

SUBDIVISION & DEVELOPMENT APPEAL BOARD DECISION

CHAIR: Karen Howley
PANEL MEMBER: Richard Boerger
PANEL MEMBER: Michael Kartusch
PANEL MEMBER: Carol Mah
PANEL MEMBER: Gerry Paradis

BETWEEN:

Brad Kettner & Amanda Dubyna

Appellant

-and-

Dennis Bowness

Applicant

-and-

CITY OF RED DEER
Represented by Beth McLachlan, Development Officer

Development Authority

JURISDICTION AND ROLE OF THE BOARD

1. The Subdivision and Development Appeal Board (the Board) is governed by the Municipal Government Act, RSA 2000, c. M-26 (the MGA) as amended. Planning and Development is addressed in Part 17 of the MGA, and also in the Subdivision and Development Regulation, Alta Reg 43/2002 (the SDR).
2. The Board is established by The City of Red Deer, By-law No. 3619/2019, *Appeal Boards Bylaw* (April 1, 2019). The duty and purpose of the Board is to hear and make decisions on appeals for which it is responsible under the MGA and The City of Red Deer, Bylaw No. 3357/2006, *Land Use Bylaw* (August 13, 2006) (the LUB).

3. Section 685(3) of the MGA is as follows:

Grounds for appeal

685(1) If a development authority

- (a) fails or refuses to issue a development permit to a person,
- (b) issues a development permit subject to conditions, or
- (c) issues an order under section 645,

the person applying for the permit or affected by the order under section 645 may appeal to the subdivision and development appeal board.

(2) In addition to an applicant under subsection (1), any person affected by an order, decision or development permit made or issued by a development authority may appeal to the subdivision and development appeal board.

(3) Despite subsections (1) and (2), no appeal lies in respect of the issuance of a development permit for a permitted use unless the provisions of the land use bylaw were relaxed, varied or misinterpreted or the application for the development permit was deemed to be refused under section 683.1(8).

4. The Permitted Uses in the LUB in R1 District Regulations are as follows:

4.1 R1 Residential (Low Density) District

R1

General Purpose
The general purpose of this District is to provide land which will be used for low density residential development.

(1) R1 Permitted and Discretionary Uses Table

(a) Permitted Uses

- (i) Accessory building subject to sections 3.5 and 4.7(3).
- (ii) Detached dwelling unit.
- (iii) ¹Deleted
- (iv) Home occupations which, in the opinion of the Development Officer, will not generate traffic subject to section 4.7(8).
- (v) ²Deleted
- (vi) ³Secondary Suite, subject to section 4.7(9).
- (vii) ⁴at 22 Gunn Street no more than 6 lots with a single dwelling unit per lot.

5. Further, s. 4.7(9) of the LUB sets out a number of use provisions related to secondary suites.

6. During the hearing, none of the Parties objected to the classification of the subject property as a Discretionary Use or argued that the proposed development required any relaxations to the LUB.

7. The Board reviewed s. 4.7(9) of the LUB and confirms that this application does not require any relaxations to the LUB.

DECISION:

8. There were no relaxations, variations or arguments related to interpretation of the LUB presented to the Board. Therefore, the Board finds that the application is a Permitted Use that complies with the LUB.
9. The Board finds that the appeal is captured in s. 685(3) of the MGA and there is no appeal.
10. Notwithstanding this, in the event the Board has erred in that determination, it turned its mind to the application of the legislation, conducted its analysis and determined that the August 25, 2020 approval of the Development Authority (with conditions) should stand. The analysis is below.

PROCEDURAL MATTERS:

11. None of the Parties had any objection to the constitution of the Board. There were no conflicts identified by the Board Members.
12. There were no preliminary issues for the Board to decide.

