



Municipal District of Bighorn No. 8

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DECISION OF THE SUBDIVISION/DEVELOPMENT APPEAL BOARD

Hearing: Thursday, January 10, 2019

Development Permit 78/18, T. and L. Clippingdale (Appellants)

I. Decision

For the reasons outlined below, the Subdivision and Development Appeal Board (the “Board”) conditionally grants the January 10, 2019 appeal of Tim and Laura Clippingdale (the “Appellant’s”), on the refusal of the Development Officer for Development Permit Application No. 78/18, for a Deck Addition to a Single Detached Dwelling with Side and Rear Yard Variances (required to deem the Dwelling to Conform) on Lot 2, Block 4, Plan 6402 H.X. (#406 Bow River Drive), hereinafter referred to as “the subject property” in the Hamlet of Harvie Heights. The conditions of approval are:

1. Approval is granted for a 2.16m (7.1ft) side yard variance to allow the existing dwelling to be located 0.34m. (1.1 ft.) from the side yard property line, as shown on the site plan provided with the Development Permit application;
2. Approval is granted for a 5.14m (16.86 ft) rear yard variance to allow the existing dwelling to be located 2.86m. (9.38 ft.) from the rear property line, as shown on the site plan provided with the Development Permit application;
3. Approval of the deck addition, as shown on the site plan provided with the Development Permit application;
4. The deck addition be constructed as shown on the application drawings with no sides or roof to be added to the deck;
5. There be no changes to the deck addition unless those changes are approved by the M.D. of Bighorn;
6. That all construction for the deck addition comply with the Alberta Building Code and a building permit be obtained.

II. Background

The Board heard an appeal from the Tim Clippingdale, one of the Appellants, with respect to the Development Officer’s Notice of Refusal on Development Permit application 78/18. The Appellant was seeking approval to construct a deck addition to the existing dwelling. However, the Real Property Report (site plan) submitted with the development permit application, showed the side and rear yard setback distances as not conforming to the Development Regulations in Section 12.5.2 of the Hamlet Residential District (R-1).

The deck addition to the existing structure is considered a permitted use but cannot be approved because the side and rear yard setbacks do not meet the requirements of the R-1 District.

The required side yard setback distance in the R-1 District is 2.5m. (8.2 ft). The site plan showed the existing dwelling as 0.34 m (1.1 ft) from the side yard property line. The existing dwelling encroaches 2.16m. (7.1 ft) into the side yard setback and therefore requires an 86 percent variance to the setback distance. Under Section 643 of the Municipal Government Act (MGA) the existing dwelling is a non-conforming building.

The required rear yard setback distance in the R-1 District is 8.0m. (26.2 ft). The site plan showed the existing dwelling as 2.86m (9.38 ft) from the rear yard property line. The existing dwelling encroaches 5.14m. (16.86 ft) into the rear yard setback and therefore requires a 65 percent variance to the setback distance. Under Section 643 of the Municipal Government Act (MGA) the existing dwelling is a non-conforming building.

Under Section 643(5) of the Municipal Government Act (MGA), “a non-conforming building may continue to be used but the building may not be enlarged, added to, rebuilt or structurally altered except, (c) in accordance with a land use bylaw that provides minor variance powers to the development authority for the purposes of this section.”

In order for the deck addition to be approved, the existing dwelling needs to change from a non-conforming building to a conforming building. The approving authority would need to grant the side yard and rear yard variances requested by the Applicants.

Pursuant to Section 41.3.2 (b) and Section 41.3.3 (c) of Land Use Bylaw 09/18, the extensive variances requested for the side yard and rear yard setbacks of 2.16m. (7.1 ft) and 2.86m (9.38 ft) respectively for Development Permit application 78/18, could not be granted by either the Development Officer or the Municipal Planning Commission.

Based on these facts, the Development Officer issued a Notice of Refusal for Development Permit Application 78/18 dated December 4, 2018. The Applicants submitted their appeal of the Development Officer’s decision on December 10, 2018 to the Subdivision and Development Appeal Board.

The appeal hearing by the Board was held on January 10, 2019, at the M.D. Administration building in the Hamlet of Exshaw; the Appellants (T. Clippingdale) was present at the hearing. The Board heard from the Appellants; the Board also heard from Development Officer Janice Thompson on the Officer’s Notice of Refusal. Several documents were submitted to the Board, as follows:

- Copy of the Notice of Refusal, date of issue, December 4, 2018, on Development Permit Application 78/18;
- Copy of the letter of appeal from the Appellant received December 17, 2018;
- Copy of the Certificate of Title;
- Maps showing the location of the Subject Property;
- Plan showing deck additions, with measurement and specifications;
- Development Permit Application Receipt Record;
- Excerpts from the Land Use Bylaw 04/10 (Section 41.3).

Issues Raised

The Board and Appellant discussed the following reasons for requesting the variance:

- the Appellant stated that he made application to build a deck on his property and was informed the existing home was non-complaint. He would like to build a new deck but must receive compliance for the existing home before he can build it.
- the Appellant said he had no plans for significant renovations to the home which was built in the 1960’s;
- The Appellant was unaware that there were non-compliance issues with the side and rear yard setbacks when he purchased the property in 2017;
- The Appellant had not heard of any concerns with the existing residence or his application for a new deck.

III Reasons for Decision / Findings of Fact

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

- The Board felt the proposed side yard and rear yard variances would not unduly affect the amenities of the neighbourhood.
- The Board noted that there were no objections from any adjacent neighbours submitted to the Hearing.
- The Board noted that granting the two variances would allow the existing dwelling to become a conforming building under Section 643 of the Municipal Government Act and the deck addition could be approved.

The findings of facts are as follows:

- There were no letters of support or opposition received by the Board.

January 22, 2019

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.