

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

Hearing held at: Calgary, Alberta

Date of hearing: July 09, 2010

Members present: Bill Scott, Presiding Officer
Kerry Armstrong
Angela Dowling

Basis of appeal: This is an appeal from a refusal by the Development Authority for a development permit made on the application of **Christopher A. McCallum** for a **change of use: secondary suite** at 232 Deer Ridge Place SE.

Appeal filed by: **Christopher McCallum**

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 change of use to Secondary Suite – Attached Below grade at 232 Deer Ridge Place SE. The property is located in the community of Deer Ridge and has a land use designation of Multi – Residential – Contextual Grade Oriented (M-GC d30) District.

The City of Calgary, Subdivision and Development Appeal Board # 8110
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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:

Christopher McCallum, appellant, in favour of the appeal

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 refusal.

In Favour of the Appeal:

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

- He submitted that he contests some of the measurements for the subject development as indicated in the reasons for refusal for his development permit.
- The relaxation of the lot width where the relaxation should be 22 percent and not 28 percent. In his calculations and measurements, the lot width is less.
- Also in regards to the lot width, he further submitted that on June 07, 2010, Council adjusted the parcel widths required for secondary suites within the zoning of his property. The parcel width has been reduced to a 13 metres minimum from 15 metres and his property is under 1.3 metres thereby the relaxation requested is 11.1 percent.
- On the parcel depth, the appellant submitted that his lot is five metres longer than the required 30 metres. Appellant is not disputing the refusal in the actual minimum area; but in his opinion, the relaxation should only be 21 percent.
- The appellant further submitted that since his lot is five metres longer than 1.3 metres narrower than the bylaw requires, thus the property lot is actually 399.16 square metres of the necessary 400 square metres.
- In regards to parking, the appellant submitted that he understands the intent of mandating parcel depth which is to discourage over parking in front of the property

to avoid street congestion. There is a double garage at the back of the property with an extra parking pad beside it, therefore; there should be ample parking for three vehicles for the tenants of the subject property.

- Furthermore, the subject property is situated along Deer Ridge Way SE which is a corner lot hemmed in by three roadways. Although the available parking space in front of his property is for the general public, in the appellant's opinion, there is room for three to four more vehicles in a non-obstructive and congestive location.
- In regards to suite size, the appellant worked with his architect to design a smaller and more acceptable suite size which is in the 75 square metres range.
- Finally, with the reasons stated and the reduced suite size, the appellant deduced that he addressed all the concerns posed by the Development Authority in regards to lot width, parcel depth, parking requirement, and reducing the size for the secondary suite that the Board will allow his appeal.

Opposed to the Appeal:

No one spoke opposed to the appeal but a letter from a neighbour was submitted to the Board.

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 allowed and the decision of the Development Authority is overturned.**
- 2. The approval is for change of use: Secondary Suite.**
- 3. The development permit shall be issued subject to the following conditions of approval.**

Conditions of approval

Prior to release conditions

The following prior to release conditions must be completed and submitted to the satisfaction of the Development Authority.

To resolve prior to release conditions, please contact the file manager.

1. The applicant shall submit three sets of amended plans to the satisfaction of the Development Authority indicating the following:
 - (a) Delineating the secondary suite within the lower level of the dwelling unit to a maximum of no more than 81 square metres as calculated using the subject building's exterior foundation measurements and as shown to the Subdivision and Development Appeal Board at the hearing;
 - (b) Showing the secondary suite being separated from the stairwell accessing the lower level and main floor storage room by a door as shown to the Subdivision and Development Appeal Board at the hearing; and
 - (c) Delineating one on-site parking stall to be accessed from the lane and located west of and adjacent to the existing garage as shown to the Subdivision and Development Appeal Board at the hearing.

Permanent conditions

The following are the permanent conditions:

2. The approval is for a change of use: Secondary Suite.
3. The approved secondary suite shall not exceed 81 square metres.
4. The development permit shall have a term of five years on the expiry of which the use shall be discontinued and not recommenced until a new development permit for the use has been approved and issued.
5. The secondary suite shall be demised from the access stairwell and storage area by a door.
6. The lower level storage area shall not be used in association with the secondary suite.
7. There shall be one outside parking stall provided on site accessed from the lane and located west of and adjacent to the existing garage, all to the satisfaction of the Development Authority. This parking stall shall be for the use of the residents of the secondary suite.

8. The development shall be completed in its entirety, in accordance with the approved plans and conditions.
9. No changes to the approved plans shall take place unless authorized by the Development Authority.
10. A development completion permit shall be applied for, and approval obtained, within one month of release of the development permit. Call the Development Field Inspection Group at 403-268-5311 to request that a Field Inspector conduct a site inspection and sign the development completion permit.
11. Approval of this development permit does not in any way exempt you from complying with the requirements of the Alberta Building Code.