BACKGROUND:

13. On August 25, 2020, the Development Officer approved, with conditions, the Development Permit Application from the Applicant for the discretionary use of a Secondary Suite at 39 Judd Close zoned R-1 – Residential Low Density.
14. Prior to the approval, the Development Officer sought comments on the application from area landowners within 100 metres of the subject property. These were provided to the Board in Exhibit B1 starting at page 40.
15. The Appellant is a neighbour and filed this appeal with the Board on September 15, 2020.
16. The Board entered into evidence the following:
 - Exhibit A.1: Hearing Materials (10 pages)
 - Exhibit B.1: Development Authority Report (67 pages)
 - Exhibit C.1: Applicant Submission (2 pages)
 - Exhibit C.2: Appellant Photos displayed at hearing.
Appellant submission found in Exhibit A.1 pages 2-4

SUMMARY OF EVIDENCE AND ARGUMENT:

17. The Development Authority stated that the site is zoned as R1 (Residential – Low Density) in which Secondary Suites are a discretionary use.
18. The Development Authority provided the Board with a full analysis of the application. The analysis included the regulations applicable to all Secondary Suites (e.g. 15% cap/neighbourhood) as well as site specific regulations for the proposed development.

19. The Appellant identified several specific concerns. These are summarized below along with the arguments of the Applicant and Development Officer:

i. **PARKING:**

Appellant: The Appellant expressed concern regarding ease of access to the proposed parking in the winter. The Appellant also stated that there are concerned owners in the effected area who have expressed concerns with regarding to parking, property value and unappealing back yards. The Appellant drew attention to the photos submitted by the Development Officer and argued that they were not an accurate representation of the parking concern because they were taken during a weekday when most people are away from home working.

Development Authority: The Development Authority concurred with the Appellant with regard to the time the photos were taken, stating that there is likely to be more vehicles in the evening and weekend. However, the application provides for two parking stalls in the rear yard which exceeds the required one stall. Further to this, the Development Authority pointed out that permits for Secondary Suites must take into account the *availability* of parking and the close has two entry points as well as a green space in the centre.

Applicant: The Applicant submitted that the most common cause of disputes between neighbours is parking. The Applicant stated that the close (including the subject property) has an attached double garage and driveway. He argued that the site is more suitable than a street with no front garages, as the parking then must be on the street. The greenspace allows there to be more parking.

ii. **NOISE AND TRAFFIC:**

Appellant: The Appellant stated the proposed site already has parking and traffic issues. He advised that due to its location in Johnstone Crossing, many drivers use the close as a place to turn around.

Development Authority: The proposed development should not cause any more noise pollution or traffic offenses than any other dwelling. She advised that there are alternative enforcement methods available for noise and traffic violations.

Applicant: The Applicant did not speak directly to this issue.

iii. **CONCENTRATION / DENSITY OF SECONDARY SUITE LOCATIONS:**

Appellant: The Appellant argued that there are currently no Secondary Suites in a Close or next to larger homes on larger lots. He submitted that existing Secondary Suites are all placed strategically – backing onto the berm, Taylor Drive or on corners and ends.

Development Authority: The Development Authority explained the area consists mainly of Detached Dwellings on lots greater than 360 m². There are 5 Semi-Detached Dwelling (duplex) lots located within close proximity and no Multiple Family or Multi-attached buildings.

The Development Authority further supported this with quantifying information. If approved, the neighbourhood would have 9.1% of dwellings with existing approvals for Secondary Suites. The cap imposed in the LUB is 15%.

Applicant: The Applicant argued that The City guidelines are clear and allow suited homes in all neighbourhoods and types of streets or closes provided they comply with the LUB.

iv. **VALUE OF NEIGHBOURING PROPERTIES:**

Appellant: The Appellant argued that dwellings with Secondary Suites located next door are more difficult to sell. The Appellant also stated that many of the concerns caused by Secondary Suites contribute to de-valuing property by increasing noise and traffic.

In response to whether or not value of property is a planning consideration, the Appellant acknowledged the alternative enforcement methods available but believes that before they are noise and traffic concerns, they are planning concerns and should be considered as such.

Development Authority: The Development Authority advised that the value of property is not a relevant planning concern.

Applicant: The Applicant spoke to the cost of building a Secondary Suite and advised that his assessment values tend to increase with the addition of a Secondary Suite. The Appellant argued that there is a need for affordable housing and suited properties are a good option for tenants that cannot rent a whole house. The Applicant argued it is important that the Secondary Suite be in a good neighbourhood (e.g. quiet and safe) as this is a rental feature.

