

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

Hearing held at: Calgary, Alberta

Date of Hearing: August 20, 2010

Members present: Bill Scott, Presiding Officer
Kerry Armstrong
Robert Merchant

Basis of appeal: This is an appeal from an approval by the Development Authority for a development permit made on the application of **Tammy England** for a **change of use: secondary suite - attached below grade** at 1243 Mardale Drive NE.

Appeal filed by: **Arthur De La Mare**

This appeal was originally scheduled for August 06, 2010 but was adjourned to August 20, 2010 at the appellant's request.

Description of Application:

The appeal before the Subdivision and Development Appeal Board ("Board") deals with an approval by the Development Authority for a change of use for an attached below grade secondary suite at 1243 Mardale Drive NE. The property is located in the community of Marlborough and has a land use designation of Residential – Contextual One Dwelling – Provision for Secondary Suite (R-C1s) District.

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:

Bruno Heitmar, a neighbor, in favour of the appeal; and
Tammy England, owner and applicant, opposed to 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:

Mr. Heitmar raised the following issues in favour of the appeal:

- He submitted that he lived in the neighbourhood since the early seventies and they have seen the growth, maintenance, sometimes lack of challenges that occurred over time. In his opinion, if this application is granted, it would increase already visible negative effects to the neighbourhood.
- Also added that there are currently illegal suites located on their street as well as neighbours renting out portions of their home to friends and they create parking frustration. In addition, it is not only the parking that has dramatically changed in their neighbourhood but the overall atmosphere and condition in which homes and properties are maintained.
- Furthermore, as an elderly couple in retirement, they feel pressured to keep their vehicles parked in front of their home as neighbours with more than three vehicles take their convenient parking.
- He also submitted that his family has been residents in the neighbourhood for over 40 years and they pride themselves in respecting their neighbours but at this time, they are opposed to the change in the property and support a secondary suite.

Opposed to the appeal:

The applicant/owner submitted photographs and raised the following issues opposed to the appeal:

- She submitted that their property had a land use designation from R-C1 to R-C1s as of November 2009. This re-designation allow them to have a suite in their basement thereby, their intention is to construct a suite following all the pertinent regulations.
- Some details of the development permit are:
 - The front window proposed will be inside of an existing planter therefore it will not significantly change the appearance of the property.
 - The proposed window will be facing the street and along side of an existing hedge, therefore, it will not invade anyone's privacy. Also, it will be located in an existing fenced side alley; therefore, it will not change the appearance from any vantage point outside the alley.
 - One new window will replace an already existing window and it will be on the same wall.
 - Currently, there is a gate and a single parking pad where the proposed parking pad will exist; thereby it will not change the use of the property or the accessibility from the back alley.
 - The rear yard of the property is of sufficient size to accommodate the extension of the parking pad and a private amenity space of at least the minimum 7.5 square metres.
- Applicant also submitted her findings from The City of Calgary Civic Census Summary, Community Populations Comparisons where:
 - The population of Marlborough decreased by 2.15 percent between 2008 and 2009, while the population of Calgary increased by 2.16 percent. In her opinion, adding one suite will not significantly affect the population of the community.
 - In regards to the type and number of dwellings by structure type in 2009, she found out that "other than single family dwellings" is 42 percent, while Marlborough's percentage is much lower at 27.4%. In her opinion, her property which is properly zoned as a suited property will only make Marlborough more aligned with the remainder of the city.
 - Also, in the Census from 2006 and 2009, for the community of Marlborough, the percentage of population age 0 to 19 has decreased by 13.47 percent, the population ages 20 to 44 decreased by 3.46 percent and the population ages 45 to 75 plus, increased by 2.43. The utilization of the playgrounds and schools in our area is decreasing. A two bedroom secondary suite is a potential location of affordable housing for a young family which will enhance the utilization of The City's investment in playground and schools.

- Finally, in the applicant's opinion, the proposed development will not have a negative effect on the enjoyment, use or value of any adjacent properties.

Applicant also clarified the following issues:

- She and her partner have three vehicles, one for her; one for partner and her nanny also have one vehicle who will occupy the parking pad.
- The property owner intends to stay in the subject property and her nanny and her family will be occupying the new secondary suite. The nanny's family consists of two adults and two children

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 in part and the decision of the Development Authority is varied.**
- 2. The approval is for change of use: Secondary Suite.**
- 3. The development permit shall be issued as approved by the Development Authority with the following conditions of approval.**

Conditions of approval

Prior to release conditions

The following are the prior to release conditions. All requirements shall be resolved to the satisfaction of the Development Authority.

