

Summary of Evidence:*Board report*

The Board report contains all the materials submitted by the Development Authority that pertain to the application, the appellant's notice of appeal and any submissions made by the appellant, applicant and any other parties to the appeal. All the evidence of the Development Authority is contained in the Board report.

Hearing

The Board heard verbal submissions from the following:

Mike MacDonald, representing the appellant, in favour of the appeal; and
Brandon Smith, the owner/appellant, in favour of the appeal.

The Development Authority:

The Development Authority did not make a verbal presentation to the Board. Prior to the hearing, the Development Authority in response to the appeal provided a written submission including area map, and summary of factors, considerations and rationale for the development permit decision.

In Favour of the Appeal:

Mr. MacDonald presented photographs, a viewgraph, and raised the following:

- He is the subject property owner's father and future occupant of the secondary suite if it is approved. He is a senior and his son has an infant, therefore it would be very beneficial for both sides if he could reside on the same property.
- He went through photographs and explained that most of the immediate neighbours have front driveways or park in the rear; therefore there is lots of on street parking available. Furthermore, his son has a double garage and only one vehicle, therefore the other spot would be allocated to the suite; the lack of a parking stall is the Development Authority's main reason for refusal.
- When reviewing the Development Authority's reasons for refusal, there was no parking study done, therefore nothing for him to refute. In his submission, he believes that it is based on opinion only and not fact.
- Mr. MacDonald described the streetscape and surrounding area and stated that he was advised by a lawyer to get a parking study done, however he felt that it was not necessary due to the fact that the subject property is not on 20 Street or 16 Street

SW, which are major traffic arteries. In addition, there are no commercial developments, schools, churches, etc. in the immediate area, it is strictly residential.

- He and/or his son have spoken to all of the neighbours and advised that they all support the project.
- The main problem with the on street parking currently has to do with construction vehicles not residents.
- He has reviewed the Municipal Development Plan which speaks about increase in densification in inner city communities rather than expansion, and feels that this development does just that. It also talks about Complete Communities and states: "...vibrant places...where people of varying ages, incomes, interests and lifestyles feel comfortable and can choose between a variety of building types." If this secondary suite is approved it broadens the choice of houses in the community, enhances the value and is close to public transportation which is especially advantageous for seniors and students (it is close to Mount Royal College).
- He advised that neither the Marda Loop Community Association nor the ward Alderman submitted comments regarding this application.
- He advised that there is no space to provide a third parking stall on the lot.
- Mr. MacDonald elaborated on the suite, including materials that would be used.
- The Development Authority stated that this proposed development does "...unduly interfere with the amenities of the neighbourhood or affect the use, enjoyment or value of neighbourly properties", he submits that it does not.

Upon questioning, Mr. MacDonald and Mr. Smith clarified the following:

- He advised that there are two vehicles associated with the subject property, his and his son's.
- Mr. Smith showed where existing bus stops are in relation to his property and their destinations; he also stated that Mount Royal College is approximately 25 blocks from his house. In addition, one would have to travel by bus to get to the new West LRT line from the subject property.
- He explained that the daytime weekend photographs were all taken around noon and the weekend evening ones were all taken around 5:30pm.

Opposed to the Appeal:

No one spoke in opposition to the appeal and no letters of objection were received.

Decision:

In determining this appeal, the Board:

- Complied with the provincial legislation and land use policies, applicable statutory plans and, subject to variation by the Board, The City of Calgary Land Use Bylaw 1P2007 and all other relevant City of Calgary Bylaws;
- Had regard to the subdivision and development regulations; and
- Considered all the relevant planning evidence presented at the hearing, the arguments made and the circumstances and merits of the application.

1. The appeal is denied and the decision of the Development Authority is upheld.

2. A development permit shall not be issued.

Reasons:

1 Having considered the written, verbal, and photographic evidence submitted, the Board notes that the appeal pertains to a refusal by the Development Authority of a development permit application for a new secondary suite with a lot width and parking relaxation at 4202 17 Street SW. The property has a land use designation of Residential – Contextual One/Two Dwelling (R-C2) District pursuant to Land Use Bylaw 1P2007.

2 The Development Authority refused the application primarily on the basis of narrow lot width and insufficient on-site parking. The lot width requirement is intended to ensure that there is adequate space provided for the individual needs of both dwelling units, including outdoor amenity spaces and parking facilities. Parking is an extremely important factor in considering secondary suites, due to the negative impact the increase in vehicles and traffic has on an established residential neighbourhood. In the opinion of the Development Authority, the proposed secondary suite cannot be supported.

