

**SUMMER VILLAGE OF NORGLLENWOLD
SUBDIVISION AND DEVELOPMENT APPEAL BOARD
HEARING AND DECISION
OCTOBER 5, 2018**

CALL TO ORDER

The Chair called the hearing to order at 10:00 a.m.

The following people were in attendance:

Chair	Jeff Ludwig
Member at large	Beverly Smith
Member at large	Carol McMillan
Development Officer	Koralyn Lemmon
CAO	Phyllis Forsyth
SDAB Secretary	Teri Musseau
Superior Safety Codes	Schelby Kennedy
Applicants	Jodi Neish
	Ryan Neish

PURPOSE OF THE HEARING

The purpose of this hearing is to hear an appeal received from Ryan and Jodi Neish against the Municipal Planning Commission's conditions to their amended Development Permit #171575 on August 27, 2018 for the property located at 193 Grand Avenue, Lot 7, Block 2, Plan 2203KS in the Summer Village of Norglenwold.

IN THE MATTER OF AN APPEAL by the appellant, Ryan and Jodi Neish appealing the Development Authority's decision on property located at 28 Rustic Crescent, Lot 8, Block 1, Plan 7921843 in the Summer Village of Norglenwold.

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 August 27, 2018.

UPON NOTICE BEING GIVEN by letter to the appellant and owners of property located within 200' radius of the proposed development on September 24, 2018. The hearing is being convened within 11 days of receipt of the notice of appeal.

BACKGROUND

The Subdivision and Development Appeal Board Secretary advised that Ryan and Jodi Neish are appealing the Municipal Planning Commission's conditions to their amended Development Permit #171575 on August 27, 2018 for the property located at 193 Grand Avenue, Lot 7, Block 2, Plan 2203KS 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. & Mrs. Neish if they had any objection to any of the Subdivision and Development Appeal Board members. He had none.

The Board members were asked if other than the agenda package provided here today, had any member of the SDAB sought, been given or reviewed evidence prior to the hearing.

All answered they had not.

JURISDICTION AND DUTIES

Phyllis Forsyth, CAO, provided the Board information on the duties of the Subdivision and Development Appeal Board members and how to determine if they had jurisdiction to hear the appeal.

Chair Ludwig, called for a brief recess to determine jurisdiction.

Determining they had jurisdiction to hear the appeal, the hearing was reconvened.

READING OF APPEAL LETTER FROM MR. & MRS. NEIDH

The CAO read the appeal written from Mr. & Mrs. Neish which was received at the office on September 24, 2018 appealing the conditions from the Municipal Planning Commission on their amended development permit for fencing/guard rails at 193 Grand Avenue.

DEVELOPMENT OFFICER REPORT

Koralyn Lemmon provided the Board with the background information regarding the application.

An application for a dwelling unit, retaining walls, and shoreline development on August 24, 2017, which went before the Municipal Planning Commission on September 19, 2017. One of the reasons it went before the Commission was because the retaining wall on the south property line (between 193 & 189 Grand Ave) reached a height of 6.5 ft., over the 3.28 ft. which requires a development permit. At this hearing, the Commission tabled the decision for further information.

On October 24, 2017, the application went back to the Commission with the requested information and was approved with the condition “maximum height of retaining walls not to exceed 7 ft.” Meeting minutes attached. On August 16, 2018, the owners submitted an application to amend their development permit to include a fence.

The application went before the Commission on August 27, 2018 due to the heights of the fence being over the maximums the Land Use Bylaw allows.

The Commission approved the application with conditions. Regarding

condition 20(B) “south property line fence sections 1-3 to be constructed to a maximum of 3.28ft. including the height of the retaining wall”. This is not possible, the retaining wall is already 3.9ft. at fence post section 1, 5.8ft. at fence post section 2, and 5.5ft. at fence post section 3 (as per the owner’s measurements), and the MPC previously approved retaining walls up to 7ft.

As per Schelby Kennedy, Building Safety Codes Officer from Superior Safety Codes, if the difference in grade between 193 & 189 Grand Ave is more than 1.9 ft., a guard of 36” is required. If the grade difference is more than 5.9 ft., then a guard of 42” is required. Depending on where the final grades are, will determine if guards are required. Superior believes Sections 2 and 3 requires 36” guards for sure, and Section 1 will depend on final grade. Emails/photos attached. Administration believes a fence and a guardrail in this instance is the same. The Land Use Bylaw defines fence(s) as “means a physical barrier constructed from typical building material for the purpose of providing privacy and/or preventing unauthorized access.” Summary

APPELLANT PRESENTS CASE

Jodi Neish spoke to the conditions she is appealing on her amended Development Permit #171575.

