

Appeal No.: 0262 003 2012
Hearing Held: 22 August 2012

SUBDIVISION & DEVELOPMENT APPEAL BOARD DECISION

CHAIR: R. MOISEY
PANEL MEMBER B. FARR
PANEL MEMBER F. JOYNT
PANEL MEMBER G. LEASAK
PANEL MEMBER: C. STEPHAN

BETWEEN:

MULTIPLE WOODLEA LANDOWNERS
Represented by Laura Turner & Rick Doucet

Appellant

and

CITY OF RED DEER
MUNICIPAL PLANNING COMMISSION
Represented by Vicki Swainson

Development Authority

and

TYLER & JESSICA BRAKE

Applicant

DECISION:

MOVED by F. Joynt; seconded by B. Farr:

RESOLVED that the Subdivision and Development Appeal Board having heard all of the parties who wished to speak both in favour and against the appeal filed by L. Turner & R. Doucet (on behalf of multiple landowners) regarding the Municipal Planning Commission's July 11, 2012 approval of an application for the development of a detached garage to be located at 5141 45 Avenue (Lot 10; Block H, Plan K9) CONFIRMS the decision of the Municipal Planning Commission (MPC) and denies the appeal. A 1.5 metre relaxation to the maximum height requirement is granted and the development is approved subject to the following:

- I. The Applicant is required to install landscaping at the rear of the garage that will provide screening.

CARRIED
3 in favour
2 opposed

BACKGROUND:

1. The subject property is located at 5141 45 Avenue and is zoned R1 – Residential (Low Density) District. The neighbourhood is known as the Woodlea Neighbourhood which consists of both new and original (or restored) bungalows and two storey single family dwellings.
2. *The City of Red Deer Land Use Bylaw #3357/2006* as amm. (LUB) restricts the maximum height for an accessory building to 4.5 meters.
3. On July 11, 2012 the MPC approved an application for the development of a detached garage (an accessory building in the LUB) with a height of 6.0 meters – granting a 1.5 meter (33.34%) relaxation to the LUB requirements.
4. Multiple landowners in the area have appealed the decision of the MPC to this Board.

ISSUES / ARGUMENTS:

SCALE OF THE PROPOSAL

5. The Appellant submitted that the proposed garage has an area of 92 m² which is not in scale with the house (111 m²) and is incongruent with other homes in the area.
6. The Development Authority stated that the LUB limits the portion of a site that can be covered by buildings at a maximum of 40% and the site coverage of the proposed covers only 17.46% of the site.
7. The Development Authority also stated that if the proposed garage were larger than the dwelling, the application would be considered an area redevelopment and be subject to s. 4.7(2) of the LUB which allows the Development Authority to require increased development standards in order to maintain the character of existing neighbourhoods.
8. The Applicant stated that the reason the proposed garage is not in scale with the house is because they are not redeveloping the house at this time. Currently, the property does not have a garage and it is needed for storage, therefore they want to develop the garage first. He stated that when the house is redeveloped the footprint will be larger than the existing dwelling and will match the proposed garage.
9. A written submission from an area landowner was received in support of the proposed garage, stating that a detached garage is less conspicuous than a front attached garage would be.
10. The proposed development complies with the LUB with respect to site coverage. For this reason, the Board finds that scale is not an issue in this application. The submission of the Appellant that the proposed garage is incongruent with other homes in the area is explored in more detail under 'Character / Impact on Neighbourhood'.

HEIGHT RELAXATION

11. The Appellant submitted that other garages in the area have between 8/12 – 10/12 pitches while the proposed garage has a 2/12 pitch. The Appellant also submitted that other garages in the area have

been granted height relaxations in the range of 10-20% and that by comparison, the requested relaxation of 33.34% combined with a 2/12 pitch is excessive.

