



**SUBDIVISION AND DEVELOPMENT APPEAL BOARD  
TOWN OF STONY PLAIN**

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**HEARING DATE:** August 6, 2020  
**DEVELOPMENT PERMIT:** 2020-D0104

**NOTICE OF DECISION OF SUBDIVISION AND DEVELOPMENT APPEAL BOARD**

**INTRODUCTION**

1. The Development Officer of the Town of Stony Plain conditionally approved a development permit application made by Barbara Kallay (“The Applicant”) for a proposed three season sunroom addition to an existing deck at 9 Greenbriar Place: Plan 022 4740 Block 7 Lot 63. Irina Brazuk (“The Appellant”) appealed the issuance of conditionally approved development permit 2020-D0104 on July 14, 2020.
2. The Subdivision and Development Appeal Board (“SDAB”) heard the appeal on August 6, 2020.

**PRELIMINARY MATTERS**

**A. Subdivision & Development Appeal Board Hearing Communication**

On Monday, July 20, 2020 a letter was circulated by mail to inform the residents of the Subdivision & Development Appeal Hearing to take place on August 6, 2020.

Anyone affected by the decision of the conditionally approved development permit were requested to pre-register to make an oral submission by July 31, 2020 to ensure that social distancing guidelines are adhered to have this meeting in person at the Town Office in Council Chambers.

The agenda package was posted to the Town’s website on July 30, 2020.

**B. Board Members**

At the start of the hearing, the Chair of the SDAB asked if anyone in attendance would like to request a postponement of the hearing. No one came forward.

At the beginning of the hearing the Chair of the SDAB asked the Appellant and the Applicant if they had concerns with the membership of the Board. The Appellant and the Applicant affirmed they had no issues with the membership of the Board.

The Chair asked the Board Members if they had visited the site, been in contact with anyone affected by this appeal, or they feel they should be excused for any reason.

Board Member Jo-Ann Hall stated for the record that she is a regular user of the Stony Plain Golf Course.

The Board Members affirmed that they had not visited the site, been in contact with anyone affected by this appeal, or feel they should be excused for any reason.

### **C. Exhibits**

The SDAB marked the exhibits as set out at the end of this decision letter.

### **DECISION OF THE SUBDIVISION AND DEVELOPMENT APPEAL BOARD**

At the end of the hearing the Chair of the SDAB asked the Appellant and the Applicant if they felt they had a fair hearing and opportunity to present their information. The Appellant and the Applicant affirmed they had.

The Chair of the SDAB closed the Public Hearing for Development Permit 2020-D0104 and advised that the Board has 15 days to make a decision. The decision will be prepared in the form of a letter on behalf of the SDAB by the SDAB Clerk.

### **SUMMARY OF HEARING**

The following is a summary of the oral and written evidence submitted to the SDAB. At the beginning of the hearing, the SDAB Members affirmed that they had reviewed all the written submissions filed in advance of the hearing, not visited the site, been in contact with anyone affected by this appeal, or feel they should be excused for any reason.

#### **Development Authority Presentation**

##### **Summary:**

The Development Officer conditionally approved Development Permit 2020-D0104 for the proposed sunroom with a variance relaxing the minimum required rear yard setback from 7.5 metres (24.6 feet) to 5.0 metres (16.4 feet).

The decision of the Development Officer was appealed.

**Land Use District and Use Class:**

Development Permit 2020-D0104 is subject to the regulations of Land Use Bylaw 2576/LUO/17, which will be referred as “the LUB” within this submission.

The Lands are located within the LUB Section 2.2.0. R1-Detached Large Lot Detached Dwelling Residential District.

Sunrooms are considered an addition to a dwelling and are a permitted use within the R1 District.

**Relevant Planning Documents:**

Land Use Bylaw 2576/LUO/17

Section 1.2.4 Development Permit Variance

Section 1.3.2 Exemption from a Development Permit

Section 2.2.0 R1-Large Lot Detached Dwelling Residential District

Section 3.9.0 Sight Line Control

**Relevant Background information:**

On June 22, 2020, the Town received a development permit application to construct a three season screened sunroom on an existing rear deck at 9 Greenbriar Place.

A sunroom is considered an addition to the principal building and is subject to the LUB Section 2.2.0. R1 District regulations.

The proposed development does not meet the minimum rear yard setback requirement of 7.5 metres to the rear property line; therefore, a 2.5 metres variance is required to allow the development to proceed.

