



Municipal District of Bighorn No. 8

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DECISION OF THE SUBDIVISION AND DEVELOPMENT APPEAL BOARD

Hearing: Monday, March 18, 2019

Development Permit 87/18, Tom and Heather Murray (Appellants)

I. Decision

The appeal before the Subdivision and Development Appeal Board (SDAB) was brought by Tom and Heather Murray.

On February 8, 2019, the Development Authority refused the application of Tom and Heather Murray for an Accessory Building (existing, unapproved picnic shelter) and a change of use (from a single detached dwelling (an existing unapproved, un-serviced cabin) to an accessory building (storage structure) all on SE Section 33, TWP. 30, RGE. 6, W5M – near Burnt timber Road, in the North Ranchlands Portion of the Municipal District of Bighorn, hereinafter referred to as “the subject property”. The property is owned by Tom and Heather Murray, Mymac Limited (Lorena Miller, Neil MacDonald, Joanne Mackenzie and Andrew MacDonald) and Margaret Keyzer. The subject property has a land use designation of Agricultural Conservation. The proposed development is a permitted use within the district.

The Development Authority’s Notice of Refusal states that the development permit application was deemed refused as per Section 683.1(8) of the Municipal Government Act (MGA) for the following reasons: that the Section 42.4.1, of the Land Use Bylaw 09-Z/18 requires “An application for a Development Permit shall be made to the Development Officer, using the prescribed form, signed by the owner or agent”, and Section 4.1.1. requires “an accessory building or use shall not be developed or approved prior to the issuance of a Development Permit, where required, for the principal use or building on the site”.

The hearing commenced and concluded on March 18, 2017.

For the reasons outlined below, the Subdivision and Development Appeal Board (the “Board”) denies the appeal and the decision of the Development Authority is upheld. A development permit shall not be issued.

II. Background

The Board heard an appeal from Tom and Heather Murray (the Appellants). Tom and Heather Murray applied for an Accessory Building (existing, unapproved picnic shelter) and a change of use (from a single detached dwelling (an existing unapproved, un-serviced cabin) to an accessory building (storage structure) all on the subject property.

The appeal is against the Development Authority’s February 8, 2019 Notice of Refusal of Development Permit 87/18 that states the development permit application was deemed refused as per Section 683.1(8) of the Municipal Government Act (MGA) for the following reasons: that the Section 42.4.1, of the Land Use

Bylaw requires “An application for a Development Permit shall be made to the Development Officer, using the prescribed form, signed by the owner or agent”, and Section 4.1.1. requires “an accessory building or use shall not be developed or approved prior to the issuance of a Development Permit, where required, for the principal use or building on the site”.

Based on above noted facts, the Development Authority issued a Notice of Refusal for Development Permit Application 87/18 dated January 9, 2019 on February 8, 2019. The Applicants submitted their appeal of the Development Officer’s decision on February 22, 2019 to the Secretary of the Subdivision and Development Appeal Board.

The appeal hearing by the Board was held on March 18, 2019, at the M.D. Administration building in the Hamlet of Exshaw; the Appellants (Tom and Heather Murray) were present at the hearing. The Board heard from the Appellants; the Board also heard from Development Authority (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, February 8, 2019, on Development Permit Application 87/18;
- Copy of the letter of appeal from the Appellant received February 22, 2019;
- Copy of the Development Permit Application;
- Copy of the Certificate of Title;
- Map showing the location of the Subject Property;
- Photographs of the picnic shelter, cabin, and storage structure;
- Development Permit Application Receipt Record;
- Excerpts from the Municipal Government (Section 683.1(8));
- Excerpts from Land Use Bylaw 04/10 (Sections 42.4. and 4.1.1.); and
- Suggested conditions of approval if development permit is issued.

Issues Raised

The Board and Appellants discussed the following reasons for the appeal:

- The Murray’s explained they purchased a portion of the property one and a half years ago. They said there were two existing structures on site, the picnic shelter and cabin, and they understood they were permitted at the time they purchased the property.
- The Murray’s said they only use the property for recreational uses.
- The Murray’s said they contacted the MD through their real estate agent and were told structures were permitted, but once the purchase had been completed, they learned that it was structures belonging to the MacDonald’s that had a permit, not theirs. They said they tried but could not find anything in their records to show the structures were permitted.
- The Murray’s stated they could not get consent from one of the property owners, M. Keyzer, for the application.

III Reasons for Decision / Findings of Fact

The reasons for the Board’s decision to refuse the appeal:

- The Board is satisfied that Section 42.4.1 of the Land Use Bylaw requires the consent of all owners of the subject site. The application did not comply with Section 42.4.1 of the Land Use Bylaw, as the applicant did not receive the consent of all owners listed on the Land Title registered on the subject property, noted as Title Number 171 182 567.
- The application does not contain all outstanding information and documents sufficient for it to be deemed complete, because it is missing the consent of all owners of the subject property.
- The application was appropriately deemed refused according to Section 683.1(8) of the MGA.
- The Board acknowledges the applicants’ submissions that the subject property effectively functions as three different parcels of land. However, the land is still a single parcel, and the internal agreements between the landowners do not change this or replace the Land Use Bylaw’s requirements that all owners must consent to the application.
- Even if the applicants had obtained the consent of all parties, the application would still have been contrary to Section 4.1.1. that requires an accessory building or use shall not be developed or approved prior to the issuance of a Development Permit, where required, for the principal use or building on the site. The applicants have not demonstrated that there is a principal use of the subject site which has either been approved or which would not have required a development permit.
- The Board places no weight on the fact that the developments that are the subject of this application (accessory building (existing, unapproved picnic shelter) and a single detached dwelling (an existing unapproved, un-serviced cabin)) have been developed on the subject property without the approval of the Development Authority.

The Board acknowledges the following additional submissions:

- There was one letter of support for the Development Authority’s decision to refuse the application, submitted by M. Keyzer.
- Verbal support for the appeal was made at the hearing by N. MacDonald and J. MacKenzie.

April 4, 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, RSA 2000 c. M-26, as amended. An application for leave to appeal to the Court of Appeal of Alberta shall be made within THIRTY (30) days after the issue of the order, decision, permit or approval sought to be appealed.