

Appeal No.: 0262 002 2012

July 23, 2012

SHUNDA CONSULTING & CONSTRUCTION  
6204 46 AVENUE  
RED DEER, ALBERTA T4N 7A2

**-and-**

INSPECTION & LICENSING  
4914 48 AVENUE  
RED DEER, AB T4N 3T4

VIA EMAIL: [I.slater@shunda.ca](mailto:I.slater@shunda.ca)  
(paper copy to follow)

VIA EMAIL: [vicki.swainson@reddeer.ca](mailto:vicki.swainson@reddeer.ca)  
(paper copy to follow)

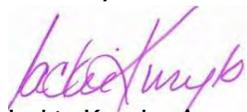
**RE: SUBDIVISION & DEVELOPMENT APPEAL BOARD DECISION  
3509 49 AVENUE – THREE UNIT MULTI ATTACHED BUILDING**

Dear Sir/Madam:

Further to the above referenced hearing, the Subdivision & Development Appeal Board has made the attached decision.

If you have any questions concerning these matters, please contact the Subdivision Development Appeal Board Clerk at 403.342.8132.

Cordially,



Jackie Kurylo, Appeals Coordinator  
Clerk, Subdivision & Development Appeal Board

c.c. Peter Bouwsema (PJB Design Consultants – via email only [peter@pjbdesign.com](mailto:peter@pjbdesign.com))

Appeal No.: 0262 002 2012  
Hearing Held: 10 July 2012

SUBDIVISION & DEVELOPMENT APPEAL BOARD DECISION

CHAIR: R. MOISEY  
PANEL MEMBER B. FARR  
PANEL MEMBER G. LEASAK  
PANEL MEMBER P. MCGREGOR  
PANEL MEMBER: C. STEPHAN

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**BETWEEN:**

SHUNDA CONSULTING & CONSTRUCTION MANAGEMENT LTD  
Represented by P. Bouwsema, PJB Design

Appellant  
(Applicant)

and

CITY OF RED DEER  
MUNICIPAL PLANNING COMMISSION  
Represented by V. Swainson

Development Authority

**DECISION:**

MOVED by B. Farr; seconded by P. McGregor:

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 Shunda Consulting & Construction Management Ltd. regarding the Municipal Planning Commission's May 23, 2012 denial of an application for the development of a 3 unit multi-attached building located at 3509 49 Avenue (Lot 5; Block 2, Plan 832ET) REVERSES the decision of the Municipal Planning Commission (MPC) and allows the appeal. The development is approved subject to the following:

1. The Applicant must apply and pay for a driveway crossing onto 49<sup>th</sup> Avenue that complies with the engineering standards of the City of Red Deer;
2. The Applicant must submit a site drainage plan that complies with engineering standards of the City of Red Deer;
3. The Applicant must submit, prior to construction, a fire safety plan which includes protection of adjacent buildings and complies with emergency services standards of the City of Red Deer; and
4. The Applicant must install the 'optional connecting sidewalk' shown on the revised site plan submitted to the Board (page 6 Exhibit A).

CARRIED  
I opposed

**BACKGROUND:**

On May 23, 2012 the MPC denied the application for a discretionary 3 unit multi-attached building (2 three bedroom units plus 1 two bedroom unit) for the following reasons:

- The proposal on this existing isolated parcel creates an overdevelopment of the site.
- A 43.4% relaxation to the site area is excessive.
- A large amount of mature landscaping is being removed and not being replaced on the site.
- The two rear parking stalls allocated to the middle unit are not easily accessible for the occupants.

In their submissions to the Board, both Parties agree that the information presented to the MPC with respect to the site area relaxation was incorrect. The MPC believed the relaxation needed to be 43.4%. The actual requested relaxation for site area is 18.33% (121.92 m<sup>2</sup>).

Additionally, the Applicant provided the Board with a revised site plan dated July 3 (page 6 Exhibit A). The Development Authority did not object to the consideration of this plan. This is the plan on which the Board bases its decision.

**FACTS / OVERVIEW:**

The subject property is located in the South Hill neighbourhood which is an area that has undergone a number of changes including the development of other multi-family units including three storey apartments located on the south, north and west sides of the subject property.

