

Hearing:

The Board heard verbal submissions from:
Tim Griffin, co-owner, in favour of the appeal; and
Peter Schryvers of Permit Masters, the appellant, in favour 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, 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 denied and the decision of the Development Authority is upheld.**
- 2. A development permit shall not be issued.**

Reasons:

1 Having considered the written, verbal, and photographic evidence submitted, the Board notes that the appeal pertains to a refusal by the Development Authority of a development permit application for a new secondary suite and a revision to the single detached dwelling to convert the attached garage roof to a balcony at 212 11 Street NW. The property has a land use designation of Multi-Residential – Contextual Grade-Oriented (M-CG d72) District pursuant to Land Use Bylaw 1P2007.

2 The Development Authority refused the application on the basis that, among other things: the proposed development is inappropriate for the location and parcel; it is incompatible with the neighbourhood; it will negatively impact the adjacent properties; it interferes with the access and transportation requirements for the parcel; interferes with vehicle movement on the parcel; and does not align with the planning policy which aims to prevent overlooking and privacy impacts. For these reasons and for what it felt to be excessive required relaxations, the Development Authority could find no compelling planning rationale to approve the proposed development, and therefore decided to refuse the application.

3 The applicant/appellant in their notice of appeal submitted that, in their opinion, the reason for the Development Authority's refusal was primarily based on a parking relaxation for the property. In the appellant's opinion, sufficient parking can be accommodated on site for both the primary residence and the proposed secondary suite. Secondly, the appellant is also of the opinion that the green roof above the garage should not be considered a balcony and amenity space, and that and it would not result in overlooking issues. Thirdly, the appellant submitted that a number of design factors regarding the secondary suite, such as the location of the entrance at the side of the subject property, and the location of the designated amenity space at the front yard of the property, which are of concern to the Development Authority, are, in the appellant's opinion, appropriate and justifiable.

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

Section 13 states, in part:

General Definitions

- 13 (6) "**amenity space**" means a space designed for active or passive recreational use.
- (13) "**balcony**" means a horizontal platform that is attached to a **building** above the first **storey** floor level and is intended for use as an outdoor **amenity space**.

Section 28(1) states:

Permitted Uses That Meet All Requirements

- 28 (1) Where a **development permit** application is for a **permitted use** in a **building** or on a **parcel** and the proposed **development** conforms to all of the applicable requirements and rules of this

Bylaw, the **Development Authority** must approve the application and issue the **development permit**.

Section 30 states:

Permitted Uses That Do Not Meet All Requirements

30 Where a **development permit** application is for a **permitted use** in a **building** or on a **parcel** and the proposed **development** does not conform to all of the applicable requirements and rules of this Bylaw, the **Development Authority** may:

- (a) refuse to approve the **development permit** application; or
- (b) approve the **development permit** application and grant a relaxation of the requirement or rule to which the proposed **use** does not conform.

Section 31 states:

Test for a Relaxation

31 The **Development Authority** may approve a **development permit** application for a **permitted 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 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 37(2) states:

Development Authority's Decision

- 37 (2)** The **Development Authority** may refuse a **development permit** application for **a discretionary use** even though it meets the requirements and rules of this Bylaw.

Section 122(3) states, in part:

122 Standards for Motor Vehicle Parking Stalls

- (3)** The minimum depth of a **motor vehicle parking stall** is 5.9 metres where it is required for:
- (a) a Contextual Semi-detached Dwelling, Contextual Single Detached Dwelling, Duplex Dwelling, Secondary Suite, Secondary Suite – Detached Garage, Secondary Suite – Detached Garden, Semi-detached Dwelling or Single Detached Dwelling; and
 - (b) [...]