3 The applicant/appellant in their notice of appeal submitted that there is a two car garage on site and that they only owned one vehicle. The other stall in the garage would be assigned to the secondary suite.

4 The Board has particular regard to the following sections of Land Use Bylaw 1P2007 including but not limited to:

Section 28(1) states:

Permitted Uses That Meet All Requirements

- 28 (1)** Where a *development permit* application is for a *permitted use* in a *building* or on a *parcel* and the proposed *development* conforms to all of the applicable requirements and rules of this Bylaw, the *Development Authority* must approve the application and issue the *development permit*.

Section 30 states:

Permitted Uses That Do Not Meet All Requirements

- 30 Where a **development permit** application is for a **permitted use** in a **building** or on a **parcel** and the proposed **development** does not conform to all of the applicable requirements and rules of this Bylaw, the **Development Authority** may:
- (a) refuse to approve the **development permit** application; or
 - (b) approve the **development permit** application and grant a relaxation of the requirement or rule to which the proposed **use** does not conform.

Section 31 states:

Test for a Relaxation

- 31 The **Development Authority** may approve a **development permit** application for a **permitted use** where the proposed **development** does not comply with all of the applicable requirements and rules of this Bylaw if, in the opinion of the **Development Authority**:
- (a) the proposed **development** would not unduly interfere with the amenities of the neighbourhood or materially interfere with or affect the use, enjoyment or value of neighbouring properties; and
 - (b) the proposed **development** conforms with a **use** prescribed by this Bylaw for that land or **building**.

Section 116 states:

General Rules

- 116 All **motor vehicle parking stalls, visitor parking stalls, bicycle parking stalls** and **loading stalls** required by this Bylaw for a **development** must be located on the same **parcel** as the **development**.

Section 295 states:

295 “Secondary Suite”

- (a) means a **use** where a second, self-contained **Dwelling Unit**

is located within a **Contextual Single Detached Dwelling** or **Single Detached Dwelling**;

- (b) [...]
- (c) requires a minimum of 1.0 **motor vehicle parking stalls**; and
- (d) [...]

Section 305 states:

305 “Single Detached Dwelling”

- (a) means a **building** which contains only one **Dwelling Unit** and may include a **Secondary Suite**, **Secondary Suite – Detached Garage** or **Secondary Suite – Detached Garden** in Districts with allow those **uses**, but does not include a **Manufactured Home**;
- (b) [...]
- (c) requires a minimum of 1.0 **motor vehicle parking stalls** per **Dwelling Unit**, and
- (d) [...]

Section 429 states:

Parcel Width

429 The minimum **parcel width** is:

- (a) [...]
- (a.1) 9.0 metres for a **parcel** containing a **Secondary Suite**;
- (b)– (d) [...]

Section 443 states:

Motor Vehicle Parking Stalls

443 The minimum number of **motor vehicle parking stalls** for each **Contextual Single Detached Dwelling**, **Duplex Dwelling**, **Semi-detached dwelling** and **Single Detached Dwelling** is 2.0 stalls per **Dwelling Unit** where:

- (a) the **parcel width** is less than 9.0 metres and the **parcel** is part of a plan of subdivision approved after September 7, 1982, or
- (b) the area of the **parcel** is less than 270.0 square metres and the **parcel** is part of a plan of subdivision approved after September 7, 1982.

Section 425 (1)(f.1) lists “Secondary Suite” as a permitted use in the R-C2 District.

5 The Board also has regard to the South Calgary/Altadore ARP and the Low Density Residential Housing Guidelines for Established Communities (Infill Guidelines).

6 The Board notes that the Development Authority advises (page 40 of the Board’s report) that the subject parcel was subdivided in 2003. Therefore, the Board finds that section 443 of Land Use Bylaw 1P2007, which requires two parking stalls per dwelling unit, applies in this case.

7 The application requires the following relaxations:

- (a) With regard to parking, a relaxation is required of section 295(c) of Land Use Bylaw 1P2007, which require one motor vehicle parking stall per secondary suite. There are two parking spaces on-site, which are required by section 443(a) of the Bylaw for the primary dwelling unit. There is therefore a deficiency of one required parking stall for the proposed development, which is a 100 percent relaxation of the parking stall requirement for the proposed development; and
- (b) A relaxation of section 429 of the Bylaw is required of 0.25 metres or 2.77 percent regarding minimum parcel width for a secondary suite.

