



# 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](mailto:bighorn@md.bighorn.ab.ca)

## DECISION OF THE SUBDIVISION and DEVELOPMENT APPEAL BOARD

Hearing: Wednesday, January 6, 2021

Development Permit 29/20 and 30/20 , Cowley Outfitters - Gloria Cowley (Appellant)

### I. Decision

On November 8, 2020, the Development Authority issued a Notice of Decision for Development Permit 29/20 for an Extensive Agriculture Operation (to keep horses) and approval of existing Accessory Buildings for the agricultural use, all on a portion of NW, Section 26 (LSD), Township 24, Range 8, West of the 5<sup>th</sup> Meridian (the “subject property”). The property is located in the Rafter Six Tourist and Recreation District (RSTR).

The Appellant appealed Condition No. 3 of Development Permit 29/20 which required the tent storage structure and hay shelter to be moved so the structures conforms with Section 26.5, Development Regulations, in Land Use Bylaw 09-Z/18, being a regulation within the Rafter Six Tourist and Recreation District (RSTR). The tent storage structure and hay shelter are all to be moved into a conforming location on the property within six months of the subject permit becoming effective on the subject property.

On November 8, 2020, the Development Authority issued a Notice of Decision on part of Development Permit Application 30/20 for a Factory-Built Dwelling with a front yard setback variance of Existing Accessory Structures for some of those existing structures all located a portion of NW, Section 26 (LSD), Township 24, Range 8, West of the 5<sup>th</sup> Meridian (the “subject property”). The property is located in the Rafter Six Tourist and Recreation District (RSTR).

The Appellant appealed Condition No. 5 of Development Permit 30/20 which required the bath/pumphouse structure to be moved into a conforming position as per the requirements of Section 26.5 Development Regulations in Land Use Bylaw 09-Z/18, being a regulation within the Rafter Six Tourist and Recreation District (RSTR). The bath/pumphouse structure is to be moved on the property within six months of the subject permit becoming effective on the subject property.

The appeals of Development Permits 29/20 and 30/20 are being made by the same landowner of the above described property. The Subdivision and Development Appeal Board (the “Board”) heard the Appellant’s two appeals in one hearing.

The hearing commenced and concluded on January 6, 2021.

The Subdivision and Development Appeal Board (the “Board”) **DENIES** the appeal of Condition 3 of Development Permit 29/20 and the decision of the Development Authority is upheld. The Board’s reasons are outlined below:

1. The existing tent storage structure and hay shelter are located 1.5 metres or less from the north and west property boundary and do not conform with Development Regulations 26.5 of the

Rafter Six Tourist and Recreation District (RSTR) in the Land Use Bylaw. Development Regulation 26.5 requires a minimum setback distance of 30 metres from the front yard, rear yard and side yard.

2. The appellant has not provided sufficient evidence to satisfy the Board that the development with this relaxation will not unduly interfere with or affect the use, enjoyment or value of the neighbouring property. There was disagreement over whether the Appellant has a leasehold interest in the neighbouring property, but nothing turns on that, as the Board must consider the use of the subject property, and not whether the Appellant has a leasehold interest on the adjacent Crown land. The Board must make its own determinations regarding the impact of the development on the neighbouring property and cannot simply base its decision on whether or not the owner or occupant of that property at the particular time of the development objects.

The Subdivision and Development Appeal Board (the “Board”) **GRANTS** the appeal of Condition (5) of Development Permit 30/20 and allow the variance of 5 metres for the Bath/Pumphouse Structure to remain in its current location 25 metres from the west property boundary. The Board’s reasons are outlined below:

1. The variance of 5 metres to the 30 metre setback distance, noted in Development Regulations 26.5 of the Rafter Six Tourist and Recreation District (RSTR) in the Land Use Bylaw, is a reasonable relaxation to keep the existing Bath/Pumphouse Structure in its current location. The structure is still a significant distance from the property line.
2. No evidence was presented that the Bath/Pumphouse Structure would impact adjacent landowners, and the Board is satisfied that it will not given the significant distance between the structure and the property line.

## **II. Background**

On November 8, 2020, the Development Authority issued a Notice of Decision for Development Permit 29/20 for an Extensive Agriculture Operation (to keep horses) and approval of existing Accessory Buildings for the agricultural use, all on a portion of NW, Section 26 (LSD), Township 24, Range 8, West of the 5<sup>th</sup> Meridian (the “subject property”). The property is located in the Rafter Six Tourist and Recreation District (RSTR).

On November 8, 2020, the Development Authority issued a Notice of Decision on part of Development Permit Application 30/20 for a Factory-Built Dwelling with a front yard setback variance of Existing Accessory Structures for some of those existing structures all located a portion subject property.

Based on these facts, the Municipal Planning Commission (the “Approving Authority”) issued two separate Notices of Decision for Development Permit Applications 29/20 and 30/20 on November 19, 2020. The Applicant submitted the appeal of the Development Authority’s decisions on

Development Permits 29/20 and 30/20 on December 9, 2020 to the Subdivision and Development Appeal Board.

