

**SUMMER VILLAGE OF WHITE SANDS SPECIAL COUNCIL MEETING
AGENDA**

May 28 , 2021 at 9:00 AM

Location: Multiplex Bldg, 8 Front Street, White Sands

1. **Call to Order**
2. **Waiver of Notice**

As required. Special Council meetings held with more than 24 hours' notice to council and to the public do not require a Waiver of Notice. When Waivers are required, the signed waiver will be attached to the Minutes of the Special Meeting.
3. **Public Hearing for Bylaw 181-21 Land Use Bylaw Amendment – Variances**
 - a. **Open Public hearing**
 - b. **Notices sent out to all residents as follows: Mail – May 12 & 13/21**
 - c. **Additional notices sent out by newsletter email list and posted on Municipal Website and Facebook on May 11/21**
 - d. **Written Responses received by administration – 2, verbal 2 regarding clarification no concerns noted.**
4. **Agenda**
5. **Items to be discussed:**
 - a. **Bylaw 181-21 - Land Use Bylaw Amendment – Variances**
 - b. **In-Camera Session - Non-Disclosure Agreement – Discussion under FOIP sections 21(1)a,b – Disclosure harmful to intergovernmental relations, 23(1)a,b – Local public body confidences, 24(1)b, d – Advice from officials**
6. **Adjournment**

A special council meeting may be held with less than 24 hours' notice to all councillors and without notice to the public if at least 2/3 of the whole council agrees to this in writing before the beginning of the meeting (MGA 194)

No matter other than that stated in this notice calling the special council meeting may be transacted at the meeting unless the whole council present at the meeting and the council agrees to deal with the matter in question (MGA 194)

Melissa Beebe
CAO
Summer Village of White Sands

SUMMER VILLAGE OF WHITE SANDS

Request for Decision (RFD)

Meeting: Special Council
Meeting Date: May 28, 2021
Originated by: Craig Teal, RPP MCIP, Director, Parkland Community Planning Services
Title: **BYLAW NO. 181-21 – Land Use Bylaw Amendment – Variance Powers**

BACKGROUND/PROPOSAL:

Bylaw 181-21 proposes to add limited variance powers to the Summer Village of White Sands Land Use Bylaw. If approved, the Development Officer would be able to consider granting a variance to the yard and setback requirements for main buildings and accessory buildings. The “variance power” means the Development Officer could approve a development that has a smaller yard or setback than the standard set out in the applicable District, For example, a 2.8m side yard instead of a 3.0m side yard.

The granting of a variance is made on a case by case basis. Each case must meet the “test” set out in Section 640(6) of the Municipal Government Act. This means the Development Officer must confirm that the proposed development, if given a variance, would not unduly interfere with the amenities of the neighbourhood or materially interfere with or affect the use, enjoyment or value of neighbouring parcels. Only uses that are allowed on the site may be considered for a variance. This “test” is proposed to be added to the Land Use Bylaw as Part 2, Subsection 2.3(8).

Bylaw 181-21 specifically limits the ability of the Development Officer to grant a variance to yard requirements and setback requirements where a particular property has some characteristic that makes meeting the normal requirements difficult. All other standards, such as the number of buildings and RVs on a property, dimensions of onsite parking stalls, landscaping requirements, and building height are not eligible for a variance. These limits are set out in proposed Part 2, Subsection 2.3(8.1).

Bylaw 181-21 also clarifies that the Development Officer may decide upon applications relating to a discretionary use. The Bylaw also adjusts cross-references to the applicable subsections relating to the possibility of obtaining a variance.

DISCUSSION/OPTION/BENEFITS/DISADVANTAGES:

Giving variance powers to the Development Officer is a choice that Council can make through their Land Use Bylaw. The Municipal Government Act does not require it to be part of the Land Use Bylaw but sets out expectations (which is the “test” referred to earlier) if a Council chooses to include the ability to grant variances in their Land Use Bylaw. Provided the Municipal Government Act requirements are satisfied, Council can also limit the range of variances that may be considered.

