
Appeal File Numbers: 022-STU-014
Application Number: 305305-22-D0297
Appeal Against: Development Authority of Sturgeon County
Appellants: Dennis Wasnea
Date and Location of Hearing: November 8, 2022
Council Chambers and Through Electronic Communications
Date of Decision: November 22, 2022
SDAB Members: Chair Julius Buski, Lee Danchuk, Allan Montpellier, Lili Terry

NOTICE OF DECISION

IN THE MATTER OF an appeal by Dennis Wasnea against the Development Authority’s refusal to construct an accessory building for personal use storage building at Plan 1620169; Block 2; Lot 20B Silver Chief, 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; and
 - 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:
- He would like to build the accessory building before the principal building is constructed.

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-D0297. In summary:

1. The property is in the R1 – Country Residential District. The parcel is 1.47 acres and is developed with a 90 square foot shed built in 2016. The parcel was originally 3.02 acres and was split by subdivision application file 2013-S-047 and endorsed in 2015. There is no approach allowing access to the parcel from Range Road 261.
2. The general purpose for the Country Residential District is to accommodate uses in a residential context, which means the primary use is for residential purposes prior to any other uses being allowed. A stand-alone accessory building does not meet the intent of the district's residential context.
3. Silver Chief is a residential community with all other parcels except the subject parcel being developed with a dwelling.
4. 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.
5. Allowing an accessory building to be constructed prior to a dwelling indicates that residential parcels can primarily be used for storage and could even have unintended consequences of commercial use when parcels are sold.
6. The development permit was refused in accordance with sections 6.1.4 and 12.1.4 of the Land Use Bylaw.
7. Pursuant to Section 6.1.4 of Land Use Bylaw, an accessory building or use is not permitted on a parcel without a principal building or use being previously developed on the parcel.
8. Section 12.1.4 of Land Use Bylaw states the maximum floor area of an accessory building is 230 square metres (2,475 square feet). The accessory building is proposed to be 234.9 square metres (2,528 square feet). Floor area means the sum of the areas of all floors of a building measured to the outside surface of exterior walls and the centre line of the fire walls but not including the floor areas of basements, attached garages, verandahs, or breezeways.

Requested size – 234.9 square metres (2,528 square feet)
Variance required – 4.9 square metres (53 square feet)

9. An approach was never constructed as part of the subdivision approval. Should the Board approve the development, a paved approach must be installed as a condition. It is understood that the building may be accessed by adjacent Lot 20A; however, should the subject lot be sold, it shall have legal access.
10. Allowing an accessory building prior to a dwelling being constructed may 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

- [10] He purchased the property in 1974 and has lived in Silver Chief since 1978. He is a long-standing resident of the area.
- [11] He built his home on the southside of the lot with future thoughts of subdividing for his children.
- [12] The property was subdivided 10 years ago but none of his children are interested in building on it.
- [13] He considered building a smaller house, but it would be too expensive.
- [14] He is considering relocating to the city; however, there are aspects of acreage living that he and his wife would miss, such as a garden.
- [15] Building a locked personal storage building would allow a place to store acreage equipment and have a place to return to from the city. It would be designed with the future in mind should he decide to move back to the acreage.
- [16] At this time there is no intent to live in the space and it would be just a shell with cold storage.
- [17] The building would have an 8-foot door at the front and be essentially the size of a double garage with a secondary roof.
- [18] The proposed building would be constructed from his side of the property with no disturbance to the neighbours.
- [19] He has shown the design to the neighbours and has had no objections.
- [20] It would be infeasible for him to construct a separate approach for the accessory building. He is interested in accessing the accessory building from his property or through the shallow ditch.

DECISION OF THE BOARD

- [21] The Board GRANTS the appeal and REVOKES the decision of the Development Authority made on October 7, 2022, to refuse development permit application 305305-22-D0297, and approves the development permit with the following conditions:**

1. Prior to any construction occurring on site, a separate building permit shall be obtained and approved. Minimum construction standards shall conform to the requirements of the current Alberta Building Code.
2. The applicant/landowner shall ensure that any development, construction, building, or use within the parcel shall comply with and be in accordance with the recommendations contained in the Geotechnical Investigation prepared by J.R. Paine & Associates Ltd. Report No: 4905-2 dated October

2015.

3. Separate electrical, plumbing, gas and/or private septic disposal system permits shall be obtained as required.
4. The following minimum accessory building setbacks to property lines shall be adhered to:

Front yard:	12 metres (39.4 feet)
Side yard:	3 metres (9.8 feet)
Rear yard:	3 metres (9.8 feet)
5. The accessory building shall not be used as a dwelling.
6. The accessory building as approved shall not be used for purposes related to the operation of any commercial business and shall be used for personal use only.
7. The applicant/landowner shall apply for and construct a physical approach accessing from the Municipal Road in conformance with the specifications of Sturgeon County's General Municipal Servicing Standards.
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. 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.
9. Exterior storage of goods 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.
11. 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.

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. Early excavation, prior to building permit approval, can result in standing water, potential for freezing, and can cause safety hazards for neighbouring properties if the area is open for longer than necessary.
2. 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.
3. 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

- [22] The Appellant's request is to construct an accessory building for personal use storage on lands located in the R1 – Country Residential district. Pursuant to Section 6.1.4 of Land Use Bylaw, an accessory building or use is not permitted on a parcel without a principal building or use being previously developed on the parcel.
- [23] Section 12.1.4 of Land Use Bylaw states the maximum floor area of an accessory building in the R1 – Country Residential District is 230 square metres (2,475 square feet). The accessory building is proposed to be 234.9 square metres (2,528 square feet). The requested variance to the maximum floor space exceeds the maximum amount that may be granted by the Development Authority.
- [24] 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.
- [25] The Appellant raised as evidence that he received verbal support from neighboring property owners for his development. However, as no documentary evidence was provided, the Board gave no weight to the assertion.
- [26] However, the fact that adjacent landowners were notified of the proposed development and did not express objection satisfies the Board 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 Appellant raised as evidence five other properties in the area that have accessory buildings with no principal dwelling. However, the Board gave no weight to this evidence as the developments were approved prior to the 2017 amendments to the Land Use Bylaw and therefore are not subject to the same regulations as the development in question.
- [28] The Board finds that the requirements for accessory buildings with respect to floor area are intended to be consistently applied. The Board finds that Council limiting the Development Authority's ability to grant variances in floor area to accessory buildings was intentional to ensure that accessory buildings remain within the footprints prescribed by the Land Use Bylaw. Allowing variances to the maximum floor area, particularly where there is no principal dwelling, risks the accessory dwelling being used as a principal dwelling, which would affect the character of the neighbourhood. Further, in his verbal submission to the Board, the Appellant noted that he had misinterpreted how maximum floor area was calculated and is willing to construct within the maximum floor area prescribed in the Land Use Bylaw.
- [29] The Appellant raised that it would be infeasible for him to construct a physical approach accessing from the Municipal Road in conformance with the specifications of Sturgeon County's

SUBDIVISION and DEVELOPMENT

APPEAL BOARD

Sturgeon County
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General Municipal Servicing Standards, and that an access agreement from his adjacent parcel would suffice. The Board finds that the subdivided parcel shall have its own approach from the Municipal Road. Although an access agreement between the two parcels was raised as an option, the Board finds that the intent of the Land Use Bylaw is for the parcel in question to eventually have a principal dwelling, which would require a unique access. The Board's decision grants the Appellant the required flexibility to construct the accessory building in contemplation that the parcel would eventually see the construction of a principal dwelling.

- [30] 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 22nd day of November 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 and Development Services Report; and
- The Appellant's written submissions