



Municipal District of Bighorn No. 8

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DECISION OF THE SUBDIVISION/DEVELOPMENT APPEAL BOARD

Hearing: Wednesday, January 3rd, 2018
Development Permit 105/17, Cody Spurr (Appellant)

I. Decision

For the reasons outlined below, the Subdivision and Development Appeal Board (the “Board”) grants the December 8th, 2017 appeal of Cody Spurr (the “Appellant”), on the refusal of the Development Officer for Development Permit Application No. 105/17, for the requested variance to the limitation on width of vehicle accesses/driveways in Section 3.11 of the Land Use Bylaw. The Appellant requested a 71.6% variance to the driveway width limitation, for the existing driveway at 41 Windridge Road (legal description Lot 1 Block 1 Plan 8610481; hereinafter referred to as the “Subject Property”) in the Hamlet of Exshaw.

II. Background

The Board heard an appeal from the Appellant’s representative (Jenny Spurr), with respect to the Development Officer’s Notice of Refusal on Development Permit application 105/17. The Appellant was in the process of completing the purchase of the Subject Property, and requested a Letter of Compliance from the M.D. The Development Officer noted the developed (concrete) driveway width was not in conformance with the Land Use Bylaw requirements, and further noted the encroachment of said driveway into the undeveloped municipal road allowance. The Appellant applied for a development permit for the driveway width relaxation; on November 23, 2017, the Development Officer sent a Notice of Refusal to the Applicants for Development Permit application 105/17, noting the requested relaxation exceeded the powers of both the Development Officer and the Municipal Planning Commission, as the variance requested was 71.6%. 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 driveway width variance.

The appeal hearing by the Board was held on January 3rd, 2018, at the M.D. Administration building in the Hamlet of Exshaw; the Appellant’s representative (Jenny Spurr) was present at the hearing. The Board heard from the Appellant’s representative; the Board also heard from Development Officer Jenny Kasprovicz 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 105/17 form submitted by the Appellant and signed by the registered owner of the subject property;
- Copy of the December 8, 2017 letter of appeal from the Appellant;
- Correspondence from Rosemary Gartly and Christian Whelpdale (former registered owners of the Subject Property) dated December 8, 2017;

- Copy of the November 30th, 2017 Notice of Refusal from the Development Officer;
- Copy of the Certificate of Title;
- Pictures of the Subject Property, showing the driveway and other driveways within the community;
- Map showing the location of the Subject Property;
- Copy of the July 12, 2017 Compliance Assessment report provided to the former registered owners of the Subject Property, outlining the non-compliant driveway;
- July 2017 Real Property Survey Report (showing the concrete driveway area);
- Excerpts from the Land Use Bylaw 04/10 (Part 4, Section 36); and
- Copies of e-mail correspondence between the Appellant and M.D. Planning staff during September/October 2017.

There were no submissions, written or verbal, in support nor opposition to the decision of the Development Officer.

Issues Raised

The Appellant's representative referenced the Appellant's December 8th letter, noting the following reasons for requesting the variance:

- as new owners of the Subject Property, the Appellant had "inherited" the problem from the previous owners;
- there is a strong precedence in the Hamlet for non-conforming driveways;
- the land adjacent to the Subject Property will not be developed [the Subject Property is bounded by Municipal Reserve to the south and west; road allowance to the east, and an already -developed single family residential lot to the north];
- the Subject Property's driveway meets the minimum on-site parking and loading requirements; and
- parking on-street [on the undeveloped road allowance] would encourage Exshaw Creek trail users to do the same, which is undesirable from the community's standpoint.

The Subject Property is zoned as Hamlet Single Detached Serviced Residential (R-SH). The maximum driveway width for the R-SH district is 6.7 metres. The Board noted that the Real Property Survey Report showed the edge of the concrete driveway on the Subject Property's front boundary was just under 12 metres. 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 driveway was constructed prior to the Appellant purchasing the Subject Property. The Board also noted there were two (pedestrian) doorway accesses into the single family residence on the Subject Property, both utilizing the concrete driveway; therefore a portion of the concrete driveway could be considered "walkways" for the two doorway accesses.

The Board noted the aforementioned December 8 letter from the Subject Property's former owners; otherwise there were no objections nor letters of support 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 would not unduly affect the amenities of the neighbourhood.
- The Board could not distinguish between what part of the concreted area was "driveway" and what was "walkway".
- The Board noted that no objections, written or verbal, were submitted to the Hearing.

The findings of facts are as follows:

- No objections were presented to the Board.
- The lands adjacent to the Subject Property are unlikely to be developed in the future.

January 4th, 2018

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.