
CALGARY SUBDIVISION AND DEVELOPMENT APPEAL BOARD

Hearing held at: Calgary, Alberta

Date of hearing: August 29, 2013

Members present: Meg Bures, Presiding Officer
Jo Anne Atkins
John Attrell
Brian Corkum

Basis of appeal: This is an appeal from a refusal by the Development Authority for a development permit made on the application of **Annette Ernst** for a **new: secondary suite** at 4635 70 Street NW.

Appeal filed by: **Annette Ernst**

Description of Application:

The appeal before the Subdivision and Development Appeal Board (Board) deals with a refusal by the Development Authority for a development permit application for a new secondary suite at 4635 70 Street NW. The property is located in the community of Bowness and has a land use designation of Residential – Contextual One/Two Dwelling (R-C2) District.

Hearing:

The Board heard verbal submissions from:

Annette Ernst owner, applicant and appellant in favour of the appeal; and Joe Leizerowicz representing the Bowness Community Association in opposition to the appeal.

Summary of Evidence:

The Board report contains the Development Authority's decision respecting the development permit application and the materials submitted by the Development Authority that pertain to the application, and forms part of the evidence presented to the Board. The Board report contains notice of appeal and any documents, materials or written submissions submitted by the appellant, applicant and any other parties to the appeal.

Appendix A attached to this decision contains the summary of evidence from the parties submitted at the hearing and forms part of the Board's decision.

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, as amended, 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 at 4635 70 Street NW. 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 a number of required relaxations, including (1) the secondary suite exceeding the maximum floor area dimension requirement, (2) insufficiently sized outdoor amenity space for the secondary suite, and (3) narrow lot width. The floor area maximum is intended to limit the number of potential occupants to the suite, reduce parking demand, and preserve the majority of the home for its original approved use as a single detached dwelling. Adherence to this rule ensures the secondary nature of the suite, compared to the principle dwelling. The Bylaw provides for a 10 percent variance to the maximum allowable floor area. However, this is intended to accommodate unique layouts and design challenges. There is no circumstance particular to this building that provides planning rationale in support of the requested relaxation, which is more than 10 percent. In the Development Authority's opinion, the requested relaxations are excessive and the development exceeds the scope and original intent for a secondary suite. As a result, the application was refused.

3 The applicant/appellant in their notice of appeal submitted that this suite has been selected for the "Calgary Pilot Safety Suite Project" and has been inspected and approved as safe. By the appellant's measurements, the interior dimensions are 734 square feet of living space for the tenant, which is less than the Development Authority's calculation for the secondary suite. The relaxation for lot size should, in the appellant's opinion, be relaxed; and private amenity space exists in the rear yard, which is large enough to satisfy the minimum dimension requirement. In the appellant's opinion, a relaxation for the floor area should be granted to prevent having to construct a wall in the middle of the living room to reduce the size of the 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 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)-(d) [...]

Section 352 states:

Secondary Suite – Floor Area

352 (1) The maximum floor area of as **Secondary Suite**, excluding any area covered by stairways, is 70.0 square metres:

- (a) in the R-C1Ls, R-C1s, R-C1N, R-1N Districts; or

- (b) when located on a **parcel** with a **parcel width** less than 13.0 metres.
- (2) [...]
- (3) The maximum **floor area** in subsections (1) and (2) may be relaxed by the **Development Authority** to a maximum of 10.0 per cent.

Section 353 states:

Secondary Suite – Outdoor Private Amenity Space

353 A **Secondary Suite, Secondary Suite – Detached Garage** and **Secondary Suite – Detached Garden** must have a **private amenity space** that:

- (a) is located outdoors;
- (b) has a minimum area of 7.5 square metres with no dimension less than 1.5 metres; and
- (c) is shown on a plan approved by the **Development Authority**.

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

5 The application requires the following relaxations:

- (a) With regard to floor area, a relaxation is required of section 352(1)(b) of Land Use Bylaw 1P2007, which requires a maximum of 70.0 square metres, excluding any area covered by stairways. The Development Authority calculated an area of

the secondary suite as 85.4 square metres, which requires a variance of 15.4 square metres or 22 per cent;

- (b) Regarding outdoor amenity space, the decision rendered plans indicate an outdoor amenity space of 2.3 square metres, which requires a relaxation of section 353(b) of the Bylaw of 5.2 square metres or 69 percent; and
- (c) Regarding parcel width, the decision rendered plans indicate a parcel width of 8.55 metres, which requires a relaxation of section 429(a.1) of the Bylaw of 0.45 metres, or 5 percent.

6 The application is for a secondary suite located in the basement of an existing single detached dwelling. According to the Development Authority, the approved floor plans associated with the development permit and building permit for the original building did not show a secondary suite. The Board accepts this evidence.

7 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 three relaxations of the provisions of the Land Use Bylaw.

8 The Board acknowledges the written and oral submissions including but not limited to the appellant/ applicant and interested/ affected parties, as well as letters and correspondence received regarding the application and appeal.

9 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.

10 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.

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

12 With regard to floor area, the Board notes the following: The appellant submitted that she measured the secondary suite herself and arrived at considerably smaller dimensions than the 85.43 square metre measurement which Development Authority calculated. By the appellant's estimate, the total area of the secondary suite is 950 square feet (88.3 square metres), with a common area and entrance area of 160

square feet (14.9 square metres), and a furnace room of 60 square feet (5.6 square metres). In the appellant's opinion the furnace room and common area should be removed from the calculation of the area of the secondary suite, for a total livable space of the secondary suite of 730 square feet (67.8 square metres), which is less than the bylawed maximum. Upon questioning by the Board, the appellant explained that she used a tape measure to measure the rooms herself and did not use any professional floor plan measurement services or accurate measuring equipment.

