
SUBDIVISION AND DEVELOPMENT APPEAL BOARD**DECISION**

Hearing held at: Mountain View County Office
Council Chambers

Date of Hearing: November 22, 2016

Members Present: Keith Branter
Angela Aalbers
Alana Gibson
Gil Hegel
Ron Vogel

Basis of Appeal: This is an appeal to a development permit refused by the Municipal Planning Commission on October 6, 2016. The Appellant has sited the following as the Reason for Appeal:

- Construction of an accessory building with an easterly side yard setback relaxation from 15 meters to 10 meters will not materially interfere with or affect neighbouring property.

Appealed By: Ivan Price

Description of Application:

On November 22, 2016 the Subdivision and Development Appeal Board heard an appeal by Ivan Price, in regards to the refusal of a development permit by the Municipal Planning Commission for an accessory building with easterly setback relaxation on the NW 7-29-3 W5M Plan 0814703 Block 1 Lot 1.

The essential issue that the Subdivision and Development Appeal Board must address in this appeal is whether a proposal for Construction of an Accessory Building with an easterly side yard setback relaxation is consistent with:

- Municipal Development Plan (MDP)
 - Section 3.2.2 To minimize the loss of agricultural land by limiting the amount of land removed from agricultural use.
 - Section 3.3.3 All new farm residences and other buildings shall be encouraged to locate within the quarter section to minimize the impact on agricultural operations.
- The Land Use Bylaw Section 5.2.7 Pursuant to the Municipal Government Act Section 640(6), the Approving Authority may approve an application for development permit notwithstanding that the proposal does not comply with this Bylaw, if in the opinion of the Approving Authority
 - a) the proposal would not
 - (i) unduly interfere with the amenities of the neighbourhood;
 - or

- (ii) materially interfere with or affect the use, enjoyment, or value of neighbouring properties; and
 - b) the proposal conforms with the use prescribed for that land or building under this Bylaw.
- The Land Use Bylaw No. 15/15 Section 11.1. A Agricultural District, Discretionary Uses – Accessory Building and Use Site Regulation Side Yard - Minimum 15.0 m (49.2 ft.)
 - Dogpound Area Structure Plan Bylaw No. 34/03
 - Section 3.1.1 Agriculture will continue to be the primary use of the land throughout the majority of the plan area.

Findings of Fact:

1. The subject parcel is 51.88 acres and is zoned Agricultural District and is located within the Dogpound Rural Community.
2. A Development Permit application was received for a farm use accessory building with a setback relaxation of 10 meters (32.8 ft.) from the east side property line. The proposed farm use accessory building, herein referred to as the Farm Building, is to measure 55.7 meters squared (600 sq. ft.), 6.1 meters x 9.1 meters (20ft x 30 ft.) with an eave height of 3.0 meters (10 ft.) and a peak height of 3.9 meters (12.8 ft.).
3. The proposed application does not meet the required side yard setback of 15 meters (49.2 feet) as mentioned within the Agricultural District of the Land Use Bylaw No 15/15.
4. Should the structure have met the side yard setback of 15 meters within the Agricultural District of the Land Use Bylaw No 15/15 a development permit would not have needed to be obtained as this would be considered an exempt use under Section 4.2 of the Land Use Bylaw No 15/15 where no development permit is required for Farm Buildings.
5. The applicant started construction of the Farm Building prior to receiving a Development Permit.
6. The application is a result of a complaint to the County.
7. The applicant ceased construction of the Farm Building immediately upon notification from the County and submitted a Development Permit application.
8. There is an existing dwelling with attached garage on the subject property.
9. To move the Farm Building 5 meters to the west, in order to meet the required 15 meters setback would place the structure in front of the existing garage and on the existing driveway.
10. The proposed Farm Building location to the east of the dwelling was selected over the west side due to the proximity of the existing water well and septic system.
11. The property contains some sloping to the southwest.
12. The proposed location is well screened by mature trees and bushes from the road and the neighbours to the east.
13. The closest dwelling is approximately 90 meters (300 feet) away to the southeast.
14. The applicant proposed the exterior of the Farm Building is to be constructed with fire resistant material; steel roof and trim, and concrete fibre siding on a concrete pad.
15. The proposed Farm Building construction site is maintained as part of the yard site with existing vegetation consisting of mowed grass and trees.
16. Both the Cremona and Madden Fire Departments are 7 miles away; 15 minute response time from the Cremona Fire Station.
17. Where fire is of concern the County has adopted a FireSmart program. The FireSmart principles encourage the utilization of fire retardant building materials for new structures.
18. The primary concern of the adjacent landowner is the Farm Building poses a fire risk.

19. The adjacent landowner is concerned the intensification of noise could impact their cattle operation.

Decision:

The decision of the Subdivision and Development Appeal Board (SDAB) is to uphold the appeal and approve the proposed Accessory Building with Easterly Setback Relaxation, in accordance with the Land Use Bylaw No. 15/15 and the submitted application, within NW 7-29-3-5 Plan 0814703 Block 1 Lot 1 submitted by PRICE, Ivan, Development Permit File No. PLDP20160285, subject to the following conditions:

CONDITIONS:

The works outlined in this application are subject to the following Conditions:

Standard Conditions:

1. The provisions of the Land Use Bylaw No. 15/15.
2. Approval by the approving authority does not exclude the need and/or requirements of the Permittee to obtain any and all other permits as may be required by this or any other legislation, bylaws, or regulations.
3. The Development Officer may, by notice in writing, suspend a Development Permit where development has occurred in contravention to the terms and conditions of the permit and/or Land Use Bylaw.

