

**SUMMER VILLAGE OF NORGLLENWOLD
SUBDIVISION AND DEVELOPMENT APPEAL BOARD
OCTOBER 31, 2017
HEARING AND DECISION**

CALL TO ORDER

The Chair called the hearing to order at 10:05 a.m.

The following people were in attendance:

Jeff Ludwig – Chair
Beverly Smith – Member at large
Carol McMillan – Member at large
Koralyn Lemmon – Development Officer
Phyllis Forsyth - CAO
Teri Musseau – SDAB Secretary
Ryan Neish – Appellant
Jodi Neish – Appellant
Susan Allison – Applicant
Jim McLeod – Gallery
Lane Arthur - Gallery

PURPOSE OF THE HEARING

The purpose of this Hearing is to hear an appeal against the Municipal Planning Commission's decision of September 19, 2017 to approve a development application for construction of a detached garage with guest house.

IN THE MATTER OF AN APPEAL by the appellants, Ryan & Jodi Neish, appealing the Development Authority's decision to approve a development permit for construction of an accessory building at 103 Grand Avenue, Lot 1B, Block B, Plan 9321837.

BEFORE the Summer Village of Norglenwold Subdivision and Development Appeal Board:

Chairman Jeff Ludwig
Member Beverly Smith
Member Carol McMillan

THIS IS AN APPEAL ON the Development Authority's decision of September 19, 2017.

UPON NOTICE BEING GIVEN by letter to the appellant/applicant and owners of property located within 200' radius of the proposed development on October 11, 2017.

BACKGROUND

The Subdivision and Development Appeal Board Secretary advised that Ryan and Jodi Neish, are appealing the Development Authority's decision of September 19, 2017, approving a development permit to construct a detached garage with guest house for the property of 103 Grand Avenue, Lot 1B, Block B, Plan 9321837, in the Summer Village of Norglenwold.

OBJECTIONS TO ANY MEMBERS HEARING THE APPEAL

The Secretary asked if any members of the Subdivision and Development

Appeal Board felt that they should disqualify themselves from hearing the appeal before them. No one felt the need to disqualify themselves.

The Secretary then asked Mr. and Mrs. Neish if they had any objection to any of the Subdivision and Development Appeal Board members. They had none.

READING OF APPEAL LETTER FROM MRS. NEISH

The Secretary read the appeal written from Mrs. Neish which was received at the office on October 3, 2017. In her appeal she stated the following reasons for appeal:

- 1) Council member recused himself declaring conflict with hearing.
- 2) Alleged basement not permitted.
- 3) Geotechnical report not provided.
- 4) Letter of intent not provided.
- 5) Construction started prior to the 21 day appeal period.

DEVELOPMENT OFFICER REPORT

Koralyn Lemmon provided the Board with the background information regarding the proposed development.

The original completed application was received at the office on September 12, 2017. The applicant applied for a garage with guest house at 103 Grand Avenue.

The application was presented to the Municipal Planning Commission on September 19, 2017. The application before the Commission for a guest house is listed as a discretionary use in the Land Use Bylaw and the total floor area of 1696 sq. ft. is also listed as a discretionary use. After reviewing the application the Commission approved the proposed development.

APPELLANT PRESENTS CASE

Mrs. Neish addressed the Board. She read an email that was sent to the Secretary on October 20, 2017, which stated her main reason for the appeal is to ensure Administration and the Municipal Planning Commission are treating all development permits equally and fairly.

Mrs. Neish also addressed some of the conditions that were not required by the applicant. She noted her main goal was to bring awareness of the inconsistencies in the development appeal process in the Summer Village and to ensure all residents are treated fairly.

QUESTIONS FROM THE BOARD

There were no questions from the Board at this time.

IN FAVOUR OF THE APPEAL

No one spoke in favor of the appeal.

WRITTEN SUBMISSIONS IN FAVOUR OF THE APPEAL

No written submissions had been received in favour of the appeal.

APPLICANT PRESENTS CASE

Susan Allison presented her case addressing the reasons for appeal as provided by Mrs. Neish.

Ms. Allison agreed that Councillor McLeod was in conflict with the hearing and acted appropriately by recusing himself. He was not involved in the approval process.

No geotechnical report was provided as one was not requested.

The development has no basement.