13 In the Board's opinion, the Land Use Bylaw is clear in regard to how the maximum floor area of a Secondary Suite is measured, i.e. excluding any area covered by stairways. If the Bylaw authors had intended to exclude other areas such as common areas and furnace rooms, it would have done so. In the Board's opinion, the appellant appears to be recalculating and justifying the floor area dimensions of her proposed secondary suite so as to appear to be under the maximum allowable dimension, based on anecdotal measurements and without meritorious planning rationale. Ultimately, relevant and determinative are the plans that are part of the development permit application, which are the plans reviewed by the Development Authority, and on which basis it rendered its decision (the so-called decision rendered plans). The Board therefore accepts the Development Authority's calculation of floor area and required relaxation as per section 352(1) of the Land Use Bylaw, based on the plans submitted with the development permit application.

14 Upon questioning by the Board regarding alternate stairway configurations that may provide a more suitable entrance to the secondary suite, while also serving to reduce the area of the suite so as to comply with the bylawed maximum, the Board notes that the appellant admitted to not exploring alternate floor layout options because she did not want to spend any more money on renovating or altering the suite.

15 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.

16 The Board agrees with the Development Authority's opinion that the minimum lot width in the Land Use Bylaw is intended to ensure that a parcel can sustain higher density in terms of meeting all requirements of the Bylaw including but not limited to providing sufficient amenity space for all the uses on the property.

17 Regarding amenity space, the Board notes the following: The appellant first explained that the dimensions of the outdoor amenity space as shown on the decision rendered plans are incorrect and that the area of the designated outdoor amenity space for the secondary suite is actually an area in the rear yard under a pergola, which is at least 9 feet long by 6 feet wide. The appellant then explained that she intends to allow

the occupants of the secondary suite to use the entire rear yard as well as the side yard for amenity space. The Board notes that the appellant provided no photographs, accurate diagrams or measurement specifics regarding those revised areas for outdoor amenity space for the secondary suite.

18 In addition, the Board notes that the site plan submitted as part of the decision rendered plans is not a Real Property Report and is not stamped by an authorized land surveyor. The Board also notes that the appellant admitted that the Development Authority had requested a new survey of the property, but she decided not to spend any more money on the application until she obtained a development approval.

19 When asked where the amenity space would be for the primary dwelling, the appellant explained that the designated private amenity space for the primary dwelling would be at the front of the subject property. Upon questioning, the appellant claimed that there are other properties in the immediate area, for example next door, where the front yards are used as private amenity spaces, because she has seen people using patios located in those front yards. However, no evidence was presented to confirm whether any those properties have private amenity spaces designated in the front yards because of secondary suites on the properties or for any other reason. In the Board's opinion, because people are observed using or recreating in their front yards, it does not necessarily mean that those areas are designated private amenity spaces to the exclusion of any other portions of those respective properties. Therefore, the Board places no weight on the appellant's assertion that there are other examples in the immediate area of private amenity spaces designated in the front yards of properties.

20 Therefore, the Board finds that the size of the proposed secondary suite does have the potential to create an intensity of use on the site that is contrary to the intentions of the Bylaw for secondary suites in single detached dwellings. This is exacerbated by the appellant's revised plan, as explained during the hearing, to use the front yard as well as the side and rear yards for the designated outdoor amenity spaces for the primary dwelling and the secondary suite occupants, respectively. The Board finds that this intensity of use, especially on a narrow parcel, will have a significant and undue impact on the adjacent properties, as it affects the use and enjoyment of these properties.

21 In addition, having regard to all the evidence, the Board finds the required relaxations significant in both number and magnitude.

22 Furthermore, the Board notes the opposition of the community association, as presented by its representative at the hearing, in supporting the Development Authority's reasons for refusal.

23 While the Board finds it commendable that the appellant is endeavoring to bring an existing secondary suite into full compliance, the fact remains that secondary suites, especially where they are a permitted use, need to be an appropriate development for

the property in question, and that any required relaxations must be in accordance with the Land Use Bylaw and the *Municipal Government Act*.

24 The Board's opinion the appellant provided unreliable and contradictory evidence, and appeared to be more concerned with obtaining approval for the bylaw relaxations pertaining to the suite as it currently exists, rather than endeavoring to achieve alternative solutions for the secondary suite layout and outdoor amenity space without the need for bylaw relaxations.

25 That said, however, the Board notes that the width of the subject parcel, 8.55 metres, is less than the bylawed minimum width for a parcel containing a secondary suite, and that the required variance for parcel width in this case is 4 percent. Section 429(a.1) is clear in its stipulation of 9.0 metres for minimum parcel width containing a secondary suite. The Board finds that insufficient evidence and/ or planning rationale was presented that warrants relaxing this section of the Land Use Bylaw.

26 Although the appellant placed great emphasis on the fact that her secondary suite has been selected for the Building Regulations Pilot Project for secondary suite safety, the Board places neither positive nor negative weight on this point. In the Board's opinion, the onus is on the owner of a secondary suite to ensure first and foremost that the location is suitable for a proposed secondary suite from a planning and land use bylaw perspective. Participation in programs to ensure building regulation compliance is not relevant for the development permit application process. Building regulation falls under the *Alberta Safety Codes Act*, RSA 2000, c S-1 and the *Alberta Building Code Regulation*, Alta Reg 117/2007. It is outside the purview of the Development Authority and, upon appeal, is not within the Board's jurisdiction.

27 The Board, based on the evidence and aforementioned factors, 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.

28 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.

29 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.

30 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.

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

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

33 A development permit shall not be issued.

Meg Bures, Presiding Officer
Subdivision and Development Appeal Board

Issued on this 12th day of September, 2013

UNCERTIFIED COPY