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Appeal File Numbers:	022-STU-003
Application Number:	305305-22-D0047
Appeal Against:	Development Authority of Sturgeon County
Appellant:	Derek Checora
Date and Location of Hearing:	March 29, 2022 Council Chambers and Through Electronic Communications
Date of Decision:	April 5, 2022
SDAB Members:	Chair Julius Buski, Lee Danchuk, Allan Montpellier, Amanda Papadopoulos

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### NOTICE OF DECISION

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**IN THE MATTER OF** an appeal by Derek Checora against the Development Authority’s refusal to construct a side (carport) and rear (two storey) addition to a detached garage with a variance to the side and rear yard setbacks at Plan 5618KS; Lot B 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 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 prior to the hearing 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; and
  - The Appellant’s written submissions

### 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 Appellant raised the following grounds of appeal:
- The project is not viable if the sizes are reduced to meet the setbacks. The cistern and septic field are on opposite sides of the existing garage, and it is not possible to extend in that direction.

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

Carla Williams, representative for the Development Authority, provided a presentation which outlined the Development Authority's refusal of development permit application 305305-22-D0347. In summary:

1. The property is in the R1 – Country Residential District. The parcel is 0.33 hectares (0.83 acres) in area developed with a single detached dwelling and detached garage.
2. The proposed development meets the Land Use Bylaw regulations with respect to parcel coverage and height.
3. Section 2.8.4(ii) of the Land Use Bylaw states, in exercising discretion under subsection 2.8.2, the Development Authority shall consider the general purpose and intent of the district. A variance from the provisions of the Bylaw shall not be granted when the variance will knowingly cause a building not to comply with the Safety Codes Act. In this regard, the Safety Codes Officer reviewed the application and confirmed the building can be constructed 0.47 metres from the property line if the building construction meets minimum building code requirements. The addition would require additional fire protection to include a layer of 5/8" type x drywall on the interior and non-combustible cladding along the property line adjacent to a residential property (east property line). The carport addition would not require additional drywall and cladding along the south property line and it is adjacent to a lane.
4. There are mature trees along the property boundary which provide screening from the neighbouring dwellings. However, construction of the additions may require removal of some of the trees. The applicant contacted the neighbours regarding the proposed development and received support from the property owners to the north and directly to the east.
5. The existing septic field limits development to the north of the existing garage. The existing building has a mezzanine at the back and the 2-storey addition would be an extension of this mezzanine.

6. The proposed additions do not meet the Bylaw requirements with respect to the minimum side and rear yard setback.

a) Pursuant to section 12.1.4 of the Land Use Bylaw, the minimum side yard setback for an accessory building is 3.0 metres within the R1 - Country Residential District.

Proposed side yard – 0.47 metres  
Variance requested – 2.53 metres or 84.3%

b) Pursuant to section 12.1.4 of the Land Use Bylaw, the minimum rear yard for an accessory building is 3.0 metres within the R1 - Country Residential District.

Proposed rear yard – 0.47 metres  
Variance requested – 2.53 metres or 84.3%

c) The maximum percentage of variance that may be granted by the Development Authority in the R1 – Country Residential District is 40%. Section 2.8.6(b) of the Land Use Bylaw states that variances for the districts in excess than what is prescribed shall be refused by the Development Authority. The requested variances of 84.3% exceed the maximum percentage that may be granted.

#### **SUMMARY OF APPELLANT’S POSITION**

- [10] The garage is going to be built on the far, right side of the property in the same location as the current shed and tents that are being used for storage of tools and equipment.
- [11] To build according to the current setbacks, the project would not be viable as the space would be too small for a vehicle or dump trailer to fit.
- [12] Utilizing the existing structure will minimize the cost and constructing the garage extension is recommended for structural stability of the overall garage.
- [13] There is tree coverage on the east side of the property and along the side of the carport there is a dead end road that services only two residents.
- [14] The extension cannot be built on the north side of the property due to the placement of the cisterns.
- [15] The written support of surrounding neighbours has been provided.

**DECISION OF THE BOARD**

**[16] The Board GRANTS the appeal and REVOKES the decision of the Development Authority made on March 8, 2022, to refuse development permit application 305305-22-D0047, and approves the development permit with the following conditions:**

1. The proposed side and rear addition to the existing detached garage is approved to be constructed in accordance with the stamped approved site plan and construction drawings.

Approved side and rear yard setback - 0.47 metres

Required side and rear yard setback – 3.0 metre

Variance Granted – 2.53 metres or 84.3%

2. Prior to any construction occurring on site, a separate building permit shall be obtained and approved. An accessory building that is to be constructed less than 2.4 metres (7.9 feet) from a parcel line shall be subject to additional fire protection to the satisfaction of the County's contracted Safety Codes inspection service provider and in accordance with the Safety Codes Act.

3. The detached garage with side carport/storage and rear 2-storey addition shall not exceed 254 square metres (2,736 feet) in floor area and 7 metres (23 feet) in height.

Maximum floor area is 230 square meters (2,475 square feet)

Variance Granted – 24 square metres (258 square feet) or 10%

4. The accessory building with new additions shall not be used as a dwelling.
5. The maximum parcel coverage shall not exceed 15%.
6. The accessory building shall not be used for purposes related to the operation of any commercial business and shall be used for personal use only.
7. The quality of the exterior treatment and design of the accessory building shall be compatible with other buildings in the vicinity. The exterior finish of the accessory building shall be completed within two years of the date of issuance of the development permit.
8. 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. If the drainage of this 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.
9. Exterior storage of good and materials associated with this approval shall be kept in a clean and orderly manner at all times and shall be screened from roads and adjacent residential uses to the satisfaction of the Development Authority. 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. A garbage receptacle shall be

placed on site during the construction stage and be removed upon completion.

10. 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. 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. Separate electrical, plumbing or gas permits are to be obtained as required.
3. 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.
4. 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 and Alberta Environment. The applicant/landowner must also comply with the conditions of any easement of covenant which affects the development.

**REASONS FOR THE DECISION**

- [17] The Appellant's request is to construct a side carport and rear two storey addition to a detached garage with a variance to the side and rear yard setback. Section 12.1.4 of the Land Use Bylaw states that the minimum side yard setback for an accessory building in the R1 – Country Residential district is 3.0 metres and the minimum rear yard setback for an accessory building is 3.0 metres. The maximum amount of variance that may be granted by the Development Authority in the R1 – Country Residential district is 40%. Section 2.8.6(b) of the Land Use Bylaw states that variances for the districts in excess than what is prescribed shall be refused by the Development Authority. The requested variance of 84.3% exceeds the maximum percentage that may be granted.
- [18] The Board received evidence from the Development Officer that the subject parcel meets the Bylaw regulations with respect to parcel coverage and height.
- [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 received letters of support from five neighbouring property owners and no submissions stating opposition to the proposed development. 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.
- [21] The Board finds that the proposed development conforms with the uses prescribed in the Land Use Bylaw within the R1 – Country Residential District.
- [22] For all of these reasons, the Board has decided to grant the appeal with the conditions noted and revoke 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 April, 2022.



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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 and Development Services Report; and
- The Appellant's written submissions