

REGIONAL SUBDIVISION AND DEVELOPMENT APPEAL BOARD

UNIT B 4730 ROSS STREET
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403-343-3394

December 29, 2020

Lynn Stone
4813 39 Street
Ponoka, AB T4J 0B6

RE: Appeal of Development Permit 2020-1007-0058 for an accessory building (detached garage) with a variance to allow 16' (4.88m) walls on Lot 28, Block 3, Plan 102 5930 at 3901 49 Avenue, Ponoka

SUMMARY OF APPEAL

This is an appeal of a development permit approval for an accessory building in the form of a detached garage. It involves a variance to allow 4.88m (16ft) high walls as compared to the 3.1m (10.17ft) standard set out in the Low Density Medium Lot Residential District of the Town of Ponoka Land Use Bylaw. The Appellant, Lynn Stone, is appealing the approval of the variance based on the impact the development may have on neighbouring properties. The Appellant filed the Notice of Appeal beyond the 21 day appeal period provided for in s. 686(1)(a)(i)(A) of the *Municipal Government Act*. The jurisdiction of the Board to hear the appeal was addressed in a separate decision issued on December 4, 2020. The merit hearing for the appeal was held on December 15, 2020.

Hearing Panel: Joe Henderson, Chair
Julia King, Board Member
Heather Ryan, Board Member

SDAB Clerk: Craig Teal
SDAB Legal Counsel: Kelsey Becker Brookes

BACKGROUND OF THE APPLICATION

Development Permit 2020-1007-0058 approves the construction of an accessory building on Lot 28, Block 3, Plan 102 5930. It is a detached garage intended to house a recreational vehicle. Lot 28 is designated Low Density Medium Lot Residential District (R1B) under the Town of Ponoka Land Use Bylaw. A detached garage is deemed an accessory building and is a permitted use in the R1B District. The approved development permit includes a variance of the maximum allowed 3.1m (10.17ft) wall height to allow for a wall height of 4.88m (16ft).

PRELIMINARY MATTERS

At the start of the hearing on December 15, 2020, the Appellants, Applicants, Other Parties in Attendance and Development Authority were given the opportunity to raise objections to the Board Members assigned to the hearing. No objections were raised.

The status of Margo Fleming as authorized Agent on behalf of the Applicant was confirmed.

HEARING

Summary of the Development Authority's Submissions

The Development Authority stated that the detached garage is an accessory building which is a permitted use in the R1B District. This application needed a variance to the allowable wall height. In the R1B District, the standard for maximum wall height for an accessory building is 3.1m (10.17ft) and the standard for maximum building height is 10m (32.8ft). The standard for parcel coverage is 40%.

The Development Authority indicated that the property is subject to the Town of Ponoka Municipal Development Plan which provides no guidance for accessory buildings. No other statutory plans apply to the property.

The Development Authority stated that the restrictive covenant that is registered on the title of Lot 28, Block 3, Plan 102 5930 is not binding on development decisions made by the Town of Ponoka. The Town of Ponoka is not one of the parties to the restrictive covenant. Further, the requirements of the restrictive covenant address homes and not accessory buildings and speak to building height but not wall height. The Development Authority opined that even if the terms of the restrictive covenant were binding on the decision of the Development Authority the detached garage is not in conflict with the requirements outlined in the restrictive covenant.

The Development Authority stated the Development Officer is authorized to grant a variance to a Land Use Bylaw standard such as wall height. Section 13.6 of the Land Use Bylaw indicates that "the Development Authority may approve an application for development permit notwithstanding that the proposed development does not comply with this bylaw, if, in his opinion,

- 13.6.1 the proposed development would not
 - 13.6.1.1 unduly interfere with the amenities of the neighbourhood, or
 - 13.6.1.2 materially interfere with or affect the use, enjoyment, or value of neighbouring parcels of land, and
- 13.6.2 the proposed development conforms with the use prescribed for the land or building in this bylaw."

The Development Authority pointed out that the Subdivision and Development Appeal Board (SDAB) is able to consider a variance under Section 687 of the Municipal Government Act. Further, the SDAB is given considerable latitude and deference by the Courts should a Court be asked to review the SDAB's reasons for granting a variance.

