
Appeal File Number:	024-STU-018
Application Number:	305305-24-D0279
Appeal Against:	Development Authority of Sturgeon County
Appellant:	Randy Didrikson
Date and Location of Hearing:	December 17, 2024 Council Chambers and Through Electronic Communications
Date of Decision:	December 31, 2024
SDAB Members:	Lili Terry (Presiding Officer), Lee Danchuk, Amanda Papadopoulos, and Don Rigney

NOTICE OF DECISION

IN THE MATTER OF an appeal by Randy Didrikson against the Development Authority's approval of a development permit to construct an accessory dwelling unit with attached garage with a variance to the maximum floor area at 5033RS; 6; Skyglen Airpark, 11 54231 Range Road 250 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 (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:
1. The Notice of Appeal;
 2. A copy of the development permit application with attachments;
 3. The Development Authority's written decision;
 4. Planning & Development Services Report; and
 5. Applicant's submission (photographs and documentation).

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 Presiding Officer.

[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 the following grounds of appeal:

- He objects to portions of the development permit approval, including:
 - Location of the proposed accessory dwelling too close to his property line.
 - Construction of a roadway and utility services too close to his property line.
 - Absence of restrictions on renting the accessory dwelling.

RECOMMENDATION OF THE DEVELOPMENT AUTHORITY

[10] Yvonne Bilodeau, representative of the Development Authority, provided a presentation which outlined the Development Authority's conditional approval of Development Permit 305305-24-D0279. In summary:

1. The property is located in the R1 – Country Residential District and is 1.24 hectares, developed with a single detached dwelling with attached garage and three accessory buildings.
2. The Development Authority received an application to construct an accessory dwelling unit with attached garage with a variance to the maximum floor area. The development permit was approved with conditions.
3. Two previous applications for subdivision of the parcel were refused by the Subdivision Authority.
4. A Statement of Non-Compliance was issued June 4, 2024 citing that there is no record of a development or building permit for the shed (5.59 metres x 3.13 metres). Additionally, the shed encroaches onto the right-of-way (registered instrument 942 255 285) at the southwest corner of the property. The shed must be relocated in compliance with the setback requirements of 3 metres from a side property line and 12 metres from the front property line. It should be noted that new developments cannot be withheld due to non-conformance of another structure. Non-conforming use of a building may not be enlarged or added to and no structural alterations shall be made to it or in it.
5. Section 12.1.2 of the Land Use Bylaw identifies an accessory dwelling unit as a discretionary use in the R1 – Country Residential District.
6. Section 6.1A.1(a) of the Land Use Bylaw states that a maximum of one accessory dwelling unit shall be considered per principal dwelling and shall be subordinate to the principal

dwelling in all districts except AG-Major and AG-Minor parcels within the Agriculture District, and within the IND-Integrated Neighbourhood District, which may allow up to two accessory dwelling units. Section 6.1A.2(a) states the maximum floor area of Accessory Dwelling Units shall be 115 square metres in the R1 District. Section 6.1A2(d) states, in determining maximum floor area for accessory dwelling units, shared mechanical rooms, stairways, and attached garages shall be excluded from the floor area calculations.

7. Section 1.6 of the Land Use Bylaw defines floor area as “the sum of the areas of all floors of a building measured to the outside surface of exterior walls and the centre line of fire walls but not including the floor areas of basements, attached garages, verandahs or breezeways”.
8. Section 2.8.6 of the Land Use Bylaw states that, in the R1 – Country Residential District, the Development Authority may issue a variance between 0.1 and 40%.
9. The Applicant provided justification for their request for a variance to the maximum floor area as being required to accommodate accessibility elements for their aging parents. They explored alternatives such as a two-storey home but indicated that option was not practical for elderly individuals.
10. The Applicant proposed the following to minimize potential impacts to neighbouring parcels:
 - a. the accessory dwelling would be placed with an 8.87-metre setback from the property line to the west, which exceeds the minimum required setback of 3 metres;
 - b. the intention to plant additional trees to create an additional buffer for privacy and noise;
 - c. the dwelling would be designed to align with the architecture of the existing developments;
 - d. the intention to maintain the open space on the parcel as a large portion is currently undeveloped; and
 - e. noise and traffic impacts would be minimal, as the accessory dwelling is intended to be used by the Applicant’s elderly parents.
11. The Development Authority responded to the Appellant’s concerns raised in the Notice of Appeal as follows:
 - a. Accessory dwelling unit too close to the property line – The proposed setback is 8.87 metres from the west property line which exceed the minimum setback requirement of 3 metres in the Land Use Bylaw.
 - b. Access road and utility lines too close to the property line – The parcel has two access points. When analyzing the design of the house, the attached garage is positioned to face the south side of the property. This does not imply location of the access. The proposed accessory dwelling would be situated approximately 7.6 metres from the principal dwelling. Sturgeon County’s Land Use Bylaw does not regulate internal driveways. There is an easement for right of way to TransAlta Utilities on title as 942255285 for the power and telecommunication lines, which states the Grantee shall not Fence the right of way and shall have free access to the lands and shall not erect upon the right of way, any buildings, structures or other obstructions. Should access be proposed over the right of way, then it is in the best interest of the landowner to obtain their approval. Further, Condition #13 to the development

