

**SUBDIVISION AND DEVELOPMENT APPEAL BOARD****DECISION**

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Hearing held at: Calgary, Alberta

Date of hearing: March 19, 2010

Members present: Meg Bures, Presiding Officer  
Rick Grol

Bill Scott  
Andrew Wallace

Basis of appeal: This is an appeal from a refusal by the Development Authority for a development permit made on the application of **Taner – Jay Cairns** for a **new: secondary suite – detached garage** at 11 Aberdare Way NE.

Appeal filed by: **Taner Cairns**

**Description of Application:**

The appeal before the Subdivision and Development Appeal Board ("Board") deals with a refusal by the Development Authority of a development permit application for a new secondary suite above the detached garage at 11 Aberdare Way NE. The property is located in the community of Abbeydale and has a land use designation of Residential – Contextual One/Two Dwelling (R-C2) District.

*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.

*Hearing*

The Board heard a verbal submission from Taner Cairns, the applicant/appellant.

The Development Authority did not make a verbal presentation to the Board. Prior to the hearing, the Development Authority, in response to the appeal, submitted a summary report.

In Favour of the Appeal:

The appellant submitted revised plans and raised the following issues in favour of the appeal:

- He advises that the garage is an original building. The development permit is from 1981 and included second floor occupancy, not specifically a secondary suite.
- In consultation with the neighbours he is providing three onsite parking stalls (he notes the van is no longer on site). With the frontage on the property he can also include two more stalls on-street in front of the subject property. The house has a total of three bedrooms, with potentially five parking stalls.
- Initially the Development Authority had issue with the amenity space but that seems to no longer be an issue.
- He provided a letter of support from the Abbeydale Community Association and a neighbour; therefore he notes there are no letters of objection. He has contacted the neighbours and they are in support of the proposed development but he did not obtain letters of support.
- The existing roof top patio has been an issue for a number of years, the proposed development would remove the roof top patio, and as result, the rectification of these issues is welcomed by the neighbours. The roof top deck had been used across the entire roof. The proposed development would see the suite cover most of that level.
- Revised plans show the south facing windows would be frosted. Only west-facing windows overlooking the lane would be transparent and unobstructed.
- The applicant is also willing to shorten the landing on the north side of the building, and provided the Board with a revised sketch. The reduced size of the landing would therefore limit its use as a deck.
- The appellant submitted that the recent change to R-C2 zoning was not useful to the neighbourhood and not possible in a large part of the area due to the narrow lot

sizes. As a result he was of the opinion that R-C1 zoning is the only possible zoning that could reasonably be achieved.

- The appellant provided a copy of a survey document containing a certificate of compliance. He pointed out that there are some discrepancies in the Development Authority's findings concerning the frontage, the back setback, and the side setback.
- He lives in the house on the site and would agree to a condition that the owner must live on site.

Opposed to the Appeal:

No one spoke in opposition to the appeal and no letters of opposition 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*, 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 above the detached garage at 11 Aberdare Way NE. The property is located in the community of Abbeydale and 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 on the grounds that *Land Use Bylaw 1P2007* allows for increased density when minimum lot sizes are met, allowing ample space to meet the individual needs of each dwelling unit while maintaining limited impact on neighbouring properties. The lot size, area and setback requirements

for a property are intended to maintain the character of the community by restricting the size of building that can be constructed on the lot. In the opinion of the Development Authority, the requested relaxations are considered excessive and cannot be supported.

3 The Board has particular regard for the following sections of *Land Use Bylaw 1P2007*.

Section 35 states:

#### **Discretionary Use Development Permit Application**

**35** When making a decision on a **development permit** for a **discretionary use** the **Development Authority** must take into account:

- (a) any plans and policies affecting the **parcel**;
- (b) the purpose statements in the applicable land use district;
- (c) the appropriateness of the location and **parcel** for the proposed **development**;
- (d) the compatibility and impact of the proposed **development** with respect to **adjacent development** and the neighbourhood;
- (e) the merits of the proposed **development**;
- (f) the servicing requirements;
- (g) access and transportation requirements;
- (h) vehicle and pedestrian circulation within the **parcel**;
- (i) the impact on the public transit system; and
- (j) sound planning principles.

