
Appeal File Numbers: 022-STU-012
Application Number: 305305-22-D0201
Appeal Against: Development Authority of Sturgeon County
Appellants: Mark Stevens
Date and Location of Hearing: August 16, 2022
Council Chambers and Through Electronic Communications
Date of Decision: August 24, 2022
SDAB Members: Chair Julius Buski, Neal Comeau, Lee Danchuk, Mark Garrett, Amanda Papadopoulos

NOTICE OF DECISION

IN THE MATTER OF an appeal by Mark Stevens against the Development Authority’s refusal to construct a kennel (100 dogs and 40 cats) with a variance to the maximum size of an accessory building and distance to an adjacent dwelling at Plan 9720873; Lot 1 (56124 Range Road 241) 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; and
 - Appellant’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 Appellant raised the following grounds of appeal:
 - Alberta Transportation has approved the expansion of the kennel and he would like to maximize the kennel's ability to operate.
 - The affected neighbour to the north has written a letter of support and the building will be surrounded by trees to further reduce noise.
 - The size of the building allows for a potential partnership with Sturgeon County Enforcement Services.

RECOMMENDATION OF THE DEVELOPMENT AUTHORITY

Yvonne Bilodeau, representative for the Development Authority, provided a presentation which outlined the Development Authority's refusal of development permit 305305-22-D0201. In summary:

- [10] The property is in the AG – Agriculture District. The parcel is 2.68 hectares (6.61 acres) in size.
- [11] A letter from Sturgeon County was given to Pelikanna Kennels Registered Labrador Retrievers in 1973 stating no objection to operate a kennel. Further compliance was approved on June 26, 1988 for an expansion of up to 11 dogs and again in 2008 for a pet resort expansion of up to 35 dogs.
- [12] The application is to construct a building and expand the kennel operation to accommodate up to 100 dogs and 40 cats. There would be two additional employees and the business would operate as Sturgeon County Kennels.
- [13] The floor area does not meet the Bylaw regulations as outlined in Section 11.1.4 of the Land Use Bylaw 1387/17 which states the maximum allowable floor space is 2,475 square feet. The building footprint is proposed to be 4,200 square feet with a second floor of 1,380 square feet for a total floor area of 5,580 square feet.
- [14] Section 2.8.6 of the Land Use Bylaw states that the Development Officer may grant a variance of up to 50% in the Agriculture District. The variance requested of 125% is more than what the Development Officer can approve.
- [15] Section 6.17.1 of the Land Use Bylaw states that kennel and animal boarding shall not be located within 300 metres (984.3 feet) of a dwelling on an adjacent parcel. A further variance was requested for the distance from the kennel to a dwelling on an adjacent parcel, from 300 metres to 230 metres, or 23%. The variance allowable by the Development Officer is up to 29.9%. As the

adjacent landowner provided a letter in support of the application, this was not a reason for refusal.

- [16] The proposed development aligns with all other regulations for kennel and animal boarding and is within the parcel coverage allowed at 4.1%.
- [17] The number of animals is at the discretion of the Development Authority. It is proposed for up to 100 dogs and 40 cats onsite. Based on the market demand, it is expected to utilize all kennels only over Christmas and during long weekends in the summer.
- [18] There is sufficient screening provided by the tree line and no concerns have been raised about added traffic in the area.

SUMMARY OF APPELLANT’S POSITION

- [19] This is an existing home-based business operating as Sturgeon County Kennels Ltd.
- [20] The property is 6.67 acres in size and zoned AG – Agriculture.
- [21] There is a primary residence and two accessory buildings with a current parcel coverage of 2.6%.
- [22] The variance to the maximum allowable floor area is requested to allow the business to efficiently utilize the existing Alberta Transportation permit to operate a kennel and animal boarding facility.
- [23] The current building offers 35 dog kennels and requires an additional 65 dog kennels to take advantage of the maximum allowable number of dogs and cats.
- [24] Increasing the kennel space will provide a benefit to the community as the business currently has a wait list of customers that cannot be accommodated.
- [25] A letter of support from the adjacent property owner was included in the submission package.
- [26] There are trees along the side the property that provide visual and acoustic screening.
- [27] There is sufficient parking on site and no issues have been raised in that regard.

