

# REGIONAL SUBDIVISION AND DEVELOPMENT APPEAL BOARD

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

September 7, 2021

## NOTICE OF DECISION

**RE: Appeal of Development Permit Application DP#2021-10 for an accessory building (detached garage) with a variance to allow a height of 20 feet 10 inches on Lot 79, Block 6, Plan 092 7960 that is located within the Summer Village of Parkland Beach.**

### SUMMARY OF APPEAL

This is an appeal of a development permit approval for an accessory building in the form of a detached garage. The garage was approved with a variance to the maximum height standard within the Summer Village of Parkland Beach Land Use Bylaw - *Land Use Bylaw No. 2018-01* (LUB). The maximum height standard was relaxed from 5.0 metres (16.4 feet) to allow for a building height of 6.35 metres (20.8 feet).

The Appellants – Laurence Rooney, Max Gross, Keith Nesbitt, and Mark Wynker – appealed the variance approval based on reasons including (1) the lack of principal building to which an accessory building should be subordinate to, (2) discrepancies between the application and the approval, (3) the variance that was provided without a principal dwelling to compare the height to, and (4) the lack of public communication of the permit process.

Notice of the appeal was provided to interested parties and a hearing was held on August 26, 2021.

Hearing Panel: Joe Henderson, Chair  
Jocelyn Robinson, Board Member  
Lynda Petten, Board Member

SDAB Clerk: Craig Teal  
Anika Drost

## **BACKGROUND OF THE APPLICATIONS**

The Development Authority approved an accessory building (DP#2021-10) on July 16, 2021 on the lands described as Lot 79, Block 6, Plan 092 7960. The subject property is designated Residential (R) District within the LUB. “Personal Recreational Use” and “Accessory Building” are both listed as permitted uses within this land use district. The approval granted a variance to the 16.4 foot height standard set out in the LUB. As such, the garage was proposed at 32 feet by 34 feet large, with a building height of 20.8 feet. The Development Authority approved the development subject to the following conditions:

1. The development of the buildings and site improvements shall proceed in substantial accordance with the attached application form and approved plans and drawings. Any modification or changes from the approved plans requires written approval from the Development Authority.
2. Use and development of the subject site shall conform to all other applicable requirements of the Summer Village of Parkland Beach Land Use Bylaw, except where a relaxation has been expressly granted.
3. Finished grading of the parcel must direct storm water run-off into a municipal drainage system or roadway ditch or a shared drainage swale along a property line without causing ponding of water on or flow of water across abutting lands.
4. A Building Permit is also required under the Safety Codes legislation, and other permits may apply. Contact IJD Inspections Ltd (Red Deer) for information: 877-617-8776 or [www.ijd.ca](http://www.ijd.ca)

An appeal was filed with the Regional Subdivision and Development Appeal Board on August 6, 2021. Affected parties were notified on August 16, 2021, with public notifications being distributed on August 17, 2021.

## **MERIT HEARING**

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

The Development Authority used its discretion and approved the garage with a height variance as the proposal is in compliance with sections 2.2(1)(a)(i) and (ii) of the LUB:

1. The Development Authority may approve, with or without conditions, an application for development that does not comply with this bylaw if, in the opinion of the Development Authority,
  - a. The proposed development would not
    - i. Unduly interfere with the amenities of the neighbourhood, or

- ii. Materially interfere with or affect the use, enjoyment or value of neighbouring parcels of land, and [...]

The Development Authority indicated that the Applicants discussed the proposed garage with his neighbours and that no concerns were raised. This is also indicated by the supporting letters that form part of the Applicants' submissions.

The Development Authority indicated that the notification of the decision was given to affected parties. Notification letters were mailed to adjacent landowners, it was posted on the Summer Village of Parkland Beach office window, it was posted on the website, and an email was forwarded to everyone signed up to receive the Summer Village's Notification emails.

Section 9.1 of the LUB lists Personal Recreational Use and Accessory Buildings as permitted uses for the subject property. The LUB states:

8.1.2. Residential Districts

7. Accessory buildings which are constructed on parcels with the principal use Personal Recreational Use shall be sited on a parcel so as to not impede the potential for future development of a detached dwelling.

Personal Recreational Use is defined within the LUB as:

[...] the use of a residential parcel for personal recreation and leisure by the occupants using recreational vehicles as accommodation, with no permanent dwelling units located on site. This does not include a campground.

The Development Authority recognizes "Personal Recreational Use" as the principal use of the property, as there are recreational vehicles on site. As such, an accessory building is permitted on the site.

During questioning, the Development Authority clarified that whether a recreational vehicle is considered a principal dwelling is irrelevant in this case. As long as the property is used for "Private Recreational Use", an accessory use that is subordinate to the primary use of the property is permitted.