The Development Authority considered several factors in applying the variance test required in Section 13.6.1 of the Land Use Bylaw. This included the fact the application met the setback regulations of the R1B District, met the site coverage regulations of the R1B Districts, includes an access more than 6m (19.68ft) from 39 Street, was for a detached garage in the rear yard, proposed a normal roof pitch, and proposed that the exterior appearance of the detached garage match that of the principal building. In the Development Authority's assessment no landscape or geographical/natural view would be obstructed, no shade issues would be created and the garage would not have a negative impact on the human scale between neighbouring parcels. Having weighed these factors the Development Authority concluded there was no negative impact on the amenities of the neighbourhood and that the development does not materially interfere with or affect the use, enjoyment, or value of neighbouring parcels.

The Development Authority commented on the submission made by the Appellant. It was pointed out that no appraisal or similar evidence had been provided to verify the stated 5 to 10 percent loss of property value. The Development Authority also observed that the windows on the west elevation of the Appellant's house appear to be intended to allow natural light into the house rather than creating a viewing opportunity. It was pointed out that none of the windows had an interior seating area where a person would remain and enjoy a view to the exterior.

The Development Authority commented on the submission made by Shealyn Ronnie noting that shade and light impacts raised in the submission are questionable given the distance between properties. Further, no information has been submitted to demonstrate a change in shade or the amount of light reaching properties. The Development Authority also noted that the sight distances for vehicles using the lane are acceptable.

The Development Authority commented on the photo included in the submission made by Lucas Hetze. It was pointed out that the photo appears to have been altered to zoom in on the west wall of the detached garage and that the picture is taken from a property four lots removed to the west.

The Development Authority commented on the future use of the detached garage for commercial purposes raised in the submission made by the Appellant. It was noted that the Development Authority cannot base their decision on a "presumed use" and makes their assessment based on the use indicated on the application.

Summary of the Applicant's Submissions

The Applicants, Bruce and Marlene Phillips, did not attend the appeal hearing on December 15, 2020 and were instead represented by their Agent, Margo Fleming.

Ms. Fleming noted that the Applicants had discussed the garage with neighbours prior to applying for the development permit. This included the intent of storing their recreational vehicle in the garage and the resulting need for a 14 foot high door and a garage at least 36 feet in length. The neighbours did not raise any concerns.

Ms. Fleming indicated that the Applicants followed the process requested of them in submitting their development permit. They did not intend to build a garage that would not be acceptable to their neighbours. The Applicants feel it is unfortunate that concerns have arisen after the garage has been constructed. They also note that some neighbours, including those who have direct views of their property, have complimented them on how well the appearance of the garage matches that of the house.

Summary of the Appellants' Submissions

The Appellant indicated she has no ill feelings towards her neighbours and feels that the Development Authority made the wrong decision in assessing the application. She pointed out that some materials she has requested from the Town have not been provided and that these materials may have helped her prepare for the hearing.

The Appellant stated that the Development Authority's submission shows that the Development Authority did not take enough information into account to make a determination on the impact of neighbouring properties. This includes the location of the subdivision on a high point in town that provides views to the west. The Appellant stated that the 160 percent variance of the wall height, by virtue of the degree of variance granted, has a negative impact. The detached garage impedes all views from the windows on the west side of the Appellant's house. The Appellant indicated that the windows may not have interior seating areas for use in looking out the windows but seating could be added in the future. The main point is that the view from each window is blocked by the detached garage.

The Appellant estimated that the loss in value of their home is at least \$20,500. This is based on a financial article suggesting a view is worth 5 to 10 percent of the value of a property applied to the Appellant's current estimate of their home's value. The Appellant notes that recent real estate listings for the neighbourhood emphasize the views to the west from second floor living areas as one of the factors that make the area attractive. Further, the Appellant indicated that the subdivision has some of the highest property values in the town and that this can be credited to the architectural controls put in by the developer.

The Appellant noted that the restrictive covenant seeks to address building height and does not contemplate a 160 percent variance of the Land Use Bylaw requirements. Building styles are also limited on corner lots to bungalows, split levels and bi-levels to maintain views. The detached garage is the same height as a two storey home and not consistent with the restrictive covenant. Additionally, the prior review by the Approval Committee did not take place and the Development Authority should not have approved the development without it.

