



# Municipal District of Bighorn No. 8

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## DECISION OF THE SUBDIVISION/DEVELOPMENT APPEAL BOARD

**Hearing: Tuesday, July 7, 2020**

**Development Permit 28/20, Jessie Ashton (Appellant)**

### **I. Decision**

The appeal before the Subdivision and Development Appeal Board (SDAB) was submitted by Jessie Ashton Nest Design & Drafting (the “Appellant”) acting as agent for the property owner Jacqueline Hutchison.

On June 4, 2020, the Development Authority issued a Notice of Decision for Development Permit 28/20 application by the Appellant for the replacement of a rear deck on an existing single detached dwelling located at Lot 12, Block 1, Plan 6402HX (the “subject property”), 245 Bow Crescent in the Hamlet of Harvie Heights, Alberta. The subject property is located within a Hamlet Residential District (R-1) referenced in Section 12 of the Land Use Bylaw. The proposed development is a discretionary use within the R-1 district.

The subject property is deemed to be an existing non-conforming building in accordance with Section 643 of the Municipal Government Act as the front of the dwelling encroaches into the municipal road allowance on Bow Crescent. The single detached dwelling is required to have a front yard setback of 7.5 metres from the front property boundary in accordance with the R-1 District (Section 12.5.2. of Land Use Bylaw 09/-Z/18).

The Development Authority’s Notice of Decision states that proposed Development Permit 28/20 was REFUSED by the Development Authority on June 4, 2020 due to the front yard set back variance of 7.5 m, which is greater than can be allowed by either the Development Officer or the Municipal Planning Commission.

The hearing commenced and concluded on July 7, 2020.

For the reasons outlined below, the Subdivision and Development Appeal Board (the “Board”) conditionally grants the July 7, 2020 appeal by the Appellant for Development Permit Application No. 28/20.

The Board’s conditions of approval are:

1. Approval for the replacement of a deck on an existing single detached dwelling located at Lot 12, Block 1, Plan 6402HX is granted based on the information provided by the applicant for the proposed attached deck only, and for no other development.
2. The proposed development shall be located as shown on the site plan provided by the applicant and identified as Schedule 'A' attached hereto.
3. All construction shall conform to the National Building Code, 2019 and a building

permit shall be obtained.

4. Construction practices shall be followed as outlined in Section 42.26 of Land Use Bylaw No. 09-Z/18.
5. 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: items such as: shingles, brush and vegetation, metal, cardboard, drywall, and kiln-dried lumber.

## **II. Background**

The Board heard from the Appellant who is appealing the Notice of Decision by the Development Authority dated June 4, 2020 to REFUSE Development Permit Application 28/20.

On Development Permit 28/20, the Development Officer refused the application for a Development Permit on Lot 12, Block 1, Plan 6402HX (245 Bow Crescent), due to the front yard set back variance of 7.5 m, which is greater than can be allowed by either the Development Officer or the Municipal Planning Commission.

The Notice of Decision was published in the June 25, 2020 edition of the Rocky Mountain Outlook.

The Appellant is appealing Notice of Decision on Development Permit No. 28/20.

The Board hearing was held on July 7, 2020 at the M.D. Administration building in the Hamlet of Exshaw. The Board heard from the Appellant. The Board also heard from Development Officer Jenny Kasproicz on the Notice of Decision for development application 28/20. Several documents were submitted to the Board, as follows:

- Copy of the Notice of Decision, dated June 4, 2020 for Development Permit Application 28/20;
- Copy of the Letter of Appeal from the Appellant's Agent received June 12, 2020;
- Map showing the location of the Subject Property;
- Development Permit application 28/20 for the subject property and submitted documents; Letter of Authorization for Agent, Building Elevations, Certificate of Title, Registered Caveat (Encroachment Agreement); Map showing road encroachment and location of proposed deck replacement;
- Aerial Photograph of the subject property showing building encroachment;
- Excerpts from the Land Use Bylaw 09-Z/18 (Section 12. Hamlet Residential District (R-1) and Section 41.3 Variance Powers of the Development Authority.

## **Issues Raised**

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

- The Appellant stated the proposal was to replace the existing deck for safety reasons and not to ask for additional living space. She said the deck is at the rear of the house and there is a large yard with no rear neighbours. The Appellant said the house was built before the subdivision was created and an agreement with Alberta Transportation was made at that time regarding the building encroachment in the front yard.
- L. Rosvold asked if the size or shape of the deck would change and if it would have a similar look. The Agent said the existing deck is 8 feet and the proposed deck is 10 feet. The Appellant stated the deck would be similar, but the bench that is currently on the deck would not be replaced and they will use a railing that meets building code.
- Chair Apedaile asked about the backyard and the estimate distance between the deck rear property line. The Appellant said it was 59 feet and the lot is very large.
- L. Hogarth asked the Development Planner if expanding the deck was inconsequential to the encroachment. The Development Planner said Administration's opinion was that Section 643 of the MGA, includes a provision that states in accordance with a Land Use Bylaw there are minor variance powers granted to the approving authority. If the SDAB applies the minor variance powers to the setback, then the Appellant would be able to add to the dwelling.