The Appellant appealed condition Condition No. 3 of Development Permit 29/20 which required the tent storage structure and hay shelter to be moved so the structures conforms with Section 26.5, Development Regulations, in Land Use Bylaw 09-Z/18, being a regulation within the Rafter Six Tourist and Recreation District (RSTR).

The Appellant is requesting the Board provide a variance to the 30 metre building setback, noted in Development Regulation 26.5, to have the existing tent storage structure and hay shelter remain in their current location, being 1.5 metres from the north and west property boundary.

The Appellant also appealed Condition No. 5 of Development Permit 30/20 which required the bath/pumphouse structure to be moved into a conforming position as per the requirements of Section 26.5 Development Regulations in Land Use Bylaw 09-Z/18, being a regulation within the Rafter Six Tourist and Recreation District (RSTR). The bath/pumphouse structure is to be moved on the property within six months of the subject permit becoming effective on the subject property.

The Appellant is requesting the Board provide a 5 metre variance to the 30 metre building setback, noted in Development Regulation 26.5, to have the existing bath/pumphouse structure remain in the current location being 25 metres to the west property boundary.

The hearing by the Board was held on January 6, 2021, at the M.D. Administration building in the Hamlet of Exshaw; the Appellant (Gloria Cowley) was present at the hearing. The Board heard from the Appellant and Development Officer Janice Thompson on the Notices of Decision for Development Permit Applications 29/20 and 30/20. Several documents were submitted to the Board, including:

- Copy of the Notice of Decision Development Permit Applications 29/20 and 30/20 issued on November 19, 2020;
- Copy of the letter of appeal from the Appellant received November 19, 2020;
- Copy of Development Permit applications 29/20 and 30/20;
- Copy of Conceptual Site Plan of the Subject Property;
- Photographs of Structures on the Subject Property;
- Certificate of Title;
- Excerpts from the Land Use Bylaw 09-Z/18 – Sections 26, 41.3 and 41.3.3.

### **Issues Raised**

The Board and Appellant discussed the following reasons for requesting the variance:

- The Appellant explained the requested the setback for the tent storage structure and hay shelter was a temporary solution for storage. She said the current locations of the structures does not interfere with the use and enjoyment of neighbours and are not visible to any neighbours.

- L. Hogarth asked if the tent structure was not permanent is the intention to move or remove it at any time. Katrina Cowley said they do not have plans to move the tent as it is full of furniture they are storing for a house they would like to build in the future.
- K. Cowley said the hay shelter is a tent and is used to feed the horses and said it would be very challenging to move the structures. She said moving the structures might make them visible to neighbours.
- K. Cowley said the bath/pumphouse acts as a cover for water lines going to the horse corrals and said a five (5) metre variance would be appreciated.
- Hogarth asked how long the bath/pumphouse had been in its current location. G. Cowley said it was installed around 1995 or shortly thereafter.
- Chair Apedaile asked who owned the property to the west of the Cowley property. G. Cowley said the west side is leased to Carswell and said there are trees on the fence line and one open area.
- Chair Apedaile asked if the area was visible to Rafter 6. G. Cowley said no.

### **III In Opposition**

The Board heard from Keith Wilson, legal counsel for Rafter 6 Ranch (adjacent landowner). K. Wilson stated said the SDAB and MPC should not grant variances for structures that have been recently brought on to the Cowley property and are clearly not meeting setback requirements. K. Wilson also said that here was no evidence that the Cowley's have a lease on the Crown lands to the north of their property.

Chair Apedaile asked the Appellants if the 1.1 acres, immediately north of their property, was held in a lease by the Cowley's. G. Cowley said correct.

### **IV Reasons for Decision / Findings of Fact**

The reasons for the Board's decision to deny the appeal of Condition 3 of Development Permit Application 29/30 are:

1. The existing tent storage structure and hay shelter do not conform to the minimum 30 metre setback building setback distance specified in Development Regulations 26.5 of the Land Use Bylaw.

2. The Appellant has not provided sufficient evidence to satisfy the Board that the development with this relaxation will not unduly interfere with or affect the use, enjoyment or value of the neighbouring property. There was disagreement over whether the Appellant has a leasehold interest in the neighbouring property, but nothing turns on that, as the Board must consider the use of the subject property, and not whether the Appellant has a leasehold interest on the adjacent Crown land. The Board must make its own determinations regarding the impact of the development on the neighbouring property and cannot simply base its decision on whether or not the owner or occupant of that property at the particular time of the development objects.
3. There are no planning merits for approving this discretionary use so close to the property line. Relocating the tent storage structure and hay shelter to conform to the required setback distance of 30 metres would bring the structures into conformance with the Land Use Bylaw.
4. The six month timeline note in Condition 3 to relocate the two structures is not deemed to be onerous.

The reasons for the Board's decision to grant the appeal of Condition 5 of Development Permit Application 30/20 are:

1. The variance of 5 metres to the 30 metre setback distance is a reasonable relaxation to keep the existing Bath/Pumphouse Structure in its current location. The structure is still a significant distance from the property line.
2. No evidence was presented that the Bath/Pumphouse Structure would impact adjacent landowners, and the Board is satisfied that it will not given the significant distance between the structure and the property line.

January 26, 2021  
DATE

*M. D. Apedaile*  
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, 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.