



SUBDIVISION AND DEVELOPMENT APPEAL BOARD MINUTES

For SDAB Hearing No. 22-009

TIME: 6:30 pm

DATE: November 30, 2022

PLACE: Council Chambers, Cochrane RancheHouse

Chairperson:	Scott Shannon
Board Members:	Ashley Marshall Hayley Gavin Mark Cardwell Morgan Nagel, Councillor TerriAnne Halmrast
Administration:	Adam Nordquist, Planner II John Popoff, Manager, Planning Services
SDAB Clerk:	Karen Babin

1. **CALL TO ORDER**

- a. MOVED by M. Cardwell to open the hearing
Carried Unanimously
- b. Chairperson Shannon opened the hearing at 6:30pm
- c. Introductions were made from the Board and Administration
- d. Chairperson Shannon asked if anyone had any objections to any member of the Board
 - i. There were no objections

2. **ADOPTION OF AGENDA AND MINUTES**

- a. MOVED by A. Marshall to adopt the Agenda as presented
Carried Unanimously
- b. MOVED by H. Gavin to adopt the Minutes from SDAB 22-008 hearing held November 30, 2022 as presented
Carried Unanimously

3. **APPEAL**

- a. The Chairperson asked the Clerk to introduce the appeal
 - i. The Clerk read out the appeal as follows:

DP2022-067
297 Riviera Way
Lot 6, Block 26, Plan 161 0575
Dwelling, Semi-Detached and Single Detached (33 Units)

- b. The Chairperson asked the Clerk if this Appeal had been duly advertised

The Clerk stated that the Notice of Appeal had been advertised in the November 24 edition of the Cochrane Eagle as well as sent out to adjacent landowners

4. **OUTLINE OF HEARING PROCESS**

- a. The Chairperson outlined the hearing process for all present

There were no concerns with the process from the Applicant, Appellant, Administration or any members of the audience

- b. The Chairperson asked the Clerk if each of the affected parties had received all materials in a timely fashion.

The Clerk replied that they had

5. **PRELIMINARY MATTERS**

- a. Ms. Anderson, legal counsel for the Applicant and landowner, advised she would state their position on whether the Board has jurisdiction to hear the appeal per section 685(3) of the *Municipal Government Act*, RSA 2000 M-26 during her presentation.

6. **PRESENTATIONS**

- a. Administration:

- i. The Chairperson called upon the Development Officer to come forward and present their report
- ii. Adam Nordquist submitted a comprehensive Administrative Report and made an oral and visual presentation to the Board
- iii. Questions were asked from the Board to Administration

- b. Appellant:

- i. The Chairperson called upon the Appellant to come forward and present their report
- ii. Alex Rushton submitted a report and made an oral presentation to the Board
- iii. Questions were asked from the Board to the Appellant

- c. Applicant:

- i. The Chairperson called upon the Applicant to come forward and present their report
- ii. Bonnie Anderson of Dentons Canada LLP and legal counsel for the Applicant and landowner, submitted a comprehensive report and made an oral presentation to the Board
- iii. Questions were asked from the Board to the Applicant

d. Additional Presentations:

- i. Trevor Longmire, an adjacent property owner, also submitted comments to the Board and voiced his support for the appeal
- ii. Jens Baun, an adjacent property owner, voiced his support for the appeal

7. QUESTIONS AND SUMMARIES

- a. Final questions for clarification were asked
- b. Summaries were presented from Administration, the Applicant and Appellant
- c. The Chairperson asked if all parties involved felt they were given a fair hearing
 - i. All parties agreed they were given a fair hearing

8. CLOSE

- a. The Chairperson advised that the Board had 15 days to reach their decision
- b. MOVED by A. Marshall to adjourn the hearing
Carried Unanimously
- c. Chairperson Shannon adjourned the hearing at 7:51 pm

