

**SUBDIVISION AND DEVELOPMENT APPEAL BOARD****DECISION**

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Hearing held at: Calgary, Alberta

Date of hearing: March 03, 2011

Members present: Meg Bures, Presiding Officer      Rick Grol  
Gian-Carlo Carra    Andrew Wallace

Basis of appeal: This is an appeal from an approval by the Development Authority for a development permit made on the application of **Kenneth John Williams** for a **change of use: secondary suite** at 81 Evansbrooke Way NW.

Appeals filed by: **Gail McLay and Tara Molnar**

**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 change of use: secondary suite at 81 Evansbrooke Way NW. The property is located in the community of Evanston and has a land use designation of Residential – Narrow Parcel one Dwelling (R-1N) District.

**Summary of Evidence:***Board report*

The Board report contains all the materials submitted by the Development Authority that pertain to the application, the notice of appeal and any submissions made by the applicant/ appellant and any other parties to the appeal. All the evidence of the Development Authority is contained in the Board report.

*Hearing*

The Board heard verbal submissions from the following:

Tara Molnar, an appellant, in favour of the appeal; and Kenneth John Williams, the applicant and co-owner of the subject property, in opposition of the appeal.

The Development Authority:

The Development Authority did not make a verbal presentation to the Board. Prior to the hearing, the Development Authority, in response to the appeal, submitted additional factors, considerations and rationale for its decision.

In Favour of the Appeal:

The Board heard from Ms. Molnar who submitted letters of support from affected neighbours; pictures of the subject site and surrounding area demonstrating the parking issues faced by this neighbourhood; an MLS listing for the subject property indicating the existing “mother-in-law” suite and stating the lot width is 10.63 metres; a City of Calgary My Property Report, and a City of Calgary Assessment Summary Report from December 31, 2010 indicating the lot is designated as Residential – Narrow Lot Dwelling and that there is no basement suite. The appellant then raised the following points in favour of the appeal:

- She stated that she and her family have lived at 89 Evansbrooke Park NW for the past eight years.
- There are many illegal secondary suites located within this neighbourhood. The appellant would like the Board to allow this appeal, as it would alleviate some of the parking issues happening within the neighbourhood.

- There is a very serious parking issue within this neighbourhood. There are no lanes in the general area and all homes have double front attached garages. The average lot size is very small and therefore it is very difficult for people to park in front of their homes. The parking problems have started to foster negative relations amongst the residents of this community.
- She referenced the pictures of the subject site that show that the owners and their tenants often double park. There are four very large vehicles that are associated with the subject property. The problems associated with this spill down the street and affect all who live in this area.
- The subject property is currently listed on MLS. It is advertising the existence of a second dwelling unit.
- She referenced the letters in support of this appeal that were submitted at the hearing.

Opposed to the Appeal:

The Board then heard from Mr. Williams, the applicant and co – owner of the subject property. Mr. Williams raised the following points in opposition to the appeal:

- The subject home was originally built in 2004. It was at this time that the original owners had the basement developed. Mr. Williams and his wife bought the property in 2007; there was a complete kitchen in the basement and that they had hoped to use as a summer kitchen for entertaining. At the time, Mr. Williams and his wife were not aware that the suite was considered illegal by The City. When they discovered this, they decided to obtain the appropriate permits instead of removing it. He further stated that there have been no changes made to the suite since they bought the property.
- Approximately a year and a half ago, Mr. Williams' son and his wife and child moved in. They are currently in the process of having their own home constructed in the general area and occupancy is anticipated to occur in either April or May of this year.
- He confirmed that there is a parking issue associated with the subject site. Both Mr. Williams and his son have large trucks, while their wives also have smaller vehicles. There is a double front attached garage but it is currently being used to store Mr. Williams' boat and quads. The garage is approximately 24 feet wide by 22 feet deep, and could therefore accommodate two vehicles. The front drive is slightly larger and can also store two vehicles. Mr. Williams did confirm that if necessary he could find another storage location for his recreational vehicles to ensure all of their cars are kept on site.
- The Board should note that two of the vehicles currently being used by the family will be removed within the next few months when their son and his family move into their new home.

- In addition, Mr. Williams confirmed that there is no key lock on the door separating the main house from the secondary suite. The lock on the door is more akin to what one would find on a bedroom or bathroom door.

**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 with the following amendments/ additions to the conditions of approval.**

**Conditions of approval****Prior to release conditions**

The following are the prior to release conditions. All requirements shall be resolved to the satisfaction of the Development Authority.

1. The applicant shall submit six (6) sets of amended plans (file folded and collated) to the satisfaction of the Development Authority. The amended plans shall include the following:
  - a) Indicate the private amenity space for the secondary suite on the plans;
  - b) Show a minimum of two approved on-site motor vehicle parking stalls;

- c) Annotation clearly indicating which one of the approved on-site motor vehicle parking stalls is designated and assigned for the exclusive use of the secondary suite.