permit states that no development shall encroach on or be erected on an easement or right-of-way unless the owner of the encroaching structure has obtained written consent from the owner or licensee to which the easement or right-of-way has been granted.

- c. No restrictions on renting accessory dwelling - Sturgeon County only regulates the use of land through the Land Use Bylaw and does not regulate people and therefore does not take who may live in the dwelling under consideration.
12. The proposed development includes the installation of a new private septic system. New systems are encouraged as existing systems may not have the capacity to accommodate the additional usage and thus cause the systems to fail.
13. The accessory dwelling is proposed at 160.7 square metres not including the attached garage and basement, which is calculated as a 40% variance from the maximum floor area of 115m². The variance request aligns with the regulations of the R1 – Country Residential District, and all other regulations of the Land Use Bylaw.
14. In approving the development permit, the Development Authority considered that there are two accessory building on the Appellant's property along with mature trees and a fence that provide a visual and noise buffer between the two parcels.

SUMMARY OF APPELLANT'S POSITION

[11] The Appellant, Randy Didrikson, attended the hearing and submitted that:

1. He is concerned with the intended location and size of the proposed accessory dwelling, and the potential effects of having a driveway, utilities, and multiple families living close to his property. He cited concerns with dust, noise, nuisance of construction, traffic, and possibly noisy neighbours.
2. He stated that the mature trees on his property do not provide acceptable visual privacy and noise mitigation.
3. He stated that a development permit for an accessory dwelling should include a condition that aligns with Sturgeon County Land Use Bylaw 1385/17, section 6.1A.1(g) which states that an application for an accessory dwelling unit shall verify that the development meets the current Alberta Private Sewage Systems Standard of Practice.
4. He has concerns regarding the possibility that the accessory dwelling may become a rental property in the future.
5. He has enjoyed the private, quiet, and natural beauty of living on a large acreage lot, where neighbours have respected each other's privacy, and he implores the Board to reject the location of the proposed accessory dwelling.

SUBMISSIONS FROM AN ADJACENT LANDOWNERS

[12] Mel Watamaniuk attended the hearing and spoke in favour of the appeal. He submitted that:

1. He owns the property immediately east of the subject parcel and has enjoyed the quiet and peaceful country life on his property.
2. He does not agree that the proposed development meets the definition of an accessory dwelling due to its unusually and unnecessarily large size.
3. He does not agree that this development enhances the neighbourhood or aligns with the current neighbourhood esthetic.

SUBMISSION FROM THE APPLICANT

[13] The Applicant, Hussein Aboudib, attended the hearing and submitted that:

1. He and his family are the new owners of the subject parcel and purchased the property with the goal of moving to a quiet, peaceful neighbourhood in a natural, country setting.
2. He has a clear understanding of the Land Use Bylaw and the regulations for accessory dwellings. He worked with the Planning and Development Department to ensure that the application aligns with all applicable regulations to build a suitable home for his elderly parents.
3. The family is not seeking to rent the accessory dwelling to other parties, and as part of the written submission provided proof that the utilities are to be combined.
4. Using photographs he supplied to the Board, he submitted that the distance between the principal dwelling and proposed accessory dwelling will contribute less traffic and noise disruption than the adjacent parcel to the north of the Appellant's property, which appears to operate a business.
5. The suggestion made by the Appellant to move the proposed location of the accessory dwelling further east on his property would result in significant added costs to the project, including but not limited to costs pertaining to extending the access road and relocating the attached garage location to avoid the main gas line.
6. In consideration of neighbours, he elected to exceed the minimum required setbacks for the accessory dwelling.

