

**SUMMER VILLAGE OF SUNBREAKER COVE
SUBDIVISION AND DEVELOPMENT APPEAL BOARD
JUNE 7, 2022
RECORD OF HEARING AND DECISION**

PRESENT	Chair	Teresa Beets
	Member-at-Large	Garry Will
	Member-at-Large	Mike Bruni
	Development Officer	Kara Kashuba
	ICAO	Tanner Evans
	Recording Secretary	Teri Musseau
	Applicant	Brian Bakgaard
	Appellant(s)	Ralph White
		Charlotte White
	Tina Nielsen	

CALL TO ORDER Chair Beets called the hearing to order at 10:00 a.m.

PURPOSE OF HEARING The purpose of the hearing is to hear an appeal received on May 11, 2022, from Ralph & Charlotte White, and a second appeal received May 16, 2022, from Rick and Tina Nielsen, appealing the April 26, 2022, issuance of development permit #222032 by the Development Officer, for demolition and a dwelling for the property located at 747 Elk Street, Lot 6, Block, 6, Plan 1823MC, in the Summer Village of Sunbreaker Cove.

APPEAL FILED AND NOTICE GIVEN Pursuant to Section 686(1) of the Municipal Government Act, the appeal was filed within the 21-day appeal period and notice was given by letter to the applicant and owners of property located within a 200' radius of the proposed development. The hearing is being convened 27 days after receipt of the letter of appeal and within 30 days as outlined in Section 686(2) of the Municipal Government Act.

DEADLINE FOR DECISION Pursuant to Section 687(2) of the Municipal Government Act, the Subdivision and Development Appeal Board must give its decision in writing together with reasons for the decision within 15 days of concluding the hearing.

OBJECTIONS TO MEMBERS OF THE APPEAL BOARD The Members of the Subdivision and Development Appeal Board are appointed in accordance with the Subdivision and Development Appeal Board Bylaw #138-18.

Members of the Subdivision and Development Appeal Board were asked if they felt they should disqualify themselves from hearing the appeal before them and no one felt they needed to disqualify themselves.

Garry Will disclosed the fact that he has known all the parties present for several years.

Mr. & Mrs. White and Mrs. Nielsen were asked if they had any objection to any of the members of the Subdivision and Development Appeal Board present hearing the case. They had no objection to any of the members hearing the case.

Mr. Bakgaard was also asked if he had any objections to any of the members of the Subdivision and Development Appeal Board present hearing the case. He had no objection to any of the members hearing the case.

**DISCLOSURE
OF EVIDENCE
FINDING OF
FACTS**

The members of the Subdivision and Development Appeal Board were asked if they had sought, been given or reviewed any evidence prior to the hearing.

Other than the agenda package that was sent to members a few days prior to the hearing, none of the members had sought, been given or reviewed any evidence prior to the hearing.

**APPEAL
LETTER READ**

Tanner Evans, Chief Administrative Officer, read the appeal letter received from Mr. & Mrs. White on May 11, 2022, and the letter received from Tina Nielsen on May 16, 2022, into record.

**DUTIES AND
JURISDICTION**

CAO Evans provided his report to the Board on duties and jurisdiction.

Mayor Beets called for a recess to determine if the board had jurisdiction to hear the appeal before them at 10:15 a.m.

Mayor Beets reconvened the meeting at 10:45 a.m. stating the Subdivision and Development Appeal Board determined it has jurisdiction to hear the appeal as the Land Use Bylaw may have been relaxed, varied, or misinterpreted.

**HEARING
PROCEDURES**

Chair Beets reviewed the procedures to be followed for the hearing.

**BACKGROUND
OF APPEAL**

Kara Kashuba, Development Officer, provided the Subdivision and Development Appeal Board the background of the appeal.

In April 2022, a development permit was issued by the development authority for demolition and a new dwelling at 747 Elk Street. The property had an existing dwelling and detached garage to be demolished. The approved development permit includes a two-story dwelling with a walkout basement and attached garage. The proposed dwelling development complies with the Land Use Bylaw regulations, is considered a permitted use, and required no variances. The Land Use Bylaw states:

“Permitted use(s) means a use which is compatible with other uses in the district and for which a Development Permit shall be issued provided it otherwise conforms with the Land Use Bylaw.”

