

**CALGARY SUBDIVISION AND DEVELOPMENT APPEAL BOARD**

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Hearing held at: Calgary, Alberta

Date of hearing: November 07, 2013

Members present: Meg Bures, Presiding Officer  
Kerry Armstrong  
Jo Anne Atkins  
Heather Hiscock

Basis of appeal: This is an appeal from a refusal by the Development Authority for a development permit made on the application of **Jacey Payne** for a **new: secondary suite** at 659 Panora Way NW.

Appeal filed by: **Jacey Payne**

**Description of Application:**

The appeal before the Subdivision and Development Appeal Board (Board) deals with a refusal by the Development Authority for a development permit application for a new: secondary suite at 659 Panora Way NW. The property is located in the community of Panorama Hills and has a land use designation of Residential – Narrow Parcel One Dwelling (R-1N) District.

**Hearing:**

The Board heard verbal submissions from:

Jacey Payne, the applicant/ appellant as well as co-owner of the subject property, in favour of the appeal; and  
[REDACTED], an affected neighbor, 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 the 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 at 659 Panorama Way NW. The

property is located in the community of Panorama Hills and has a land use designation of Residential – Narrow Parcel one Dwelling (R-1N) District pursuant to Land Use Bylaw 1P2007.

2 The Development Authority refused the application in consideration of the land use bylaw rules and the compatibility and impact of the proposed development to neighbouring properties. The application seeks a relaxation for the requirement that a parcel must be a minimum of 9.0 metres in order to accommodate an additional dwelling unit. The bylaw also requires that for both uses (the primary dwelling and the secondary suite) a minimum of 3.0 parking stalls that are no less than 2.85 metres wide must be provided on the site. The plans submitted with the application show that the 8.7 metre wide parcel can accommodate no more than 2.0 parking stalls in the detached garage which results in a deficiency of 1.0 parking stall. The intent of the land use bylaw in regulating Secondary Suites is to ensure that a higher density of residential development be achieved by adequately accommodating the requirements of both dwelling units on the site. Parking is an important factor when evaluating Secondary Suites due to the negative impact that the increase in vehicle traffic and parking demand can have on a residential neighborhood, especially where the lots are narrow. In the Development Authority's opinion, the requested relaxations are excessive and the development exceeds the scope and original intent for a secondary suite. As a result, the application was refused.

3 The applicant/appellant, in her notice of appeal, submitted that although the parking stall required for the secondary suite is only 2.6 metres wide (versus the required width of 2.85 metres), practically speaking, it provides a comfortable parking space. Also, considering Calgary's shortage of affordable housing, the appellant is of the opinion that her secondary suite is otherwise satisfactory and should be approved with a relaxation for the parking stall width.

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 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 122(4) States:

#### **Standards for Motor Vehicle Parking Stalls**

**122 (4)** The minimum width of a **motor vehicle parking stall** required for a **Dwelling Unit** is:

- (a) [...]
- (b) 2.85 metres where one side of a stall abuts a physical barrier;
- (c) [...]

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**.

Section 464 states:

**Parcel Width**

- 464 (1)** The minimum **parcel width** is:
- (a) [...]
  - (b) 9.0 metres for a **parcel** containing a **Secondary Suite**, and
  - (c) [...]
- (2)** [...]

Section 473 states:

**Motor Vehicle Parking Stalls**

- 473** The minimum number of **motor vehicle parking stalls** is 2.0 stalls for a **Single Detached Dwelling** located on a **parcel** with a **parcel width** less than 9.0 metres.

Section 461(h.1) lists “Secondary Suite” as a discretionary use in the R-1N District.

5 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.