DATED this 13 day of December 2022

Original signed by Scott Shannon

Scott Shannon, Chairperson

Original signed by Karen Babin

Karen Babin, SDAB Clerk

TOWN OF COCHRANE
SUBDIVISION AND DEVELOPMENT APPEAL BOARD

BOARD ORDER: 22-009

IN THE MATTER OF THE *Municipal Government Act*, R.S.A. 2000 Chapter M-26 (Act)

AND IN THE MATTER OF AN APPEAL FROM AN ORDER lodged by Alex Rushton,
of Cochrane, AB (Appellant)

BEFORE:

Scott Shannon, Chairperson

Ashley Marshall

Hayley Gavin

Mark Cardwell

Morgan Nagel, Councillor

Terri Anne Halmrast

Karen Babin, SDAB Clerk

This is an appeal to the Town of Cochrane Subdivision and Development Appeal Board (SDAB) of the Development Authority, being the Notice of Decision to approve Development Permit 2022-067 for Dwelling, Semi-Detached and Single Detached (33 Units) at 297 Riviera Way, Plan 161 0575, Block 26, Lot 6, in the Town of Cochrane (Town).

A hearing to consider the appeal was convened by the SDAB on November 30, 2022, commencing at 6:30 pm in the Town's Council Chambers. The live stream was available for viewing on the Town's website at CochraneAB.CivicWeb.net/Portal/Video.

I. BACKGROUND

Development Permit application DP2022-067 is for Dwelling, Semi-Detached and Single Detached (33 Units). The proposed development is located at 297 Riviera Way in the neighbourhood of Riversong. The subject property has a land use designation of Residential Mix (R-MX) and the proposed use is a Permitted use within the district.

The Appellant, Alex Rushton, appealed this decision as per section 685(1) of the *Municipal Government Act*, RSA 2000, c. M-26 (MGA), any person affected by an order, decision or development permit made or issued by a development authority may appeal to the Subdivision and Development Appeal Board.

II. DETERMINATION OF THE BOARD

The Appeal is denied, and the decision of the Development Authority is upheld as per the reasons outlined in section V Decision.

III. APPEARANCES and SUBMISSIONS

The Board received oral and/or written submissions from:

- a) Alex Rushton, the Appellant
- b) Bonnie Anderson, legal counsel on behalf of the Applicant and landowner
- c) Adam Nordquist, on behalf of the Development Authority
- d) Trevor Longmire, neighbour in favour of the appeal

The Board also heard from:

- e) Jens Baun, neighbour in favour of the appeal

The following were presented during the hearing and form part of the record:

- Exhibit 1 – email submitted by Trevor Longmire
- Addendum 1 – PowerPoint Presentation submitted by the Development Authority.
- Addendum 2 – PowerPoint Presentation submitted by the Applicant

IV. SUMMARY OF EVIDENCE

- a) Submissions of the Development Officer
- The Development Officer's submission included a report, maps, plans, photos and PowerPoint presentation.
- The Town received the development permit application on May 12, 2022. The subject property is within the Residential Mix District (R-MX) where semi-detached and single detached dwellings are listed as a Permitted Use. The application was deemed complete on June 2, 2022 and circulated to internal departments and external agencies for comment.
- The development is proposed as Bareland Condominium thus was reviewed in accordance with section 8.6 of Land Use Bylaw 01/2022.
- The application was reviewed against the following statutory and non-statutory planning documents:
 - [Municipal Development Plan](#), Bylaw 07/2008 (MDP)
 - Section 8.2 Land Use Goals: use land efficiently and creatively; meet minimum residential density level of eight units per acre

