
Appeal File Number:	023-STU-011
Application Number:	305305-23-D0140
Appeal Against:	Development Authority of Sturgeon County
Applicant/Appellant:	Shelley Takacs
Date and Location of Hearing:	July 4, 2023 Council Chambers and Through Electronic Communications
Date of Decision:	July 18, 2023
SDAB Members:	Julius Buski, Neal Comeau, Lee Danchuk, Mark Garrett, and Amanda Papadopoulos

NOTICE OF DECISION

IN THE MATTER OF an appeal by Shelley Takacs against the Development Authority’s refusal to leave two existing accessory buildings as built with variances to rear and side yard setbacks at NE 5-55-24-W4M (24415 Township Road 551) 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 she would like to leave the existing accessory buildings as built with variances to the rear and side yard setbacks.

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-D0140. In summary:
1. The parcel is 5.06 acres and developed with a single detached dwelling, various outbuildings, and the event barn. There are two separate accessory buildings involved in the permit.
 2. Building A (18.35 x 9.82 metres) is the existing barn, previously approved under permit 305305-18-D0299 and is currently being used as an Event Venue for weddings. Building B (5.50 x 3.76 metres) is a small shed being used for storage.
 3. Council granted approval of the rezoning of the lands to Agriculture 2 which allows the parcel to be accommodated for diversified agricultural development that has a greater effect on local roads, infrastructure, and neighbouring parcels due to increased levels of traffic and visitors.
 4. Once rezoning was established, the landowner had to apply for a development permit for the new use to bring the property into compliance. A surveyed site plan was obtained by the landowner which revealed the two buildings did not meet minimum setbacks.
 5. A separate approval has been issued for Event Venue under permit number 305305-23-D0139.
 6. Land Use Bylaw 1384/17 states:
 - Section 2.8.6: The maximum percentage of variance that may be granted by the Development Authority in the AG2- Agriculture 2 District is 50%.
 - Section 2.8.6(b): Variances for the districts in excess of what is prescribed shall be refused by the Development Authority.
 - Section 11.1A: The minimum rear yard and side yard setback for accessory buildings in the AG2 District is 3 metres (9.8 feet).

7. The Development Authority could not approve the permit as the developments exceeded the variance authority as follows:
 - Building A (18.35 x 9.82 metres) -The rear yard setback is 1.26 metres (4.1 feet). Therefore, the requested variance is 1.74 metres (5.7 feet) or 58%.
 - Building (5.50 x 3.76 metres) - The side yard setback is 0.36 metres (1.2 feet). Therefore, the requested variance is 2.64 metres (8.6 feet) or 88%.
8. The Development Authority recommends that the Board uphold the appeal and grant the permit to leave the existing accessory buildings as built with variances to rear and side yard setbacks subject to the conditions included in the Planning & Development Services Report.

SUMMARY OF APPELLANT'S POSITION

- [11] The Appellant, Shelley Takacs, submitted that the existing structures on the property do not negatively impact adjacent properties.
- [12] Building A (event barn), constructed in 2018, was inadvertently placed too close to the property boundary in absence of visible property markers.
- [13] Building B (storage shed) was pre-existing on the property at time of purchase and does not interfere with the neighbouring property.

SUBMISSIONS FROM OTHER AFFECTED PERSONS

- [14] Morris Lowe, an adjacent property owner, spoke in favour of the appeal, noting that Building B in no way impacts the use of his property.

DECISION

- [15] **The Board GRANTS the appeal in part, REVOKES the decision of the Development Authority made on June 5, 2023, to refuse development permit application 305305-23-D00140, and APPROVES a development permit with the following terms and conditions:**
1. Building A (18.35 x 9.82 metres) - A variance is granted to the rear yard setback at 1.26 metres (4.1 feet).
 2. Building B (5.50 x 3.76 metres) - A variance is granted to the side yard setback at 0.36 metres (1.2 feet).
 3. A separate building permit shall be obtained. Minimum construction standards will conform to the requirements of the current Alberta Building Code.
 4. The accessory building shall not be used as a dwelling.
 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.

REASONS FOR THE DECISION

- [16] The subject property is in the AG2 – Agriculture 2 District.
- [17] The application is to leave two existing accessory buildings as built with variances to rear and side yard setbacks. The variance required for the rear yard setback for Building A (event barn) is 1.74 metres (5.7 feet) or 58%. The variance required for side yard setback for Building B (storage shed) 2.46 metres (8.6 feet) or 88%.
- [18] Sturgeon County Land Use Bylaw 1385/17 states the minimum rear yard and side yard setback for accessory buildings is 3 metres (9.8 feet). The Board notes that, upon amending the Land Use Bylaw with Bylaw 1597/22 to add the AG2 District to the Land Use Bylaw, the variance table in section 2.8.6 was not amended to prescribe the Development Authority's variance powers in the AG2 District. Therefore, the Board interprets that the Development Authority does not have variance powers in this District. This is inconsequential since under either interpretation, the variance requests would have had to have been refused by the Development Authority and the matter appealed to the Board.
- [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 considered the documentary evidence, including the aerial photograph of the subject property showing the proximity of the accessory buildings in relation to the property boundary.
- [21] A landowner immediately adjacent to the west of the subject parcel submitted that the position of accessory Building B does not impact the use of his property.
- [22] The Board received no submissions stating opposition to the proposed variances. Therefore, the Board is satisfied that the accessory buildings do 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.
- [23] The Board finds that the proposed development conforms with the use prescribed in the Land Use Bylaw, being accessory buildings in the AG2 District.
- [24] For all of these reasons, the Board grants the appeal and approves variances for the accessory buildings as built with the conditions noted above.

Dated at the Town of Morinville, in the Province of Alberta, this 18th day of July, 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