Having provisions in the Land Use Bylaw to address variances for yard and setback requirements is meant to address the following scenarios:

1. Non-conforming buildings that were placed on a parcel many years before the current requirements of the Land Use Bylaw were established and may not have been accurately placed on site. Without the ability to obtain a variance, these buildings cannot be enlarged, added to, rebuilt or structurally altered. Even the addition of an attached deck can become a question of legal status for the property.
2. A mixture of parcel sizes under the same Land Use District where the smaller existing parcels may not be able to meet the current "average parcel" expectations of the Land Use Bylaw. Some parcels in the range of 6,000 ft² may not be able to meet all yard and setback requirements that are applied based on an average lot size of 10,000 ft².
3. Unique circumstances that the Land Use Bylaw may not have anticipated or could not possibly incorporate into standard requirements applying to all parcels. Issues such as site specific topography, parcel shape or other features on every site may not be adequately addressed through the standard requirements.

In the absence of being able to grant a variance, the Development Officer has no choice but to issue a refusal or issue a conditional approval requiring the development proposal to be changed to meet the Land Use Bylaw requirements. Both of these outcomes are the possible subject of an appeal. This raises the possibility that minor variances that do not impact other properties may be directed to the Subdivision and Development Appeal Board (SDAB). The SDAB is able to grant variances regardless of whether or not the Land Use Bylaw allows it. The SDAB variance power comes straight from the Municipal Government Act and does not rely on the local Land Use Bylaw. For smaller variances, addressing the matter through an SDAB proceeding is an inefficient way (financial cost and time) to resolve these types of scenarios.

The issuing of an approval with a variance also increases the possibility of an appeal being filed by an adjacent landowner.

The current version of Part 2, Subsection 2.3(8) in the Land Use Bylaw appears to offer a broad scope of variance power to the Development Officer but in a manner that does not satisfy the Municipal Government Board expectations. It reads:

"The Development Officer may:

- (a) Approve, with or without conditions, an application for a development permit; or
- (b) Advise that a real property report appears to conform with the Land Use Bylaw;

notwithstanding that the proposed development or subdivision does not comply with the By-Law or is a non-conforming building, if in the opinion of the Development Officer, the proposed development of subdivision or non-conforming building:

(a) Conforms with the use prescribed for that land or building in this Land Use By-Law.”

The above text requires amendment since it:

1. Leaves out the Municipal Government Act requirement to confirm the impacts on the neighbourhood and neighbouring parcels;
2. Addresses the processing of compliance requests and the review of real property reports which should be addressed as a policy rather than as part of the Land Use Bylaw; and
3. May have inadvertently provided for a broader range of variance power than Council may have intended.

Consideration of the changes put forward in Bylaw 181-21 requires public notification of the proposed bylaw and a public hearing to consider the proposed bylaw.

COSTS/SOURCE OF FUNDING (if applicable):

n/a

RECOMMENDED ACTION:

1. That Council review the draft amendment to the Land Use Bylaw and provide direction on the content to be given first reading; **Completed on May 6, 2021**
2. That Council give first reading to Bylaw 181-21; **Completed May 6, 2021**
3. That Council set a date, time and place for the public hearing for Bylaw 181-21. **Completed on May 6, 2021 with Public Hearing Date for May 28, 2021 @ 9 am at 8 front street.**

Attachment: Bylaw 181-21 to amend the Land use Bylaw

Reviewed by: CAO:  _____

BYLAW 181-21

A BYLAW OF THE SUMMER VILLAGE OF WHITE SANDS, PROVINCE OF ALBERTA TO AMEND BYLAW NO. 153-15 OF THE SAID VILLAGE.

WHEREAS pursuant to the provisions of the Municipal Government Act, Revised Statutes of Alberta, 2000, Chapter M-26 and amendments thereto.

THE MUNICIPAL COUNCIL OF THE SUMMER VILLAGE OF WHITE SANDS IN COUNCIL ASSEMBLED ENACTS AS FOLLOWS:

- 1) That **Part 2, Subsection 2.3(5)(c)** is amended by adding "or a discretionary use" after the words "permitted use";
- 2) That **Part 2, Subsection 2.3(6)(b)** is amended by replacing the words "subsection (6)" with "subsection (8) and subsection (8.1)";
- 3) That **Part 2, Subsection 2.3(7)(b)** is amended by replacing the words "subsection (9)" with "subsection (8) and subsection (8.1)";
- 4) That **Part 2, Subsection 2.3(8)** is amended by replacing it with the following:

