
Appeal File Number:	020-STU-019
Application Number:	305305-20-D0225
Appeal Against:	Development Authority of Sturgeon County
Appellant:	Jared Ellerbeck
Date and Location of Hearing:	December 15, 2020 Held via Videoconference
Date of Decision:	December 22, 2020
SDAB Members:	Chair Lee Danchuk, Mark Garrett, Alanna Hnatiw, Dave Kluthe Amanda Papadopoulos

NOTICE OF DECISION

IN THE MATTER OF an appeal by Jared Ellerbeck of the Development Authority’s refusal of a development permit to operate a Home-Based Business Level Three – Western Landscape (Trucking and Design Division) at NE 20-54-25-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;
 - 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.

- [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:
- There is information missing on the permit to clarify the use of space.
 - Only temporary storage is being requested.
 - Previous companies used the same space with no complaints.
 - It is the non-landscaping division of the business that would occupy the space.
 - There is lot space required for vehicles to turn around safely and park.

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-D0225 be refused for the following reasons:

- [10] The application was refused solely on the variance to allow for exterior storage exceeding what is stipulated in the regulations.
- [11] Section 6.16, Table 6.1 of the Land Use Bylaw states that, for Level 3 Home-Based Businesses, exterior storage shall not exceed 1% of the parcel size in accordance with Section 5.7 of the Land Use Bylaw. A variance was requested to allow 1,500 square metres of exterior storage, but the maximum allowed under the Land Use Bylaw is 121.4 square metres. Therefore, the requested variance is 92%.
- [12] 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 AG –Agriculture District is 50%. Therefore, the Development Officer does not have authority to grant the 92% variance being requested.

SUMMARY OF APPELLANT'S POSITION

- [13] The Appellant is locating the trucking division of his company to this location and requires both outdoor, temporary storage and a safe lot to park and maneuver the company trucks and trailers.
- [14] The lot has an existing 1,500 square foot gravel pad that would be adequate space for vehicles to turn around.

- [15] Over the last seven years, there were two companies located at this property and there were no complaints from neighbouring property owners about either business.
- [16] There are no neighbours within 400 metres south, west or east of the location.
- [17] The yard is fenced and adequately screened but additional trees will be planted to fill in any gaps along the east side. High pressure gas lines run along two sides of the property so a natural buffer will be created.
- [18] Traffic and road impact will be minimal as the delivery trucks leave in the morning and do not return until the end of the day. There will be no vehicle traffic in and out of the lot.
- [19] The Appellant agrees to adhere to all conditions imposed by the County and Alberta Transportation.
- [20] The Board GRANTS the appeal, REVOKES the decision of the Development Authority made on November 10, 2020 to refuse development permit application 305305-20-D0225, and APPROVES the development permit with the following conditions:**

Permit Conditions

1. No more than one level 2 or 3 home-based businesses shall be allowed on one parcel.
2. The home-based business shall not occupy more than 30% of the gross floor area of the dwelling and 100% of the gross floor area of the accessory building(s).
3. Exterior storage shall be contained within the fenced portion and shall not exceed 1,500 square metres (16,146 square feet) as per the approved site plan.
4. 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.
5. The home-based business shall not generate client traffic.
6. The home-based business shall be operated by the permanent resident(s) of the principal dwelling and there shall be no more than four (4) non-resident employees on site.
7. There shall be no more than three (3) commercial vehicles, two (2) passenger vehicles and three (3) trailers used for business purposes and be parked on-site.
8. The home-based business shall not generate noise, smoke, steam, odour, dust, fumes exhaust, vibration, heat, glare or refuse matter considered offensive or excessive by the Development Authority. At all times, the privacy of the adjacent residential dwelling(s) shall be preserved and shall not, in the opinion of the Development Authority, unduly interfere with or affect the use, enjoyment or value of neighbouring or adjacent parcels.

9. Only one on-site, commercially produced sign to identify the business, shall be allowed. The sign dimensions shall be a maximum of 1m (3.3ft) in length and 0.6m (2ft) in height. The sign shall be displayed as a window sign, be affixed to a building or be located in the front yard adjacent to the front parcel boundary and either be self-supporting or attached to existing fencing. There shall be no off-site signage associated with this home-based business.
10. The home-based business shall operate between 8:00 a.m. to 4:00 p.m. only.
11. One parking stall per non-resident employee and one parking stall per commercial vehicle shall be provided on-site and is encouraged to be provided at the side or rear of the principal building.
12. The development permit is issued to the applicant and is non-transferable. Should the applicant move or sell the business, the permit will become void.
13. The applicant shall obtain, if required, a building permit for a change of use of the accessory building from personal use to commercial use associated with the operation of the Home-Based Business.
14. This approval is subject to the approval and conditions of a Roadside Development Permit issued by Alberta Transportation.

Advisory Notes:

1. Home-Based Business means the accessory use of a dwelling, accessory buildings and parcel for an occupation, trade, profession or craft to be operated by the permanent residents of the dwelling.

REASONS FOR THE DECISION

- [21] The Appellant's request is for a variance of 92% to the parcel size for exterior storage. In accordance with section 2.8.6(b) of the Land Use Bylaw, the Development Authority may grant a variance of 50% in the AG – Agriculture District and a variance request in excess of what has been prescribed shall be refused by the Development Authority.
- [22] 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.
- [23] The proposal meets all other bylaw regulations, including floor area, client traffic generation, non-resident employees onsite, vehicles and trailers onsite, hours of operation, additional onsite parking, and signage.

- [24] The fact that adjacent landowners were notified of the proposed development and did not express objection satisfies the Board 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.
- [25] Upon reviewing photographs of the subject property, the Board finds that the development would have no negative impacts on adjacent properties as there are no neighbours within 400 metres of the property. Additionally, the Appellant is committed to ensuring there are adequate trees planted along the east side to provide further screening and the property is buffered from development along two sides by a high-pressure gas line.
- [26] As the facility is a trucking/delivery operation and not a retail facility, there will be limited traffic to and from the site and only during regular business hours. The Board finds that the development would not cause traffic issues or damage or impact the roads leading in and out the location.
- [27] The Board finds that the proposed development conforms with the use prescribed in the Land Use Bylaw, which is a Home-Based Business Level 3.
- [28] The Board heard that two previous companies operated from this location and there was no evidence provided of any complaints regarding those businesses.
- [29] The Board heard evidence regarding property taxation on this parcel, including potential implications of future annexation. This is not a planning consideration and therefore the Board placed no weight on this evidence.
- [30] As part of the Development Officer's submission, a response letter from the City of St. Albert was enclosed, which provided interpretations of Sturgeon County's Land Use Bylaw, concern regarding the relocation of the business from the St. Albert Riel Business Park, and potential impacts to future land use planning and operations of the transportation network once this property is annexed by the City of St. Albert. The Board is satisfied that Sturgeon County's Development Officer has accurately interpreted the Land Use Bylaw. The Board is not concerned with the possible implications of a business wishing to relocate from a business park in another municipality. Finally, Board received no evidence of the potential land use planning impacts and operations of the transportation networks and therefore placed no weight on this information.
- [31] 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 22nd day of December, 2020.

SUBDIVISION AND DEVELOPMENT APPEAL BOARD
Sturgeon County



Lee Danchuk, 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.