
Appeal File Number: 023-STU-018
Application Number: 305305-23-D0197
Appeal Against: Development Authority of Sturgeon County
Applicant/Appellant: Ray Schmidt
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 Ray Schmidt against the Development Authority’s refusal of a permit to construct a deck and lean to addition to an accessory building with a variance to the side yard setback at Plan 2316NY; Block 2; Lot 8 Sturgeon Crest (15-25012 Sturgeon Road) 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 construct a deck and lean to addition to an accessory building with a variance to the side yard setback.

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-D0197. In summary:

1. The parcel is 1.6 hectares (3.78 acres) and developed with a single detached dwelling, various outbuildings, and barn.
2. The Development Authority previously issued development permits to the subject property for the single detached dwelling, and the barn with a variance to the size, height, and side yard setback. The Board previously granted an appeal (021-STU-012), approving a development permit for an existing accessory building with a variance to the side yard setback, floor area, and height.
3. A development permit application was received to construct a raised deck and lean to addition to an existing accessory building to be 1.2 metres (4 feet) from the side property line which requires a variance of 1.3 metres (4.2 feet) or 52%.
4. Land Use Bylaw 1385/17 states:
 - Section 12.2. R2 – Country Estate Residential District:
 - An accessory building is a permitted use.
 - The minimum side yard setback for an accessory building is 2.5 metres (8.2 feet).
 - Section 2.8 Decision Process – Table 2.1 Variances:
 - The Development Authority may issue a variance up to 40% in the R2 – Country Estate Residential District.
 - Variance requests that exceed the Development Authority's prescribed variance powers in the Land Use Bylaw shall be refused by the Development Authority.
5. The Development Authority could not approve the permit as the proposed development would exceed the variance authority as follows:

- The side yard setback is 1.2 metres (4 feet). Therefore, the requested variance is 1.3 metres (4.2 feet) or 52%.
6. The Development Authority is aware of the structures located on the reserve land owned by the Appellant. Sturgeon County is currently drafting policy to address these types of non-conformance issues expected to go before Council in the fall.
 7. The Board's decision for 021-STU-012 was also for this building and was supported by the Board as it considered it 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.
 8. A deck or lean to is not considered in the calculation of maximum floor area; therefore, this proposal can be supported. If approved, a recommended condition of the permit is that the lean to remain unenclosed and the deck remain uncovered. If either of the structures are further developed in this manner, they would be considered into the calculation of floor area and would require further variances.
 9. The building code inspector reviewed the drawings and advised that there is no prescribed setback for a garage and accessory building on a personal use property. Referral to other internal departments was not required as the proposed development does not affect any infrastructure.

DECISION

[11] **The Board GRANTS the appeal and REVOKES the decision of the Development Authority made on July 14, 2023 to refuse development permit application 305305-23-D00197, and APPROVES a development permit with the following conditions:**

1. Prior to any construction occurring on site, a separate building permit shall be obtained and approved. Minimum construction standards shall conform to the requirements of the current Alberta Building Code.
2. Electrical, gas, plumbing, and private sewage disposal permits be obtained as required.
3. The minimum building setbacks are:
 - **Side yard: Variance Granted to 1.2 metres (4 feet)**
4. The deck shall remain uncovered and the lean to shall remain unenclosed.
5. 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 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.

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. The exterior finish of the dwelling shall be completed within two years of the date of issuance of the development permit.
8. 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 granted by the Development Authority.

Advisory Notes:

1. Please be advised an approved building permit is required prior to any construction occurring on site. Construction occurring prior to the issuance of a building permit is subject to a double fee penalty. Early excavation, prior to building permit approval, can result in standing water, potential for freezing and can cause safety hazards for neighbouring properties if the area is open for longer than necessary.
2. 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.
3. It is the responsibility of the applicant/landowner to ensure that all development, and activities associated with the development, complies with any federal, provincial, or municipal laws/legislation and any required license, permit, approval, authorization, regulation, or directive.

REASONS FOR THE DECISION

- [12] The subject property is in the R2 – Country Estate Residential District.
- [13] The application is to construct a deck and lean to addition to an accessory building with a variance to the side yard setback. The variance required for the side yard setback for the proposed development is 1.3 metres (4.2 feet) or 52%.
- [14] Sturgeon County Land Use Bylaw 1385/17 states the minimum side yard setback for accessory buildings is 2.5 metres (8.2 feet). The Development Authority was required to refuse the application as it exceeded the 40% variance authority in the Land Use Bylaw.

- [15] 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.
- [16] Adjacent landowners were notified of the proposed development and did not make submissions of opposition to the Board, which satisfies the Board 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.
- [17] The Board finds that the proposed development conforms with the use prescribed in the Land Use Bylaw, being a deck and lean to addition to an accessory building in the R2 – Country Estate Residential District.
- [18] For all of these reasons, the Board grants the appeal and approves the variance for the proposed development with the conditions noted above.

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