

# REGIONAL SUBDIVISION AND DEVELOPMENT APPEAL BOARD

UNIT B 4730 ROSS STREET  
RED DEER AB T4N 1X2  
403-343-3394

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September 21, 2023

## NOTICE OF DECISION

**RE: Appeal of Development Permit 23/55 for construction of a 6'6" high fence, with a portion of it in the front yard on Lot 21, Block 41, Plan 4286NY located at 5004-55 St Close in the Town of Rocky Mountain House, Alberta.**

### SUMMARY OF APPEAL

This is an appeal of a development permit application for the construction of a 6'6" high fence, with a portion of it in the front yard which included a 100% variance granted to allow for the 6'6" high fence (3'3" maximum as per Land Use Bylaw 2020/19).

The Appellant, David and Ina Clark appealed the decision. A summary of the reasons for the appeal are that the fence will create an unsightly view, diminish property value, and that wooden fences require more maintenance than a chain link fence.

Notice of the appeal was provided to interested parties and a hearing was held on September 13, 2023.

Hearing Panel:            Joe Henderson, Chair  
                                 Kathy Pfau, Board Member  
                                 Julia King, Board Member

SDAB Clerk:             Tracy Breese

### BACKGROUND OF THE APPLICATION

The Development Authority, being the Town of Rocky Mountain House, issued Development Permit No. 23/55, on August 24, 2023. The subject site is Lot 21, Block 41, Plan 4286NY located at 5004-55 St Close, in the Town of Rocky Mountain House. The subject site is designated RL – Low Density Residential District under the Town of Rocky Mountain House Land Use Bylaw. A complete application for a development permit was received on August 10, 2023. The development permit application was to construct a 6'6" high fence in their rear yard, side yard and a portion of the front yard. A decision was made on August 24, 2023, with a variance of 100% granted to allow a 6'6" high fence in the applicant's front yard.

The Development Authority for the Town of Rocky Mountain House noted the following as their reasons for issuing the development permit:

The subject property is unique in that the front yard, as defined under the Land Use Bylaw, is aesthetically their side yard (see figure 2). The regulations for fencing therefore would require a variance to allow the applicant to fence this area.

Planning & Development felt that the proposed new development with variance would not interfere with the amenities, use and enjoyment of the area. There is a significant right-of-way between the subject parcel and the sidewalk (Approximately 2.9m), so the fence with Variance would not have any impact to pedestrians or sightlines. The development authority also felt that the fence would screen any outdoor storage of items located on the subject property and would subsequently be an overall improvement to the area. An existing large tree to the north of the front yard, on an adjacent property also screens the fencing to neighbors located within the close.

The development authority felt that the use, enjoyment, and value of the neighborhood is not impacted by the fence variance, as the proposed fencing meets the character of the neighborhood and would improve privacy to the applicants, as well as to the neighbors.

The sidewalk and pedestrian access would not be affected by the proposed development as shown in some of the photos included in the report and would provide privacy between the applicant and their adjacent landowner North of the subject parcel. The real property report submitted by the applicants as their site plan shows that the proposed fence would not be on the Town's right-of-way between the Town's sidewalk and the applicant's property boundary.

**Other considerations for approving the development permit:**

- ❖ There were no restrictive covenants or encumbrances on title for the subject parcel that would prohibit construction of the new fence.
- ❖ The home on the subject parcel was constructed over 50 years ago and the front of the home faces 50<sup>th</sup> avenue. The Land Use bylaw indicates that the side of their home is their front yard but aesthetically it is their side yard.
- ❖ As indicated on their submitted site plan which was on a real property report (RPR) dated November 29, 2004 the existing chain link fence the applicants would replace with the new fence on the development permit is 0.2m south of the lot corner on the north west portion of the RPR and 0.3m south of the lot corner on the north east portion of the RPR.
- ❖ Between the applicant's property lines and the Town sidewalk is a Town right-of way. Excluding the site triangle, there is a separation distance of approximately 3 meters between the edge of the concrete sidewalk and the applicant's property line.

