



# Municipal District of Bighorn No. 8

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## DECISION OF THE SUBDIVISION/DEVELOPMENT APPEAL BOARD

**Hearing: Tuesday, August 27, 2019**  
**Development Permit 51/19 (Appellants)**

### **I. Decision**

The appeal before the Subdivision and Development Appeal Board (SDAB) was brought by Janice and Marc Webster.

On July 16, 2019, the Development Authority refused the application of Janice and Marc Webster (the “Appellants”) for a height variance to an Accessory Building (barn and garage on lower level) located on Unit 5, Condominium Plan 0110235 (Within NW Section 26, TWP. 26, RGE. 7, W5M – Ghost Pine Lumber Subdivision, near Jamieson Road, in the Municipal District of Bighorn, hereinafter referred to as “the subject property”). The property is owned by Janice and Marc Webster. The subject property has a land use designation of Small Holdings District (SH). The proposed development is a permitted use within the SH district.

The Development Authority’s Notice of Refusal states that the proposed development did not comply with the maximum height of 7.0 metres for a detached Accessory Building in the Small Holdings District of Land Use Bylaw 09-Z/18. The proposed height of 26 feet 9 <sup>5</sup>/<sub>8</sub> inches (8.2 metres) requires a height variance of 1.2 metres or 17% above the maximum height for an Accessory Buildings stipulated in Section 9.5.3. for the Small Holdings District (SH). The height variance for the Accessory Building is greater than can be approved by the Development Officer pursuant to Section 41.3.3 (a) of Land Use Bylaw or the Municipal Planning Commission pursuant to Section 41.3.2 (a) of the Land Use Bylaw.

The hearing commenced and concluded on August 27, 2019.

For the reasons outlined below, the Subdivision and Development Appeal Board (the “Board”) conditionally grants the August 27, 2019 appeal of Janice and Marc Webster for Development Permit Application No. 51/19. The conditions of approval are:

1. Approval is granted based on the information provided by the applicant/owner for the Accessory Building (Barn and Garage) and presented at the hearing. No further development, expansions, or change in use is permitted unless approved by the MD of Bighorn.
2. The Subdivision and Development Appeal Board (S/DAB) grants an approximate 17% (1.2m) height variance to the accessory building to a maximum of 8.2m.
3. The second storey balcony for the Accessory Building, as indicated on the front elevation (Sheet A-1) drawing and left and right elevation (Sheet A-2) drawing submitted at the hearing, is removed from the drawings and shall not be constructed as part of the development of the Accessory Building.
4. All construction shall conform to the National Building Code, 2019 (AE) and a building permit shall be obtained prior to commencement of construction.

5. All electrical wiring, and all natural gas or propane connections and installations shall be approved by Alberta-registered Safety Codes Officers.
6. The maximum height of the accessory building shall not exceed 8.2m.
7. The exterior finish, including roofing material, shall be complimentary to that of the existing buildings.
8. There shall be no major home-based business carried on within the accessory building, unless a separate application for such has been approved by the MD of Bighorn.
9. Careful attention shall be paid to the exterior lighting in order to preserve the night environment through reduction of light pollution. Exterior lighting shall be designed, located and arranged to be low glare in nature and to minimize light trespass on to adjacent properties. Light fixtures with a lumen output of greater than 2,000 lumens shall be fully shielded to the satisfaction of the MD.
10. The developer shall sort construction wastes generated as a result of the development prior to transporting the waste material to a disposal facility, such as the Francis Cooke Regional Landfill. As a minimum, the MD of Bighorn expects to see the following material sorted for recycling purposes: asphalt shingles, brush and vegetation, metal, cardboard, drywall and kiln-dried lumber.
11. Any damage to municipal infrastructure throughout the construction period shall be the applicant's sole responsibility to repair in a manner deemed acceptable to the MD of Bighorn at the applicant's cost.
12. The applicant shall apply for a separate Road Use Permit through the Operations Department for any temporary use/occupation; including construction activities, on any adjacent Public Property.
13. Construction practices shall be followed as outlined in Section 42.26 of Land Use Bylaw No. 09-Z/18.
14. As a fire protection measure all roofs shall be constructed of non-combustible or fire retardant materials.
15. The developer shall control weeds during the period of construction.
16. Any additional changes to that proposed in the application shall require a separate (or amendment) application prior to commencement of those changes.