## **III**

### **Reasons for Decision / Findings of Fact**

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

- The Board acknowledges the single detached dwelling located at Lot 12, Block 1, Plan 6402HX is an existing non-conforming building, in accordance with Section 643 of the Municipal Government Act.
- The Board deems the replacement of the existing deck as routine maintenance of the building, as per Section 643 (b) of the Municipal Government Act.
- The Board is satisfied the replacement of the existing deck does not materially interfere with or affect the use, enjoyment, or value of neighbouring parcels of land.

The findings of facts are as follows:

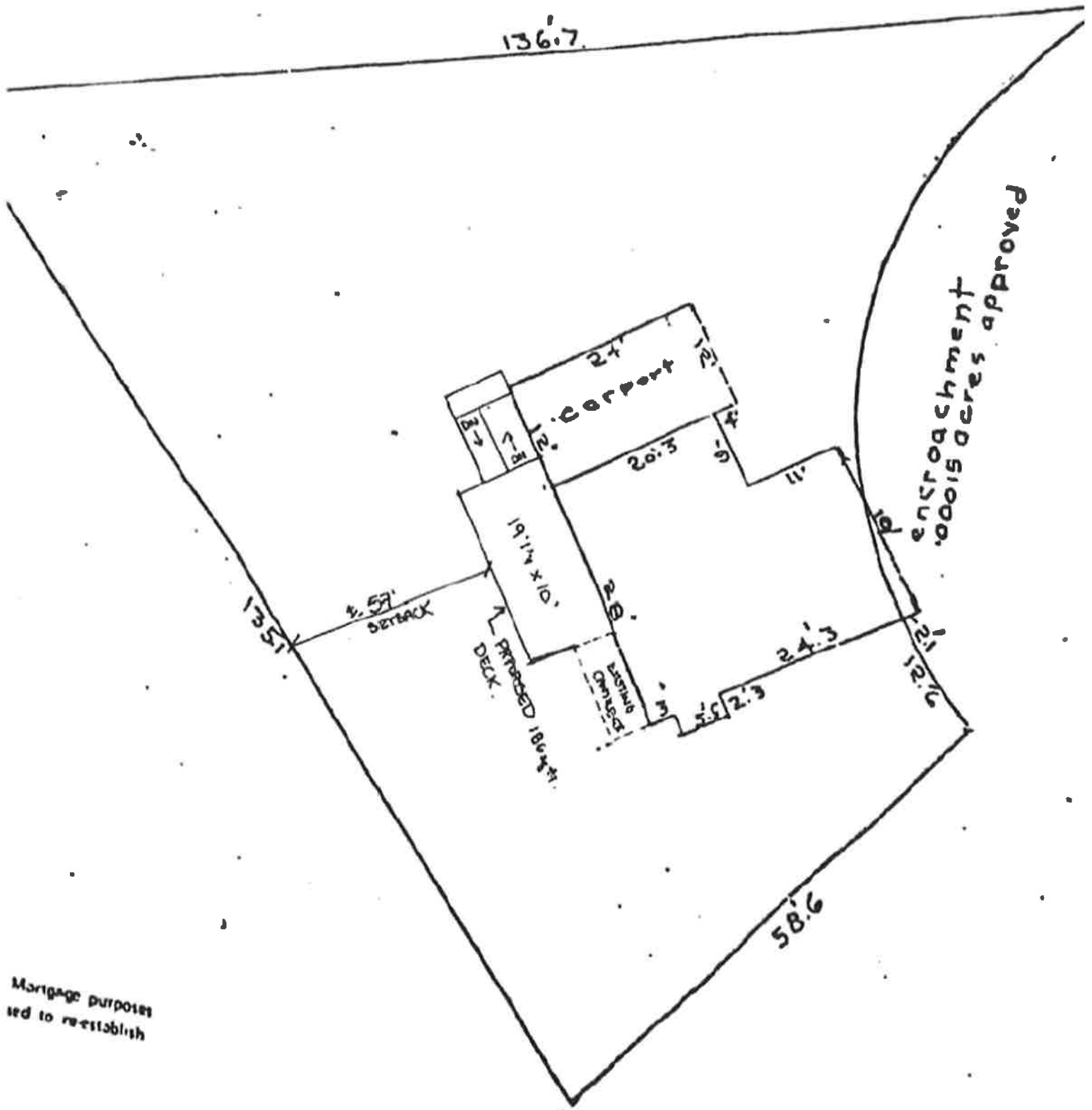
- The subject property has a land use designation of Hamlet Residential District (R-1) in the Land Use Bylaw.
- The proposed deck replacement is a discretionary use in the R-1 District.
- The subject property is deemed to be an existing non-conforming building in accordance with Section 643 of the Municipal Government Act.
- The Provincial Encroachment Agreement, registered as Caveat 771 182 735 on the Certificate of Title, allows the encroachment of the single detached building into the municipal road allowance on Bow Crescent in the hamlet of Harvie Heights.

✓ July 20, 2020

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.



Schedule 'A'  
 Referenced as Condition 2  
 to SDAB DECISION for DP 28/20 Appeal