An appeal was filed with the Regional Subdivision and Development Appeal Board on August 30, 2023 by the Appellant on DP No. 23/55. Affected parties were notified on September 1, 2023, with public notification being distributed on September 8, 2023.

## **MERIT HEARING**

### **Summary of the Development Authority's Submissions**

A development permit was processed for construction of a 6'6" high fence in the applicant's rear yard, side yard and a portion in the front yard. The property in question is considered a corner parcel under the Town of Rocky Mountain House land use bylaw. There is a section that is included in the report that defines what a corner parcel is.

The development authority met with the applicant in early July to discuss some options with them to address their RV parking and some of the options included removing the RV, putting in a driveway in their front yard or constructing a higher fence in the front yard to screen the RV.

On August 24th a development permit was issued for the development and a variance was granted of 100 percent for the front portion of the fence.

In doing the review under the land use bylaw the Development Authority does have, under the fencing and screening section, the authority to approve higher fences.

Approval depends on what the character, the appearance and design is going to look like. The development authority did carry out several site visits over time, going around the area and determined, based on the surrounding area like the trees in the cul-de-sac, that the fence wouldn't affect the design characteristics of the neighborhood. Another item that was considered is the sight line for traffic safety.

The development authority reached out to the Town of Rocky Mountain House Engineering and Operations department and sent them pictures of the fence and the application. The Engineering and Operations Department was asked if they had any comments or concerns, and they did not indicate that they had any concerns. As the town's development authority, variances can be approved by the development authority if there is no impact to the surrounding neighbours, that the development is not going to affect the use and enjoyment of the area and that pedestrian sight line views would not be significantly impacted.

### **Summary of the Appellant's Submissions**

The Appellant's appeal is based on the following factors;

- 1) The proposed fence will create an unsightly view and diminish their property value and impact the aesthetics of the overall neighborhood as well.

- 2) The only reason the fence is being constructed is to hide the applicant's motorhome that is parked in their front yard asserting that this is a violation of town bylaws. Allowing the fence to be built would create a precedence for other people to park their recreational vehicles in their front yard.
- 3) The real property report (RPR) submitted as part of the development application does not show the accurate location of the property line between the applicant and appellant properties. The RPR indicates the property corners as "temporary points" which are not accurate.
- 4) The current chain link fence is one of the reasons that the appellants purchased their property. They submit that chain link fences require minimal maintenance and are longer lasting than wood fences. Concerns were also raised about the quality of lumber that is being used in the project and that there is no gate indicated on the submitted drawings.
- 5) There is no provision in the permit regarding the trees that run along the proposed fence line. They submit that an arborist may be required to ensure any trimming of the trees does not damage or kill the trees.
- 6) The contractor listed on the permit is the current homeowners and they are not professional in erecting fences.
- 7) The current chain link fence runs adjacent to a wood retaining wall. The appellants are concerned that the process of digging holes for the new fence could make the retaining wall unstable.
- 8) The current chain link fence is connected to the appellant's rear fence. No provision has been made in the approval to ensure the security of the appellant's fence.

### **Summary of the Applicant's Submissions**

The Applicant stated that the fences that the Appellant has are connected to theirs and that they don't feel that they should be out of pocket to remove them and the retaining wall is behind the fence that they want to put in based on the existing RPR from 2004.

### **KEY FINDINGS OF FACT**

The Board makes the following key findings:

1. The subject site is designated RL – Low Density Residential District under the Town of Rocky Mountain House Land Use Bylaw.