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 conditions are added to the permanent conditions:

4. Unfettered access shall be maintained at all times to at least two on-site motor vehicle parking stalls.
5. One of the two approved on-site motor vehicle parking stalls shall be used exclusively for the use of the secondary suite. Amended plans shall clearly indicate, by way of annotation, which one of the approved on-site motor vehicle parking stalls is designated and assigned for the use of the secondary suite.
6. All motor vehicles belonging to or otherwise associated with the residents of the primary residence and the secondary suite shall be parked on site.
7. The double attached garage shall be used and maintained for the purpose of parking of motor vehicles.
8. The property owner shall reside on the subject property.

### 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 application for a change of use for an attached below grade secondary suite at 81 Evansbrooke Way NW. The property has a land use designation of Residential – Narrow Parcel One Dwelling (R-1N) District pursuant to Land Use Bylaw 1P2007.

2 The Development Authority reviewed the subject application pursuant to the rules of Land Use Bylaw 1P2007, in effect on the date of decision, as they pertain to secondary suites in a Residential – Narrow Parcel One Dwelling (R-1N) District on the grounds that it complied with all provisions of the Bylaw. As such the Development Authority, finding no relaxations to the Land Use Bylaw being sought or granted, deemed the application appropriate and supportable, and approved it with conditions.

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 116 states:

#### **General Rules**

**116** All **motor vehicle parking stalls**, **visitor parking stalls**, **bicycle parking stalls** and **loading stalls** required by this Bylaw for a **development** must be located on the same **parcel** as the **development**.

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 305 states:

**305 “Single Detached Dwelling”**

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

Section 461 states:

**Discretionary Uses**

**461** The following **uses** are **discretionary uses** in the Residential – Narrow Parcel One Dwelling District:

- (a) – (h) [...]
- (h.1) **Secondary Suite**;
- (h.2) **Secondary Suite – Detached Garage**; and
- (h.3) **Secondary Suite – Detached Garden**
- (i) – (m) [...]

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 465 states:

#### Parcel Depth

- 465** (1) Unless referenced in subsection (2), the minimum **parcel depth** is 22.0 metres.
- (2) The minimum **parcel depth** for a **parcel** containing a **Secondary Suite – Detached Garage** or a **Secondary Suite – Detached Garden** is 30.0 metres.

Section 466 states:

#### Parcel Area

- 466** (1) Unless referenced in subsection (2), the minimum area of a **parcel** is 233.0 square metres.
- (2) The minimum area of a **parcel** containing a **Secondary Suite – Detached Garage** or a **Secondary Suite – Detached Garden** is 400.0 square metres.

Section 467 states:

#### Parcel Coverage

- 467** (1) Unless otherwise referenced in subsections (2), (3) and (4), the maximum **parcel coverage** is 50.0 per cent of the area of a **parcel**.
- (2) Unless otherwise referenced in subsections (2), (3) and (4), the maximum **parcel coverage** is 60.0 per cent of the area of a **parcel** where:
- (a) the area of the **parcel** is less than 300.0 square metres; and
  - (b) the **parcel width** less than 8.7 metres.
- (3) Unless otherwise referenced in subsection (4), the maximum **parcel coverage** is 45.0 per cent of the area of a **parcel** where the **parcel width** is greater than 11.0 metres.



- (4) The maximum **parcel coverage** referenced in subsections (1), (2) and (3) must be reduced by 21.0 square metres for each required **motor vehicle parking stall** that is not located in a **private garage**.

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 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**.

4 In addition, the also Board has regard to sections 351, 352 and 354 of Land Use Bylaw 1P2007.

5 Although the Development Authority found that the proposed change of use requires no relaxations, the Board notes a written comment included in the Bylaw check on page 9 of the Board's report, indicating that the necessary outdoor private amenity space, as required by section 353 of the Bylaw, is not indicated on the plans for the proposed secondary suite and that it is required to be shown on plans. The Board further notes that the floor plan for the proposed secondary suite, upon which the Development Authority rendered its decision (page 22 of the Board's report), is indeed missing any indication of outdoor private amenity space.

6 The Board acknowledges the submissions of all parties, including but not limited to the appellants, the applicant, as well as letters and correspondence received regarding the application and appeal.

7 One of the appellants, in their notice of appeal, as well as a number of the letters she provided from community residents, asserted that the area is not suited to secondary

suites because of the narrowness of the lots and the closeness of the homes to each other, which creates an additional degree of residential density. In their opinion, the Evanston community was not designed to accommodate the extra residents and the associated traffic and parking issues that would likely come with the approval of secondary suites.

8 The appellants went on to explain that most of the homes in the community are on narrow lots and virtually all of them have double car garages with wide driveways. As a result, there is very little curb space available for on-street parking. This has resulted in tremendous parking congestion in the community.

9 The appellants' primary concerns appear to be related to the potential for an increase in on-street parking demand resulting from the change of use. In considering all the evidence, the Board notes that the appellants, while having a general concern regarding the potential impact of the proposed change of use on their community, the Board determines that parking is the substantive concern.

10 The Board notes that neither of the appellants lives adjacent to the subject property, and although they live in the same community, the appellants live some distance from the subject property.

11 Nevertheless, the Board has regard to the anecdotal evidence provided by the appellants that there is a scarcity of on-street parking in the community.

