

Appeal No.: 0262 006 2014
Hearing Held: August 13, 2014

SUBDIVISION & DEVELOPMENT APPEAL BOARD DECISION

CHAIR: B. FARR
PANEL MEMBER R. KERBER
PANEL MEMBER G. LEASAK
PANEL MEMBER COUNCILLOR L. MULDER
PANEL MEMBER Z. ORDMAN

BETWEEN:

XIAODONG WU

Appellant

and

VALTA ELECTRIC LTD
Represented by R. Hillman

Applicant

and

CITY OF RED DEER
Represented by M. Kvapil & E. Stuart

Development Authority

DECISION:

MOVED by L. Mulder, seconded by Z. Ordman

NOW THEREFORE BE IT RESOLVED THAT the Subdivision and Development Appeal Board, having heard the parties who wished to speak in favour and against the appeal filed regarding the July 02, 2014 decision of the Development Officer which approved the application of Valta Electric Ltd. for the development of a new one bedroom secondary suite which is a discretionary use to be located at 86 Turner Crescent (Lot 19, Block 4, Plan 092 0662) zoned R1 (General Residential District) hereby CONFIRMS the decision of the Development Officer with VARIED conditions as follows:

1. The development must conform to the plans approved by the Development Authority on July 02, 2014; and
2. The floor area of the secondary suite shall not exceed the floor area of the primary dwelling; and
3. The Applicant must maintain a minimum of three on-site parking stalls, one of which must be for the exclusive and unrestricted use of the secondary suite resident(s) and cannot be used in tandem with the resident(s) of the primary dwelling. All parking stalls must comply with provisions in the Land Use Bylaw.

CARRIED

BACKGROUND:

1. The Applicant is proposing to develop a new one bedroom secondary suite located at 86 Turner Crescent (Lot 19, Block 4, Plan 092 0662) zoned General Residential (R1). A secondary suite in an R1 district is a discretionary use.
2. The subject property is located in the neighbourhood known as Timberlands which consists of a mix of R1 lots, Residential Town House lots (R2T), Semi Detached lots (RIA), Residential Narrow lots (RIN) to the south of the proposed development, 3 Public Service (PS) lots and Commercial Mixed Use (CS) to the west of the proposed development.
3. The Development Officer approved the application and the Appellant has appealed the decision to this Board.

ISSUES / ARGUMENTS:

NOTIFICATION OF APPLICATION FOR SUITE AT 85 TURNER CRESCENT

4. The Appellant stated that they did not receive advance notification of the secondary suite at 85 Turner Crescent which is adjacent to their house.
5. The Development Authority stated that notification of the application was issued in accordance with section 4.7(9.6) of *The City of Red Deer Land Use Bylaw #3357/2006* as amm. (the LUB) which requires notification be given to landowners located within 100 metres of the subject property.
6. The Development Authority also stated that upon their review of the file for the application at 85 Turner Crescent, the Appellant was not on the list of area landowners. The Development Authority suggested that the Appellant may not have been registered on title at the time the application was processed.
7. The Board only has authority over matters expressly granted to it by *The Municipal Government Act R.S.A. 2000 Ch. M-26* as amm. (the MGA). The public notification of an application that is to be (or was) considered by the Development Authority is not within the Board's jurisdiction. Further, it is not relevant to this matter.

MAXIMUM SECONDARY SUITE ALLOWANCE

8. Section 4.7(9.5) of the LUB restricts the maximum number of secondary suites that may be developed in a neighbourhood to 15% of the total number of detached dwelling units in that neighbourhood.
9. The Development Authority stated that Timberlands has 108 constructed single family dwellings which would allow for a maximum of 16 secondary suites; that there are 12 existing approvals in the neighbourhood and that approval of the subject application would result in 12% of the maximum 15% approvals being issued.

10. The Appellant stated that if the development is approved, 4/23 houses on Turner Crescent would have a secondary suite. This would equate to 17.5% which would exceed the maximum allowed under the s. 4.7(9.5) of the LUB.

11. Section 4.7 (9.5) of the LUB states:

“Whether it is listed as a permitted or a discretionary use, a Secondary Suite may not be developed in any applicable Residential District if such development would increase the number of Secondary Suites in a neighbourhood beyond 15% of the total number of detached Dwelling Units in that neighbourhood. For the purpose of this section, the Secondary Suite Neighbourhood Zone boundaries shall be the boundaries as illustrated on Figure 3A.”

