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Appeal File Numbers:	022-STU-004
Application Number:	305305-22-D0048
Appeal Against:	Development Authority of Sturgeon County
Appellants:	David and Atty Bressler
Date and Location of Hearing:	April 5, 2022 Council Chambers and Through Electronic Communications
Date of Decision:	April 19, 2022
SDAB Members:	Chair Julius Buski, Lee Danchuk, Alanna Hnatiw, Amanda Papadopoulos, Lili Terry

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### NOTICE OF DECISION

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**IN THE MATTER OF** an appeal by David and Atty Bressler against the Development Authority’s refusal to leave an exiting building as built (detached garage) with a variance to the side and rear yard setbacks at Plan 7621623; Block 7; Lot 9 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 section 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 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;
  - Appellants’ written submissions; and
  - Adjacent landowner’s written 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 Appellants raised the following grounds of appeal:
  - The existing garage is in excellent condition, in an established residential subdivision, and is located at the rear of property, away from any existing buildings, bodies of water, roads, or public spaces.
  - The variance is exceeding by only 7.6% in the rear and 2.8% on the side.

**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 305305-22-D0048. In summary:

1. The property is in the R2 – Country Estate Residential District. The parcel is 0.49 hectares (1.21 acres) with a single detached garage and small gazebo. The garage was constructed in 1988. A dwelling located on the site was constructed in 1980 and demolished in 2010.
2. An accessory building means a building or structure that is incidental, subordinate and located on the same parcel as a principal building but does not include a building or structure used for human habitation.
3. Pursuant to Section 6.1.4 of Land Use Bylaw, an accessory building or use is not permitted on a parcel without a principal building or use being previously developed on the parcel. Given the garage was built after the single detached dwelling as an accessory building, this regulation was not considered as part of the refusal.
4. The accessory building meets the Land Use Bylaw regulations with respect to floor area, parcel coverage, and height.
5. The accessory building does not meet the Land Use Bylaw requirements with respect to the minimum side and rear yard setback. The variances required to leave the structure as built exceed what may be granted by the Development Authority. The application was refused for the following reasons:
  - Section 12.2.4 of the Land Use Bylaw states the minimum side yard setback for an accessory building is 2.5 metres (8.2 feet) within the R2 - Country Estate Residential District.

Actual side yard – 1.43 metres (4.69 feet)

Variance required – 1.07 metres (3.5 feet) or 42.8%

- Section 12.2.4 of the Land Use Bylaw states that the minimum rear yard setback for an accessory building is 2.5 metres (8.2 feet) within the R2 - Country Residential District.

Actual rear yard – 1.31 metres (4.30 feet)

Variance required – 1.19 metres (3.9 feet) or 47.6%

- Pursuant to section 2.8.6 of the Land Use Bylaw, the maximum variance that may be granted by the Development Authority in the R2 district is 40%. Variances for the district in excess of what is prescribed shall be refused by the Development Authority.

6. The accessory building has been on the property since 1988 and no complaints have been received regarding the location of the structure. Photos provided by the applicant confirm the building is in good condition. There are mature trees along the property boundary softening any negative impacts on adjacent properties.

#### **SUMMARY OF APPELLANTS' POSITION**

- [10] The property was purchased in June 2020, and they believe it has been vacant for the last 10 years.
- [11] Since purchasing the property, they have planted new trees, removed noxious weeds, spread grass seed, and cleaned up some overgrowth to help maintain the aesthetics of the neighbourhood. They plan to construct a home on the property.
- [12] The garage in question is at the end of the property and is serviced with electricity and gas which are currently disconnected.
- [13] The structure insured, and is in good condition, stable, and has no major cracks. There is a concrete pad in the front and concrete along the side which are in very good shape.
- [14] Leaving the garage in place seems to be appropriate. There is no nearby public infrastructure, no impedance to future development, and no roadway development anticipated. There are no buildings, waterbodies, wetlands, parks, or other public spaces nearby. There are no drainage issues, slope instability concerns, or sight restrictions from the neighbours.

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

- [15] **The Board GRANTS the appeal and REVOKES the decision of the Development Authority made on March 8, 2022, to refuse development permit application 305305-22-D0048, and approves the development permit with the following conditions:**
  1. The existing detached garage (86.5 square meters in floor area) is approved to remain as shown on the Real Property Report dated November 25, 2021, signed by Paul W.K. Chan, Alberta Land Surveyor.

**Minimum Side Yard Required – 2.5 metres**  
**Approved Side Yard Setback – 1.43 metres**  
**Variance Granted – 1.07 metres or 42.8%**

**Minimum Rear Yard Required – 2.5 metres**  
**Approved Rear Yard Setback – 1.31 metres**  
**Variance Granted – 1.19 metres or 47.6%**

2. A separate building permit shall be obtained and approved.
3. The accessory building shall not be used for purposes related to the operation of any commercial business and shall be for personal use only.
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 the drainage of this 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.

**Advisory Notes:**

1. The building permit fee is subject to double fee penalty.

**REASONS FOR THE DECISION**

- [16] The Appellants' request is to leave a detached garage as built with a variance to the side and rear yard setbacks. Section 12.2.4 of the Land Use Bylaw states that the minimum side and rear yard setbacks for an accessory building in this district is 2.5 metres. Section 2.8.6 of the Land Use Bylaw states that the maximum variance that may be granted by the Development Authority in this district is 40% and that variances for the districts in excess than what is prescribed shall be refused by the Development Authority. The requested variance of 42.8% to the side yard setback and 47.6% to the rear yard setback exceeds the maximum percentage that may be granted.
- [17] The Board received evidence from the Development Officer that the subject parcel meets the Bylaw regulations with respect to parcel coverage and height.
- [18] 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.
- [19] The Board received a letter of support from a neighbouring property owner and no submissions stating opposition to the proposed development. The Board also received photographs from the Appellants indicating that the structure is in good condition and is being properly maintained. Therefore, the Board is satisfied 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.
- [20] The Board finds that the proposed development conforms with the uses prescribed in the Land Use Bylaw within the R2 – Country Residential District, being an accessory building constructed in 1988 at which time there was a principal dwelling on the property.
- [21] For all of these reasons, the Board grants the appeal with the conditions noted and revokes 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 April 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;
- Planning and Development Services Report;
- The Appellants' written submissions; and
- Adjacent landowner's written submission