



Municipal District of Bighorn No. 8

No.2 Heart Mountain Drive, P.O. Box 310, Exshaw, Alberta T0L 2C0

Phone: (403) 673-3611 • Calgary Direct: (403) 233-7678

Fax: (403) 673-3895 • Email: bighorn@md.bighorn.ab.ca

DECISION OF THE SUBDIVISION/DEVELOPMENT APPEAL BOARD

Hearing Date: October 30th, 2017

Development Permit 82/17

J. Brygger/A. Neilson (Appellants)

S. Arlidge/G. Pentland (Applicants)

I. Decision

For the reasons outlined below, the Subdivision and Development Appeal Board (the “Board”) confirms the issuance of Development Permit 82/17 to the Applicants, by the Municipal Planning Commission on September 28th, 2017, with additional conditions as noted below. Development Permit 82/17 was issued for a studio suite and a side yard setback variance for a newly constructed single detached dwelling at 8 Pigeon Mountain Drive (legal description Lot 4 Block 7 Plan 3338GO) in the Hamlet of Exshaw.

Additional Conditions

The appeal against both the Studio Suite and the side yard variance is denied; however, the conditions in Development Permit 82/17 are amended by inclusion of new conditions:

1. The Applicants are to take sufficient measures to ensure light trespass from their property onto any adjacent properties is mitigated to the best of their ability: use of low wattage light fixtures, and screening to direct light downward onto the Applicants’ property.
2. The Applicants are to be fully aware that the M.D. does not plow snow in the Hamlet alleyways, and therefore it is the Applicants’ responsibility to maintain their own access to the vehicle parking spots and garage at the rear of the property.

The Board also noted the issue of some confusion over “Secondary Suites” and “Studio Suites” within the M.D. of Bighorn Land Use Bylaw: the two need to be better defined within the L.U.B., in order to ensure that it is clear what kind of suite is being applied for/approved. The current definitions do not provide for a full understanding of what a “Secondary Suite” is, versus what a “Studio Suite” is, and what makes the two different. The Board recommends that this concern be addressed, by the M.D. of Bighorn, in the current review of the Land Use Bylaw.

II. Background and Issues Raised

The Board heard an appeal from the Appellants, Janet Brygger and Anthony Neilson (who reside next to the newly constructed single detached residence) with respect to the Municipal Planning Commission’s (“MPC”) approval of Development Permit application 82/17. The Applicants (Sue Arlidge and Greg Pentland) had applied for a development permit for a variance to an already-constructed single detached residence: during the course of construction, the contractor had miscalculated measurements, and as a result, the building encroaches 2.36 inches into the five foot (1.5 metre) side yard set-back, thereby requiring approval for a 4% variance to the side yard. The Applicants had indicated that this encroachment could not easily be brought back into conformance.

The Appellants had also appealed the approval of the studio suite in the Applicants’ single detached dwelling. They cited an infringement on their property rights to privacy and enjoyment of their land, indicating

orientation (the suite entrance is oriented towards the Appellants' property), window locations and size (the studio suite has two large picture windows that overlook the Appellants' property), lighting (exterior and interior lighting from the Applicants' property strays onto the Appellants' property), and the rooftop deck (a rooftop deck on the studio suite allows for occupants of the suite to look into the Appellants' backyard) as reasons for the appeal, in their 4 Oct 17 letter to the Board Secretary. The Appellants further noted that the Land Use Bylaw does not allow for the development of a studio suite that is attached to the principal building, as the garage on the Applicants' new single detached residence is connected to the principal building; the studio suite is on the top floor of said garage.

A third issue, garage access and vehicle parking at the rear of the Applicants' property was brought forward: it was noted that, since the M.D. snow-plowing policy does not include back lanes, the Applicants would have to be responsible for clearing snow in order to access the garage and park vehicles on the rear on-site (outside) parking pads, without that cleared-snow

The appeal hearing by the Board was held on October 30th, 2017, at the M.D. Administration building in the Hamlet of Exshaw; both the Appellants and the Applicants were present at the hearing, along with approximately eight others in the gallery. The Board heard from the Appellants, the Applicants, one person in support of the Appellants and one in support of the Applicants; 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:

- Copy of Development Permit Application 82/17;
- Copy of the 28 Sept 17 Notice of Decision from the MPC;
- Copy of the 4 Oct 17 letter of Appeal from the Appellants, including photographs;
- Copy of the Certificate of Title;
- Copies of plans and the site layout for the Applicants' single detached residence;
- Map showing the location of the Subject Property;
- Copy of the Real Property Survey Report (showing setback distances, house, house and deck locations); and
- Excerpts from the Land Use Bylaw 04/10 (Part 3 Section 14 and Part 4, Section 36).

Bill Day spoke in favour of the Appellants, and submitted his comments, which are attached to the minutes of the Hearing; Margaret Blokhuis spoke in favour of the Applicants. The Applicants also submitted eleven letters of support from other property owners on Pigeon Mountain Drive, indicating there were no issues with the studio suite at 8 Pigeon Mountain Drive, "as long as the owners occupy the main dwelling and follow all MD Bighorn rules and bylaws."; those letters are attached to the Applicant's written submission to the Board

There were no other submissions, written or verbal, in support or opposition to the decision of the Development Officer, the Appellants' appeal, nor the Applicants.

III Reasons for Decision / Findings of Fact

The Reasons for the Board's decision to uphold the MPC's issuance of the development permit, granting the side yard setback variance and approving the studio suite, with additional conditions are:

- The Board felt the proposed variance to the side yard setback of 2.36 inches would not unduly affect the Appellants' use and enjoyment of their property.
- The Board noted the many letters received, from Pigeon Mountain Drive property owners, expressing support for the studio suite.

- The Board also notes the Land Use Bylaw regulations (Part 3 Section 14.6.1) place sufficient restrictions on secondary/studio suites, to ensure the suites will fit into the neighbourhood and not unduly affect the peaceful enjoyment of property by the other residents of Pigeon Mountain Drive. The Board noted the requirements for the owner of the principal dwelling to reside in said dwelling at all times, while the suite is rented or used by others (i.e. the owner cannot live elsewhere and rent out both the suite and the principle dwelling unit; further a statutory declaration to that effect is required), and that there is a permit renewal process for the suite that requires an application/approval after Year one, followed by a similar application/approval process every three years thereafter.
- The Board noted that, with regard to Section 14.7.1 of the Land Use Bylaw (Design guidelines), the neighbourhood and a noticeable amount of the hamlet are in a transitional stage of re-development, and the M.D. has chosen to provide suggested guidelines, not compulsory architectural controls, for building appearance and design.

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/5.0 feet.
- Eleven letters from adjacent neighbours were received in support of the Applicants.
- The Applicants are required to renew the studio suite development permit on the basis as outlined in the Land Use Bylaw.

November 10, 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.