1. Submit three sets of amended plans showing:
 - a) The removal of the existing rear yard in-swing gate;
 - b) A new 2 metre high fence surrounding the designated two stall parking area; and
 - c) Annotate one stall on the rear parking pad assigning it to the secondary suite use.

Permanent conditions

The following are the permanent conditions.

1. The approval is for a change of use: Secondary Suite.
2. The approved Secondary Suite shall not exceed 72.11 square metres.
3. The development shall be completed in its entirety, in accordance with the approved plans and conditions.
4. There shall be one outside parking stall provided on site accessed from the lane and located on the existing gravel parking pad, all to the satisfaction of the Development Authority. This parking stall shall be for the exclusive use of the secondary suite.
5. No changes to the approved plans shall take place unless authorized by the Development Authority.
6. A development completion permit shall be issued for the Secondary Suite before the use is commenced or the development occupied. A development completion permit is independent from the requirements of building permit occupancy. Call Development Inspection Services at 403-68-5491 to request a site inspection for the development completion permit.

Advisory comments

DP #2010-1219

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 building permit(s) are required. Now that your development permit application has been approved, you may apply for building permit(s). Please contact Building Regulations 403-268-5311 for further information.
2. The approval of this development permit does not limit in anyway the application of the regulations of the Alberta Building Code.

Reasons:

- 1 Having considered the written, verbal and photographic evidence submitted, the Board notes that the appeal pertains to an approval by the Development Authority of a development permit application for a change of use for an attached below grade secondary suite at 1243 Mardale Drive NE. The property has a land use designation of Residential – Contextual One Dwelling – Provision for Secondary Suite (R-C1s) District pursuant to Land Use Bylaw 1P2007.
- 2 The Development Authority reviewed the subject application pursuant to the rules of Land Use Bylaw 1P2007, in effect on the date of decision, as they pertain to secondary suites in a Residential – Contextual One Dwelling – Provision for Secondary Suite (R-C1s) District on the grounds that it complied with all provisions of the Bylaw. As such the Development Authority, finding no relaxations to the Land Use Bylaw being sought or granted deemed the application appropriate and supportable, and approved it with conditions.
- 3 The Board notes that on August 6, 2010, an adjournment to the hearing of August 20, 2010 was requested in writing by the appellant and granted by the Board.
- 4 Further, the Board notes that the appellant is not in attendance at this hearing.
- 5 The Board finds that timely notice was given to the appellant regarding the adjournment date and, as such, determined that proceeding with the hearing in the appellant's absent was fair and appropriate.
- 6 In the notice of appeal the appellant adduced that the approved application lacks sufficient on-site parking to adequately mitigate an increase in on-street parking demand resulting from the change of use.
- 7 The Board has regard to the following sections of Land Use Bylaw 1P2007.
- 8 Section 387 states:

Permitted and Discretionary Uses for Parcels Designated R-C1s

387 *Parcels* designated R-C1s have the same *permitted* and *discretionary uses* referenced in sections 385 and 386, with the additional *discretionary uses* of:

- (a) **Secondary Suite;**
- (b) **Secondary Suite – Detached Garage;** and
- (c) **Secondary Suite – Detached Garden.**

9 Section 352 states:

Secondary Suite – Floor Area

- 352** (1) The maximum floor area of a **Secondary Suite**, excluding any area covered by stairways, is 70.0 square metres:
- (a) in the R-C1Ls, R-C1s, R-C1N, R-1s and R-1N Districts; or
 - (b) when located on a parcel with a parcel width less than 13.0 metres.
- (2) The maximum floor area of a **Secondary Suite – Detached Garage** or **Secondary Suite – Detached Garden**, excluding any area covered by stairways, is 70.0 square metres.
- (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.

10 In addition, the also Board has regard to sections, 351, 353 and 354 of Land Use Bylaw 1P2007.

11 In considering all the evidence, the Board notes that the appellant, while having a number of concerns regarding the proposed use, the Board determines that parking is the substantive concern and that the other issues relate to an on-going of neighbour dispute and are not relevant.

12 As such the Board has regard to the anecdotal evidence provided by the appellant in his notice of appeal and the affected neighbour, and determines that there is a scarcity of on-street parking in the community.

13 The Board takes into consideration the evidence that the applicant's family has two vehicles and the proposed tenants of the secondary suite have one vehicle, and

determines that the proposed two rear yard parking stalls would be adequate in meeting the parking demands of the parcel's uses.

14 To ensure that parking remains at all times available and accessible for the parcel's approved uses; the Board determines it appropriate to impose conditions requiring amended plans showing unfettered access to the approved parking area and that one of the two parking stalls being assigned to the proposed use by way of an annotation to that effect.

15 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 Land Use Bylaw 1P2007.

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

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

18 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 10th day of September, 2010