

Appeal No.: 0262 002, 003, 004 2014
Hearing Held: June 25, 2014

SUBDIVISION & DEVELOPMENT APPEAL BOARD DECISION

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

BETWEEN:

JAMES & BARBARA HEINZLMEIR
SCOTT & LESLIE DEDITCH
CRAIG SHEARDOWN

Appellants

and

KYLE PERESSINI

Applicant

and

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

Development Authority

DECISION:

MOVED by Ralph Solomons, seconded by Gayle Leasak

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 May 20, 2014 decision of the Development Officer which approved the application of Kyle Peressini for the development of a new 2 bedroom secondary suite which is a discretionary use to be located at 73

Selkirk Boulevard (Lot 6, Block 6, Plan 5109MC) zoned R1 (general residential) hereby CONFIRMS the decision of the Development Officer with VARIED conditions as follows:

1. The floor area of the secondary suite shall not exceed the floor area of the primary dwelling;
and
2. The Applicant is required to install a rear parking pad for one vehicle, by October 1, 2014, and ensure the parking area is physically separated from the landscaped area, by use of curb stops or other means; and
3. The Applicant is required to install a sidewalk from the rear entrance to the rear parking pad by October 01, 2014; and
4. 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 2 bedroom secondary suite located at 73 Selkirk Boulevard (Lot 6, Block 6, Plan 5109MC) 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 Sunnybrook which consists predominantly of single family dwellings and some multifamily dwellings. The subject property is a corner lot in close proximity to parks and the Piper Creek lands.
3. The Development Officer approved the application and the Appellants have appealed the decision to this Board.

ISSUES / ARGUMENTS:

NEIGHBOURHOOD NOTIFICATION OF THE APPLICATION

4. The subject property is situated on Selkirk Boulevard at the entrance to Sydney Close. The Appellants stated that because there is only one entrance to the close, the application affects the entire close and the neighbourhood notification letter issued by the Development Officer on April 29, 2014 should have been sent to all homes on Sydney Close.
5. The Development Officer 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 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 notification of an application that is to be considered by the Development Authority is not within the Board's jurisdiction.

7. However, section 686 of *The Municipal Government Act* R.S.A. 2000 Ch. M-26 as amm. (the MGA) prescribes who the Board must provide notice of a hearing to – including “those owners required to be notified under the land use bylaw and any other person that the subdivision and development appeal board considers to be affected by the appeal...”.
8. Section 2.17(1)(e) of the LUB requires that the Board issue notice of a hearing to owners of parcels of land within 100 meters of the subject property. Only a portion of the properties on Sydney Close are within 100 metres of the subject property. The appeals filed asserted that all of the properties’ inside the entire close are affected by this application.
9. In order to determine whether or not the property owners of Sydney Close are ‘affected’ by this application, the Board instructed notice of the hearings to also be given to all landowners of properties in Sydney Close. Accordingly, notice was sent to the Applicant, the Appellants, the Development Authority, area landowners within 100 metres of the subject property; AND to all of the landowners of property on Sydney Close on June 10, 2014.

MAXIMUM SECONDARY SUITE ALLOWANCE

10. 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.
11. The Development Authority stated that Sunnybrook has 387 single family dwellings which would allow for 58 secondary suites and that there are 9 existing approvals in the neighbourhood and that approval of the subject application would result in 2.6% of the maximum 15% approvals being issued. Further, the Development Authority stated that The City of Red Deer does not regulate the renting of dwellings.
12. The Appellants contended that a secondary suite is, in effect, multi-family housing and that of 4 neighborhoods surveyed, Sunnybrook has the highest ratio of multi-family dwellings to single family dwellings at 41%. To support this, the Appellants submitted a survey on page 12 of Exhibit A.
13. Further, the Appellants stated that the 2.6% does not account for all rental properties and illegal secondary suites in the area; therefore it is inaccurate. The Appellants believe that if all rental properties and secondary suites were taken into consideration, the neighbourhood would be in excess of 15%.
14. The following definitions are found in the LUB:

“*Secondary Suite* means a self-contained Dwelling Unit that is located within a primary Dwelling Unit, where both Dwelling Units are registered under the same land title”

“*Multiple Family Building* means a residential building containing three or more dwelling units having shared entrance facilities, in which the dwelling units are arranged in any horizontal or vertical configuration”

“*Dwelling Unit* means a self-contained building or a portion of a building, whether occupied or not, usually containing cooking, eating, living, sleeping and sanitary facilities and used or designed to be used as a permanent residence by a household”

15. Based on the definitions found in the LUB, the Board finds that a dwelling with a secondary suite does not constitute a multi-family dwelling and accepts the 2.6% as presented by the Development Authority. The proposed development complies with section 4.7(9.5) of the LUB.

