
Appeal File Number: 023-STU-004
Application Number: 305305-23-D0008
Appeal Against: Development Authority of Sturgeon County
Applicant/Appellant: Darrell Hyska
Date and Location of Hearing: April 4, 2023
Council Chambers and Through Electronic Communications
Date of Decision: April 17, 2023
SDAB Members: Julius Buski, Lee Danchuk, Amanda Papadopoulos, Don Rigney

NOTICE OF DECISION

IN THE MATTER OF an appeal by Darrell Hyska against the Development Authority’s refusal to leave an existing uncovered deck, pergola and fence as built at Plan 7621623, Block 4, Lot 1 Upper Manor 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 and 686 of the *Municipal Government Act*, RSA 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, and Sturgeon County’s Municipal Development Plan (MDP), and any amendments thereto.
- [3] The following documents were received prior to the hearing and for part of the record:
1. The Notice of Appeal;
 2. A copy of the development permit application with attachments;
 3. The Development Authority’s written decision; and
 4. Planning & Development Services Report.

PRELIMINARY MATTERS

- [4] There were no preliminary matters addressed at this 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.

ISSUE

[9] The Appellant raised that he would like to leave the developments as built and enter into an encroachment agreement with the County.

RECOMMENDATION OF THE DEVELOPMENT AUTHORITY

[10] Yvonne Bilodeau, representative of the Development Authority, provided a presentation which outlined the Development Authority's refusal of Development Permit 305305-23-D0005. In summary:

1. The subject parcel is districted R2 – Country Estate Residential.
2. A lease agreement was in place between the County, Mid-West Gas Transmission Ltd., and the landowners. It was determined that the municipal reserve property was required in accordance with Sturgeon County Open Space Plan for a future pedestrian system.
3. In September 2022, Council refused the Appellant's request to lease a portion of the municipal reserve and directed Administration to terminate the landscape agreement and remediate the property to allow public access.
4. A staged plan was prepared to remove the landscaping and other improvements on the municipal reserve land. It was determined that the deck, pergola, and fence required permits for variances as they were constructed too close to the property line.
5. Land Use Bylaw 1384/17 states:
 - Section 2.8.6: The percentage of variance that may be granted by the Development Authority in the R2 – Country Estate Residential District is 40%.
 - Section 2.8.6(b): Variances for the districts in excess of what is prescribed shall be refused by the Development Authority.
 - Section 5.8.2(b): No fence or wall shall in any residential district exceed 1 metre (3.3 feet) in height in a front yard or flanking front yard abutting a public road without an approved variance.
 - Section 12.2.4: The minimum rear yard setback for a principal dwelling is 6 metres (19.7 feet).

6. The Development Authority could not approve the permit as the developments exceeded the variance authority as follows:
 - The variance requested for the deck is 5.03 metres (16.5 feet) or 84%.
 - The fence varies in height between 1.06 metres (2.5 feet) and 1.22 metres (4 feet); therefore, the requested variance is 21%.
 - The fence and landscaping encroach into Sturgeon County's Road Right of Way along Manor View Crescent.
 - The pergola encroaches 1 metre (3.3 feet) into Sturgeon County's Municipal Reserve.
7. The Development Authority recommends that the Board uphold the appeal and grant the permit for variances to leave the existing uncovered deck, pergola, and fence as built subject to the conditions recommended by Administration.

SUMMARY OF APPELLANT'S POSITION

[11] The Appellant, Darrell Hyska, submitted that he is working collaboratively with the County to come into compliance and remediate landscaping on the municipal reserve land as required and within the established timelines of the agreement.

SUBMISSIONS FROM OTHER AFFECTED PERSONS

[12] Lili Terry, adjacent property owner, spoke in opposition to the appeal, noting concern that the municipal reserve is intended for future walking path connectivity in the community and that allowing the variances and encroachment to continue would negatively impact this plan. Further, she submitted that land use rules and compliance should be consistent for all residents.

[13] Chris Terry, adjacent property owner, spoke in opposition to the appeal, stating that the pergola which includes an open fire pit feature is non-compliant with the County's Burning Bylaw, which requires a fire pit to be 3 metres from the property line. He submitted that this presents a public safety hazard and liability issue given the encroachment on municipal reserve land. He submitted that users of any future walking path may be at risk of injury should they pass too close to the feature.