The Development Authority stated that there was a verbal indication between the Development Authority and the Applicant that the driveway would be relocated to the west side of the property unlike shown on the drawings submitted. It was highlighted that the letter to the Applicants, dated July 16, 2021, stated that the garage with the variance was approved including the relocation of the driveway. The relocation of the driveway would not have required a variance and was not part of the drawings that were used to notify the public and affected landowners.

## **Summary of the Applicants' Submissions**

The Applicants stated that they were in contact with the adjacent landowners which are in support of the proposed development. Letters of support were submitted as part of the submissions for this appeal, which indicate full awareness of and support for the proposed garage.

The Applicants stated that the use of their property qualifies under Personal Recreational Use of the LUB. The LUB allows space for recreational hobbies and recreational buildings on the property. When they constructed their initial shed on the property, they also did so under the appropriate permits and approvals.

The LUB states that an accessory building is a permitted use on the subject property. Constructing the garage prior to the development of a principal dwelling allows the Applicants to protect their personal property from rural crime and keep the subject site tidy, which is of benefit to the surrounding landowners. The Applicants also raised concern that multiple insurance claims had been made due to wind and hail storm damage in the past. Allowing the construction of a garage will protect their property from such damage. It will also allow the storing of materials and tools when the future principal dwelling is being build. The intention is to develop a future principal dwelling on the property once financial means to do so are available. The Applicants explored the option of having a sea can placed on the property to store their personal property but discovered a 90-day time limit for sea-cans on properties. As such, they decided that the accessory building would be the best and most appealing option for personal storage on site.

The garage height was chosen to accommodate the Applicants' recreational vehicle and is not an unusual size for a garage in the subject area as the Applicants observed 29 oversized accessory buildings of which four are larger than the proposed garage. The Applicants stated that the subject site slopes down towards the north or rear property line, away from the road. The drop in topography is approximately 7 feet, which will also result in the garage appearing not as tall as 20 feet from the road. During questioning by the Appellants, the Applicants stated that a number of the oversized garages observed in the area were located within treed areas.

## **Summary of the Appellants' Submissions**

The Appellants filed an appeal based on reasons including the misunderstanding around accessory building, the discrepancies between the application and the approval, including the public communication, and the unnecessary granting of the height variance.

The Appellants stated that the proposed development materially interferes and affects the use, enjoyment and value of the neighbouring parcels of land. Constructed homes are surrounded by trailers on adjacent properties.

The Appellants highlighted that Accessory Building is defined under that Land Use Bylaw as:

[...] a building which is separate and subordinate to the principal building and/or use of the parcel, the use of which is incidental to that main building or use and is located on the same parcel of land, and includes such things as a garage, greenhouse, garden shed or workshop but does not include a temporary building or soft-sided building.

This definition can be interpreted as requiring a principal building prior to construction of an accessory building. However, the LUB further states that an accessory building can be located on the property if it is designated as “Personal Recreational Use”. The application does not indicate that the property is designated as “Personal Recreational Use”. The use field was left blank on the application form. Since no principal dwelling and no “Personal Recreational Use” are located on the property, no accessory building should be permitted.

The Appellants argued that there is no reason for the Development Authority to grant a variance to the height standard. Section 2.2(2) of the LUB states the following:

[...] the Development Authority shall adhere to the following:

- b. A variance shall be considered only where warranted by the merits of the proposed development and in response to
  - iii. Irregular lot lines, parcel shapes or site characteristics which create difficulties in siting structures within the required setbacks or in meeting the usual bylaw requirements; or
  - iv. Existing development approved under a previous bylaw

The subject property does not contain any special characteristics that would justify approving a height variance.

The Appellants disagree with the Development Authority’s decision that the proposed development does not interfere with the use, enjoyment and value of neighbouring parcels of land. They recommend that the permit be denied and that adjustments to the development permit process be made to properly inform the public of proposed developments.

There are numerous discrepancies between the application and the approval of the garage which includes a lack of required information and unacceptable data presentation. Section 3.1 of the LUB refers to a list of items that are required as part of an application. This list includes: legal description, yard setbacks, scaled drawings, statement of existing and proposed use. The drawings provided in the notice of decision for the development permit did not provide any dimensions and no specifications. Furthermore, there was no indication that the driveway is to be relocated.

The Appellants provided site photos to show the nature of the subject site. They also indicated that only two of the four Appellants can see the subject site from their properties.

### **Summary of Other Parties' Submissions**

#### **William and Yvonne Nyrerod**

The Nyrerod's submitted a letter in support of the appeal. The letter states that the provision of constant variances is making a mockery of the LUB. The Nyrerod's raised concern about too many properties with multiple buildings and trailer, and oversized garages which are unsightly and chaotic. The Applicants should adhere to the LUB requirements or find a property suitable for their proposal.

