

Appeal No.: 2012-001
Decision No.: 0262-001/2012
Hearing Held: 13 March 2012

SUBDIVISION & DEVELOPMENT APPEAL BOARD DECISION

CHAIR: R. MOISEY
PANEL MEMBER B. FARR
PANEL MEMBER: D. WYNTJES

BETWEEN:

YOLANDA INFANTE
Represented by V. Higham

Appellant
(Applicant)

and

CITY OF RED DEER
MUNICIPAL PLANNING COMMISSION
Represented by B. Glass

Development Authority

MOVED by B. Farr; seconded by D. Wyntjes:

RESOLVED that the Subdivision and Development Appeal Board having heard all of the parties who wished to speak both in favour and against the appeal filed by Yolanda Infante regarding the Municipal Planning Commission's July 06, 2011 denial of an application for the discretionary use of an existing two bedroom secondary suite located at 81 Oliver Street (Lot 5A; Block 14, Plan 762 1978) REVERSES the decision of the Municipal Planning Commission (MPC) and allows the appeal. The development is allowed subject to:

1. The development must conform to the plans approved by the development officer;
2. The floor area of the secondary suite shall not exceed the floor area of the primary dwelling;
3. The development must maintain a minimum of 3 on-site parking stalls which comply with the provisions of the Land Use Bylaw; and
4. The Appellant must install a sidewalk from the rear parking stalls to the side entrance by June 01, 2012.

CARRIED UNANIMOUSLY

I. BACKGROUND:

On July 06, 2011 the MPC denied the application for the discretionary use of an existing two bedroom secondary suite at the subject property for the following reasons:

- The neighbourhood in Oriole Park is already very dense due to the number of multi-family units such as duplexes along Oliver Street and Overdown Drive as well as the four-plexes within Orient Green.
- The proposed use is located in a semi-detached dwelling, and a secondary suite at this location would over-intensify the use of the site and would have a negative impact on existing traffic, parking and safety issues.
- On street parking is a planning consideration the Municipal Planning Commission deems relevant in this application.

The July 06, 2011 decision was appealed to the Subdivision and Development Appeal Board (SDAB) and heard on August 10, 2011. The Appellant appealed the decision of the SDAB to the Court of Appeal. On January 27, 2012 the Court of Appeal directed a new hearing of this matter. Accordingly, a hearing was scheduled for February 16, 2012. Quorum was not obtained on this date and a Notice of Hearing for the matter to be heard on March 13, 2012 was issued.

At the outset of the hearing, the following preliminary matters were addressed:

- A. Panel Composition: The Chair introduced the panel and advised the parties that he sat as a panel member on the first appeal application to the SDAB on August 10, 2011. When asked, neither party objected to his or the panel members' hearing the matter.
- B. Translation Services: In acknowledgement of the Appellant's principal language being Tagalog the Chair asked if the Appellant required translation services. The Appellant indicated that her Agent would serve in that capacity.

2. FACTS / OVERVIEW:

The subject property is located in the Oriole Park neighbourhood which consists of Single Family, Semi Detached (duplex) and Four Plex lots. The Land Use Bylaw (LUB) allows up to 15% of dwellings in a neighbourhood to have secondary suites. There are 795 constructed single family dwellings in the neighbourhood allowing for a total 110 suites. At the time of this hearing there were 15 secondary suite permits granted and approval of the proposed development would result in 2.6% of approvals having been granted.

3. ISSUES / ARGUMENTS

A. Density

The Development Authority argued that density in the area is already high due to the number of multi-family units such as duplexes along Oliver Street and Overdown Drive as well as the four-plexes within Orient Green. They noted that it is their position that increasing density at this location would increase traffic, parking and safety concerns in the area.

The Development Authority referred to Part 4, section 9.8(b)(ii) of the LUB that allows favorable consideration to be given to a secondary suite when the development consists largely of 12 meter wide lots (the 'lot width consideration'). The Development Authority argued that although many of the lots in the neighbourhood exceed 12 meters in width; this is due to the fact that the lots to the south of the subject property are four-plexes and must be wider than 12 meters.

The Appellant advanced three main arguments relative to density:

- i. That the application fully complies with – and in some cases exceeds the Land Use Bylaw (LUB) requirements – including the provisions for density (noted in this decision above at section 2).
- ii. That the MPC erred by making a subjective decision rather than an objective decision. In support, the Appellant referred the lot width consideration and submitted that approximately 55% of the lots exceed 12 meters in width.
- iii. That secondary suites support Green Urban Planning and are a tool used by municipal leaders to address urban sprawl.

The proposed development complies with the LUB. For that reason, the Board did not find the lot width consideration to be a factor in this application. Further, the Board finds that this area is not overly dense. This conclusion is supported by the fact that the application is well below the allowable limit of 15% (approval of the application results in 2.6% of approvals granted) and that potential future increases in density are not likely given the zoning and prohibition for new secondary suites to be located in RIA districts.

B. Parking

The Development Authority acknowledged that the application meets the parking requirements in the LUB with the provision of four stalls but reiterated the importance of available on street parking. It was noted that the Development Authority would not have information relative to parking complaints that may be received by the R.C.M.P.

The Appellant argued that there hasn't been any parking complaints made with respect to the proposed development.

The Board heard from two area landowners and the tenant of the subject property who specifically stated that available on street parking is not a concern.

The Board is unaware of any evidence presented to the MPC that would lead them to conclude that the on street parking is a concern in this area and further, how the approval of this application might impact it. The Board finds that on street parking is not a concern,

C. Neighbourhood Impact

The MPC determined that the application would increase traffic, parking and safety concerns, which would negatively impact the surrounding neighbourhood. The Development Authority also argued that when an application for development is approved, it 'stays with the land' and while there are no concerns for the neighbourhood at this time, consideration should be given for future Owners.

The Appellant argued that the secondary suite has been in existence for nearly 10 years without a complaint. In support the Appellant referred the Board to the letters of support provided in Exhibit I at pages 18 & 19 and to the two area landowners who spoke in favor of the proposed development. It is the Appellant's position that denial of the application would have a negative impact on the neighbourhood because rental of the property on a room by room basis could

result in increased traffic and would result in less available parking because the LUB would only require the provision of 2 off street parking stalls instead of 3. The Appellant also argued that denial of the application would cause hardship to the existing tenants.

The Board finds some of the arguments presented by the Appellant to have little relevance to this application including the conduct of the tenants (whether positive or negative); Green Urban Planning; the impact to the existing tenants and the potential speculative use of the site if the development were denied.

However, the Board does not find there to be a negative impact to the neighbourhood. The Board is unaware of any evidence presented to the MPC that would lead them to conclude that traffic, parking and safety are a concern in this neighbourhood and further, how the approval of this application might impact it.

4. CLOSING

This decision can be appealed to the Court of Appeal on a question of law or jurisdiction. If you wish to appeal this decision you must follow the procedure found in section 688 of the Municipal Government Act which requires an application for leave to appeal to be filed and served **within 30 days** of this decision.

Dated at the City of Red Deer, in the Province of Alberta this 22 day of March, 2012 and signed by the Chair on behalf of all three panel members who agree with this decision.



R. Moisey, Chair
Subdivision & Development Appeal Board

EXHIBIT LIST

Exhibit 1.....Agenda: 25 pages