



Municipal District of Bighorn No. 8

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DECISION OF THE SUBDIVISION/DEVELOPMENT APPEAL BOARD

Hearing Date: September 19, 2017

Development Permit 73/17, Brenda and Lee Liebel (Appellants)

I. Decision

For the reasons outlined below, the Subdivision and Development Appeal Board (the "Board") grants the September 19th appeal to Brenda and Lee Liebel (the "Applicants"), on the refusal of Development Permit Application No. 73/17 by the Development Officer for the requested side yard setback variance for a previously constructed addition (deck expansion) to a single detached dwelling.

The Development Permit application 73/17 for the deck expansion and resulting north side yard variance on the subject property, legally described as Lot 20, Block 1, Plan 1311505, (#53 Windridge Road in the Hamlet of Exshaw, is approved by the Board with the following conditions:

1. A 1.22 metre) side yard variance is granted to the previously constructed deck expansion to the single detached dwelling on the subject property.
2. All construction shall conform to the Alberta Building Code.
3. The landowners are required to apply for and obtain a Building Permit from the MD of Bighorn for the addition (deck expansion) to the single detached dwelling.

II. Background

The Board heard an appeal from the Appellants, with respect to the Development Officer's Notice of Refusal on Development Permit application 73/17. The Appellants had applied for a development permit for a variance to a previously constructed addition (deck expansion) to their single detached residence. On August 30, 2017, the Development Officer sent notified the Applicants that Development Permit application was being refused. The reason for the refusal was the deck expansion encroached 1.22 metres into the side yard setback distance of 1.50 required in the Hamlet Single Detached Serviced Residential District. The resulting encroachment required an 82% variance to the 1.5 metre side yard setback, which neither the Development Officer or the Municipal Planning Commission have the authority to grant as per Sections 36.3.2(b) and 36.3.3(c) of the Land Use Bylaw. The Appellant is requesting the Board approve the deck expansion and the side yard variance.

The appeal hearing by the Board was held on September 19, 2017, at the M.D. Administration building in the Hamlet of Exshaw; the Appellants were present at the hearing. The Board heard from the Appellant; the Board also heard from Development Officer Jan Thompson on the Officer's Notice of Refusal. Several documents were submitted and provided to the Board, as follows:

- Board Secretary's Case Outline/Overview;

- Copy of Development Permit Application 73/17 form;
- Copy of the August 30, 2017 Notice of Refusal from the Development Officer;
- Copy of the August 31, 2017 Appeal from the Appellants, including photographs;
- Copy of the Certificate of Title;
- Copy of the Development Permit Application 73/17;
- Map showing the location of the Subject Property;
- Copy of the Real Property Survey Report (showing setback distances, house, house and deck locations);
- Excerpts from the Land Use Bylaw 04/10 (Part 3 Section 14 and Part 4, Section 36); and
- Two letters from adjacent neighbours supporting the variance request by the Appellants.

There were no other submissions, written or verbal, in support or opposition to the decision of the Development Officer.

Issues Raised

The Appellants explained they were in the process of selling their home and only became aware of the issue of the deck expansion and side yard encroachment after they applied for a Letter of Compliance from the MD. The Appellants' noted that the 2013 flood wiped out their back yard and they re-built the back yard, including the deck.

The subject property is zoned as Hamlet Single Detached Serviced Residential District (R-SH). The side yard variance for the district is 1.50 metres. The Board noted that the Real Property Survey Report showed the deck expansion was 0.28 metres from the side yard property line and would require a variance of 1.22 metres to the side yard setback.

The Board noted there were two submissions in support of the Appellants' variance request from nearby property owners; and that no objections were received.

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 to the north side yard setback of the previously constructed deck expansion would not unduly affect the amenities of the neighbourhood.
- The Board noted that two letters from adjacent neighbours were received in support of the variance request. No objections, either written or verbal, were presented to the Board.

The findings of facts are as follows:

- The subject property is zoned as Hamlet Single Detached Serviced Residential District (R-SH). The minimum side yard setback is 1.50 metres.
- Two letters from adjacent neighbours were received in support of the variance request.
- No objections were presented to the Board.
- The Appellants' are required to obtain a Building Permit for the previously constructed deck.

September 20, 2017

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.