

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

Hearing held at: Calgary, Alberta

Date of hearing: January 19, 2012

Members present: Chairman, Rick Grol
Meg Bures Terry Smith
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 **Placeworks Design** for a **new: accessory residential building (garage), secondary suite – detached garage** at 111 Couture Crescent SW.

Appeals filed by: **Jeffery Beeston, Martin Ortiz and Leslie Rome**

The appeal was originally scheduled for December 22, 2011 but was adjourned to January 19, 2012 at the request of the agents for the applicant.

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 new accessory residential building (garage) and secondary suite with detached garage at 111 Couture Crescent SW. The property is located in the community of Lincoln Park and has a land use designation of Residential – Contextual One/Two Dwelling (R-C2) District.

The City of Calgary, Subdivision and Development Appeal Board # 8110
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Summary of Evidence:*Board report*

The Board report contains the notice of appeal and any submissions made by the appellants, all the materials submitted by the Development Authority that pertain to the application, the applicant, and any other submissions made by 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 the following:

Jeff Beeston, an appellant, in favour of the appeal;
Martin Ortiz, an appellant, in favour of the appeal; and
Gregg Ferguson of Placeworks Design, the applicant, in opposition of the appeal.

The Development Authority:

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 relevant sections of Land Use Bylaw 1P2007, a chart of relaxations, and additional factors, considerations and rationale for the decision. This information can be found on pages 83 to 85 of the report.

In Favour of the Appeal:

The Board heard from Mr. Beeston who stated that he and his wife reside at 228 Mike Ralph Way SW. He then stated the following in favour of the appeal:

The subject property is located directly west of his home, across the lane.

The appeal was submitted to the Subdivision and Development Appeal Board in early December and that supporting information can be found on pages 01 to 03 of the Board report.

To learn more about the proposed development, the appellant visited the Property Records Office to review the development plans and the attached bylaw variances that were granted.

Further to the written appeal, the appellant opposed the proposed development for several reasons. They are as follows:

1. The subject development's proposed expansion of the existing garage space to accommodate a three car garage is not in keeping with neighbourhood planning principles that were originally approved for the Garrison Green neighbourhood. The planning principles allowed for narrower streets in this neighbourhood and adding additional parking capacity goes against these principles and would have the impact of increasing traffic in a neighbourhood already experiencing very busy traffic for its size.
2. The Municipal Development Plan's policies encourage growth and change in neighbourhoods. These policies must have been in mind with the planning of Garrison Green as it is already a high density neighbourhood. It has a density of 34 dwelling units per hectare. This equates to 85 people per hectare (assuming 2.5 people per dwelling unit). The Municipal Development Plan's city wide 60 year target is only 27 people per hectare. Therefore, the neighbourhood of Garrison Green already far exceeds The City's target as outlined in the Municipal Development Plan.
3. The proposed property's overall massing, as seen from the lane and adjacent properties, is out of context. All adjacent properties are less than 13 metres wide. This is the only property along the lane that exceeds 13 metres in width. This is the only property that potentially could develop a suite of this size.
4. Finally, the proposed development seeks planning bylaw variances. Specifically, the subject property exceeds the minimum requirements for parcel height, depth, and area. There is no rationale for these bylaw variances and the site itself should not require any for a development.
 - The R-C2 zoning bylaws specify that the maximum height of a secondary suite is not to exceed 7.5 metres. The plans that are on file with the property Records Office show a maximum height of 7.8 metres.
 - The Bylaw stated that the minimum set back from the alley of a secondary suite be 1.5 metres. The plans on file demonstrate that the setback of the suite will be 0.9 metres. This is a significant difference.
 - The secondary suite proposed floor plan size is 77.9 square metres; again this is in excess of the maximum allowed under the Bylaw of 70 square metres excluding covered stairwells.

The Bylaws were enacted to allow for secondary suites in R-C2 zoning were designed to reduce the impact of these structures on the surrounding

residences. The proposed development in contravention of the Bylaw and no variance in excess of these parameters should be allowed.

By approving the variances on the proposed development, the Board would be undermining the extensive public engagement, City staff time, and Council's efforts in development adequate development standards through Land Use Bylaw 1P2007.

There have been multiple refinements made to the secondary suites aspects of the Land Use Bylaw to allow for development. However, this property seeks Bylaw variances with no rationale.

In conclusions, the Subdivision and Development Appeal Board should grant this appeal and uphold the regulations of the Land Use Bylaw 1P2007, the site development plans in Garrison Green, and the neighbours' adherence to the Municipal Development Plan. It is requested that the development as proposed be denied.