DECISION

[14] **The Board DENIES the appeal and UPHOLDS the decision of the Development Authority made on November 1, 2024 to approve development permit application 305305-24-D0279 subject to the following conditions:**

1. Prior to any construction occurring on site, a separate building permit shall be obtained and approved. Minimum construction standards will conform to the requirements of the current Alberta Building Code.
2. Separate electrical, gas, plumbing, and private sewage disposal permits shall be obtained as required.
3. Accessory dwelling units shall meet the setbacks for an accessory building of the applicable district and are as follows:
 - Front yard 12 metres (39.4 feet);
 - Side and rear yard 3 metres (9.8 feet).
4. The maximum parcel coverage shall not exceed 15%.
5. A maximum of one accessory dwelling unit shall be considered per principal dwelling and shall be subordinate to the principal dwelling.
6. A 40% variance is granted to the maximum floor area of an accessory dwelling unit to 160 square metres from the required 115 square metres in R1 districts.
7. Shall be constructed on a permanent foundation which may or may not include a basement. A basement means a portion of the dwelling, partly or wholly below grade and has no more than 1.8 metres of its clear height above grade and lies below the finished level of the floor directly above.
8. Shall not be separated from the principal dwelling by condominium conversion or subdivision.

9. Access to the lot shall be via the existing approach.
10. Shall be designed and finished to match or complement the exterior finish of the principal dwelling.
11. A group home (major or minor), farm help accommodation, bed and breakfast, or visitor accommodation shall not be permitted on the same parcel containing an accessory dwelling unit.
12. Shall provide two on-site parking stalls for an accessory dwelling unit over 80 square metres.
13. No development shall encroach on or be erected on an easement or right-of-way unless the owner of the encroaching structure has obtained written consent from the owner or licensee to which the easement or right-of-way has been granted.
14. 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.
15. If the development authorized by a permit is not commenced within 12 months from the date of its issuance, or is not carried out with reasonable diligence, the development permit approval ceases and the development permit is deemed to be void, unless an extension to this period has been previously granted by the Development Authority.
16. 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. 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.

REASONS FOR THE DECISION

- [15] The subject property is located in the R1 – Country Residential District. The application is to construct an accessory dwelling unit with attached garage with a variance to the maximum floor area.
- [16] An accessory dwelling unit is a discretionary use in the R1 – Country Residential District and the Development Authority may issue a variance to the floor area up to 40%.
- [17] With respect to the issue of the proposed accessory dwelling being too close to the Appellant’s property line, the Development Authority submitted that the proposed location of the accessory dwelling unit, set back 8.87 metres from the western property line, exceeds the 3-metre side yard setback established by section 12.1.4 of the Land Use Bylaw. Further, the Board received photographic evidence showing mature trees that act as a visual barrier between the two properties.

- [18] With respect to the issue of the size of the proposed accessory dwelling, the Board heard that section 6.1A.2(a) of the Land Use Bylaw states the maximum floor area of accessory dwelling units in the R1 District shall be 115 square metres. Section 2.8.6 of the Land Use Bylaw states that, in the R1 District, the Development Authority may issue a variance between 0.1 and 40%. The inclusion of accessory dwelling units in the R1 District and the ability to vary the maximum floor area to 40% indicates Council's intent for accessory dwelling units to be considered and variances be granted on a case-by-case basis. The Board did not receive compelling evidence from the Appellant or others opposed to the proposed development as to why the variance to the floor area should not be granted.
- [19] With respect to the issue of the access road and utility lines being too close to the Appellant's property line, the Development Authority submitted that there are no provisions in the Land Use Bylaw regulating the placement of utilities or interior roadways.
- [20] With respect to the issue of the development permit applying no conditions on the rental of the proposed accessory dwelling, the Board was not persuaded by the submissions of either the Appellant or the Applicant as it relates to who would occupy the dwelling. In applying the land use regulations, the Board must consider the use, not the user. While the Applicant may be seeking to construct the accessory dwelling for his aging parents, the Board does not consider personal circumstances in applying the Land Use Bylaw.
- [21] The Appellant raised concerns regarding sewage servicing for the proposed accessory dwelling. The Board notes that Condition #2 of the approved development permit requires private sewage disposal permits to be obtained as required, which would require the accessory dwelling to have a separate sewage disposal system.
- [22] In consideration of the evidence before it, the Board finds that the proposed development would not 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, which is an accessory dwelling unit with a variance to the maximum floor area in the R1 – Country Residential District.
- [23] For all of these reasons, the Board denies the appeal and upholds the decision of the Development Authority to approve development permit application 305305-24-D0279 with the conditions noted above.

Dated at the Town of Morinville, in the Province of Alberta, this 31st day of December, 2024.



Lili Terry, Presiding Officer

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
- Applicant's submission (photographs and documentation)