

---

Appeal File Numbers: 022-STU-010  
Application Number: 305305-22-D0158  
Appeal Against: Development Authority of Sturgeon County  
Appellants: James and Laura Betz  
Date and Location of Hearing: July 19, 2022  
Council Chambers and Through Electronic Communications  
Date of Decision: July 27, 2022  
SDAB Members: Chair Lee Danchuk, Neal Comeau, Mark Garrett, Allan Montpellier, Lili Terry

---

### NOTICE OF DECISION

---

**IN THE MATTER OF** an appeal by James and Laura Betz against the Development Authority's approval to construct a garage suite with a height variance at Plan 7720113; Block 4; Lot 7 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;
  - Appellants' written submission;
  - Applicants' written submission; 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 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 Appellants raised the following grounds of appeal:
  - If another suite/house is built on the lot, it will make acreage living disappear.
  - In the past, second dwellings have not been allowed.
  - There should not be a precedent set where second dwellings are allowed.

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

Carla Williams, representative for the Development Authority, provided a presentation which outlined the Development Authority's approval of development permit 305305-22-D0158. In summary:

- [10] The property is in the R1 – Country Residential District. The parcel is 0.55 hectares (1.36 acres) with a single detached dwelling, an attached garage, and small accessory buildings.
- [11] According to the Municipal Development Plan (MDP), in the R1 Residential District, an accessory dwelling unit is supported as an affordable housing option.
- [12] The proposed Accessory Dwelling Unit meets the definition of a Garage Suite, and the proposed location is in accordance with all setback requirements.
- [13] The proposed suite does not meet the Bylaw regulations with respect to the height of an accessory building. The maximum height for an accessory building is 8 metres (26.2 feet) and the proposed building is 8.5 metres (28 feet). A variance of 0.5 metres (1.6 feet) or 5.9% was granted in accordance with section 2.8.6, which states the Development Officer may grant a variance of up to 19.9% in the R1 District.
- [14] The suite is under 115 square metres (1,237 square feet) in area.
- [15] The parcel coverage of existing buildings and the proposed suite is 6.9%.
- [16] The Applicants confirmed vehicle access to the suite will be an extension of the existing driveway used for the principal dwelling. Only one access is allowed as per the County's General Municipal Servicing Standards. There is ample space for on-site parking to be provided for on the parcel.
- [17] The land title includes a caveat (#782 117 404) dated January 31, 1978. The Restrictive Covenant Agreement between the original developer of the subdivision and the original landowner of the parcel states, no more than one dwelling for one family or household unit with such further structures as may be necessary for the use of such household unit shall be erected on any private

area in Hewitt Estates. Resale of any lot must be accompanied by and include these covenants and restrictions to be assumed by the new purchaser. The municipality is not a party to the caveat and therefore the County is not obligated and cannot enforce these restrictions.

**SUMMARY OF APPELLANTS' POSITION**

- [18] Hewitt Estates has large, desirable lots.
- [19] Secondary suites have been denied in the past and the County should continue to deny these developments.
- [20] There should not be a precedent set where second dwellings are allowed.
- [21] The caveat placed on the properties by the Developer should be considered and abided by.
- [22] The development will reduce property values in the community and there will be an increase of traffic due to an increase in residents.

**SUMMARY OF APPLICANTS' POSITION**

- [23] They purchased the property in Hewitt Estates and are enjoying the community. They are intending this to be their forever home.
- [24] Mrs. Blossoms' parents have been searching for a property in the County to purchase but have not had success in finding one. They also feel comfortable in Hewitt Estates.
- [25] The structure will be built for the parents to move into so they can be close to family.
- [26] The structure will be built to match the current home and will not be an eye sore.

**DECISION OF THE BOARD**

**[27] The Board DENIES the appeal and UPHOLDS the decision of the Development Authority made on June 10, 2022 to approve development permit 305305-22-D0158 with the following conditions:**

1. Prior to any construction occurring on site, a separate building permit shall be obtained and approved. Minimum construction standards will conform to the requirements of the current Alberta Building Code.
2. Separate electrical, gas, plumbing and private sewage disposal permits shall be obtained as required.
3. Pursuant to section 12.1.4 of the Land Use Bylaw, the maximum height for an accessory building is 8 metres (26.2 feet).
  - Proposed height – 8.5 metres (28 feet)
  - Variance requested – 0.5 metres (1.6 feet) or 5.9%The variance is granted.
4. The accessory dwelling unit developed as a garage suite shall meet the setbacks for an accessory building of the R1 district as follows:
  - Front yard 12 metres (39.4 feet)
  - Side yard 3 metres (9.8 feet)
  - Rear yard 3 metres (9.8 feet)
5. The maximum parcel coverage shall not exceed 35%.

