
CALGARY SUBDIVISION AND DEVELOPMENT APPEAL BOARD

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 **Debicki Speta Design** for a **new: secondary suite - detached garage, accessory residential building (garage)** at 712 33A Street NW.

Appeal filed by: **Deborah Curley representing Parkdale Community Association**

Description of Application:

The appeals before the Subdivision and Development Appeal Board (Board) deal with an approval by the Development Authority for a development permit for a new: secondary suite - detached garage, accessory residential building (garage) at 712 33A Street NW. The property is located in the community of Parkdale and has a land use designation of Residential – Contextual One/Two Dwelling (R-C2) District.

Hearing:

The Board heard verbal submissions from:

Debroah Curley representing the Parkdale Community Association, the appellant, in favour of the appeal;

Ruby Miller, a member of the Parkdale Community Association Planning and Development Committee, as well as a member of this community, in favour of the appeal; and

Thomas Debicki of Debicki Speta Design, the applicant, 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(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 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 is added:
 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:

- The building is moved back an additional 0.30 metres from the rear property line.

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.

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 712 – 33A Street NW. 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 Parkdale Community Association, explained that the subject development will be the first such secondary suite in the area, and as such, the community association does not support any of the required bylaw relaxations. The notice of appeal specified concerns regarding the relaxation for site coverage, extension of the cantilever projection into the rear lane, and potential impact on the privacy of adjacent neighbours. The community association is of the opinion that the subject development should be able to be developed in accordance with the bylaw, such that no relaxations are necessary. Another resident of the community, who also spoke in support of the appeal, reiterated the same concerns.

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

Section 13(22) states:

- (22) “**building coverage**” means the area of a **parcel** which is covered by a **building** excluding:
- (a) [...]
 - (b) portions of the **building** greater than 2.4 metres above **grade** and with a depth less than 1.0 metres, measured from the wall directly below.
 - (c) portions of eaves, roofs, pergolas and other similar elements with a depth less than 1.0 metres, measured from the wall directly below
 - (d)-(e) [...]

Section 13(100) states:

- (100) “**parcel coverage**” means the cumulative **building coverage** of all **buildings** on a parcel excluding **Accessory Residential Buildings** which in aggregate are less than 10.0 square metres..

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 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 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 triple car garage at the rear of a laned parcel. The Development Authority explained on page 56 of the Board report that the building design reduces massing of the structure through the use of articulation. The relaxations sought are for the building design to incorporate the suite access, stairs and amenity space.

5 According to the Development Authority’s calculations, the proposed development requires the following relaxations of Land Use Bylaw 1P2007:

- (a) Pursuant to section 346(4)(b) of 5.83 square metres, or 8 percent, for parcel coverage by accessory residential buildings
- (b) Pursuant to section 351(2)(a)(i) a relaxation of 1.2 metres or 80 percent for the secondary suite from the rear property line, and
- (c) Pursuant to section 351(2)(a)(ii) a relaxation of 0.3 metres or 50 percent for the private garage from the rear property line.

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.

7 The Board reviewed the context of the proposed development and required Bylaw relaxations, 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 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*.

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 Regarding the necessary bylaw relaxations as determined by the Development Authority, the Board notes the following. With regard to the area of the proposed accessory residential building's footprint, the Development Authority measured an area of 80.83 square metres, whereas the applicant, who is also the architect for the proposed development, submitted evidence indicating that the building footprint area is 76.67 square metres. Upon questioning by the Board, the applicant surmised that the development authority had perhaps erred in its calculation by incorporating the outline of the eaves of the second floor of the building, which could account for the difference in respective calculations of the building foot print and parcel coverage. The Board accepts this evidence and agrees that the correct area of the footprint of the proposed accessory residential building is 76.67 square metres. Therefore the Board finds that the required relaxation of section 346(4)(b) of the bylaw is 1.67 square metres, or 2 percent.

