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**CALGARY SUBDIVISION AND DEVELOPMENT APPEAL BOARD**

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Hearing held at: Calgary, Alberta

Date of hearing: March 28, 2013

Members present: Meg Bures, Presiding Officer  
Jo Anne Atkins  
Natasha Pashak

Basis of appeal: This is an appeal from an approval by the Development Authority for a development permit made on the application of **Reinhard M Voelmle** for a **new: secondary suite – detached garage** at 2212 26 Avenue SW.

Appeal filed by: **Richmond/Knob Hill Community Association represented by Doug Roberts**

**Description of Application:**

The appeal before the Subdivision and Development Appeal Board (Board) deals with an approval by the Development Authority for a development permit for a new: secondary suite – detached garage at 2212 26 Avenue SW. The property is located in the community of Richmond and has a land use designation of Residential – Contextual One/Two Dwelling (R-C2) District.

**Hearing:**

The Board heard verbal submissions from:

Doug Roberts representing the Richmond/ Knobhill Community Association, the appellant, in favour of the appeal;  
Reinhard Voelmle, the applicant and a co-owner of the subject property, in opposition of the appeal;  
Michelle Healey, a co-owner of the subject property, in opposition of the appeal; and  
Harvey Olsen, the designer of the proposed development, in opposition of 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 of appeal 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 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

- Prior to release condition number one is deleted in its entirety and replaced by the following:
  1. Submit a total of four (4) complete sets of amended plans (file folded and collated) to the satisfaction of the Development Authority.

The amended plans shall indicate the following:

- a) The Balcony railing shall be 48 inches high, and consist of translucent glass or other permanently obscured material;
- b) A minimum 2.0 metre high privacy screen on both sides of the balcony;
- c) A minimum of five (5) columnar Aspen trees, which are a minimum height of 4 metres at the time of planting, shall be planted along the west property line; and
- d) A spreading deciduous tree, with a minimum caliper of 75 mm at the time of planting, shall be planted in front of the easterly portion of the balcony.

Please ensure that all plans affected by the revisions are amended accordingly.

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.

### Permanent conditions

- The following permanent condition is added:
  - 2.1 The required trees as listed in the prior to release condition number one shall be maintained for the life of the permit. In the event that any of the required trees die, they shall be replaced by the same trees as indicated in prior to release condition number 1 of this permit, within one growing season.

**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 secondary suite on the upper floor of the detached garage located at 2212 26 Avenue 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 appellant, who represents the Richmond/Knob Hill Community Association, in summary explained that the subject lot is an unusually deep parcel. The proposed secondary suite will have a full width balcony that extends along the second floor of the detached garage size. Large south-facing windows and the balcony will result in overlooking into the rear yards of the adjacent properties to the west and east of the subject parcel. Because this is only the second such development in their community, the community association is concerned with ensuring that and secondary suites in detached garages are developed appropriately, in order to prevent or mitigate potential overlooking issues that would impact adjacent neighbours. Because the Richmond ARP was written in 1986, secondary suites were not contemplated at that time and, as a result, the document is silent regarding any requirements or restrictions for secondary suites in the community. In addition, the appellant submitted that the balcony of the proposed secondary suite would require a 100 percent relaxation, which is contrary to the position of the Development Authority. In the appellant's opinion, the overlooking that would result from the balcony, and the resulting impact on adjacent properties, is therefore a concern. The appellant explained that he is not looking to overturn the approval, but instead requests changes to the proposed development to mitigate the potential for overlooking into adjacent properties. During the hearing the appellant and the applicant agreed upon several changes to the proposed development that would limit or mitigate the potential for overlooking from the proposed secondary suite and balcony toward adjacent properties.

3 The Board has particular regard to the following sections of Land Use Bylaw 1P2007 including but not limited to:

Section 13(112) states:

- (112) “**private garage**” means an **Accessory Residential Building** or a part of a **main residential building** which accommodates the storage or shelter of vehicles and includes a carport.

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 36 states:

#### **Discretionary Use That Does Not Comply**

- 36 The **Development Authority** may approve a **development permit** application for a **discretionary use** where the proposed **development** does not comply with all of the applicable requirements and rules of this Bylaw if in the opinion of the **Development Authority**:
- (a) the proposed **development** would not unduly interfere with the amenities of the neighbourhood or materially interfere with or affect the use, enjoyment or value of neighbouring properties; and
  - (b) the proposed **development** conforms with a **use** prescribed by this Bylaw for that land or **building**.

