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Appeal File Numbers: 022-STU-006  
Application Number: 305305-22-D00121  
Appeal Against: Development Authority of Sturgeon County  
Appellants: David Hayes  
Date and Location of Hearing: June 21, 2022  
Council Chambers and Through Electronic Communications  
Date of Decision: July 5, 2022  
SDAB Members: Chair Julius Buski, Lee Danchuk, Neal Comeau, Allan Montpellier,  
Amanda Papadopoulos

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#### NOTICE OF DECISION

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**IN THE MATTER OF** an appeal by David Hayes against the Development Authority’s refusal to leave an existing covered deck and uncovered deck with a variance to the side and rear yard setbacks at Lot 25; Block 10; Plan No. 7722157 (16 Prospect Place) 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*, 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 (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; and
  - Planning and Development Services Report.

#### 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] The Appellant provided advance notice to the Secretary of the Board that he would not attend the hearing, and therefore the hearing proceeded in his absence.
- [7] The Board is satisfied that it has jurisdiction to deal with this matter.

#### ISSUES

- [8] The Appellant raised the following grounds of appeal:
- The covered structure was installed over the original deck 24 years ago (1997) and no neighbour has ever complained;
  - There is plenty of space between the deck and fence for any equipment, if ever required;
  - The neighbour has advised that the development does not interfere;
  - The uncovered deck was built last summer (2021);
  - The new deck is very small compared to the original one;
  - There are no buildings opposite the deck and has a fenced-in path outside of the owner's fence;
  - There is no traffic opposite the deck and is only used to cut the grass.

#### RECOMMENDATION OF THE DEVELOPMENT AUTHORITY

Yvonne Bilodeau, representative for the Development Authority, provided a presentation which outlined the Development Authority's refusal of development permit application 305305-22-D00121. In summary:

1. The property is located in Cardiff Echoes in the R4 - Hamlet Serviced District. The parcel is 0.08 hectares (0.20 acres) with a dwelling with attached garage. A development (building) permit was issued to construct a dwelling with attached garage. A compliance certificate was issued on November 11, 1996 with no decks shown at that time.
2. 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.
3. The accessory buildings do not meet the Land Use Bylaw requirements with respect to the minimum side and rear yard setback. The variances required to leave the structures as built exceed what may be granted by the Development Authority. The application was refused for the following reasons:

##### **Enclosed Deck**

- Section 12.4.4 of the Land Use Bylaw states that the minimum side yard setback for an accessory building is 2.5 metres (8.2 feet) within the R4 -Hamlet Serviced District.

Variance required – 1.33 metres (4.36 feet) or 46%

##### **Unenclosed Deck**

- Section 12.4.4 of the Land Use Bylaw states that the minimum rear yard setback for an accessory building is 2.5 metres (8.2 feet) within the R4 - Hamlet Serviced District.

Variance required – 0.86 metres (2.8 feet) or 66%

- Pursuant to section 2.8.6 of the Land Use Bylaw, the maximum variance that may be granted by the Development Authority in the R4 – Hamlet Serviced District is 40%. Variances for the district in excess of what is prescribed shall be refused by the Development Authority.
4. According to the Appellant’s Notice of Appeal, the covered deck (side yard) was constructed over 24 years ago and no complaints have been received regarding the location of the structure; and the uncovered deck was built in the summer of 2021 as it had damaged boards and is smaller than the original deck. Photos provided by the applicant confirm the decks are in good condition.
  5. If the appeal is granted, a building permit will be required.
  6. There are mature trees along the adjacent property line, softening any impacts of side yard encroachment.
  7. Leaving the decks 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.

**DECISION OF THE BOARD**

[9] **The Board GRANTS the appeal and REVOKES the decision of the Development Authority made on May 20, 2022, to refuse development permit application 305305-22-D0121, and approves the development permit with the following conditions:**

1. A variance is granted from the minimum setbacks of 2.5 metres (8.2 feet) as follows and shown on the Real Property Report dated April 21, 2022, signed by Paul W.K. Chan, Alberta Land Surveyor.

<b>Side Yard</b>	<b>1.33 metres (4.36 feet) a variance of 46% - Covered Deck</b>
<b>Rear Yard</b>	<b>0.86 metres (2.8 feet) a variance of 66% - Uncovered Deck</b>

2. A separate building permit shall be obtained. Minimum construction standards will conform to the requirements of the current Alberta Building Code.
3. The uncovered deck as approved shall remain uncovered and unenclosed. Future deck construction is subject to separate development and building permit approval.

**REASONS FOR THE DECISION**

[10] The Appellant’s request is to leave an existing covered deck and uncovered deck with a variance to the side and rear yard setbacks. Section 12.4.4 of the Land Use Bylaw states that the minimum side and rear yard setbacks for an accessory building in this district is 2.5 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 districts in excess than what is prescribed shall be refused by the Development Authority. The requested variance of 46% to the side yard setback (covered deck) and 66% to the rear yard setback (uncovered deck) exceeds the maximum percentage that may be granted.

- [11] 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.
- [12] The Appellant did not attend the hearing; however, he provided reasons why the appeal should be granted, including that there have been no concerns from the neighbours. This was supported by the Development Officer who advised the Board that no complaints have been received regarding this property. The fact that no neighbours provided written or verbal submissions in opposition to the appeal further supports this claim.
- [13] The Board finds that the development does not 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, being an accessory building.
- [14] 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 5<sup>th</sup> day of July, 2022.

  
Julius Buski, 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 & Development Services Report