Advisory comments

The following advisory comments are provided as a courtesy to the applicant and property owner. They represent some, but not all of the requirements contained in the Land Use Bylaw that must be complied with as part of this approval.

1. In addition to your development permit, you should be aware that a building permit is also required. Now that your development permit application has been approved, you may apply for a building permit. Please contact Building Regulations at 403-268-5311 for further information.

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 change of use to Secondary Suite – attached below grade at 232 Deer Ridge Place SE. The property has a land use designation of Multi – Residential – Contextual Grade Oriented (M-GC d30) District pursuant to Land Use Bylaw 1P2007.

2 The Development Authority refused the subject application on the grounds that the Land Use Bylaw provisions governing secondary suites are very specific with respect to the maximum allowable size of the units. In considering the application, the Development Authority determined that the proposed development if approved would provide a dwelling unit far beyond the Bylaw's intent for a secondary suite and would come close to being a fully independent second dwelling unit rather than a subsidiary of the principal dwelling. In addition, the lot size and area requirements for residential properties are intended to maintain the community's character and govern the amount

of the parcel that can be built on. In the opinion of the Development Authority the requested relaxations are excessive.

3 The Board has regard to the following sections of Land Use Bylaw 1P2007:

Section 573 states, in part:

Single Detached, Semi-Detached, Duplex Dwellings and Secondary Suites

573 Any of the following uses must comply with the rules of the R-C2 District that apply to such **development**:

(a) - (c) [...]

(d) **Secondary Suite**;

(d.1) - (f) [...]

Section 576 states:

Purpose

576 The Multi-Residential – Contextual Grade-Oriented District:

- (a) is intended to apply to the **Developed Area**;
- (b) has **Multi-Residential Development** that will typically have higher numbers of **Dwelling Units** and traffic generation than low density residential dwellings;
- (c) has **Multi-Residential Development** designed to provide some or all **Units** with direct access to **grade**;
- (d) provides for **Multi-Residential Development** in a variety of forms;
- (e) has **Multi-Residential Development** of low height and low **density**;
- (f) allows for varied **building height** and **front setback areas** in a manner that reflects the immediate context;
- (g) is intended to be in close proximity or **adjacent** to low density residential development;

- (h) provides outdoor space for social interaction; and
- (i) provides landscaping to complement the design of the **development** and to help screen and buffer elements of the **development** that may have impacts on residents or nearby **parcels**.

4 Further the Board notes that on June 7, 2010, City Council enacted Bylaw 12P2010 which amended sections 295 and 429 of Land Use Bylaw 1P2007 to read as follows:

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) is a use within the Residential Group in Schedule A to this Bylaw;
- (c) requires a minimum of 1.0 **motor vehicle parking stalls**; and
- (d) does not require **bicycle parking stalls – class 1** or **class 2**.

Parcel Width

429 The minimum parcel width is:

- (a) - (b) [...]
- (c) 13.0 metres for a **parcel** containing a **Secondary Suite**, **Secondary Suite – Detached Garage** or **Secondary Suite – Detached Garden**;
- (d) [...]

5 In addition the Board has regard to section 431(c) of Land Use Bylaw 1P2007, which provides:

Parcel Area

431 The minimum area of a parcel is:

- (a) - (b) [...]
- (c) 400.0 square metres for a **parcel** containing a **Secondary**

Suite, Secondary Suite – Detached Garage or Secondary Suite – Detached Garden; and

(d) [...]

6 Further, the Board has regard to section 687(3) of the *Municipal Government Act*, R.S.A.2000, c.M-26, as amended, which provides:

Hearing and decision

687(3) In determining an appeal, the subdivision and development appeal board

- (a) [...]
- (a.1) must comply with the land use policies and statutory plans and, subject to clause (d), the land use bylaw in effect;
- (b) - (c) [...]
- (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,and
 - (ii) the proposed development conforms with the use prescribed for that land or building in the land use bylaw.

7 The Board notes that the plans on which the Development Authority made its decision showed the entire lower level of the building being used for the proposed use and provided for a kitchen, living and dining rooms, two bedrooms, sanitary facility as well as a mechanical and a storage room within some 98.67 square metres. This would require a relaxation of 28.67 square metres of the maximum 70 square metres gross floor area size allowed for a secondary suite.

8 During the hearing, the appellant, in response to the Development Authority's concern over the size of the secondary suite, requested that the Board would accept amended plans which indicate a reduction of the proposed development to some 81 square metres by relocating the storage room outside and separate from the proposed secondary suite.

