



**SUBDIVISION AND DEVELOPMENT APPEAL BOARD
OF THE TOWN OF OKOTOKS
DATED JULY 6, 2017**

DECISION

Hearing held at: Town of Okotoks Municipal Centre
Council Chamber
5 Elizabeth Street, Okotoks

Date of Hearing: June 22, 2017

Members present: Jasse Chan, Chair
Councillor Tanya Thorn
Corey Brandt
Todd Martin
Gerry Melenka
Kelly Rogers

Member absent: Andrew Cutforth

Staff present: Colleen Thome, Development Officer
Kari Idland, Development Planner
Karen Humby, Recording Secretary

SDAB Legal Counsel: John Gescher, Brownlee LLP

Summary of Appeal: This is an appeal against the decision of the Okotoks Municipal Planning Commission to refuse Development Permit Application Number 117-17 for a one bedroom Studio Suite in a walkout basement at 450 Cimarron Boulevard, Okotoks, Alberta (Lot 65, Block 34, Plan 071 5152) for the following reasons:

1. Land Use Bylaw 4.1.3 requires that the Development Authority give due consideration to replies respecting development referrals. Responses to internal circulation overwhelmingly discourage the extension of the driveway for reasons of safety, circulation, parking, maintenance, urban forestry, and aesthetics. Responses to site posting indicate opposition to the

- appearance and potential conflicts of an oversized driveway along Cimarron Boulevard and the existing street parking challenges, upheld by administrative review by affected departments.
2. Studio Suites are listed as a discretionary use in the R1 District. Land Use Bylaw 4.3.2 provides that the Development Authority may approve with or without conditions, or may refuse, an application for a discretionary use, notwithstanding compliance with the requirements for the use under the Land Use Bylaw, in order that suitability of the use on the site and effects on surrounding land uses may be taken into consideration when deciding on an application.
 3. Land Use Bylaw 9.24.4 requires that sites containing studio suites be developed so that all site improvements associated with a studio suite, including parking, are consistent in design to site improvements associated with single detached development in the immediate vicinity. Other homes in the vicinity are typically developed with double attached garages and double parking pads.
 4. The development of an additional parking space for the studio suite, through widening of the driveway, will increase vehicle-pedestrian conflicts along a collector road.
 5. The development of an additional parking space for the studio suite, through widening of the driveway, will exacerbate the existing snow storage issues along the collector road.
 6. The development of an additional parking space for the studio suite, through widening of the driveway, could cause undue congestion on the adjacent street adding to the existing on-street parking shortage as the property is located on a laneless collector street where the availability of on-street parking is extremely limited.

Summary of
Grounds for Appeal:

1. Application meets all planning requirements.
2. Inaccurate presentation of traffic problem on Cimarron Boulevard.
3. Snow argument as basis of rejection flawed.
4. Contradictory evidence by Municipal Enforcement, Parks, and Transportation based on Town's own repeatedly voiced intention that the Boulevard should have had traffic calming measures present from off-set, that the Boulevard was never designed as a

- thoroughfare and thereby traffic calming measures should have been standard (example larger and smaller road in the area), and that such is in active consideration to reduce/redirect cut-through traffic whilst not interrupting residents of the Boulevard.
5. Multiple spurious arguments against the application resulting in invitation to other departments to present similar rejection reasoning and Planning Department change of support.
 6. Requirement of a hard parking surface demanded by Town, then used to reject the application, although options presented by applicant at time of application.
 7. Possibility of 'fixes' (ways of making right problems arising, such as conditions and variances being applied) noted as sought by planning and the panel with other applications prior to and after application in question.
 8. Main point used for rejection of application based on unbalanced and potentially biased information. Grass paving option rejected based on experience of multi-users at library versus single car residential use and up-to-date data not requested nor considered. Other alternatives already being used by Town without apparent problems in residential area.
 9. Aesthetics argument contradictory based on Planning's own data, where extended driveways have already been approved in the vicinity, and home styles are various.
 10. Failure to apply parking concerns specific to the area of the application location, which benefits from the Towns own currently applied traffic and parking rules.
 11. Responses by applicant prior to the hearing and included in hearing package not acknowledged due to being not considered or ignored.

Appeal Filing:

The appeal was filed by Lenora Prevost-Jones (applicant and registered owner of the subject property).

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 *Municipal Government Act* ("MGA").

The appeal form was filed with the Board on May 31, 2017. The Notice of Decision from the Municipal Planning Commission was emailed and mailed to

Lenora Prevost-Jones (as applicant and registered owner of the property) on May 19, 2017.