12 With regard to the issue of parking associated with the proposed change of use, the Board notes the following: The evidence shows that the width of the subject property is 10.6 metres. Therefore, according to sections 295, 305, and 473 of the Bylaw, the site requires a minimum of one on-site parking stall for the single detached dwelling, and a minimum of one on-site parking stall for the secondary suite, for a total two on-site motor vehicle parking stalls.

13 The Board takes into consideration the evidence that there are two families currently living on site. The applicant and his wife are the owners of the primary residence and the applicant's son and his son's family are currently living in the secondary suite. Between the two families, there is a total of four motor vehicles associated with this residence.

14 In considering the parking concerns of the appellants, the Board notes that, in addition to the existing bedrooms on the dwelling's primary residence, the proposed secondary suite contains one bedroom. As indicated above, a total of four adults reside in the dwelling, two in the proposed secondary suite and two in the primary residence, who have a total of four motor vehicles. Therefore, the Board finds that there is a potential for the proposed use to attract more vehicles than would normally be associated with a single dwelling unit.

15 The applicant explained that the site can accommodate a total of four motor vehicles on-site: two in the attached double car garage, and two on the double-wide driveway in front of the garage.

16 The applicant further explained, however, that only two of the four vehicles associated with the residence are parked on-site on the driveway. The remaining two are parked on the street. None of their motor vehicles are parked inside the double attached garage because there is no room; the garage is currently being used for storing a boat, all terrain vehicles and other recreational equipment.

17 Upon questioning by the Board, the applicant confirmed that, if required, he would be able to remove the boat and all terrain vehicles from his garage and store them at another location, in order to make room to park two vehicles inside his garage.

18 Regarding the appellants' concerns regarding the appropriateness of secondary suites in a community that is predominantly narrow, closely spaced lots, and their assertion that the proposed change of use to include a secondary suite may not comply with the Bylaw requirements for the land use in this area, the Board notes the following.

19 According to section 461 of the Bylaw, secondary suites are a discretionary use in this area, which has a land use designation of R-1N. Furthermore, according to sections 464, 465 and 466 of the Bylaw respectively, the subject parcel's width, depth and area are such that it can accommodate a secondary suite.

20 As indicated above, the site requires a minimum of two on-site parking stalls. The Board notes that a calculation of the maximum allowed parcel coverage of the subject site complies with section 467(4) of the Bylaw, regardless of whether one, or even two, of the required motor vehicle parking stalls were to be located on the driveway, instead of inside the attached private garage. In the Board's view the garage should be used for the parking of motor vehicles so that all vehicles owned or otherwise associated with the residents of the primary residence and the secondary suite can be accommodated on site.

21 The Board agrees with the Development Authority's conclusion that the proposed use respects the rules of the Bylaw and requires no relaxations.

22 As a result, the Board finds that, based on all the evidence, and on sound planning principles, the change of use is acceptable, but providing that a number of specific conditions are imposed to address the issue of parking, so as not to contribute to the on-street parking challenges already existing in the community.

23 Because the residents of the primary residence and the residents in the proposed secondary suite have a total of four vehicles between them, and considering the requirement for a minimum of two on-site motor vehicle parking stalls, as well as the applicant's statement that he would be able to make room in his double attached garage

to accommodate two motor vehicles, the Board finds it necessary to impose conditions to achieve those results in order to comply with the requirements of the Bylaw.

24 Based on the evidence and having regard to sound planning principles, the Board therefore determines that imposing the following four conditions is necessary from a planning perspective in order to prevent any potential parking issues, which may result from the proposed use:

- a.) Unfettered access shall be maintained at all times to the required approved on-site motor vehicle parking stalls;
- b.) One of the two required on-site parking stalls shall be designated for the exclusive use of the secondary suite and indicated as such on the amended plans;
- c.) The double attached garage must be used and maintained for the purpose of parking two motor vehicles; and
- e.) All motor vehicles belonging to or otherwise associated with the residents of the primary residence and the secondary suite shall be parked on site.

25 In addition, to ensure that parking remains at all times available and accessible for the parcel's approved uses, the Board determines it appropriate to impose a condition requiring amended plans showing unfettered access to at least two approved parking stalls, and clearly designating, by way of an annotation, that one of the two required parking stalls is being assigned to the proposed use.

26 The Board also requires amended plans clearly indicating the necessary outdoor private amenity space, as required by section 353 of the Bylaw.

27 Having regard to sound planning considerations, the Board imposes the further condition that the property owner must reside on-site as part of the approval of the secondary suite.

28 The Board, in weighing all the evidence presented during the hearing, and having regard for sound planning rationale, finds that the proposed change of use, based on the amended plans and proposed conditions, is in keeping with the rules and intent of Land Use Bylaw 1P2007, and is a use appropriate in form and function relative to the adjacent developments and the general neighbourhood.

29 The Board finds that the application warrants approval, subject to imposing additional conditions of approval.

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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Meg Bures, Presiding Officer  
Subdivision and Development Appeal Board

Issued on this 28th day of March, 2011

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