



BEAUMONT  
**Subdivision  
and Development**  
APPEAL BOARD

HEARING DATE: October 21, 2024  
FILE NO.: 24-03  
DEVELOPMENT PERMIT DB-2024-474

**BOARD MEMBERS:**

Mr. Martin Stout, Chair  
Ms. Lindsay Skelly  
Ms. Christabel Khumalo  
Mr. Carl Savard

**Notice of Decision of Subdivision and Development Appeal Board**

**INTRODUCTION**

1. The Development Authority of the City of Beaumont (the "Development Authority") issued a development permit for an Accessory Building, Greenhouse located at 5610-56A Street, Beaumont, legally described as Plan 802 2319, Block 11, Lot 6 (the "Lands"). The applicant for the Development Permit was Gary Boles (the "Applicant").
2. On September 23, 2024, Susan Nelson and Colin Nelson appealed the Development Permit.
3. The Subdivision and Development Appeal Board (the "Board") held the appeal hearing on October 21, 2024, in person.

**PRELIMINARY MATTERS**

**A. Board Members and Jurisdiction**

4. At the outset of the appeal the Chair requested confirmation from all parties in attendance that there was no opposition to the composition of the Board hearing the appeal. None of the persons in attendance had any objection to the members of the Board hearing the appeal.

**B. Exhibits**

5. At the beginning of the hearing the Chair confirmed that everyone in attendance had the hearing package prepared for the hearing. All exhibits before the Board are referenced in Appendix "B".

**C. Miscellaneous**

6. There was no request for an adjournment of the hearing.
7. There were no objections to the proposed hearing process.

**DECISION OF THE SUBDIVISION AND DEVELOPMENT APPEAL BOARD**

8. The Board denies the appeal.

**SUMMARY OF HEARING**

9. The following is a summary of the oral and written evidence submitted to the Board. At the beginning of the hearing, the Board indicated that it had reviewed all the written submissions filed in advance of the hearing.

**Development Authority**

10. The Lands are located at 5610-56A Street, Beaumont, legally described as Plan 802 2319, Block 11, Lot 6. The Lands are located within the Conventional Neighbourhood district (CN) (s. 3.3 of the City of Beaumont Land Use Bylaw 944-19 (the "LUB")). The lands are located along a minor collector roadway - 56A street. The proposed location of the Accessory Building is in the rear yard on the northwest portion of the Lands, adjacent to the north property line. The Accessory Building is 4.27m<sup>2</sup> x 9.74m<sup>2</sup> (14' x 32') Greenhouse (41.62m<sup>2</sup>).
11. The application for a proposed accessory structure – greenhouse was received on August 13, 2024 and deemed complete on August 27, 2024. An Accessory Building or Structure is a Permitted Use in the CN District, Section 3.3.2, and, in accordance with Section 3.3.6(b), the following regulations apply:
  - (a) Principal Frontage Setback – Min. 3.0m and no closer than the Principal Building  
Complies - The Proposed Development is not located in the Principal Frontage.
  - (b) Side Yard Setback – Min. 1.2m except for attached buildings where the side yard setback is 0.0m  
Complies – The Proposed Development is located 1.22m from the Side Yard lot line.
  - (c) Secondary Frontage Setback – 3.0m

Complies – The Proposed Development is not located in the Secondary Frontage.

- (d) Rear Yard Setback – Min. 1.2m  
Complies – The Proposed Development is located 1.22m from the Rear Yard lot line.
- (e) Lot Coverage – Max. 15%  
Complies – The Proposed Development has a Lot Coverage of 5.2%.
- (f) Height – Max. 2-storeys, but in any event, no taller than the principal building (Section 3.3.7(b)).  
Complies – The Proposed Development is 3.45m in height to the peak of the roof and less than one full storey.

12. The Development Authority noted the relevant sections of the Municipal Government Act, RSA 2000, c.M-26 (the "MGA"):

Permitted and Discretionary Uses 642(1)

When a person applies for a development permit in respect of a development provided for by a land use bylaw pursuant to section 640(2)(b)(i), the development authority must, if the application otherwise conforms to the land use bylaw and is complete in accordance with section 683.1, issue a development permit with or without conditions as provided for in the land use bylaw.

