



Municipal District of Bighorn No. 8

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DECISION OF THE SUBDIVISION/DEVELOPMENT APPEAL BOARD

Hearing: Monday, November 19th, 2018
Development Permit 64/18, L. Boutet (Appellant)

I. Decision

For the reasons outlined below, the Subdivision and Development Appeal Board (the “Board”) conditionally grants the October 23rd, 2018 appeal of Lily Boutet (the “Appellant”), on the refusal of the Development Officer for Development Permit Application No. 64/18, for a side yard set-back variance of 1.77 metres (existing cantilever and rear deck are set back only 0.72 metres from the side-property line, as opposed to the Land Use Bylaw requirement of 2.5 metres), and for new additions to the dwelling of a cantilever/bumpout of the kitchen, a new enclosed front porch entry, new dormers, and interior renovations to the existing single-detached dwelling located at 327 Cascade Drive (legal description Lot 10 Block 3 Plan 6402 HX; hereinafter referred to as “the subject property”) in Harvie Heights. The conditions of approval are:

1. Approval is granted based on the information provided by the landowner for an Addition of a Cantilevered Bump Out (a kitchen expansion), the Addition of a Porch Entry (incorporating the existing side entry deck), and the Addition of Dormers to the Dwelling Roof.
2. The proposed development shall be located as shown on the plans provided by the owner, for Development Permit 64/18, except as altered through this decision.
3. More detailed and dimensioned drawings shall be provided to the Development Officer for the proposed kitchen cantilever addition, new porch, and dormers.
4. All construction shall conform to the Alberta Building Code and a building permit shall be obtained prior to commencement of any construction.
5. All electrical wiring and plumbing, all natural gas or propane connections, and all sewage alterations and installations shall be approved by Alberta-registered Safety Codes Officers.
6. If new plumbing fixtures are proposed as part of the development, the developer shall install low-water-use plumbing fixtures only. As applicable, these fixtures shall have the following features:
 - a. toilets shall have a capacity no greater than 6.0 litres per flush; and
 - b. shower heads shall have a flow capacity of not more than 9.5 litres per minute.
7. Pursuant to Section 3.24.6 of LUB 09-Z/18, and prior to commencement of construction, the landowner shall submit a statement, signed and sealed by a qualified professional that the existing sewage handling system is functioning properly.
8. The new additions to the dwelling shall be a minimum of 2.5 metres from any side property boundary unless approved to be at a lesser distance of 1.5 m as per the Alberta Building Code.
9. The Subdivision and Development Appeal Board (S/DAB) grants an approximate 71% (1.77 m) side yard setback variance to make the existing dwelling deemed to conform with Section 643 of the Municipal Government Act so that the proposed additions as described within this decision can be built. Accordingly, the existing dwelling may be as close as 0.72 m to the side property boundary.
10. The addition of dormers to the subject dwelling shall not result in the dwelling exceeding the

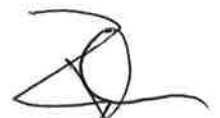
- maximum allowable height of 9.0 m as required within the Hamlet Residential District (R-1).
11. The additions shall match or be complimentary to that of the existing building.
 12. Care must be taken to ensure that the other setback distances to property boundaries are not exceeded as prescribed in Land Use Bylaw No. 04/10 (LUB), except for those projections allowed pursuant to Section 3.21 of the LUB.
 13. The landowner is responsible to ensure that site grading is completed to provide effective site drainage in accordance with Section 3.3 of Land Use Bylaw No. 04/10. Accordingly, no site drainage will be allowed to drain onto the adjacent neighbouring residential properties.
 14. The developer shall control weeds during the period of construction.
 15. Construction practices shall be followed as outlined in Section 36.25 of Land Use Bylaw No. 04/10.
 16. The developer shall sort construction wastes generated as a result of the development prior to transporting the waste material to a disposal facility, such as the Francis Cooke Regional Landfill. As a minimum, the MD of Bighorn expects to see the following material sorted for recycling purposes: items such as, asphalt shingles, brush and vegetation, metal, cardboard, drywall and kiln-dried lumber.
 17. The developer to install a high-level alarm in the existing septic tank/system and an interconnect to shut off the domestic water, to prevent re-occurrences of the overload/overflow situations that occurred in the past.

