



**SUBDIVISION AND DEVELOPMENT APPEAL BOARD
OF THE TOWN OF OKOTOKS
DATED June 22, 2016**

DECISION

- Hearing held at: Town of Okotoks Municipal Centre
Council Chamber
5 Elizabeth Street, Okotoks
- Date of Hearing: June 8, 2016
- Members present: Jasse Chan, Chair
Councillor Carrie Fischer
Councillor Matt Rockley
Corey Brandt
Andrew Cutforth
Fred Keen
Gerry Melenka
- Member absent: Kelly Rogers
- Staff present: Wendy Cardiff, Development Officer
Mandy Wong, Development Officer
Karen Humby, Recording Secretary
- Board Solicitor: Chris Davis, Christopher Davis Law
- Summary of Appeal: Appeal against the decision of the Okotoks Municipal Planning Commission to approve Development Permit Application Number 125-16 for a 32 Unit Attached Housing Development and Associated Freestanding Signage with the following variances:
1. Section 9.1.3(b) [Projections Over Setbacks] to allow the development with a cumulative deck projection of 25.45m² per building into the rear yard where the maximum is 12m², a variance of 13.45m²;
 2. Section 9.1.3(b) [Projections Over Setbacks] to allow the development with a cumulative cantilever projection of 9.72m² per building into the rear yard

- where the maximum is 2.5m², a variance of 7.22m² per building;
3. Section 9.3.8(c) [Tandem Parking] to permit tandem parking in attached houses where the overall parking provision is less than 2.5 spaces per dwelling unit;
 4. Section 10.6.6(a) [Freestanding Signs] to permit a freestanding monument sign in the R-MD District;
 5. Section 17.4.1(b) [Area of Site] to permit the development with a site area of 110.4m² per dwelling unit where the minimum required is 279m², a variance of 168.6m² or 60% per dwelling unit; and
 6. Section 17.5.1(a) [Building Height] to permit the development with three storeys where the maximum is 2 storeys.

Appeal filed by: Gordon White on behalf of residents of the community.

Summary of
Grounds for Appeal:

"We are writing on behalf of a group of Okotoks residents appealing development permit (DPA 125-16) for a 32 unit residential development located at 103 McRae Street. Our primary reason for the appeal is the number and extent of variances that were granted by the Town of Okotoks in approving the development permit. By granting these variances, the town has approved a development that differs substantively from the building type, scale and character of development allowed under the R-MD zoning. Zoning provides certainty to neighbouring residents regarding the type of development that will be permitted in their community and residents expect that the rules of the zoning be adhered to. If a developer is proposing a development that varies as extensively from the current zoning as the proposed development does, a re-zoning application should be submitted. The re-zoning application would then go through the proper channels of community consultation, a public hearing and decision by Council.

Below you will find a summary of each of the variances granted and how each of them will negatively impact the use and enjoyment of our property.

- Section 17.4.1 (area of site). The land use by-law states that a site area of 279 square metres is required for each dwelling unit. Based on the size of the site, a total of 12 units are allowed on the site. With 32 units, the development will have 20 (almost three times) more units than permitted in the zoning. This increase represents an

amount of intensity on the site that does not conform to the zoning and we believe that if a developer is proposing a development that will vary so greatly than what the community is expecting to be built based on the approved zoning a rezoning application should be made.

- Section 17.5.1(a) (building height). The R-MD zoning allows two storeys of building on the site where the development will have three. Again, we believe this represents that a major divergence from the permitted zoning and that such a change should be requested through a rezoning application. The increase in storeys of height will result in a development that is not in alignment with the character that is expected by members of the community.
- Section 9.3.8(c) (tandem parking). The land use by-law states that tandem parking be allowed in attached houses where the overall parking provision is greater than 2.5 stalls per unit. By granting a relaxation to this rule, there will be an insufficient number of parking stalls available for residents of the development. This will lead to an increase of number of these residents parking on neighbouring streets, which are already very congested with parking. We believe that the number of required parking stalls should be met on site.
- Section 9.1.3(b) (projection over setback). Two separate major variances have been granted in relation to projections over setbacks. The cumulative deck projection variance represents a variance of over 2 times than the allowed projection and the cumulative cantilever projection represents a variance of over 3 times than the allowed projection. The extent of variances results in a development substantially different that is expected under the R-MD zoning.