- Section 8.4.2 Residential Goals: facilitate a balanced housing mix for all lifecycles, income levels and household sizes while ensuring adequate land is available to meet housing needs
- [Cochrane Sustainability Plan, 2009](#)
 - Pathway 9: provide diverse, accessible, safe and affordable housing options for all income levels, to either own or rent
 - Pathway 11: sets a target of increasing density within the existing 2009 municipal footprint
- [South Ridge Area Structure Plan, Bylaw 14/94](#)
 - The area is broadly residential and allows for a range of both residential uses and other compatible uses.
 - Section 3.3: a variety of dwelling units are encouraged with single detached being predominant and a limited mix of multiple housing types. Density target is 8-10 units per gross developable acre but may be exceeded with approval of the Development Authority.
 - Section 3.3.3 states multi-unit development shall be located near major streets and open spaces
 - Section 3.3.4 states the form, structure and appearance of multi-unit developments shall be complementary to adjacent developments and the streetscape
- [Riversong Design Brief](#)
 - The Design Brief and concept plan, anticipates density for the R-M lots at 30 units per acre with a maximum allowable of 60 units.
 - Section 3.1 requires that further investigation be undertaken to determine the density of R-M lots due to the topography and natural features of the area.
- [Riversong Stage 2 Neighbourhood Plan](#)
 - This Plan identifies the subject property as a multi-unit site zoned R-M that is to be developed as comprehensive multi-family sites. Detailed reviews are undertaken at the permit stage to determine suitable housing forms.
 - Section 4.1: a variety of housing forms will be available including single detached, semi-detached, townhomes and multi-unit
 - Section 6.0: overall density of eight (8) units per acres to a maximum density of 17.1 units per acre is anticipated with the subject property at 18 units per acre. The density count will not be finalized until the subdivision or permitting stage due to bylaw regulations.
 - The emergency access road was moved to the interior of the property due to topography restrictions.
 - Strategically placed walkways will be provided for access to the Bow River pathway and downtown via the River Avenue Bridge.
 - A Traffic Impact Assessment was completed and approved by the Town as part of the Neighbourhood Plan approval process.
- [Land Use Bylaw 01/2022 \(LUB\)](#)
 - The development was proposed as bareland condominium meaning it is reviewed as a comprehensive development. Setbacks are measured from the exterior perimeter while internal lot widths and lot areas are at the discretion of the development authority.
 - The Development Officer provided a comprehensive overview of R-MX District requirements including setbacks, building height, lot coverage and maximum density. The proposed development is compliant with all requirements.
 - Internal roadways will be private and designated as common property once the development is subdivided and registered at Land Titles.
 - An access agreement will be required to ensure emergency access on the private roadway

and that pedestrians have access to the regional pathway system via a proposed sidewalk. The private roadway will be developed to accommodate emergency vehicles and the existing emergency access gate will remain to prevent unauthorized access.

- Sections 8.19.8 and 8.19.12 identify the parking requirements. The proposed development meets or exceeds these requirements as shown in the site plan attached as Appendix Six.
- Sections 8.13.3 and 8.13.18 identify minimum landscaping requirements. The proposed development meets or exceeds these.
- Grading, servicing and stormwater plans were submitted and have been reviewed and approved by Civil Land Development Services.
- Section 8.21.4 requires that a slope stability report and retaining structure designs be submitted for review and approval prior to the start of development.
- Section 1.10.4 d) states that all Development Permit applications for Permitted Uses that comply with this Bylaw shall be approved.
- [Municipal Government Act, RSA 2000, c M-26](#) (MGA)
 - Section 642(1) of the *Municipal Government Act* states that “when a person applies for a development permit in respect of a development provided for by a land use bylaw pursuant to section 640(2)(b)(i), the development authority must, if the application otherwise conforms to the land use bylaw and is complete in accordance with section 683.1, issue a development permit with or without conditions as provided for in the land use bylaw.”
- Circulation Comments
 - The application was circulated to internal departments and external agencies. Comments were received from Water & Wastewater and Civil Land Development Services, which were addressed prior to a decision being made on the application.
- After thorough review, the Development Officer found the development application was in alignment with the planning policies and was compliant with all applicable regulations of the LUB. In accordance with the LUB and *MGA*, a development permit must be issued. The Notice of Decision with conditions was issued on October 11, 2022.
- Administration provided the following responses to questions from the Board:
 - The adjacent driveway and cul-de-sac are at peak height of the retaining wall with it sloping down from there.
 - There is an easement registered on title for a drainage swale in the area between the proposed retaining wall and fence line.
- b) Submission of the Appellant
- The Appellant’s submission included a report, maps and photos.
- Mr. Rushton stated the appeal was filed based on privacy, safety and security concerns resulting from the proposed development. It is his opinion that the Land Use Bylaw and Neighbourhood Plan were misinterpreted.
 - With respect to privacy, section 3.5 of the Integrated Neighbourhood Design Guidelines notes that vertical landscaping, solid fencing and construction of rear garages can be used to limit overlook into private spaces. Photos 1 and 2 highlight the fact that the elevation of the proposed development is above the top of the fence line thus reducing the privacy of neighbouring parcels.
 - With respect to safety, drawings show a planned cul-de-sac for the proposed development ends a few feet from the rear fence of 206 Riviera View. There is nothing to stop a vehicle from leaving the road, clearing the fence and ending up in this backyard. Photo 10 shows the planned cul-de-sac in relation to the fence and backyard. Additionally, the retaining wall at its highest is 6 feet