**Review and Discussion:**

Upon review of Development Permit application 2020-D0104, the Development Officer found:

- The application is to construct a three season sunroom on an existing rear deck;
- The dwelling is a bungalow (single storey);
- The subject property backs onto the Stony Plain Golf Course;
- The dwelling is set back further on the lot than the dwellings on either side of it;
- Development and building permits were issued for the existing deck in 2003 (2003-D0257);
- The height of the proposed sunroom is 2.33 metres (7.76 feet);
- The existing rear deck is 1.10 metres (3.6 feet) high;
- The existing rear deck is 5.0 (16.4 feet) from the closest point of the rear property line and meets the LUB regulations regarding setbacks for a deck;
- The required rear yard setback for a principal building in the R1 District is 7.5 metres (24.6 feet);
- The proposed sunroom would require a variance of 2.5 metres to the required rear yard setback regulation; and,
- The side yard setbacks and site coverage comply with the LUB regulations for the R1 District.

As per the LUB Section 1.2.4., a Development Authority may vary any regulation of the LUB and issue a development permit even though the proposed development does not comply with one or more regulations of the LUB. There are parameters to follow when considering a variance (see Exhibit B LUB Section 1.2.4. Development Permit Variance). In summary, in the opinion of the Development Officer:

- The use conforms to the use prescribed for the land and building;
- It would not unduly interfere with the amenities of the neighborhood or materially affect the use, enjoyment or value of neighboring parcels of land;
- The variance is a reasonable deviation needed to accommodate the proposed development;
- Looking at the site plan it has been determined that the existing deck does encroach on a registered easement. Upon further investigation, the easement is a drainage easement that allows the Golf Course to drain through some of the lots in Greenbriar Place. Nothing in the easement agreement that restricts improvements upon the easement. The deck was approved in 2003 on the existing deck on this easement.
- It would not change the drainage of the property, as it is to be placed on an existing deck.

During the review of the development permit, the Development Officer did not take into consideration the sight lines from adjacent properties through the Lands.

The purpose of imposing rear yard setbacks within the LUB is to provide amenity space on the property, for the use and enjoyment of the occupants of the land. A sunroom is a form of amenity space.

The building permit application for the proposed sunroom has undergone a plan review under the Albert Building Code successfully.

#### **Rationale for Decision:**

The Development Officer determined that the proposed sunroom addition would have little impact on the adjacent landowners, as the existing dwelling is setback quite a bit further than the dwellings on the adjacent properties.

As well, the Development Officer determined that the requested variance was reasonable for the following reasons:

- a) The Lands back onto the Golf Course;
- b) The existing dwelling is set back further than the adjacent dwellings; therefore, the proposed structure would not be “imposing” on the adjacent property’s rear decks;
- c) The existing rear deck is at the minimum required rear yard setback for a deck in the R1 District, the applicant cannot possibly meet the 7.5 metres setback;
- d) The proposed sunroom meets the other district regulations regarding side yard setbacks and site coverage.

#### **Response to the Appellants Concerns:**

In response to the concerns noted in the Appellant’s Notice of Appeal dated July 14, 2020:

- a) The LUB Section 3.9.0. Sight Line Control regulations address sight lines regarding intersections for the purpose of vehicular and pedestrian safety. It does not address sight lines to natural areas, parks or other features adjacent or near a private property.
- b) The Town cannot guarantee of a view through another person's private property;
- c) As per LUB Section 1.3.2., the applicant could place the following structures on the existing rear deck, exempt from the requirement of a development permit, which could have a similar impact:
  - 1. A 2.4 metres (7.9 foot) high privacy wall;
  - 2. a 10 m<sup>2</sup> (107 ft<sup>2</sup>) gazebo with screening;
  - 3. a pergola structure with screening.
- d) Other accessory buildings could be constructed in a rear yard that could impact sight lines through private property, such as sheds. The LUB allows a maximum height of 4.0 metres (13 feet) for a shed that is 10 m<sup>2</sup> or less and a maximum height of 4.6 metres (15 feet) for a shed that is greater than 10 m<sup>2</sup>.
- e) The proposed sunroom is further away from the Appellant's property than the closest point of the house, which is at 1.91 metres from the common property line.
- f) The total height of the sunroom, on the deck, will be approximately 3.43 metres (11.25 feet); which is lower than the principal building. A typical bungalow would be approximately 4.6 metres (15 feet) depending on roof pitch, height of ceilings, height of finished floor, etc.).

