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**CALGARY SUBDIVISION AND DEVELOPMENT APPEAL BOARD**

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Hearing held at: Calgary, Alberta

Date of hearing: February 28 and March 14, 2013

Members present: Stefne Madison, Presiding Officer  
Kerry Armstrong  
Jo Anne Atkins

Basis of appeal: This is an appeal from an approval by the Development Authority for a development permit made on the application of **Thomas Keeper** for a **new: secondary suite – detached garage** at 814 Radford Road NE.

Appeals filed by: **Michele Jolley; and Sean MacLeod**

Initially the Board heard the appeal on February 28, 2013. After the hearing, the Board determined that some of the affected persons had received notice of the hearing with an incorrect date. To correct the error, the Board decided to reopen the hearing to allow affected persons that wish to be heard by the Board to make submissions regarding the appeal. Subsequently, the Board recommenced the hearing on March 14, 2013.

**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 secondary suite – detached garage at 814 Radford Road NE. The property is located in the community of Renfrew and has a land use designation of Residential – Contextual One/Two Dwelling (R-C2) District.

**Hearing:**

The Board heard verbal submissions from:

Christine Guiddin MacLeod, spouse of Sean MacLeod, an appellant, in favour of the appeal;

Michele Jolley, an appellant, in favour of the appeal;

Margaret White, an affected neighbour, in favour of the appeal;

Thomas Keeper, the applicant/co-property owner, opposed to the appeal;

Maggie Keeper, co-property owner, opposed to the appeal;

Kristi Hyson, an employee with Scotia Bank, opposed to the appeal; and

Paul Riley, an affected neighbour, opposed to the appeal.

**Summary of Evidence:**

The Board report contains the Development Authority's decision respecting the development permit application and the materials submitted by the Development Authority that pertain to the application, and forms part of the evidence presented to the Board. The Board report contains notice(s) of appeal(s) and any documents, materials or written submissions submitted by the appellant(s), applicant and any other parties to the appeal.

Appendix A attached to this decision contains the summary of evidence from the parties submitted at the hearing and forms part of the Board's decision.

**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 development permit is null and void.**

**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 secondary suite – detached garage at 814 Radford Road NW. The property has a land use designation of Residential – Contextual One/Two Dwelling (R-C2) District pursuant to Land Use Bylaw 1P2007.

2. After the initial hearing in respect of this matter, the Board determined that some of the affected parties had received notice of the hearing with an incorrect date. Therefore, the Board decided to reopen the hearing and rescinded the previously announced oral decision with respect to the appeal. Notice of the hearing was reserved and affected persons who had not previously presented and wished to be heard by the Board were given an opportunity to provide submissions to the Board respecting the appeal and application. No objections were made by any parties to the recommencement of the hearing and the subsequent followed procedure.

3. The Board has regard to the following sections of the *Municipal Government Act*, including but not limited to:

Section 685 states, in part:

**Grounds for appeal**

**685(1)** If a development authority

- (a) fails or refuses to issue a development permit to a person,
- (b) issues a development permit subject to conditions, or
- (c) issues an order under section 645,

the person applying for the permit or affected by the order under section 645 may appeal to the subdivision and development appeal board.

**(2)** In addition to an applicant under subsection (1), any person affected by an order, decision or development permit made or issued by a development authority may appeal to the subdivision and development appeal board.

**(3)** [...]

Section 686 states:

**Appeals**

**686(1)** A development appeal to a subdivision and development appeal board is commenced by filing a notice of the appeal, containing reasons, with the board within 14 days,

(a) in the case of an appeal made by a person referred to in section 685(1), after

(i) the date on which the person is notified of the order or decision or the issuance of the development permit, or

(ii) if no decision is made with respect to the application within the 40-day period or within any extension under section 684, the date the period or extension expires,

or

(b) in the case of an appeal made by a person referred to in section 685(2), after the date on which the notice of the issuance of the permit was given in accordance with the land use bylaw.

**(2)** The subdivision and development appeal board must hold an appeal hearing within 30 days after receipt of a notice of appeal.

**(3)** The subdivision and development appeal board must give at least 5 days' notice in writing of the hearing

(a) to the appellant,

(b) to the development authority whose order, decision or development permit is the subject of the appeal, and

(c) to those owners required to be notified under the land use bylaw and any other person that the subdivision and development appeal board considers to be affected by the appeal and should be notified.

**(4)** The subdivision and development appeal board must make available for public inspection before the commencement of the hearing all relevant documents and materials respecting the appeal, including

(a) the application for the development permit, the decision and the notice of appeal,  
or

(b) the order under section 645.

