
Appeal File Number: 021-STU-013
Application Number: 305305-21-D0275
Appeal Against: Development Authority of Sturgeon County
Appellant: Tom and Tara L’Hirondelle
Date and Location of Hearing: October 5, 2021
Held via Videoconference
Date of Decision: October 19, 2021
SDAB Members: Chair Julius Buski, Dave Kluthe, Allan Montpellier, Amanda Papadopolous

NOTICE OF DECISION

IN THE MATTER OF an appeal by Tom and Tara L’Hirondelle of the Development Authority’s refusal to change the use from a single detached dwelling to a garden suite with a variance to the maximum floor area at Plan 0224998; Block 1; Lot 1A 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;
 - The Appellant’s submission; and
 - Adjacent Landowner’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.

- [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:
 - The This is an existing home that has been on the property since 1972 and the size cannot be reduced.

RECOMMENDATION OF THE DEVELOPMENT AUTHORITY

Yvonne Bilodeau, representative for the Development Authority, provided a presentation which included the following information:

- [10] The property is located in the AG - Agriculture District. The property is 1.5 hectares (3.76 acres) in area and permits are in place for the existing home and detached garage.
- [11] Section 2.8.6(b) of the Land Use Bylaw states that variances for the districts in excess than what is prescribed shall be refused by the Development Authority. The maximum percentage of variance that may be granted by the Development Authority in the AG – Agriculture District is 50%.
- [12] Section 6.25.1(i) of the Land Use Bylaw states that notwithstanding section 2.8, variances of maximum floor area shall be refused by the Development Authority.
- [13] Section 6.25.4(b) of the Land Use Bylaw states that maximum floor area shall not exceed 111.5 square metres (1,200 square feet) in AG and R1 districts. The floor area of the proposed suite is 165.1 square metres (1,777 square feet) which exceeds the maximum allowable floor area by 53.6 square metres (576 square feet) or a 48% variance.
- [14] The development complies with all other regulations regarding suites.

SUMMARY OF APPELLANT'S POSITION

- [15] The Appellants are wanting the build a new home for themselves while allowing the parents to remain in the original dwelling until they are no longer able to live independently.
- [16] The family has lived and farmed on this land since 1885 and the Appellants are the fifth generation.
- [17] The new development will have accommodations available for the parents in the future and the intent is to then demolish the original dwelling.

DECISION

[18] The Board GRANTS the appeal, REVOKES the decision of the Development Authority made on September 9, 2021 to refuse development permit application 305305-21-D0275, and APPROVES the development permit with the following conditions:

1. A variance to the maximum floor area of the suite is granted and shall not exceed 165.1 square metres (1,777 square feet).
2. A maximum of one suite shall be considered on a parcel.
3. The garden suite shall not be separated from the parcel by subdivision, unless it can meet the regulations of parcel density for the applicable land use district.
4. A semi-detached dwelling, group home (major or minor), family day home, farm help accommodation, bed and breakfast or home-based business (level 2 or 3) shall not be permitted on the same parcel containing a suite.
5. Drainage measures undertaken as part of a development shall not negatively impact adjacent parcels by way of flooding or inundation through the redirection of surface water. In the event that the drainage of development is found to affect adjacent parcels, all mitigating measures required to remedy the problem including drainage structures, drainage easements and retaining walls shall be at the sole expense of the landowner of the parcel where the mitigating measures are required.
6. This permit is subordinate to permit approval 305305-21-D0279 and shall only become valid once the principal dwelling is occupied. If the dwelling is not constructed this permit approval is void, and suite shall remain the principal dwelling.

Advisory Notes

1. Garden suite means 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.
2. It is the responsibility of the developer to ensure that the applicant/landowner complies with any federal or provincial laws/legislation and that any required permits are obtained. All development will comply and be consistent with any license, permit, approval, authorization, regulation, or directive established by the Alberta Energy Regulator and Alberta Environment. The applicant/landowner must also comply with the conditions of any easement of covenant which affects the development.

REASONS FOR THE DECISION

- [1] The Appellants' request is to change the use from a single detached dwelling to a garden suite with a variance to the maximum floor area. Section 6.25.4(b) of the Land Use Bylaw states that maximum floor area shall not exceed 111.5 square metres (1,200 square feet) in AG and R1 districts. The floor area of the proposed suite is 165.1 square metres (1,777 square feet) which exceeds the maximum allowable floor area by 53.6 square metres (576 square feet) or a 48% variance.

- [2] 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.
- [3] The development complies with all other regulations regarding suites.
- [4] The Board received one written submission from a neighbouring property owner who is in support of the proposed development. The Board received no submissions from neighbouring property owners in opposition to the proposed development.
- [5] Administration is recommending support of the appeal as the proposal as, in its opinion, the development does not unduly interfere with the amenities of the neighbourhood or materially interfere with or affect the use, enjoyment or value of neighbouring properties.
- [6] For all of these reasons, the Board has decided to grant the appeal and revoke the decision of the Development Authority to refuse the development permit.

Dated at the Town of Morinville, in the Province of Alberta, this 19th day of October 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;
- The Appellant's submission; and
- Adjacent Landowner's written submission