The Appellant stated that the detached garage at 20 feet wide, 40 feet long and at least 20 feet high is more a commercial or agricultural shop than a structure that fits within a residential area. It was suggested that if a tractor can be stored in the building then the building belongs in an industrial area.

The Appellant suggested that there were alternatives to the detached garage and that the garage is a luxury rather than a necessity. It was pointed out that the recreational vehicle could have been parked on a concrete pad in the rear yard or the Applicant could have rented indoor commercial storage elsewhere in and around the community.

The Appellant indicated that the Applicants may intend to use the detached garage for a mechanical business involving the repair, renovation and re-sale of recreational vehicles. It was suggested that using the building as this kind of shop will violate several bylaws.

The Appellant questioned the calculation of site coverage and noted that different figures have been used and there is no listing of the items that are included. The Appellant suggested that with the detached garage constructed there seems to be little green space left on the lot and that the garage may not have been constructed as approved.

The Appellant stated that the situation with the garage is unfortunate and was caused by the actions taken by the Town in not following the Land Use Bylaw and the restrictive covenant. The Appellant asked the Board to overturn the development permit approval.

Summary of Other Parties' Submissions

Lucas Hetze

Mr. Hetze noted his objection is based on the height of the building and the way it blocks their view off their deck to the trees to the east. He further noted that the height of the garage gives the area a more constrictive feel for those living nearby or having to drive past the building. Mr. Hetze stated the size and height of the building would be more appropriate on an acreage, farm or industrial area. It was stated that Ponoka struggles to attract residents and that a deviation of this scale from the architectural controls put in place by the developer does not make Ponoka an attractive place to live.

Andrew Smikles

Mr. Smikles indicated that the application seems to have gone through too quickly to assess the impacts. He also noted that granting the variance seems backwards in relation to the architectural controls of the subdivision.

Shealyn Ronnie

Ms. Ronnie noted that her property is located across the alley with only one house between their property and the Applicants' property.

Ms. Ronnie stated that a variance within a reasonable threshold would be understandable but 60 percent over the maximum wall height is not. She notes the restrictive covenant makes no mention of oversized garages and expects height to match the Land Use Bylaw requirements. Ms. Ronnie questioned the impact that approving the detached garage will have on future, similar decisions in terms of setting a precedent and the impact on property values in the area.

Ms. Ronnie indicated that the approved garage does not fit in when compared to the normal size and height of local detached garages. She noted that it casts shadow and blocks sunlight for numerous backyards. She also noted that the garage is less than pleasing to the eye. Ms. Ronnie suggested that the garage blocks sight lines for vehicles and pedestrians in the lane and for those trying to keep an eye on young children

Shannon Kocyba

Ms. Kocyba indicated that the view to the east from her kitchen window just looks at the detached garage now that it is built. She noted that sunrise casts a shadow over their yard. Ms. Kocyba also pointed out that watching her children and other children playing is more difficult now as the sight lines are obstructed and she is not able to see to the east to 39 Street.

KEY FINDINGS OF FACT

The Board makes the following key findings of fact:

1. The detached garage is deemed an accessory building under the definitions of the Town of Ponoka Land Use Bylaw. Accessory building is a permitted use within the R1B District of the Town of Ponoka Land Use Bylaw.
2. The detached garage is proposed to have 4.88m (16 ft) high walls. The standard in the R1B District is a maximum wall height of 3.1m (10 ft) for accessory buildings. This is a 60 percent variance from the District standard.

