
Appeal File Number:	020-STU-018
Application Number:	305305-20-D0226
Appeal Against:	Development Authority of Sturgeon County
Appellant:	Michael Hittinger
Date and Location of Hearing:	November 3, 2020 Held via Videoconference
Date of Decision:	November 12, 2020
SDAB Members:	Chair Julius Buski, Mark Garrett, Dave Kluthe, Allan Montpellier, Amanda Papadopoulos

NOTICE OF DECISION

IN THE MATTER OF an appeal by Michael Hittinger of the Development Authority's refusal of a development permit to construct an accessory building with a variance to the side and rear yard setbacks at Plan 866CG; 14; 8 & 9 Alcomdale; SW 5-57-26-W4 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;
 - Development Support 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.

- [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 garage footprint used the existing concrete that was installed by a previous owner.
 - The cost of breaking, removing and hauling away the concrete makes the project infeasible.
 - There is 5 feet of clearance between the proposed garage and the neighbour.
 - The applicant would like to build the garage to be able to sell the property and develop another.

RECOMMENDATION OF THE DEVELOPMENT AUTHORITY

Yvonne Bilodeau, representative for the Development Authority, provided a presentation which included a recommendation that development permit application 305305-20-D0226 be refused for the following reasons:

- [10] Section 12.4.4 of Land Use Bylaw 1385/17, as amended, states that the minimum side yard and rear yard setback is 2.5 metres (8.2 feet).
- [11] The existing foundation setback is 0.84 metres (2.76 feet) from the side property line which requires a variance of 1.66 metres (5.44 feet) or 66.4%.
- [12] The rear setback is 1.79 metres (5.87 feet) from the rear property line requiring a variance of 0.71 metres (2.33 feet) or 28.4%.
- [13] Section 2.8.6(b) of the Land Use Bylaw states that variances for the districts in excess of 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 R4 – Hamlet Serviced District is 40%. The application was refused due to the side yard setback variance request of 66.4%.
- [14] The proposal meets all other bylaw regulations such as front yard setback (27.79 metres), maximum floor area (1,032 square feet), maximum height (14 feet) and maximum parcel coverage (28%).

SUMMARY OF APPLICANT/APELLANT'S POSITION

- [15] The concrete grade beam in question has been in place on the property for approximately 20 – 25 years.

- [16] The cost of deconstructing the grade beam and having a new one poured is not feasible. A quote from Black Diamond Concrete Finishing Ltd. places the cost at \$15,359.40.
- [17] The proposed development will allow for the existing foundation to remain in place while improving the appearance of the property.
- [18] Upon review of the recommended conditions provided by the Development Officer and listed on pages 20-22 of the agenda package, should the Board choose to approve a variance, the Appellant advised that he is in agreement with the conditions.

DECISION

- [19] **The Board GRANTS the appeal, REVOKES the decision of the Development Authority made on October 14, 2020 to refuse development permit application 305305-20-D0226, and APPROVES the development permit with the following conditions:**

Permit Conditions

1. The proposed development is subject to and conditional to the issuance of an approved Roadside Development Permit by Alberta Transportation.
2. Prior to any construction occurring on site, a separate building permit shall be obtained and approved. Minimum construction standards shall conform to the requirements of the current Alberta Building Code.
3. Separate electrical, plumbing or gas permits be obtained as required.
4. The following minimum setbacks to the property line shall be adhered to:
Side yard: 0.84m (2.76ft) Variance Granted
Rear yard: 1.79m (5.87ft) Variance Granted
5. The accessory building shall be set back a minimum 1.9m (6.2ft) from the dwelling.
6. The accessory building shall not be used as a dwelling.
7. The accessory building shall not exceed 96m² (1,032ft²) in building area and 4.2m (14ft) in height as approved.
8. The accessory building as approved shall not be used for purposes related to the operation of any commercial business and shall be used for personal use only. A home-based business is subject to separate development permit approval.
9. The maximum parcel coverage shall not exceed 35%.
10. The quality of the exterior treatment and design of the accessory building shall be compatible with other buildings in the vicinity. The exterior finish of the accessory building shall be completed within two years of the date of issuance of the development permit.
11. 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 a 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.
12. Exterior storage of goods and materials associated with this approval shall be kept in a clean and orderly manner at all times and shall be screened from roads and adjacent residential uses to the satisfaction of the Development Authority. Any excavation, storage or piling up of materials

- required during the construction stage shall have all necessary safety measures undertaken and the owner of such materials or excavation assumes full responsibility to ensure the situation does not prevail any longer than reasonably necessary to complete a particular stage of construction work.
13. The applicant/landowner shall adhere to the documents registered on title. No development shall encroach on or be erected on an easement or right-of-way unless the owner of the encroaching structure has obtained written consent from the owner or licensee to which the easement or right-of-way has been granted.
 14. If the development authorized by this permit is not commenced within 12 months from the date of its issuance, or is not carried out with reasonable diligence, the permit approval ceases and the permit is deemed to be void, unless an extension to this period has previously been granted by the Development Approving Authority.
 15. No person shall keep or permit in any district any object or chattel which, in the opinion of the Development Approving Authority, is unsightly or tends to adversely affect the amenities of the district. Any excavation, storage or piling up of materials required during the construction stage shall have all necessary safety measures undertaken and the owner of such materials or excavation assumes full responsibility to ensure the situation does not prevail any longer than reasonably necessary to complete a particular stage of construction work. A garbage receptacle should be placed on site during the construction stage and be removed upon completion.

Advisory Notes

1. Please be advised an approved building permit is required prior to any construction occurring on site. Construction occurring prior to the issuance of a building permit is subject to a double fee penalty. Early excavation, prior to building permit approval, can result in standing water, potential for freezing and can cause safety hazards for neighbouring properties if the area is open for longer than necessary.
2. Please contact Alberta 1 Call at 1-800-242-3447 for utility locates at least two days prior to the commencement of construction. The development cannot encroach into or over a utility easement or right of way.
3. 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

- [20] The Appellant's request is for a variance of 66.4% to the sideyard setback. In accordance with section 2.8.6(b) of the Land Use Bylaw, the Development Authority may grant a variance of 40% in the R4 – Hamlet Serviced District and a variance request in excess of what has been prescribed shall be refused by the Development Authority.
- [21] 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.

- [22] The Appellant provided verbal evidence that one neighbouring property owner was in support of the proposed development. Although the Board did not place any weight on this evidence, it did consider the absence of neighbours opposing the variance as indication that 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.
- [23] The proposal meets all other bylaw regulations such as front yard setback (27.79 metres), maximum floor area (1,032 square feet), maximum height (14 feet) and maximum parcel coverage (28%).
- [24] The Board finds that the proposed development conforms with the use prescribed in the Land Use Bylaw (an accessory building).
- [25] For all of these reasons, the Board has decided to grant the appeal, revoke the decision of the Development Authority, and approve the development permit with the conditions noted above.

Dated at the Town of Morinville, in the Province of Alberta, this 12th day of November 2020.

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;
- Development Support Services Report; and
- The Appellant's submission