Notice of Hearing: Section 606 and Section 686 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 June 22, 2017 hearing was mailed on June 6, 2017 to: the Appellant, the Town, and those persons identified by the Board as "affected" persons. This provided at least five (5) days advance notice of the hearing (counting the seven (7) days presumed for regular mail).

As an alternative (and in addition) to personally delivered notice, notice of the June 22, 2017 hearing was published in two issues of the *Western Wheel* (June 7, 2017 and June 14, 2017), both issues being published more than five (5) days prior to the hearing.

The Board heard from K. Humby, Recording Secretary, that she received an email from the Appellant on June 21, 2017 at 11:50 p.m. indicating that she had a training test and could not change the date. The Appellant requested that the required number of copies of her presentation be provided to the Board. On the advice of SDAB Legal Counsel, the Recording Secretary enquired if the Appellant wanted to request an adjournment to another date so that she would be able to appear in person, and the Appellant responded to proceed in her absence. A copy of that correspondence was provided to the Members at the hearing and is attached hereto as Schedule "A". Section 687(1) of the *Municipal Government Act* states that "*At a hearing under section 686, the subdivision and development appeal board must hear (a) the appellant or any person acting on behalf of the appellant,*"... As the Appellant was given the choice to request an adjournment, and she indicated that the hearing could go ahead in her absence, the Board decided to proceed with the hearing.

The Board heard a verbal submission from Kari Idland, Development Planner.

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

- Letter dated June 22, 2017 from Lenora Prevost-Jones, Appellant; and
- Letter dated June 18, 2017 from Jane (Johanna) DeBakker of 446 Cimarron Boulevard in favour of the appeal.

The Board hereby adopts the June 22, 2017 meeting summary attached hereto a Schedule "B".

DECISION:

By the Subdivision and Development Appeal Board on June 22, 2017 that Development Appeal Number 2017-01 be denied and the decision of the Municipal Planning Commission to refuse Development Permit Application 117-17 for a one bedroom Studio Suite in a walkout basement be upheld.

FINDINGS / FINDINGS OF FACT:

Studio Suite Use:

The property subject of the appeal (450 Cimarron Boulevard: Lot 65, Block 34, Plan 071 5152) is located within the Residential Single Detached (R1) District.

Land Use Bylaw Section 11C.2.2 lists Studio Suites as a Discretionary Use.

Land Use Bylaw Section 4.3.2 states *"In making a decision on an application for a development permit for a "Discretionary Use", the Development Authority shall:*

- (a) approve the application; or*
- (b) approve the application subject to conditions and restrictions considered appropriate or necessary; or*
- (c) refuse the application."*

Land Use Bylaw Section 4.5.4 (a) Refusals states *"When an application for a Development Permit is refused, the Notice of Decision including reasons for refusal shall be mailed to the applicant."*

The Board determined that refusal of the application for a studio suite with reasons was within the power of the Development Authority as studio suites are listed as a discretionary use in the Residential Single Detached (R1) District.

Parking Requirements for a Studio Suite:

Number of Spaces Required:

Land Use Bylaw Section 9.3.3 (a) General Rules for Parking states *"Parking spaces shall be provided on-site in accordance with the minimum parking requirements listed for each use."*

Land Use Bylaw Section 9.24.6 Studio Suites states *"Site containing studio suites shall be developed so that the parking space for the studio suite is not a tandem parking space."*

Land Use Bylaw Section 11C.2.1. Minimum Parking Required for a Permitted Use within the Residential Single Detached (R1) District states that a Single Detached Dwelling with no lane requires 4 spaces per dwelling.

Land Use Bylaw Section 11C.2.2 Minimum Parking Required for a Discretionary Use within the Residential Single Detached (R1) District states that a Studio Suite requires 1 space/suite in addition to the parking requirement for the single detached dwelling.

As the property subject of this appeal does not have a lane, and based on the requirements of the Land Use Bylaw, the Board determined that five parking spaces would be required (four for the principal dwelling and one for the studio suite), of which the studio suite space could not be tandem.

Variance to Parking Requirement:

Land Use Bylaw Section 4.4.1 Discretion of the Development Authority states *"The Development Authority may approve a development permit application for a proposed development with variances if: (a) the development does not unduly interfere with the amenities of the neighbourhood or materially interfere with or affect the use, enjoyment or value of neighbouring properties;..."*

In the Appellant's submission on page 7, she indicated that *"as a single car owner, a variance could have been applied to the application in this case, whereby the suite could either be parked on the drive or on the road."*

The Board heard evidence from Administration that parking relates to the use, and not the user. Administration stated that the property could be sold, and there is no guarantee that the next owner would be a single car owner.

