
Appeal File Number: 023-STU-016
Application Number: 305305-23-D0185
Appeal Against: Development Authority of Sturgeon County
Applicants/Appellants: Mark Berglund and Alice Sloan
Date and Location of Hearing: August 8, 2023
Council Chambers and Through Electronic Communications
Date of Decision: August 23, 2023
SDAB Members: Julius Buski (Chair), Neal Comeau, Lee Danchuk, Amanda Papadopoulos,
and Don Rigney

NOTICE OF DECISION

IN THE MATTER OF an appeal by Mark Berglund and Alice Sloan against the Development Authority's refusal to leave a single detached dwelling with attached garage as built with a variance to the Front Yard at Plan 7620629; Block 2; Lot 2 Glory Hills (136-27507 Township Road 544) 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 form 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 she would like to leave a single detached dwelling with attached garage as built with a variance to the front yard setback.

RECOMMENDATION OF THE DEVELOPMENT AUTHORITY

- [10] Carla Williams, representative of the Development Authority, provided a presentation which outlined the Development Authority's refusal of Development Permit 305305-23-D0185. In summary:
1. The parcel is 1.4 hectares (3.53 acres) and developed with a single detached dwelling and two accessory buildings.
 2. The dwelling was approved by the County (Permit #051-76) in 1976. The permit stated the dwelling was to be constructed a minimum of 53 metres (175 feet) from the road.
 3. In 1979, a breezeway with attached garage (Permit #321-79) addition to the dwelling was approved by the County. The garage section was approved to be a minimum of 21 metres (69 feet) from the road.
 4. A building permit application was issued for development of the basement in 2012. A development permit was not required and therefore the non-compliance issue was not addressed at that time. There is no record of development permit or building permit approvals for the existing accessory buildings.
 5. Land Use Bylaw 1385/17 states:
 - Section 12.1 R1 – Country Residential District:
 - A single detached dwelling is a permitted use.
 - The minimum front yard setback for a single detached dwelling abutting a local road is 12 metres (39.4 feet).
 - The minimum side and rear yard setback for a single detached dwelling is 6 metres (19.7 feet).
 - Section 2.8 Decision Process – Table 2.1 Variances:
 - The Development Authority may issue a variance up to 40% in the R1 district.
 - Variance requests that exceed the Development Authority's prescribed variance powers in the Land Use Bylaw shall be refused by the Development Authority.

6. The Development Authority could not approve the permit as the development exceeds the Development Authority's variance authority as follows:
 - The dwelling (breezeway addition and garage) – The front yard setback is 1.87 metres (6.14 feet). Therefore, the requested variance is 10.1 metres (33.14 feet) or 84.4%.
7. The existing dwelling is non-compliant rather than non-conforming as it was not constructed as per the approval. For any new additions or alterations to be considered by the Development Authority, the dwelling must be approved to remain as built in its current location.

SUMMARY OF APPELLANTS' POSITION

[11] The Appellant, Alice Sloan, submitted that that she would like to leave the single-attached dwelling and garage as built, and that she would not be opposed to the removal of trees in the road right of way if they were deemed to be a safety concern due to obstructed sightlines.

DECISION

[12] **The Board GRANTS the appeal, REVOKES the decision of the Development Authority made on June 29, 2023 to refuse development permit application 305305-23-D0185, and APPROVES a development permit to leave the single detached dwelling with breezeway and attached garage as built with a variance of 10.1 metres, or 84.4% to the front yard setback.**

REASONS FOR THE DECISION

[13] The subject property is in the R1 – Country Residential District.

[14] The application is to leave the single detached dwelling with breezeway and attached garage as built with a variance of 10.1 metres, or 84.4% to the front yard setback.

[15] Sturgeon County Land Use Bylaw 1385/17 states the front yard setback for a single detached dwelling abutting a local road is 12 metres (39.4 feet). The Development Authority was required to refuse the application as it exceeded the variance authority in the Land Use Bylaw.

[16] 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.

- [17] The Board heard that the dwelling has existed at the current location for 47 years, and that the County has no record of incidents or complaints associated with the dwelling's placement on the parcel.
- [18] The Board heard that the file was reviewed by the County's Enforcement Services, and no concerns were noted regarding the approach or impacts to traffic in the neighbourhood.
- [19] The non-compliance of the existing dwelling was identified as a result of the Applicants seeking to construct a rear addition, not as a result of any complaints or non-compliance concerns. The Board received no submissions stating opposition to the proposed variance. Therefore, the Board is satisfied that the dwelling does 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 use prescribed in the Land Use Bylaw, being a single detached dwelling with breezeway and attached garage in the R1 – Country Residential District.
- [21] For all of these reasons, the Board grants the appeal and approves variances for the buildings as built.

Dated at the Town of Morinville, in the Province of Alberta, this 23rd day of August, 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