Section 295 states:

#### **295 “Secondary Suite”**

- (a) means an accessory **Dwelling Unit**:
  - (i) that does not exceed 70.0 square metres in **gross floor area**, excluding the area covered by stairways;
  - (ii) that is located on the same **parcel** as a **Contextual Single Detached Dwelling** or a **Single Detached Dwelling**; and
  - (iii) that will only be approved as one of the following:

- (A) “**Secondary Suite – Attached Above Grade**” where the **Secondary Suite** is located above the first **storey** of a **Contextual Single Detached Dwelling** or a **Single Detached Dwelling**;
  - (B) “**Secondary Suite – Attached At Grade**” where the **Secondary Suite** is attached to the side or rear of **Contextual Single Detached Dwelling** or a **Single Detached Dwelling**;
  - (C) “**Secondary Suite – Attached Below Grade**” where the **Secondary Suite** is located below the first **storey** of a **Contextual Single Detached Dwelling** or a **Single Detached Dwelling**;
  - (D) “**Secondary Suite – Detached Garage**” where the **Secondary Suite** is located above the first **storey** of a detached **private garage**;
  - (E) “**Secondary Suite – Detached Garden**” where the **Secondary Suite** is detached and located at **grade** to the rear of a **main residential building**;
- (b) is a **use** within the Residential Group in Schedule A to this Bylaw;
  - (c) requires a minimum of 1.0 **motor vehicle parking stalls** per **Dwelling Unit**; and
  - (d) does not require **bicycle parking stalls – class 1** or **class 2**.

Section 351 states in part:

#### **Secondary Suite-Setbacks**

- (1) For a **Secondary Suite – Attached Above Grade**, **Secondary Suite – Attached at Grade** and **Secondary Suite – Attached Below Grade** the minimum **building setback**:
  - (a) from a **front property line**, must be equal to or greater than the **building setback** from the **front property line** for the **main residential building**;
  - (b) from a **rear property line**, must be equal to or greater than the minimum **building setback** from the **rear property line** for the **main residential building**; and
  - (c) from a **side property line**, must be equal to or greater than

the minimum **building setback** from the **side property line** for the **main residential building**.

- (2) For a **Secondary Suite – Detached Garage**, the minimum **building setback** from any **rear property line** is:
- (a) 1.5 metres for that portion of the **building** used as a **Secondary Suite**; and
  - (b) 0.6 metres for that portion of the **building** used as a **private garage**.
- (3) For a **Secondary Suite – Detached Garden**, the minimum **building setback** from a **side property line** is 1.2 metres.
- (4) For all **buildings** containing a **Secondary Suite**, other than those referenced in subsection (1), the minimum **building setback** from a **side property line** is 1.2 metres.
- (5) A minimum separation of 3.0 metres is required between the closest façade of the **main residential building** to the closest façade of the **Secondary Suite – Detached Garage** or the **Secondary Suite – Detached Garden**.

Section 424 states:

#### Purpose

**424** The Residential – Contextual One / Two Dwelling District is intended to accommodate existing residential **development** and contextually sensitive redevelopment in the form of **Duplex Dwellings**, **Semi-detached**, and **Single Detached Dwellings** in the **Developed Area**.

Section 429 states in part:

#### Parcel Width

The minimum **parcel width** is:

- (a) – (b) [...]
- (c) 15.0 metres for a **parcel** containing a **Secondary Suite**; and
- (d) [...]

Section 431 states in part:

#### Parcel Area

The minimum area of a *parcel* is:

- (a) – (b) [...]
- (c) 400.0 square metres for a *parcel* containing a **Secondary Suite**;  
and
- (d) [...]

Section 426(1)(j) of *Land Use Bylaw 1P2007* lists “Secondary Suite” as a discretionary use within the R – C2 District.

4 The subject development proposes the addition of a secondary suite on the site in the form of a suite on the second floor of the existing detached garage.

5 The Board notes that the site contains a single detached residential building and a detached garage at the rear of the property, and is surrounded by residential uses on the north and south sides. A lane separates this property from residential uses to the west.

6 Pursuant to section 351(2)(a) of *Land Use Bylaw 1P2007* the minimum building setback from any rear property line is 1.5 metres. The Board notes that the proposed development provides a setback of 1.0 metres, which is a deficiency of 0.5 metres, requiring a relaxation of this section of some 33 percent.

7 Pursuant to section 351(4) of the *Land Use Bylaw 1P2007* the minimum building setback from a side property line is 1.2 metres. The Board notes that the proposed development provides a setback of 0.6 metres, which is a deficiency of 0.6 metres, requiring a relaxation of this Bylaw section of some 50 percent.