Grounds for Appeal 685

(3) Despite subsections (1) and (2), no appeal lies in respect of the issuance of a development permit for a permitted use unless the provisions of the land use bylaw were relaxed, varied or misinterpreted or the application for the development permit was deemed to be refused under section 683.1(8).

13. The Development Authority noted that there are 3 properties in the vicinity of the Lands with accessory buildings that are larger than the Proposed Development (see page 57/68 of the Agenda Package), with one being slightly taller. Based on the size of the Accessory Building and the elevation drawings, the Development Authority determined that the Proposed Development was not out of character for the neighbourhood and would meet the character of the neighbourhood.
14. The application for an Accessory Building to be used as a Greenhouse, considered under Accessory Building or Structure Use, was approved by the DA for the following reasons:
- (a) The Proposed Development of an Accessory Building is a Permitted Use in the CN District; and
  - (b) The Proposed Development meets all the requirements for an Accessory Building or Structure Use classification and no variances or relaxations to the standards of the LUB are required and therefore must be approved.

15. In response to questions from the Appellant, the Development Authority stated that it did not conduct an on-site inspection of the Lands but reviewed the City's files. The information was readily available due to the age of the neighborhood. The Development Authority did not have information about the height of the buildings, but did have information regarding the size.

#### **APPELLANTS SUSAN AND COLIN NELSON**

16. Ms. Nelson spoke for the Appellants. They live adjacent to the Lands. Ms. Nelson read the statement contained within the agenda package. In addition, she stated that the drawings do not follow the City's guidelines, although they follow the requirements for an Accessory Building. She stated that the Accessory Building is to have some windows in the front (on the South) with the door to the West. There will be an aluminum roof. Based upon the size and location of the Accessory Building, it will affect their enjoyment and use of their lands. The rest of the houses in the neighborhood are bungalows and bi-levels. The landscaping is more open. There is currently nothing blocking their view. The Proposed Development runs the whole length of their yard. Due to the height, it will produce more shade and they will have less sun than they currently have.
17. She referred to the photographs at pages 62 to 64 of the Agenda Package. Their whole enjoyment will be taken away. The view from their deck will be 11.5 feet wall of siding, instead of the sun. Due to the location of utility services, it will not be possible to plant trees required to obscure the sight of the building.
18. She stated that the Development Authority was remiss in not visiting the Lands before making its decision. The Development Authority should have conducted an on-site inspection and should not have made its decision based on a review of the drawings. In her view, buildings of these proportions are not often looked at. Many lots would not have the space to accommodate a building of this size. Most of the other properties in the neighborhood which have Accessory Buildings would be described as single detached garages. These are old properties, many with no garage but with a space allocated to them. The size and location of the Accessory Building should have been a red flag which should have triggered a site visit by the Development Authority.
19. The Appellants recognized that the Proposed Development was a permitted use and therefore hard to appeal. However, she stated the application should have been dealt with on an individual basis as it will impact their (the Appellants') resale value. She spoke with a realtor who did not indicate a specific monetary value, but stated that there would be an impact to their property value. People would not want to buy their house or there would be a significant reduction in the value of their house.
20. In her view, the City did not show due diligence. It was an unusually large building and should have been examined in person.
21. The Appellants stated that the structure is not going to be a greenhouse. Further because of where it is located it will completely block the view. She stated that a

greenhouse should have glass so that it could be seen through. The greenhouse should have plants, but there will be other things within the building.

22. In response to questions from the Board:
- (a) about the Proposed Development being a permitted use with resulting constraints on what the Board may do, the Appellant acknowledged that the Applicant had followed all of the LUB regulations in relation to size and setbacks. However, in her view, due to the construction not being viewed on site, the failure of the Development Authority to come out to view before making its decision and taking the sizes from drawings is the error. The Development Authority did not look at the impact on the neighborhood. Due to the size of the building and the City not normally dealing with buildings of this size in an area like this, in this respect, this was a misinterpretation of the LUB. The Development Authority did not follow through on what they ought to have done.
  - (b) the Appellant confirmed that as far as she could tell the Proposed Development conformed with the LUB.