TRAFFIC / PARKING

16. The Appellants re-iterated the argument that a dwelling with a secondary suite constitutes a multi-family dwelling and therefore requires more parking. Having already determined that a dwelling with a secondary suite is not a multi-family dwelling, this argument is redundant.
17. The Appellants argued that Sunnybrook (and Sydney Close) was designed when most families had only one vehicle. Because of this, there are a large number of properties with only room for one off street parking stall which results in a high volume of on street parking. This in turn creates congestion and makes access into the close difficult when vehicles are parked on both sides of the road. This is further exacerbated in the winter with the addition of windrows.
18. The Appellants argued that the entry to the close does not meet minimum standards for emergency vehicles. A fire truck requires a minimum of 6.0 metres of unobstructed roadway and vehicles range from 2.2 – 2.5 metres in width. The entrance of Sydney Close is 8.5 metres wide, which would prohibit access if vehicles are parked on both sides of the road.
19. The Appellants also believe that adding a secondary suite, regardless of the extra off street parking stall that is required under the LUB results in extra vehicles entering and exiting the close which creates a hazard for residents in the close (vehicles will come into the close, u-turn at the bottom and then park in front of the subject property, increasing traffic within the close).
20. The Appellants questioned the existing parking on the subject property, stating that the current parking pad is not wide enough to accommodate 2 vehicles.
21. The Development Authority spoke to the parking requirements of the proposed development. The subject property has a single wide curb cut that leads to a small double wide drive and attached garage. A dwelling requires 2 off street parking stalls. The Development Authority concurred that the double wide drive and garage are small (4.6 metres wide) but noted that the length of the pad with the garage is approximately 6.0 metres which is adequate to park 2 vehicles in tandem (which is permitted under the LUB).
22. The Development Authority advised that as a condition of approval, the Applicant is required to provide a third off street parking stall (and sidewalk to / from the stall and the dwelling for the unrestricted use of the secondary suite that will be accessed from the lane at the rear of the property).
23. The Development Authority stated that the application was referred to the department of Emergency Services for review and that they did not identify access concerns. The Development

Authority also noted the location of a fire hydrant in close proximity to the subject property and noted that parking is prohibited by a hydrant.

24. The Development Authority also spoke to how the application relates to s. 4.7 (9.8) of the LUB which provides criteria by which the Development Authority may give favorable consideration on an application for a secondary suite. Specifically, the subject property: has on street parking available due to the corner lot and close proximity to green space as well, the lot is accessible from a lane.
25. To support their argument, the Appellants provided copies of roadway design standards, relevant legislation, a survey of road width sizes in similar neighborhoods, sketches and excerpts from consultant reports.
26. The Board finds that the evidence presented with regard to concern over parking and access for emergency vehicles demonstrates that it a preexisting condition and independent of this application therefore the Board concludes that parking and traffic issues cannot be attributed to this application. Further, there was no evidence presented that the proposed application would exacerbate either of these concerns.
27. The Board notes that regulating or enforcing access road specifications is not within the authority of this Board. There are alternate means of addressing these concerns through The City of Red Deer administration.

RENTAL PROPERTIES

28. The Appellants advanced many concerns relating to rental properties. Some of these concerns include unsightly premises, illegal activities and absent landlords (lack of accountability). The biggest concern echoed among the Appellants is that the Appellants feel that the integrity of their community is compromised by problems attributable to rental properties and tenants.
29. The Development Authority reiterated that The City does not regulate rental properties and also advised that a recent site inspection conducted by a compliance officer did not reveal any infractions.
30. Issues relating to illegal and criminal activities are addressed under different legislation. The Board does not have the jurisdiction or the means to address those concerns.

INTERFERENCE WITH AMENITIES / ENJOYMENT AND VALUE OF PROPERTY

31. The Appellants spoke to the character of Sunnybrook. The Appellants stated that the proposed development will be a detriment to the character of the neighbourhood because renters do not (typically) have a vested interest in the neighbourhood in which they live.
32. The Appellants also stated that they chose to live in the area for its single family dwelling lifestyle and the fact that multi-family dwellings are located only at community entrances. They believe that the proposed development will interfere with the amenities of the neighbourhood and the enjoyment and value of their property.
33. Once a permit is issued, it stays with the property (runs with the land). The Appellants also expressed concern over the potential for the proposed development to be started and then abandoned.

34. The Development Authority re-iterated that many of the concerns identified by the Appellants are addressed through other legislation (i.e. Community Standards Bylaw, Traffic Enforcement).

35. 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”

36. 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...”*

37. To assist the Board in measuring whether or not there is an impact on the neighbouring lands, the Board considered the favourable characteristics identified in section 4.7(9)(9.8) of the LUB and finds that the proposed development meets eight out of the twelve favourable characteristics:

(a) Availability of on-street parking spaces by virtue of any of the following:

(i) corner lot locations.

(iii) a side boundary of the lot abuts a Municipal Reserve parcel which is not less than 10.0 metres wide.

(b) Surrounding neighbourhood not overly dense by virtue of any of the following:

(i) Development consists largely of detached dwelling units

(iii) the number and location of lawful secondary suites

(iv) the number and location of area semi-detached and multiple family units

(c) (i) the lot is located on a street that has more than one entrance / exit (Selkirk Boulevard)

(ii) The lot has access from a lane

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

38. The Board notes that regardless of the application under appeal, the Applicant could choose to rent the property to five separate individuals. That scenario could exacerbate the concerns of the Appellants.

39. Further, section 4.7(9)(9.9) states that “in making its decision on a Secondary Suite, the Development Authority shall not consider the condition of the property or the behavior of the occupants of the property, as these matters are enforced through the Community Standards bylaw and other legislation”. This section is in keeping with earlier findings in this decision. While the Board appreciates the concerns relative to the character of the neighbourhood; there was nothing presented to the Board that attributes those concerns to this application.
40. Further, the future status of the permit is not within the purview of the Board and is irrelevant given the lack of evidence to link the concerns of the Appellants with the proposed development.

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 4th day of July, 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