Although we understand that the town has a certain level of discretion in granting variances, the extent of the variances granted in approving this development is unacceptable. We do not believe the town has the authority to approve a development with close to 3 times the number of units allowed and a full extra storey on a building that is allowed to only have two storeys. In this regard, we are requesting that the approval of the development permit be refused.”

Appeal Filing:

The Subdivision and Development Appeal Board (the “Board”) finds that the Appeal was properly filed within the time allowed, pursuant to Sections 685 and 686 of the *MGA*.

The appeal form was filed with the Board on May 11, 2016. The Notice of Decision from the Municipal Planning Commission was published in the Okotoks Western Wheel on April 27, 2016.

The appeal was filed by Gordon White on behalf of residents of the community.

Notice of Hearing:

Section 686 and Section 606 of the *MGA* set out requirements for giving notice of an appeal hearing. The Town of Okotoks Land Use Bylaw No. 40-98 (the "Land Use Bylaw") does not set out requirements for giving notice of an appeal hearing regarding a development permit application.

Written notice of the hearing was provided at least five (5) days in advance of the hearing (counting the seven (7) days presumed for regular mail) to: the Appellant, the Applicant (also the Property Owner), the Town, and those persons identified by the Board as "affected" persons.

As an alternative (and in addition) to personally delivered notice, notice of the hearing was also published in two issues of the Western Wheel, both issues being published more than five (5) days prior to the hearing.

The Board heard verbal submissions from the following:

- Wendy Cardiff, Development Officer;
- Mandy Wong, Development Officer;
- Gordon White, Appellant;
- Cheryle Dobbyn of Turner Valley, AB, supporting the appeal;
- Elizabeth Welton of 27 Maple Street, supporting the appeal;
- Dave Welton of 27 Maple Street, supporting the appeal;
- Jeremy Bernstein of 85 South Railway Street, supporting the appeal;
- Heather James-Davies of 85 South Railway Street, supporting the appeal;
- Rob Boyd of 66 Cimarron Meadows Way, supporting the appeal;
- John Craig of 81 South Railway Street, supporting the appeal;
- Murray McBain of 114 McRae Street, supporting the appeal;
- Don Lindell of 25 Maple Street, supporting the appeal;
- Jean Adamson of 29 Poplar Avenue, supporting the appeal;
- Brenda Edstrom of 49 South Railway Street, supporting the appeal;
- Asha Szakalski of 26 Maple Street, supporting the appeal;
- Peter Newman of 15 Lineham Avenue, supporting the appeal.
- William Bradley of MODhaus, on behalf of and representing the owner, Sahota S B Investments Inc., against the appeal;
- Charles Lemieux of 2 Lineham Avenue, against the appeal;

- Terry Moore of High River, AB, against the appeal;
- Jennifer Garces of High River, AB, against the appeal;
- Val LaRock, Municipal District of Foothills, AB; against the appeal; and
- Ed Povhe of 52 North Railway Street, neither supporting nor against the appeal;

The Board reviewed the Agenda Package prepared by Town Administration and directly received written submissions from the following:

- Letter dated May 10, 2016 from the Appellant, Gordon White, which formed part of the Development or Subdivision Appeal Form Application included in the Agenda Package. Submitted at the meeting, which was not part of the Appeal Application, were photographs of the neighbourhood;
- Letter dated May 24, 2016 from Dave and Elizabeth Welton of 27 Maple Street, in favour of the appeal, which was included in the Agenda Package. Submitted at the meeting, were photographs of the neighbourhood taken on June 6, 2016;
- Undated letter from Betsy McQuade of #303, 15 Lineham Avenue, in favour of the appeal;
- Copy of the verbal submission provided by Cheryle Dobbyn in favour of the appeal; and
- Letter dated June 6, 2016 from William Bradley of MODhaus, on behalf of the owner and applicant, Sahota S B Investments Inc., in opposition to the appeal.

DECISION:

The Subdivision and Development Appeal Board found, following the conclusion of the public portion of the appeal hearing on June 8, 2016, that the decision of the Municipal Planning Commission to conditionally approve Development Permit Application 125-16 would be upheld and the appeal is denied.

