

**SUMMER VILLAGE OF SUNRISE BEACH  
SUBDIVISION AND DEVELOPMENT APPEAL BOARD**

**SUBDIVISION & DEVELOPMENT APPEAL BOARD HEARING DECISION**

Hearing: Monday, April 24, 2023  
Development Permit Applicant No. 23DP01-44

File No. 23SDAB01-44

---

**Background:**

The Subdivision and Development Appeal Board (the “Board”) heard an appeal by Georgina Meade and Ryan Jabs represented by Craig Thomas of the decision by the Development Authority for the Summer Village of Sunrise Beach to refuse Development Permit No. 23DP01-44 which proposes to leave a previously constructed structure “as built” and as sited on lands described as Plan 3503KS, Block 1, Lot 3: 6103 Willow Way within the Summer Village of Sunrise Beach, Alberta (the “Lands”).

The Board heard from Georgina Meade, Appellant, Ryan Jabs, Appellant, Craig Thomas, Representative for the Appellant, Tony Sonnleitner, Development Officer for the Summer Village of Sunrise Beach and Michelle Gallagher, Legal Counsel for the Summer Village of Sunrise Beach. Documents were provided to the Board, as follows:

Exhibit 1	Letter of Appeal – Submitted by Craig Thomas – Received March 27, 2023
Exhibit 2	Legal Counsel Submission – Submitted by Michelle Gallagher, Patriot Law
Exhibit 3	Email from Alberta Land Titles, Re: Ownership and Designation of Land as walkway/road as per Plan 3503KS – Submitted by Tony Sonnleitner
Exhibit 4	Development Officer’s Report – Submitted by Tony Sonnleitner
Exhibit 5	Appellant’s Report – Submitted by Craig Thomas
Exhibit 6	Letter Opposing Appeal – Submitted by Morris and Jane Burak

The Board determined based upon the information supplied that the Hearing would fall under the Summer Village of Sunrise Beach’s Subdivision and Development Appeal Board.

**Decision:**

The Board determined that the decision of the Development Authority for the Summer Village of Sunrise Beach to deny Development Permit Application No. 23DP01-44 which proposes to leave a previously constructed structure “as built” and as sited upon the Lands described as 3503KS, Block 1, Lot 3: 6103 Willow Way, within the Summer Village of Sunrise Beach, Alberta shall be upheld and that the appeal be denied for the following reasons.

**Reasons:**

1. The Board determined that the as-built structure does not conform to the definition of a “Modular Home” or “Single Detached Dwelling” as defined in the Summer Village of Sunrise Beach Land Use Bylaw 71-1999, as amended.

**SECTION 4 DEFINITIONS**

- a. **“MODULAR HOME”** – means a factory fabricated built dwelling unit, designed to be transported on a truck in sections and assembled on site, but such sections or units have neither chassis, running gear, nor its own wheels, and the sections may be stacked side by side or vertically with a maximum length to width ratio of 2.0:1. A modular home does not include a single detached dwelling, manufactured home or mobile home and shall have a minimum 74.3 square metres (800 sq. feet) in floor area not including decks, porches or verandahs.
- b. **“SINGLE DETACHED DWELLING”** – means a complete building intended to be used as a permanent residence not separated from direct access to the outside by another separate or self contained portion of a building and has a length to width ratio of no more than 2.0:1. Does not include a mobile home, manufactured home, or modular home as defined under this Bylaw and shall have a minimum floor area of 74.3 sq. metres (800 sq. feet) not including decks, porches or verandahs.

**SUMMER VILLAGE OF SUNRISE BEACH  
SUBDIVISION AND DEVELOPMENT APPEAL BOARD**

**SUBDIVISION & DEVELOPMENT APPEAL BOARD HEARING DECISION**

Hearing: Monday, April 24, 2023

Development Permit Applicant No. 23DP01-44

File No. 23SDAB01-44

---

The evidence given at the Subdivision and Development Appeal Board Hearing indicated that the subject as-built structure was built on-site, not factory fabricated, on the subject lands therefore, the structure does not meet the definition of Modular Home. In addition, the evidence shows that the as-built structure has a floor area of 32.51m<sup>2</sup> whereas the definition of both a Single Detached Dwelling and Modular Home indicates that the minimum floor area shall be 74.3 m<sup>2</sup> (or 800 ft<sup>2</sup>).

Therefore, the Board determined that the as-built structure does not meet the definitions of a Modular Home or Single Detached Dwelling.

