



Municipal District of Bighorn No. 8

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DECISION OF THE SUBDIVISION/DEVELOPMENT APPEAL BOARD

Hearing: Thursday, September 3, 2020

Development Permit 41/20, Constance Thiessen and Spencer Thiessen (Appellants) and Katrina Levasseur (Agent for the Appellants)

I. Decision

The appeal before the Subdivision and Development Appeal Board (SDAB) was submitted by Katrina Levasseur of Axiom Geomatics acting as agent for the Appellants.

On July 15, 2020, the Development Authority issued a Notice of Decision to refuse Development Permit 41/20. The appeal was made by the Agent on behalf of the Appellants and the landowner Denis Gignac. The appeal is against the decision of the Development Authority to refuse the application for a Development Permit 41/20 on Lot 2, Block 1, Plan 755 H.V. (#1 Mount Laurie Road), the subject property, due to the rear yard setback variance for a rear deck attached to the residential dwelling and front and rear yard setback variances to an existing garage. The setback variance for the rear yard deck encroachment and front yard setback for the garage is greater than can be allowed by either the Development Officer or the Municipal Planning Commission. Further, a minor rear yard setback variance is required for the garage.

The subject property is located within a Hamlet Serviced Residential District (R1-S) referenced in Section 14 of the Land Use Bylaw 09/-Z/18. The rear setback distance for the R-1 district for a residential dwelling is 8m. The rear deck is attached to the dwelling and is 3.76m from the rear property line which requires a variance of 4.24m (53%). The existing deck is a discretionary use within the R1-S district. There is no record of a development permit being issued by the Development Authority for the deck.

The existing garage requires front and rear yard variances. In the R1-S district the front yard setback is 5.0 metres. The existing garage is located 2.67m from the front property line and will require a variance of 2.33m (46%) to comply with the R-1S district regulations. In the R1-S district the rear yard setback for an accessory building is 1.5m. The existing garage is located 1.35m from the rear property line and requires a variance of 0.15m (10%). An accessory building is a permitted use within the R1-S district.

The hearing commenced and concluded on September 3, 2020.

For the reasons outlined below, the Subdivision and Development Appeal Board (the "Board") conditionally grants the September 3, 2020 appeal by the Appellant for Development Permit Application No. 41/20.

The Board's conditions of approval are:

1. A variance of a 4.24 metres setback distance from the rear property line is granted for the deck attached to the existing single detached dwelling located on Lot 2, Block 1, Plan 755HV, based on the information provided by the Applicant and for no other development.
2. Any structural modifications to the existing deck will require a development permit.
3. A variance of 2.33 metres to the front yard setback for the existing garage located on Lot 2, Block 1, Plan 755HV, based on the information provided by the Applicant and for no other development.
4. A variance of 0.15 metres to the rear yard setback for the existing garage located on Lot 2, Block 1, Plan 755HV, based on the information provided by the Applicant and for no other development.

II. Background

The Board heard from the Agent, representing the Appellant and landowner, who is appealing the Notice of Decision by the Development Authority dated July 15, 2020 to REFUSE Development Permit Application 41/20.

On Development Permit 41/20, the Development Officer refused the application for a Development Permit due to the variance required to accommodate an existing deck structure encroaching into the rear yard setback and a front yard variance to an accessory building (existing garage); both variances being greater than can be allowed by either the Development Officer or the Municipal Planning Commission. As part of the same Notice of Decision, the Development Officer, refused to approve a rear yard setback variance to an existing garage.

The Notice of Decision was published in the August 20, 2020 edition of the Rocky Mountain Outlook.

The Appellant is appealing the Notice of Decision for Development Permit No. 41/20.

The Board hearing was held on September 3, 2020 at the M.D. Administration building in the Hamlet of Exshaw. The Board heard from the Agent, Appellants and Landowner. The Board also heard from Development Officer Janice Thompson on the Notice of Decision for development application 41/20. Several documents were submitted to the Board, as follows:

- Copy of the Notice of Decision, dated July 15, 2020 for Development Permit Application 41/20;
- Copy of the Letter of Appeal from the Appellant's Agent received August 5, 2020;
- Map showing the location of the Subject Property;
- Real Property Report of the subject property showing building locations and measurement from property lines.
- Development Permit application 41/20 for the subject property and submitted documents; Letter of Authorization for Agent, Building Elevations,
- Photographs of the subject property showing the dwelling, deck and garage;
- Excerpts from the Land Use Bylaw 09-Z/18 (Section 14. Hamlet Residential Serviced District (R1-S) 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's agent, K. Levasseur, introduced herself to the Board and said she works for Axiom Geomatics, the company that prepared the Real Property Report (RPR) for the property on March 10, 2020. She said they are appealing the decision to refuse the deck and garage variances.

Board Member E. Butters asked why the buildings were not built in the locations where the original permit required them to be. The landowner replied the buildings were placed according to the M.D. requirements at that time.

L. Hogarth asked if the subject property backs onto the railway. The Development Officer replied and said the setback distance is from the rear property line to the dwelling which is the railway property.

III

Reasons for Decision / Findings of Fact

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

- The Board is satisfied the rear yard setback variance to the existing deck does not materially interfere with or affect the use, enjoyment, or value of neighbouring parcels of land.

- The Board is satisfied the front and rear yard setback variances to the existing garage do 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 Serviced District (R1-S) in the Land Use Bylaw.
- The Real Property Report dated March 10, 2020 shows the locations and distances of the existing dwelling, deck and garage on the subject property.

September 18, 2020

DATE

BOARD



CHAIRMAN,

SUBDIVISION/DEVELOPMENT APPEAL

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.