

Appeal No.: 0262 007 2014
Hearing Held: 16 September 2014

SUBDIVISION & DEVELOPMENT APPEAL BOARD DECISION

CHAIR: Z. ORDMAN
PANEL MEMBER G. LEASAK
PANEL MEMBER R. SOLOMONS

BETWEEN:

MASON MARTIN HOMES
Represented by H. MacBeth

Appellant
(Applicant)

and

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

Development Authority

DECISION:

MOVED by Z. Ordman, seconded by G. 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 by Mason Martin Homes regarding the July 09, 2014 decision of the Development Authority which denied the development permit application for a 35 unit three storey multiple-family residential building to be located at 150A Vanier Drive (Lot 116, Block 4, Plan 082 4844) zoned R2 (Medium Density Residential) hereby REVOKES the decision of the Development Officer. The development is approved with the following conditions:

1. The development must conform to the plans approved on July 9 and revised to the satisfaction of the Development Officer, also incorporating a redesign of the deck on the south side of the proposed development so as to maintain a 4.5 m side yard;
2. The Applicant to provide a detailed site plan, to the satisfaction of the Engineering Services Department showing:
 - a. Storm water management plan;
 - b. Pre and post development land elevations for the site including drainage patterns;
 - c. Barrier free ramps;
 - d. Erosion control plan features;
 - e. Location of all planned and existing deep (water, sanitary and storm) and shallow (Atco Gas, Electric Light & Power, Telus and Shaw) utilities;

3. The Applicant to enter into a joint servicing agreement with the City to be registered against the title to protect jointly used deep utilities, to the satisfaction of the Engineering Services Department;
4. The Applicant to make application to the Engineering Services Department and pay for a driveway crossing;
5. The Applicant to provide a revised landscaping plan satisfactory to the Recreation, Parks & Culture Department detailing the location of plantings and adequate screening of the proposed waste and recycling area.

CARRIED

BACKGROUND:

1. The Appellant is seeking to develop a three storey multi-family building with 35 units (twenty-five 2 bedroom units and ten 1 bedroom units) with underground parkade.
2. On July 9, 2014, the Municipal Planning Commission denied the development permit application (as described above) with a site area of 3744.44 m², a landscaped area of 1028.0 m², and side yards of 3.78 m and 4.5 m, to be located at 150A Vanier Drive (Lot 116, Block 4, Plan 082 4884), zoned R2. The Municipal Planning Commission refused the development permit application for the following reasons:
 - “1. Due to the several large relaxations to the Land Use Bylaw, the proposal is deemed to be an over development of the site.
 2. The parking design and layout, traffic movement and access are considered unsafe due to pedestrian conflict, vehicle congestion, and sightlines, and are therefore not supported by the Commission.
 3. The applicant’s proposed reliance on the continued consent of the adjacent condo board to share residential amenity areas does not satisfy the Commission.
 4. The orientation and footprint of the building and the impact of using a laneway as primary access will create traffic safety concerns and negatively impact the neighbouring properties to the south.”
3. The Appellant has appealed the decision to this Board.

FACTS / OVERVIEW:

4. The proposed development is located in the neighbourhood known as Vanier Woods. The neighbourhood consists primarily of General Residential (R1), Residential Narrow Lot (R1N) and Semi-detached Dwellings (RIA). There is an existing multi-family development consisting of 38 townhomes to the north and west of the subject property. The property to the east across Vanier Drive is zoned Multiple Family Residential (R3) and is nearing construction completion.

ISSUES / ARGUMENTS:**SHARED RESIDENTIAL 'AMENITY AREAS'**

5. The Development Authority stated that under section 4.7(1)(f) of The City of Red Deer, Bylaw 3357/2006 *Land Use Bylaw* (LUB) the proposed development requires 157.5m² of 'amenity area'. The Development Authority also stated that 35.2% of the proposed development will be landscaped, which complies with the LUB.
6. The Appellant stated that the proposed development would be sharing amenity space with the adjacent property (Vintage Park). In support of this, the Appellant provided correspondence signed by two Board Members from Vintage Park Condominium Corporation (Exhibit C).
7. The letter grants permission for the Appellant to install additional landscaping and 'have a sitting area provided on the south side of the developed park area'. The Board heard from area landowners at the hearing questioning the legitimacy and enforceability of the letter.
8. The Board notes that the letter is not on letterhead, does not clearly identify the Board Members' signatures or their roles on the board, and does not bear a corporate seal or the signatures of witnesses. Thus, the Board finds that the letter would not be legally binding.
9. However, the LUB does not define 'amenity area' and it is unclear if an amenity area is the same as a 'landscaped area'. Merriam Webster (retrieved September 16, from <http://www.merriam-webster.com/dictionary/amenity>) defines amenity (in part) as: (1) *the attractiveness and value of real estate or of a residential structure*; and (3) *something that conduces to comfort, convenience, or enjoyment*.
10. Therefore, notwithstanding the lack of clarity in the LUB, the Board finds the underground parking to be an 'amenity area'; therefore the proposed development complies with the LUB with respect to required amenity area and landscaping.