6 The application requires the following relaxations:

- (a) With regard to parcel width, a relaxation is required of section 464(1)(b) of Land Use Bylaw 1P2007, which requires a minimum of 9.0 metres, for a parcel containing a secondary suite. The Development Authority indicates that the parcel width is 8.7 metres, which requires a variance of 0.3 metres or 3 percent;
- (b) With regard to the number of parking stalls, a relaxation of sections 295(c) and 473 of the Bylaw which require a total of 3.0 parking stalls on the parcel for both dwelling units. Only 2.0 parking stalls are provided for on site, for the primary dwelling. No parking stall is provided for the secondary suite which results in a variance of 1.0 stall, which is a 100 percent relaxation of section 295 (c) of the Bylaw; and
- (c) With regard to the required width of the parking stall for the secondary suite, a relaxation of section 122(4)(b) of the Bylaw is required. The width of the proposed parking stall for the secondary suite is 2.6 metres, rather than 2.85 metres, requiring a variation of 0.25 metres, or 8.7 percent.

7 The application is for a new secondary suite located in the basement of an existing single detached dwelling. The Board notes from the decision rendered plans that subject property is slightly trapezoidal in shape and that the parcel width along the front of the property is 8.16 metres and 9.22 metres in width along the rear of the property. Therefore, the Board finds that section 464(1)(b) of the Bylaw applies, which requires a minimum parcel width of 9.0 metres for parcels containing a secondary suite.

8 There is an existing two-car garage on the subject property. Parking for the proposed secondary suite is in the form of a gravel pad located at the rear of the property, beside the garage, and accessed from the rear lane.

9 The evidence shows that the parking spot on the gravel pad is bounded on one side by the wall of the garage, and is open to the adjacent property on the opposite side. The Board finds, therefore, that section 122(4)(b) of the Bylaw applies, requiring a minimum parking stall width of 2.85 metres.

10 The appellant explained that the width of the gravel parking pad is 2.6 metres along the rear property line and is of the opinion that this is a sufficient width for parking a car. To illustrate this point, the appellant showed a photo of a car parked at that location. The Board notes that because of the trapezoidal shape of the property, as shown on the decision rendered plans, the width of the front end of the parking stall is even narrower than the width measured along the rear property line. In response to the Board's questioning in this regard, the appellant acknowledged that the parking pad would be narrower at the front end but was unable to provide an estimate of the width at the front of the parking pad. Therefore, because of the shape of the property and

location and orientation of the gravel pad on the lot, the Board finds that required relaxation of section 122(4)(b) of the Bylaw regarding to parking stall width is likely greater than 0.25 metres, or 8.7 per cent as stated above, although the exact amount, in this case, is not material. Irrespective of the above, the Board finds that because the gravel pad does not meet the minimum dimensions for a parking stall, pursuant to section 122(4)(b) the Bylaw, the gravel pad area does not qualify as a parking stall.

11 The Board acknowledges that the appellant is of the opinion that the parking pad is of sufficient size to comfortably accommodate a vehicle, and notes that she provided a photo of a small car parked on the gravel pad. However, the Board's supposition is that the minimum parking stall dimensions stipulated in the Land Use Bylaw are intended to accommodate the substantial variety of vehicle types. Although the appellant's photograph shows that a small car could be parked at the proposed location, 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. Furthermore, the size of motor vehicles of property owners or residents of the subject property could change in the future. Thus the Board places no determinative weight on the appellant's argument.

12 Therefore, based on the above information, the Board finds that the subject property contains only two parking stalls rather than the required three parking stalls for both the primary dwelling and the secondary suite. The Board therefore concurs with the Development Authority that sections 295(c) and 473 of the Bylaw, which require a total of 3.0 parking stalls on the parcel for both dwelling units, has not been met. The Board finds that the two car garage provides the two required parking stalls for the primary dwelling, but that there is no parking stall for the secondary suite, thereby requiring a 100 percent relaxation of section 295(c) of the Bylaw.

13 The Board notes from the decision rendered plans that the layout and floor plans of the primary dwelling and proposed secondary suite show that the entrance to the secondary suite is located at the rear of the building, and that the only entrance to the primary dwelling will be located at the front of the building. The Board also notes that the appellant acknowledged that she parks on the street from time to time, even though there is a two-car garage at the rear of the property. Therefore, the Board finds it likely to expect that the residents of the primary dwelling will park on the street in front of the property, rather than park at the garage at the rear of the property, walk through the amenity space of the secondary suite, and along the entire length of the property, in order to access the entrance at the front of the building.

