



Municipal District of Bighorn No. 8

No.2 Heart Mountain Drive, P.O. Box 310, Exshaw, Alberta T0L 2C0

Phone: (403) 673-3611 • Calgary Direct: (403) 233-7678

Fax: (403) 673-3895 • Email: bighorn@md.bighorn.ab.ca

DECISION OF THE SUBDIVISION/DEVELOPMENT APPEAL BOARD

Hearing: Monday, November 25, 2019
Development Permit 80/19 (Appellant)

I. Decision

The appeal before the Subdivision and Development Appeal Board (SDAB) was brought by Peter Sokolowski and Philippa Liston.

On October 2, 2019, the Development Authority issued a Notice of Refusal for an application by Piotr Sokolowski and Phillipa Liston Philippa (the “Appellants”) for a variance to the width of a driveway approach located on Lot 2, Block 7, Plan 1510262 (132 River’s Bend Way), hereinafter referred to as “the subject property”. The property is owned by the Appellants. The subject property has a land use designation of Hamlet Residential Serviced District (R1-S). The development of a driveway approach on the subject property is regulated by Section 3.6.4 of the M.D. of Bighorn Land Use Bylaw No. 09-Z/18 for driveway width and approaches within the municipality.

The Development Authority’s Notice of Refusal cites Section 3.6.4 of the Land Use Bylaw and notes the Appellant’s request for an 8.6 metre wide driveway approach exceeds the maximum width of 6.7 metres by 1.9 metres. The proposed variance of 1.5 metres requires a 29% relaxation to Section 3.6.4 of the Land Use Bylaw. The variance for the driveway 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.

As part of the Notice of Refusal, the Development Officer requested the driveway approach be modified to comply with the maximum width of 6.7 metres at the front property line of the subject property. Prior to any modification work proceeding within the approach area (municipal/public property), a permit must be obtained from the M.D. of Bighorn Operations Department.

The hearing commenced and concluded on November 25, 2019.

For the reasons outlined below, the Subdivision and Development Appeal Board (the “Board”) upholds the decision of the Development Officer and orders the Appellant to comply with the Notice of Refusal for Development Permit Application No. 80/19. The Board’s conditions of approval are:

1. In accordance with Section 3.6.4 of the Land Use Bylaw, the driveway will be modified to comply with the maximum width of 6.7 metres at the front property line of the subject property;
2. The modification will remove 1.9 metres from the driveway approach on the right side of the subject property as shown on Schedule 1 attached to this Decision.
3. The area of land created by the removal of the driveway approach shall be landscaped with similar materials currently used on the side yard of the subject property.

4. The Appellant shall complete the modification to the driveway and provide proof, consisting of photographs and site plan, to the M.D. of Bighorn by February 5, 2020, all to the satisfaction of the Development Officer.
5. Prior to any modification work proceeding within the approach area (municipal/public property), a permit must be obtained from the M.D. of Bighorn Operations Department.

II. Background

The Board heard an appeal from Peter Sokolowski and Philippa Liston (the “Appellants”) for a variance to the width of a driveway approach located on Lot 2, Block 7, Plan 1510262 (132 River’s Bend Way), with respect to the Development Officer’s Notice of Refusal issued on November 5, 2019 for Development Permit application 80/19. The Appellant is seeking a variance to the width of the driveway approach on the subject property.

The Notice of Refusal was based on:

1. Development Permit 80/19, for a variance to the width of the driveway approach on the subject property, was refused by the Development Officer as the proposed width requires variance of approximately 1.9 metres or 29% above the maximum driveway approach width of 6.7 metres stipulated in Section 3.6.4 of the Land Use Bylaw.
2. The requested variance for the driveway approach 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 80/19. The Appellants submitted an appeal of the Development Officer’s decision that was received by the Secretary of the Subdivision and Development Appeal Board on November 8, 2019.

The appeal hearing by the Board was held on November 25, 2019, at the M.D. Administration building in the Hamlet of Exshaw. 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: November 5, 2019 for Development Permit Application 80/19;
- Copy of Development Permit Application 80/19 dated October 1, 2019
- Real Property Report for the subject property showing the location and dimension of the driveway approach received October 1, 2019;
- Copy of the Letter of Appeal from the Appellants received November 8, 2019;
- Site Plan of the River’s Bend subdivision identifying the subject property.
- Photographs of driveway and driveway approach on the subject property.
- Excerpts from the Land Use Bylaw 09-Z/18 (Section 3.6. Driveway Approach, including Section 3.6.4. and Section 41 Variance Powers of the Development Authority);
- Copy of the Certificate of Title;
- Development Permit Application Receipt Record;
- Letters in support of the appeal from adjacent neighbours.

Issues Raised

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

- The Appellants (P. Liston and P. Sokolowski) told the Board they were asking for a variance to the driveway width.
- P. Liston told the Board that they have a 3-car garage, and during the planning process they had to relocate their house on the lot, so it was closer to the street in order to accommodate extra windows on the home. He said with the home moved forward on the lot, the permitted width of the driveway would not allow access to the third garage. P. Sokolowski said he thought the driveway was included in the building permit.
- P. Liston told the Board that they tried to taper the driveway to the recommended width at the curb and didn't realize the property line started further back from the road, meaning the driveway was not tapered enough at the curb. P. Sokolowski said there is no sidewalk on their side of the road. P. Liston said the garages are already built and they would like to use them.
- P. Liston said she was told by her lawyers to have another Real Property Report (RPR) prepared once the home was finished in order to release compliance funds that were being held.
- The Board and the Appellants examined the RPR plan together and discussed the width of the driveway approach.