12. Figure 3A is attached to this decision as Appendix I. It delineates the ‘neighbourhood zone’ area of Timberlands which includes more than Turner Crescent. The Board finds that Turner Crescent is only a portion of the neighbourhood zone referred to in the LUB and that to calculate the number of secondary suites allowed, the area must be looked at in its entirety – not a portion of the neighbourhood zone as suggested by the Applicant.

13. Section 687(3)(a.1) of the MGA gives parameters on the Board’s jurisdiction – specifically, that when making a decision, the Board must comply with the LUB in effect.

14. The Board finds that the proposed development complies with the LUB.

PARKING CONGESTION

15. The Appellant expressed concern for parking congestion if the proposed development is approved.

16. The Development Authority stated that the proposed development meets the on-site parking requirements of three parking stalls and also provides a sidewalk from the suite parking to the rear entrance of the dwelling which will encourage use of the stalls.

17. The Board notes that The City does not restrict the number of vehicles that can be owned by a resident. Under the LUB, dwelling units must provide two off street parking stalls. Applying for a legal secondary suite increases that requirement to three.

18. Section 4.7(9)(9.8)(a) provides five planning considerations upon which an application for a secondary suite may be given favorable consideration. While none of the five considerations listed apply to the proposed development, there was no evidence presented to demonstrate that the area currently experiences parking congestion or that increased on street parking (if any) could be attributed to this particular application.

19. The proposed application complies with the LUB. If there is parking congestion in the area, it is addressed through other legislation (i.e. Traffic Bylaw).

INTERFERENCE WITH AMENITIES / ENJOYMENT AND VALUE OF PROPERTY

20. The Appellant expressed concern for lack of privacy that he believes will occur due to narrow lot sizes, with two existing duplexes and two residences with secondary suites.

21. The Appellant stated that they chose to purchase their lot without any legal suites in the area and that secondary suites were never mentioned to them.
22. They believe that the proposed development will devalue their property.
23. The Development Authority re-iterated that 15% of neighbourhood dwellings are permitted to accommodate secondary suites and that the proposed development complies with the LUB.
24. The Development Authority submitted that reports issued by Canada Mortgage and Housing Corporation confirm that the presence of secondary suites do not typically lower property values in the vicinity of the secondary suite.
25. Section 687(3) of the MGA discusses the impact an application has on the neighbouring parcels of land. It states that the Board:

“(d) may make an order or decision or issue or confirm the issue of a development permit even though the proposed development does not comply with the land use bylaw if, in its opinion,

(i) the proposed development would not

(A) unduly interfere with the amenities of the neighbourhood;

(B) materially interfere with or affect the use, enjoyment or value of neighbouring parcels of land, and

(ii) the proposed development conforms with the use prescribed for that land or building in the land use bylaw”

26. The proposed development is for a discretionary use that complies with the other regulations found in the LUB. The LUB definition of discretionary use provides that an application may be approved *“after due consideration is given of the impact of that use upon neighbouring lands...”*
27. To assist the Board in measuring whether or not there is an impact on the neighbouring lands, the Board evaluated the application against the planning principles found in section 4.7(9)(9.8) of the LUB and finds that the proposed development meets seven out of the twelve favourable characteristics:
 - (b) Surrounding neighbourhood not overly dense by virtue of any of the following:
 - (i) Development consists largely of detached dwelling units,
 - (ii) Development consists largely of minimum 12 m wide lots,
 - (iii) the number and location of lawful secondary suites, or
 - (iv) the number and location of area semi-detached and multiple family units
 - (c) Neighbourhood design and accessibility:
 - (i) the lot is located on a street that has more than one entrance / exit,
 - (ii) the lot has access from a lane, or

(iii) the lot is located in close proximity to a neighbourhood dark of open space area, a neighbourhood commercial site or a community trail / pathway system.

CLOSING:

For the reasons detailed above, the decision of the Development Officer is confirmed with varied conditions and the development is approved.

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 25th day of August, 2014 and signed by the Chair on behalf of all five panel members who agree that the content of this document adequately reflects the hearing, deliberations and decision of the Board.



Bill Farr, Chair
Subdivision & Development Appeal Board

EXHIBIT LIST

Exhibit A..... Hearing Materials Package pages 1-53

Appendix 1