3. All other applicable requirements of the Land Use Bylaw including rear setback, side setback, distance from flanking street and site coverage are met.
4. The detached garage will have the same colour and finish as the house.
5. Section 13.6 of the Town of Ponoka Land Use Bylaw authorizes the Development Authority to approve a variance and does not establish a numerical limit on the degree of variance that the Development Authority may approve. In choosing to grant a variance, the Development Authority must be satisfied that:
 - a. the proposed development would not 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
 - c. the proposed development conforms with the use prescribed for the land or building in the Land Use Bylaw.
6. Section 687(3)(d) of the *Municipal Government Act* authorizes the SDAB to issue a development permit even though the proposed development does not comply with the Land Use Bylaw if, in its opinion:
 - 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
 - b. the proposed development conforms with the use prescribed for that land or building in the Land Use Bylaw.
7. While the view through the windows on the west elevation of the Appellant's house through the Applicant's property and to the west has changed, the view was already limited by the various houses and accessory buildings lying to the west and southwest of the Applicant's property.
8. The detached garage is highly visible from the properties to the west, south and southwest of the Applicant's property. The west facing and south facing walls of the detached garage are uniform in appearance with no architectural features to visually soften the appearance or massing of the building.
9. The Town of Ponoka is not a party or signatory to the Restrictive Covenant registered as Instrument Number 102 376 867 on the title of Lot 28, Block 3, Plan 102 5930. The restrictive covenant is not binding on decisions of the Development Authority or decisions of the Subdivision and Development Appeal Board. A restrictive covenant is enforced privately by the benefitting party.

DECISION

The Board decides as follows:

1. The appeal filed by Lynn Stone is allowed in part, with the addition of condition (g); and
2. The August 18, 2020 decision of the Development Authority is replaced with the following:

The Subdivision and Development Appeal Board approves the application submitted by Bruce and Marlene Phillips (the "Applicant") for a development permit for the Permitted Use of an Accessory Building (Detached Garage), with walls at a 4.88 metre maximum height, as shown on the plans dated August 18, 2020 and stamped as "Approved," copies of which are attached to and form part of this decision (collectively referred to as the "Approved Plans"), on the lands zoned R1B located at 3901 49 Avenue, legally described as Lot 28, Block 3, Plan 102 5930, (the "Site"), subject to the conditions listed below:

- a. The development permit shall not be deemed completed based on this approval until all conditions except those conditions of a continuing nature have been fulfilled to the satisfaction of the Development Officer.
- b. The approved development must conform to the conditions of this development permit and the Approved Plans and any revisions thereto as required pursuant to this approval. Any further revisions to the Approved Plans must be approved by the Development Authority.
- c. The Applicant shall repair or reinstate, or pay for the repair or reinstatement, to original condition, any public property, street furniture, curbing, boulevard landscaping and tree planting or any other property owned by the Town which is damaged, destroyed or otherwise harmed by development or construction on the subject lands. Repairs shall be done to the satisfaction of the Town of Ponoka. In the event that the Town undertakes the repairs, the Applicant shall pay the costs incurred by the Town within 30 business days of being invoiced for such costs.
- d. The Applicant to provide a copy of all required applicable Federal, Provincial and Municipal Approvals to the Development Officer.
- e. The Applicant shall ensure continuous clean-up of construction debris tracked onto the public roadway(s) resulting from the construction of the approved development.
- f. The appearance of the approved Detached Garage shall match or complement the materials and finish of the existing principal building (detached residence).

- g. The Applicant shall install landscaping in the form of tree and/or shrub plantings along the south and west walls of the detached garage 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 sixteen 4.88m (16) feet at maturity. At least two (2) plantings are required along the west wall and at least three (3) plantings are required along the south wall. The plantings along each wall shall be located so as to divide the view of the west wall into three (3) more or less equal parts and divide the view of the south wall into four (4) more or less equal parts.

REASONS FOR DECISION

In exercising its discretion to grant a variance to the maximum wall height regulation, the Board must apply the test set out in s. 687(3)(d) of the *Municipal Government Act*, which is the same variance test the Development Authority applied as outlined in Section 13.6 of the Town of Ponoka Land Use Bylaw. However, the Board had the benefit of significantly more information from affected parties as to the interference with the amenities of the neighbourhood and the impact on the use, enjoyment and value of neighbouring parcels of land.

In the Board's opinion, the detached garage does not unduly interfere with the amenities of the neighbourhood. The height of the detached garage may be higher than what is typical of a single car or two car detached garage; however, it remains comparable in height to many of the other buildings in the area. Additionally, the R1B District regulations allow for building height of up to 10m (32.8ft). In this respect, the detached garage fits within the scale and character of the buildings in the immediate vicinity. Further, the requirement that the exterior finishing of the detached garage must be the same as that of the existing principal building matches the character of the existing buildings with regard to exterior architectural appearance.