8 Pursuant to section 351(5) of the *Land Use Bylaw 1P2007* the minimum separation between the closest façade of the main residential building to the closest façade of the Secondary Suite – Detached Garage is 3.0 metres. The Board notes that the proposed development provides a separation of 2.1 metres from the main residential building, which is a deficiency of 0.9 metres, requiring a relaxation of this Bylaw section of some 30 percent.

9 Pursuant to section 429(b) of the *Land Use Bylaw 1P2007* the minimum parcel width to accommodate a secondary suite is 15.0 metres. The Board notes that the subject parcel provides 10.43 metres, which is a deficiency of 4.57 metres, requiring a relaxation of this Bylaw section of some 30 percent.

10 Pursuant to section 431(c) of the *Land Use Bylaw 1P2007* the minimum area of a parcel containing a secondary suite is 400.0 square metres. The Board notes that the

subject parcel provides an area of 323.16 square metres, which is a deficiency of 76.84 square metres, requiring a relaxation of this Bylaw section of some 19 percent.

11 There are no letters of objection to the proposed development. The Board received one letter from a neighbour in support of the proposed development, and one conditional support letter of the Community Association.

12 The Board takes into account that *Land Use Bylaw 1P2007* provides specific requirements that must be met for allowing a secondary suite on a parcel.

13 Having regard to section 424 of *Land Use Bylaw 1P2007*, the Board notes that the purpose of the R-C2 land use designation endeavours to ensure contextually sensitive redevelopment.

14 The Board concurs with the Development Authority that the intent of *Land Use Bylaw 1P2007* is to allow for increased density while taking into consideration minimum lot sizes, sufficient space to meet the needs of each dwelling unit, and potential impacts on neighbouring properties, and that the Bylaw requirements themselves are intended to maintain the character of the community by restricting the size of building that can be constructed on a property.

15 The Board notes that the proposed development requires a significant number of relaxations of *Land Use Bylaw 1P2007*. In terms of the required relaxations for the proposed development, the Board, however, carefully weighs the context of the relaxations.

16 The Board does not place positive weight on the survey drawing provided by the appellant at the hearing, as it was not stamped by a surveyor.

17 The Board notes that the parcel size and width of the lots in this community are relatively undersized. In addition, based on the photographic evidence and site plans, the Board finds that the subject property is relatively congested in terms of lot coverage due to the development that already exists on the lot.

18 The height of the proposed development, the location of the windows and the location of the deck / landing, in the opinion of the Board, would allow for overlooking into adjacent properties to the south and north of the subject property, as well as significant overlooking toward the lane and residential properties to the west.

19 The revised plans provided by the appellant at the hearing indicated frosting on the south-facing windows that would otherwise have a view directly into the adjacent property located at 9 Aberdare Way NE. The Board notes, however, that one of the two windows on that side of the development is located in a bedroom and, as such, would need to be operable. It is reasonable to assume that south facing windows on the upper



floor of a building would likely be opened, thereby negating any visual obscurity provided by the frosting.

20 Although the appellant stated that the adjacent neighbours supported the proposed development, no letters of support were provided.

21 Having regard to the siting of the lot and the size of the existing dwelling on the lot, the Board takes into consideration that the amount of amenity space on the parcel is at a minimum.

22 The Board finds that adding a secondary suite to the parcel results in an increase in density on the site which, in the Board's opinion, would create impact issues on the adjacent properties. The massing that would be created by a second story on top of the garage is out of character with the lane-scape.

23 The Board finds that the amount and cumulative impact of all of the relaxations exacerbates the intensity of use on the site. In the opinion of the Board the amount and size of relaxations would have a negative impact on the use and enjoyment of the neighbouring parcels of land.

24 Accordingly, pursuant to section 687(3)(d) of the *Municipal Government Act*, the Board concludes that the required relaxations and the 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.

25 Based on the evidence and the aforementioned factors, the Board finds that adding a secondary suite to the subject parcel is not in keeping with contextually sensitive redevelopment as envisioned by *Land Use Bylaw 1P2007* for the R-C2 District.

26 Having regard to the merits of the application and sound planning principles, the Board, in keeping with section 35 of *Land Use Bylaw 1P2007*, determines that the proposed development is not appropriate for the parcel.

27 In reviewing and weighing all the evidence, the Board, based on the evidence, therefore finds that the application does not warrant approval.

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

29 A development permit shall not be issued.

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Meg Bures, Presiding Officer  
Subdivision and Development Appeal Board

Issued on this 31<sup>st</sup> day of March, 2010

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