
Appeal File Number:	021-STU-001
Application Number:	305305-21-D0004
Appeal Against:	Development Authority of Sturgeon County
Appellant:	Wayne Kinsella
Date and Location of Hearing:	February 2, 2021 Held via Videoconference
Date of Decision:	February 16, 2021
SDAB Members:	Chair Julius Buski, Lee Danchuk, Mark Garrett, Alanna Hnatiw, Amanda Papadopolous

NOTICE OF DECISION

IN THE MATTER OF an appeal by Wayne Kinsella of the Development Authority’s refusal to move a modular home with an enclosed deck onto the property (Garden Suite) at Plan 1521511; Block 1; Lot 3 within Sturgeon County.

- [1] This is the decision of the Sturgeon County Subdivision and Development Appeal Board (the “SDAB” or “Board”) on an appeal filed with the SDAB pursuant to sections 685 of the *Municipal Government Act*, R.S.A. 2000, c. M-26 (the “MGA” or “Act”).
- [2] In making this decision, the Board reviewed all the evidence presented and considered provisions of the *Municipal Government Act*, Sturgeon County’s Land Use Bylaw 1385/17 (the Land Use Bylaw or LUB), and Sturgeon County’s Municipal Development Plan (MDP), and any amendments thereto.
- [3] The following documents were received prior to the hearing and form part of the record:
- The Notice of Appeal;
 - A copy of the development permit application with attachments;
 - The Development Officer’s written decision;
 - Planning and Development Services Report; and
 - The Appellant’s submission.

PRELIMINARY MATTERS

- [4] There were no preliminary matters addressed at the hearing.

PROCEDURAL MATTERS

- [5] The appeal was filed on time and in accordance with section 686 of the MGA.
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- [6] There were no objections to the proposed hearing process as outlined by the Chair.
- [7] There were no objections to the composition of the Board hearing the appeal.
- [8] The Board is satisfied that it has jurisdiction to deal with this matter.

ISSUES

- [9] The Appellant raised the following grounds of appeal:
- This is a modular home that will be moved off of the temporary foundation in the future.

RECOMMENDATION OF THE DEVELOPMENT AUTHORITY

Carla Williams, representative for the Development Authority, provided a presentation which included the following information:

- [10] The proposed development meets the definition of a Garden Suite and meets all setback requirements.
- [11] Access to the Garden Suite would be from the existing approach off Range Road 261.
- [12] The site can accommodate an additional private sewage disposal system for the Garden Suite in accordance with the Alberta Private Sewage Systems Standard of Practice 2015. The suite is privately serviced with water and sewer thereby having no negative impact on County infrastructure.
- [13] Adequate parking for the garden suite (1 stall/per bedroom) can be provided for on-site.

Notwithstanding, Ms. Williams recommended that development permit application 305305-21-D0004 be refused for the following reasons:

- [14] The proposed suite does not meet the Bylaw regulations with respect to the floor area in the AG – Agriculture district. The total floor area of the suite, including the enclosed deck portion, is 165 square meters (1,776 square feet) which exceeds the maximum floor area of 111.5 square meters (1,200 square feet) by 53.5 square meters (575.8 square feet).
- [15] The variance to the floor area requested is 48%. The Development Authority does not have authority to grant variances to the floor area and therefore the application was refused.
- [16] The intent of a Garden Suite is to be accessory to the principal dwelling on the parcel to provide for housing needs that do not require another single-family dwelling. Accessory use means, *the use of a building or land which is incidental and subordinate to the principal use of the parcel on which it is located*. Therefore, the size of a Garden Suite has been limited to a maximum floor area of 1,200

square feet in the Land Use Bylaw. Although the proposed Garden Suite has only one bedroom, the proposal ultimately entails the construction of another single-family dwelling on the property and does not meet the intent of a Garden Suite related to floor area. On this basis, Administration could not support the approval of the application.

- [17] The appeal noted “this will be a modular home and deck which will be moved off the property in the future.” The Development Authority must review the application based on the information presented. The Land Use Bylaw does not consider if a Garden Suite is to be used on a temporary or permanent basis.