2. The Board determined that as the as-built structure does not meet the definitions of Modular Home or Single Detached Dwelling, it is not a Permitted nor Discretionary Use in the R – Residential District as stated in Section 50(2) of Land Use Bylaw No. 71-1999, as amended, which states:

**SECTION 50 R - RESIDENTIAL DISTRICT**

(2) Permitted Uses

- Single detached dwelling
- Accessory use – home occupation

Discretionary Uses

- Modular home
- Public utility building and operation
- Public park
- Accessor building
- Home occupation
- Holding tank
- Well

The Board did consider Section 9 of Land Use Bylaw No. 71-1999, as amended, which states:

**SECTION 9 SAME OR SIMILAR USES**

The uses which are listed in the permitted and discretionary uses columns under the land use districts are not intended to be exclusive or restrictive. Where a specific use does not conform to the wording of any definition, the Development Officer may deem that the proposed use conforms to the spirit and intent of the purpose of the land use district and is deemed similar to other uses allowed in that land use district. Notwithstanding, all uses defined as “same or similar uses” shall be discretionary.

In addition, the Board considered evidence submitted that pursuant to the Summer Village of Sunrise Beach Land Use Bylaw 71-1999, as amended, Section 10 DEVELOPMENT PERMIT REFERRALS the Development Officer, directed the development permit application to Council for their review and comment. The Board took into consideration that Council’s response was that the proposed development does not meet the spirit and intent of the current Land Use Bylaw and is not compatible with the community.

The Board determined that the as-built structure is so significantly and materially different from the defined requirements of a Single Detached Dwelling or Modular Home as the floor area is less than half of the size of the required minimum for a permitted type of residence, the as-built structure is of a completely different character and nature and as such, the as-built structure reflects an entirely different “use”. The Board also determined that as it does not reflect the spirit or intent of the Land Use Bylaw No. 71-1999, which was adopted by Council for the Summer Village of Sunrise Beach, the as-built structure does not fall within a same or similar use.

**SUMMER VILLAGE OF SUNRISE BEACH  
SUBDIVISION AND DEVELOPMENT APPEAL BOARD**

SUBDIVISION & DEVELOPMENT APPEAL BOARD HEARING DECISION

Hearing: Monday, April 24, 2023

Development Permit Applicant No. 23DP01-44

File No. 23SDAB01-44

---

3. The Board determined that as the as-built structure does not fall within the parameters of a Permitted Use or Discretionary Use, the Development Authority was correct in refusing Development Permit Application No. 23DP01-44 in accordance with Section 640(6)(b) of the Municipal Government Act, R.S.A. 2000, c. M-26 which states:

**Land use bylaw**

640(6) A land use bylaw may authorize a development authority to decide on an application for a development permit even though the proposed development does not comply with the land use bylaw or is a non-conforming building if, in the opinion of the development authority,

- (b) the proposed development conforms with the use prescribed for that land or building in the land use bylaw.

In addition, the Board, when determining if the Board would have the ability to approve the as-built structure, referred to Section 687(3)(d)(ii) Municipal Government Act, R.S.A. 2000, c. M-26, as amended which states:

**Hearing and Decision**

687(3) In determining an appeal, the board hearing the appeal referred to in subsection (1),

- (d) may make an order or decision or issue or confirm the issue of a development permit even though the proposed development does not comply with the land use bylaw if, in its opinion,
- (ii) the proposed development conforms with the use prescribed for that land or building in the land use bylaw.

The Board also considered, as given in evidence, *Planning Law and Practice in Alberta*, Laux and Stewart-Palmer, 2019, 4th ed, page 10-58 which states:

The *Municipal Government Act* authorizes a municipal council to delegate a variance power to the development authority in its land use bylaw,<sup>267</sup> and directly delegates such power to a subdivision and development appeal board.<sup>268</sup> A board may approve a development that does not comply with a land use bylaw, but only if it "conforms with the uses prescribed" in the bylaw for the land on which the development is to be undertaken.<sup>269</sup> In other words, a use variance is not permitted in Alberta.

It has been suggested by some that if a proposed use, which is not listed for a district in which it is to be affected, is compatible with the listed uses, a board has jurisdiction to grant a permit. Indeed, this same interpretation was placed on a board's variance power when the 1977 Planning Act first went into effect. However, at that time, the relevant sections of the Act stated that a permit could be issued for a non-complying development if it did "not conflict with the use prescribed" in the bylaw.<sup>270</sup> The word "conflict" was changed by a 1979 amendment to read "conform".<sup>271</sup> The word "conform" is found in the current legislation.<sup>272</sup> Use of this word, it is submitted, forecloses any argument that the test is one of compatibility.

The Board concluded they do not have the authority to approve the as-built structure as it does not conform to the uses prescribed under Section 50(2) of Land Use Bylaw No. 71-1999, as amended.

4. The Board determined that the as-built structure does not comply with the Municipal Development Plan Bylaw No. 166-2020 for the following reasons:

**SUMMER VILLAGE OF SUNRISE BEACH  
SUBDIVISION AND DEVELOPMENT APPEAL BOARD**

SUBDIVISION & DEVELOPMENT APPEAL BOARD HEARING DECISION

Hearing: Monday, April 24, 2023

Development Permit Applicant No. 23DP01-44

File No. 23SDAB01-44

---

Policy 3.1.2 requires that “Residential infill should respect or complement the existing built form, including height, size and architectural detailing of existing development.”

