

# REGIONAL SUBDIVISION AND DEVELOPMENT APPEAL BOARD

UNIT B 4730 ROSS STREET  
RED DEER AB T4N 1X2  
403-343-3394

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November 2, 2021

## NOTICE OF DECISION

**RE: Appeal of Development Permit Application 2021-16 for a development of a “2008 Boxx Modular 60ft x 12ft Skid Mounted Trailer to be used as Storage Structure” on the lands described as Lot 4, Block A, Plan 881 0768 that is located in the Village of Linden.**

### SUMMARY OF APPEAL

This is an appeal of a development permit approval for a storage structure. The development permit was approved with conditions that included moving of the storage structure to another location on Lot 4.

The Appellant, MJ Singh, appealed the approval for reasons including the relocation of the storage structure from the side of the principal building to the rear of the principal building.

Notice of the appeal was provided to interested parties and a hearing was held on October 21, 2021.

Hearing Panel: Karen Howley, Chair  
Earl Graham, Board Member  
Kathy Pfau, Board Member

SDAB Clerk: Anika Drost

### BACKGROUND OF THE APPLICATION

The Development Authority approved a Storage Structure (Development Permit 2021-16) on September 1, 2021 on the lands described as Lot 4, Block A, Plan 881 0768. The subject property is designated Central Business District (CB) within the Land Use Bylaw (LUB). The subject site is surrounded by the Village’s Central Avenue to the north, a road and vacant parcel to the east, a residence to the south, and a ravine and creek to the west.

The Development Authority approved the development subject to the following conditions:

1. The Applicant must have the structure relocated to the original site approved in Development Permit 2020-16 within sixty days of this approval (November 1, 2021)
2. The undercarriage of the structure must be completely screened from view by the skirting within 60 days of placement of the structure.
3. The design, siting, external finish, architectural appearance, and landscaping generally of all buildings, including any accessory buildings or structures and signs and any reconstruction shall be to the satisfaction of the Development Authority in order that there shall be general conformity in such matters with adjacent buildings. The exterior of the structure must match the principal building in color.
4. Cold storage only, no utilities.
5. Maintain minimum setback requirements as per CB district Village of Linden Land Use Bylaw 2012-04.
  - a. Must be at least 1m (3.2 feet) from any principal building.
6. Must adhere to all Federal, Provincial, or other municipal legislation, or to the conditions of any easement, covenant, building scheme or agreement affecting the building of land. The operation of all uses shall comply with the environmental and public health performance standards of the Provincial Government.
7. All safety permits and building permits from Palliser Regional Municipal Services.
8. Comply with Village of Linden Land Use Bylaw 2012-04; CB – Central Business District.
9. Any changes in the proposed development as approved; the holder of the permit must first obtain permission of the Municipal Planning Commission. An additional development permit may be necessary.

The Appellant received the notice of decision on September 2, 2021. An appeal was filed with the Regional Subdivision and Development Appeal Board (the Board) on September 22, 2021. The appeal spoke to condition 1 of the development permit approval. Affected parties were notified of the appeal and the appeal hearing on September 28, 2021, with public notifications being distributed on October 13, 2021.

## **MERIT HEARING**

### **Summary of the Development Authority's Submissions**

The Development Authority stated that the 2008 Boxx Modular 60ft x 12ft skid mounted trailer was moved onto the property in 2020 without a development permit. Eventually it was proposed to be a part of a development permit for a 5-room motel. Since no work was done to proceed with the development of the motel, the Village contacted the Appellant to discuss his intentions. He indicated that he wanted to utilize the trailer as a storage structure for his commercial business. The Appellant was informed that a new development permit application was necessary as the nature and scope of the project would change from a motel to a storage structure use.

With the initial permit for the motel expiring on August 13, 2021 and no time extension agreement for the initial motel permit being applied for, the Development Authority advised the Appellant, that the trailer had to be moved off the property. On August 18, 2021, the Applicant applied for the trailer to be used as storage structure. The application was considered by the Development Authority on September 1, 2021 and approved. The Development Authority considered the application for the discretionary use and examined the relocation of the building, the required setbacks, vehicular and pedestrian traffic, access to the building, storage structure requirements, the purpose of the development, landscaping and screening requirements, the impact of the building to surrounding properties, and the design and general appearance.

It was determined that the requested location of the storage structure along the southern boundary of the property was not suitable. Since pedestrian, vehicle and commercial loading traffic would all occur through the front of the building, the Development Authority found the location to be a safety issue. Locating the storage structure at the back of the building would reduce traffic and congestion along the front of the property, and would utilize the rear loading dock. Loading and unloading of the trucks could occur at the back of the building and not the front where pedestrians also enter the building. An emphasis was placed on screening the structure from the public by locating it behind the building. Since the structure was on skids, it was determined that skirting was necessary to hide the undercarriage. The storage structure would have to meet the appearance and color of the principal building.

Considering the safety concerns and appearance of the storage structure in the side yard, it was requested that the storage structure be moved to the rear of the building. The Development Authority was not aware of the blocked loading dock, as such, it was not a consideration during decision making. The Appellant was informed that he could provide the information for further consideration. However, the Appellant appealed the decision.