The Board then heard from Mr. Ortiz, the second appellant. Mr. Ortiz presented the shadow assessment he prepared which can be found on pages 10 through 16 of the Board report. He then raised the following points in favour of the appeal:

- Mr. Ortiz lives at 232 Mike Ralph Way SW and his backyard will face the proposed development.
- This is a major development and one of the first of its kind within the community. It will not be in keeping with the context of the lane ways.
- The appellant further stated that by allowing the requested Bylaw relaxations, his property and his comfort in his home have been affected.
- Mr. Ortiz's home faces east and his backyard faces west and it receives direct sunlight during the afternoon hours; this is particularly valuable during Calgary's short summer season. The proposed development calls for greater building height, which will block sunlight from the appellant's backyard and the interior of his home. This will affect the use and enjoyment of his property.
- The appellant then presented the sun shadow assessment that he had prepared. This assessment presents the results of a detailed review where the current situation and the proposed development were analyzed. The shadow assessment modeling results show that in July the proposed development increases the shadow area on the appellant's rear yard by 80 percent; in August by 160 percent; and in September by 58 percent. The appellant reiterated that it is evident that by allowing the requested Bylaw relaxations there will be a direct impact on his property.
- A large building located directly behind his house will not only add an aesthetically unpleasant structure nearby but will all negatively impact the value of his property. The appellant stated that a home is a person's largest life investment and a decrease in his property value will affect his financials and future plans.
- In addition, the appellant stated that it would have been appreciated if there had been some form of community engagement from the property owner or applicant but

this was not the case. Mr. Ortiz continued and reiterated Mr. Beeston's statement that this is a very densely populated community. Therefore, whatever one neighbour decides to do on their property will have a direct impact on those surrounding properties.

- In addition, the proposed densification of the subject property will increase the traffic in the area due to the addition of new residents and their visitors. This will produce higher levels of noise, increase traffic in the rear lane, and also increase the potential of motor vehicle and pedestrian collisions. More traffic to the back alley. Higher levels of noise and potential of collisions.

Upon questioning of the Board, the appellants clarified the following issues:

- Mr. Beeston stated that even if the proposed development did not require any Bylaw relaxations he would still not be in support of it as there are currently no other second storey garages constructed on this block. He continued by stating that the relaxations that have been granted by The City will have very serious implications on the rest of the neighbourhood and could potentially set a precedence. The size and scope of the proposed development is not in context with the neighbourhood.
- Mr. Beeston also stated that the appellants are not necessarily concerned with the Bylaw relaxations that only directly affect the subject property. The proposed balcony projection for example will only affect the owners of the subject lot.
- The appellants demonstrated on the map the location of their respective properties in relation to the subject site.

The appellants also took advantage of rebuttal and stated the following:

- Mr. Beeston stated that the shadow study presented by the applicant is a very good indication of the context of the neighbourhood and clearly demonstrates how the proposed development is not in keeping with it.
- Mr. Ortiz stated that it is difficult to comprehend how the proposed development will not increase the amount of shadowing on his property based on how the existing development currently casts shadows long enough to reach his fence.

Opposed to the Appeal:

The Board then heard from Mr. Ferguson who presented a 3-D shadow study as well as 3-D computer renderings of the proposed development. The applicant then stated the following in opposition of the appeal:

The new accessory residential building (garage) – secondary suite-detached garage was approved by development permit DP2011-2363. This type of development is allowed for in R-C2 land use designation and will not unduly affect the appellants' amenity, value, or enjoyment of their property. The relaxations as requested and supported by Development

and Building Approvals are reasonable and lend to a better overall development in keeping with the spirit of the Land Use Bylaw.

It is the applicant's hope that the appellants' concerns may be able to be largely addressed through clarification of a number of different characteristics of the development in relationship to the greater site.

The applicant and owners of the property would request that after review and consideration of the development, its site and context, and the applicable sections of the Land Use Bylaw, the Subdivision and Development Appeal Board upholds the decision to approve this application.

The development permit application sought a received three relaxations to the requirements of Land Use Bylaw 1P2007 for a R-C2 designated lot for this new detached garage with a secondary suite. The applicant acknowledges the concerns of the appellants but feels that with clarification they can be addressed.