DECISION OF THE BOARD

- [28] **The Board GRANTS the appeal and REVOKES the decision of the Development Authority made on July 20, 2022 to refuse development permit 305305-22-D0201. The Development Permit is APPROVED with the following conditions:**

1. A variance of 125% is granted to the maximum floor area of an accessory building to 518 square metres (5,580 square feet).
2. The accessory building shall be designed to reduce impacts of noise on adjacent parcels.
3. A variance of 23% is granted to allow the kennel facility to be located 230 metres from an existing adjacent dwelling in accordance with Section 2.8.6 of Land Use Bylaw 1385/17.
4. A separate building permit is required and shall be in conformance with the current regulations of the Alberta Building Code.
5. Separate gas, plumbing, electrical and private sewage disposal systems permits shall be obtained as required.
6. The minimum building setbacks to be adhered to are:

Front yard	35 metres (114.83 feet)
Side yard	6 metres (19.69 feet)
Rear yard	6 metres (19.69 feet)
7. The maximum number of animals onsite shall not exceed 100 dogs and 40 cats.
8. All outdoor enclosures, pens, runs, or exercise areas shall be fenced and shall not be located within the front yard.
9. Animals shall not be permitted to be outdoors between the hours of 10:00 PM to 7:00 AM.
10. Parking for staff and clients shall be provided for on-site.
11. Access to the site shall be via the existing approach and shall be in conformance with the specifications of Sturgeon County's General Municipal Servicing Standards.
12. Any sign to be placed on the land or building is subject to separate development permit approval.
13. Future expansion of the facility shall require a new application for a Development Permit.
14. 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 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.
15. Exterior storage of good 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.
16. If the development authorized by this permit is not commenced within 12 months from the date of its issuance, or is not carried out with reasonable diligence, the permit approval ceases and the permit is

deemed to be void, unless an extension to this period has previously been granted by the Development Approving Authority.

17. Any excavation, storage, or piling up of materials required 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. Kennel and Animal Boarding means a development used for the treatment, breeding, boarding, or training of four or more animals which are not owned by the resident of the dwelling unit on the parcel.
2. Should traffic to the site become a concern for the County, a Road Use Agreement may be required.
3. The boarding facility should be operated in accordance with the Code of Practice for Canadian Kennel Operations.
4. The applicant shall comply with the conditions of Permit No. RSDP026899 issued by Alberta Transportation.
5. FireSmart principles are recommended to be incorporated into all development near forested areas. To download the Firesmart resources appropriate for your development, please visit www.wildfire.alberta.ca/fire-smart.
6. 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.
7. 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

- [29] The property is in the AG - Agriculture District, with *kennel and animal boarding* being a discretionary use in that district. The Appellant's request is to construct a building to expand his kennel operation to accommodate up to 100 dogs and 40 cats with variances to the distance to an adjacent dwelling and maximum floor area.
- [30] Section 6.17.1 of the Land Use Bylaw states that *kennel and animal boarding* shall not be located within 300 metres (984.3 feet) of a dwelling on an adjacent parcel. It is requested that the distance from the kennel to a dwelling on an adjacent parcel be varied from 300 metres to 230 metres, or 23%. This variance is within the allowable discretion of the Development Officer and was not a basis for refusal of the application. As the adjacent landowner provided a letter of support at the time of the application, the Board confirms this variance.

- [31] Section 11.1.4 of the Land Use Bylaw states that the maximum floor area allowable in the AG District is 2,475 square feet. A variance of 3,105 square feet, or 125%, is requested. Section 2.8.6 of the Land Use Bylaw states that the Development Officer may grant a variance of up to 29.9% and the Municipal Planning Commission may grant a variance of up to 50% in this district.
- [32] 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.
- [33] The Board received evidence from the Development Officer that the subject parcel meets Land Use Bylaw regulations with respect to parcel coverage, traffic generation, number of employees, parking, and kennel and animal boarding. The Board also received evidence that there are trees along the side the property that provide visual and acoustic screening.
- [34] The Board notes that the adjacent landowner nearest to the proposed development provided a letter of support as part of the Appellant's original application. 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.
- [35] The Board finds that the proposed development conforms with the use prescribed in the Land Use Bylaw, being a *kennel and animal boarding* facility.
- [36] The Board notes that the Appellant submitted evidence that, in 2020, a previous panel of the Subdivision and Development Appeal Board granted a large variance to the footprint of an accessory building. The Board did not give any weight to this submission as the Board is not bound by precedent and in each case must make its decision based on the evidence presented and the merits of each application.
- [37] The Appellant submitted that there is demand for a kennel and boarding facility with greater capacity, and there would be community benefit derived from the approval. The Board asserts that it must make its decisions based on planning merits. On their own, the Board is not persuaded by these arguments. However, taken together with the absence of opposition to the proposal, the Board is persuaded that there is community support for the application and 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.
- [38] For all of these reasons, the Board has decided to grant the appeal and approve the development permit with the conditions noted above.

Dated at the Town of Morinville, in the Province of Alberta, this 24th day of August, 2022.



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 written submission