Mrs. Neish referred to her appeal letter. She stated she tried to outline everything in her letter and that there wasn’t much more to add. She addressed the conditions she is appealing and the reasons why she is appealing them.

Condition 20(a) North side of fence to be constructed to a maximum height of 6.56 ft. to follow the slope of the land to the front corner of house from where it continues at a maximum height of 3.28 ft. to the lowest retaining wall to be finished both.

195 Grand Avenue currently has a 6 ft. high fence on the north side of their property and will look unbalanced. The relaxation request is for 2.72 ft. Both parties has small children and pets that they want to keep in their yards.

Condition 20 (b) South property line fence Sections 1-3 to be constructed to a maximum of 3.28 ft. including the height of the retaining wall finished both sides as per the Land Use Bylaw.

South side retaining wall to accommodate the difference in elevation between 189 and 193 Grand Avenue. Retaining wall was approved with original development permit on November 28, 2017. The Alberta Building Code 9.8.8 requires a 3” guard rail be placed on the retaining wall for safety.

Condition 20(c) South property line fence sections 4-7 to be constructed to a height of 42 inches on top of the retaining wall as per the Alberta Building Code finished on both sides.

She has no problem with this condition as it meets Alberta Safety Code however there are no requirements on what construction material must be used for a guard no whether it must be painted. The retaining wall is completely on her property and has no way of maintaining the other side of the fence as the neighbor has told her to stay off their property. Currently 189 Grand Avenue has an unfinished fence on the other side of her property therefore not painting both sides would match existing.

Condition 20(d) South property line fence sections 8-13 to be constructed to a maximum of 6.56ft including the height of the exposed retaining wall measure on the South facing side finished both sides.

She has no issue with this condition other than finishing both sides as per previous comments.

QUESTIONS FROM THE BOARD

The board members asked questions of the appellant regarding current height of retaining wall, materials to be use, clarification on requirement for finish of fence, safety concerns and Alberta Safety Code requirements.

Schelby Kennedy from Superior Safety Codes addressed the board to clarify the requirements in the Alberta Safety Codes legislation.

WRITTEN SUBMISSIONS IN FAVOUR OF THE APPEAL

Phyllis Forsyth, CAO, read a submission from Angela Bloos of 195 Grand Avenue.

Mrs. Bloos stated she has a 6 ft. fence on the north side of her property and does not want a 3 ft. fence on the south side. She feels having consistency in the height of the fences makes the community more attractive. She feels the bylaws should be equal for all residents.

COMMENTS IN FAVOUR OF THE APPEAL

No one in attendance to speak.

WRITTEN SUBMISSIONS IN FAVOUR OF THE CONDITIONS

No written submission were received in opposition of the development.

COMMENTS IN FAVOUR OF THE CONDITIONS

None.

QUESTIONS FROM THE BOARD

The board asked for further clarification on which sections of the fence exceeded the Land Use Bylaw and what the requirements were from Alberta Safety Codes.

CLOSING COMMENTS FROM THE APPELLANT

Mrs. Neish felt she had done a good job speaking to her appeal and had nothing additional to add.

CLOSING COMMENTS FROM THE DEVELOPMENT OFFICER

As per the development permit is states “You are hereby authorized to proceed with the development specified, provided that any stated conditions are complied with, that the development is in accordance with any approved plans and applications, and that construction conforms with any provincial and federal requirements relative to this development.” The Alberta Building Code would prevail over conditions imposed by the Development Authority. Administration is not opposed to the other conditions listed by the MPC.

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 10:54 a.m. noting no further information or submissions would be entertained by the board.

DECISION OF THE BOARD

The Subdivision and Development Appeal Board hereby grants the amended development permit #171575 for 193 Grand Avenue as follows:

- (20a) Appeal upheld to allow a 6 ft. fence along the north property line.
Appeal upheld finished on one side only.
- (20b) Appeal upheld sections 1-3 to be constructed as per Alberta Building Code. Appeal upheld finished on one side.
- (20c) Finished on both sides not required.
- (20d) Finished on both sides not required.

DATED AT THE TOWN OF SYLVAN LAKE THIS 5TH DAY OF OCTOBER, 2018.

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

**Jeff Ludwig
Board Chairman**