2. Based on Section 3.16 (1) of the Town of Rocky Mountain House Land Use Bylaw (2020/19) The maximum height of a fence, as measured from grade is 3'3" for that portion of the fence which extends beyond the front portion of the principal building. Section 11.3.1(4) of the Town of Rocky Mountain House Land Use Bylaw (2020/19) provides the maximum height of a fence located in the front yard of a property is limited to 3'3".
3. Based on Section 11.3.1 (4) of the Town of Rocky Mountain House Land Use Bylaw (2020/19), a development permit is required for the front yard portion of the new fence because it exceeds the height limit provided in the Land Use Bylaw.
4. The subject lot is located on an area that is considered a corner parcel as per the Town of Rocky Mountain House Land Use Bylaw (2020/19). Per section 3.5.1 of the Town of Rocky Mountain House Land Use Bylaw (2020/19) the proposed area is defined as the "front yard" portion of the property.
5. Development Officers have the authority to grant variances as per Section 11.10 and 3.16.2 of the Land Use Bylaw (2020/19).
6. Based on the existing RPR supplied, the existing chain link fence is located on the applicant's property.
7. The applicant followed the proper development process and applied for a development permit prior to proceeding with the erection of a new fence that requires a variance approval.

## **DECISION**

The appeal filed by David and Ina Clark is DENIED and the decision of the Development Authority is upheld with the following additional conditions:

- 1) That the Applicant use Commercial grade finished lumber.
- 2) Any gate must be constructed in the same style and standard of material as the fence will be constructed of.

## **REASONS FOR DECISION**

**The Board finds the following:**

1. The Board accepts and agrees with the assessment of the Development Authority regarding the submission that due to the orientation of the house on the property, the

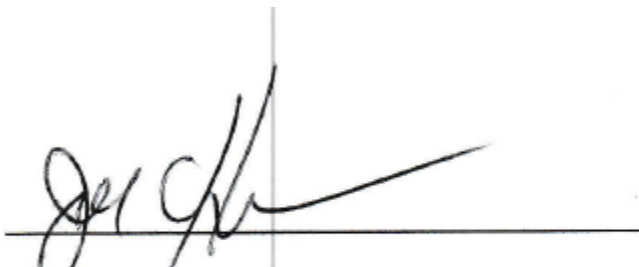
subject property is unique in that the front yard, as defined under the Land Use Bylaw, is aesthetically their side yard.

2. The Board did not accept any arguments on the effects the development will have on neighboring property values as no evidence was given to support this argument.
3. During the hearing there was support expressed for approval of the application from two neighbours who live in the development area. One lives across the street from the subject property, and one is two properties to the north of the subject property.
4. The Board did not consider the intended uses of the area to be fenced. The issue of parking a motorhome in what is technically the front yard of the property is beyond the scope of this board.
5. Based on the RPR and the Development Authority report, the Board is of the opinion that the fence does not conflict with vehicle or pedestrian sight lines such that it would potentially interfere with traffic control devices or sidewalks.
6. The Board is of the opinion that a fence height variance of 100% will not unduly interfere with the amenities of the neighbourhood or materially interfere with or affect the use, enjoyment or value of neighbouring parcels of land.

**CLOSING:**

This decision can be appealed to the Court of Appeal on a question of law or jurisdiction. If you wish to appeal this decision you must follow the procedure found in section 688 of the Municipal Government Act which requires an application for leave to appeal to be filed and served within 30 days of the date of this decision.

Dated at Ponoka County, in the Province of Alberta this 21st day of September 2023 and signed by the Chair on behalf of all three panel members who agree that the content of this decision adequately reflects the hearing, deliberations and decision of the Board.



**Joe Henderson, Chair**



## **APPENDIX "A"**

PARTIES WHO ATTENDED, MADE SUBMISSIONS, OR GAVE EVIDENCE AT THE HEARING:

<u>Name</u>	<u>Capacity</u>
David and Ina Clark	Appellant
Treena and Patrick Martin	Applicant
Michael Fitzsimmons and Renee Hartling	Development Authority
Tammy Shevalier	Adjacent Landowner
Ruth Huhn	Adjacent Landowner
R.L. (Bob) Haagsma A.L.S.,	High Country Surveys

## **APPENDIX "B"**

DOCUMENTS RECEIVED PRIOR TO THE HEARING:

<u>Item</u>
Notice of Appeal
Development Permit Application
Notice of Decision
Information Provided by Development Authority
Notices for Hearing
Submissions from Adjacent Neighbour