12 In addition, with regard to section 351(2)(a)(ii) of the bylaw, which requires the minimum building setback from the rear property line for any portion of the building used as a private garage is 0.6 metres, the Board notes that the Development Authority determined the closest distance to be 0.30 metres, which equates to a relaxation of 50 percent. The evidence shows that this measurement pertains to the distance of the external staircase from the rear property line. In the Board's opinion, the staircase is used to access the secondary suite, and does not pertain to any portion of the building used as a private garage. Therefore, in the Board's opinion, the plans instead show that the closest part of the building used as a private garage to the rear property line is 1.79 metres. In conclusion, the Board finds that the closest portion of the building used as a private garage is set well away from the minimum setback distance and, as such no relaxation is required for this section of the Bylaw.

13 Although the appellant explained in the notice of appeal and during the hearing that they were concerned about the projection of a portion of the rear of the building extending into the rear lane, the Board notes from the evidence that no portion of the building extends past the rear property line into the lane. In fact, the evidence shows that the closest portion of the building, namely the external staircase to access the secondary suite, extends to a distance of 0.30 metres from the rear property line. Although the appellant was concerned about the width of the rear lane and felt that the proposed development would exacerbate difficulties for driving large vehicles in the lane, the Board finds that, because no portion of this development extends past the rear property line of the subject parcel, any concerns regarding the width of the rear lane and associated potential driving hazards that may exist are not relevant in this case.

14 With regard to the appellant's concern regarding the proximity of the secondary suite to the rear property line, and the resulting relaxation of section 351(2)(a)(i) of the bylaw of 80 percent, the Board notes that the applicant offered at the hearing to move the entire development a further 0.3 metres back from the rear property line. The Board accepts this proposed revision, which will result in a distance of 0.6 metres from the staircase to the rear property line. Therefore, the Board finds that this amendment to the plans will result in a reduction of the magnitude of the relaxation of section 351(2)(a)(i) of the bylaw, to 0.9 metres, or 60 percent.

15 With regard to the appellant's concerns regarding potential overlooking from the secondary suite, and therefore the potential impact on the privacy of adjacent properties, the Board notes the following. The evidence shows that the size, number and orientation of windows on the northeast, southwest and northwest sides of the secondary suite are relatively small in size and number, and appear to be situated such that their purpose is more for access to light and less for views. Therefore, in the Board's opinion, the potential for overlooking concerns from these windows is not a significant factor.

16 With regard to the potential for overlooking concerns from the windows on southeast side of the secondary suite, the Board notes the following. The windows on the southeast façade, which overlook the lane, include three large windows and a series of transom windows along the roofline. The floor plan indicates that two of the large windows are bedroom windows, and one is located in the living room. The appellants submitted that the potential for overlooking from these windows of the secondary suite would have particular impact on the two properties across the lane from the subject property, namely 711 and 715 33 Street NW. The Board notes from the photos presented at the hearing that the home on the property located at 711 33 Street, is situated nearer the front of that parcel, at a considerable distance from the proposed development. In addition, the two windows that are directly facing this property are bedroom windows. In the Board's opinion, it is likely that the occupants of the secondary suite will have window coverings on these windows and that overlooking or privacy concerns impacting the property across the lane would not be a significant factor. The evidence also shows that the living room of the secondary suite is set back a further 1.5 metres from the lane than the bedroom windows, and that views from the living room window toward the property across the lane are blocked by the walls of the external stair case.

17 With regard to the potential for overlooking toward the property located at 715 33 Street, the Board notes that photographic evidence shows that the home on that property is also situated near the front of that parcel and that there is a large garage on that property that would serve to block the views from the proposed secondary suite toward that property.

18 Therefore, the Board finds that staggered setback of the southeast façade of the building, the significant setback distances from the rear property line and the presence of the external walled stair case all combine to significantly reduce or mitigate the potential for overlooking from the proposed secondary suite toward properties across the lane, and that the privacy of those properties will not be unduly impacted.

19 The Board also finds that the amendment proposed by the applicant to move the entire building back 0.3 metres further from the rear property line will further reduce the potential for overlooking or privacy concerns from the secondary suite.