14 Map evidence shows that Panora Way NW is a crescent shaped street. The subject property and the homes along the same northwest side of Panora Way NW have rear lanes. The Board notes that only the side and the "arm" of Panora Way, where the subject parcel is located, has a rear lane. All of the other "arms" of Panora Way are laneless. Also, the properties on the opposite, "interior" side of the street do not have rear lanes. Both the appellant, and Ms. Rykes, a nearby resident who attended the

hearing and spoke in opposition to the appeal, confirmed that the homes along Panora Way on the opposite side of the street, i.e. the laneless properties, have two-car garages with double-wide front driveways. Upon questioning by the Board, Ms. Rykes explained that because of the predominance of double-wide garages on narrow parcels, there is very little available on-street space between driveways for parking. The Board finds this is a significant factor to be considered.

15 With regard to the amount of on-street parking on Panora Way, the Board notes the following. The appellant explained that she parks her car on the street in front of her house from time to time and does not have any problem finding available on-street parking. However, Ms. Rykes, who lives 6 properties away on the same side and same "arm" of Panora Way, explained that the amount of on-street parking is a problem, especially in the evenings, and that she often has to park around the corner, outside of Panora Way, because of extremely limited parking availability. The Board notes that no photographic evidence was presented by either party to show the on-street parking situation. However, the Board finds it notable that both the appellant and Ms. Rykes, mentioned that they parked on the street, even though, as the evidence indicates, double car garages are common in this neighbourhood. Therefore, based on the evidence presented regarding road configuration, lot widths, and number and sizes of driveways along Panora Way, the Board finds it reasonable to expect that the amount of on-street parking is very limited on Panora Way NW.

16 The Board takes into account that Council expressly and purposively in Land Use Bylaw 1P2007 stipulated a minimum parcel width of 9.0 metres for the use of "Secondary Suite". Having regard to the context and scheme of Land Use Bylaw 1P2007, and its operations, the intent of the Land Use Bylaw clearly is to deem the location of a secondary suite on a parcel with a parcel width under 9.0 metres, from a planning perspective, as not being appropriate.

17 The Board agrees with the Development Authority's opinion that the minimum lot width in the Land Use Bylaw is intended to ensure that a parcel can sustain higher density, and the resulting increased intensity of use, in terms of meeting all requirements of the Bylaw. This includes, but is not limited to, on-site parking requirements. Deficiencies that result from a proposed increased intensity of use on a property, translate directly to a potential impact on the immediate neighbourhood.

18 In this case, the Board finds that the proposed secondary suite, which does not have the required on-site parking, will likely add to, and further exacerbate, the on-street parking concerns in the neighbourhood.

19 Therefore, the Board finds that the proposed secondary suite and its associated intensity of use, especially on a narrow parcel, will have a significant and undue impact on the adjacent properties, as it affects the use and enjoyment of these properties.



20 While the Board finds it commendable that the appellant is endeavoring to develop a secondary suite, in part, to help address the shortage of affordable housing in the city, the fact remains that a secondary suite needs to be an appropriate development for the property in question, and that any required relaxations must be in accordance with the Land Use Bylaw and the *Municipal Government Act*.

21 Although the appellant explained that she has been conditionally accepted to the City of Calgary's Secondary Suite Grant Program, the Board places neither positive nor negative weight on this point. In the Board's opinion, the onus is on the owner of a secondary suite to ensure, first and foremost, that the location is suitable for a proposed secondary suite from a planning and land use bylaw perspective. Participation in such programs is outside the purview of the Development Authority and, upon appeal, is not within the Board's jurisdiction.

22 Having regard to all the evidence, the Board finds the required relaxations significant in both number and magnitude.

23 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, having regard to all the evidence and aforementioned factors, the proposed development and required relaxations have a negative impact on the adjacent properties and the immediate neighbourhood.

24 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.

25 Having regard to the evidence and aforementioned factors, the Board finds that the minimum parcel dimension rule of the Bylaw should prevail in this instance.

26 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.

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

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

29 A development permit shall not be issued.

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Meg Bures, Presiding Officer  
Subdivision and Development Appeal Board

Issued on this 6<sup>th</sup> day of December, 2013

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