



Municipal District of Bighorn No. 8

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DECISION OF THE SUBDIVISION/DEVELOPMENT APPEAL BOARD

Hearing: November 20, 2017

Development Permit 94/17, Matthew Visentin and Michelle Dorge (Appellants)

I. Decision

For the reasons outlined below, the Subdivision and Development Appeal Board (the “Board”) grants the November 20, 2017 appeal of Matthew Visentin and Michelle Dorge (the “Applicants”), on the refusal of the Development Officer for Development Permit Application No. 94/17, for the requested variances to the side yard setbacks of two existing accessory buildings (horse shelters).

The Development Permit application 94/17 for the variances to the side yard setbacks of two existing accessory buildings on the subject property, legally described as Block 1, Plan 001 2257 within the SW 4-30-6-W5M (63248 Whispering Pines Road), is approved by the Board with the following conditions:

1. A 28.90 metre variance (96%) to the side yard setback for the accessory building located 1.20 metres from the side yard on the subject property is granted.
2. A 26.74 metre variance (89%) to the side yard setback for the accessory building located 3.26 metres from the side yard on the subject property is granted.

II. Background

The Board heard an appeal from the Appellants, with respect to the Development Officer’s Notice of Refusal on Development Permit application 94/17. The Appellants had applied for a development permit for side yard variances to two previously constructed accessory buildings (horse shelters) on the subject property. On October 3, 2017, the Development Officer sent a Notice of Refusal to the Applicants for Development Permit application 94/17. The reason for the refusal was the variances required for the two accessory buildings of 28.90 metres and 26.74 metres respectively, encroaching into the side yard setback distance of 30.0 metres required in the Agricultural Conservation District (AC). The resulting encroachments required the accessory buildings to have side yard variances of 96% and 89% respectively. As per Sections 36.3.2(b) and 36.3.3(c) of the Land Use Bylaw, the Development Officer and the Municipal Planning Commission do not have the authority to grant such large variances. The Appellant is requesting the Board approve the side yard variances for the two accessory buildings.

The appeal hearing by the Board was held on November 20, 2017, at the M.D. Administration building in the Hamlet of Exshaw; one Appellant (Matthew Visentin) was 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 94/17 form submitted by the applicant and signed by the registered owner of the subject property;
- Correspondence from Tim and Jessica van der Hiele (registered owners of the property) dated September 22, 2017;
- Copy of the October 3, 2017 Notice of Refusal from the Development Officer;
- Copy of the October 12, 2017 Appeal from the Appellants;
- Copy of the Certificate of Title;
- Map showing the location of the Subject Property;
- Copy of the Compliance Assessment letter issued to Dawn Lashmar – dated September 15, 2017.
- 2017 Real Property Survey Report (showing setback distances of the two accessory buildings located near the southern property boundary of the subject land);
- Excerpts from the Land Use Bylaw 04/10 (Part 3 Section 14 and Part 4, Section 36);
- Letter of Support from adjacent landowner, David G. Mallory, dated September 22, 2017;
- Photographs of the subject property showing the accessory buildings, dated September 25, 2017; and
- Handout prepared by the Development Officer, that includes a context map, Real Property Report dated 2000, aerial photograph of the subject property, and Part 4, Section 37 of the Land Use Bylaw.

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

Issues Raised

The Appellant, Matthew Visentin, stated he and his partner are the former owners of the property. Mr. Visentin said he was unaware of Real Property Reports, as they are uncommon in Manitoba, where he is from originally. He said the previous owners led him to believe that everything on the property complied when he and his partner purchased the property in 2015. A Real Property Report was not requested or prepared as part of 2015 land purchase. Mr. Visentin stated at the time he sold the property to the new owners in 2017, they made him aware that a current Real Property Report showed the two horse shelters too close to the property line and did not comply with the M.D's regulations. Mr. Visentin stated the new owners were supportive of him appealing the permit decision as they want this matter resolved before the purchase holdback is paid. Mr. Visentin told the Board that the two horse shelters (accessory buildings) were part of the sale and the new owners wanted to keep them. Mr. Visentin said the structures are pole sheds and constructed of 2 x 4's and tin, and are not serviced. He said the property is narrow and was not sure the shelter buildings could be relocated on the property. He told the Board that the shelters back onto an undeveloped government road allowance that is essentially a swamp. He said that the only activity on surrounding land is cattle grazing.

The subject property is zoned as Agricultural Conservation District (AC). The required side yard distance for the district is 30.0 metres. The Board noted that the Real Property Survey Report showed the two accessory buildings were 1.20 and 3.26 metres from the side yard property line when the required side yard setback for the AC district was 30.0 metres. The two accessory buildings would require variance of 28.90 metres and 26.74 metres respectively to encroach into the side yard setback. The resulting encroachments require the accessory buildings to have side yard variances of 96% and 89% respectively. As per Sections 36.3.2(b) and 36.3.3(c) of the Land Use Bylaw, the Development Officer and the Municipal Planning Commission do not have the authority to grant such large variances.

The Board noted the year the two accessory buildings were constructed is unknown. According to the Appellant's the structures were already present on the property in 2015 when they purchased the land. The Board noted the two structures are not shown on a Real Property Report dated 2000 for the same property.

The Board noted there was one submissions in support of the Appellants' variance request from a 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 variances to the side yard setback of the previously constructed accessory buildings (horse sheds) would not unduly affect the amenities of the neighbourhood.
- The Board noted that one letter from the adjacent neighbour was 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 Agricultural Conservation District (AC). The minimum side yard setback is 30.0 metres.
- One letter from an adjacent neighbour was received in support of the variance request.
- No objections were presented to the Board.

December 4, 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.