12. The Development Authority stated that their original recommendation (to the MPC) was that the application be denied and that the recommendation was based on an existing practice of not supporting any development applications with relaxations that exceed a 10% variance from the LUB.
13. The Development Authority submitted that, of the garages in the immediate area, there are 3 that have been granted height variances in the amounts of 1.37 meters (height of 5.87 meters); 0.77 meters (height of 5.27 meters) and 0.67 meters (height of 5.17 meters).
14. The Applicant stated that the proposed garage has been designed to accommodate hobbies including a car lift (total 12 feet 6 inches in height - 7 foot 6 inch lift plus 5 foot car height) for restoring old cars and a loft area for an art studio.
15. To assist in determining whether or not the height relaxation is excessive, the Board considered and made the following findings:
 - a. Practice of Development Authority: the Development Authority uses a 10% variance as a means to determine whether or not to support an application. Because the Development Authority evaluates and approves or denies all applications for development, it is reasonable for the Board to conclude that more than a 10% variance could be considered unusual or excessive.
 - b. Garages in the immediate area: the Board was presented with verbal and photographic evidence of existing garages in the immediate area which was not disputed by the Appellants or the Applicant. While the Board cannot positively confirm that the LUB requirements that were applied to the garages in the area are identical to the ones being applied to the proposed garage, given the long term existence of the neighbourhood, the Board believes they are likely the same and can therefore consider them as a demonstration of what is acceptable. The requested relaxation is similar to other garages in the area and in particular, is only 6 inches (approximately) higher than the garage with a 5.87 meter relaxation. In this regard, the Board does not find the relaxation to be excessive.
 - c. A number of concerns regarding the proposed garage were advanced by the Appellants - of which many related to the character of the neighbourhood which is explored in more detail later in this decision. Concerns such as sight lines were not advanced to the Board.
16. Based on the above analysis, the Board does not find the proposed height relaxation to be excessive.
17. The LUB does not regulate roof pitch. The pitch of the proposed garage is explored in more detail later in this decision.

CONFIGURATION OF GARAGE

18. The majority of garages have vehicle entrances that face an alley or roadway. The entrance to the proposed garage faces the dwelling. The Appellant argued that this creates a long driveway that is located 3-4 metres deeper into the backyard than neighbouring garages. The Appellant also stated that a front facing entrance is not compatible for using the garage.

19. The Development Authority stated that the LUB does not regulate driveways provided that minimum landscaping requirements can be met. The proposed garage complies with the minimum 35% landscaping requirement.
20. The Applicant explained that the reason the proposed garage doors face the dwelling is two-fold: first is for increased security and second is for ease of access between the dwelling and the garage.
21. The LUB does not regulate the configuration of the garage. The configuration of the proposed garage is explored in more detail later in this decision.

USE OF GARAGE

22. The Appellant noted that the proposed garage includes the installation of water and sewer lines which raises concerns that it could be used as a living space and / or commercial purposes.
23. The Development Authority stated that improper use of the proposed garage would be subject to enforcement and penalties under the LUB or other applicable bylaws. The Development Authority also stated that a garage is considered an 'accessory building' in the LUB which allows for them to be used for purposes other than a garage, such as greenhouses or work shops.
24. The Applicant reiterated that the proposed garage will be used for storage and hobbies and they do not intend any other use.
25. The Board did not receive any evidence that would support the speculation of the Appellants. If another use is desired by the Applicant, it would require an application to The City of Red Deer and be subject to the LUB or other applicable bylaws. The Board does not find use of the proposed development to be a concern.

CHARACTER / IMPACT ON NEIGHBOURHOOD

26. Section 687(3)(d) of the *Municipal Government Act*, R.S.A. 2000, Ch. M-26 (the MGA) speaks specifically to the impact an application has on the neighbourhood. It states that the Board:

“may make an order or decision or issue or confirm the issue of a development permit even though the proposed development does not comply with the land use bylaw if, in its opinion,

(i) the proposed development would not

(A) unduly interfere with the amenities of the neighbourhood; or

(B) materially interfere with or affect the use, enjoyment or value of neighbouring parcels of land”

27. Following is a summary of issues, arguments and Board findings relative to the character of the neighbourhood and the potential impact of the proposed garage on the neighbourhood.
 - a. Decision of MPC: The Appellant stated that when MPC made its decision, it did not consider the character of the neighbourhood. The Appellant also stated that landowners in the area did

not attend the MPC meeting because the Development Authority made a recommendation to the MPC to deny it.

The Development Authority stated that prior to making its decision; the MPC received copies of all written comments from area landowners as well as heard from those in attendance at the meeting. The Development Authority concurred that they provided a recommendation to deny the application to the MPC but added that they also provided a proposed resolution (which was passed) for the MPC to consider if the application were approved.