### **KEY FINDINGS OF FACT**

The Board makes the following key findings:

1. The proposed development (detached garage) is a subordinate use to the principal use which is identified as Personal Recreational Use within the Land Use Bylaw. The proposed development is an accessory building and meets the definition of the Land Use Bylaw.
2. The variance was granted outside the Development Authority's discretion under Section 2.2(2)(a) of the LUB.
3. Notification about the proposed development was satisfactory in regards to the Land Use Bylaw provisions and the *Municipal Government Act* requirements for public notification.
4. The building orientation is shown on the figure "A-1 – Garage Overview" top left image and the bottom right image. The garage roof slopes upwards towards the east property line, with the eastern wall of the building being 20.8 feet tall.
5. The building location in relation to the already constructed shed is shown on figure "A-1 – Lot Layout". The garage will be located within the property's northwest corner, with the existing shed being located to the east, shielding the east wall of the garage. The driveway to the detached garage will follow along the west property boundary.

## **DECISION**

The appeal filed by Laurence Rooney, Max Gross, Keith Nesbitt, and Mark Wynker is denied and the decisions of the Development Authority is upheld, subject to the addition of condition 5 in the conditions of approval which are:

1. The development of the buildings and site improvements shall proceed in substantial accordance with the attached application form and approved plans and drawings. Any modification or changes from the approved plans requires written approval from the Development Authority.
2. Use and development of the subject site shall conform to all other applicable requirements of the Summer Village of Parkland Beach Land Use Bylaw, except where a relaxation has been expressly granted.
3. Finished grading of the parcel must direct storm water run-off into a municipal drainage system or roadway ditch or a shared drainage swale along a property line without causing ponding of water on or flow of water across abutting lands.
4. A Building Permit is also required under the Safety Codes legislation, and other permits may apply. Contact IJD Inspections Ltd (Red Deer) for information: 877-617-8776 or [www.ijd.ca](http://www.ijd.ca)
5. The Applicant shall install landscaping in the form of tree and/or shrub plantings along the north wall of the detached garage for the sections that is taller than 16.4 feet to visually break up the appearance of each wall. The vegetation that is selected must be coniferous for year round effect and must be able to grow to a height of at least 20.8 feet at maturity. At least two (2) plantings are required along the north wall. The plantings shall be located so as to reduce the appearance of the northeast corner of the garage.

## **REASONS FOR DECISION**

The Board finds that the garage is a subordinate use by definition. There are recreational vehicles on site that are considered part of a principal use of "Private Recreational Use", which therefore allows the garage to be recognized as an accessory building under the LUB.

The Board acknowledges the Appellants' frustration with the lack of detailed information on the application submissions. However, Section 3.1(2) of the LUB allows the Development Authority to make the determination as to whether an application contains satisfactory information to review the application and make a decision. In this case, the Development Authority deemed the application complete with the information provided. The Board also

acknowledges that the driveway has been relocated from the initial submissions, but understands that there was a verbal agreement between the Applicant and the Development Authority to do so, and that no variance is required for a driveway relocation. No evidence was brought before the Board to consider the driveway relocation as an issue for the purpose of this appeal.

The approved site plan on figure “A-1 – Lot Layout” shows the driveway located along the western property line. The Board finds the approved orientation of the garage is shown on the figure “A-1 – Garage Overview” top left image and the bottom right image. The garage roof slopes upwards towards the east property line, with its tallest point being 20.8 feet along the eastern wall of the garage. The garage location is shown on figure “A-1 – Lot Layout”. The garage will be located within the property’s northwest corner, with the existing shed being located to the east. The existing shed will shield the east wall of the garage. The driveway to the detached garage will follow along the west property boundary.

When examining the Residential District provisions of Section 9.1 of the LUB, it states that this district is intended “[t]o provide an area of high quality resort residential development in the form of single detached dwellings and personal recreational vehicle use”. The Board finds that the proposed use fits within this purpose statement and the permitted uses of this district.

Although the Board acknowledges that the neighbours’ views are changing as a result of approved developments in the area, the Board is of the opinion that the change in views does not rise to the point of materially interfering with the use, enjoyment and value of adjacent properties. The neighbouring properties continue to be able to be used, enjoyed and valued for residential and recreational purposes. The Board finds that over the years development within the area will occur and change the views of landowners that currently have a view of the subject property. Even if no variances are granted, other landowners are able to construct 16.4 foot tall accessory buildings and 33 foot tall principal dwellings on their lots, which in turn may block the views the Appellants currently have of the subject property. Further, it is commonplace for views in residential districts to undergo change as neighbouring properties are developed over time.