**Conclusion:**

The Development Authority submits that the Subdivision and Development Appeal Board uphold the decision of the Development Officer.

The subject property backs onto the Stony Plain Golf Course; therefore, the variance to the rear yard setback does not impact another residential property at the rear (north).

The proposed sunroom meets the LUB minimum required side yard setback and maximum site coverage for the lot.

Unobstructed views through another person's private property are not guaranteed. People have the right to improvements within their property lines, whether it be fences, sheds, decks, play structures, or gazebos.

**Exhibits:**

- Exhibit A: Development Permit 2020-D0104 Decision
- Exhibit B: Land Use Bylaw 2576/LUO/17 Sections
- Exhibit C: Context Maps – Topographic and Aerial
- Exhibit D: Video Submission by the Appellant

**The Appellant's Presentation:**

The Appellant, Irina Brazuk is the homeowner at 7 Greenbriar Place.

Ms. Brazuk provided an oral and video submission in support of her appeal. Ms. Brazuk stated that the sunroom will be built deep in her neighbor's backyard and will block her view of the golf course.

Ms. Brazuk is concerned that the sunroom being built on top of the existing deck will be overbearing to her yard and house, block the view of her property and limit her enjoyment of the golf course.

Ms. Brazuk purchased her land on the golf course for the beautiful view. She stated that her neighbor's bungalow sticks out 25 feet and the deck is 10 feet, so when she looks out to the east of the property, she is left with 16 feet of view and will only see her neighbor's house.

Ms. Brazuk is concerned that because her neighbor's house is set further back than hers all she will see is house and it will be overbearing.

Ms. Brazuk presented a video submission to support her appeal.

### **The Applicant's Presentation:**

The Applicant, Barbara Kallay, is the homeowner at 9 Greenbriar Place.

Ms. Kallay stated her reason's for building the three season sunroom were enjoyment. The enjoyment of the three seasons we have out of the wind and to be able to bring her husband home from the Good Samaritan to visit and be out of the wind and bugs. She also stated that the sunroom would provide protection from wild golfers, Golf balls have hit her and broken windows on her property and that the sunroom would provide protection.

Ms. Kallay reiterated from the Development Authority's report that, "sightlines are not guaranteed by the Town".

Ms. Kallay stated that existing trees in yards and on the golf course, currently limit the view of the golf course to the east.

Ms. Kallay stated that the submitted photos fail to show that there is view of the golf course looking north from number 7 Greenbriar Place and number 9, her home.

Ms. Kallay stated that the trees, home and deck are all already there and the deck met the requirements set in 2003.

In response to the word "overbearing" being used, Ms. Kallay stated that she wants to improve her property and increase her resale value. Ms. Kallay feels the word "overbearing" is used to control what she is doing in her yard and her attempt to improve her property.

Ms. Kallay requested that the Board uphold the decision of the Development Officer and approve her application.

### **CLOSING REMARKS**

The Applicant shared that the builder of the proposed sunroom was present if the SDAB Members had any questions regarding the project.

The Appellant shared that in response to the Applicant's presentation, she feels her neighbor would like to have enjoyment at her expense, as the sunroom would prevent her from enjoying her own property.

Ms. Brazuk stated that she has been in real estate since 2000 and knows how effective position and location of a homes is and again feels like her neighbor is improving her home and increasing her property value at Ms. Brazuk's expense, as her property value will decrease.

Ms. Brazuk stated that the wind blows from the west, and that her neighbor planted trees next to her deck 3 or 4 years ago without asking her if she would like them. Ms. Brazuk feels these trees secure her neighbor from the wind. Ms. Brazuk stated that she can see the blue sky and greens though the trees but once the sunroom is built all she will see is the house.

Ms. Brazuk stated that trees have their own life span and are not a permanent structure.

Ms. Brazuk stated people buying a home on the golf course know it comes with the risk of flying golf balls.

## **EVIDENCE**

Evidence presented to the SDAB and related to the SDAB hearing can be found in the SDAB Agenda Package dated August 6, 2020. Furthermore, additional evidence provided and presented to the SDAB can be found in the Meeting Minutes for the SDAB hearing held on August 6, 2020. All evidence is retained as per the Town's retention schedule.

