



Municipal District of Bighorn No. 8

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DECISION OF THE SUBDIVISION/DEVELOPMENT APPEAL BOARD

Hearing: 30 November 2010

Development Permit #52/10, A. & D. Mallory (Appellant)

I. Decision

For the reasons outlined below, the Board grants the 8 November 10 appeal of Ann and David Mallory, revokes the 26 October 10 decision of the Municipal Planning Commission on Development Permit 52/10, for a second single family dwelling, five cabins to be used as accessory buildings (for storage) with a variance to the side yard set-back to one accessory building, on the subject property legally described as Ptn. SW Section 4 Township 30 Range 6 West of the Fifth Meridian, near Whispering Pines Road. The granting of the appeal is subject to the following conditions:

For the Second Single Family Dwelling:

1. A Building Permit shall be obtained for the second dwelling.
2. All electrical wiring shall be approved by an Alberta-registered Safety Codes Officer.
3. A twenty-five per-cent (25%) variance to the minimum dwelling unit habitable floor area requirements be allowed, thereby allowing a habitable floor area of 470 square feet.

For the Accessory Buildings:

1. The existing Accessory Buildings shall conform to the Alberta Building Code.
2. All electrical wiring shall be approved by an Alberta-registered Safety Codes Officer.
3. A maximum thirty per-cent (30%) variance to be given, for any side-yard setback that might be required, for the encroaching accessory buildings to be retained at their current location. The building labeled "Gwen" must be relocated to comply with this variance (currently encroaching approximately fifteen metres into the setback; maximum encroachment allowed, with variance, is nine metres).
4. The accessory buildings shall not be used as residential dwelling accommodations and given the history of the property, the applicants shall consent to periodic inspections to ensure that these accessory buildings are not used for residential purposes.
5. The Appellants shall be allowed to retain four (4) of the existing Accessory Buildings.

II. Background

The Subdivision and Development Appeal Board (the "Board") heard an appeal from Ann and David Mallory (the Appellants), with respect to the Municipal Planning Commission's (the "MPC") 26 October 10 refusal of Development Permit 52/10. The Appellants had applied to retain one recreational cabin as a single family dwelling unit, for a hired hand, and to retain five other recreational cabins, which were made uninhabitable and converted to accessory buildings for

storage. The Appellants' application had further included a request for a sideyard set-back variance, as the one cabin/accessory building (labeled as "Gwen") was encroaching approximately fifteen metres (15 m.) into the sideyard setback to the adjoining property. The Appellants, having purchased the property approximately a year and a half ago, had removed 11 storage sheds and 16 cabins, in order to comply with a stop order registered against the property in March 2002. As the Stop Order required removal of all cabins on site, the Appellants sought approval to retain five of the cabins and retain one dwelling unit, for the purposes of accommodating a part-time hired hand, with variances approved. The MPC refused the application, noting that:

- the retention of the structures was not "...consistent with the spirit of the Stop Order";
- that at least one structure appears to be in a non-conforming position (encroaching into the sideyard set-back).

In making the appeal to the S/DAB, the Appellants modified their application:

- the building intended to be the second dwelling unit, upon inspection (#16, BM), would be too difficult to renovate to current Alberta Safety (Building) Code requirements, and consequently would be removed before December 19th, 2010. The Appellants thus requested that the building known as "KT" be allowed to remain as the second dwelling unit, with a variance to the minimum required habitable floor area of 592 square feet: the building's square footage is 470 square feet, or approximately 20% less than the minimum requirement.
- the Appellants reduced the request from five accessory buildings down to four (the four being those labeled "Millen", "Elk", "Cougar", "Gwen").
- a sideyard setback be granted for the accessory building known as "Gwen", given its encroachment of fifteen metres (15 m.) into the thirty metre (30 m.) sideyard setback requirement.

The appeal hearing by the Board was held on November 30th, 2010, at the M.D. Administration building in the Hamlet of Exshaw; the Appellants were present at the hearing. The Board heard from the Appellants; the Board also heard from the Director of Planning/Assistant Municipal Manager Greg Birch and MPC Chair Carolyn Montgomery, on the MPC's Notice of Decision. A number of documents were submitted and provided to the Board, as follows:

