



SUBDIVISION AND DEVELOPMENT APPEAL BOARD

DECISION

Hearing held at: Calgary, Alberta

Date of hearing: May 12, 2011

Members present: Chairman, Rick Grol
Kerry Armstrong
Meg Bures
Angela Dowling
Dale Hodges
Andrew Wallace

Basis of appeal: This is an appeal from an approval by the Development Authority for a development permit made on the application of **Gary Loftus** for a **change of use: secondary suite** at 121 Chaparral Ridge Point SE.

Appeals filed by: **Alicja Ulatowski and Halina Surma; Dexter and Sherry Daniels**

This appeal was originally scheduled for April 07, 2011 but was adjourned to May 12, 2011 at the request of the appellants.

Description of Application:

The appeal before the Subdivision and Development Appeal Board ("Board") deals with an approval by the Development Authority of a development permit for a change of use to a secondary suite at 121 Chaparral Ridge Point SE. The property is located in the community of Chaparral and has a land use designation of Residential – Narrow Parcel One Dwelling (R-1N) District.

Summary of Evidence:

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:

Alicja Ulatowski, appellant in favour of the appeal;
Dexter Daniels, appellant, in favour of the appeal;
Gary Luftus, property owner, opposed to the appeal; and
Brian Smith, neighbor, 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 decision.

In Favour of the Appeal:

The appellants distributed documents to the Board including photographs and then submitted the following in favour of the appeal:

- Ms. Ulatowski submitted that the cul-de-sac does not provide for a big frontage and the front driveways are attached to each other with front lots that are around 6.61 metres. The lots are pie lots. There are no back lanes as the lots are located on the ridge; therefore making it difficult to provide extra parking.
- Another concern is parking. One of the conditions of the development permit for this secondary suite is to provide off-street parking but in the appellant's view, this cannot be accommodated in the subject site. There is a tandem garage in the subject site so if the property owners' cars are parked in their garage, no one can park in the driveway as it will be blocking the entrance/exit to the garage. If the proposed tenants are to park in the street, this will only compound to the already difficult parking condition in the small cul-de-sac. Appellants submitted that they realize parking on the street is public but with having to add more vehicles to park it will exacerbate the parking issues.
- She concluded that this secondary will negatively impact their use, value and enjoyment of their property.

Mr. Daniels also addressed the Board and stated the following why he is opposed to the approval of secondary suite right beside his property:

- He submitted that they live next door to the subject site and for years they put up with the operation of illegal suite on the subject site. Therefore, their privacy was and will continue to be invaded by renters going down between their houses. He added that he spoke with the property owner about their tenants parking in the subject site's driveway as they were blocking part of their driveway making it difficult to exiting their driveway. After this conversation with the property owners, the tenants have been parking on the street.
- Furthermore, they strongly disagree with parking relaxation as, in his opinion, it creates problems for the whole neighbourhood with very narrow lots and it prevents the neighbours to enjoy their properties and intrude into their lives. He added that due to the narrow lots, in the winter time, there is no room to shovel the snow into the subject properties' lot as it will block the entrance for the tenants. Therefore, the applicant/property owner had to shovel the snow on the neighbouring properties and into the cul-de-sac resulting in a big pile of snow making it difficult to drive around in the circle.
- Finally, in the appellant's opinion, when they bought their home, it was designated as single family homes and it should remain as that in order to protect their interests, and enjoy their homes. Also, in his opinion, allowing renters adds to the population in a very narrow and high density area and it will lead to precedence for the whole cul-de-sac.
- A letter was also submitted by Mr. Peter Allen, property owner of 121 Chaparral Ridge Point SE. He too is strongly opposed to this proposed secondary suite.

Opposed to the Appeal:

Mr. Luftus, the applicant/property owner, submitted photographs and two letters of support from neighbours. He then submitted the following in opposition to the appeal:

- He submitted that they currently own two vehicles. He is retired and uses his car occasionally and it is parked in the garage. The other car is also parked in the garage and leaves every week day morning returning at night. Other residents in the subject site park in the driveway. No one street parking is used by these other residents. The current tenant only has one vehicle. Sometimes tenants have more than one vehicle.
- He admitted that he parked his car on the street at a very short period of time while he was in the process of selling it. He also added that his neighbours advised them that they want that spot on the street to park their own car. Parking has created a major issue that involved the police regarding his car being for sale and parked on the street which is technically and legally a public space.
- He also added that he and his wife like to travel.