above ground. There is nothing to prevent someone from falling into the narrow void and injuring themselves.

- With respect to security, section 8.9.1 of the LUB states that developments “should incorporate the principles of Crime Prevention Through Environmental Design (CPTED) where applicable” like clear sightlines and using landscaping as barriers to deter unauthorized access. The drawings show the proposed retaining wall in close proximity to the existing fence line thus creating a narrow void that will be difficult to see into and easy for someone to hide in.
- Section 8.10.2 of the LUB states that the Development Authority should only approve an application if satisfied that the proposed development will be “compatible with the surrounding area and is appropriate for the proposed location”. This proposal is neither compatible with nor appropriate for this location.
- Riversong 2 Neighbourhood Plan addresses pedestrian connectivity and mentions strategically placed walkways and pathways. Figure 7: Key Elements (Appendix 5 of Administration’s submission) shows that the regional pathway was originally planned to be where the retaining is now proposed to be built. The pathway would provide a transition between the housing types and eliminate the lack of privacy issue. The pathway has now been moved to the western edge of the development; the original plan that was approved should have been followed.
- The Appellant asks that the plan change the proposed drainage lands to a properly graded green space, without a retaining wall, and incorporating the previously planned pathway.
- Section 3.3.4 of the South Ridge Area Structure Plan states that “the form, structure and appearance of multiple unit developments shall be complementary to adjacent development and the streetscape.” The proposed development is not complementary to the adjacent properties.
- Mr. Rushton provided the following response to a question from the Board:
 - Cul-de-sacs usually have greenspace at the end acting as a buffer. There are no safety protections for the yards backing onto this road.

c) Submission of the Applicant

- Bonnie Anderson of Dentons Canada LLP, presented on behalf of the property owner. Also in attendance were Pam MacInnis of B&A Planning Group, Kent Hystad of Madlee Developments and Sean Wilkinson of Aplin & Martin Consultants Ltd.
- Ms. Anderson reviewed the reasoning for the application’s approval by the Development Authority:
 - single and semi-detached dwellings are permitted uses in the R-MX district, no variances were requested or required, and it met with all applicable statutory and non-statutory requirements.
 - Section 1.10.4 of the LUB states that all development permit applications for permitted uses that comply with the LUB shall be approved. This application is for a permitted use that fully complies therefore must be approved.
 - Section 685(3) of the MGA states there is no ability to appeal the approval of a development permit application for a permitted use “unless the provisions of the land use bylaw were relaxed, varied or misinterpreted or the application...was deemed to be refused”. This application did not require relaxations or variances nor was the LUB misinterpreted therefore there are no grounds for appeal.
- Ms. Anderson acknowledged that the Appellant’s main arguments centered around safety, privacy and security of the properties adjacent to the proposed development, none of which established that the application was incorrectly approved. Therefore, the appeal must be dismissed. The Appellant’s concerns could be addressed through additional Conditions of Approval if the Board so chooses.
- With respect to the regional pathway relocation, it is Ms. Anderson’s understanding that this occurred around the time of the emergency access road relocation. Additionally, Neighbourhood Plans are not statutory planning documents meaning municipalities have some discretion whether to implement

such policies. Moving the location of the pathway does not materially affect the residents as they will still have access thus meeting the original intent and purpose of the Neighbourhood Plan. This change also keeps the access on public land as opposed to private property.