"The Development Officer may approve, with or without conditions, an application for development that does not comply with this Land Use By-law if, in the opinion of the Development Officer,

 - (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 to the use prescribed for that land or building in this Land Use By-law."
- 5) That the following is added as **Part 2, Subsection 2.3(8.1)**:

"In approving an application for a development permit pursuant to subsection 2.3(8), the Development Officer shall adhere to the following:

- (a) A variance from the requirements of this By-law shall only be considered for the regulations relating to yards and setbacks for main buildings or accessory buildings; and
- (b) A variance of the required yard or setback regulations in this By-law shall only be considered when warranted by the merits of the proposed development and in response to irregular parcel boundaries, parcel shapes, or similar parcel characteristics which create difficulties in siting structures in a manner that meets the usual By-law requirements; and
- (c) Prior to considering a variance the Development Officer shall require a letter from the applicant stating:
 - (i) Reasons why they believe a variance is warranted; and
 - (ii) Steps proposed to minimize any impact of granting the variance such as additional landscaping, building orientation, and window and door placement; and
- (d) In the event that a variance is granted, the nature of the approved variance shall be specifically described in the development permit and any notice given regarding the development permit approval."

6) That this Bylaw shall take force and effect upon the date of final passing thereof.

READ a first time this 6 day of May, 2021.

NOTICE OF PUBLIC HEARING: Mailed to every land owner within the Summer Village of White Sands on May 11 -13, 2021.

Public Hearing held May 28, 2021.

READ a second time this _____ day of _____, 2021.

READ a third time and finally passed this _____ day of _____, 2021.

Mayor

CAO

From: George Kuzma [REDACTED]
Sent: Thursday, May 27, 2021 11:47 AM
To: cao@whitesandsab.ca
Subject: By-law amendments

Municipal Council of whitesands

When considering rear and side yard variance on by-law set backs. Take into consideration that the variance is not causing a fire safety issue.

With a 20 to 25 minute response time by the fire department and allowing a variance that would put buildings and structures to close to adjoining properties and structures.

There should be a set percentage of variance that is allowed on rear and side set backs. Then the development officer would have some proper by-law in place and not be the only one that makes that decision. That should be part of the changes to the by-laws amendments.

George Kuzma
Whitesands property owner.

From: Jim Marke <[REDACTED]>
Sent: Wednesday, May 12, 2021 5:30 PM
To: cao@whitesandsab.ca
Subject: Bylaw 181-21 amendment
Attachments: 14Feb2020 re Motion 19-09-11.pdf; Untitled attachment 00013.html; Submission ByLaw 173-19.pdf; Untitled attachment 00016.html; 3 In 1 Out copy.pdf; Untitled attachment 00019.html; Proposed SVWS LUB 173-19.pdf; Untitled attachment 00022.html; Closer Look at amendment Bylaw 162.18.pdf; Untitled attachment 00025.html

Hello Melissa,

This email and attachments are intended for your use and are not formatted for general consumption. I hope I've not confused you.

RE ByLaw 181-21 amendment.

1. Part 2, Sub 2.3(5)(c) OK
2. Part 2, Sub 2.3(6)(b) OK
3. Part 2, Sub 2.3(7)(b) OK
4. Part 2, Sub 2.3(8) This is an important change placing appropriate responsibility on the Dev Officer. Architectural values. OK
5. Part 2, Sub 2.3(8.1) Variances. Appropriate Limitations. OK

The above are interesting improvements to these parts of ByLaw 153-15, and are a good but small part of a much needed overall dusting.

(You missed an opportunity to 'fix' Part 2, Sub 2.3(9) - sub clauses (a),(b),(c),(d), **(b),(c),(d)** repeated subs subs. In fact this type of opportunity can be 'fixed' without the necessity of a Public Notice as I'm sure you are aware.)

RE Further concerns

But there are many other amendments and corrections needed which I previously emailed and referred to in painful detail.

Those efforts have not been responded to.

There has been, I note, further reference to requiring removal of trailer units for a period during the course of the summer.

The MGA have 2 vital clauses that have been studiously ignored. Under Interpretation (1)(z.1) "summer village residence" and under (2.1) "building" includes. These clauses must be recognized, understood and respected in our LUB. They are the key to development.

I wrote 14 Feb 2020 in reference to Motion 19:09:11 on this subject again not responded to. Here it is: