



Municipal District of Bighorn No. 8

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File

DECISION OF THE SUBDIVISION/DEVELOPMENT APPEAL BOARD

Hearing: Tuesday, October 22, 2019
Development Permit 77/19 (Appellant)

COPY

I. Decision

The appeal before the Subdivision and Development Appeal Board (SDAB) was brought by Edward (Bob) Sonntag.

On September 23, 2019, the Development Authority issued a Notice of Refusal for an application by Edward (Bob) Sonntag (the "Appellant") for a side yard variance to an Accessory Building (Shipping Container) located within SW Section 8, TWP. 27, RGE. 7, W5M – 74065 Forestry Trunk Road near Highway 40, hereinafter referred to as "the subject property". The property is owned by the Appellant. The subject property has a land use designation of Agricultural Conservation District (AC). The proposed development is a permitted use within the AC district.

The Development Authority's Notice of Refusal states that the proposed development did not comply with the minimum side yard setback distance of 30.0 metres from the property line for a detached Accessory Building in the AC District of Land Use Bylaw 09-Z/18. The Accessory Building is located 12.45 metres from the nearest side yard property line. The proposed side yard variance of 17.55 metres or 60% above the minimum side yard setback stipulated for Accessory Buildings in Section 8.5.1. of the AC District. The variance for the Accessory Building is greater than can be approved by the Development Officer pursuant to Section 41.3.3 (a) of Land Use Bylaw or the Municipal Planning Commission pursuant to Section 41.3.2 (a) of the Land Use Bylaw.

The hearing commenced and concluded on October 22, 2019.

For the reasons outlined below, the Subdivision and Development Appeal Board (the "Board") conditionally grants the October 22, 2019 appeal of Edward (Bob) Sonntag for Development Permit Application No. 77/19. The Board's conditions of approval are:

1. The Subdivision and Development Appeal Board (S/DAB) grants a 20.5 metre (68.3%) variance to the side yard setback to the existing accessory building so that the accessory building may be a minimum of 9.5 metres from the north side property line.
2. All construction shall conform to the National Building Code, 2019 (AE) and a building permit shall be obtained.
3. All electrical wiring, and all natural gas or propane connections and installations shall be approved by Alberta-registered Safety Codes Officers.
4. There shall be no home-based business carried on within the accessory building unless a separate application for such has been approved by the MD of Bighorn.
5. The accessory building shall not be used for any sleeping accommodation, and no secondary suite shall be created. This building shall not be used as a dwelling or provide any overnight residential

- occupancy and shall not contain any cooking facilities.
- 6. Any exterior lighting shall be designed, located and arranged to be low glare in nature and to minimize light trespass on to adjacent properties. Light fixtures with a lumen output of greater than 2,000 lumens shall be fully shielded to the satisfaction of the MD.
- 7. Arrangements for access to the site shall be the responsibility of the applicant/owner and at the applicant/owner's sole expense.
- 8. Any additional changes to that proposed in the application shall require a separate (or amendment) application prior to commencement of those changes.
- 9. No further development, expansions, or change in use is permitted unless approved by the MD of Bighorn.

II. Background

The Board heard an appeal from Edward (Bob) Sonntag with respect to the Development Officer's Notice of Refusal issued on September 23, 2019 for Development Permit application 77/19. The Appellant is seeking a side yard to an Accessory Building on the subject property.

The Notice of Refusal was based on:

1. Development Permit 77/19, for an Accessory Building on the subject property was refused by the Development Officer as the proposed 12.45 metre side yard setback for the Accessory Building requires a side yard variance of 17.55 metres or 60% above the minimum setback of 30.0 metres for accessory buildings stipulated in the AC district regulations in the Land Use Bylaw.
2. The requested side yard variance for the Accessory Building is greater than can be approved by the Development Officer pursuant to Section 41.3.3 (a) of Land Use Bylaw or the Municipal Planning Commission pursuant to Section 41.3.2 (a) of the Land Use Bylaw.

Based on these facts, the Development Officer issued a Notice of Refusal for Development Permit Application 77/19. The Applicant's agent (Modern Dimensions Design Inc.) submitted an appeal of the Development Officer's decision that was received by the Secretary of the Subdivision and Development Appeal Board on September 26, 2019.

The appeal hearing by the Board was held on October 22, 2019, at the M.D. Administration building in the Hamlet of Exshaw. The Board heard from the Appellant, Edward (Bob) Sonntag. 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, September 23, 2019 for Development Permit Application 77/19;
- Copy of the Letter of Appeal from the Appellant's Agent (Modern Dimensions Design Inc.) received September 26, 2019;

- Copy of letter from Appellant dated September 6, 2019
- Letter of Support dated September 5, 2019 from adjacent neighbour (Denise and Joe Nickel);
- Map showing the location of the Subject Property;
- Site Plans showing the accessory building (container building) location on site and distances from the side yard property line;
- Photographs of the accessory building on site;
- Site Plan from a building permit application for the subject property;
- Slope Stability Assessment Report for the subject property, prepared by e2k engineering ltd;
- Excerpts from the Land Use Bylaw 09-Z/18 (Section 8 Agricultural Conservation District and Section 41 Duties and Responsibilities of the Approving Authorities);
- Copy of the Certificate of Title;
- Development Permit Application Receipt Record.

Issues Raised

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

- The Appellant told the Board the property was purchased six years ago with the idea to build a cabin and shed. He constructed the container shed but did not apply for a permit.
- The Appellant said the rationale for placing the containers (the accessory building) where they are is due to the limitations on the landscape, with steep slopes in all directions with a three-acre clearing with a flat spot in the corner of the property. He noted that this is the only place to build.
- The Appellant stated there is no power or lights in the building. He said he parks his quads and truck and tractors in the building. He said there is no water or sewer. He said the shed will only be used for cold storage.
- L. Rosvold asked about the location of the accessory building on the property and its distance from the property line and other adjacent homes. The Appellant stated that the container shed was approximately 500 metres away from the nearest home on the adjacent property, the Nickels.
- R. Anderson asked about the location and ownership of other properties adjacent to the subject property. The Appellant responded that the adjacent properties were owned by the Nickels, Bar C Ranch and the Province.
- D. Apedaile asked about the use of the solar panels on the roof of the accessory building. The Appellant said he would intend to run a line from the container shed to a future cabin on the site.
- R. Anderson asked if the container shed will be used as a guest building. The Appellant noted that the accessory building would likely be removed when the future cabin is constructed.
- R. Anderson noted there were discrepancies in the side yard setback distances from the accessory building to the property line that shows 12.45 metres and 14.85 metres on different site plans submitted with the SDAB package. The Appellant stated that a legal survey had not been completed on the property.
- The Board, Appellant and Development Officer examined site plans together. The Development Officer also submitted a recent site plan, that was included in a separate building permit application, for the subject property. This new site plan showed 10.13 metres side yard setback between the accessory building and the property line.
- D. Apedaile noted that with three different setback distances, a minimum side yard distance for the accessory building needs to be determined to ensure the distance of the accessory building from the property line will not

be an issue when a future property survey is undertaken.

III Reasons for Decision / Findings of Fact

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

- The proposed side yard variance for the Accessory Building would not unduly interfere with the amenities of the area or materially interfere with or affect the use, enjoyment, or value of neighbouring parcels of land.
- The Board was satisfied that the accessory building was not visible from adjacent properties as a result of steep terrain and forest cover in and around the subject property.

The findings of facts are as follows:

- The subject property has a land use designation of Agricultural Conservation District (AC) in the Land Use Bylaw. The proposed Accessory Building is a permitted use within the District.
- Verbal support for the appeal was made at the hearing by Denise and Joe Nickel, adjacent property owners.

November 1, 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.