- Board Secretary's Case Outline/Overview;
- copy of the 28 September 10 Development Permit 52/10 application;
- site sketch plan, showing the existing dwelling unit, all cabins/sheds/proposed accessory buildings (and denoting which buildings had been removed), the closed gun range, the neighbouring property and dwelling unit;
- copy of the 29 March 02 Stop Order issued to the subject land's former owner (P. Laveck);
- the 26 Oct 10 MPC Notice of Refusal (decision);
- excerpt from the 20 Oct 10 MPC meeting on Development Permit application 52/10;
- the Appellants' powerpoint presentation to the S/DAB;
- 8 Nov 10 Letter of Appeal from Appellants;

-Suggested Conditions for Subdivision and Approval – Planning & Development department;

-submissions indicating “no objections” to the issuance of DP 52/10:

-N/CO R. Christianson, RCMP

-R. Deschene, adjacent property owner

-T. & T. Heaney, adjacent property owner

-P. & R. van Hal, property owners/residents on Whispering Pines Road

-submissions supporting the MPC’s Notice of Refusal:

-F. Painsi, adjacent property owner

-J. N. Trenke, property owner adjacent to the Appellant’s leased lands

The aforementioned documents are attached as Exhibits to the minutes of the hearing. There were no other submissions received in support of either the Appellants nor the MPC decision, nor were there any oral submissions made at the Hearing in support of the Appellants nor the MPC decision.

Issues Raised

The Appellants raised the following issues, in their appeal:

1. All Recreational Activity Halted and Eliminated
2. Removal of Cabins
3. Removal of Storage Sheds
4. Overall Clean-up

The Appellant indicated that the recreational activities that were a prominent issue in the March 2002 Stop Order had ceased: all tenants had vacated the cabins, the gun range had been decommissioned, motorized access to the Appellants’ adjacent lease lands had been eliminated, and many of the cabins/storage sheds had been removed or converted to non-residential uses (storage, horse shelters, etc.). The property’s use is now an agricultural operation, with horses and cattle.

The Board noted that the original 2002 Stop Order required the removal of the cabins on site, by December 19th, 2010, and that recreational activities/development were addressed in the Stop Order. The Board noted that the cabins were vacated and many removed; the gun range decommissioning and motorized access issues were not considered by the Board, in the deliberations regarding the Appellants’ application to retain buildings.

The Appellants noted the extensive amount of debris/junk left on site by the previous owners/tenants, and indicated their clean-up efforts included scrap metal removal, legal burning of some buildings, an RCMP forced entry/explosives unit training exercise, and many trips to landfills.

The overall clean-up efforts by the Appellants, while noted by the Board, were not considered in the deliberations regarding the Appellants’ application to retain buildings.

Term of Ownership: The Appellants noted that they had gained ownership of the subject lands in April 2009, and thus had accomplished a significant amount of work in complying with the March 2002 Stop Order, in trying to meet the December 19th, 2010 deadline stipulated in the Stop Order.

The Board noted the extensive compliance efforts undertaken to date, by the Appellants, given the relatively-short time of ownership.

Encroachment: The Appellant indicated that they recognized the one cabin/accessory building (“Gwen”) encroached into the sideyard, and indicated a willingness to relocate said building, but may still need a variance.

The Board noted the willingness to relocate the building.

Consultation with neighbours: The Appellants indicated their efforts to contact adjacent neighbours and property owners, and that they had not been able to speak to one property owner in the vicinity, who had not returned their calls.

The Board noted the submissions from the immediately-adjacent neighbours of the subject property (Heaneys and Deschene) indicating they supported the Appellants application and providing reasons for their support. The Board also noted that the submissions from those supporting the MPC’s Refusal (Painsi and Trenke) did not provide reasons for their support of the MPC refusal.

III Reasons for Decision / Findings of Fact

The reasons for the Board’s decision to grant the appeal and allow the retention of buildings/the second dwelling unit/variances are:

- the Board felt the remaining buildings, the second dwelling unit and the variances did not unduly affect the amenities of the neighbourhood, noting the submissions from the immediately-adjacent neighbouring properties that indicated support for the Appellants’ application.
- the Board felt the remaining buildings, the second dwelling unit and the variances would not materially interfere with nor affect the use, enjoyment or value of neighbouring parcels of land.
- the Board believed the Appellants were attempting to “do the right thing” by applying for the retention of the buildings and the necessary variances, and trying to comply with the Stop Order.
- the Board noted that the submissions in support of the MPC’s decision/refusal did not offer any reasons for their support.

The finding of fact is as follows:

- There was a strong showing of support from immediately-adjacent properties/the closest neighbours; the two objections received (supporting the MPC decision, not the

Appellants) failed to provide any reasons for the objections, nor any compelling reason for the S/DAB to deny the appeal.

3 Dec 2010

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.