The subject property is a corner lot with an area of 542.9m<sup>2</sup>. It is 13.7 meters wide and 39.6 meters deep. It is zoned as medium density residential (R-2) and multi-attached buildings are considered discretionary.

**ISSUES / ARGUMENTS:**

**SIDE YARD RELAXATION / ORIENTATION OF PROPOSED DEVELOPMENT**

The Appellant and the Development Authority disagree on the minimum side yard requirements found in *The City of Red Deer Land Use Bylaw #3357/2006* as amm. (LUB). Section 4.4 of the LUB sets out the regulations that pertains to R2 zoning and includes the following table (replicated in part):

Regulations	Requirements
Side Yard Minimum	Multi-attached (without side entry): 1.8 m Multi-attached (with side entry): 2.4 m

The Development Authority interprets this to mean the proposed development must have minimum 2.4 meter side yards.

The position of the Applicant is that the north side (36<sup>th</sup> Street) should be considered the ‘front’ of the subject property (which has a 6.0 meter front yard and would not require a relaxation) and the east (lane) and west (49<sup>th</sup> Avenue) sides of the proposed development should be considered the ‘side yards’ of the property (both of which have in excess of 2.4 meter side yards). Based on this orientation, both the front and side yards would comply with the LUB.

The address for the subject property is 3509 49 Avenue. Additionally, the alley on the revised site plan is shown on the east side of the site plan, as are the garbage bins. When possible, garbage collection occurs in a rear alley so as not to impede normal traffic flow. For these reasons, the Board finds that the front of the proposed development is the west side (49<sup>th</sup> Avenue). Given this finding, the proposed development requires 2.4 meter setbacks on the north and south side of the subject property therefore the proposed development requires a .06 meter relaxation on the north side and .57 meter relaxation on the south side both of which the Board finds to be minimal for the development.

#### FRONTAGE (WIDTH) RELAXATION

The proposed development has a frontage of 13.7 meters. The LUB requires 22.0 meters which results in a 37.6% (8.3 meter) relaxation. The Applicant argues that the relaxation required is mitigated by two factors: first that it is a corner lot and second that (although they cannot technically be counted) there are substantial boulevards (3.6 meters) on both the west (49<sup>th</sup> Avenue) and north (36<sup>th</sup> Street) sides of the subject property.

The Development Authority stated that many multi-attached developments require a frontage relaxation due to the evolving definition of 'multi-attached' (originally meant to address row housing) and advised that a LUB amendment is pending to address it.

Although the relaxation is seems significant at 37.6%, the Board does not believe it to be excessive for this site because in addition to representation by the Development Authority that a LUB amendment is pending to adjust this requirement, neither the MPC or the Development Authority stated that it was a concern.

#### SITE AREA RELAXATION

The proposed development requires an 18.33% relaxation in the total allowable site area. Similar to the arguments relating to the frontage relaxation, the Applicant argues that this is mitigated by the fact that the lot is a corner lot and that there are substantial boulevards (3.6 meters) on both the west and north sides of the subject property.

As noted earlier in this decision, the Development Authority stated that the MPC incorrectly believed the relaxation needed was 43.4%. The Development Authority also advised that the purpose of site area regulations is to ensure the site has adequate parking, landscaping and yard setbacks.

The Board does not find the requested 18.33% relaxation to be excessive. It is a corner lot with large boulevards which mitigates any negative aesthetic impact from the relaxation. There is also sufficient parking and landscaping which meets the intent of the regulation as stated by the Development Authority.

#### PARKING

Six parking stalls are required to comply with the LUB. The proposed development meets that requirement. The MPC cited concerns over ease of access for the occupants of the middle unit (specific to two of the stalls) as one of its reasons for denial. The updated site plan relocates the two stalls for the middle unit more to the north and includes the installation of a strip of landscaping to delineate it.

