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Appeal File Numbers:	022-STU-001
Application Number:	305305-21-D0341
Appeal Against:	Development Authority of Sturgeon County
Appellant:	Phyllis Bates
Date and Location of Hearing:	February 1, 2022 Held via Videoconference
Date of Decision:	February 14, 2022
SDAB Members:	Chair Julius Buski, Mark Garrett, Alanna Hnatiw, Allan Montpellier, Amanda Papadopoulos

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### NOTICE OF DECISION

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**IN THE MATTER OF** an appeal by Phyllis Bates against the Development Authority’s refusal to construct a detached dwelling with a variance to the front yard setback and parcel coverage located at NE 5-55-23-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; and
  - Planning and Development Services Report.

### 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 lot size is 100 feet x 100 feet and a setback of 115 feet puts it off the property.
  - The Appellant was never informed that her land is considered Agriculture as her property taxes indicate Residential.
  - Using only 15% of her lot is not acceptable.

#### **RECOMMENDATION OF THE DEVELOPMENT AUTHORITY**

Carla Williams, representative for the Development Authority, provided a presentation which outlined the Development Authority's refusal of development permit application 305305-21-D0341 for the following reasons:

1. The property is in the AG – Agriculture (Residential) District. The replacement dwelling is proposed to be located 15.2 metres from the front property line. The minimum front yard setback for a dwelling is 35 metres. A variance of 19.8 metres or 56.6% was requested and the maximum variance that can be granted by the Development Authority is 50%.
2. The existing detached garage is approximately 2 metres from the front property line and is considered legally non-conforming.
3. The previous dwelling was located approximately 8.5 metres from the front property line and the new dwelling is proposed to be setback to a more suitable setback of 15.2 metres.
4. The proposed dwelling meets all other setback requirements.
5. The maximum parcel coverage on an AG – Residential parcel is 15% which is calculated by dividing the total amount of building footprint on a parcel by the total parcel area. The parcel coverage was calculated at 22.3%.
6. Land Use Bylaw Section 2.8.4 states there shall be no variance from the regulations prescribing parcel coverage.
7. An Agriculture parcel is typically 2.47 acres in area to accommodate for private sewage. The subject parcel is smaller in area than most unserved Hamlet (R3) and Country Residential Estate (R2) parcels within the County. The maximum parcel coverage for R3 and R2 lots is 35%. Therefore, the maximum parcel coverage for the subject lot should be higher than 15% given its size.

8. The parcel is to be serviced with a cistern and septic tank in accordance with the Alberta Private Sewage Systems Standards.

#### **SUMMARY OF APPELLANT'S POSITION**

- [10] The previous house was the family home her husband grew up in. The house burned down and she would like to rebuild on the same property.
- [11] The lot is only 30 meters long and cannot meet the 35-metre setback. If she were to move the home any further back on the property, it would place the building over the existing septic tank.
- [12] She has been unable to find a modular home that is under 28 feet wide and the only other option for her would be a trailer and due to her age, she would prefer to not have to deal with all the maintenance that comes with a trailer.

#### **DECISION OF THE BOARD**

- [13] **The Board GRANTS the appeal and REVOKES the decision of the Development Authority made on December 31, 2021, to refuse development permit application 305305-21-D0341, and approves the development permit with the following conditions:**
  1. The single detached dwelling (modular home) is to be placed in accordance with the approved site plan.
  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, gas, plumbing and private sewage disposal permits shall be obtained as required.
  4. 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. If 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.
  5. If the development authorized by a permit is not commenced within 12 months from the date of its issuance, or is not carried out with reasonable diligence, the development permit approval ceases and the development permit is deemed to be void, unless an extension to this period has been previously granted by the Development Authority.
  6. No person shall keep or allow 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 needed 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.

*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.
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**

- [14] The Appellant's request is to construct a detached dwelling with a variance to the front yard setback and parcel coverage. Section 2.8.6 of the Land Use Bylaw states that the maximum amount of variance that may be granted by the Development Authority in the AG - Residential district is 50% and that a variance in excess of what has been prescribed shall be refused by the Development Authority. The requested variance of 56.6% exceeds the maximum percentage that may be granted.
- [15] Section 11.1.4 of the Land Use Bylaw states that the maximum parcel coverage in the AG – Agriculture district is 15%. The parcel coverage of the proposed dwelling is 22.3%. Section 2.8.4 of the Land Use Bylaw states that there shall be no variance from the regulations prescribing parcel coverage.
- [16] 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.
- [17] The Board received evidence that the application is to replace a home that was destroyed by fire. The Board received evidence from the Development Officer that the subject parcel is smaller in area than most unserviced Hamlet (R3) and Country Residential Estate (R2) parcels within the County and that the maximum parcel coverage for R3 and R2 lots is 35%. Therefore, the maximum parcel coverage for the subject lot should be higher than 15% given its size.

- [18] 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.
- [19] The Board finds that the proposed development conforms with the use prescribed for that land in the Land Use Bylaw, with a single detached dwelling being a permitted use within the AG – Agriculture District.
- [20] 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 14<sup>th</sup> day of February 2022.



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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; and
- Planning and Development Services Report