## **FINDING OF FACT**

1. The appeal was filed in time, in accordance with section 686 of the *Municipal Government Act*, RSA 2000, c. M-26.
2. The subject property is located at 9 Greenbriar Place which backs onto the Golf Course and is set back further than the adjacent dwellings.
3. The existing rear deck is at the minimum required rear yard setback for a deck in the R1 District, the applicant cannot possibly meet the 7.5 metres setback.
4. The proposed sunroom meets the other district regulations regarding side yard setbacks and site coverage.
5. The Development Authority confirmed that this development permit approval would not affect drainage as there is nothing in the easement agreement that restricts improvements upon the easement, and it is being built on an existing deck.
6. The Land Use Bylaw Section 3.9.0. Sight Line Control regulations address sight lines regarding intersections for the purpose of vehicular and pedestrian safety. It does not address sight lines to natural areas, parks or other features adjacent or near a private property.
7. That the Town of Stony Plain does not guarantee unobstructed views on another's private property.
8. As per Land Use Bylaw Section 1.3.2., the Applicant could place other structures on the existing rear deck, exempt from the requirement of a development permit.

## **REASON FOR DECISION**

The Board is of the opinion:

- That the photo and video evidence submitted confirmed that the sight line is currently partially obstructed by existing trees.
- That there was no evidence provided by the Appellant that confirmed that the addition of a three season sunroom would result in a decrease in her property value.
- That the written, verbal, picture and video evidence submissions given by the Appellant confirmed that the view to the east is currently obstructed by trees and that a sunroom would not appear to further obstruct the sight line.
- That the Town of Stony Plain does not guarantee unobstructed views on another's private property.

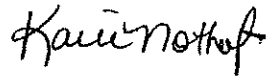
## **DECISION**

The Subdivision and Development Appeal Board deny the appeal and uphold Development Permit 2020-D0104 with the following conditions imposed by the Development Authority.

1. The proposed three season sunroom addition over the existing deck is conditionally approved with a variance relaxing Land Use Bylaw 2576/LUO/17 Section 2.2.5.3.a. rear yard setback from 7.5 metres to 5.0 metres.
2. Before the permit is valid, it is subject to the statutory appeal period process as set out in Land Use Bylaw 2576/LUO/17. If an appeal is received, the decision of the Subdivision and Development Appeal Board will be final.
3. Conditional approval for the proposed sunroom addition over the existing rear deck is subject to Land Use Bylaw 2576/LUO/17.
4. Further permit application will be required to expand or modify the addition.
5. Site coverage and setbacks must be in accordance with the regulations of the Land Use Bylaw 2576/LUO/17 R1 District in which the parcel is located, as well as Section 3.10.0 Yards and Permitted Projections into Yards.
6. The proposed addition must not interfere with the required lot grading and drainage, nor create a negative impact on adjacent properties. Lot grading must adhere to the approved engineered lot grading plan for the area.
7. It is the Applicant's responsibility to ensure that the location of the proposed addition is not in conflict with any overhead or shallow utilities located on the site.
8. Permits and inspections relating to building, electrical, gas, plumbing, highways, public health, and all other permits required in connection with the proposed development shall be obtained from the appropriate authorities.
9. The Town is under no obligation to reissue a permit if the development is not completed before expiry of this permit, which is a one year period as per Land Use Bylaw 2576/LUO/17 Section 1.3.9, unless a shorter period is stated.



This decision was issued on this 6<sup>th</sup> day of August 2020 for the Town of Stony Plain Subdivision and Development Appeal Board.



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Karie Nothof, SDAB CLERK  
on behalf of Harold Pawlechko, Chair  
Subdivision and Development Appeal Board

**APPENDIX A:  
REPRESENTATIONS**

**PERSONS APPEARING**

1. Cathy Kozyra, Development Officer I
2. Irina Brazuk, Appellant
3. Barbara Kallay, Applicant

**APPENDIX B:  
DOCUMENTS RECEIVED AND CONSIDERED BY THE SDAB**

	Description	Date	Page(s)
1.	Notification Letter of Conditional Approval of Development Permit 2020-D0104	June 26, 2020	37-39
2.	Notice of Appeal	July 14, 2020	43
3.	SDAB Agenda Package	July 31, 2020	1-92
4.	Submission by the Development Authority	July 31, 2020	16-41
5.	Submissions by the Appellant	July 31, 2020 August 6, 2020	51-55 Written Submission Exhibit D (Video Submission)
6.	Submission by the Applicant	July 31, 2020	56-92