- He also submitted that his next door neighbour Mr. Daniel's expressed liability concerns over the sidewalk between their houses. Mr. Daniels' main concern is about the tenant's falling and suing him on the sidewalk. The sidewalk is mainly on the subject site's property and this issue was dealt with and his concern is alleviated by having a survey done and a fence link was erected between the two houses.
- Furthermore, the secondary suite allows them freedom to live where they do without risk of their home falling in disrepair due to lower income based on his retirement. He added that they also would like to have a family living in their walkout suite to have their own life that includes cooking. Currently the tenant is from B.C. and would like to live in the suite for a couple of years.
- He presented letters of support from two neighbours who also live in the neighbourhood. They stated in their letters that they do not have any issues with the secondary suite.
- Finally, in the applicant's/property owner's opinion, this proposed secondary suite does not have any negative impact on the use, value and enjoyment of the neighbouring properties.

Upon questioning by the Board, Mr. Luftus clarified that:

- There is no lease contract for the occupants of the secondary suite. The current tenant typically is there only for four days per week and gone on Fridays, Saturdays and Sundays.
- There is an amenity space for the tenant located in the back of the subject site.

Mr. Smith who resides at 192 Chaparral Ridge Circle SE also addressed the Board and stated that he is in support of this secondary suite and he does not have any concerns or issues with it.

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. 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 an approval by the Development Authority of a development permit application for a change of use to a secondary suite at 121 Chaparral Ridge Point SE. The property has a land use designation of Residential – Narrow Parcel One Dwelling (R-1N) District pursuant to Land Use Bylaw 1P2007.

2 The Development Authority submitted that the Bylaw relaxations granted (for floor area, parking and outdoor amenity space requirements) are very minor in nature and will not impact or interfere with the use and enjoyment of the neighbouring properties by their respective owners or tenants.

3 The Board has particular regard to 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 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 122(3) states:

Standards for Motor Vehicle Parking Stalls

- (3) The minimum depth of a **motor vehicle parking stall** is 5.9 metres where it is required for:
- (a) a **Contextual Single Detached Dwelling, Duplex Dwelling, Secondary Suite, Secondary Suite – Detached Garage, Secondary Suite – Detached Garden, Semi-detached Dwelling** or **Single Detached Dwelling**; and
 - (b) a **Dwelling Unit** where the stall is provided in a **private garage** intended to be used for the occupants of only one **Dwelling Unit**.

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) 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
- (c) does not require **bicycle parking stalls – class 1** or **class 2**.

Section 305 states:

305 “Single Detached Dwelling”

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

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.

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 461 states:

Discretionary Uses

461 The following *uses* are **discretionary uses** in the Residential – Narrow Parcel One Dwelling District:

- (a) – (h) [...]
- (h.1) **Secondary Suite**;
- (h.2) **Secondary Suite – Detached Garage**; and
- (h.3) **Secondary Suite – Detached Garden**

(i) – (m) [...]

Section 473 states:

Motor Vehicle Parking Stalls

473 The minimum number of *motor vehicle parking stalls* is 2.0 stalls for a **Single Detached Dwelling** located on a *parcel* with a *parcel width* less than 9.0 metres.

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**.

4 The Development Authority determined that the application requires the following relaxations of Land Use Bylaw 1P2007, and which it granted:

- (a) A relaxation for the maximum floor area allowed for a secondary suite per section 352 of the Bylaw. As the floor area of the secondary suite is 71.26 metres, a relaxation of 1.26 metres or 1.8 metre is necessary;
- (b) A relaxation for the required parking stall for the secondary suite is required; and
- (c) The required minimum outdoor amenity space pursuant to section 353 of the Bylaw is 7.5 square metres. As the outdoor amenity space (although not shown on the plans but a patio measuring 2.44 by 3.05 metres exists) is 7.44 square metres, a relaxation of 0.06 metres is required.

