

In the Court of Appeal of Alberta

Citation: Pomeroy v Grande Prairie (County No 1), 2026 ABCA 312

Date: 20261001

Docket: 2603-0152AC

Registry: Edmonton

Between:

Ryan Pomeroy

Applicant

- and -

**County of Grande Prairie No. 1 and Intermunicipal Subdivision and Development
Appeal Board County of Grande Prairie No. 1**

Respondents

**Reasons for Decision of
The Honourable Justice Jane Fagnan**

Application for Permission to Appeal

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[1] The applicant applies for permission to appeal a decision of the Intermunicipal Subdivision and Development Appeal Board County of Grande Prairie No 1 under s 688(3) of the *Municipal Government Act*, RSA 2000, c M-26 (*MGA*).

[2] The applicant intends to argue the Board erred in law or jurisdiction, or both in:

- a) misinterpreting the land use bylaw, including the definition of a “Dwelling” or “Dwelling Unit”;
- b) failing to provide justifiable, transparent and intelligible reasons for concluding that the Structure constituted a Dwelling Unit under the land use bylaw; and
- c) misinterpreting the *MGA* regarding the test for variances.

[3] The applicant must demonstrate the appeal involves questions of law of sufficient importance to merit a further appeal and has a reasonable chance of success: *Biernacki v Alberta (Land and Property Rights Tribunal)*, 2022 ABCA 56 at para 10; *Conley v Calgary (City)*, 2026 ABCA 105 at para 6; *Hawkesworth v Edmonton (City)*, 2026 ABCA 171 at para 8.

[4] Interpretation of a land use bylaw raises a question of law: *Lor-al Springs Ltd v Ponoka County Subdivision and Development Appeal Board*, 2000 ABCA 299 at para 23. Leave should be granted if there is a reasonably arguable point of law or jurisdiction which could affect the result: *Rendle v Edmonton (Development Appeal Board)*, 1995 ABCA 499 at para 2.

[5] The Board found the structure in question constituted a “Dwelling” or “Dwelling Unit” under the applicable land use bylaw which defines those terms in part as containing independent and separate sleeping, cooking and sanitary facilities intended as a permanent residence. The County Planner told the Board the presence of permanent major appliances generally indicates cooking facilities. The Board recognized the structure did not contain a “full traditional kitchen” but found that it contained “sleeping, cooking and sanitary components” which it said were “characteristics consistent” with a Dwelling Unit as defined in the land use bylaw.

[6] The interpretation of the definition of “Dwelling” or “Dwelling Unit” is a question of law. This ground of appeal is reasonably arguable.

[7] The respondent submits the first ground is not of sufficient importance, as the specific land use bylaw provision only applies in the County. However, it is of general application in the County and of concern to County residents. It is of sufficient importance to merit a further appeal.

[8] The applicant is seeking to have the matter remitted to the Board. Counsel acknowledged that the second ground - sufficiency of reasons - is intertwined with the first ground regarding interpretation. In the circumstances, there is no need for the second ground to be advanced as a stand-alone ground of appeal.

[9] The arguable point of law must also be capable of affecting the result. The third ground of appeal is relevant in this regard.

[10] The third proposed ground relates to the Board's consideration of the structure as an Accessory Building and the refusal to grant a variance.

[11] Although the Board determined the structure was a second single detached dwelling and therefore not an Accessory Building, it did go on to consider the argument regarding whether variance ought to have been permitted for the structure as an Accessory Building, concluding that it should not. It found that a variance would not be appropriate given the cumulative level of development on the parcel, the need to maintain the integrity of the County's land use policies and processes, and adjacent landowner concerns.

[12] The applicant intends to argue that the Board substituted an "appropriateness" or policy inquiry for the "negative effects test" in s 687(3)(d)(i) of the *MGA*. That provision permits a development authority to approve a development that does not comply with the land use bylaw where, in its opinion, the proposed development would 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.

[13] The applicable test is reproduced on the first page of the Board's decision. It considered and weighed concerns expressed by adjacent landowners. The Board's analysis regarding whether a variance was appropriate is heavily fact and context specific. This ground of appeal raises a question of mixed fact and law. Consequently, permission is not granted with respect to the third ground.

[14] As a result, the Board's decision regarding variance for the structure as an Accessory Building will stand. Even if the applicant were to succeed on his appeal on the first ground, the matter were to be remitted by this Court and the Board reversed its decision on whether the structure constitutes a Dwelling, the applicant would still be faced with the refusal of the variance for the structure as an Accessory Building. Therefore, the arguable point of law on the first ground would not be capable of affecting the result.

[15] The application for permission to appeal is dismissed.

Application heard on September 23, 2026

Reasons filed at Edmonton, Alberta
this 1st day of October, 2026

Fagnan J.A.

Appearances:

L. Haynes
for the Applicant

L.N. Chalaturnyk
for the Respondent County of Grande Prairie No. 1