SUMMARY OF APPELLANT’S POSITION

- [18] This is a modular home that will be built on site and will be removed from the temporary foundation when it is no longer needed.
- [19] There is no basement, and all setback requirements and distance between the principal dwelling and proposed Garden Suite have been met.
- [20] The property has an existing driveway and approach.
- [21] The site is flat with good drainage and the septic tank requirements of the County will be met.
- [22] The enclosed deck is required because of the aggressive mosquito population and with it being adjacent to an open field, the wind is always blowing.
- [23] The Garden Suite will not unduly interfere with the amenities of the neighbourhood or materially interfere with the use, enjoyment, or value of adjacent parcels of land.
- [24] The Garden Suite is suitable for handicapped individuals which is important as the applicant ages and his mobility becomes more of an issue. The suite will allow him to live next door to his daughter who can provide the support he may require.

DECISION

- [25] **The Board DENIES the appeal and CONFIRMS the decision of the Development Authority made on January 8, 2021 to refuse development permit application 305305-21-D0004.**

REASONS FOR THE DECISION

- [26] The Appellant’s request is to move a modular home (Garden Suite) onto an existing parcel with a variance to the maximum floor area.
- [27] The proposed development is located in the AG – Agriculture district. Section 6.25.4(b) of Land Use Bylaw states that the square footage of a Garden Suite cannot exceed 1,200 square feet. The application is for a modular home of 1,448 square feet with an enclosed deck of an additional 288 square feet for a total of 1,776 square feet. The Development Authority was required to refuse the

requested variance of 48% as section 6.25.1(i) of the Land Use Bylaw states that variance requests must be refused by the Development Authority.

- [28] The parcel where the Garden Suite is proposed to be placed is 2.47 acres in area and is currently developed with a single detached dwelling of 2,313 square feet with an attached garage.
- [29] The Board finds that, in accordance with section 687(3)(d) of the *Municipal Government Act*, the Board may issue a development permit even though the proposed development does not comply with the Land Use Bylaw if, in the Board's opinion, the proposed development would not unduly interfere with the amenities of the neighbourhood or materially interfere with or affect the use, enjoyment or value of neighbouring parcels of land, and the proposed development conforms with the use prescribed for that land in the Land Use Bylaw.
- [30] The Board did not receive submissions from neighbouring property owners or evidence from the Development Officer suggesting that the proposed development would unduly interfere with the amenities of the neighbourhood or materially interfere with or affect the use, enjoyment or value of neighbouring parcels of land. Therefore, the Board did not consider this issue.
- [31] In reaching its decision, the Board considered the definition of Garden Suite as provided in the Land Use Bylaw, which is "a single-storey dwelling unit developed at grade which shall be accessory to a principal dwelling, single detached and shall conform to the Safety Codes Act. This does not include a dwelling, semi-detached or duplex."
- [32] The Board finds that the Land Use Bylaw provides sufficient housing types to maintain a healthy level of growth within the County, which contemplates the Appellant's circumstance, which is to age in place with support from a resident of the principal dwelling.
- [33] The Board finds that the requirements for Garden Suites with respect to floor area are intended to be consistently applied. The Board finds that Council limiting the Development Authority's ability to grant variances in floor area to Garden Suites was intentional to ensure that Garden Suites remain within the footprints prescribed by the Land Use Bylaw.
- [34] The Board finds that placing floor area restrictions on Garden Suites is desirable to ensure that Garden Suites remain accessory to principal dwellings as required by the definition provided in the Land Use Bylaw. In this context, the principal dwelling is 2,313 square feet while the proposed Garden Suite is 1,776 square feet. The Board finds that a variance of 576 square feet, or 48%, is inappropriate and that such a variance would not meet the intended use of a Garden Suite under the Land Use Bylaw. Therefore, the Board chooses not to exercise its discretion in granting the variance.
- [35] For all of these reasons, the Board has decided to deny the appeal and confirm the decision of the Development Authority to refuse to the development permit.

Dated at the Town of Morinville, in the Province of Alberta, this 16th day of February 2021.

SUBDIVISION AND DEVELOPMENT APPEAL BOARD
Sturgeon County



Julius Buski, Chair

Pursuant to Section 688(1)(a) of the Municipal Government Act (MGA), an appeal of a decision of the Subdivision and Development Appeal Board lies with the Alberta Court of Appeal on a matter of law or jurisdiction. In accordance with Section 688(2)(a), if a decision is being considered, an application for permission to appeal must be filed and served within 30 days after the issuance of the decision and, notice of the application for permission must be provided to the Subdivision and Development Appeal Board and in accordance with Section 688(2)(b), any other persons that the judge directs.

APPENDIX "A"
List of Submissions

- The Notice of Appeal;
- A copy of the development permit application with attachments;
- The Development Officer's written decision;
- Planning and Development Services Report; and
- The Appellant's submission.