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Appeal File Number: 021-STU-012  
Application Number: 305305-21-D0266  
Appeal Against: Development Authority of Sturgeon County  
Appellant: Ray Schmidt  
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

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### NOTICE OF DECISION

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**IN THE MATTER OF** an appeal by Ray Schmidt of the Development Authority's refusal to leave an existing accessory building as built with a variance to the side yard setback, floor area and height at Plan 2316NY; Block 2; Lot 8 Sturgeon Crest 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 submissions.

### 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 variance is required as the structure is already built and is used as tractor storage.

#### RECOMMENDATION OF THE DEVELOPMENT AUTHORITY

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

- [10] The accessory building is located in the R2 – Country Estate Residential District. It is approximately 1.2 metres (3.9 feet) from the side property line. The building is a barn type structure that is used to store the landowners' tractor collection and is 371.6 square metres (4,000 square feet) and 9.1 metres (30 feet) in height
- [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 R2 – Country Estate Residential District is 40%.
- [12] Two of the requested variances exceed 50%. The floor area exceeds the maximum by 231.6 square metres (2,493.3 square feet) which equates to 165% and the side yard setback exceeds the maximum by 1.3 metres (4.2 feet) which equates to 52%.

#### SUMMARY OF APPELLANT'S POSITION

- [13] The building was specifically built to store antique John Deere tractors
- [14] The owner is very particular of what is placed on his property and the building is neat and clean and in no way an eye sore to neighbouring properties.
- [15] The owner was unaware that there were any issues with the structure at the time of development and had he known he would have proceeded differently.
- [16] The owner agrees with all the conditions as set out by the Development Authority.

#### DECISION

- [17] **The Board GRANTS the appeal, REVOKES the decision of the Development Authority made on August 27, 2021 to refuse development permit application 305305-21-D0266, and APPROVES the**

**development permit with the following conditions:**

1. A building permit shall be obtained and approved. Minimum construction standards shall conform to the requirements of the current Alberta Building Code.
2. Separate electrical, plumbing or gas permits be obtained as required.
3. A variance to the side yard setback is granted at 1.2m (3.9ft) or 52%.
4. The accessory building shall not be used as a dwelling.
5. The accessory building shall not exceed 371.6m<sup>2</sup>(4,000ft<sup>2</sup>) in floor area and 9.1m(30ft) in height. A variance of 165% and 15% respectively is granted.
6. The accessory building shall be used for personal use only, any other use is subject to subsequent development permit approval.
7. 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.
8. 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.

**Advisory Notes:**

1. It is the responsibility of the applicant/landowner to ensure that all development, and activities associated with the development, complies with any federal, provincial, or municipal laws/legislation and any required license, permit, approval, authorization, regulation, or directive.

**REASONS FOR THE DECISION**

- [18] The Appellant's request is to leave an existing accessory building as built. In accordance with section 2.8.6(b) of the Land Use Bylaw the maximum percentage of variance that may be granted by the Development Authority in the R2 – Country Estate Residential District is 40%. A variance request in excess of what has been prescribed shall be refused by the Development Authority. The required variances of 165% and 52% exceed the maximum percentage that may be granted.
- [19] 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.

- [20] The Board did not receive submissions from neighbouring property owners and no complaints to the Development Authority have been received for this building.
- [21] Administration is recommending support of the appeal as the proposal does not, in their opinion, unduly interfere with the amenities of the neighbourhood or materially interfere with or affect the use, enjoyment or value of neighbouring properties.
- [22] 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 19<sup>th</sup> day of October 2021.

SUBDIVISION AND DEVELOPMENT APPEAL BOARD  
Sturgeon County



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Julius Buski, Chair

*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.