**(5)** In subsection (3), "owner" means the person shown as the owner of land on the assessment roll prepared under Part 9.

Section 687(1) states:

### Hearing and decision

**687(1)** At a hearing under section 686, the subdivision and development appeal board must hear

- (a) the appellant or any person acting on behalf of the appellant,
- (b) the development authority from whose order, decision or development permit the appeal is made, or a person acting on behalf of the development authority,
- (c) any other person who was given notice of the hearing and who wishes to be heard, or a person acting on behalf of that person, and
- (d) any other person who claims to be affected by the order, decision or permit and that the subdivision and development appeal board agrees to hear, or a person acting on behalf of that person.

4. 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 426(j.1) lists “Secondary Suite – Detached Garage” as a discretionary use in the R-C2 District.

5. The application is for a secondary suite above a detached garage at the rear of the subject property. A Single Detached Dwelling that was previously approved under a separate development permit is under construction on the property.

6. 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. The Board considered all arguments either against or in support of the proposed development.

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

8. 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.

9. The appellants in summary submitted that the proposed secondary suite/garage would create significant privacy issues, would significantly block sunlight for the neighbouring properties, and is not compatible with the surrounding community.

10. The applicant in summary submitted that the Development Authority approved the application and that the application meets all the rules of the Land Use Bylaw. In his opinion, the development will not create any overlooking issues. In addition, the applicant stated that Calgary is in need of secondary suites.

11. Kristi Hyson appeared to speak as the representative of Scotia Bank, the mortgagee of the property in question. The Board, however, notes that she did not provide an authorization from Scotia Bank authorizing her to represent Scotia Bank in the matter before the Board. In terms of affected persons respecting the appeal, the Board did not give Scotia Bank notice of the hearing, neither the first hearing date nor the second hearing date. The Board determined Ms. Hyson was not an affected person as referred to in section 687(1)(d) of the *Municipal Government Act* and declined to hear from her. Although the mortgagee may have financial considerations, these are in the Board's opinion not sufficient to make either her or Scotia Bank an affected party respecting the subject appeal as required under the provisions of the Act.

12. The following has to be said in this regard. Section 687(1)(d) provides that persons that claim to be affected by an order, decision or permit can be heard by the Board at the hearing respecting an appeal. The case law indicates that the meaning of the words in the Act connotes a degree of effect from a development permit approval which is greater than on the average person (*Re Clarendon Development Ltd.* (1965), 51 M.P.R. 108, 50 D.L.R (2d) 521 (N.S.C.A.)), a person who is "injuriously affected" (same case)

or a person who is “genuinely and relevantly affected” (*Bowen v. Edmonton* (1977), 2 Alta. L.R (2d) 112, 3 A.R. 63, 75 D.L.R. (3d) 131 (C.A.)). The Court in *Re Actus Management Ltd. v. Calgary (City)*, [1975] 6 W.W.R. 739, 62 D.L.R. (3d) 421 (Alta. C.A.), at para 14 held that an affected person is “not someone who lives miles away and only occasionally visits, walks or drives by the subject development”.

13. In the Board’s view in this regard it is important to take into account that despite the fact that the Board has broad discretion respecting the nature and quality of evidence which it may receive in the appeal process regarding a subject development, there are limitations in the kind of evidence the Board can receive or consider in determining an appeal. The case law indicates that the Board cannot entertain irrelevant evidence, submissions or arguments. (*Dallinga v. Calgary (City)*, [1976], [1 W.W.R. 319, 62 D.L.R. (3d) 433 (Alta. C.A.); *Re Actus Management Ltd. v. Calgary (City)* [1975] 6 W.W.R. 739, 62 D.L.R. (3d) 421 (Alta. C.A.) and *Crown Parking Co. v. Calgary (City)* (1994), 22 M.P.L.R (2d) 1, 22 Alta. L.R. (3d) 39, 165 A.R. 355, 89 W.A.C 355 (C.A.), among others). Typically evidence or submissions within the scope of the appeal need to be confined to relevant or legitimate planning considerations or associated arguments to that effect. To that end under the scheme of the *Municipal Government Act* and a land use bylaw, and its operations, it is reasonable to conclude that in relation to an approved or proposed development the Act intends to have the word “affected” to a large extent or primarily pertain to planning concerns and considerations. This is underscored by the Courts in *Clarendon Development* and *Bowen v. Edmonton* where it used the words “injuriously affected” and “genuinely and relevantly affected”.