## **II. Background**

The Board heard an appeal from Janice and Marc Webster with respect to the Development Officer's Notice of Refusal issued on July 16, 2019 for Development Permit application 51/19. The Appellants are seeking a height variance to an Accessory Building on the subject property.

The Notice of Refusal was issued based on:

1. Development Permit 51/19, for a Detached, Two-Story Accessory Building on the subject property was refused by the Development Officer due to a height variance for the Accessory Building.
2. The Accessory Building's height of 26 feet 9 <sup>5</sup>/<sub>8</sub> inches (8.2 metres) requires a height variance of 1.2 metres or 17% above the maximum height of 7.0 metres for accessory buildings stipulated for the Small Holdings District (SH) regulations in Land Use Bylaw.
3. The height variance for the Accessory Building is greater than can be approved by the Development Officer pursuant to Section 41.3.3 (a) of Land Use Bylaw or the Municipal Planning Commission pursuant to Section 41.3.2 (a) of the Land Use Bylaw.

Based on these facts, the Development Officer issued a Notice of Refusal for Development Permit Application 51/19 dated July 16, 2019. The Applicants submitted their appeal of the Development Officer's decision on July 29, 2019 to the Secretary of the Subdivision and Development Appeal Board.

The appeal hearing by the Board was held on August 27, 2019, at the M.D. Administration building in the Hamlet of Exshaw. The Board heard from Janice and Marc Webster. The Board also heard from Development Officer Jenny Kasproicz on the Officer's Notice of Refusal. Several documents were submitted to the Board, as follows:

- Copy of the Notice of Refusal, date of issue, July 16, 2019, on Development Permit Application 51/19;
- Copy of the letter of appeal from the Appellant received July 29, 2019;
- Copy of the Certificate of Title;
- Map showing the location of the Subject Property;
- Development Permit Application Receipt Record;
- Tender Drawings for the Building showing elevations, foundation plan, building sections;
- Minutes of the Annual General Meeting of Condominium Corporation No. 0011 0235 held on January 19, 2019;
- Excerpts from the Land Use Bylaw 09-Z/18 (Section 9 Small Holdings District and Section 41 Duties and Responsibilities of the Approving Authorities);
- Three Aerial Photographs of the Subject Property.

### **Issues Raised**

The Board and Appellants discussed the following reasons for the appeal:

- The Appellants stated the purpose of the building was to build a barn, the main function of the barn was for storage and animal shelter.
- The Appellants said the building is in forested location on their property and adjacent neighbours cannot see it.
- The Appellants had no plans for the second storey of the accessory building other than storage and explained that they purchased a kit for the barn and that is how the building was designed.

- The Appellants confirmed that dwelling features noted on Drawing A-7 (Specification Notes), such as the kitchen and bathroom, had been removed from the building plans submitted in their original development permit application and were not intended to be constructed.
- The height variance is a result of the building design.
- Applicants said they were planning to build the deck and railings on the building.
- In response to a question from the Chair, the Appellants replied the balcony and roof overhang was more for aesthetics and allowed for farm equipment to be stored under the balcony.

### III Reasons for Decision / Findings of Fact

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

- The proposed height variance for the Accessory Building would not unduly interfere with the amenities of the area or materially interfere with or affect the use, enjoyment, or value of neighbouring parcels of land.
- It was noted that the design of the accessory building was from a kit that appears to be more residential in appearance with a second storey balcony. The Board requested the removal of the second storey balcony as it is deemed to be an aesthetic feature and not germane to the stated use of the accessory building as a barn, garage and storage.

The findings of facts are as follows:

- The subject property has a land use designation of Small Holdings District (SH). The proposed Accessory Building is a permitted use within the SH district.
- Verbal support for the appeal was made at the hearing by A. Cordsen, President of the Condominium Corporation.
- Verbal support for the appeal was made at the hearing by F. Seidel, a resident of the area.

September 11, 2019

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.