



Municipal District of Bighorn No. 8

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DECISION OF THE SUBDIVISION/DEVELOPMENT APPEAL BOARD

**Hearing: Monday, November 25, 2019
Development Permit 81/19 (Appellant)**

I. Decision

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

On October 2, 2019, the Development Authority issued a Notice of Refusal for an application by Peter Sokolowski and Philippa Liston (the "Appellants") for a variance to the eaves on the north side of the existing residential dwelling located on Lot 2, Block 7, Plan 1510262 (132 River's Bend Way, Hamlet of Dead Man's Flats), 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 projection of the eaves into the required yard setback is regulated by Section 3.26, as per Table 3, of the M.D. of Bighorn Land Use Bylaw No. 09-Z/18 for Permitted Projections in Yard Setbacks.

The Development Authority's Notice of Refusal cites Permitted Projections in Section 3.26 (and Table 3) of the Land Use Bylaw and notes the Appellant's request for the north side eave to extend 0.30 metres into the minimum yard setback of 0.9 metres for sills, eaves and gutters. The proposed variance of 0.3 metres requires a 40% relaxation to Section 3.26, Table 3, of the Land Use Bylaw. The variance for the eave projection into the yard setback of the subject property is more 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 non-compliant eaves to be altered to meet the minimum yard setback of 0.90 metres from the north property line.

The hearing commenced and concluded on November 25, 2019.

For the reasons outlined below, the Subdivision and Development Appeal Board (the "Board") conditionally grants the November 5, 2019 appeal by Piotr Sokolowski and Philippa Liston for Development Permit Application No. 81/19. The Board's conditions of approval are:

1. The Subdivision and Development Appeal Board (S/DAB) grants a 0.30 metre (40%) variance to the yard setback for the north side eave on the existing dwelling.

II. Background

The Board heard an appeal from Piotr Sokolowski and Philippa Liston (the "Appellants") for a variance to the property line setback distance for the north side eave on the existing dwelling 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 81/19. The Appellants are seeking a variance to the north side eave on the existing dwelling.

The Notice of Refusal was based on:

1. Development Permit 81/19, for a variance to the north side eave projection of 0.30 metres into the 0.90 metre minimum yard setback distance from the northern property line of the subject property, was refused by the Development Officer as the proposed variance was 40% above the required minimum setback distance of 0.90 metres stipulated in Section 3.26, Table 3, of the Land Use Bylaw.
2. The requested variance of 0.30 metres 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 81/19. 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 81/19;
- Copy of Development Permit Application 81/19 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.
- Photograph of the dwelling showing the north side eave and the adjacent municipal reserve lot.
- Excerpts from the Land Use Bylaw 09-Z/18 (Section 3.26. Yard Setbacks and Permitted Projections 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 (Piotr Sokolowski and Philippa Liston) made a short presentation to the Board. P. Liston told the Board that there is one corner at the back of the garage where the eave is non-compliant. She told the Board the dwelling was moved on the property prior to building, in order to accommodate required setbacks for windows on the house. The measurement for the eave was missed.
- P. Sokolowski told the Board the eave is 6 inches too long. P. Liston said she didn't realize the eave was not in compliance until they had a Real Property Report (RPR) prepared. She said she applied for a variance from the MD, but it was refused.
- P. Sokolowski told the Board that their property does not have neighbours on either side of their home as it is located next to a park and a walking trail. He added that the home has a built-in sprinkler system.

III Reasons for Decision / Findings of Fact

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

- The proposed variance to the projection of the dwelling's north side eave into the north property line of the subject property 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 north eave projection into the 0.90 metre yard setback will not affect the adjacent municipal reserve lot and walking trail.

The findings of facts are as follows:

- The subject property has a land use designation of Hamlet Residential Serviced District (R1-S).
- The requirement for a minimum allowed 0.90 metre yard setback for eaves located near property lines is regulated by Permitted Projections in Section 3.26, as per Table 3, of the M.D. of Bighorn Land Use Bylaw No. 09-Z/18.
- The north side eave on the dwelling is 0.60 metres from the northern property line of the subject property.
- Written support from adjacent neighbours was provided to the Board 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.