LAND USE BYLAW RELAXATIONS

11. Lot Area: the Development Authority stated that the proposed development requires a 4585m² lot. The lot in question is 3744.44m² resulting in a requested relaxation of 840.56m² (18.3%). However, the proposed development is under the 40% allowable site coverage at 34.6%.
12. The LUB requires side yards for R2 zoning to be equal to 66% of the buildings height, but in no case not less than 3.0m. The Development Authority stated that a side yard equal to 66% of the building height, in this case 9.11m, would be unrealistic as the lot frontage is 18m.
13. The Development Authority spoke to the purpose of side yard requirements, stating that they exist to ensure an appropriate distance between adjacent developments. In R3 zoning, the LUB requires 4.5m side yard setbacks for 3 storey multi-family building. As the proposed development is a 3 storey multi-family building, the Development Authority supports 4.5m side yards.
14. The proposed development provides a 4.5m **north** side yard which would meet the recommendation of the Development Authority but still ultimately requires a relaxation of 5.33 m (58.5%).
15. The proposed development provides a 4.5m **south** side yard from the foundation (3.78m from the balconies), resulting in a requested relaxation of 4.61m (50.6%). The Appellant stated that the south

side yard would comply with a 4.5m side yard if the deck shown were to be re-designed, which he would be willing to do.

16. The Board heard from several area landowners in attendance and received written comments stating that the proposed development is an overdevelopment of the site, that the relaxations are excessive and who used existing parking and traffic conditions in the area as an example of overdevelopment (parking and traffic are addressed in full later in this decision).
17. The Board reviewed the requested relaxations in conjunction with the verbal statements made at the hearing and in context with the policy framework established. Specifically, the Strategic Direction, the Municipal Development Plan, the Major Area Structure Plan and the Vanier Wood Neighbourhood Area Structure Plan all contemplate more intensive land use and higher density housing; therefore they will not be detrimentally impacted by the relaxations.
18. The proposed development is located near the corner of 22 Street (arterial road) and Vanier Drive. Sound planning principles support higher density housing that is located near arterial roads so as to better maximize public transit. Further, the proposed development is contiguous with existing development in the section.
19. The Board finds that the requested relaxations are not excessive and will not create an overdevelopment of the site.

PARKING

20. The Development Authority stated that the LUB requires the provision of fifty-five parking stalls for the proposed development. The development proposes to provide vehicle parking at grade (30 stalls) and underground (25 stalls).
21. The Board received written concerns and verbal representations by area landowners stating that Vanier Drive has limited parking and expressing concern over the potential impact that the proposed development will have in the area. The Board heard from several people who believe that the existing parking requirements of the LUB are inadequate.
22. The Board did not receive any evidence beyond verbal and written statements that would compel belief that limited parking is an issue in this area that would warrant exceptional, higher development standards than the rest of the City.
23. The proposed development complies with the LUB. It would be improper for the Board to impose a higher standard of development on the Appellant than is required of any other developer.

USE OF LANEWAY AS ACCESS / SAFETY / TRAFFIC

24. The majority of the parking (including underground) for the proposed development will be located in the west area, accessible by the south paved lane.
25. The Board heard from area landowners expressing concern for the use of the lane, stating that the access is too narrow. The Development Authority advised that the proposed development was reviewed by the department of Engineering Services with no concerns identified.
26. The Board also heard several recounts of pedestrians having near misses with vehicles. Upon review of the area landowner concerns and the air photo (Exhibit A, page 52) provided, the Board

finds it likely that the design of the dwellings to the north have resulted in pedestrians using the lane (back) side of their residences as a front door.

27. Regardless, the Board notes that there is an option for all area residents to use sidewalks and safe pedestrian walkways (trails) which will join with the sidewalks for the proposed development.
28. The Board heard concerns of area landowners with respect to the speed of traffic in the lane and poor sightlines. The Board finds that the sightline issues identified at the hearing are pre-existing, not a result of this application and that the proposed development allows for acceptable sightlines. Further, the speed of traffic is not an issue within the Board's mandate; it is regulated by other legislation with enforcement mechanisms.

RENTAL PROPERTY / WARRANTIES MADE AT TIME OF PURCHASE

29. The Appellant stated that the intent is to develop a high-end rental apartment, not units to be sold. Area landowners expressed concern over the transient nature of rental properties and standard of care taken by a property owner versus a tenant.
30. Many area landowners also expressed concern, stating that they were told the lot in question would be developed as townhomes, not an apartment style building.
31. Both of these concerns are not within the authority of the Board.

CLOSING:

For the reasons detailed above, this appeal is allowed and the development is approved subject to the conditions indicated on page 1 & 2 of this decision.

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 26 day of September, 2014 and signed by the Clerk in the absence of the Chair on behalf of all three panel members who agree with this decision.

Z. Ordman for Zef Ordman

Z. Ordman, Chair
Subdivision & Development Appeal Board

EXHIBIT LIST

Exhibit AHearing Materials: 61 pages
Exhibit BLetter received September 16, 2014 (Clark)
Exhibit CLetter from Vintage Park Condo Association