Section 295 states:

295 “Secondary Suite”

- (a) means a **use** where a second, self-contained **Dwelling Unit**

is located within a **Contextual Single Detached Dwelling** or **Single Detached Dwelling**;

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

Section 305 states:

305 “Single Detached Dwelling”

- (a) means a *building* which contains only one **Dwelling Unit** and may include a **Secondary Suite**, **Secondary Suite – Detached Garage** or **Secondary Suite – Detached Garden** in Districts with allow those **uses**, but does not include a **Manufactured Home**;
- (b) [...]
- (c) requires a minimum of 1.0 *motor vehicle parking stalls* per **Dwelling Unit**; and
- (d) [...]

Section 338(4) states, in part:

Projections Into Rear Setback Area

- 338 (4)** When an attached **private garage** has a **balcony** or **deck**, the **balcony** or **deck** must not be located within 6.0 metres of a **rear property line** or 1.2 metres of a **side property line**.

Section 340(1) states:

Balconies

- 340 (1)** An **open balcony** must not project more than 1.85 metres from the **building** façade to which it is attached.

Section 573 of The City of Calgary Land Use Bylaw 1P2007 states, in part:

Single Detached, Semi-Detached, Duplex Dwellings and Secondary Suites

573 Any of the following **uses** must comply with the rules of the R-C2 District that apply to such **development**:

(a)-(c) [...]

(d) **Secondary Suite**

(d.1)-(e) [...]

(f) **Single Detached Dwelling.**

Section 577(1)(e.1) lists “Secondary Suite” as a permitted use in the M-CG District.

Section 578(1)(t) lists “Single Detached Dwelling” as a discretionary use in the M-CG District

5 The Board has regard to the Hillhurst-Sunnyside Area Redevelopment Plan (ARP).

6 The application requires the following relaxations:

(a) With regard to parking, a relaxation is required of sections 295(c) and 305(c) of Land Use Bylaw 1P2007, which require one motor vehicle parking stall per secondary suite and per dwelling unit respectively. There is one parking space on-site, presumably for the primary dwelling unit. There is therefore a deficiency of one required parking stall for the proposed development, which is a 100 percent relaxation of the parking stall requirement for the proposed development; and

(b) With regard to the balcony/amenity space located above the garage, relaxations are required of: section 340(1) of the Bylaw which requires a variance of 6.79 metres or 367 percent regarding maximum projection from the façade; and section 338(4) of the Bylaw which requires a variance of 0.6 metres or 10 percent regarding the minimum setback from the rear property line, and a variance of 1.05 metres or 88 percent regarding setback from the side property line.

7 The application is for a new secondary suite located in the basement of an existing single detached dwelling, and a revision to the single detached dwelling to convert the attached garage roof to a balcony. The Board notes that the proposed secondary suite use and development is a permitted use in the subject district that governs the subject property. However, it does not conform to Land Use Bylaw 1P2007, as it requires a relaxation of the provisions of the Land Use Bylaw.

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

9 The Board considered the appellant's arguments in support of the application but for the reasons that follow finds the arguments not compelling and lacking in planning merits.

10 Pursuant to section 30 of Land Use Bylaw 1P2007, where a development permit application is for a permitted use in a building or on a parcel and the proposed development does not conform to all of the applicable requirements and rules of this Bylaw, the Development Authority may: (a) refuse to approve the development permit application; or (b) approve the development permit application and grant a relaxation of the requirement or rule to which the proposed use does not conform.

11 The Board finds that the required Bylaw relaxations for the proposed development, in terms of size and nature, are significant.

12 The appellant disagreed with the Development Authority's position that a 100 percent relaxation is required for the deficient parking stall allocated to the secondary suite. The appellant explained in great detail that, in his opinion, the attached garage can accommodate two vehicles, parked in tandem configuration, and that the outside parking pad on the east end of the garage can accommodate one vehicle, for a total of 3 on-site parking stalls. Although he acknowledged that the dimensions of the three parking stalls do not meet the bylawed minimum dimensions for length, he emphasized that he is able to park three vehicles on his property, and therefore, in his opinion, the parking stall variance should instead pertain to the deficient parking stall lengths, which he considers to be minor in nature and therefore allowed.