9 The Board, in considering the request, notes that the relocation of the storage room not only reduces the size of the secondary suite but also removes the potential for the area to be used as a bedroom within the proposed use and, as such, accepts the request and reviews the appeal based on the amended plans submitted to it during the hearing.

10 The Board notes that the Development Authority's decision to refuse the application was based on the rules of Land Use Bylaw 1P2007 in effect on or before May 26, 2010.

11 The Board being aware that City Council adopted Bylaw 12P2010 on June 7, 2010 which amends Land Use Bylaw 1P2007 as it relates to secondary suites and, therefore pursuant to section 687(3)(a.1) of the *Municipal Government Act*, applies these amended rules in its assessment of the appeal and the application.

12 The Board finds that the subject parcel, having a width of 11.70 metres and an area of 399.16 square metres requires relaxations of 1.30 metres or a 10 percent and 0.84 square metres or 0.21 percent of sections 295 and 431 respectively of Land Use Bylaw 1P2007 as amended.

13 Having regard to the Bylaw definitions and the Development Authority's practice to use external measures in its review of development permit applications in accordance with the Bylaw, the Board dismisses the appellant's assertion that internal and not external dimensions should be used in determining an application's measurements and areas.

14 In reviewing the revised plans and in considering the appellant's submissions, the Board notes that the secondary suite will be developed below grade in a building that was originally constructed as a three bedroom single storey single dwelling unit.

15 The Board has regard to the fact that the immediately adjacent neighbourhoods have land use designations of Residential - Contextual One Dwelling.

16 In weighing the evidence the Board notes that the general character of the parcel's neighbourhood has the appearance and function of low density residential single family dwellings.

17 The Board, having regard to the parcel's current land use designation of Multi-Residential – Contextual Grade Oriented District, takes into account the original low density residential form and context of the adjacent developments and the greater neighbourhood in general.

18 The Board notes that under the Land Use Bylaw 1P2007 the Multi-Residential – Contextual Grade Oriented District, which governs the site, contemplates densification.

19 The Board, based on a purposive and contextual interpretation of the Bylaw, finds that the intent of Land Use Bylaw 1P2007 is that a secondary suite, as a second dwelling unit, is to be subsidiary to the principal dwelling on the parcel, i.e. the (Contextual) Single Detached Dwelling, The Board concurs with the Development Authority that the original development as proposed would be a fully independent second dwelling unit on the parcel rather than being subsidiary to the principal dwelling.

20 However, the Board takes into consideration that the proposed development reduced in size to 81 square metres as shown on the amended plans would meet the intent of the Bylaw that a secondary suite is a subsidiary of the principal dwelling on the parcel.

21 Furthermore, the Board takes into account the nature and form of adjacent parcels and their neighbourhoods. As they are currently of a low density single residential dwelling nature the Board determines that a five year term limit to the approval is appropriate in order to adequately assess the suitability and compatibility of the proposed use in its current context and prior to redevelopment occurring as contemplated by the land use designation.

22 In considering the parking concern contained in the single letter of objection, the Board notes that, with the proposed secondary suite, the dwelling unit will contain a total of five bedrooms – two in the secondary suite in addition to the existing three bedrooms on the dwelling's main level. In the Board's opinion there would be a potential for the proposed use to attract more vehicles than would normally be associated with a single dwelling unit.

23 In addition the Board notes that the subject parcel is situated on a corner and as such it is the Board's opinion that vehicles associated with the use may compromise vehicular and pedestrian safety should on-street parking occur due to the use.

24 Based on the evidence and having regard to sound planning principles, the Board therefore determines that imposing a condition to provide one additional on-site parking stall is necessary from a planning perspective in addressing any parking issues which may result from the proposed use.

25 The Board, in weighing all the evidence presented during the hearing, finds that the proposed change of use, based on the amended plans and proposed conditions, is in keeping with the rules and intent of the Land Use Bylaw, except as noted above, and is a use appropriate in form and function relative to the adjacent developments and the general neighbourhood.

26 The Board, therefore, determines that the required relaxations for the proposed change of use are warranted. In the Board's opinion these relaxations meet the criteria of section 687(3)(d) of the *Municipal Government Act*.

27 Therefore the Board finds that the application warrants approval subject to conditions of approval.

28 For the above reasons the Board allows the appeal and overturns the decision of the Development Authority.

29 A development permit shall be issued with the above listed conditions of approval.

Bill Scott, Presiding Officer
Subdivision and Development Appeal Board

Issued on this 17th day of August, 2010

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