II. Background

The Board heard an appeal from the Appellant and the Appellant's agent (Rick Killeen), with respect to the Development Officer's Notice of Refusal on Development Permit application 64/18. The Appellant was seeking approval to construct additions (a new kitchen cantilever, a new front porch entry, new dormers and interior renovations) onto the existing single family residence on the subject property. In reviewing the development permit application, the Development Officer noted that the existing single family residence encroached into the side yard setback : the Land Use Bylaw requires a 2.5 metre setback, but the existing structure has only a 0.72 metre set-back. Neither the Development Officer nor the Municipal Planning Commission have the ability to grant the requested side-yard variance. Without the variance to the existing dwelling encroachments, the new additions and renovations could not be granted (as per MGA Section 643).

The appeal hearing by the Board was held on November 19th, 2018, at the M.D. Administration building in the Hamlet of Exshaw; the Appellant and her agent were present at the hearing. The Board heard from the Appellant and her agent; the Board also heard from Development Officer Janice Thompson on the Officer's Notice of Refusal, the President of the Harvie Heights Community Association (Joseph Wells), and the Appellant's neighbor Madeline Crilley. Several documents were submitted and provided to the Board, as follows:

- Copy of the Notice of Refusal dated October 18th, 2018, on Development Permit Application 64/18;
- Copy of the October 23rd, 2018 e-mail and letter of appeal from the Appellant;
- Copy of the July 2011 Real Property Report;
- Photos of the existing single family residence on the subject property (3);
- Copy of the Certificate of Title;



- Floor plans, and elevation sketches of the existing single family residence
- Maps showing the location of the Subject Property;
- Excerpts from the Land Use Bylaw 04/10 (Section 41.3);
- Copy of Development Permit 52/83 issued May 11, 1984
- Letters in support of the Refusal from the Harvie Heights Community Association, M. Crilley, and J. Mackenzie/A. Spiteri;
- Letter in support of the Appellant from A. & D. Hanert

Both the President of the Harvie Heights Community Association and M. Crilley also spoke in support of the Refusal on the Development Permit. Both cited concerns with the existing on-site wastewater disposal system (a septic tank and field), noting the system had malfunctioned in the spring of 2018, and thus requesting detailed action be taken to address the wastewater disposal system, as outlined in their respective submissions.

Issues Raised

The Appellant and agent referenced the Appellant's October 23rd letter of appeal, noting the following reasons for requesting the variance:

- all of the new development proposed complies with the required set-backs in the Land Use Bylaw; the current encroachments have existed since the single family residence was first constructed back in the 1950's;
- there have been no previous objections raised to the Appellant's father (original builder of the existing single family residence) nor to the Appellant herself;
- there has been two development permit issued subsequently, in 1983 and 1997/8, without any variances being noted;
- the single family residence is built at an angle on the lot; only a portion of the cantilever and deck on the side are thus non-conforming;
- the deck and cantilever were in existence prior to neighbours purchasing/residing at the adjacent house (329 Cascade Drive).

Other reasons were outlined in the Appellant's October 23rd letter.

The Board noted the concerns raised by the Harvie Heights Community Association and M. Crilley regarding the on-site wastewater disposal system, and further noted the Appellant/Appellant's agent's statements that they intend to repair/replace the septic tank/field, once the new construction was finished (the Appellant's agent indicated that construction access for the construction had to be through the rear yard, and it did not make sense to repair/replace the existing tank/field now, only to have construction equipment driving over same, to work on the dwelling. The Board also heard the Appellant's agent indicate the Appellant and he had been putting aside money now for the post-construction on-site wastewater disposal system work.

The Board noted there was no one present to speak in favour of the Appellant and the appeal; there was one letter of support submitted, from a neighbouring property owner (A. & D. Hanert).

III Reasons for Decision / Findings of Fact

The reasons for the Board's decision to grant the variance are:

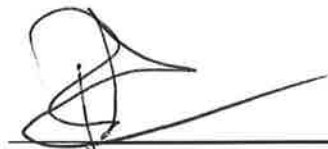
- The Board felt the proposed variance would not unduly affect the amenities of the neighbourhood.
- The Board noted that the objections that were submitted to the Hearing were primarily focused on the subject property's existing on-site wastewater disposal system. The Board also noted that the proposed development of the cantilevered kitchen bump out, the porch addition, the dormers, and the interior renovations would not increase the occupancy load on the wastewater disposal system, and therefore did not see the existing system as an impediment to granting the appeal. The Board also noted the statements of the Appellant and her agent that the existing system would be addressed, post-construction of the proposed development.

The findings of facts are as follows:

- The existing side yard encroachment resulted in the side yard setback being only 0.72 metres (a 1.77 metre variance) and therefore no additional variances are required for the proposed new construction.

November 26, 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.