Administration stated in a response to a question from the Board that street parking could not be considered when determining whether adequate parking existed, and that in the absence of a variance, the parking requirements for an application must be met on site.

The Board determined that any decision to approve the application could only be made if there was also a variance to reduce the parking requirement, allowing the application to proceed with no addition to the existing on-site parking. The Board decided not to approve such a variance, as detailed in the Reasons below.

Hard Surface Parking Space versus Alternatives Proposed by the Appellant:

Land Use Bylaw Section 9.3.3 (b) General Rules for Parking states *"All required parking areas shall be graded and completed with a hard surface so as to ensure that drainage will be confined to the site and disposed of in accordance with the accepted development site servicing plan."*

While a hard surface parking space versus the alternatives proposed by the Appellant was taken into consideration by the Board, the Board determined that the primary issue was either the widening of the existing driveway and the subsequent boulevard access to meet the parking requirement, or a variance in the required number of parking spaces.

Application Referrals to Town Business Centres:

Land Use Bylaw Section 4.1.2 Development Referrals states "*The Development Officer may refer for comment any matter or any application for a development permit to any authority deemed necessary.*"

Land Use Bylaw Section 4.1.3 Development Referrals states "*Having received a reply on a matter referred to any adjacent municipality, or any authority, the Development Authority shall give due consideration to the reply.*"

The Board determined that Administration followed standard procedure in circulating the application to Engineering, Municipal Enforcement, Safety Codes Services, Transportation, and Parks.

Authority for Approval of the Boulevard Crossing:

The Board heard evidence from Administration that a separate on-site parking space is required for the studio suite which requires widening of the driveway and widening of the boulevard crossing to access said parking space.

Administration stated in response to a question from the Board that without widening of the boulevard crossing to the parking space, shortcutting across the lawn could occur, compromising the integrity of the vegetation within the boulevard. Administration stated in response to a question from the Board that a parking space cannot be considered a parking space without access.

Authority to grant approval for the driveway widening that crosses the boulevard is pursuant to Bylaw 22-12, the Open Spaces and Recreation Facilities Bylaw.

Section 2.17 of Bylaw 22-12 defines Open Space as "*an area, including vegetation and improvements located therein, over which the Town exercises control; and so as not to restrict to generality of the foregoing, includes: ... d) median strips, boulevards and traffic islands; and ...*"

The Board determined that it does not have the authority to approve the portion of the driveway widening that crosses the boulevard as Bylaw 22-12, the Open Spaces and Recreation Facilities Bylaw, does not fall within its jurisdiction. The Board agrees with Administration that without access, the parking space cannot be considered.

Snow Storage:

The Board heard evidence from Administration that by allowing the additional parking space, and subsequent widening of the driveway, there is less area to store snow or to clear the windrow from the roadway in front of the driveway during a snow event. If the parking space and subsequent widening of the driveway and boulevard crossing were granted, the grassed area shown on page 13 of the Appellant's presentation would shrink (i.e. this grassed area would become a hard surface parking space and/or hard surface required for access to the parking space); therefore, allowing less area for snow storage.

Whether a hard surface parking space or the alternatives proposed by the Appellant was installed, the Board agreed with Administration that less area would be available for snow storage.

Traffic and Safety Concerns:

Land Use Bylaw Section 9.3.3 (g) General Rules for Parking states "*Parking areas shall be designed and located so as to minimize any disruption to the continuity of the pedestrian system and adjacent public roadways.*"

Section 7.1.1 Road Classification and Inconsistent Land Use – Safety Issues on Page 53 of the In-Service Road Safety Review Cimarron Boulevard prepared by Bunt & Associates Engineering (Alberta) Ltd. states "*The results of the traffic analysis confirmed that the daily traffic volumes along the corridor are in the order of 10,000 vpd to 11,000 vpd which is considered to be appropriate for the Primary Collector road classification. However, these volumes are considered to be at the upper threshold for this type of road. In other words, this roadway is at capacity and is starting to exhibit arterial (major) levels volumes. The condition is exacerbated with the type of land use along the corridor, as this corridor exhibits a mixture of rear lane and front driveway residential product. The sections that exhibit rear lane residential product are appropriate for the primary collector road classifications. The sections that exhibit front drive product should be placed on a collector road standard (i.e. 1000 to 5000 vpd), as the backing out of the driveway is inherently an unsafe movement, especially on a high volume roadway (>5000 vpd). In summary, the mixture of high traffic volumes and front drive residential product is considered to be safety concern.*"