- The Overland Drainage Easement and Restrictive Covenant Agreement have been registered on title since the lands were sub-divided in 2016. The drainage right-of-way is 2.4 metres wide with 1.8 metres on the Appellant's lands and 0.6 metres on the Applicant's lands. Only 0.6 metres is required for constructing the retaining wall so it could potentially be moved to the east to make the overland drainage area narrower and discourage people from entering should the Board choose to make this change.
- The grade of the overland drainage lands cannot be adjusted. A change in elevation is required in order to move the water.
- From an urban planning and privacy perspective, the Applicant believes this is a better plan. The fenced side yards of Lots 27 and 28 are proposed to run parallel to the Appellant's and neighbouring lots. Typically, the windows on the side elevations of homes are smaller, set higher from the floor and in lower-traffic rooms thus affording neighbouring homes more privacy. Additionally, side yards are normally smaller and used less frequently than rear yards, again providing more privacy.
- Section 8.9.1 of the LUB does speak to promoting public safety through environmental design; however, the words used are "should" as opposed to "shall" thereby making it a suggestion and not a requirement.
- The following responses were provided to questions from the Board:
 - Ms. Anderson stated that the Applicant would be amenable to adjusting the design of the retaining wall at the end of the cul-de-sac if the Board so wishes. Fencing could be added to protect adjacent homes from vehicle lights and to discourage trespassers.
 - Mr. Hystad explained that streetlights are not proposed for the cul-de-sac as it is a private road. There are lights proposed for the fronts of the homes. The public road running east-west will have streetlights.
 - Ms. Anderson replied that the width of the overland drainage lands is 2 metres and could be reduced if required.
 - Mr. Hystad advised that columnar aspens are planned for the space between the retaining wall and swale but not within the easement. There is room for soft landscaping at the cul-de-sac but not adjacent to the existing homes.
 - Mr. Hystad stated fencing is planned at either end of the easement to restrict access. There will be chain link at the north end and regular fencing at the south end. There is no plan to add signage stating it is private property, but it could be added.

d) In Favour of the Appeal

- Trevor Longmire, adjacent property owner in favour of the appeal
 - Mr. Longmire's backyard is small and has a concrete swale so adding landscaping for privacy is not an option.
 - He expressed concern about a possible increase in crime due to the lack of clear sightlines into the easement area and that people could potentially hide there until after dark.
 - Deer and other wildlife are often seen in this area. Mr. Longmire is concerned that there is nothing preventing them from entering the overland drainage lands and becoming trapped.
 - It is unfortunate that the Applicant did not shift the development 10 feet to the west as that likely would have resolved the issues presented tonight. This area feels more closed in than any other space in town; the proposed development encroaches on existing neighbours. They would have liked to have had an opportunity to discuss potential options with the Applicant and the Town.

- Jens Baun, adjacent property owner in favour of the appeal
 - Mr. Baun stated he is not against development, and they were aware there would be further development west of their property when they purchased it. The pathway was in the drawings and was one of the reasons they chose this area.
 - Mr. Baun said one reason they moved from Calgary was because of crime. They found there was less crime in Cochrane and liked the openness of Riviera. Now they find out there will be a dark alleyway behind their fence and that is a problem.
 - Mr. Baun also expressed concern about deer and other wildlife getting trapped.
 - Mr. Baun suggested the Board, Town and developers work together to get development that everyone likes.
 - In response to Ms. Anderson and section 8.9.1 of the LUB, Mr. Baun stated that crime prevention is not a nice to have, it is a must have.