The Development Authority provided a series of site photos to show the visual appearance of the storage structure and the site. She highlighted that the photos were taken in the afternoon and show delivery trucks being parked in front of the building for unloading, despite the Appellant's statement that delivery trucks only arrive in the early morning and are not an issue.

The Development Authority indicated that there is a tower located on the subject site, behind the building. The tower is accessed by the utility company through the emergency access/road along the back of the commercial building.

## **Summary of the Appellant's Submissions**

The Appellant was not aware of the bylaws in place when he purchased the storage structure and when he moved it onto the property. He was unaware that he was not allowed to move the storage structure onto his property without the Village's approval.

The Appellant appealed the relocation of the storage structure from the south side of the building to the back (west) of the building. The Appellant wants the storage structure to remain in its current location along the south side of the property. It is inconvenient to move the storage structure to the rear of the building as there is no access to the building from the back. The loading dock is blocked off and similarly, the rear door is blocked and used for air condition units. The Appellant uses the southern door, along the side of the building, where the deck is located to access the storage structure and bring items into the store. This door is used to access the store and the residence. However, both uses are separated by a hallway and door. The Appellant clarified that he does not need to walk through the residence to use the door for commercial purposes. He also stated that relocation would make it more inconvenient to access the emergency road to the tower.

Relocating the storage structure would create an expense of approximately \$8,000 and would result in no benefit to the Appellant and no benefit from a safety perspective. The photos submitted by the Development Authority illustrate that the storage structure already meets most appearance concerns and could easily be painted and skirted to meet the other conditions. The Appellant takes no issues with the conditions to improve the physical appearance of the storage structure.

Regarding the safety and congestion concerns, the Appellant stated that he only receives two deliveries per week in the early morning when business is slow. He clarified that the delivery trucks in the photos would only be there for a few minutes as they only deliver water, but stated that larger deliveries occur in the early morning.

There are no residences located along three of the property boundaries, the only residence is located to the south. The Appellant stated that he contacted the residents to the south and they had no objections to the storage structure remaining at its current location.

## **Summary of the Area Landowner's Submissions**

Victoria Thomson, an Area Landowner, lives northeast of the subject property and has an unobstructed view towards the property. Victoria Thomson stated that the storage structure has been on the subject property for over one year, with other parked vehicles having created an eye-sore for the community. She emphasized that the LUB needs to be followed and cannot just be disregarded. The storage structure needs to meet the requirements of the LUB and needs to fit in with the character of the site.

Should the storage structure be approved for the location as is, she requests that proper concealment of the storage structure is followed through with to see as little of the storage structure as possible. Since the Appellant has not followed the proper procedures up to this point, the approval should require the conditions to be met within a timely manner.

Victoria Thomson also disagreed with the timing of delivery trucks on the subject property. When customers' vehicles are parked along the front of the store, delivery trucks cannot park to unload. She agrees that only using one access door for customers and deliveries to the store is unsafe.

### **KEY FINDINGS OF FACT**

The Board makes the following key findings:

1. The subject development is located within the CB – Central Business District of the Land Use Bylaw, which lists “Storage Structure – accessory to a principal commercial use/building” as a discretionary use.
2. The Storage Structure meets the definition of “Storage Structure” under the Land Use Bylaw.
3. The Storage Structure was placed on the property without a development permit and is proposed to be used as storage structure for the commercial building, as per the development permit application for file DP2021-16.
4. The previous development permit for DP2020-16 is not relevant for the matter of this appeal.
5. The U-haul trucking business and parking of the U-haul trucks and trailers are not a subject of this appeal. Details regarding the arguments surrounding this topic were not included as part of this decision.

### **DECISION**

The appeal filed by MJ Singh is allowed and the decision of the Development Authority is modified as follows:

Development Permit 2021-16 for a “Storage Structure” is conditionally approved under the provisions of Land Use Bylaw 2012-04.

Permit Number:	2021-16
Legal Address:	Lot 4, Block A, Plan 881 0768
Proposed Use:	“Storage Structure”

## Conditions:

1. The Storage Structure shall be located to the south of the principal building and is subject to the following:
  - a. The northern wall of the Storage Structure must be at least 17.07m (56 feet) from the southern wall of the principal building; and
  - b. The Storage Structure must be at least 1.00m (3.2 feet) from the southern property boundary; and
  - c. The Storage Structure must be at least 8.95m (29.4 feet) from the eastern property boundary.
2. The Storage Structure shall be securely supported such that level is maintained over time. Leveling of the trailer must be completed within 60 days of issuance of this decision.
3. Any parts of the undercarriage that are exposed shall be completely screened from view by skirting within 60 days of issuance of this decision.
4. The exterior of the structure shall match the color of the principal building and is subject to the Development Authority's satisfaction. The exterior re-finishing shall be completed within 60 days of issuance of this decision.
5. Landscaping shall be installed in the form of shrubs 1 meter east of the east wall of the Storage Structure. The vegetation that is selected must be coniferous for year round effect and must be able to grow to a height of at least 6 feet at maturity. At least three (3) plantings are required along the eastern wall. The shrubs shall be at least 3 feet tall at the time of planting. The plantings shall be located so as to reduce the visibility of the eastern side of the structure. The planting shall be completed by June 30, 2022.
6. The area around the Storage Structure shall be kept tidy and free of any debris.
7. The Storage Structure shall be used for cold storage purposes only. No utilities shall be connected to the building.
8. Must adhere to all Federal, Provincial, or other municipal legislation, or to the conditions of any easement, covenant, building scheme or agreement affecting the building of land. The operation of all uses shall comply with the environmental and public health performance standards of the Provincial Government.
9. All required safety permits and building permits shall be obtained from Palliser Regional Municipal Services.
10. Unless otherwise stated in the above approval, the Storage Structure shall comply with all applicable provisions of the Village of Linden Land Use Bylaw 2012-04.