The Board determined that the variance to the building height does not significantly impact the mass of the building as a whole. The drawings submitted show a garage with a slanted roofline, which upon further examination only requires a height variance due to a portion of the roof peak. The roof line slants upwards from a 12 foot wall to an approximately 20 foot wall over a total length of 32 feet. If the garage was designed to take full advantage of a variance along the entire frontage of the garage with for example a flat roof and 20 foot walls on either side, the mass of the building would have a significantly greater visual impact. In this case, the Board is satisfied that the variance does not unduly interfere with the use, enjoyment or value of the neighbouring parcels as the visual impact is not significant and the garage will meet all other LUB requirements including the appropriate setbacks.



The Board acknowledges that the Appellants have concerns about the visual impact and the view that others may have from their property towards the approximately 20 foot wall of the garage. In this case, the Board determines that landscaping would soften the appearance of the building for surrounding properties. As such, the Board requires that landscaping in the form of coniferous trees be placed within the rear yard of the accessory building along the portions of the building wall that are above 16.4 feet tall. The Board is satisfied that the existing accessory building that is intended to be located to the east of the proposed garage will lessen the visual impact of the eastern garage wall and break up the mass of the wall visually.

The Board finds that the height variance for the proposed accessory building was granted outside the scope of the variance power given to the Development Authority. Section 2.2(2)(a) of the LUB clearly states:

- a. A variance shall be considered only where warranted by the merits of the proposed development and in response to
  - i. Irregular lot lines, parcel shapes or site characteristics which create difficulties in siting structures within the required setbacks or in meeting the usual bylaw requirements; or
  - ii. Existing development approved under a previous bylaw

In this case, the Board is not satisfied that the proposed development is located on a parcel that has an irregular parcel shape or the site constraints for locating the accessory building on the parcel. The subject property is a rectangular parcel and no evidence was brought before the Board to suggest that the subject property has site constraints that would restrict the location or size of the garage. Furthermore, the development was not approved under a previous bylaw that would allow the variance.

Although the Development Authority is bound by Section 2.2(2)(a) of the LUB, the Subdivision and Development Appeal Board is not. In accordance with Section 687(3)(d) of the *Municipal Government Act*, the Subdivision and Development Appeal Board may make a decision on a development permit even if it does not comply with the LUB, if in its opinion:

- (i) the proposed development would not
  - (A) Unduly interfere with the amenities of the neighbourhood, or
  - (B) materially interfere with or affect the use, enjoyment or value of neighbouring parcels of land,
- and
- ii) the proposed development conforms with the use prescribed for that land or building in the land use bylaw.

As elaborated on above, the Board finds that the subject development permit does not unduly interfere with the use and enjoyment of neighbouring lands for their intended residential and recreational purposes.

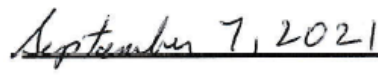
The Board also finds that no adjacent landowners, who may be the most affected party by development on the subject property, have appealed the development permit or raised any concerns regarding the development proposal. The Board acknowledges that the property can be seen from several lots away and that the development of the subject site and nearby sites will change the character of this area over time. However, the proposal is in compliance with the purpose of this district and the three permitted uses prescribed within it. The LUB that was adopted in 2018 has identified that this area will consist of a mix of recreational uses and principal dwelling units as well as accessory buildings. This is the nature of this area and the changes from recreational use to permanent principal dwelling units is accommodated within the parameter of the LUB provisions.

The Board finds that the Development Authority has provided appropriate Notice of Decision to affected parties, and went above and beyond what the Land Use Bylaw under Section 3.7 requires, to provide additional notices to the community members. The Board finds that changes to the notification requirements and concerns therewith are outside its jurisdiction and would need to be dealt with by the Summer Village Council.

**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 Ponoka County, in the Province of Alberta this 7<sup>th</sup> day of September, 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.

  
Joe Henderson, Chair  
Date

## **APPENDIX “A”**

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

<u>Name</u>	<u>Capacity</u>
Laurence Rooney	Appellant
Max Gross	Appellant
Keith Nesbitt	Appellant
Cyril Fortney	Development Authority
Marc Mousseau	Applicant
Heather Moon	Applicant
Darcy Robinson	Public
Barb Rooney	Public
Jennifer Munro	Public
Pauline Gross	Public
Phil Hallet	Public
Phil Cole	Public

## **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

### DOCUMENTS RECEIVED AT THE HEARING:

<u>Reference Tab</u>	<u>Item</u>
TAB F	Applicants’ Submission
TAB G	Applicants’ Supplementary Submission – Support Statements
TAB H	Appellants’ Supplementary Submissions – Site Photos
TAB I	Public Letter from Nyrerods in Support of Appeal
TAB J	Appellants’ Speaking Notes