Superior Safety Codes had specific requirements for soil testing and excavation. There had been a prior septic field at this address and special care had to be taken to address the soil status. Phil K Wong, P. Eng., provided the applicant findings from his inspection and recommendations that needed to be addressed prior to the commencement of footings/foundation and structural slab. The report was provided to the Board in the agenda package.

A letter of intent was provided to the Municipal Planning Commission in application package.

Ms. Allison confirmed the construction had started before the 21 day appeal period. They had spoken with the Development Officer and were advised they were constructing at their own risk.

No variances were requested to the Municipal Planning Commission.

The applicant requested the complaint be dismissed due to a reckless disregard by the appellant.

IN FAVOUR OF THE DEVELOPMENT

No one spoke in favor of the development.

WRITTEN SUBMISSIONS IN FAVOUR OF THE DEVELOPMENT

No written submissions had been received.

QUESTIONS FROM THE BOARD

Beverly Smith, Board member, asked for clarification on where Councillor McLeod sat during the Municipal Planning Commission meeting.

Koralyn Lemmon, Development Officer, explained that Mr. McLeod declared conflict of interest and sat on the other side of the table. He sustained from the discussion and decision of the Commission.

Phyllis Forsyth, CAO, told the Board that Mr. McLeod acted as a representative for the applicant at the table.

DEVELOPMENT OFFICER PRESENTED HER CASE

Koralyn Lemmon, Development Officer, responded to the reasons for appeal.

1. Jim McLeod (Councilor & MPC Member) recused himself as the MPC Member and sat as the applicant during his application hearing, as per Norglenwold's MPC Bylaw #206/12 section 8.6 states: "*Any Member who has a pecuniary interest, whether direct or indirect, with respect to any matter before the Commission, shall declare his/her interest, shall abstain from discussion and voting on the matter, and will have his/her interest and abstention recorded in the minutes of the proceedings.*" Additionally under section 8.0: "*A quorum of the Commission is two (2) members*" (that being Toby & Ed).
2. As per the applicant, no basement is being constructed, only footings that are below the frost line (4-5 ft. below grade), which is typical construction for the size of the building.
3. A geotechnical report was not requested with the application as Administration typically only requests the report for dwellings on vacant lots and dwelling development near the shoreline especially if the property is sloped. As per the Land Use Bylaw #208/13 Part Two, section 2.3 (2) it states: "*At the sole discretion of the Development Officer, an application for Development Permit may be required to be accompanied by: (a) A geotechnical report.*"
4. A letter of intent was included with the application. The letter stated: "*The exterior of the building will be clad in vinyl siding complementary to the existing dwelling. Window frames, soffit and fascia will be white to match the existing dwelling,*" which is the Land Use Bylaw Part Three, section 1. 1(1) (f) requirement.
5. As per the Development Permit, condition 16) states: "*No work may commence prior to October 13, 2017 to allow for the 21 day appeal period.*" All applicants are notified that if they start construction prior to this date, it is at their own risk if an appeal is made and they are instructed to reclaim the area if requested by the SDAB or Court of Appeal. Construction is a short season and it is the responsibility of Administration to inform the applicants of the appeal period.

QUESTIONS FROM THE BOARD

Carol McMillan, Board member had none.

Jeff Ludwig asked Mrs. Neish if she thought they were building the garage on the grass?

Mrs. Neish understood there needs to be footings but believes the plans should say how deep the applicant plans to excavate.

Koralyn Lemmon explained that Superior Safety Codes would address that. The depth of excavation is not needed for a development application.

CLOSING COMMENTS FROM THE APPELLANT

Ryan Neish explained the original appeal letter from his wife should not have referred to "basement" but rather excavation. Their concern is not that a letter of intent was not provided by the applicant but it wasn't a condition and should have been.

The Neish's stated Administration had told them previously that all developments going before the Municipal Planning Commission require a geotechnical report and Ms. Allison was not asked to provide one.

Mr. Neish stated that he and his wife are not opposed to the development but rather to the inconsistency of the conditions for development.

Mrs. Neish was concerned with development conditions not being enforced and wants consistency.

QUESTIONS FROM THE BOARD

Beverly Smith asked if the letter of intent was provided to the Municipal Planning Commission.

Phyllis Forsyth explained that it was provided in the package but Administration has no control over whether or not the members wish to discuss the letter.