### **APPLICANT GARY BOLES**

23. Mr. Boles stated that he moved to Beaumont and wanted a bungalow, a garage for his hobbies and a lot big enough to accommodate his hobby of growing plants. He wanted a big lot, but that the lot he bought was smaller than he anticipated due to the placement of the fence in the wrong location. The Proposed Development will not affect the neighbors. It is on the other side of a 5 foot 4 inch fence. The building is 8 feet tall to the eaves so therefore is only three feet above the fence. There will be no impact on the neighbors. The Proposed Development is behind trees already over the fence. There will be minimal effect on the neighbors' plants. The area of their garden is well away from where the Accessory Building will be.
24. The aerial photographs are accurate and the guidelines take into account more than he can imagine.
25. Housing prices are done by comparables. Adding an Accessory Building will add to value and will not detract from it. His realtor says that privacy is a factor in buying decisions. His permit is for a greenhouse, not a garage although a garage is an accessory building. He will be using the building for growing plants. He wants the Accessory Building to match his house and as a result, it will look better.
26. The windows will be on the South wall facing his house and not facing the Appellants. There will be skylights to the South with windows. The soffits and fascia will be aluminum with an asphalt roof.
27. Once he received development permit approval, he raised the construction with the neighbors. He has already lost multiple plants trying to winter them. He emptied his garage into the backyard to save his plants. This results in a messy yard that he does not like.

28. He asked for the requirements from the City. Upon receipt of those requirements, he based his application upon that. He has met the requirements from the LUB and feels his permit should be allowed.
29. He has applied for an Accessory Building- greenhouse which will be used primarily for plants, but other things will be stored in it. He will not be using the building for business or mechanics.
30. In response to questions from the Board, the Applicant confirmed that the windows will be on the South side of the Accessory Building and the Appellants are on the north side of the building.

## **FINDINGS OF FACT**

31. In addition to the specific facts set out under the Board's reasons, the Board finds the following as facts.
32. The Lands are located at 5610-56A Street, Beaumont, legally described as Plan 802 2319, Block 11, Lot 6.
33. The Lands are zoned Conventional Neighbourhood District (CN).
34. The Proposed Development is an Accessory Building - Greenhouse.
35. The Proposed Development is a permitted use in the Conventional Neighbourhood (CN) District.
36. The Proposed Development does not require any variances and is in conformance with the requirements of the LUB. There are no misinterpretations, relaxations or variances of the LUB.
37. The appeals were filed on time.
38. The Appellants are affected persons.

## **REASONS**

### **Affected Persons**

39. The Board must determine whether those appearing and speaking before the Board are affected persons. The Board notes that there was no objection made to those making submissions to the Board; however, the Board wishes to review this issue for completeness.
40. The Appellants are neighbours adjacent to the Lands. Due to the proximity to the Proposed Development, the Board finds that the Appellants are affected by the Proposed Development.

41. The Applicant's permit is under appeal. Since his permit is appealed, he is affected.

### **Jurisdiction and Issues to be Decided**

42. In making its decision on whether to confirm, revoke or vary the development permit under section 687(3)(c) of the MGA, the Board is aware that if the use is a permitted use, the Board's jurisdiction is limited by section 685(3) which states:

**(3)** Despite subsections (1) and (2), no appeal lies in respect of the issuance of a development permit for a permitted use unless the provisions of the land use bylaw were relaxed, varied or misinterpreted or the application for the development permit was deemed to be refused under section 683.1(8).

**(4)** Despite subsections (1), (2), (2.1) and (3), if a decision with respect to a development permit application in respect of a direct control district

- (a) is made by council, there is no appeal to the subdivision and development appeal board, or
- (b) is made by a development authority, the appeal may only be made to the subdivision and development appeal board and is limited to whether the development authority followed the directions of council, and if the subdivision and development appeal board finds that the development authority did not follow the directions it may, in accordance with the directions, substitute its decisions for the development authority's decision.

43. Therefore, to make a decision on the main issue, the Board must determine the following questions:
- a. What is the use?
  - b. Is the use permitted within the district?
  - c. Has the Development Authority relaxed, varied or misinterpreted the Land Use Bylaw?

### **What is the use?**

44. The evidence before the Board was that the application was for an Accessory Building – greenhouse. Although the Appellants suggested that the Accessory Building was not going to be a greenhouse because it would not be constructed totally out of glass, the Board notes that there was no evidence before it that the Accessory Building has to be constructed of any particular materials.
45. Further, the Board prefers the evidence of the Applicant who indicated that he was going to use the Accessory Building as a greenhouse. The Applicant confirmed that the primary use was to be for a greenhouse, although he might store other things within the building. He confirmed that no commercial or other use would be made of the Accessory Building. The Board accepts this evidence as the Applicant has the best knowledge of the proposed use of the Accessory Building.