DECISION

[14] **The Board GRANTS the appeal in part, REVOKES the decision of the Development Authority made on March 3, 2023, to refuse development permit application 305305-23-D0005, and APPROVES a development permit with the following terms and conditions:**

1. A variance is granted to the rear yard setback of the deck at 0.97 metres (3.18 feet).
2. A variance is granted to the height of the fence between 1.06 metres (3.5 feet) and 1.22 metres (4 feet).
3. The uncovered deck as approved shall remain uncovered and unenclosed. Future deck construction is subject to separate development and building permit approval.
4. An encroachment agreement shall be entered into to allow the fence and landscaping to encroach within Sturgeon County's Right of Way along Manor View Crescent.

- [15] **The Board DENIES the application for the pergola and related landscaping to encroach 1 metre (3 feet) into Sturgeon County’s Reserve Lot described as Lot R7; Block 4, Plan 7621623.**

REASONS FOR THE DECISION

- [16] The subject property is in the R2 – Country Residential District and adjacent to a municipal reserve lot described as Lot R7, Block 4, Plan 7621623.
- [17] The application is to leave an existing fence, uncovered deck, and pergola as built. The variance to relax the required rear yard setback for the deck is 5.03 metres (16.5 feet) or 84%. The fence varies in height between 1.06 metres (3.5 feet) and 1.22 metres (4 feet) and the variance requested is 21%. The pergola encroaches 1 metre (3.3 feet) onto the Municipal Reserve Lot.
- [18] Sturgeon County Land Use Bylaw 1385/17 states the percentage of variance that may be granted by the Development Authority in the R2 – Country Estates Residential District is 40% and that no fence or wall shall exceed 1 metre (3.3 feet) in height. Variances for the district in excess of what is prescribed shall be refused by the Development Authority. Therefore, the permit was refused and the Appellant appealed to the SDAB.
- [19] The Board heard from the Development Officer that a lease agreement was in place between the County, Mid-West Gas Transmission Ltd, and the landowner; however, it was determined that the municipal reserve property was required for a future pedestrian system.
- [20] The Board considered 4 written submissions and 2 verbal submissions from adjacent landowners in opposition to this appeal. The submissions included concerns regarding the encroachment of the pergola onto the municipal reserve lot and the potential safety hazard it poses to the community. More broadly, those in opposition to the appeal noted a desire to have the property restored to its natural state and allowing access for all members of the community to enjoy.
- [21] The Board considered the documentary evidence, including the Real Property Report and photographs of the subject property showing the proximity of the uncovered deck in relation to the property boundary, the height of the fence, and the encroachment of the pergola features onto the municipal reserve lot.
- [22] The Board finds that the improvements do not comply with the Land Use Bylaw. In accordance with section 687(3)(d) of the *Municipal Government Act*, the Board may issue a development permit even though a 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 Board considered the impact of the deck and fence on the amenities of the neighbourhood and the use, enjoyment, and value of neighbouring parcels of land. The Board finds that variances for these improvements do not unduly interfere with the amenities of the neighbourhood or the use, enjoyment, and value of neighbouring parcels of land and therefore grants a permit for these improvements.
- [24] In determining to refuse the permit for the pergola, the Board considered the impact on public safety. The Board heard evidence that the Appellant's property is not fenced and concerns from neighbouring property owners of the potential impact on users of future walking trails on the municipal reserve land.
- [25] An adjacent landowner submitted as evidence Sturgeon County Bylaw 1476/20, the Burning Bylaw, as evidence, drawing the Board's attention to section 2.1(a)(i). This provision requires a fire pit to have a minimum 3 metre clearance from the nearest edge of a building, property line or other combustible material. Therefore, approval of the pergola would be inconsistent with Sturgeon County's bylaw which is in place to protect public safety.
- [26] Although the developments on the municipal reserve are not within the purview of the development permit application, the Board considered the broader impact of this appeal on the enjoyment of the neighbourhood and amenities of the community. The Board heard from County Administration that there is a plan in place to restore the property in a timely fashion and that appropriate enforcement mechanisms are in place to ensure compliance.
- [27] For all of these reasons, the Board has decided to grant the appeal in part and approve variances for the fence and deck as built with the conditions noted above.

Dated at the Town of Morinville, in the Province of Alberta, this 17th day of April 2023.

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 & Development Services Report