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Appeal File Numbers: 022-STU-017  
Application Number: 305305-22-D0320  
Appeal Against: Development Authority of Sturgeon County  
Appellants: James and Laura Betz  
Date and Location of Hearing: December 20, 2022  
Council Chambers and Through Electronic Communications  
Date of Decision: January 3, 2023  
SDAB Members: Lee Danchuk (Presiding Officer), Mark Garrett, Alanna Hnatiw, Al  
Montpellier, Amanda Papadopoulos

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### NOTICE OF DECISION

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**IN THE MATTER OF** an appeal by James and Laura Betz against the Development Authority’s refusal to leave an existing accessory building (fabric structure 30 feet x 60 feet) as built with a variance to the front yard setback at Plan 7720113; Block 2; Lot 5 Hewitt Estates 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 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 Presiding Officer.
- [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 fabric structure has been in the same location for 17 years.
- Since it is not a permanent structure, the Appellants believed it did not require a development permit.
- The fabric structure is in a location that is convenient, and the neighbours' views have not been affected.

#### **RECOMMENDATION OF THE DEVELOPMENT AUTHORITY**

- [10] Carla Williams, representative for the Development Authority, provided a presentation which outlined the Development Authority's refusal of development permit application 305305-22-D0320. In summary:

1. The property is in the R1 – Country Residential District. The parcel is 1 hectare (2.54 acres) with a single detached dwelling, an attached garage, and the fabric structure. The house was constructed 1978 and the garage in 1995.
2. A complaint was received in September 2022 referring to an illegal building (fabric structure) and the operation of a mechanic shop operating from the subject property. A search of the land file revealed no record of development or building approval for the existing building nor was there an approval to operate a home-based business.
3. 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.
4. The accessory building meets the Land Use Bylaw regulations with respect to floor area, height, and side and rear yard setbacks.
5. The accessory building does not meet the Land Use Bylaw requirements with respect to the front yard setback. The building is 4.6 metres from the front yard property line and the minimum front yard setback on an R1 parcel is 12 metres. Therefore, a variance of 7.4 metres or 61.7% is required to leave the structure as built. The variance exceeds the Development Authority's discretion (40%) and was refused.
6. The accessory building has been on the property for 17 years without a permanent foundation. It does not appear that it is used for the operation of a business and a mature shelterbelt has grown between the structure and the road to soften the impact to adjacent properties.
7. Administration would support approval to leave the structure as built with the recommended conditions.

**SUMMARY OF APPELLANTS' POSITION**

- [11] The fabric structure was placed on the property in 2005 and has stayed in the same location for the last 17 years. There have been no complaints for the 17 years that the shelter has been in place.
- [12] At the time of building the fabric structure, the Appellants inquired with the County and were told that no permits were required for a temporary structure.
- [13] The fabric structure is placed along a tree line that blocks the view from the road and from neighbouring properties.
- [14] The fabric structure is in good condition and is estimated to be halfway through its expected life. When it is no longer viable, it will be replaced with a permanent shed that will meet all setback requirements.
- [15] The fabric structure stores a boat, trailer, and utility equipment. There is no business operating from the property. The Appellants own all the vehicles on the property, which are being repaired or used for parts.

**DECISION OF THE BOARD**

[16] **The Board GRANTS the appeal and REVOKES the decision of the Development Authority made on November 9, 2022 to refuse development permit application 305305-22-D0320, and approves the development permit with the following conditions:**

- 1. A separate building permit shall be obtained and approved.
- 2. The accessory building (fabric structure 30ft x 60ft in floor area) is approved to remain in accordance with the site plan provided.

<b>Minimum Front Yard Required</b>	<b>12m (39.4ft)</b>
Actual Front Yard	4.6m (15ft)
Variance Granted	7.4m or 61.7%

- 3. The accessory building shall be used for personal use only.

**REASONS FOR THE DECISION**

- [17] The property in question is located within the R1 – Country Residential District. The parcel is 1 hectare (2.54 acres) with a single detached dwelling, an attached garage, and the fabric structure.
- [18] The Appellants' request is to leave the accessory building (fabric structure) as built with a variance to the front yard setback. Section 12.1.4 of the Land Use Bylaw states that, within the R1 - Country Residential District, the minimum front yard setback for an accessory building abutting a local road is 12 metres (39.4 feet). 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 61.7% to the front yard setback exceeds the maximum percentage that may be granted by the Development Authority, and therefore the application was refused.

- [19] 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.
- [20] The Board received evidence that a complaint was received in September 2022 referring to an illegal building (fabric structure) and the operation of a mechanic shop operating from the subject property, resulting in the Development Authority conducting a search of the land file, which revealed no record of development or building approval for the existing building or approval to operate a home-based business.
- [21] The Board received a written submission in opposition to the appeal, from Stefanie and Michael Blossom, who state two reasons for their position: 1) that all residents of the subdivision should become familiar with and follow County regulations, and 2) the fabric structure is in their direct line of sight and is not visually appealing.
- [22] The only photographs available to the Board were supplied by the Development Authority, which show a fabric structure in good condition. The photographs also show a mature shelterbelt between the structure and the road. No other photographs or documentary evidence were supplied to indicate how the structure appeared from the vantage point of neighbouring properties.
- [23] The Board heard verbal submissions from two residents. Gary Ochitwa indicated that he does not live in the vicinity of the proposed development and who spoke to the assertion that the Appellant was told he did not need a permit for the fabric structure. The Board gave no weight to his submission.
- [24] The second speaker, Abigail Coughlan, identified herself to live in the Hewitt Estates subdivision and noted that the fabric structure has been in place for as long as she has lived in the community and that it cannot be seen from the roadway due to the mature trees. Based on her proximity to the property in question, the Board placed some weight on her submission, which is consistent with the fabric structure being in the same location for 17 years without complaint.
- [25] The Board noted that there are several derelict vehicles on the property, but there was no evidence that the fabric structure is being used for the purpose of operating a home-based business. Photographs provided by the Development Authority show that the structure is being used for personal storage, including for a boat, trailer, lawnmower, and other personal items.
- [26] The accessory building meets the Land Use Bylaw regulations with respect to floor area, height, and side and rear yard setbacks.
- [27] On the balance of the evidence, the Board is satisfied that the structure 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, as the mature shelterbelt softens the impact from the roadway.

- [28] Alternatively, the Board considered the potential impact of requiring the landowners to relocate the fabric structure in order to come into compliance with the Land Use Bylaw. The Board considered that a decision to require the structure to be moved back farther from the road would be unlikely to rectify the adjacent landowners' concerns regarding the condition of the structure and sight lines.
- [29] The Board finds that the structure conforms with the uses prescribed in the Land Use Bylaw, being an accessory building.
- [30] For all of these reasons, the Board grants the appeal and approves the development permit with the conditions noted.

Dated at the Town of Morinville, in the Province of Alberta, this 3<sup>rd</sup> day of January, 2023.



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Lee Danchuk, Presiding Officer

*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
- Adjacent landowner's written submission