“For a permitted use in any district:

(a) The Development Officer shall approve, with or without conditions, an application for a Development Permit where the proposed development conforms in every respect to this Land Use Bylaw, the Municipal Government Act, Subdivision and Development Regulations, approved statutory plans, and the Sylvan Lake Management Plan: 2000 Update.”

The main argument by the appellants appears to be that administration has misinterpreted the difference between an attached or detached garage. The Land Use Bylaw section 1.3 states the following:

“Detached dwelling(s) means a residential building containing one dwelling unit and everything physically attached to said dwelling unit (e.g., breezeways and attached garages), which is physically separate from any other residential building, and does not include a manufactured dwelling unit”

Accessory building(s) means a building separate and subordinate to the main building, the use of which is incidental to that main building and is located on the same parcel of land.”

The drawings included in the supporting documents show that the garage is attached not only with walls, deck, and a roof, but also with an interior stairway that leads from the second floor above the garage into the remainder of the dwelling. The garage has no other man door access other than the one leading inside the dwelling. The only thing making the design unique is that the garage portion of the dwelling is set on an angle to accommodate the driveway and vehicle entrance into the garage. The drawing on page 6 of the supporting documents appears to show them separately, but this is deceiving as it is showing the second floor above the garage next to the lower floor of the walk-out.

The garage is physically and structurally attached and therefore part of the detached dwelling, is not considered to be a separate building, and is therefore required to comply with the Land Use District regulations for a detached dwelling in the Land Use Bylaw.

Below are responses addressing concerns to the appellant’s letters of appeal.

- 1) Height – The total height of proposed dwelling is 27.4’ (8.38m) and is 5.4’ (1.64m) under the maximum allowable height of 32.8’ (10m).
- 2) Square Footage – There is no maximum square footage size for a dwelling on a property, the size can vary depending on how it meets the Land Use Bylaw requirements. (Setbacks, parcel coverage etc.).
- 3) Use of the building – It is common to see extra bedrooms above attached garages and is a requirement for developers to provide floor plans for a dwelling but there are no regulations on what exactly the floor plans can and can’t have for rooms. For this development there is no indication that the rooms above the attached garage will be used as guest housing.
- 4) Parcel Coverage – The calculations on the site plan result in a proposed parcel coverage total of 49.86% and is within the maximum 50%. A condition on the development permit states, *“Final as build real property report from an Alberta Land Surveyor at completion of landscaping that includes parcel coverage.”* This condition is to ensure that the parcel coverage is within the maximum. We cannot require developers to be under the 50% as it is the maximum allowable and it is their decision to develop to the maximum with the understanding that any future property changes will have to accommodate that total.
- 5) Notice of Decision – After receiving the appellants letter it had come to our attention that one page of the supporting documents was missing from the documents on the website. This was corrected and all the documents were re-sent to the

appellant, there was no reason for the page to not be shared with the public. The requirement of notice as stated in the Land Use Bylaw is listed below:

*“Development Permits and Notices
For permitted and discretionary uses:*

- (i) Mail a notice of the decision to all persons whose use, enjoyment or value of property may, in the opinion of the Development Authority, be affected; and*
- (ii) Post a notice of the decision on the Summer Villages’ website;”*

A notice of decision was mailed to all adjacent properties and the notice was posted on the Summer Villages website for the period of appeal.

**APPELLANT
PRESENTATION**

Ralph & Charlotte White addressed the board with the reasons they believed there was misinterpretation of the land use bylaw by the Development Officer when granting Development Permit #222032 for demolition and dwelling at 747 Elk Street.

It is the opinion of the appellant the garage is separate from the dwelling and therefore should be considered an accessory building and subject to the land use bylaw regulations for an accessory building.

The White’s concerns include:

- height of the accessory building
- square footage of accessory building
- purpose of accessory building
- developed area of the lot
- notice of decision is incomplete

The White’s addressed a separate floor plan for the garage and stated the garage had a different foundation and separate roof. They feel the garage is being attached by a breezeway and it is an accessory building to the main dwelling and not an attached garage.

There were additional concerns over the use, value and enjoyment of their property should the applicant be permitted to develop as per the approved development plans. The development would obstruct the view of the lake from their property causing an affect on the value of their property.