Section 138(a) states in part:

#### **Defined Terms:**

- 138 “Accessory Residential Building”

- (a) means a **building**:
  - (i) that accommodates a **use** that is subordinate to the main residential **use** on a **parcel**; and
  - (ii) that is not attached to a **Dwelling Unit** except where the attachment is entirely below **grade** or directly below a **patio**.
- (b) – (d) [...]

Section 295.1 states:

**Defined Uses:**

**295.1 “Secondary Suite – Detached Garage”**

- (a) means a **use**:
  - (i) where a second, self-contained **Dwelling Unit** is located in the same **building** as a detached **private garage**; and
  - (ii) that is located on the same **parcel** as a **Contextual Single Detached Dwelling** or **Single Detached Dwelling**.
- (b) – (d) [...]

Section 346 states:

**Restrictions on Use of Accessory Residential Building**

- 346 (1)** The finished floor area of an **Accessory Residential Building**, other than a **private garage**, must not exceed 0.6 metres above **grade**.
- (2)** An **Accessory Residential Building** must not be used as a **Dwelling Unit**, unless a **Secondary Suite – Detached Garage** has been approved.
- (3)** An **Accessory Residential Building** must not have a **balcony** or rooftop **deck**.
- (4)** The area of a **parcel** covered by all **Accessory Residential Buildings** located on a **parcel**, must not exceed the lesser of:
  - (a) the building coverage of the main residential building, or
  - (b) 75.0 square metres;

- (b) the calculation to determine the area of a parcel covered by **Accessory Residential Buildings** must not include any **Accessory Residential Buildings** with a cumulative **gross floor area** of 10.0 square metres or less.
- (5) All roof drainage from an **Accessory Residential Building** must be discharged onto the **parcel** on which the **building** is located.

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

4 The application proposes to develop a new secondary suite on the second floor of a new detached double car garage at the rear (north end) of a laned parcel. The amenity space for the secondary suite will consist of a balcony that extends the full width of the building along the south side. Large south-facing windows and sliding patio doors open onto the balcony.

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

- (a) A relaxation of section 352(2) of 1.21 square metres or 2 percent for secondary suite floor area; and

(b) Pursuant to section 346(4) a relaxation of 6.94 square metres or 9 percent for parcel coverage by accessory residential buildings;

6 The Development Authority indicated on page 51 of the Board report that a bylaw check retained on file notes an additional relaxation for the balcony on an Accessory Residential Building. However, the Development Authority appears now to be of the opinion that the balcony is not associated with the accessory building; but rather it forms part of the secondary suite. The Development Authority submits that there is no land use bylaw provision which prohibits a balcony on a secondary Suite – Detached Garage, and therefore in its opinion, a relaxation for the balcony is not required.

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 Pursuant to section 36 of Land Use Bylaw 1P2007 the Development Authority may approve a development permit application for a discretionary use where the proposed development does not comply with all of the applicable requirements and rules of this Bylaw if in the opinion of the Development Authority: (a) the proposed development would not unduly interfere with the amenities of the neighbourhood or materially interfere with or affect the use, enjoyment or value of neighbouring properties; and (b) the proposed development conforms with a use prescribed by this Bylaw for that land or building. On appeal, the Board has the same powers pursuant to section 687(3)(d) of the *Municipal Government Act*.

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

12 Further the Board takes into consideration that the subject parcel is unusually deep. The proposed secondary Suite – Detached Garage, which is located at the rear of the parcel, is also located at the intersection of two rear lanes behind the property. Therefore, the Board finds that due to the unusual size, orientation and location of the parcel, secondary suite development at this location should be designed in a manner, which is sensitive and responsive to the context of the neighbourhood and immediately surrounding properties.

13 In particular, because of the significant depth of the subject parcel, the Board finds, based on the evidence, that overlooking from the proposed secondary suite toward adjacent properties on the west and east side of the subject parcel is a factor to be considered.

14 The Board agrees with the appellant that the size of the subject parcel, the orientation of the proposed development on the parcel, the large south-facing second floor balcony and large south-facing second floor windows of the development, as proposed, results in overlooking into adjacent backyards and affects their privacy.

15 In the Board's view Land Use Bylaw 1P2007 offers a generous envelope for secondary suite developments but purposively stipulates specific rules. In that regard, the Board notes the following: Pursuant to section 295.1(a) the use of "Secondary Suite – Detached Garage" means a use: (i) where a second, self-contained dwelling unit is located in the same building as a detached private garage; [...]. Pursuant to 13(112) "private garage" means an accessory residential building or a part of a main residential building which accommodates the storage or shelter of vehicles and includes a carport. Therefore a secondary suite is a "use" located in a garage building which according to Land Use Bylaw 1P2007 is an accessory residential building.