## **REASONS FOR DECISION**

The Board finds that insufficient evidence was provided to consider the current location of the storage structure to be a safety concern. Although the photos provided by the Development Authority show deliveries being made to the store during the afternoon, no persuasive evidence was presented to demonstrate the relationship of how the placement of the storage structure at the back of the building would direct this traffic to the rear instead of the front of the building. The Board determines that the photos indicated that the deliveries are being unloaded directly into the store, and not into the storage structure. Therefore, the Board finds that moving the storage structure to the rear of the building may not change the delivery logistics of the Appellant, as deliveries may still be made to the front entrance of the store and not to the storage structure.

The Board finds that even if the barricaded loading dock was cleared for operational purposes, the subject development permit for the storage structure does not dictate the loading and unloading locations for the delivery trucks that service the store.

The Board acknowledges the health and safety concerns of the Development Authority and the Area Landowner regarding the barricading of the rear loading dock and rear building door. However, the Board finds that the principal building is not the subject of this development permit application and emphasizes that the principal building and use would have been subject to a separate development permit and separate building permit approvals.

The Board finds that a lot of emphasis has been placed on the physical appearance of the storage structure. To alleviate concerns regarding the appearance and visibility of the storage structure, the Board finds that the long-term appearance of the storage structure requires improvements as contemplated in the LUB. The Board finds that the storage structure needs to be leveled and the exterior re-finished to match the appearance of the principal dwelling and blend in with its surrounding.

In response to concerns about the visibility of the storage structure, landscaping in the form of coniferous plantings shall be placed along the eastern side of the storage structure. Although the most affected landowners - adjacent landowners to the south - provided no comments or concerns about the subject application, the Board finds that landscaping will reduce the visibility of the structure from nearby residences to the east and south of the subject property, and will enhance the overall appearance of the property from the public roadway.

The Board finds that the subject property is large enough for the storage structure to satisfy the minimum setback requirements of the LUB, while being located in the side yard of the subject property, parallel to the southern property boundary. The Board notes that there was no dispute about the storage structure being able to meet the minimum setback requirements nor the setbacks as indicated on the Appellant's site plan that was submitted as part of his development permit application. As such, the Board is satisfied to approve the placement of the storage

structure within the southern side yard of the subject property subject to its compliance with setbacks noted in the conditions of approval.

The Board acknowledges the presence of a telecommunication tower facility behind the building, which is accessed off Centre Avenue West, and acknowledges that there is a road on the property to accommodate access to the facility. If the storage structure were to be placed at the rear of the building as approved in the September 1, 2021 conditional approval, there may be obstruction of the road. The Board finds that no telecommunication tower facility access concerns were raised about the Appellant's preferred placement of the storage structure in the southern side yard of the property. Based on this evidence, and the photos provided that show that the storage structure in the southern side yard is not obstructing the access road, the Board is satisfied that the placement of the storage structure in the side yard as per conditional setbacks would not interfere with the access to the telecommunication tower facility.

**CLOSING:**

This decision can be appealed to the Court of Appeal on a question of law or jurisdiction. If you wish to appeal this decision you must follow the procedure found in section 688 of the Municipal Government Act which requires an application for leave to appeal to be filed and served within 30 days of the date of this decision.

Dated at the City of Red Deer, in the Province of Alberta this 2<sup>nd</sup> day of November, 2021 and signed by the Chair on behalf of all three panel members who agree that the content of this decision adequately reflects the hearing, deliberations and decision of the Board.

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Karen Howley, Chair

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Date



**APPENDIX "A"**

PARTIES WHO ATTENDED, MADE SUBMISSIONS, OR GAVE EVIDENCE AT THE HEARING:

<u>Name</u>	<u>Capacity</u>
MJ Singh	Appellant
Lynda vanderWoerd	Development Authority
Victoria Thomson	Area Landowner

## **APPENDIX “B”**

### DOCUMENTS RECEIVED PRIOR TO THE HEARING:

<u>Reference Tab</u>	<u>Item</u>
TAB A	Notice of Appeal
TAB B	Application
TAB C	Development Permit Issued
TAB D	Information Provided by Development Authority
TAB E	Notices
TAB F	Development Authority’s Supplementary Submissions
TAB G	Appellant’s Supplementary Submission
TAB H	Area Landowner’s Submission