Section 3.2(2) of the LUB sets out parking standards for all districts and speaks only to unobstructed driving aisles:

Subdivision & Development Appeal Board 4914 48 Avenue Phone: 403-342-8132 Fax: 403-346-6195

Box 5008 Red Deer, AB T4N 3T4 SDAB@reddeer.ca

*'All parking areas must have access to individual parking spaces by means of unobstructed driving aisles satisfactory to the Development Authority.'*

The Board interprets this section as being applicable to accessibility of the stalls by vehicular means, not accessibility of the stalls by occupants of the residence. However, the requirement of the proposed development to provide parking stalls is (presumably) to ensure that residents will use the stalls onsite rather than on street parking. There is nothing on the revised site plan that would prohibit access of the stalls by the occupants. The Board believes that installation of the 'optional sidewalk' as shown on the revised site plan (Page 6 Exhibit A) will encourage the use of onsite parking.

#### IMPACT ON NEIGHBOURHOOD

The Appellant stated that the proposed development would be an asset to the neighbourhood. To support this statement he noted that no letters of objection were received either by the MPC or the Board. He noted that the proposed development will have a similar look to the building across the street; that the proposed development exceeds the minimum rear yard required and is under the maximum height and lot coverage requirements.

The Development Authority originally recommended to the MPC that the proposed development be approved. She advised the Board that the South Hill neighbourhood is undergoing significant re-development and referred to s. 4.7(2) (a) of the LUB which allows for (but does not require) increased development standards for proposed developments that would match the standards of the existing development. It is their position that given the surrounding developments (3 storey apartment buildings) a single family dwelling would not be a suitable use of the lot.

The Board heard from two area landowners with the following concerns:

- Whether or not the proposed development would be owner occupied. The landowner stated that rental properties tend to attract transient people and suggested that may be a contributing factor for increased crime in the area. The Development Authority advised that The City of Red Deer does not regulate rental properties.
- Traffic congestion – the landowner expressed concern for potential traffic congestion and cited the South Hill area on the west side of Gaetz Avenue as an example of poor traffic flow.
- Landscaping – the first area of concern relevant to landscaping pertained to the removal of mature trees that used to be on the site. The second concern related to location of new landscaping – the mature tree roots had been negatively impacting the parking lot of the building next to the subject property. The Appellant indicated that he would be willing to install mature landscaping to mitigate the removal of the trees (that has already occurred). He also acknowledged the problem that existed because of the mature tree roots and confirmed that there is no plan to replace the trees in that location.

The authority of the Board is limited to evaluating the merits of the proposed development as it relates to the LUB and related legislation. The Board is aware that many issues common to rental properties are addressed under bylaws other than the LUB and contain alternate ways in

which concerns can be addressed. The Board has no authority over whether or not rental properties are owner occupied.

There was no evidence given to the Board that would indicate that traffic congestion is an issue in this neighbourhood or if it does exist, that it could be attributed to the proposed development; or that the proposed development would have a negative impact on existing traffic patterns in the area once constructed. So, while the Board values the comments of the area landowners, traffic congestion has not been established as having a negative impact on the area and therefore is not a basis on which to deny this application.

Further, the Board notes that some concerns such as traffic congestion could potentially be addressed in an Area Redevelopment Plan. However, there was no indication that an Area Redevelopment Plan exists for this neighbourhood or that one is being considered.

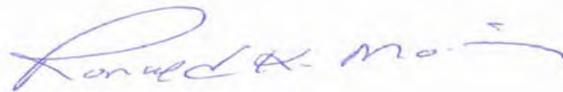
Last, the mature trees on the subject property identified by an area landowner as a concern have already been removed (at time of hearing). Further, even if they hadn't been removed, the LUB does not regulate trees on private property and therefore the Board would have little jurisdiction to deal with them.

**CLOSING:**

For the reasons detailed above, this appeal is allowed 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 23 day of July, 2012 and signed by the Chair on behalf of all five panel members who agree with this decision.



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R. Moisey, Chair  
Subdivision & Development Appeal Board

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EXHIBIT LIST

- Exhibit 1 .....Agenda: 14 pages
- Exhibit 2 .....8.5 x 14 inch artist rendering of proposed development
- Exhibit 3 .....Development Authority photographs