Standard Conditions If Applicable:

4. N/A
5. N/A
6. An Alberta Land Surveyor is to locate / post the location of the building(s) / structure(s) prior to construction as per the approved sketch. The County shall not be responsible or liable for non-compliance with this condition.
7. N/A
8. N/A
9. N/A
10. No development shall be constructed, placed or stored over an easement or utility right of way; the applicant/landowner is responsible for contacting Alberta-One-Call and/or other governing authority.

Permits Associated with Building Construction:

11. If the development authorized by a Development Permit is not completed within twenty-four (24) months from the effective date of the permit, such permit approval ceases and the permit itself is deemed void, expired and without effect, unless an extension to this period has been previously granted.

12. Permittees are advised that they are subject to standards of the Safety Codes Act of Alberta and are responsible to meet the requirements of the Act in regards to building, electrical, gas, plumbing, and private sewage disposal systems. Prior to construction required permits must be obtained from Mountain View County. Mountain View County shall not be responsible or liable in any manner whatsoever for any structural failures, defects or deficiencies whether or not the said development has complied with the Safety Codes Act of Alberta.

Additional Conditions:

13. The proposed accessory building is for farm use and is not permitted for any business/industrial/commercial or residential use/occupancy.
14. The exterior of the accessory building will be constructed with the materials proposed; fire resistant material; steel roof and trim, and concrete fibre siding on concrete pad.
15. The exterior finishing of the building is constructed to be visually consistent with the exterior of the dwelling.
16. All new development is encouraged to utilize fire retardant building materials and shall practice FireSmart principles outlined in the FireSmart Manual (Refer to the enclosed Fire Smart Manual provided by Alberta Sustainable Resource Development). <http://wildfire.alberta.ca/fire-smart/>
17. An easterly setback relaxation of 10 meters (32.8 feet) to the property line is approved for the life of the building.
18. As development proceeded without the necessary Development Permit, a 1st Offence Penalty Fee for Residential Development of \$1,000 shall be applied. This fee will be invoiced. Failure to pay the Penalty Fee within 30 days of the invoice date may result in the County taking steps to caveat the Fee to the titled property.

Reasons:

1. Hearing all the evidence at this hearing, it is determined any negative impacts on the adjacent neighbour can be mitigated with Conditions within the Development Permit.
2. Sufficient evidence was not presented to indicate a 5 meters difference in setback would significantly increase the risk of fire with the proposed construction and use of the Farm Building. Fire prevention principals have been incorporated by the applicant and further enforced with the condition for the use of fire retardant building material and the application of FireSmart principles.
3. Concerns for the future use of the building that would create increased noise, having an impact on the adjacent agricultural operation such as business, industrial or commercial use would not be permitted as per the Development Permit and is subject to the provisions of the Land Use Bylaw.
4. No evidence was presented to indicate the proposed Farm Building would unduly interfere with the amenities of the neighbourhood.
5. No evidence was presented that privacy, enjoyment or impact on the value of the lands was a concern to the neighbouring properties.
6. During the hearing it was confirmed the application for the Farm Building adheres to the Municipal Development Plan as the structures are located within close proximity to minimize the impact on the applicant's agricultural lands.
7. The application is for Farm Building which conforms to the Land Use had the building met setbacks.

8. The Dogpound Area Structure plan encourages agricultural use, and a Farm Building would be a consistent use.
9. The Municipal Planning Commission within their decision to refuse the setback relaxation from 15 meters to 10 meters for the Farm Building failed to provide any tangible information on the specific instances as to why or how the application is considered to materially interfere with or affect the use, enjoyment or value of the neighbouring property.

Evidence:

The Board considered the following evidence in making its decision:

Exhibit A Notice of Development Appeal

Exhibit B Background to Development Permit Application

Exhibit C Municipal Planning Commission Notice of Decision

Exhibit D Appellants Package:

- Appellants' Letter to Board
- Site Photos

Exhibit E Letters in Support of Appellant

Exhibit F Respondents Package Submitted by Development Officer

- Request for Decision
- Location, Land Use and Ownership Map
- Site Plan submitted by Applicant
- Environmental Scan Map
- Aerial Photograph
- Objection Letter
- Applicants Letter of Intent
- Request for Decision for October 6, 2016
- Recommended Conditions of Approval
- October 6, 2016 Adopted Minutes Excerpt

Exhibit G Letter in Opposition

Exhibit H The Home Owners FireSmart Manual by Alberta Sustainable Resource Development

Verbal presentation to the Subdivision and Development Appeal Board by the following:

- Appellant
- Planning and Development Department
- Adjacent landowner

Appeals:

If you wish to appeal this decision, you must follow the procedure prescribed in Section 688 of the Municipal Government Act as follows:

Section 688(1)

The appeal must be to the Court of Appeal of the Province on a question of law or jurisdiction with respect to a decision of the Subdivision and Development Appeal Board.

Section 688(2)

An application for leave to appeal pursuant to subsection (1) must be made to a judge of the Court of Appeal within 30 days after the issue of the decision sought to be appealed, and notice of the application must be given to:

- (a) the Subdivision and Development Appeal Board; and
- (b) any other persons that the judge directs.

Section 688(3)

On hearing the application and the representations of those persons who are, in the opinion of the judge, affected by the application, the judge may grant leave to appeal if the judge is of the opinion that the appeal involves a question of law of sufficient importance to merit a further appeal and has a reasonable chance of success.

**SUBDIVISION AND DEVELOPMENT APPEAL
BOARD OF MOUNTAIN VIEW COUNTY**

Per: Kate Brant
Chair

Date Signed: Dec. 5, 2016