The first variance was for the proposed building being 0.195 metres over the 7.500 metres allowable height. This was sought to allow the roof slope and simple gable form to contextually match that of the existing refurbished wartime two storey house. The client reduced the overall height by 0.310 metres after the initial detailed review by Development and Building Approvals by reducing the ceiling height on the living level of the project from 9.0 feet to 8.0 feet in an effort to maintain the roof design and its relationship to the main house.

The second variance sought are received was a 0.60 metre relaxation of the rear yard setback from 1.50 metre to 0.90 metre in a effort to reduce shading and increase day light potential for the neighbouring property to the north. It was felt that the gable roof oriented across the lot further reduced the shading to this yard and to the rear in contrast to other less contextually strong options.

The third and final variance from the R-C2 rules around accessory buildings that was sought and relaxed was for being 7.02 square metres over the allowed 70.0 square meter floor area. This 10 percent relaxation is a discretionary relaxation limit allowed for by the Bylaw. The applicant has tried to maximize, within the department's norm, the indoor and outdoor public and amenity spaces for the owner's mother in this one bedroom configuration as she often cares for her grandson while his mother is away on business or hosts family meals for them.

'Garden Suites', a somewhat new and much needed housing type, is allowed for under the Land Use Bylaw on this site. There are many existing examples within several blocks in the Garrison Green community.

This housing type is an appropriate solution for their client's family and their circumstances. Their widowed and single mother will be the tenant allowing for a much improved quality of life and independence for her but with many advantages to the owners and their son as well. There is no intent to rent this suite out to anyone else.

The appellants concerns are to a large degree related to a perceived impact of this development on the amenity value of their homes and yards.

After receiving notification of the appeals, and seeing the concern around shading, the applicant sought to construct an accurate 3-D shadow study to reflect and confirm our initial understanding and modeling of the site conditions. Douglas Surveys was engaged to provide accurate building heights and their rear yard garage configurations along Couture Crescent SW. the applicant has been using Google Sketch-Up for modeling and such specific studies for several years and it is an effective and generally reliable tool.

When accurate representative and pitched roofs are used, including that of the proposed development, and when the model is geographically located it can be seen that shadowing has significantly less impact than was expected by the appellants.

It should be noted that the extreme height of the steeply roofed attached row housed on Couture Crescent SW, located immediately north of the proposed development, are 4.10 metres, or more, higher than the two storey home located on the subject lot, the other neighbouring properties, and the proposed secondary suite.

The person entrance to the garage level is on the south façade, closer to the existing home. The entrance to the secondary suite is on the west façade facing the house. Access to this is gained from Couture Crescent SW, which is also where guests will par, then through the yard and not the alley. No parking is provided at the rear of the yard or outside of the garage. No increase to traffic in the alley should be expected.

The east and south elevations of the approved development are articulated as much as possible to break up the scale of the facades and help provide a sense of human scale.

It must be pointed out that there seems to be a discrepancy between the relaxations requested and those listed in advertising by Development and

Building Approvals. The advertised relaxations are larger than DP2011-2363 actually sought and this may have increased the concerns of the appellants. There may have been some print scaling issues as indicated by the Planning Department only after the first appeal letters were received. The Board should be made aware that the applicant is willing to develop within the parameters noted on the application drawing's dimensions.

The height of the proposed development was advertised at 7.800 metres while the applicant actually proposed a height of 7.695 metres which would only require a 0.195 metre relaxation.

The floor area, not including the stairs, was advertised as being 77.9 square metres while the drawings submitted in the application indicate the area as being 77.02 square metres. This is a difference of 0.88 square metres, thus falling within the 10 percent discretionary relaxation.

The property owner is willing to conform to the relaxations required as indicated in the most recent labeled and dimensioned drawings submitted with the application rather than those advertised and could provide proof of compliance by survey at the completion of framing.

The new accessory residential building (garage) – secondary suite – detached garage does not unduly affect the appellants' amenity value or the enjoyment of their properties. The relaxations requested are supported by the Development Authority are reasonable and lend to a better overall development in keeping with the spirit of the Land Use Bylaw.

Therefore, the applicant and property owners request that the Subdivision and Development Appeal Board denies the appeal and upholds the decision of the Development Authority.