The Board determined that the south facing and west facing elevations of the detached garage are large and do not employ any architectural features that would soften the appearance of the building. For this reason, the Board requires that landscaping be used in the 1m (3 ft) setback area to break up the view of these sides of the building. The Board observed that the spruce tree to the northeast of the garage's northeast corner will grow and provide a similar effect to break up the view from the Appellant's property. In addition, the east and north facing elevations of the garage have more visual architectural interest due to the presence of doors, windows and related trim.

The Board acknowledges that the neighbour's views have changed as a result of the approval and construction of the detached garage. That said, 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 purposes. The Board considered that the view from the Appellant's

house was already limited by the existing buildings on other properties lying to the west. This view is mainly of other people's back yards and the backs of houses typical of an urban residential setting. Further, it is commonplace for views in urban residential areas to undergo change as neighbouring properties are developed over time.

With regard to the impact on financial value, the Board is of the opinion that the materials submitted by the Appellant in relation to property value and the change in view from windows on the west elevation of their house is not conclusive evidence that a decrease in the property's financial value has or will be experienced as a result of the detached garage. The Board noted that no authoritative documents, such as a property appraisal, indicating a decrease in the property's financial value were submitted as evidence.

The issues of shadowing and changing sun light patterns were considered by the Board. Both will change as additional buildings are constructed. This includes a detached garage that meets the 3.1m (10.17ft) wall height requirement yet can have a building height of 10m (32.8ft) to roof peak. The Board is of the opinion that the detached garage's building height of 6.1m (20ft) will still permit sun light to reach adjacent properties at various times of the day and that the impact is minimal.

The Board considered the submissions regarding sight lines and safety distances for vehicles using the adjacent lane and/or street. The Board is of the opinion that these aspects are not directly related to the increased wall height of the detached garage. The same scenario would exist if the detached garage had the 3.1m (10.17ft) high walls allowed by the Land Use Bylaw. The detached garage is situated on the property in a manner that meets the required setbacks of the Land Use Bylaw. Further a permitted 1.8m (6 ft) high fence enclosing the Applicants' rear yard would result in similar sight lines for drivers and pedestrians.

The Board is satisfied that the proposed use of the detached garage conforms with the use prescribed for the land or building in the Land Use Bylaw. While assertions were made that the detached garage may be used for commercial purposes, there has been no evidence submitted to reasonably conclude that this will be the case. Like the Development Authority, the Board must make their determination based on the proposed use communicated in the application rather than future speculative uses which may or may not comply with the allowable uses under the Land Use Bylaw.

Finally, the Board considered the fact that the detached garage has already been constructed in light of the timing of filing the appeal (which was addressed in the decision for the jurisdictional hearing) and the possible implications for the Applicant. In this particular case the ability to see much of the end product compared to drawings and renderings assisted in evaluating the impacts on adjacent properties. Beyond that, the fact that the detached garage was already constructed as of the date of the merit hearing was not a relevant planning consideration for the Board in reaching the decision.

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 29th day of December, 2020 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

December 29, 2020
Date

APPENDIX "A"

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

| <u>Name</u> | <u>Capacity</u> |
|----------------------|---|
| Lynn Stone | Appellant |
| Martin Kvapil | Development Authority |
| Alifeyah Gulamhusein | Legal Counsel for the Development Authority |
| Margo Fleming | Agent for the Applicant |
| Shealyn Ronnie | Public |
| Shannon Kocyba | Public |
| Steven Rausch | Public |
| Lucas Hetze | Public |
| Andrew Smikles | Public |

APPENDIX "B"

DOCUMENTS RECEIVED AT THE HEARING:

1. Notice of Appeal filed by Lynn Stone
2. Background Materials supplied by the Development Authority
3. Development Authority Submission
4. Appellant Submission
5. Submission from Shealyn Ronnie
6. Submission from Lucas Hetze
7. Submission from Steven Rausch
8. Notices sent by the SDAB