5 The Board acknowledges the submissions of all parties, including but not limited to the appellants, the applicant and affected neighbours/ residents, as well as letters and correspondence received regarding the application and appeal.

6 The Board notes that at the hearing the appellants raised several issues like snow clearing and regarding a walkway and fence between the homes etc. that do not pertain to the proposed secondary suite. The Board notes that these issues are irrelevant; the

Board therefore disregards these issues and in rendering its decision regarding the subject application and appeal places no weight on them.

7 The main issue pertaining to the subject secondary suite is parking.

8 The appellant Mr. and Mrs. Daniels live on 117 Chaparral Ridge Point SE to the immediate north of the applicant. The appellants Ms. Ulatowski and Ms. Surma reside on 109 and 113 Chaparral Drive SE respectively to immediate northwest of the Daniels. In summary the appellants submitted that parking on the cul-de-sac is limited and does not accommodate any on street parking.

9 The Board notes that the development and use, the secondary suite, is a discretionary use under Land Use Bylaw 1P2007. Therefore, the application can either be granted or refused based on sound planning considerations.

10 The Board agrees with the Development Authority that the required relaxations for the maximum floor area and outdoor amenity space are minor and have no impact. These relaxations meet the criteria of section 687(3)(d) of the *Municipal Government Act*.

11 The Board accepts the evidence of the Development Authority that the application requires a relaxation for the required number of parking stalls for the secondary suite. The Development Authority felt it is an appropriate relaxation as the parking stall can be provided on the front driveway.

12 The Board, however, notes from the plans that the front driveway has a depth of 4.22 metres. Pursuant to section 122(3)(a) of Land Use Bylaw 1P2007, the minimum depth of a motor vehicle parking stall is 5.9 metres for a secondary suite. Therefore, the parking stall on the driveway does not meet the requirements of the Bylaw and a relaxation of section 122(3) is also required. A vehicle parked on the driveway would encroach on the street to a certain degree.

13 The Board further notes that the subject property is located on a cul-de-sac. The properties on the cul-de-sac have front driveways. As a result of the location of the driveways and the pie shaped properties there is no or limited street parking available in front of the properties.

14 The applicant submitted that the resident of the secondary suite would park on the front driveway.

15 On balance, the Board accepts the evidence of the appellants that the parking availability on the cul-de-sac is constrained, in particular when neighbours have additional visitors or parties.

16 Based on the evidence, the Board finds that due to the cul-de-sac, the configuration of the subject lot which has a narrow front property line, and the orientation of the

driveways, in particular the driveway of subject property, the parking for the secondary suite does have an impact on the appellants. In addition, when vehicles are parked on the driveway of the subject property, access to the parking stalls in the garage is limited. Due to the narrow width of the driveway at the front property line, there is insufficient room to access the other stalls. The Board also places weight on the fact that the front driveway of the property does not meet the Bylaw requirements for a parking stall. From all of the evidence presented, the Board finds that there would be an overspill of parking resulting from the secondary suite in combination with the single detached dwelling affecting the adjacent properties. Thus, from a planning perspective, the addition of the secondary suite to the applicant's property would negatively affect the use and enjoyment of the appellant's properties. Therefore, the required parking relaxations do not meet the criteria of section 687(3)(d) of the *Municipal Government Act*.

17 Accordingly, pursuant to section 687(3)(d) of the *Municipal Government Act*, the Board determines that 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.

18 Based on the evidence and the aforementioned factors, the Board in keeping with section 35 of Land Use Bylaw 1P2007 finds that the proposed secondary suite is not compatible with the adjacent development and immediate neighbourhood, and is not appropriate for the subject property.

19 In reviewing and weighing all the evidence, the Board finds that the application from a planning perspective does not warrant approval.

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

21 Therefore, a development permit shall not be issued.

Rick Grol, Chairman
Subdivision and Development Appeal Board

Issued on this 30th day of May, 2011