The report from the Development Authority provides a synopsis of the MPC meeting of July 11 (Exhibit 1, Page 10) as well as copies of written submissions received in relation to the proposed development. The synopsis states that MPC gave consideration to the number of over height garages in the neighbourhood and the size of the lots. The Boards finds that over height garages in the area and the size of the lots are both considerations that relate to the character of the neighbourhood. Further, the decision of MPC included a condition that the Applicant install landscaping that will screen the proposed development from the lane. Screening of the proposed development will impact how it is perceived by the neighbourhood; therefore the Board believes the condition demonstrates the MPC considered the character of the neighbourhood prior to making its decision.

- b. Future Front Drive: The Appellant expressed concerns regarding a future driveway area shown on the site plan (Exhibit 2 Page 3) – specifically whether it would become a front garage. The Appellant stated that a future front drive will erode the streetscape.

The Applicant stated that streets in Woodlea are narrow which limits on street parking. The future front drive would allow visitors to park off the street which will reduce on street parking strain.

The future front drive is not included in this application and was not considered by the Board.

- c. Height: The Appellant stated that height of the garage does not fit in with the area. To support that statement, she provided photographs of homes in the neighbourhood (Exhibit 1, Pages 5-6). The Appellant stated that the LUB is not comprehensive enough to protect the character of Woodlea. The Appellant stated that the creation of a long driveway (to accommodate front facing garage doors) will interfere with the neighbours enjoyment of their backyard and that the doors will be an eyesore.

The Applicant stated that he believes the proposed development fits in with the area and that future redevelopment of the dwelling will completed to match the garage.

The Development Authority provided photographs of 3 similar garages (Exhibit 3) and stated that the impact of the proposed development would be similar. The Development Authority believes that any negative impact from the proposed development is mitigated by the large size of the lot and additional landscaping requirements.

The pitch and configuration of the proposed development is not regulated by the LUB. The height of the proposed development is the only thing that does not comply with the LUB. If a

development is a permitted use and complies with the LUB it may not be appealed (MGA s. 685(3)) therefore, determination of whether or not the height of the garage is in keeping with the character of the neighbourhood is a point on which this decision turns.

In this regard, the Board was provided with photographic evidence by the Appellant (Exhibit 1, Pages 5-6) and the Development Authority (Exhibit 3, Pages 7-11). The Appellant's photographs showed the front and rear of 2 separate properties, the photographs did not include garages. The Development Authority's photographs showed garages in the neighbourhood, 3 of which exceed the maximum height allowance.

This demonstrates to the Board that the proposed garage development will fit in with the characteristics of the neighbourhood.

- d. Impact of Proposed Development: The Appellant stated that noise levels coming from garages are naturally louder (i.e. use of power tools) and is typically buffered from neighbours by the garage itself. In this case, due to the configuration of the doors (facing the house) the Appellant believes that the noise from the garage and the vehicles accessing it will interfere with the neighbours enjoyment of their yard.

The Development Authority stated that the LUB does not regulate which way the doors for a garage must face.

The proposed development is a garage which is secondary or supplemental to the dwelling. While the Board agrees that the location of the garage doors is likely to result in the neighbours being aware of vehicles and the residents accessing the garage, nothing was presented to support that the proposed development would unduly or materially interfere with the neighbours use of their property.

CLOSING:

For the reasons detailed above, this appeal is denied and the development is approved subject to the conditions indicated on page 1 of this decision.

This decision can be appealed to the Court of Appeal on a question of law or jurisdiction. If you wish to appeal this decision you must follow the procedure found in section 688 of the Municipal Government Act which requires an application for leave to appeal to be filed and served **within 30 days** of this decision.

Dated at the City of Red Deer, in the Province of Alberta this 04th day of September, 2012 and signed by the Chair on behalf of all five panel members who agree that the content of this document adequately reflects the hearing, deliberations and decision of the Board.



R. Moisey, Chair
Subdivision & Development Appeal Board

EXHIBIT LIST

- Exhibit 1.....Agenda: pp 1-23
Exhibit 2.....Applicant written submission
Exhibit 3.....Development Authority photographs