
Appeal File Numbers:	022-STU-013
Application Number:	305305-22-D0219
Appeal Against:	Development Authority of Sturgeon County
Appellants:	Sam and Shelley Cupelli
Date and Location of Hearing:	August 30, 2022 Council Chambers and Through Electronic Communications
Date of Decision:	September 12, 2022
SDAB Members:	Chair Julius Buski, Lee Danchuk, Alanna Hnatiw, Allan Montpellier, Amanda Papadopoulos

NOTICE OF DECISION

IN THE MATTER OF an appeal by Sam and Shelley Cupelli against the Development Authority’s refusal to rebuild a single detached dwelling on an existing foundation (with a variance to the front yard setback) and to construct a front porch addition (2.1 metres x 3.0 metres in floor area) at SE 31-54-27-W4 (27514B Township Road 545) 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
 - Adjacent Landowners’ 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:
- An engineer recommended that the existing building be demolished as it is old construction and should be rebuilt to meet current building codes. The foundation is in good condition.
 - Variance to the front yard and side yard setbacks are required to meet existing Land Use Bylaw requirements.
 - The size of the porch extension is required to accommodate the interior stairs.

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 305305-22-D0219. In summary:

- [10] The property is in the AG – Agriculture District. The parcel is 1.73 acres.
- [11] The dwelling has existed since 1939 and is considered non-conforming due to its location and age.
- [12] The dwelling is 11.85 metres from the front yard property line. The minimum front yard setback on an AG – Agriculture Residential parcel is 35 metres. Therefore, a variance of 23.2 metres or 66% is required to leave the foundation as built. This exceeds the Development Authority's variance approval authority and therefore the permit had to be refused.
- [13] The minimum side yard setback on an AG – Agriculture Residential parcel for a principal dwelling is 6 metres. The dwelling is 4.78 metres from the property line, therefore requiring a variance of 1.22 metres or 20.3%. This variance was approved by the Development Authority.
- [14] The front porch addition would not cause the building to extend any closer to Township Road 545 than other existing structures located along this road. There are existing trees along the front and side property lines softening any impact to adjacent properties.
- [15] It is the Development Officer's opinion 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 properties.

SUMMARY OF APPELLANTS' POSITION

- [16] This is an existing home built in 1939.

- [17] The Appellants considered demolishing the entire home, but after consultation with an engineer, it was recommended to leave the foundation in place. They decided to rebuild on the existing foundation.
- [18] Although the foundation is in good condition and made of thicker concrete than what is poured today, the rest of the home needs to be reconstructed to meet the current building codes.
- [19] The extension of the front porch is required to accommodate interior stairs. If the extension is not built, the house would lose approximately 100 square feet of living space.
- [20] The development would improve the value of the home.

DECISION OF THE BOARD

[21] The Board GRANTS the appeal and REVOKES the decision of the Development Authority made on July 29, 2022 to refuse development permit 305305-22-D0219. The Development Permit is APPROVED with the following conditions:

- 1. Prior to any construction occurring on site, a separate building permit shall be obtained and approved.
- 2. The single detached dwelling is approved to be rebuilt on the existing foundation with a front porch addition (2.1m x 3.0m) in accordance with the approved site plan and construction drawings.

<u>Minimum Front Yard</u>	35 metres (114.83 feet)
Actual Front Yard	11.85 metres (38.9 feet)
Variance Granted	23.2 metres or 66%

<u>Minimum Side Yard</u>	6 metres (19.69 feet)
Actual Side Yard	4.78 metres (15.7 feet)
Variance Granted	1.22 metres or 20.3%

- 3. The exterior finish of the dwelling shall be completed within two years of the date of issuance of the development permit.
- 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 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 permit 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 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.

7. Separate gas, plumbing, electrical and private sewage disposal systems permits shall be obtained as required.

Advisory Notes:

1. Construction occurring prior to the issuance of a building permit is subject to a double fee penalty.
2. Setbacks from abandoned well, pipeline and sour gas facilities shall be in compliance with provincial and federal requirements.
3. 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.
4. 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

- [22] The property is in the AG - Agriculture District. The Appellants' request is to rebuild a single detached dwelling on an existing foundation (with a variance to the front yard setback) and to construct a front porch addition (2.1 metres x 3.0 metres in floor area).
- [23] The minimum side yard setback on an AG – Agriculture Residential parcel for a principal dwelling is 6 metres. The dwelling is 4.78 metres from the property line, therefore requiring a variance of 1.22 metres or 20.3%. This variance was supported by the Development Authority.
- [24] Section 11.1.4 of the Land Use Bylaw states that the minimum front yard setback for a dwelling in this district is 35 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 50% and that variances for the districts in excess than what is prescribed shall be refused by the Development Authority. The requested variance of 66% to the front yard setback exceeds the maximum percentage that may be granted and therefore the variance was required to be refused.
- [25] 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.

- [26] The Board received evidence from the Development Officer that the subject parcel has sufficient tree coverage to soften the impact to the neighbouring properties. Further, the Board heard that the application is generally supported by the Development Officer, but the Land Use Bylaw does not provide the Development Officer the authority to approve the 66% variance to the front yard setback.
- [27] The Board received a letter of support from a neighbouring property owner and no submissions stating opposition to the proposed development. 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.
- [28] The Board finds that the proposed development conforms with the use prescribed in the Land Use Bylaw, being a single detached dwelling.
- [29] 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 12th day of September, 2022.



Julius Buski, Chair

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), an application for permission to appeal must be filed and served within 30 days after the issuance of the decision. Notice of the application for permission must be given 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 Adjacent Landowners' written submission