III Reasons for Decision / Findings of Fact

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

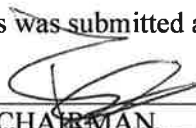
- The proposed variance for the driveway approach would interfere with the amenities of the area or materially interfere with or affect the use, enjoyment, or value of neighbouring parcels of land.
- The Board was concerned that the 8.6 wide driveway on the subject property would restrict public street parking as the additional 1.9 metres would give vehicles less area on the street in which to park.
- The modification to the driveway approach to 6.7 metres in width allows the majority of the driveway width to remain as it is currently constructed.

The findings of facts are as follows:

- The subject property has a land use designation of Hamlet Residential Serviced District (R1-S).
- The development of a driveway approach on the subject property is regulated by Section 3.6.4 of the M.D. of Bighorn Land Use Bylaw No. 09-Z/18 for driveway width and approaches within the municipality.
- The constructed driveway approach is 8.6 metres wide.
- Written support from adjacent neighbours was submitted at the hearing by the Appellants.

December 9, 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.

ALBERTA LAND SURVEYOR'S REAL PROPERTY REPORT

LEGAL DESCRIPTION

LOT 2, BLOCK 7, PLAN 1510262

MUNICIPAL ADDRESS

132 RIVER'S BEND WAY, DEAD MAN'S FLATS

PREPARED FOR

PHILIPPA LISTON

NOTES

1. The survey was completed on July 17, 2019.
2. A title search was performed on July 22, 2019.
3. Unless otherwise specified, distances are taken to foundation and are in metres.
4. Lot area 663.7 m²
5. Footprint 201.1 m² 30.3 % (Dwelling)
0.6 m² 0.1 % (Cantilever)
6. Fences are within 0.2m of property line unless otherwise shown.
7. Eave measurements are to fascia.
8. Deck and stair measurements are to extents of walking surface.
9. Registered interests (excluding encumbrances):
131 324 011 CAVEAT (Re: Development Agreement)
151 030 058 CAVEAT (Re: Restrictive Covenant)
151 030 062 URW (Plan 1510263)

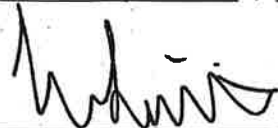
Certification: I hereby certify that this report, which includes the attached plan and related survey, was prepared and performed under my personal supervision and in accordance with the the Alberta Land Surveyors' Association's Manual of Standard Practice and supplements thereto. Accordingly, within those standards and as of the date of this report, I am of the opinion that:

1. the plan illustrates the boundaries of the property, the improvements as defined in Part D, Section 8.5 of the Alberta Land Surveyors' Association's Manual of Standard Practice, and registered easements and rights-of-way affecting the extent of the title to the property;
2. the improvements intended to be on the property are entirely within the boundaries of the property;
3. no visible encroachments exist on the property from any improvements situated on an adjoining property;
4. no visible encroachments exist on registered easements or rights-of-way affecting the extent of the property;

Purpose: This report and related plan have been prepared for the benefit of the property owner, subsequent owners, and any of their agents for the purpose of a real estate transaction.

Copying is permitted only for the benefit of these parties. Where applicable, registered easements and utility rights-of-way affecting the extent of the property have been shown on the plan. Unless shown otherwise, property corner markers have not been placed during the survey for this report. The plan should not be used to establish boundaries because of the risk of misinterpretation or measurement error by the user. The information shown on this report reflects the status of this property as of the date of survey only. Users are encouraged to have the Real Property Report updated for future requirements. Lot boundaries have been determined prior to the survey completion date shown above. Therefore the present condition of survey evidence might be significantly different than that shown.

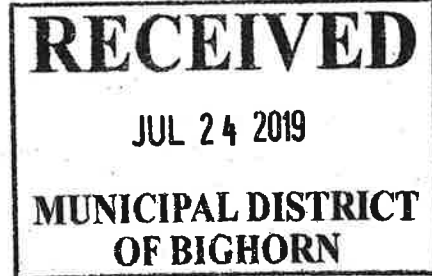
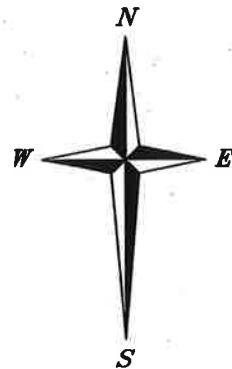
Dated this 24th day of July, 2019.



Warren Lippitt, Alberta Land Surveyor

This document is not valid unless it bears an original signature and a permit stamp in a different colour than this document.

SCALE = 1:200



DRAWN BY: JP JUL/22/2019

CHECKED BY: WL

© McElhanney Land Surveys (Alta) Ltd.

2019



McElhanney
Land Surveys (Alta) Ltd.
100, 402-11th AVENUE, CALGARY AB, T2G 0Y6
PH (403) 678-6363; FAX (855) 407-3895
FILE: 19-157