14. The Board finds that neither Ms. Hyson nor Scotia Bank demonstrated that the proposed development materially, injuriously, or genuinely and relevantly, would have an effect on Scotia Bank as a mortgagee. In the Board’s view a mortgage on a property which is held as a security against a loan, is primarily a financial interest that has no direct association with relevant and legitimate sound planning considerations. Financial and business interests are not relevant planning considerations. Furthermore, the proposed development does not require relaxations or variances of the Land Use Bylaw; therefore section 687(3)(d) (that includes the so-called relaxation or variance test) of the Act, which references “value” of a property, does not apply.

15. In conclusion, the Board found that neither Ms. Hyson nor Scotia Bank has standing under section 687(1)(d) of the Act with respect to the appeal as they are not an affected person and the Board declined to hear from Ms. Hyson.

16 With respect to the applicant’s extensive submissions advancing the position that a secondary suite would provide affordable housing etc., the Board notes the following. The Board considered the applicant’s arguments, but found these arguments not helpful. To a large extent the affordable housing arguments are philosophical and socio-economic in nature; they are not directly related to relevant planning considerations. If these arguments could be considered to be planning issues, then in

the Board's view they would be primarily related to land use issues which is the prerogative of Council when enacting a land use bylaw. Therefore, the Board places no weight on these arguments, neither from the applicant nor from the appellants and residents that oppose the proposed development.

17 In terms of the applicant's and appellants' arguments regarding value of properties, the Board finds that these arguments were unsubstantiated. Insufficient evidence was provided in this regard. Therefore, the Board places neither positive nor negative weight on these arguments.

18 The main issue is whether the proposed development, in terms of use and building, is appropriate for the subject property and how the development from a planning perspective affects the neighbouring properties. Section 35 of Land Use Bylaw 1P2007 is the guiding provision in this regard. Pursuant to section 35 of Land Use Bylaw 1P2007, when making a decision on a development permit application for a discretionary use, the Development Authority must take into account the things listed in subsections (a) through (j). Among other things, the appropriateness of the location and parcel for the proposed development, the compatibility and impact of the proposed development with respect to adjacent development and the neighbourhood as well as the merits of the proposed development and sound planning principles, must be taken into account.

19. Regarding the appellants' arguments regarding parking and amenity space of the development, the Board finds that the proposed development in this regard meets the requirements of Land Use Bylaw 1P2007.

20. The Board is cognizant of the fact that the house was previously approved under another development permit and the Board's decision is in respect of the garage and secondary suite only.

21. On balance of the evidence, the Board accepts the verbal and photographic evidence of the neighbours that the secondary suite would overlook their back yards and houses which would adversely affect their privacy. The secondary suite is in direct proximity to the appellants' properties.

22. Furthermore, the Board accepts the verbal and photographic evidence that the two storey garage/secondary suite due to its location and building size would overshadow the neighbour's property to the east reducing the amount of sunlight in their back yard in the afternoon and evening. The Board, having regard to all the evidence, found the appellants' arguments in this regard more compelling than the applicant's arguments.

23. The Board, based on the evidence, finds that the garage/secondary suite creates a large monolithic wall effect that overwhelms the neighbours' properties. In particular, the east elevation which faces the appellants' properties lacks visual interest and is unsightly.



24. The Board also takes into account the fact that three car garages are not characteristic in this community and the large footprint of the garage coupled with a complete second storey above creates a very large building which is not compatible with the neighbouring properties which are primarily small homes with double detached garages.

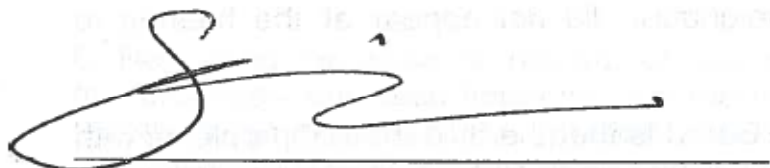
25. Moreover, the Board takes into account the fact that a secondary suite could be accommodated within the primary residence. Therefore, the applicant has an alternative available.

26. Although the proposed development requires no relaxations, it is clear from the evidence that the two storey garage/secondary suite, in combination with the large two storey residence under construction, will take up a very significant portion of the lot space. The combined height and lot coverage of the previously approved residence and the proposed garage/secondary suite create comprehensive massing on the site. In the Board's opinion this massing is excessive and will have a significant negative impact on the appellants' use and enjoyment of their properties.

27. Having regard to the merits of the application, or lack thereof, and sound planning principles, the Board, based on the evidence and aforementioned factors, finds that the proposed development is not compatible with the adjacent developments and neighbourhood. Based on sound planning considerations, the development as proposed is not appropriate for the subject parcel.

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

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



Stefne Madison, Presiding Officer  
Subdivision and Development Appeal Board

Issued on this 10<sup>th</sup> day of April, 2013