The Applicant objected to photos of dwellings with large amounts of rubbish (submitted at the hearing) being entered into evidence on the basis that the address of the photos was not confirmed and questioned the value they may have for the Board.

v. **AESTHETICS:**

Appellant: The Appellant expressed concerns over the division of the rear yard. Further, the Appellant objected to the hard surfacing on front yards. The Appellant also submitted photos (at the hearing) showing dwellings with large amounts of rubbish in the rear lane.

Development Authority: There are no regulations in the LUB which prohibit an owner from dividing their backyard or adding similar enhancements. Many outdoor enhancements are subjective and could also be considered amenities of a property.

Applicant: encouraged anyone who has a concern with the site to speak with him directly and that he would work to resolve concerns. He submitted that his Tenants enter into leases that require that the yard be kept in good order. He itemized the exterior improvements already completed including staining fence, deck, front step and adding a lower patio. The Applicant objected to photos submitted by the Appellant because they are not photos of the subject property.

vi. **QUESTION OF BIAS ON DEVELOPMENT AUTHORITY DECISION:**

Appellant: The Appellant asked for an inquiry into whether or not the Applicant had any conversations with the Development Authority prior to the purchase of the subject property or its approval (now under appeal). In support, the Appellant brought to the Boards attention that construction had begun prior to the application being made.

Development Authority: The Development Authority stated that no pre-approvals were given. She further advised that with two Development Officers working for The City, the Applicant may have discussed *prior* applications with her. She also stated Applicants cannot ask for specific staff, they 'get who they get' when they contact The City.

Applicant: The Applicant stated that prior approval was not given.

BOARD ANALYSIS:

20. Whether or not the proposed development complies with the LUB was uncontested by all present at the hearing. The Board received written and verbal evidence in support. Based on this, the Board accepts as fact the proposed development complies with the LUB.
21. However, there was a great deal of discussion on whether or not the value of property constituted a planning principle and the Board briefly examined that issue. Section 687(3)(d) of the MGA grants the Board the power to vary the LUB and 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, or

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

22. The term 'value' is not defined within the Part 17 of the MGA or in the LUB. The Board is cognizant that the word could be subjective depending on the nature and facts of the application before it.
23. In this application, based on context used in verbal and written decisions, the Board believes that the Parties refer to monetary value. The Board was not compelled by the Appellant's argument that his property would decrease in value because there was no conclusive evidence to support it.
24. The Applicant requested that the Board disallow Exhibit C.2 presented by the Appellant on the basis that it was not specific to the subject property. The Board elected to accept the Exhibit (photos) and make its own determination on relevance to the application before it.

25. The Appellant was not able to confidently confirm the address of the dwellings in the photos, nor could the Appellant confirm whether the dwellings were occupied by owners or tenants. Because of this, the Board was unable to determine its relevance and did not consider it in making its decision.
26. In addition to the Parties and the written submissions from landowners within 100 metres of the site, 3 area landowners spoke in support of the appeal (to deny the application). Their comments supported the comments of the Appellant. However, the Board was not persuaded to deny this application based on pre-existing conditions in the neighbourhood.

CLOSING:

27. To summarize, the Board finds the proposed development is a Permitted Use and there is no appeal. In the event the Board has erred in this determination, the Board has also determined that the August 25, 2020 approval of the Development Authority should stand.

Dated at the City of Red Deer, in the Province of Alberta, this 14th day of October, 2020 and signed by the Chair on behalf of all panel members who agree that the content of this document adequately reflects the hearing, deliberations, and decision of the Board.



Lori Stubbard, Board Clerk
On behalf of
Karen Howley, Chair
Subdivision & Development Appeal Board

APPENDIX A

Exhibit A.1:	Hearing Materials	10 pages
Exhibit B.1:	Development Authority Report	67 pages
Exhibit C.1:	Applicant Submission	2 pages
Exhibit C.2:	Appellant Submission (photos at hearing – see also hearing materials pages 2-4)	