REASONS:

This application is for a "discretionary use", being "attached housing", within the R-MD land use district. It is therefore open to the Board to consider the application on its own merits after hearing and considering all the evidence presented during the appeal hearing.

The Board is also required to act in accordance with any applicable ALSA regional plan and must comply with provincial land use policies and statutory plans and, subject to the Board's ability to relax or vary them, the provisions of the applicable land use bylaw,

In determining their decision, the Board had regard to the following:

South Saskatchewan Regional Plan, Section 5, Efficient Use of Land, Strategy 5.1 which states "*All land-use planners and decision-makers responsible for land-use decisions are*

encouraged to consider the efficient use of land principles in land-use planning and decision-making.

- 1. Reduce the rate at which land is converted from an undeveloped state into permanent, built environment.*
- 2. Utilize the minimum amount of land necessary for new development and build at a higher density than current practice.*
- 3. Increase the proportion of new development that takes place within already developed or disturbed lands either through infill, redevelopment and/or shared use, relative to new development that takes place on previously undeveloped lands.*
- 4. Plan, design and locate new development in a manner that best utilizes existing infrastructure and minimizes the need for new or expanded infrastructure.”*

The Calgary Metropolitan Plan, Strategy 3.a Develop Compact Settlements states *“Density infill development across the region makes good sense for the environment, the economy, our budgets and our quality of life. ...*

3. a.1 Efficient use of land. Member municipalities will ensure that new development occurs in ways that achieve efficient use of the land and infrastructure.

3. a.7 Intensification. Member municipalities will strive to accommodate at least 25 per cent of new population growth across the region through intensification of existing developed areas.”

The Okotoks Municipal Development Plan (MDP) on page 57, under Residential Vision Statement states *“In the development of all residential areas, Council wishes to encourage the provision of a choice of single detached and multi-unit dwellings and lot sizes, the creation of an attractive residential environment, and orderly and efficient development of residential lands. Given the prevalence of single family housing, Council desires a proportionate increase in multi-unit housing that caters to a diverse market and demographic. Innovative forms of all housing are encouraged to create a unique architectural and site design environment in Okotoks. Council aims to move the current 83% (single family) 17% (multi-family) ratio to 70% (single family) 30% (non-traditional housing units) by 2010. Non-traditional housing development is defined as being anything other than conventional-sized single family lots. There is a strong desire to facilitate development of innovative housing and site and neighbourhood design, thereby permitting the creation of an innovative set of design and engineering standards. Any standards shall be permitted, at the discretion of Council and upon completion of comprehensive planning, as long as five sustainable design principles are achieved: 1) density targets; 2) sustainable mixed land use; 3) a variety of housing form; 4) a variety of housing affordability; and 5) strong aesthetic merit.”*

The MDP on page 60, under item 7, Policies – Residential states *“Lot sizes for development of multi-unit housing may vary according to housing form and should be governed by the following design principles:*

- all parking facilities shall be provided on site; and*

- *sufficient areas should be provided for recreation and open space as specified in the Land Use Bylaw.*”

The Okotoks Land Use Bylaw, under the Residential Mixed Dwelling (R-MD) District, states *“the purpose and intent of this district is to provide for a wide range of residential development that is compatible with existing Central Business District development and takes into consideration the possible future expansion of the Central Business District. A limited range of commercial uses may be considered.”*

The proposed development is for a 32 unit Attached House Development. "Attached Housing" is defined within the Okotoks Land Use Bylaw as *“a building designed and built to contain three or more dwelling units separated from each other by a fire-wall with each unit having separate entrances from grade level. This use class includes Garden, Linked, Row, and Townhouse units. Each dwelling may allow for accommodation to be offered to up to two borders; however, except as otherwise allowed in this Bylaw, is used for no other purpose.”*

The Board further determined that when considering the applicable plans and policies – the South Saskatchewan Regional Plan, the Calgary Metropolitan Plan, the Okotoks Municipal Development Plan, and the purpose and intent section of the Okotoks Land Use Bylaw - the proposed use would be acceptable.