16 In accordance with sections 138 and 295.1 of the Bylaw, it is the Board's opinion that the subject detached garage where the proposed secondary suite is located is an accessory residential building.

17 Pursuant to section 346(3) of the Bylaw, balconies are not allowed on accessory residential buildings.

18 Furthermore, the Board notes that section 346(2) specifically includes the words "unless a Secondary Suite – Detached Garage has been approved". These words are not included in section 346(3). If the drafters of the Land Use Bylaw would have intended to allow a balcony for a secondary suite, it would have specifically said so. It did not do so. Having regard to a purposive and contextual interpretation of section 346 and the plain and ordinary words used in this section in conjunction with sections 13(112), 138 and 295.1, and the scheme of the Land Use Bylaw, the Board finds that balconies are not allowed on an accessory residential building, irrespective whether it contains a secondary suite. The Board agrees that there is no land use bylaw provision that prohibits a balcony associated with a particular use per se, but section 346(3) is clear in the prohibition of balconies on accessory residential buildings.

19 It is also the Board's experience that the Development Authority has not been consistent in its interpretation of the subject Bylaw provisions regarding development permit application for a secondary suite in accessory residential buildings.

20 The Board therefore disagrees with the Development Authority's submission, as indicated on page 51 of the Board report, that the balcony is not associated with the

accessory building and that there is no land use bylaw provision which prohibits a balcony on a Secondary Suite – Detached Garage.

21 Therefore, the Board finds that the balcony on the proposed development would require a 100 percent relaxation of section 346(3) of the Bylaw

22 Notwithstanding the above, the Board also takes into consideration the following: The balcony on the proposed development provides the required amenity space for the secondary suite. The balcony also serves to improve the appearance of the south façade of the building by breaking up and reducing the visual massing. The appellant and the applicant also agreed at the hearing that if height of the railing surrounding the balcony was raised to 48 inches and constructed of translucent glass or other opaque material, overlooking from inside the secondary suite would be reduced considerably. The appellant and the applicant also agreed at the hearing to plant additional trees along the west property line, and in front of the east end of the balcony, in order to further mitigate overlooking from the balcony into adjacent properties.

23 The Board therefore finds that although the proposed development includes a balcony that would require a 100 percent relaxation, the aforementioned planning reasons, and agreed upon changes to the proposed development in order to mitigate impact on adjacent properties due to potential overlooking, the relaxation is warranted. The Board notes that even if the balcony were removed, there would be considerable potential for overlooking from within the secondary suite because of the number and size of the windows along the south façade.

24 The Board, based on the evidence, therefore finds that the presence of the balcony and the agreed-upon balcony railing consisting of translucent glass or other opaque material would significantly reduce the potential for overlooking from within the secondary suite. The Board also finds it reasonable to maintain the Development Authority's requirement for a 2 metre high privacy screen at both ends of the balcony.

25 Based on the evidence and aforementioned factors, the Board finds that the Bylaw relaxations for secondary suite floor area and parcel coverage are minor and acceptable from a planning perspective. In addition, the Board finds that the Bylaw relaxation for the balcony is acceptable from a planning perspective, as long as the aforementioned agreed-upon changes are made to the development. In the Board's opinion this relaxation, although large in magnitude, will have no negative impact on the adjacent properties and meets the criteria of section 687(3)(d) of the *Municipal Government Act*.

26 Accordingly, pursuant to section 687(3)(d) of the *Municipal Government Act*, the Board determines that the proposed development and required relaxations would not unduly interfere with the amenities of the neighbourhood, or materially interfere with or affect the use or enjoyment of neighbouring parcels of land

27 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, finds that the proposed development with the imposition of some additional conditions is compatible with the adjacent developments and the immediate neighbourhood. The Board based on planning rationale finds that the development as proposed is appropriate for the site.

28 In reviewing and weighing all the evidence, the Board thus finds that the application warrants approval subject to some amendments to the conditions of approval.

29 Having regard to sound planning considerations, the Board therefore imposes a prior to release condition that amended plans shall be submitted indicating the following: (a) The Balcony railing shall be 48 inches high, and consist of translucent glass or other permanently obscured material; (b) A minimum 2.0 metre high privacy screen shall be installed at both ends of the balcony; (c) A minimum of five (5) columnar Aspen trees, which are a minimum height of 4 metres at the time of planting, shall be planted along the west property line; and (d) A spreading deciduous tree, with a minimum caliper of 75 mm at the time of planting, shall be planted in front of the easterly portion of the balcony.

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

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

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M.A. (Meg) Bures, Presiding Officer  
Subdivision and Development Appeal Board

Issued on this 12<sup>th</sup> day of April, 2013