
CALGARY SUBDIVISION AND DEVELOPMENT APPEAL BOARD

Hearing held at: Calgary, Alberta

Date of hearing: July 18, 2013, August 15, 2013, and September 05, 2013

Members present: Rick Grol, Chair
Kerry Armstrong
Jo Anne Atkins
John Attrell
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 **Eastmen Developments** for a **new: secondary suite (basement)** at 108 Everoak Close SW.

Appeals filed by: **Todd Kempthorne; Terry Budzey; Barbara Belzerowski and Rob Zabrowski**

The Board commenced the hearing for this appeal on July 18, 2013. At this time, the Board heard verbal submissions from the parties involved. The Board determined it required more information from the Development Authority and as such the item was adjourned to August 15, 2013. On this date, the item was further adjourned as the appellant was unable to attend the hearing. The hearing re-commenced on September 05, 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 (basement) at 108 Everoak Close SW. The property is located in the community of Evergreen and has a land use designation of Residential – Narrow Parcel One Dwelling (R-1N) District.

Hearing:

The Board heard verbal submissions from:

Barb Zabrowski (Belzerowski), an appellant, in favour of the appeal;
Lennard Fife, co-owner of the subject property, in opposition to the appeal; and
Abigail Fife, co-owner of the subject property, in opposition 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 the notices of appeals and any documents, materials or written submissions submitted by the appellants, 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 presented, the Board notes that the appeal pertains to an approval by the Development Authority of a

development permit for a new secondary suite (basement) at 108 Everoak Close SW. The property is located in the community of Evergreen and has a land use designation of Residential – Narrow Parcel One Dwelling (R-1N) District pursuant to Land Use Bylaw 1P2007.

2 The appellants raised concerns regarding the proposed development regarding parking, traffic and impact on the adjacent properties.

3 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 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) is a **use** within the Residential Group in Schedule A to this Bylaw;
- (c) requires a minimum of 1.0 **motor vehicle parking stalls**; and
- (c) does not require **bicycle parking stalls – class 1 or class 2**.

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

5 The application is for a secondary suite located in the basement of an existing single detached dwelling. According to the Development Authority the application requires no relaxations of Land Use Bylaw 1P2007.

6 The appellant Mr. Kempthorne lives on 104 Everoak Close SW to the immediate north of the applicant's property. The appellant Mr. Budzey resides on 131 Everoak Close SW, several homes to the west. Mr. Rob and Mrs. Barbara Zabrowski, the other appellants, reside at 127 Everoak Close SW, directly across the street from the applicant's property.

7 The Board notes that the development and use, the secondary suite, is a discretionary use under Land Use Bylaw 1P2007. Therefore, the application can either be granted or refused based on sound planning considerations.

8 The Board further notes that the subject property is located on the bulb of a cul-de-sac. All properties on the cul-de-sac and the rest of the street, Everoak Close SW, have front driveways. As a result of the location of the pie shaped properties in the cul-de-sac there is no street parking directly available in front of the properties in the cul-de-sac.

9 At the hearing one of the appellants, Ms. Zabrowski, submitted that the applicant operates a janitorial business from the subject property and that materials for the applicant's business are stored in the garage. The applicant stated that they have a commercial cleaning business, and all business related materials are stored at their other home located at 20 Everglen Grove SW and they have home occupation permit. The appellant referenced a photograph showing the garage used for storage, pointed out that at some time there were four polishing machines on the driveway and that there is no room to accommodate another vehicle in the garage. The Board notes that the Development Authority advised that according to its records there is a home occupation – class 1 permit for the subject property and that there is no record of an approved home occupation at 20 Everglen Grove SW.

10 The applicant pointed out that they are participating in the City's program to transform their illegal suite into a legal code abiding dwelling. The Board notes that participation in programs to ensure building regulation compliance is not relevant for the development permit application process. Building regulation falls under the Alberta *Safety Codes Act*, RSA 2000, c S-1 and the Alberta *Building Code Regulation*, Alta Reg 117/2007. It is outside the purview of the Development Authority and, upon appeal, is not within the Board's jurisdiction.

11 Furthermore, the Board notes the Development Authority received correspondence from residents in the vicinity in opposition to the proposed development. One neighbouring resident points out that the houses 76 through 112 only have a small section of the street for visitor and overflow parking and that the secondary suite at the subject property will only complicate the situation (page 32, Board report). The Board also received correspondence from neighbouring residents in opposition to the development and in support of the appeal, including a petition.

12 Although the proposed development does not require a relaxation of the Land Use Bylaw for parking, the Board, based on the evidence, finds that street parking in the cul-de-sac is limited. Photographic evidence was submitted that shows a significant number of vehicles parked on the street on the portions where such is possible. The Board accepts the evidence of the appellants that parking on the street in the vicinity of the subject property is at a premium.

13 Furthermore, the evidence indicates there are several home-occupations/ home-based businesses operated from surrounding properties with clients visiting the premises and associated parking on the street.

14 With respect to the applicant's janitorial business, the Board finds there is contradictory evidence about the applicant's business and whether or not there is storage of associated business materials at the subject property. In the Board's opinion it is questionable whether the applicant's home based business under the Land Use Bylaw meets the requirements of a home occupation – class 1 use or is in a fact a home-occupation – class 2 use which requires an additional parking stall. In addition, under the Bylaw, a home occupation – class 1 use does not allow the use of a private garage for business related activities, including storage. The Board notes that storage of business materials on another residential property and not residing on that property without a class 2 permit for that property, although owned by the same property owner, is not in keeping with the Land Use Bylaw. On the balance of all the evidence, the Board finds that the appellant's home based business activities from the subject property are more than a so-called office/telephone/desk operations type.

15 Having regard to the proposed secondary suite in combination with the applicant's business activities from the subject property, irrespective of whether the applicant's business activities are in compliance with the Land Use Bylaw, the Board accepts the

appellants' evidence and finds that in terms of traffic and parking there is an impact on the adjacent properties.

16 The Board finds that due to the cul-de-sac location, the configuration of the subject lot which has a narrow front property line, and the orientation of its driveway, the parking for the secondary suite, and increased traffic to and from the property, would have an impact on the adjacent properties. In addition, when vehicles are parked on the driveway of the subject property, access to the parking stalls in the garage is limited.

17 From the evidence presented, the Board finds that there would be an overspill of parking resulting from the secondary suite in combination with the single detached dwelling affecting the adjacent properties.

18 The Board, based on the balance of the evidence and aforementioned factors, thus finds that the proposed secondary suite is incompatible with the adjacent development and immediate neighbourhood.

19 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 instance is not appropriate for the subject parcel.

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

21 For the reasons stated, the Board allows the appeal and overturns the decision of the Development Authority.

22 Therefore, the development permit is null and void.

Rick Grol, Chairman
Subdivision and Development Appeal Board

Issued on this 11th day of October, 2013