8 The application is for a new secondary suite in an existing single detached dwelling. The Board notes that the proposed use and development in question is a permitted use in the subject district that governs the subject property. However, the development does not conform to Land Use Bylaw 1P2007, as it requires two relaxations of the provisions of the Land Use Bylaw.

9 The Board acknowledges the written and oral submissions including but not limited to the appellant/ applicant.

10 The Board considered the appellant’s arguments in support of the application but for the reasons that follow finds the arguments not compelling and lacking in planning merits.

11 Pursuant to section 30 of Land Use Bylaw 1P2007, where a development permit application is for a permitted use in a building or on a parcel and the proposed development does not conform to all of the applicable requirements and rules of this Bylaw, the Development Authority may: (a) refuse to approve the development permit

application; or (b) approve the development permit application and grant a relaxation of the requirement or rule to which the proposed use does not conform.

12 The Board finds that the required Bylaw relaxations for the proposed development, in terms of size and nature, are significant.

13 The Board takes into account that Council expressly and purposively in Land Use Bylaw 1P2007 stipulated a minimum parcel width of 9.0 metres for the use of "Secondary Suite". Having regard to the context and scheme of Land Use Bylaw 1P2007, and its operations, the intent of the Land Use Bylaw clearly is to deem the location of a secondary suite on a parcel with a parcel width under 9.0 metres, from a planning perspective, as not being appropriate.

14 The Board agrees with the Development Authority that the relaxations for the development are excessive in this case. The Land Use Bylaw in setting the minimum parcel sizes determined that a parcel, which does not meet these dimensions, is not suitable for a secondary suite. The minimum lot width in the Bylaw is intended to ensure that a parcel can sustain higher density in terms of meeting all requirements of the Bylaw.

15 Regarding the insufficient amount of on-site parking, the Board notes the following: there is a total of only two on-site parking spaces for both the principal dwelling and the proposed secondary suite. Although the appellant explained that the parking arrangement would currently allow the resident of the secondary suite to utilize one of the parking stalls in the garage, given the permanent nature of the secondary suite there is no ability to ensure that this arrangement would continue for future residents of both the primary dwelling and secondary suite. In addition, future residents of the primary dwelling and secondary suite could have more vehicles than the parking spaces available on site. In the Board's view, this would materially affect the use and enjoyment of the adjacent properties.

16 The appellant also provided photographic evidence of the streetscape in front of the primary residence showing what appears to be an abundance of on-street parking that would be available to residents of both the primary dwelling and the secondary suite, however the Board found this evidence inadequate as it only showed the streetscape at limited times. Therefore the Board is unable to conclude that there is an abundance of on street parking at all times during the week. Further, the intent of the bylaw in requiring that parking be provided on site for secondary suites is to prevent on street parking issues and congestion generated by new development.

17 Secondary suites, especially where they are a permitted use, need to be an appropriate development for the property in question, and any required relaxations must be in accordance with the Bylaw and the *Municipal Government Act*.

18 The Board finds that the required relaxations for the development do not meet the criteria of section 687(3)(d) of the *Municipal Government Act*. In the Board's opinion,

having regard to all the evidence and aforementioned factors, the proposed development and required relaxations have a negative impact on the adjacent properties and the immediate neighbourhood. From a planning perspective it affects the use and enjoyment of the adjacent properties as the development increases the number of vehicles being parked on the street.

19 Accordingly, pursuant to section 687(3)(d) of the *Municipal Government Act*, the Board finds that the proposed development would unduly interfere with the amenities of the neighbourhood, or materially interfere with or affect the use or enjoyment of neighbouring parcels of land.

20 Having regard to the evidence and aforementioned factors, the Board finds that the minimum parcel dimension rule of the Bylaw should prevail in this instance.

21 Having regard to the merits of the application, or lack thereof, and taking into consideration the impact of the proposed development on the neighbourhood and the neighbouring properties and sound planning considerations, the Board finds that the proposed development in this case is not appropriate for the subject parcel.

22 In reviewing and weighing all the evidence, the Board therefore finds that the proposed development does not warrant approval.

23 For the above reasons the Board denies the appeal and upholds the decision of the Development Authority.

24 A development permit shall not be issued.

Stefne Madison, Presiding Officer
Subdivision and Development Appeal Board

Issued on this ____ day of _____,