They do not believe the height is in compliance with the permitted height and feel the applicant will be over 50% parcel coverage upon completion of the build.

Mrs. Nielsen spoke to her concerns with the development. She too is concerned over the height of the garage and does not feel it is in compliance with the Land Use Bylaw and believes the size of the garage is in excess of the permitted square footage.

Mrs. Nielsen also addressed the development would obstruct their view of the lake and feels all residents should be required to follow the rules that were created.

APPLICANT PRESENTATION	<p>Mr. Bakgaard spoke to his development. He stated there was never a breezeway between the house and the garage and that he regrets the wording choice. He is building a dwelling with attached garage not a house with an accessory building. It was noted the height is below the permitted height and appreciates the concerns of his neighbours.</p> <p>Mr. Bakgaard explained the reasons for his design. He owns an irregular lot and he struggled with the design and placement of the structure. Additional bedrooms above the garage and reasons for the size of the garage were addressed.</p>
IN FAVOUR OF THE APPEAL	<p>No written submissions were received in favour of the appeal. No one was present to speak in favour of the appeal.</p>
AGAINST THE APPEAL	<p>No written submissions were received in opposition of the appeal. No one was present to speak in opposition of the appeal.</p>
SUMMARY FROM APPELLANTS	<p>Mr. & Mrs. White acknowledged the hard work Mr. Bakgaard has done on his proposed development. They are concerned with protecting the value of their property and resale value in the future.</p> <p>Mrs. Nielsen had nothing further to add.</p>
APPLICANT SUMMARY	<p>Mr. Bakgaard added his development would not hinder resale values in the future.</p>
DEVELOPMENT OFFICER SUMMARY	<p>Kara Kashuba summarized her case stating the facts.</p> <p>It is clear in the eyes of the development authority that the garage is physically and structurally attached to the dwelling. Therefore, the approved development permit for the dwelling is a permitted use that is within the regulations of the Land Use Bylaw. Further, the height of the proposed dwelling is actually 5.4' less than the maximum allowable height, so theoretically an application for a larger and higher dwelling could still be considered a permitted use on this lot. The development plans submitted have been carefully reviewed to ensure it complies with the regulations and in administration's opinion there has been no misinterpretation. The design of the dwelling is situated on the parcel to fit within the lot, it is angled to facilitate the driveway/approach which then has resulted in different roof lines and layout of the dwelling to keep the garage attached to the building.</p>
OPPORTUNITY FOR A FAIR HEARING	<p>Chair Beets asked Mr. & Mrs. White and Mrs. Nielsen if they felt they had an opportunity to state their case. All appellants acknowledged they had.</p> <p>Chair Beets asked Mr. Bakgaard if he felt he had an opportunity to state his case. He acknowledged he had.</p>
HEARING CLOSED	<p>Chair Beets thanked everyone for their attendance and presentations. A written decision of the Board will be made within 15 days. The hearing was declared closed at 11:46 a.m. No further submissions will be entertained by the board.</p>

**FINDINGS
OF THE BOARD**

Upon hearing and considering the representations and the evidence of the parties concerned the Board finds the facts in the matter to be as follows:

- 1) The dwelling is a permitted use that is within the regulations of the Land Use Bylaw.
- 2) There was no relaxation or variance granted and the dwelling height is 5.4' less than the maximum allowable height.
- 3) The development does not have an accessory building included in the plans and the garage is not considered to be a detached accessory building as it is structurally attached.
- 4) Parcel coverage is below the maximum 50% allowable.
- 5) The Land Use Bylaw was not misinterpreted by the Development Authority.
- 6) Notice of decision was mailed to adjacent landowners and the notice was posted on the Summer Village website for the appeal period.

DECISION

The *Municipal Government Act* Section 642(1) states:

“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.”

Based on the evidence presented at the hearing and with consideration for the presentations made by both the appellants and the applicant, it is the decision of the Subdivision and Development Appeal Board to uphold the development permit # 222032 for demolition and dwelling at 747 Elk Street and deny the appeal.

DATED AT THE TOWN OF SYLVAN LAKE THIS 7TH DAY OF JUNE 2022.

**THE SUMMER VILLAGE OF
SUNBREAKER COVE SUBDIVISION AND
DEVELOPMENT APPEAL BOARD**

**Teresa Beets
SDAB Chair**