



Municipal District of Bighorn No. 8

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DECISION OF THE SUBDIVISION/DEVELOPMENT APPEAL BOARD

Hearing: Thursday, February 27, 2019
Development Permit 67/18, (Appellants)

I. Decision

For the reasons outlined below, the Subdivision and Development Appeal Board (the “Board”) conditionally grants the February 27, 2019 appeal of Eeva Harrop, Seppo Heikkila and Aulikki Heikkila (the “Appellant’s”) and their representative John Horrop of Muraneq Inc., on the refusal of the Development Officer for Part 2 of Development Permit Application No. 67/18 for a new deck with a hot tub and sauna building, that is deemed to part of the proposed addition to the existing dwelling and extends into the 8.0m rear yard setback distance that does not comply with Section 12.5 of Land Use Bylaw 09-Z/18 on Lot 2, Block 1, Plan 1370J.K. (#6 Des Arcs Crescent), hereinafter referred to as “the subject property” in the Hamlet of Lac Des Arcs. The conditions of approval are:

1. Approval is granted for the proposed Part 2 of Development Permit Application No. 67/18 for a new rear deck with hot tub and sauna building as provided by the applicant/owner, and as shown on the site plan provided and identified as Schedule “A” attached hereto.
2. The Subdivision and Development Appeal Board grants a 78.75% rear yard setback variance (approximately 6.30 m) for the new deck and associated hot tub and sauna building so the sauna building may be situated no closer than 1.70 m (5 ft. 7inches) from the rear property boundary.
3. There shall be no lights on the hot tub or sauna structures which allow light to shine across the side and rear property boundaries.
4. All electrical wiring shall be approved by an Alberta-registered Safety Codes Officer.
5. 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 John Horrop, agent for the Appellants, with respect to the Development Officer’s Notice of Refusal on Development Permit application 67/18. The Appellants are seeking approval to construct a new deck with a hot tub and sauna building on the subject property.

The Development Officer refused for Part 2 of Development Permit Application No. 67/18 for a new deck with a hot tub and sauna building as the deck, hot tub and sauna were deemed to be a building attached to the approved addition (Part 1 of Application No. 67/18) on the existing dwelling. The deck, hot tub and sauna extend into the 8.0m rear yard setback distance of the Hamlet Residential District (R-1) and does not comply with Section 12.5 of Land Use Bylaw 09-Z/18 on the subject property. The Development Officer noted in the January 9, 2019 Notice of Refusal that the new deck is shown to be detached 1 inch (2.54 cm) from the proposed addition (Part 1) and is deemed to be part of the addition that includes the associated hot tub and sauna building as it has the visual appearance of being connected to the dwelling. The Development Officer also noted in the Notice of Refusal that the variance required to the 8.0m rear yard setback would require a variance of approximately 82.5% to locate the deck, hot tub and sauna building within 4ft 8in (1.42 m) of the rear property boundary. As per Sections 41.3.2.(b) and 41.3.3.(b) neither the Development Officer or the Municipal Planning Commission have the ability to grant an 82.5% variance to the rear yard setback.

Based on these facts, the Development Officer issued a Notice of Refusal for Development Permit Application 67/18 dated January 9, 2019. The Applicants submitted their appeal of the Development Officer's decision on February 4, 2019 to the Secretary of the Subdivision and Development Appeal Board.

The appeal hearing by the Board was held on February 27, 2019, at the M.D. Administration building in the Hamlet of Exshaw; the agent representing the Appellants, Mr. John Harrop, and one of the Appellants (S. Heikkila) was present at the hearing. The Board heard from Mr. Harrop and Mr. Heikkila; 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, January 9, 2019, on Development Permit Application 67/18;
- Copy of the letter of appeal from the Appellant received February 4, 2019;
- Copy of the Certificate of Title;
- Map showing the location of the Subject Property;
- Plans showing new deck, hot tub, sauna addition, and house elevations, with measurements and specifications;
- Development Permit Application Receipt Record;
- Excerpts from the Land Use Bylaw 04/10 (Sections 12.5, 42 and 41).

Issues Raised

The Board and Appellant's Agent discussed the following reasons for the appeal:

- the Agent stated that he made application on behalf of the Appellants to build a new deck, hot tub and sauna on the property and was informed by the Development Officer that the proposed development was located within the rear yard setback and was not compliant with Section 12.5 of the LUB for the Hamlet Residential District (R-1) district.
- the Agent stated the Accessory Building, the sauna, should not be deemed attached to the Principal Building per article 4.1.4 of the LUB and the sauna should not be subject to the rear yard setback.
- the Agent said the deck was not a structural element as it is less than 2'0" above grade, and as a standalone object would not require a development permit per Section 42.2.1 of the LUB.
- he considered the deck as an elevated pathway to allow a safe path of travel between the sauna and the hot tub.
- the proposed hot tub has no foundation and should not be deemed a permanent structure.
- the rear yard setback for the proposed Accessory Building (Sauna) is 5'-7" (1.7m) which exceed the 4'-9" (1.5 m) minimum setback required by article 12.5.2 of the LUB.
- the Agent noted at the 4'-8" dimension shown on the site plan, and referenced in the refusal letter should, should have been shown as 5'-7" (1.7m).
- the Agent/Appellants had spoken with their neighbours and received no objections about building the deck, hot tub and sauna.

III Reasons for Decision / Findings of Fact

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

- The Board agrees with the Development Officer's assertion that the proposed deck, hot tub and sauna are deemed attached to the dwelling and that a variance was required to accommodate the deck, hot tub and sauna.
- The Board believes the required rear yard variance would not unduly affect the amenities of the neighbourhood, as the proposed deck, hot tub and sauna back onto an adjacent municipal reserve.
- The Board noted that there were no objections from any adjacent property owners submitted to the Hearing.
- The Board noted there were two letters of no objection from adjacent property owners (O. McEachern and Charles Vincett).

The findings of facts are as follows:

- There were two letters of no objection submitted by adjacent property owners received by the Board.
- There were no letters of objection received by the Board.

March 12, 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.