13 The Board notes that the appellant made a point of explaining that in order to park three vehicles on the property they would need to be of an appropriate size to fit into the existing parking spaces, and that the owner of the house would be able to select tenants for the secondary suite who had a sufficiently small car. He also explained that because Hillhurst is such a pedestrian-friendly community, in his estimation it is unlikely that future owners of the property would own two large vehicles that would not be able to fit into the garage.

14 Having regard to Land Use Bylaw 1P2007, the Board agrees with the Development Authority that the parking deficiency for the secondary suite is one parking stall, or 100 percent, because the dimensions of the parking space allocated for the secondary suite do not meet the minimum required dimensions as per the Land Use Bylaw. Based on the evidence presented, the Board finds that subject site contains only one parking stall that meets the minimum bylawed parking stall dimensions, which is located inside the attached garage. The outside parking space that is to be allocated to the proposed secondary suite does not meet the minimum parking stall dimensions.

15 The Board concurs that the minimum parking stall dimensions stipulated in the Land Use Bylaw are intended to accommodate the substantial variety of vehicle types. In the Board's opinion it is unreasonable to expect a requirement or condition that would restrict the size of property owners' or tenants' vehicles parked on the property. At the very least, this would be an entirely unenforceable condition. The Board places no weight on the appellant's supposition that, because this is a pedestrian-friendly community, it is unlikely that future owners of the property would not own two large vehicles that could not be accommodated inside the garage, as the Board finds this argument to be complete conjecture.

16 The Board commends the appellant for making the decision to own two sufficiently sized vehicles, such that both are able to be parked inside the attached garage, and thereby eliminating additional pressure on the very limited on-street parking availability. In the Board's opinion, it is unreasonable to predict and expect that all future owners of the subject property would be as diligent and would limit their use to such vehicles or to one of those vehicles.

17 With regard to the context and configuration of the attached garage and outdoor parking space, the Board notes the following. The property is located at the intersection of two lanes, one of which is one-way (eastbound), and both of which are considerably narrower than the city standard. The fact that the previously approved development permit for the single detached dwelling requires a 4.5 metre by 4.5 metre lane corner cut in order to accommodate large vehicles, as well as evidence presented of large vehicles requiring three-point turns to negotiate the corner of the lane, speak to the extreme narrowness and congestion of the lanes at this location. Approving the relaxation for an insufficiently sized parking space at the east end of the garage, which is also at the intersection of the two lanes, would thereby allow and condone the parking of any sized vehicle and which could conceivably exacerbate an already congested and challenging laneway access situation at this location.

18 The Board also notes from the evidence that the configuration of the attached garage on the subject property is an innovative design that appears to have been designed in order to accommodate the one-way eastbound lane on the south side of the property. The diagrams on pages 28 and 29 of the Board report appear to indicate that the intended configuration of the garage is for cars to enter the garage via the door on the south (east bound) lane, and exit via the east door of the garage and driveway onto the east lane. The evidence appears to show that the garage was designed specifically for that pattern of vehicle ingress and egress. However, the Board wonders how vehicles would be forced to maneuver if the occupant of the secondary suite were parked on the driveway, blocking the intended exit door of the garage, and what impact that would have on the traffic flow on the adjacent lanes. The Board estimates that the car(s) parked in the garage would have to exit by reversing the "wrong way" into the south (eastbound) lane. In the Board's opinion, insufficient evidence was presented to

demonstrate that such a vehicle access pattern is appropriate from a planning and transportation perspective.

19 Therefore, based on the evidence and the aforementioned factors, the Board finds that the 100 percent relaxation for the parking stall associated with the secondary suite will have an impact on the immediate area that cannot be discounted. Despite the appellant's arguments, in the Board's view, adding a secondary suite to the parcel would potentially generate additional traffic and demand additional and sufficient parking available for all residents of the property. The intent of the Land Use Bylaw is that all uses within a building and development on a site have sufficient parking on site. The Board notes that parking in the community is at a premium. This is underscored by the fact of restricted residential parking on the street and in the surrounding community. Therefore from a planning and transportation perspective, a 100 percent parking relaxation has a substantial impact on the adjacent properties.