Final Comments

- Administration made the following final comments:
 - Mr. Nordquist stated they were aware of the pathway issue and discussed it with the Applicant. Through that meeting, it was determined the best course of action was to have the sidewalk run along the emergency access road to the regional pathway and had the Applicant resubmit that. An Access Agreement will also be entered into to ensure public access remains for the site. Residents still have the option to access the pathway.
 - Trees and fences can be used to delineate between private and public spaces.
- The Applicant made the following final comments:
 - Ms. Anderson noted that section 8.9.1 of the LUB is a “should” as opposed to a “shall” so she does not believe there is non-compliance with the LUB. Without any variances, relaxations or misinterpretations, this Board is mandated to approve the permit.
- The Appellant made the following final comments:
 - Mr. Rushton does believe that some of the land use plans were misinterpreted. Instead of the pathway as originally shown in the plans, there is now a drainage corridor with no landscaping.
 - The developer did mention that someone could fall in there so there is a safety issue.
 - Moving the retaining wall closer to the fence would create a narrower area which would make things worse. A three-foot-high fence on top of the retaining wall would also make things worse and not help with security.
 - One of the biggest issues is the elevation change due to the layout of the development. The Applicant’s suggestion that this current plan is better than the mirrored plan is only an opinion, and he does not agree.
 - Mr. Longmire referred to his email (Exhibit 1 in the agenda package) where he inquired about the retaining wall back in the summer. Mr. Nordquist indicated the wall would be about 0.5 metres high and that the adjacent property will be cut down and levelled off quite a bit. Mr. Longmire understands that plans can change but these ones changed rather quick. This has added to the confusion and part of the reason why they are here today.

V. DECISION

The Board reviewed all evidence and arguments, written and oral, submitted by the parties.

Semi-Detached and Single Detached Dwellings are a Permitted Use in the Residential Mix District where the subject property is located.

The Board notes that the *Municipal Government Act* is very specific about when a development permit issued for a permitted use can be appealed to the Board. Section 685(3) provides for an appeal only if the provisions of the land use bylaw were relaxed, varied or misinterpreted.

The main issues before the Board are: 1) Does the Board have jurisdiction to hear this appeal? and 2) Is the decision issued by the Development Authority appealable under section 685(3) of the *MGA*?

In *Rau v. Edmonton (City)* at Para. 15, “The Board’s jurisdiction is not limited to hearing meritorious appeals; it can also hear appeals that are flawed, even seriously flawed. The phrase “no appeal lies” found in s. 685(3) effectively means that “no appeal will be successful”, unless there is a relaxation, variation, or misinterpretation.”

In the interest of the principles of procedural fairness, the Board heard from the Appellant and other affected parties present at the hearing.

In the written and oral submissions received from the Appellant and other affected parties, the main concerns raised were around safety, privacy and security. The Board acknowledges that these are valid concerns; however, the Board’s jurisdiction is limited to the statutory provisions of the *MGA*.

The Board concurs that the development permit was issued without relaxations or variances. In further considering the Appellant’s arguments, the Board does not find there was a misinterpretation of the provisions of the LUB. Therefore, in accordance with the *MGA* and LUB, there is no right to appeal this development permit for a Permitted Use with no variances.

Accordingly, the appeal is denied, and the decision of the Development Authority is upheld. Development Permit DP2022-067 shall be issued as approved by the Development Authority subject to the following additions to the conditions of approval:

10.1 Where the retaining wall exceeds 1.0 m in height, the applicant/owner shall install a minimum 0.3 m high safety railing.

24.1 The applicant/owner shall provide a soft landscaping screen at the east end of the cul-de-sac to provide a year-round buffer and privacy screen for the existing adjacent properties. The selected plant material shall be a minimum of 1.5 m in height at time of planting.

Dated this 9th day of December 2022

Original signed by Scott Shannon

Scott Shannon, Chairperson

Original signed by Karen Babin

Karen Babin, SDAB Clerk

An appeal of this Decision, on a question of law or jurisdiction, may be made to the Alberta Court of Appeal in accordance with section 688 of the Municipal Government Act, RSA 2000, c.M-26 within 30 days of the date of this Decision.