
Appeal File Number: 023-STU-013
Application Number: 305305-23-D0157
Appeal Against: Development Authority of Sturgeon County
Applicant/Appellant: Ravi Chand
Date and Location of Hearing: July 11, 2023
Council Chambers and Through Electronic Communications
Date of Decision: July 21, 2023
SDAB Members: Julius Buski, Neal Comeau, Amanda Papadopoulos, Don Rigney and Lili Terry

NOTICE OF DECISION

IN THE MATTER OF an appeal by Ravi Chand against the Development Authority’s refusal to complete construction of a rail and drive shed structure with a variance to the side property line setback at Plan 7720672, Block 2, Lot 8 (112, 55202 Highway 825) 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 the following grounds of appeal:

- a. He wants to build the cover over the rail line to load products out of the weather elements.
- b. The building cannot be moved due to the curvature and point tangents. If the building was moved further away from the property line, the rail cars would not have enough clearance to enter the building.
- c. He owns all adjacent lots so there is no need for a road right of way.

RECOMMENDATION OF THE DEVELOPMENT AUTHORITY

[10] Tyler McNab, representative of the Development Authority, provided a presentation which outlined the Development Authority's refusal of Development Permit 305305-23-D0157. In summary:

1. The subject parcel is districted at I4 – Medium Industrial Serviced District and located in the Sturgeon Industrial Park.
2. The proposed accessory building for a transloading facility is a permitted use within the I4 district.
3. The application aligns with the Municipal Development Plan as the transload and rail spur diversifies industrial activities in the Sturgeon Industrial Park.
4. The existing foundation is too close to the side and rear property lines and does not meet minimum side and rear setbacks. Pursuant to section 14.4.4 of the Land Use Bylaw, the minimum side yard setback in the I4 District is 5 metres (16.4 feet). The foundation is 1.1 metres from the side and 3.5 metres from the rear property line.

Required side yard setback – 5 metres

Actual side yard setback – 1.1 metres

Variance required – 3.9 metres or 78%

5. Pursuant to section 2.8.6 of the Land Use Bylaw, the Development Authority may grant a variance of up to 50% in the I4 District. Section 2.8.6(b) states variances for the district in excess of what is prescribed shall be refused by the Development Authority. The requested side yard variance exceeds 50% and had to be refused by the Development Authority.
6. Total Transload Services owns and occupies the entire block in the Sturgeon Industrial Park and with the existing rail spur location and curvature, the Development Authority is supportive of the variance to allow construction of the accessory building to proceed

on the existing foundation.

SUMMARY OF APPELLANT'S POSITION

- [11] The Appellant, Ravi Chand, submitted that the building will be the first of its kind in Western Canada and will be a covered transload facility for food grade materials.
- [12] A few years ago, a general contractor was hired to complete all aspects required for the development of the building. It was discovered last year that the contractor had completed less than 50% of what was required.
- [13] The Appellant contacted County Administration and was told that no permits had been submitted for the building. After submitting the permits, he was informed the building was encroaching onto the adjacent parcel.
- [14] There will not be any access issues for any of the adjacent lots as there will be a 20-foot-wide truck lane for vehicles to pass easily.
- [15] The building cannot be moved because of the degree of curvature required for the locomotive to come into the building.

DECISION

- [16] **The Board GRANTS the appeal and REVOKES the decision of the Development Authority made on June 13, 2023, to refuse development permit application 305305-23-D0157, and APPROVES a development permit with the following terms and conditions:**

1. A building permit shall be obtained and approved.
2. Construction of the accessory building is to be in accordance with the approved site plan and engineered drawings.

Side yard: 1.1metre (3.6 feet) Variance Granted 3.9 metres or 78%

Rear yard: 3.5 metres (11.5 feet) Variance Granted 1.5 metres or 30%

3. The accessory building shall not exceed 683.7 square metres (7,358.7 square feet) in area.
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. 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.
5. 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.

6. 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.

Advisory Notes:

1. Construction occurring prior to the issuance of a building permit is subject to a double fee penalty.
2. 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, Alberta Environment and CN Rail.
3. The applicant/landowner must also comply with the conditions of any easement of covenant which affects the development.

REASONS FOR THE DECISION

- [17] The subject property is in the I4 – Medium Industrial Serviced District. The Appellant’s request is to complete construction of a rail and drive shed structure with variances to the side and rear setbacks. The proposed accessory building for a Transloading Facility is a permitted use within the I4 district.
- [18] Section 14.4.4 of the Land Use Bylaw 1385/17 specifies the minimum side and rear yard setback in the I4 Medium Industrial Serviced District is 5 metres. Section 2.8.6 of Land Use Bylaw 1385/17, states that the maximum amount of variance that may be granted by the Development Authority in the I4 – Medium Industrial Serviced District is 50% and that variances in excess of what has been prescribed shall be refused by the Development Authority. The requested variance of 78% on the side yard setback exceeds the maximum percentage that may be granted by the Development Authority, and therefore the Development Permit was refused and appealed to the Board.
- [19] The Board heard from the Development Authority that the requested variance of 30% to the rear yard setback is within the Development Authority’s authority to approve. However, as this is a hearing *de novo*, the Board is tasked with determining if the variance to the rear yard setback is appropriate.
- [20] The Board heard evidence from the Development Authority that the proposed development aligns with the Sturgeon County Municipal Development Plan as the facility diversifies industrial activities in the Sturgeon Industrial Park.
- [21] The Board further heard from the Development Authority that since the Applicant owns and occupies the entire block in the Sturgeon Industrial Park and in consideration of the rail spur location and curvature, the Development Authority is supportive of the variance requested and would have approved the application if the Land Use Bylaw so authorized.
- [22] 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.

- [23] 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.
- [24] The Board finds that the proposed development conforms with the use prescribed for that land in the Land Use Bylaw being, an accessory building for a Transloading Facility.
- [25] For all of these reasons, the Board grants the appeal and approve variances to the rear and side yard setbacks for the accessory building with the conditions noted above.

Dated at the Town of Morinville, in the Province of Alberta, this 21st day of July, 2023.



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