6. The minimum distance between an accessory dwelling unit and the principal dwelling shall be 4.8 metres (15.7 feet).
7. A maximum of one accessory dwelling unit shall be considered per principal dwelling and shall be subordinate to the principal dwelling.
8. The maximum floor area of an accessory dwelling unit shall not exceed 115 square metres (1,237 square feet).
9. The accessory dwelling unit shall be constructed on a permanent foundation.
10. The accessory dwelling unit shall not be separated from the principal dwelling by condominium conversion or subdivision.
11. Vehicle access to the accessory dwelling unit shall utilize the existing approach.
12. The accessory dwelling unit shall have an entrance separate from any vehicle entrance and be either from a common indoor landing or directly from the exterior of the structure.
13. The accessory dwelling unit shall be designed and finished to match or compliment the exterior finish of the principal dwelling.
14. An accessory dwelling unit should connect to the municipal water and sanitary services where available.
15. Two on-site parking stalls shall be provided for an accessory dwelling unit over 80 square metres in floor area.
16. No development shall encroach on or be erected on an easement or right-of-way unless the owner of the encroaching structure has obtained written consent from the owner or licensee to which the easement or right-of-way has been granted.
17. 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.
18. 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.
19. 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.

**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.
2. An Accessory Dwelling Unit means a self-contained dwelling unit, that is located either within or on the same titled parcel, and accessory to a principal dwelling and meets the Alberta Building Code. Accessory dwelling units include but are not limited to garden suites, garage suites, and secondary suites.
3. The accessory dwelling unit shall be provided with a number designation in accordance with Sturgeon County's Municipal Address System.
4. Where connection to municipal services is requested, the applicant is required to complete service applications prior to the connection request. Water and sewer lines are required to be inspected prior

to being backfilled.

5. 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.
6. 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

- [28] The property is in the R1 – Country Residential District. The Appellants’ request is to construct a garage suite with a height variance. Section 12.1 of the Land Use Bylaw states that the maximum height for an accessory building in the R1 district is 8 metres (26.2 feet). A variance of 0.5 metres (1.6 feet) or 5.9% was granted in accordance with section 2.8.6 of the Land Use Bylaw, which states that the Development Officer may grant a variance of up to 19.9% in this district.
- [29] The Board received evidence from the Development Officer that the subject parcel meets the Bylaw regulations with respect to parcel coverage and maximum floor area.
- [30] 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.
- [31] The Board recognized a caveat placed on the property in 1978 between the original Developer of the subdivision and original landowner of the parcel which allowed for no more than one dwelling for one family or household to be erected on any private area in Hewitt Estates. The Board finds that Sturgeon County is not a party to the caveat and is unable to enforce it.
- [32] The Appellants raised concerns that the proposed development would reduce property values and increase traffic in the community. However, as no documentary evidence was provided to substantiate these claims, the Board gave no weight to these assertions.
- [33] The Board received 5 written submissions in support of the proposed development and no submissions from adjacent landowners in opposition. On the balance of the evidence, the Board determined 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.
- [34] The Board considered the Appellants’ argument that additional dwelling units should not be permitted, and that approval of such developments sets a precedent. By including Accessory Dwelling Unit as a discretionary use in the R1 District, the Board finds that Council has made a policy decision to allow for these types of developments, subject to the conditions imposed by the Development Authority. The general argument that such developments should not be permitted is misplaced before the Board, whose jurisdiction is, upon receipt of an appeal,

# SUBDIVISION and DEVELOPMENT

## APPEAL BOARD

Sturgeon County  
9613-100 Street, Morinville, AB T8R 1L9

considering the specific factors of the application.

- [35] The Board finds that the proposed development conforms with the use prescribed in the Land Use Bylaw, being an accessory dwelling unit.
- [36] For all of these reasons, the Board has decided to deny the appeal and uphold the decision of the Development Authority to approve the development permit with the conditions noted above.

Dated at the Town of Morinville, in the Province of Alberta, this 27<sup>th</sup> day of July 2022.



---

Lee Danchuk, Chair

*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;
- The Appellants' written submission;
- The Applicants' written submission; and
- Adjacent landowner's written submission