20 Based on the evidence and aforementioned factors, the Board finds that the bylaw relaxation for parcel coverage is minor and acceptable from a planning perspective. In addition, the Board finds that the 50 percent relaxation for the distance from the walled staircase of the secondary suite to the rear property line also acceptable from a planning perspective. In the Board's opinion, although this relaxation is relatively large in magnitude, the presence of the external staircase provides a significant benefit in limiting the potential for overlooking from the secondary suite toward properties across the lane. Therefore, the Board finds that the bylaw relaxations for the proposed development will have no negative impact on the adjacent properties and meets the criteria of section 687(3)(d) of the *Municipal Government Act*.

21 Accordingly, pursuant to section 687(3)(d) of the *Municipal Government Act*, the Board finds that the proposed development, including the amendment to move the building a further 0.3 metres from the rear property line, as presented at the hearing, and the required relaxations, will not unduly interfere with the amenities of the neighbourhood, or materially interfere with or affect the use or enjoyment of neighbouring parcels of lands.

22 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 an additional condition 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.

23 In reviewing and weighing all the evidence, the Board thus finds that the application warrants approval subject to an amendment to the conditions of approval.

24 Having regard to sound planning considerations, the Board therefore imposes a prior to release condition that amended plans shall be submitted indicating that the building is moved back an additional 0.3 metres from the rear property line.

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

26 The development permit shall be issued as approved by the Development Authority subject to the above listed amendment/ addition to the conditions of approval.

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

Issued on this 12th day of April, 2013

UNCERTIFIED COPY

Caitlin Clow – Parkdale Location [712 33A Street NW] detached garage

1. Secondary Suite Approved? Yes or No?

The secondary suite was approved in part pending certain specifications are met in construction that appease the Parkdale Community Association.

2. Address of Suite including quadrant

712 33A Street, NW

3. Neighbourhood Name and Quadrant

Parkdale North West

4. Type of Suite: in house or garage

The suite would be located on the upper floor of the detached garage.

5. Reason for Appeal in Simple Language

Because this secondary suite would be the first of its kind in the Parkdale community, the appellant doesn't want the bylaws regarding construction to be relaxed – as they were before – rather, they want it done correctly. The appellants also have concerns regarding the amount of space this structure will take up, the extension of the cantilever – or a bonus room that is hanging freely, only anchored by one spot - into the alleyway. They are also concerned about the privacy of the neighbours because the secondary suite could potentially peer into the neighbours houses.

ALTHOUGH the photographs of the construction thus far will show that it doesn't appear that there will be a residence above the garage and even if there was, it appears that they wouldn't get a good look due to the fence and height differences between structures. They would however be able to look right into the windows of the main house.

6. How the Appeal Board decided this and why

Basically, the Board said that they would give the go-ahead if the applicant moved the structure 0.30 metres away from the property line.

The Board decided that the concern regarding the relaxation of the building footprint is a simple 1.67 metres or 2% - so within a safe range of a relaxation with little cause for concern. They said that the garage, and the future secondary suite is “well away from the minimum setback distance” therefore there is no need for a relaxation there. The Board recognized the concern from the appellant regarding the projection of a room into the alleyway and after further investigation they realized that it was an external staircase that would be 0.30 metres from the property line and that is acceptable. The Board ensured that the applicant would move the entire structure 0.3 metres back from the property line to avoid the suite extending into the alleyway. As for privacy they decided that the windows in the secondary suite will be small and mainly purposed to let in light and therefore there is no concern regarding privacy issues for the neighbours. Ultimately, the Board “finds that the bylaw relaxations for

the proposed negative impact on the adjacent properties and meets the criteria..”

6. Upload the Appeal Decision PDF

7. Take photo of exterior of the suite property



Front of Main House



Back of Main House.



Detached Garage - where the secondary suite is supposed to be on top of.



Attempt to illustrate property line difference.



View across the street. Showing that privacy won't be an issue.

[private notes: names of owner and appellants:

Owner? // Designer & Architect: Thomas Debicki, M. Sc. Arch., Debicki Speta Design,

phone 403-277-7520, e-mail: dsd@telusplanet.net. (pulled information from a Calgary Herald article (2005) <http://www.canada.com/calgary/calgaryherald/news/story.html?id=d721684c-43bc-46b8-9f3a-c9e35cd901b4>)

Appellants: Debroah Curley → representing the Parkdale Community Association & Ruby Miller → A member of the Parkdale Community Association