
Appeal File Numbers:	022-STU-011
Application Number:	305305-22-D0166
Appeal Against:	Development Authority of Sturgeon County
Appellant:	Craig Kalenchuk
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 Craig Kalenchuk against the Development Authority’s refusal to leave an accessory building as built with a variance to the side yard setback at Plan 7820387; Block 3; Lot 3 Pinewood 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;
 - Appellant’s written submission; and
 - Adjacent landowner’s written submission

PRELIMINARY MATTERS

- [4] At the commencement of the hearing, the Appellant, Craig Kalenchuk, was not in attendance.
- [5] The Board confirmed with the Board Secretary that the Appellant was provided written notice of the hearing.

- [6] The Board did not receive a request from the Appellant for an adjournment of the hearing.
- [7] The hearing was commenced 33 minutes after the scheduled time provided in the written notice to the Appellant.
- [8] In accordance with section 686(2) of the *Municipal Government Act*, the Board must hold an appeal hearing within 30 days after receipt of a notice of appeal, meaning that the Board must hear the appeal no later than July 23, 2022.
- [9] Upon being satisfied that appropriate notice was provided to the Appellant and that sufficient time was provided for him to attend, the Board proceeded with the hearing in the Appellant's absence. The Board considered the Appellant's written submissions.

PROCEDURAL MATTERS

- [10] The appeal was filed on time and in accordance with section 686 of the MGA.
- [11] The Board is satisfied that it has jurisdiction to deal with this matter.

ISSUES

- [12] The Appellants raised the following grounds of appeal:
- The building is 40 years old.
 - The garage is angled to the property line, resulting in only a small corner of the building being against the setback variance.
 - The building is of a neat finish.
 - There have been no objections from the neighbours

RECOMMENDATION OF THE DEVELOPMENT AUTHORITY

Tyler McNab, representative for the Development Authority, provided a presentation which outlined the Development Authority's refusal of development permit application 305305-22-D0166. In summary:

- [13] The property is in the R1 – Country Estate Residential District. The parcel is 3 hectares in size with a dwelling and attached garage. Development Permit (93-87) was issued to construct an accessory building 6 metres (20 feet) from the side property line.
- [14] A compliance certificate application was received in May 2022 where the Real Property Report revealed the accessory building was not in compliance with the minimum side yard setback of 3 metres (9.8 feet). The original accessory building received approval; however, the addition of the lean-to did not.
- [15] The accessory building does not meet the Land Use Bylaw requirements with respect to the minimum side yard setback. The variance required to leave the structure as built exceeds what may be granted by the Development Authority. The application was refused for the following reasons:
- Section 12.1.4 of the Land Use Bylaw states the minimum side yard setback for an accessory building is 3 metres (9.8 feet) within the R1 - Country Estate Residential District.

Actual side yard – 1.68 metres (5.51 feet)

Variance required – 1.32 metres (4.33 feet) or 44%

- Pursuant to section 2.8.6 of the Land Use Bylaw, the maximum variance that may be granted by the Development Authority in the R1 district is 40%. Variances for the district in excess of what is prescribed shall be refused by the Development Authority.

[16] There are mature trees along the property boundary softening any negative impacts on adjacent properties and leaving the accessory building as constructed would not unduly interfere with the amenities of the neighbourhood or materially interfere with or affect the use, enjoyment or value of neighbouring properties.

SUMMARY OF APPELLANT'S POSITION

[17] He is the original owner of the property.

[18] The need to obtain a Real Property Report has resulted in the appeal.

[19] The garage was built in 1985 and has the required building permit. The concrete was over-poured causing the garage to have a setback of 2.37 metres or a 21% non-compliance.

[20] A lean-to was added and upon enquiring with the County, he was informed that lean-tos were exempt from permits and taxation and assumed that lean-tos did not need to meet the variance requirements.

[21] The setback variance is now calculated at 1.68 metres or 44%.

[22] The building is of sound construction, finished in stucco and aluminum trim, and kept in good order. It is separated from the existing neighbour by a 1 metre board fence, a tree line, and a lawn. The building is only visible to the north neighbour as the frontage of the property is forested, which prevents any view of the development.

DECISION OF THE BOARD

[23] The Board GRANTS the appeal and REVOKES the decision of the Development Authority made on June 22, 2022, to refuse development permit application 305305-22-D0166, and approves the development permit with the following conditions:

1. A variance is granted from the minimum setbacks of 3m (9.8ft) as shown on the Real Property Report dated April 29, 2022 signed by RN Heacock:

Approved Side yard Setback – 1.68 metres (5.51 feet)

Variance Granted – 1.32 metres (4.33 feet) or 44%

2. A separate building permit shall be obtained. Minimum construction standards will conform to the requirement of the current Alberta Building Code.

REASONS FOR THE DECISION

- [24] This property is located in the R1 – Country Residential District. The Appellant’s request is to leave an accessory building as built with a variance to the side yard setback. Section 12.1.4 of the Land Use Bylaw states that the minimum side yard setback for an accessory building in this district is 3 metres. 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 district in excess than what is prescribed shall be refused by the Development Authority. The requested variance of 44% to the side yard exceeds the maximum percentage that may be granted.
- [25] 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.
- [26] The Board received a letter of support from a neighbouring property owner and no submissions stating opposition to the proposed development. The Board also received photographs from the Appellant indicating that the structure is in good condition and is being properly maintained. Therefore, the Board is satisfied 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.
- [27] The Board finds that the proposed development conforms with the uses prescribed in the Land Use Bylaw within the R1 – Country Residential District, being an accessory building.
- [28] For all of these reasons, the Board grants the appeal with the conditions noted and revokes the decision of the Development Authority to refuse the development permit.

Dated at the Town of Morinville, in the Province of Alberta, this 27th 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 Appellant's written submission; and
- Adjacent landowner's written submission