20 Regarding the proposed balcony on the roof of the attached garage, the Board notes the following: it will be accessed by external stairs located on the north side of the building and extends the full length and width of the garage roof. The Development Authority determines this to be a balcony projection of 8.64 from the main residential building façade, 5.2 metres from the rear property line, a floor surface area of 31.6 square metres and 3.2 metres above grade. A 42 inch high transparent railing will be located on the north side of the balcony and the remainder of the balcony perimeter will have a 42 inch high solid parapet wall. The proposed balcony will result in a number of aforementioned bylaw relaxations. The Board accepts this evidence and accepts the Development Authority's calculation of the required bylaw relaxations.

21 The appellant explained that, although the application describes the proposed development of the garage roof as a balcony, his intention is to develop a green roof that would be used for gardening, and it would not be used as amenity space. In his opinion, the proposed development is simply a green roof, and not a balcony. Because the proposed walkways on the roof are narrow and would be only for the purpose of accessing plants, there is not enough space on those hard surfaces to use it as a patio or amenity space. He explained that the main amenity space for the primary dwelling is instead a deck and grassed area located in the rear yard of the property.

22 Because the proposed development for the roof of the garage is to be located above the first storey floor level, and it will be used for gardening, which in the Board's opinion is itself a recreational activity, the Board therefore finds that it meets the definitions of amenity space and balcony as per sections 13(6) and 13(13) of the Bylaw respectively.

23 The Board notes from the decision-rendered plans that the height, location and size of the proposed balcony, as well as a 42 inch transparent railing along the north side will provide significant opportunities for overlooking into nearby and adjacent properties. Photographic evidence also shows views into adjacent and nearby properties.

24 The Board applauds the appellant's desire to develop a green roof on the attached garage, in order to create and achieve the environmental benefits that green roofs can provide. However, the Board finds that, from a planning perspective, the proposed balcony development on the roof of the attached garage on the subject property is not appropriate and that it has the potential to create adverse impacts on adjacent and nearby properties, because of the potential for increased intensity of use and overlooking. Insufficient planning rationale was presented to support granting the required relaxations pertaining to the balcony.

25 The appellant explained that the designated private amenity space for the secondary suite is to be located at the front of the subject property, adjacent to 11 Street NW. Upon questioning, the appellant explained that many other properties in the immediate area use the front yards for amenity purposes, as many people garden or use their front yards for recreation purposes. However, no evidence was presented to confirm whether any those properties have private amenity spaces designated in the front yards because of secondary suites on the properties or for any other reason. In the Board's opinion, because people are observed using or recreating in their front yards, it does not necessarily mean that those areas are designated private amenity spaces to the exclusion of any other portions of those respective properties. Therefore, the Board places no weight on the appellant's assertion that there are other examples in the immediate area of private amenity spaces designated in the front yards of properties.

26 In addition, insufficient evidence was presented to explain how this proposed amenity space for the secondary suite would be integrated into the layout of the house, considering that the entrance to the secondary suite is to be located midway along the north façade of the building, or how it would be integrated into the streetscape of this established neighbourhood. Nor was any evidence presented of any sort of pattern of designated private amenity spaces along the street or in the immediate vicinity in the neighbourhood. In the Board's view, designated private amenity spaces in the front yards of properties should be designed thoughtfully and integrated appropriately so as to be sensitive with the surrounding properties and within the local context.

27 The Board also notes the Development Authority's concerns regarding the location of the amenity space for the secondary suite and the reference in the reasons for the Development Authority's refusal to section 2.4.1.1 of the Hillhurst/Sunnyside ARP regarding the preferred locations for private outdoor areas. The Board agrees with the Development Authority that the proposed location of the outdoor amenity space is inappropriate for the reason that the associated activities will most likely cause negative impact to the neighbouring properties and that there is adequate space in the rear of the parcel for the outdoor amenity area.