46. Based on the evidence and the above reasoning, the Board finds as a fact that the Proposed Development use is an Accessory Building – greenhouse.

**Is the use permitted within in the district?**

47. The uncontradicted evidence before the Board is that the district in which the lands are located is the Conventional Neighbourhood District (CN). In the absence of any evidence to the contrary, the Board finds as a fact that the district is the Conventional Neighbourhood District (CN).
48. The Board has reviewed the evidence before it, noting that the section 3.3.2 of the LUB lists Accessory Building or Structure as a permitted use within this district. On the basis of this uncontradicted evidence, the Board finds as a fact that, pursuant to section 3.3.2 of the LUB, an Accessory Building – greenhouse is a permitted use in the Conventional Neighbourhood District.

**Has the Development Authority relaxed, varied or misinterpreted the Land Use Bylaw?**

49. Having concluded that the use is permitted within the district, the Board must turn to the question of whether it can grant the appeal or is prevented from doing so by section 685(3) of the MGA.
50. During the hearing, the Board noted to the parties that under section 685(3) of the MGA, the Board is empowered to decide on the merits of a development permit for a permitted use only if the Board finds that the Development Authority has relaxed, varied, or misinterpreted the provisions of the LUB.
51. The Appellants confirmed that the Development Authority has followed the strict requirements of the LUB. Their position was that the Development Authority relaxed, varied or misinterpreted the LUB because the Development Authority did not conduct an on-site inspection of the Lands before approving the development permit application. By contrast, the Applicant stated that he had been told the LUB requirements from the City and he applied for a building which met those requirements.
52. The Board notes that the Appellants did not identify any specific provision of the LUB which required the Development Authority to conduct a site inspection. Their argument was based upon what they urged was a significant structure with which the Development Authority would have little familiarity and which they asserted would have a significant effect on their property.
53. The Board finds that approving a development permit without a site visit does not constitute a misinterpretation, relaxation or variance of the LUB. In the absence of any requirement for a site visit, the Board is not persuaded that there has been any misinterpretation, relaxation or variance. In fact, the Appellant acknowledged that the Applicant did meet the requirements of the LUB. In the face of the Appellants' agreement that the Applicant met the LUB requirements, and in the absence of any requirement in



the LUB for a site inspection, the Board finds as a fact that there has been no misinterpretation, relaxation or variance of the LUB.

- 54. Having found that there was no relaxation, variance, or misinterpretation of the Land Use Bylaw, the Board concludes that the provisions of s. 685(3) of the MGA apply and the Board did not proceed to consider the merits of the development, as it is a permitted use pursuant to the LUB.

**Conclusion**

- 55. Since the Proposed Development is a permitted use that complies in all regards with the regulations of the LUB, the Board denies the appeal.
- 56. Issued this 30<sup>th</sup> day of October, 2024 for the City of Beaumont Subdivision and Development Appeal Board.




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C. Winter, Clerk of the SDAB, on behalf of M. Stout, Chair  
 SUBDIVISION AND DEVELOPMENT APPEAL BOARD

*This decision may be appealed to the Court of Appeal of Alberta on a question of law or jurisdiction, pursuant to Section 688 of the Municipal Government Act, RSA 2000, c M-26.*

**APPENDIX "A"**  
 REPRESENTATIONS

**PERSON APPEARING**

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- 1. Y. Sharpe, City of Beaumont
  - 2. S. Nelson, Appellant
  - 3. C. Nelson, Appellant
  - 4. G. Boles, Applicant

**APPENDIX "B"**  
**DOCUMENTS RECEIVED AND CONSIDERED BY THE SDAB:**

<b>October 21, 2024 Agenda Package</b>		
<b>Exhibit</b>	<b>Description</b>	<b>Pages</b>
1.	Agenda	1-2
2.	Notice of Appeals	3-9
3.	Notice of Hearing	10-11
4.	Development Officer Submission	12-49
5.	Presentation of the Development Authority	50-59
6.	Submissions of the Appellants	60-67
7.	Submissions from the Applicant	68