Upon questioning of the Board, the applicant clarified the following points:

- Mr. Ferguson agreed that the east and west elevations on plan A3.0 have been reversed.
- The applicant referenced the chart of relaxations found on page 84 of the Board report and stated that he agrees there are relaxations required for the balcony, the privacy wall, the setback from the rear property line, and the floor area. The relaxation stated for the building height is incorrect as the proposed development measures 7.695 which is only 0.195 metres over the allowable 7.5 metres. The applicant further stated that the Development Authority may have approved a previous set of drawings and not the final ones submitted for this application.
- The applicant further discussed the necessary relaxations for the setback from the rear property line. The rationale behind this was so that the roof of the proposed

structure could be made lower to minimize shadowing on the surrounding properties and so that it would blend in more with the community.

- The applicant also clarified the locations of the window on the second floor of the proposed development. The windows are spaced out but both windows on the east façade could be made opaque if the Board deems it necessary. The applicant also commented that the windows on the south elevation could possibly overlook into the adjacent property. Therefore, the property owner would be amendable to making those windows opaque as well.
- The applicant stated that there is no reason why the privacy wall has to be over height and that due to this they would be willing to conform to the allowable height.
- The balcony was designed so that a small patio set could be set up on it. The balcony faces the rear yard of the subject property and as such the applicant felt the relaxation was justifiable. The required relaxation for the proposed floor area of the secondary suite was also so that there would be enough space for a livable unit.
- Although the applicant felt that the relaxation for the setback from the rear property line was important for reasons previously stated, this relaxation could also be amended if approval of the applicant was dependant on it.
- The applicant stated that a good, responsible contextual design for the structure was proposed and based on this it was important to match the 6/12 roof pitch of the existing house. To do this, a building height relaxation is required. This is also something that could be amended if the Board deems it necessary. He further clarified this by stating that the 6/12 roof pitch has been achieved with the 7.695 metres height. The existing home on the subject lot is just over eight metres in height and the properties to the south are slightly higher still.

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 development permit shall be issued as approved by the Development Authority subject to the following amendments/ additions to the conditions of approval.**

Conditions of approval

Prior to release conditions

The following prior to release condition must be completed prior to the release of the permit. All requirements shall be resolved to the satisfaction of the Development Authority.

1. Submit a total of three (3) complete sets of amended plans (file folded and collated) to the satisfaction of the Development Authority.

The plans shall indicate the following:

- (a) No relaxations of Land Use Bylaw 1P2007 are allowed;
- (b) The windows on the east elevation shall either be obscured or be changed to transom windows; and
- (c) At the east elevation along the lane, the second storey (secondary suite) shall be stepped back from the east elevation wall of the garage by a minimum of 0.3 metre.

In addition to the full sized plans requested above, please submit one (1) 11 x 17 complete set of plans for the purpose of the development completion permit (DCP) process.

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 for a new accessory residential building (garage) and secondary suite with detached garage at 111 Couture Crescent SW. The property has a land use designation of Residential – Contextual One/Two Dwelling (R-C2) District pursuant to Land Use Bylaw 1P2007.

2 The appellants, who reside immediately behind the subject property and development across the lane, in summary submitted that the size and scope of the proposed development is not in context with the neighbourhood. In their opinion the proposed development will negatively affect the use and enjoyment of their properties and result in overshadowing as well as increase traffic. Furthermore, Garrison Green is already in alignments with higher density as envisioned in the Municipal Development Plan. In addition, the appellants submitted that the Bylaw rules for secondary suites were designed in a manner to reduce the impact of these structures on the surrounding residences. In their opinion, no Bylaw variances should be allowed.

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

including but not limited to:

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 340 states:

Balconies

- 340** (1) An **open balcony** must not project more than 1.85 metres from the **building** façade to which it is attached.
- (2) [...]
- (2.1) Unless otherwise referenced in this Part, a **privacy wall** located on a **balcony**:
- (a) must not exceed 2.0 metres in height when measured from the surface of the **balcony**; and
 - (b) must not be located between the foremost front façade of the **main residential building** and the **front property line**.

(3) [...]

Section 351(2) states:

Secondary Suite – Setbacks

351 (2) For a **Secondary Suite – Detached Garage**, the minimum **building setback**:

- (a) from a **rear property line** is:
 - (i) 1.5 metres for that portion of the **building** used as a **Secondary Suite – Detached Garage**; and
 - (ii) 0.6 metres for that portion of the **building** used as a **private garage**;
- (b) from a **side property line** is 1.2 metres.

Section 352(2) states:

Secondary Suite – Floor Area

352 (2) The maximum floor area of a **Secondary Suite – Detached Garage** or **Suite – Detached Garden**, excluding any area covered by stairways, is 70.0 square metres.

