

**JOINT SUBDIVISION AND DEVELOPMENT APPEAL BOARD  
DECISION**

Hearing Date: January 10, 2025  
Development Application 020020-24-D0077  
Applicants/Appellants: Carmen Nachtigall and Rodney Nachtigall  
Location: Lot 17, Block 2, Plan 7920020 in SW 17-51-19-W4  
Proposed Development: 10 foot Fence with a 4 foot Variance from Maximum Fence Height (Building and Uses Accessory to Permitted Uses)

**A. INTRODUCTION**

1. On November 27, 2024, the Beaver County Development Authority issued a decision refusing a development permit for a 10 foot high fence requiring a 4 foot variance.
2. The Appellants appeal the refusal of the development permit.

**B. PROCEDURAL MATTERS**

1. There were no objections to the Board members and no objections regarding the hearing process.

**C. SUMMARY OF HEARING**

Submissions of the Development Authority

1. The Development Authority summarized its written report, which is on the Board's file.
2. The Development Authority provided the following comments in regard to the Land Use Bylaw that was in effect at the time it received the development permit application:
  - (a) The Land Use Bylaw in effect at the time of the development permit application was Beaver County Land Use Bylaw No. 98-801 (the "Old LUB");

- (b) The subject site was designated as Country Residential District – CR under the Old LUB;
  - (c) Section 1.4(d)(ii) of the Old LUB states that fences over 6 feet in height in the CR District require a development permit;
  - (d) Section 7.26(3) of the Old LUB permitted the Development Authority to vary the height of a fence in the CR District to no more than 8 feet;
  - (e) At the time it received the application, the Development Authority could not grant the variance requested by the Appellants.
3. Since then, Beaver County passed a new Land Use Bylaw, Bylaw No. 24-1154, on December 18, 2024 (the “New LUB”).
4. In regard to the New LUB, the Development Authority provided the following comments:
- (a) The subject site is still designated as Community Residential District – CR;
  - (b) Section 6.9.6 of the New LUB permits fences up to 8 feet in height in the CR District; and,
  - (c) Section 6.9.6 of the New LUB removed the maximum variance that the Development Authority could grant to fence height in the CR District;
5. The Development Authority also advised that:
- (a) The proposed development appears to conform to the Beaver County Municipal Development Plan;
  - (b) The subject site is not the subject of a license, permit, approval or other authorization that would require this matter to be brought before the Land and Property Rights Tribunal, and the matter is properly before the Board;

- (c) All procedures in regard to notice of the application, decision and appeal were complied with;
- (d) The Development Authority received only one response from a neighbouring landowner in regard to the appeal, which indicated support for the proposed development;
- (e) The Development Authority was not empowered under the Old LUB to grant the variance requested by the Appellants;
- (f) Had the Development Authority been able to do so, it would have granted the variance and approved the development permit;
- (g) In the Development Authority's opinion, the proposed development and fence height is appropriate in the CR District;
- (h) There is a change in lot elevation between the subject site and the neighbouring parcel, which would mitigate the impact of the varied fence height, and the fence would appear to be less than 10 feet in height when viewed from the neighbour's side;
- (i) The proposed development appears to be satisfactory having regard to the *Municipal Government Act*, RSA 2000, c M-26 and *Matters Relating to Subdivision and Development Regulation*, Alta Reg 84/2022; and,
- (j) The Development Authority would support the Board approving the requested variance and development permit.

#### Submissions of the Appellants

6. The Appellants provided the following information to the Board:

- (a) The fence has already been built;

(b) It was built to block the activities of the neighbour, as referred to in the letter submitted by the Appellants, which is on the Board's file, to provide the Appellants with privacy and peace of mind;

(c) The fence is constructed of 6x6 posts and tin panels that are "buckskin" in colour on the Appellants' side and white on the neighbour's side; and,

(d) The fence will require no maintenance and is expected to last for approximately 50 years.

7. The Appellants showed the Board a photograph of the fence displaying the elevation difference between the subject site and the neighbouring property. The Appellants provided a copy of the photograph to be added to the Board's file.

#### **D. DECISION**

1. The decision of the Development Authority is revoked and the development permit and requested variance are approved.

#### **E. REASONS**

1. The subject site is located in the CR District. Pursuant to section 6.9.6 of the New LUB, fences are permitted in the CR District, provided that they do not exceed 8 feet in height.

2. If a fence is greater than 8 feet in height in the CR District, a variance is required.

3. The proposed development and variance are appropriate on the subject site. The elevation differences between the subject site and the neighbouring lands mitigate the impact that the varied fence height will have on the neighbour. The fence will appear to be less than 10 feet high when viewed from the neighbouring lands.

4. No one provided submissions or spoke in opposition to this appeal. The only comment received regarding the proposed development was one letter indicating support for the same.

5. Further, the proposed development will not be visible to anyone other than the Appellants and their neighbour. No response or submissions were received from said neighbour in regard to the decision or notice of appeal.
6. For these reasons, the Board finds that the proposed development and variance are suitable on the subject site. The proposed development 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.

Dated this 14 day of January, 2025.

Per: Brad Rice  
Chair  
Joint Subdivision and Development  
Appeal Board

### **IMPORTANT INFORMATION**

This decision may be appealed to the Alberta Court of Appeal on a question of law or jurisdiction under Section 688 of the *Municipal Government Act*, RSA 2000, c. M-26.