



Municipal District of Bighorn No. 8

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DECISION OF THE SUBDIVISION/DEVELOPMENT APPEAL BOARD

Hearing: Monday, November 19th, 2018
Development Permit 81/18, H. Unger (Appellant)

I. Decision

For the reasons outlined below, the Subdivision and Development Appeal Board (the “Board”) conditionally grants the October 23rd, 2018 appeal of SkyFire Energy (the “Appellant’s agent”), on the refusal of the Development Officer for Development Permit Application No. 81/18, for a front yard set-back variance of 5.31 metres to facilitate installation of a solar electric system located at 1 Furthur Drive (legal description Block 1 Plan 5601 HI; hereinafter referred to as “the subject property”) in the Hamlet of Benchlands. The conditions of approval are:

1. Approval is granted for the proposed solar collector structure based on the information provided by the applicant/owner, with such solar collector structure being located as shown on the site plan provided with the Development Permit application;
2. The set-back variance shall be no more than 5.31 metres (an approximate 71% variance) (5.31 m) for the subject solar collector so that it may be situated no closer than 2.19 m from the subject property’s front boundary;
3. There shall be no lights on the solar collector structure which trespass across the property boundary.

II. Background

The Board heard an appeal from the Appellant, with respect to the Development Officer’s Notice of Refusal on Development Permit application 81/18. The Appellant was seeking approval to erect a solar electric system (hereinafter referred to as “the proposed system”) on the subject property. In reviewing the development permit application, the Development Officer noted that the proposed system encroached into the front yard setback: the Land Use Bylaw requires a 7.5 metre setback, but the proposed system has only a 2.19 metre set-back. Neither the Development Officer nor the Municipal Planning Commission have the ability to grant the requested front yard variance.

The appeal hearing by the Board was held on November 19th, 2018, at the M.D. Administration building in the Hamlet of Exshaw; the Appellant was present at the hearing. The Board heard from the Appellant; the Board also heard from Development Officer Janice Thompson on the Officer’s Notice of Refusal. Several documents were submitted and provided to the Board, as follows:

- Copy of the Notice of Refusal dated October 24th, 2018, on Development Permit Application 81/18;
- Copy of the letter of appeal from the Appellant’s agent, received November 2nd;
- Copies of photos of the proposed system, locations on site, and other related diagrams;
- Copy of the Certificate of Title;
- Maps showing the location of the Subject Property;
- Excerpts from the Land Use Bylaw 04/10 (Section 41.3);
- Letter in support of the Appellant from E. Butters and D. Hutchinson

Issues Raised

The Board and Appellant referenced the Appellant agent's letter of appeal, noting the following reasons for requesting the variance:

- there were limited locations on the Appellant's property that could accommodate the proposed system;
- the proposed location offers the best annual production and limited annual shading;
- the front yard boundary line borders a pasture (without any residences located thereon) outside of the Hamlet boundaries; the aforementioned front yard set-back applies only within the Hamlet.

There was no one present to speak in favour of the Appellant and the appeal; there were two letters of support submitted, from neighbouring property owners E. Butters and D. Hutchinson.

There was no one present to speak in support of the Development Officer's refusal of the Development Permit application, nor were there any letters of support submitted.

III Reasons for Decision / Findings of Fact

The reasons for the Board's decision to grant the variance are:

- The Board felt the proposed variance would not unduly affect the amenities of the neighbourhood.
- The Board noted that there were no objections from any adjacent neighbours submitted to the Hearing.
- The Board noted that the property adjacent to the subject property has an agricultural, non-residential use, and that the current Municipal Development Plan and Land Use Bylaw have restrictive sections preventing future development that would introduce/increase residential use on this adjacent property.

The findings of facts are as follows:

- There were two letters in support of the proposed system on the subject property, and no submissions in opposition.

November 23, 2018

DATE



CHAIRMAN,
SUBDIVISION/DEVELOPMENT APPEAL BOARD

A decision of the Subdivision/Development Appeal Board is final and binding on all parties and persons subject only to an appeal upon, or questions of jurisdiction or law pursuant to, Section 688 of The Municipal Government Act, SA 2000, as amended. An application for leave to appeal to the Appellate Division of the Court of Alberta shall be made to a judge of the Appellate Division within THIRTY (30) days after the issue of the order, decision, permit or approval sought to be appealed.