From the evidence given, the as-built structure is less than half the size of the minimum requirements for a Single Detached Dwelling or Modular Home under the Land Use Bylaw No. 71-1999, as amended. Evidence was also submitted of newer developed single detached dwellings or modular homes within the Summer Village of Sunrise Beach that have variances to minimum floor area of less than 20% whereas the subject as-built structure would require a 56% variance to the requirements of floor area required under Land Use Bylaw No. 71-199, as amended. Therefore, the Board determined that the as-built structure does not respect or complement the “existing built form” or the “size and architectural detailing” of the existing development.

5. The Board determined that the as-built structure does not comply with the Site Requirements or the Front Yard Setback Requirements of Land Use Bylaw No. 71-1999, as amended.

Land Use Bylaw No. 71-1999, as amended states:

**SECTION 50 R - RESIDENTIAL DISTRICT**

(4) Site Requirements

- (b) Minimum floor area per dwelling unit (not including attached garage) 74.3 m<sup>2</sup> (800.0 ft<sup>2</sup>).

The as-built structure has a floor area of 32.51m<sup>2</sup> which is a 56% variation from the minimum floor area.

**SECTION 50 R - RESIDENTIAL DISTRICT**

(4) Site Requirements

- (d) Minimum Front Yard Setback

Shall be at the discretion of the Development Authority who shall have concern for development or potential development on adjacent parcels, but in no case shall a front yard setback be less than 7.0 m (22.9 ft).

The as-built structure has a front yard setback of 2.74m which is a 61% variation from the minimum front yard setback.

The Board determined that this is a substantial variance to the requirements of Land Use Bylaw No. 71-1999, as amended, and based upon the evidence received regarding the site plan, they found that there is sufficient area on the Lands to meet the minimum floor area and front yard setback. The Board also considered the amount of foliage, vegetation and trees that covers the Lands and determined that this is not sufficient permanent features to shield the as-built structure from view nor does building on the Lands to meet the requirements of Land Use Bylaw No. 71-199, as amended, facilitate unnecessary hardship, as these Lands display common features to other lands.

In addition, the Board considered the municipal lands that are adjacent to the subject Lands and determined that these lands would not be considered in the calculation of the front-yard setback, as the municipal lands are not part of the subject Lands and can be developed at a future date by the Summer Village of Sunrise Beach.

The Board determined that the variances for the as-built structure are too extensive and undermine both Land Use Bylaw No. 71-1999, as amended, and Municipal Development Plan Bylaw No. 166-2020, and does not collaborate with the characteristics of other single detached dwellings within the Summer Village of Sunrise Beach based upon

**SUMMER VILLAGE OF SUNRISE BEACH  
SUBDIVISION AND DEVELOPMENT APPEAL BOARD**

SUBDIVISION & DEVELOPMENT APPEAL BOARD HEARING DECISION

Hearing: Monday, April 24, 2023

Development Permit Applicant No. 23DP01-44

File No. 23SDAB01-44

---

size and value and if approved, changes the characteristic and structure of the municipality not intended when Land Use Bylaw No. 71-1999, as amended, and Municipal Development Plan Bylaw No. 166-2020, were approved by Council.

6. The Board considered the argument that a refusal of the Development Permit No. 23DP01-44 based upon the as-built structure not meeting the minimum floor area requirements in Land Use Bylaw No. 71-1999, as amended, can be determined to be discriminatory. The Board determined that the evidence given at the Subdivision and Development Hearing was based upon Single-Family Dwellings or Districts where the discrimination is based upon the use of single-family. The Board determined this is not a relevant argument as Land Use Bylaw No. 71-1999, as amended, does not use the terms Single-Family Dwelling or Districts.

In light of the evidence given, the Board determined that the decision of the Development Authority for the Summer Village of Sunrise Beach to deny Development Permit Application No. 23DP01-44 which proposes to leave a previously constructed structure "as built" and as sited upon the Lands described as 3503KS, Block 1, Lot 3: 6103 Willow Way, within the Summer Village of Sunrise Beach, Alberta shall be upheld and that the appeal be denied.

A decision of the Subdivision and Development Appeal Board is final and binding on all parties and persons. Subject only to an appeal on a question of law or jurisdiction, an appeal lies to the Alberta Court of Appeal from a decision of the Subdivision and Development Appeal Board, pursuant to Section 668 of the Municipal Government Act, Revised Statutes of Alberta 2000 Chapter M-26. An application for leave to appeal shall be made:

- (a) To a judge for the Court of Appeal; and
- (b) Within thirty (30) days after the issue of the decision sought to be appealed.



Denis Meier, Chairperson  
Subdivision and Development Appeal Board



Emily House, Clerk  
Subdivision and Development Appeal Board



Date of Decision