



Municipal District of Bighorn No. 8

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DECISION OF THE SUBDIVISION/DEVELOPMENT APPEAL BOARD

Hearing: **31 August 2011**

Development Permit #15/11, **Linda Kaech (Appellant)**

I. Decision

For the reasons outlined below, the Board grants the 2 Aug 11 appeal of Linda Kaech, granting the requested variance to eave projection into the rear-yard setback, and also revoking Condition #4 of the 20 July 10 decision of the Municipal Planning Commission on Development Permit 15/11: the Development Permit application is for structural modifications to an accessory building, on the subject property legally described as Lot 5 Block 8 Plan 6402HX (122 Elk Street, Hamlet of Harvie Heights). All other conditions outlined in the Municipal Planning Commission's 20 July 11 Notice of Decision on Development Permit 15/11 remain as approved by the MPC.

II. Background

The Subdivision and Development Appeal Board (the "Board") heard an appeal from Linda Kaech (the Appellant), with respect to the Municipal Planning Commission's (the "MPC") 20 July 11 decision on Development Permit application 15/11. The Appellant had applied to complete structural modifications to an Accessory Building, and was seeking a variance to the eave projection into the rear yard set-back. The Appellant noted the Accessory Building had been constructed over thirty years ago: in undertaking the modifications recently, she was advised that building and development permits would be needed. The MPC, hearing the application, conditionally approved the application for the Accessory Building structural modifications, with seven conditions; Condition #4 of which reads:

"The accessory building shall be brought into conformance with Section 3.21.3 of the Land Use Bylaw 04/10, which requires that eaves may only project into the rear yard setback a maximum of 0.6 m (2.0 ft). The developer may:

- a. Move the entire building into a conforming position; or
- b. Alter the roof/eaves of the building."

On the variance to the eave projection, the MPC refused the application, for the following reason:

"The accessory building must be placed in a conforming position on the lot and the Municipal Planning Commission does not have the authority under Section 35.3.3 (c) of the Land Use Bylaw 04/10 to grant a variance to deem it to conform."

The appeal hearing by the Board was held on August 31st, 2011, 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 and MPC member Paul Ryan, on the MPC's Notice of Decision. A number of documents were submitted and provided to the Board, as follows:

- Board Secretary's Case Outline/Overview;
- copy of Development Permit 15/11 application;
- copy of the Certificate of Title;
- site sketch plan, showing the existing dwelling unit, all accessory buildings, and dimension;
- a selection of photographs of the existing (subject) accessory building;
- the 20 July 11 MPC Notice of Decision and an excerpt from the 20 July 11 MPC minutes;
- Section 543 of the Municipal Government Act, pertaining to non-conforming use/buildings;
- the 2 Aug 11 Letter of Appeal from the Appellant;
- maps and an aerial photo, showing the subject property location;
- excerpts from the Land Use Bylaw 04/10 (Section 3.21; Part 3 Section 12; Section 35.3)
- submissions indicating support for the Appellant/appeal:

- Victor Henning
- Robson Gmoser
- Roland Fuhrmann
- Jyoti Venne
- George Raham
- Bini Fuhrmann
- Kal Singh
- Peter Fuhrmann
- Rolfe Fuhrmann

The aforementioned documents are attached as Exhibits to the minutes of the hearing. There were no other submissions received in support of the Appellant; there were no submissions in support of the MPC decision. Mr. Robson Gmoser was present at the hearing, and made an oral submission in support of the Appellant.

Issues Raised

The Appellants raised the following issues, in their appeal:

1. Age and location of the Accessory Building
2. Accessory Building structure
3. Relocation of Accessory Building

The Appellant noted that the Accessory Building had been constructed over thirty years ago, and that the proposed modifications were intended to upgrade the building from its current use (storage) to a studio. The Accessory Building had been enclosed, when first constructed, but not fully finished nor waterproofed. She noted the Accessory Building sits fully within the property boundaries, and does not encroach out into the alleyway, nor does it interfere with adjoining lands.

With respect to the structure, the Appellant noted that cutting the eaves back, to bring the Accessory Building into set-back conformance, would not be feasible/possible, as there are sky-lights in the roof that would interfere with any cutting. She also noted that cutting the eaves would "destroy the aesthetics of the structure".

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