On-street parking is regulated by Municipal Enforcement under Bylaw 10-10 the Traffic Bylaw. Section 4.4 of the Traffic Bylaw states "*A person driving a vehicle shall not, unless required or permitted by the Act, the Regulation, this Bylaw or by a traffic control device, or in compliance with a direction given by a Peace Officer, or to avoid conflict with other traffic, stop or park the vehicle at the following locations: ... g) within 1.5 metres from an access to a garage, private road or driveway or a vehicle crossway over a sidewalk. ...*"

On page 8 of the Appellant's submission provided to the Board at the hearing, the Appellant states "*The concern about pedestrian-vehicle conflict concern is mitigated by the fact that the property is located on a part of the Boulevard that does not experience parking issues. It is located in a block of just six house. Each house has off-street parking and seldom parks on the road.*"

The Board determined that this section of Cimarron Boulevard could not be viewed in isolation. Regardless of the allowance (or not) of one more vehicle backing out, the high volumes of traffic along this road remain.

The Board determined that properties sell, and although current owners may not use on-street parking, that could change in the future. Again, the issue was not necessarily with on-street parking, but the volume of traffic experienced along Cimarron Boulevard (as evidenced by the In-Service Road Safety Review Cimarron Boulevard prepared by Bunt & Associates Engineering (Alberta) Ltd.).

REASONS:

The Board considered Sections 4.1.2 and 4.1.3 of the Land Use Bylaw which states:

The Development Officer may refer for comment any matter or any application for a development permit to any authority deemed necessary, and

Having received a reply on a matter referred to any adjacent municipality, or any authority, the Development Authority shall give due consideration to the reply.

In accordance with the above-mentioned sections of the Land Use Bylaw, the Board considered issues and concerns brought forth from Town Business Centres as submitted into evidence as part of the Administration's Report to the Subdivision and Development Appeal Board. While the Board did not dispute the findings or position of any of the submitting business centres, it placed greater importance on certain comments and concerns brought forth, specifically:

- Cimarron Boulevard is a primary collector with average traffic volumes of 10,000 to 11,000 vehicles per day (vpd). Unlike most other primary collectors and arterials, it is only two lanes for much of its length and it has driveways fronting the roadway on both sides. As a result, there are significant, ongoing traffic challenges associated with conflicts between through-traffic on the primary collector, and vehicles attempting to access or egress driveways;
- There are significant traffic challenges arising from the roadway design, its status as a primary collector, and the traffic volumes which exceed those experienced on other roadways better suited to handle the volumes. The number of driveways also contributes to a lack of on-street parking, further exacerbating traffic and parking challenges; and

- Addition of on-site parking accessed from Cimarron Boulevard will add more vehicles attempting to navigate onto and off of the primary collector, further disrupting traffic flow.

The Board also considered a 2015 In-Service Road Safety Review Cimarron Boulevard, conducted by Bunt & Associates Engineering (Alberta) Ltd. (submitted into evidence), which stated the following:

Traffic volumes along Cimarron Boulevard are considered to be at the upper threshold for this type of road. The condition is exacerbated with the type of land use along the corridor. The sections that exhibit front drive product should be placed on a collector road standard (i.e. 1000 –5000 vehicles per day), as the backing out of the driveway is inherently an unsafe movement, especially on a high volume roadway (>5000 vehicles per day). The estimated average traffic volume on this roadway is currently 11,000 vehicles per day. The report concluded in summary that the mixture of high traffic volumes and front drive residential product is considered to create a safety concern.

The Board further considered that the Parks Business Centre has stated that it will not support the construction of any new boulevard access, nor would it support the widening of any existing boulevard crossing for any reason. Any new driveway construction or the widening of an existing driveway would be unable to meet Land Use Bylaw requirements without access via a legal boulevard crossing.

The Board determined that widening the driveway was not an option due to the decision of the Parks Business Centre to not consider any new construction of boulevard access or the widening of any existing boulevard access. The Board further determined that should new boulevard access be approved, the widening of the existing driveway would still contribute to increased vehicle-pedestrian conflict.

The Board also determined that the addition of a parking space by the widening of the existing driveway would increase on-street parking challenges and would add to snow removal issues by creating more area that needed snow to be removed while reducing the space available to store the snow.

The Board further determined that approving the development permit with a variance to the number of parking spaces (reducing by one) required in the Land Use Bylaw for properties of this type would add traffic to an already congested collector road, and further increase on-street parking challenges.

DPA FILE NO. 117-17

APPEAL & ORDER NO. 2017-01

While snow removal was taken into consideration, the decision of the Board was based primarily on the increased safety risk presented by increasing traffic into an already congested collector road, adding to existing parking constraint in the area and increasing the potential for vehicle-pedestrian conflict.


Karen Humby
Subdivision and Development Appeal Board Secretary