Koralyn Lemmon told the Board that a geotechnical report is dependent on the slope of the property in relation to the lake. This report is requested on vacant lots and development adjacent to the lake with a significant slope.

Jeff Ludwig asked if the report received from Smith Dow & Associates would be considered a geotechnical report?

Phyllis believes the report from Smith Dow was requested by Superior. Administration would not have knowledge of a septic field being present on the property.

CLOSING COMMENTS FROM THE APPLICANT

Ms. Allison provided her closing summary. The geotechnical report was important to them which is why they had one done. They couldn't have provided this prior to excavation. Their property does not have a deep slope. Their application met all the requirements for development and would like the Board to dismiss the appeal as the applicants are not opposed to the development but rather wish a schooling for the Municipal Planning Commission.

CLOSING COMMENTS FROM THE DEVELOPMENT OFFICER

The Development Officer summarized her case stating the application was complete. It was brought to the Municipal Planning Commission only because the development was considered a discretionary use. There were no requested variances.

CLOSING COMMENTS FROM THE BOARD

Chair Ludwig asked Mr. & Mrs. Neish if they felt they had an opportunity to present their case. They acknowledged they had.

Chair Ludwig thanked everyone for their attendance and presentations. A written decision of the Board will be made within 15 days.

He declared the hearing closed at 10:45 a.m. noting no further submissions would be entertained by the board.

DECISION

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

1. Council member recusing himself due to conflict of interest and changing sides of the table.

The Board finds the Councillor acted in accordance with Council Code of Conduct Policy. There was no other member of Council to sit on the Commission in place of the recused Councillor as the third member of Council is the Subdivision and Development Appeal Board Chair. The Municipal Planning Commission Bylaw #206-12 states:

3.3 The Commission shall consist of three (3) Members, including:

- a) two (2) members of Council; and is a ratepayer in the Summer Village.
- b) the remaining position shall be a member of the public-at-large who is not in conflict with the hearing.

2. Resident pouring foundation walls for unapproved basement.

The Board finds the “basement” not applicable as no basement was constructed and agrees with the Development Officer’s explanation that unless a basement is requested on the development application, there is no discussion about what is constructed below grade as this would fall under Superior Safety Codes.

3. Geotechnical Report not requested.

The Land Use Bylaw #208-13, Part Two, Section 2.3 (2) states:

2. At the sole discretion of the *Development Officer*, an application for *Development Permit* may be required to be accompanied by:
 - (a) A geotechnical report, assessment or investigation prepared by a qualified geotechnical engineer for any proposed *development*, redevelopment, clearing or grading, excavation or adding fill within *escarpment* areas having ten (10) percent or greater slopes. The proposed *development* plan must show slope *setback* distances, cross-sections of the slope area both before and after *development* and final grading. The height and existing angle of the slope shall be verified by accurate historical survey data or site specific information completed by a qualified surveyor;

4. Letter of intent not included in application.

The Board finds the letter of intent was included in the Municipal Planning Commission's package.

5. Construction started prior to the 21 day appeal period.

The Development Permit #171462 clearly states:

- 16) No work may commence prior to October 13, 2017 to allow for the 21 day appeal period.

The applicant was told this condition was for their own protection, in case of appeal, but many people do not wait until the end of the 21 day appeal period. The Development Officer confirmed this to be a common practice. While there was a violation to condition 16 the Board does not believe it has any bearing of the merits of the development. The members of the Subdivision and Development Appeal Board will take every effort to ensure consistency and fairness in applying the Land Use Bylaws.

It is the unanimous decision of the Subdivision and Development Appeal Board that the decision of the Municipal Planning Commission and the Development Permit #171462 for a detached garage with guest house be upheld.

CAROL MCMILLAN:

That recommendation to Council to define the requirements for providing a Geotechnical Report with a development application.

CARRIED

BEVERLY SMITH:

That recommendation to Council to instruct Administration to encourage applicants not to construct prior to the 21 day appeal period and enforce this condition.

CARRIED

DATED AT THE TOWN OF SYLVAN LAKE THIS 31st DAY OF OCTOBER, 2017.

**THE SUMMER VILLAGE OF
NORGLNWOLD SUBDIVISION AND
DEVELOPMENT APPEAL BOARD**

**Jeff Ludwig
Board Chairman
Issued October 31, 2017**