28 In addition, the Board notes that no evidence was presented to explain how the access to the secondary suite would function, given the location of the designated parking space for the secondary suite. The proposed designated parking space for the secondary suite is on the concrete driveway at the east end of the attached garage, and

the entrance to the secondary suite is proposed as a newly constructed side entrance, located midway along the north façade of the single detached dwelling. The appellant explained that the main amenity space for the primary dwelling is located in the rear yard of the property. The Board wonders if the occupant(s) of the secondary suite would enter the rear yard and walk across the main amenity space for the primary dwelling, to get to the entrance of the secondary suite, or if the expectation is that they would have to traverse the entire perimeter of the property to access the entrance of the suite from 11 Street. If the latter scenario is the case, the Board surmises that, for the sake of convenience, occupant(s) of the secondary suite would likely park on 11 Street, thereby contributing to on-street parking congestion, rather than parking in the designated space at the rear of the property.

29 Regarding the proposed location of the entrance to the secondary suite, the Board acknowledges the Development Authority's reference to section 2.4.1.1 of the Hillhurst/Sunnyside ARP, which recommends that "the primary entry to any dwelling unit should be oriented toward the front of the property and side entries should only be allowed as back doors." The Board notes on the decision-rendered plans a raised wood landing at the entrance to the secondary suite. Evidence presented by the appellant shows a six foot high solid wooden fence along the north property line which the appellant estimates would provide both visual and sound privacy for neighbours. The Board finds, however, that insufficient evidence was presented regarding the potential effect of a newly created entrance at that location, including the effect of the raised platform, on the neighbouring property to the north. The appellant stated that the adjacent neighbour to the north has no concerns regarding the proposed development, but no evidence was presented to confirm that assertion.

30 In looking at the context of the subject property, including the adjacent lanes, roadway configurations and the adjacent properties, uses, and neighbourhood layout, the Board notes that the proposed development aims to further increase the intensity of use on the property which already includes a large house on a relatively small inner city lot and amenity space in the rear yard, and adding additional amenity space both in the front yard and on top of the garage roof, while also creating the need for an additional on-site parking space. The appellant is trying to maximize the uses and development on the parcel as much possible, in a community consisting of relatively narrow lots and narrow adjacent lanes. In the Board's opinion, the appellant is attempting to squeeze a lot of uses and a significant increase in intensity of use onto a small property, and the proposed developments will have an unavoidable impact on neighbouring properties. Secondary suites, especially where they are a permitted use, need to comply with all the provisions of the Land Use Bylaw, and any required relaxations should be in accordance with the Land Use Bylaw and the *Municipal Government Act*. On the balance of all the evidence and based on the aforementioned factors, the Board finds that the proposed secondary suite and balcony developments at the subject location have, from a planning perspective, an adverse impact on the adjacent properties. Having regard to sound planning considerations, the Board, on the balance of the evidence, finds that in this instance the applicable rules and requirements of the Land

Use Bylaw should prevail. The appellant provided insufficient evidence that would warrant relaxations of the Land Use Bylaw.

31 The Board, based on the evidence and aforementioned factors, finds that the required relaxations for the development do not meet the criteria of section 687(3)(d) of the *Municipal Government Act*. In the Board's opinion, the proposed development and required relaxations have a negative impact on the adjacent properties and the immediate neighbourhood.

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

33 Having regard to the merits of the application, or lack thereof, and taking into consideration the impact of the proposed development on the neighbourhood and the neighbouring properties and sound planning considerations, the Board finds that the proposed development in this case is not appropriate for the subject parcel. From a planning perspective, the proposed development is incompatible with the adjacent properties and neighbourhood.

34 In reviewing and weighing all the evidence, the Board therefore finds that the proposed development does not warrant approval.

35 For the above reasons the Board denies the appeal and upholds the decision of the Development Authority.

36 Therefore, a development permit shall not be issued.

Meg Bures, Presiding Officer
Subdivision and Development Appeal Board

Issued on this 29th day of July, 2013