The Board's decision is based on the cumulative intent of these plans and policies to:

1. Utilize the minimum amount of land necessary for new development and build at a higher density than current practice.
2. Increase the proportion of new development that takes place within already developed or disturbed lands either through infill, redevelopment and/or shared use, relative to new development that takes place on previously undeveloped lands.
3. Plan, design and locate new development in a manner that best utilizes existing infrastructure and minimizes the need for new or expanded infrastructure.
4. Strive to accommodate at least 25 per cent of new population growth across the region through intensification of existing developed areas.
5. Strive to increase the proportion of multi-family dwellings to single family dwellings from the current proportion of 17% (multi-family) vs 83% (single family) ratio to 30% (non-traditional housing units) vs 70% (single family) 30% (non-traditional housing units).

In reviewing the reasons for the appeal contained within the Appellant's letter dated May 10, 2016, the Board considered the several variances and has made the following determinations regarding the variances referenced in the appeal:

With regard to the two variances granted to Section 9.1.3(b) [Projections Over Setbacks], the Board agreed with Administration's rationale that *“The decks project only 1.49m into the rear setback where the maximum projection is 2.0m. The maximum cumulative areas*

of 12m² for decks and 2.5m² for cantilevers are based on typical, single detached lots and not on large multi-unit residential sites. The total cumulative area projection per dwelling unit is 6.36m² for the decks and 2.43m² for the cantilevers, which is well within the limits of the bylaw if they were based on each unit rather than the entire building.” The Board further determined that the proposed decks and cantilevers would not differ substantively from development expected and intended under RM-D zoning, nor did the Board hear evidence suggesting these variances would unduly interfere with the amenities of the neighbourhood or materially interfere with or affect the use, enjoyment or value of neighbouring properties.

To the variance granted to Section 9.3.8(c) [Tandem Parking], the Board determined that because the proposed development is located within downtown area, it has a high walkability rating and it is in close proximity to amenities and services which would encourage fewer vehicles per dwelling. Tandem parking allows for physical space for two vehicles onsite that could be used with proper coordination of the owners. Relaxation of tandem parking allows further onsite parking and addresses neighbouring resident concerns for negative spill-over to on-street parking. In this instance, further on-site parking improves any parking "spillover" and allowing this variance would not unduly interfere with the amenities of the neighbourhood or materially interfere with or affect the use, enjoyment or value of neighbouring properties.

As to the variance granted to Section 10.6.6(a) [Freestanding Signs], the Board concurred with rationale provided by Administration which stated “*The sign profile is low, at 1.35m, and the structure is intended as an architectural site feature as opposed to advertising. The freestanding monument sign will hold an identification sign, which is permitted in the district.*” There was no evidence presented at the hearing or in the materials suggesting that the signage was a concern to the appellant or the community so, again, this variance would not unduly interfere with the amenities of the neighbourhood or materially interfere with or affect the use, enjoyment or value of neighbouring properties.

As to the variance granted to Section 17.4.1(b) [Area of Site], the Board agreed with Administration’s statements that “*Despite the variance, the development provides for adequate parking and greater landscaped area than required under the bylaw; and An increase in density in the R-MD district allows the Town to accommodate the growth in population without adding to sprawl and encourage a sustainable and efficient infrastructure.*” Given the various applicable plans and policies and given the evidence suggesting these variances would not unduly interfere with the amenities of the neighbourhood or materially interfere with or affect the use, enjoyment or value of neighbouring properties, the Board was prepared to allow this "area of site" variance.

As to the variance granted to Section 17.5.1(a) [Building Height], the Board agreed with Administration that “*The proposed building height is within the 10.0m maximum and, if an apartment development were proposed rather than attached housing, up to 4 stories would be allowed.*” The Board placed more weight on the 10m height maximum. In the Board's opinion, the maximum height is more the issue rather than the number of storeys. The proposed development is considered by the Board to be compatible with other buildings in the neighbourhood not only with respect to height, but also with respect to

mass and scale. On this last variance, the Board again found that the test in section 687(3)(d) of the MGA was satisfied.

Lastly, the Board determined that the development conformed to the prescribed usage of the land in the land use bylaw.

All conditions and requirements set forth by the Municipal Planning Commission to conditionally approve Development Permit Application 125-16 are still in place. The issuance of a development permit by the Town of Okotoks does not relieve the permit holder of the responsibility of complying with all other relevant municipal bylaws and requirements, nor excuse violation of any regulation or act, which may affect this project.

For: 
Karen Humby
Subdivision and Development Appeal Board Secretary