Section 356 states:

Secondary Suite – Building Height

- 356 (1)** The maximum **building height** is:
- (a) 5.0 metres for a **Secondary Suite – Detached Garden**; and
 - (b) 7.5 metres for a **Secondary Suite – Detached Garage**.
- (2)** *deleted*

Section 426(j.1) lists “Secondary Suite – Detached Garage” as a discretionary use in the R-C2 District.

4 The application proposes to extend the existing garage to accommodate an additional parking space and to construct a secondary suite above. The applicant requested a height relaxation in order to accommodate a roof pitch similar to the existing pitch of the residential dwelling on the property.

5 The proposed development requires the following relaxations of Land Use Bylaw 1P2007:

- (a) A relaxation of section 340 of 0.15 metre or 8 percent;
- (b) Pursuant to section 340(2) a relaxation of 0.54 metres or 27 percent for a privacy wall height;
- (c) A relaxation of section 351(2) for the minimum required setback for the secondary suite from the rear property line – 0.9 metre or 60 percent;
- (d) Pursuant to section 352(2) and (3) a relaxation for the maximum floor area of the secondary suite of 6.86 metres or 10 percent; and
- (e) A relaxation of section 356 for the maximum building height – 0.55 metre or 7 percent.

6 The Board also has regard to Municipal Development Plan.

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

8 The Board reviewed the context of the proposed development and required Bylaw relaxations, and having regard to sound planning considerations, the merits of the application, the circumstances of the case and the evidence presented.

9 The proposed development is a discretionary use. Therefore, pursuant to Land Use Bylaw 1P2007 the development permit application can either be granted or refused on the basis of sound planning considerations.

10 The Board takes into account that the Land Use Bylaw does allow a secondary suite above garages in the subject land use District.

11 Further the Board takes into consideration that the Garrison Green neighbourhood already is a high density neighbourhood with lots that are small and houses located in close proximity. Therefore, the Board finds that secondary suite development in this area should be designed in a manner which is sensitive and responsive to the context of the neighbourhood.

12 In the Board's view Land Use Bylaw 1P2007 offers a generous envelope for secondary suite developments but purposively stipulates specific rules.

13 The Board finds that the proposed development can be developed in a manner that could comply with the rules and requirements of Land Use Bylaw 1P2007.

14 In addition, the Board agrees with the appellants that due to the close proximity of their homes and orientation of windows the development as proposed results in overlooking into their backyards and affects their privacy.

15 The Board, based on the evidence and aforementioned factors, finds that the required relaxations do not meet the criteria of section 687(3)(d) of the *Municipal Government Act*. In the Board's opinion the required relaxations cumulatively have a negative impact on the adjacent homes of the appellants due to the close proximity of these homes; the relaxations contribute to the massing of the proposed development.

16 Accordingly, pursuant to section 687(3)(d) of the *Municipal Government Act*, the Board finds that the proposed development and the required relaxations would unduly interfere with the amenities of the neighbourhood, or materially interfere with or affect the use or enjoyment of neighbouring parcels of lands.

17 Having regard to the merits of the application and sound planning considerations, the Board based on the evidence and aforementioned factors, in keeping with section 35 of Land Use Bylaw 1P2007, however finds that the proposed development is compatible with the adjacent developments and the immediate neighbourhood if no Bylaw relaxations are granted.

18 If the development is modified so as to remove any relaxations of Land Use Bylaw 1P2007, then the negative impacts of the developments on the appellants are mitigated as much as possible and the development would in the Board's view be acceptable from a planning perspective. It also would be in keeping with the context of the neighbourhood, in particular taking into account that higher density townhouse developments are located to the immediate north of the proposed development.

19 In reviewing and weighing all of the evidence, the Board based on sound planning rationale thus finds that with some specific modifications the proposed development would be appropriate for the subject parcel and the application would warrant approval.

20 Having regard to sound planning considerations, the Board therefore imposes a prior to release condition that: (a) No relaxations of Land Use Bylaw 1P2007 are allowed. (b) The windows on the east elevation shall either be obscured or be changed to transom windows; and (c) The second storey (secondary suite) shall be stepped back from the east elevation wall of the garage by a minimum of 0.3 metre in order to limit the massing affect of the easterly façade of the building.

21 For the above reasons the Board allows the appeal in part and varies the decision of the Development Authority.

22 The development permit shall be issued as approved by the Development Authority subject to the above listed amendments/ additions to the conditions of approval.

Rick Grol, Chairman
Subdivision and Development Appeal Board

Issued on this 10th day of February, 2012

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