



**SUBDIVISION AND DEVELOPMENT APPEAL BOARD
OF THE TOWN OF OKOTOKS
DATED SEPTEMBER 22, 2020**

DECISION

Hearing held at: Town of Okotoks Municipal Centre
Council Chamber
5 Elizabeth Street, Okotoks (via livestream)

Date of Hearing: September 10, 2020

Members present: Jasse Chan, Chair
Gerry Melenka
Kelly Rogers
Todd Martin
Shane Hansma
Dan Proctor
John Day

Staff present: Colton Nickel, Development Planner
Velma Gallant, SDAB technical support
Michelle Grenwich, SDAB Clerk

Summary of Appeal: This is an appeal against the decision of the Okotoks Development Authority to approve Development Permit Number 165-20 for a Dwelling - Secondary Suite by granting a parking variance to permit one (1) parking space for the suite where the minimum required is two (2) spaces, a variance of one (1) parking space at 113 Thorson Place (Lot 17, Block 6, Plan 7910629).

Appeal filed by: Jim and Jean McKibbin

The appellant and applicant were asked if there were any objections to the Board members hearing the appeal. There were no objections. Those persons who made representations at the hearing were asked if they felt they had a fair hearing. They indicated they felt they had a fair hearing.

The Board heard verbal submissions from the following:

Colton Nickel, Development Planner (“Administration”);
Jim McKibbin (“Appellant”)
Randi Zelonka (“Applicant”)

The Board reviewed the materials contained in its agenda package, additional submissions package, and considered the verbal submissions made at the hearing.

SUMMARY OF SUBMISSIONS:

The following is a summary of the submissions made to the Board in respect of this appeal.

Submissions of Administration

This appeal is against the decision of the Development Authority to grant a parking variance and approve Development Permit Application 165-20 for a Dwelling – Secondary Suite at 113 Thorson Place. The decision to approve the development with conditions is being appealed due to concerns over the rationale to grant a variance to the minimum parking requirements for the development.

The secondary suite was identified in June 2020, by Okotoks Municipal Enforcement during enforcement actions on another matter. It was subsequently confirmed by the Okotoks Planning Department that a building permit was approved for basement renovations in 1986, but that there was no development permit on file authorizing the secondary suite under Land Use Bylaw No. 40-98 (LUB). There was a complaint in 2003 regarding an illegal suite; however no action was taken. The landowner was given the option to decommission the secondary suite or submit a development permit application to bring the suite into compliance with the LUB. They chose to submit a development permit application.

The development permit application was received on June 26th 2020, and the property was notice posted from July 20-27, 2020. One letter of objection was received during the notice posting, and one letter of objection was received after the notice posting closed, both citing parking concerns.

The property is in the Residential-Single Detached (R1) District and is located at the bulb of a cul-de-sac with no rear lane and does not include an attached or detached garage. The suite is classified as a Dwelling – Secondary Suite under the LUB and is listed as a discretionary use in the R1 district. The secondary suite is located within the basement level of the dwelling and contains two bedrooms. Section 11C.2.1 of the LUB requires two parking spaces to be provided for the Single Detached Dwelling and Section 11C.2.2 requires two parking spaces for Dwelling – Secondary Suites that have two or three

bedrooms. As such a total of four parking spaces are required on the property to accommodate the single detached dwelling and two bedroom secondary suite.

In approving the application, the Development Authority granted a variance to Section 11C.2.2 of the LUB to allow one parking space instead of the required two parking spaces for a two bedroom suite. Section 9.24.0 of the LUB includes additional standards for secondary suites and no variances were required to this section to support the approval. There are three dwellings with approved development permits for Dwelling - Secondary Suites in the Suntree/Tower Hill neighbourhood representing one percent of all single detached dwellings in this neighbourhood.

There is a Home Occupation – Minor on the property for a personal aesthetics business. A Home Occupation – Minor does not require a development permit and is not tied to the property, but tied to the business license holder. The LUB does not preclude a Home Occupation – Minor from existing on the same lot as a Dwelling – Secondary Suite. There is a 3.05 metre maintenance easement on the west side of the property due to the zero lot line development on the adjacent property. No structures can be erected within this easement; however, a hard surface driveway can be installed within it.

Key considerations in granting the parking variance included:

- Objective #1 (pg. 96) of the Housing Chapter of the Okotoks Municipal Development Plan (MDP) includes clear policy direction to expand options for the creation of additional secondary suites. Specific policy objectives include:
 - Increasing allowed size of secondary suites and accessory dwelling units;
 - Developing alternative parking standards reflective of demand; and
 - Working with landowners to resolve issues of non-compliance, while ensuring the Alberta Safety Codes are met.
- Recent amendments to the LUB based on policy direction in the Housing Chapter of the MDP meant that this application largely aligned with the regulatory framework of the LUB, aside from the parking variance.
- Although the property is at the bulb of a cul-de-sac, there is parking nearby on the road into the cul-de-sac less than 100 m away. A review of aerial photos from 2007, 2011, 2013, 2016 and 2018 show available parking near the property and Okotoks Municipal Enforcement noted only one parking complaint in recent years.
- The conditions of approval which included the expansion of the existing driveway to accommodate two hard surfaced tandem parking spaces, the creation of a new hard surfaced parking space at the front of the home, a hard surface walkway from the door of each unit to the spaces, and a \$10,000 performance security to ensure completion of required conditions.

On-street parking is regulated through the Town's Traffic Bylaw and not the LUB. There is a minimum 30% landscaping requirement in the R1 district of the LUB where this area cannot be occupied by structures.

In granting the parking variance and approving the secondary suite, Administration considered the high level policies in the MDP that encourage the creation of additional legal secondary suites, the limited number of complaints on file for the secondary suite, site visits, and a review of aerial photos over several years. Administration is of the opinion that granting the parking variance and approving the secondary suite would not unduly interfere with the amenities of the neighbourhood, or materially interfere with or affect the use, enjoyment or value of neighbouring parcels of land.

Submissions of the Appellant

The appellant feels that the parking variance is not justified for this residence and noted ongoing concerns with the property relating to domestic disturbances, dog waste odours, weed infested yard, years of disrepair, disrespect to their property, and negative economic impact to their property. The appellant has lived adjacent to the subject property for 40 years which has been used as a single family dwelling until the current owner purchased the property. After the change of ownership in 2003 the appellant raised concerns to the Town regarding a possible illegal suite; however this was not pursued by the Town as the owner claimed that relatives were renting downstairs.

The property is located on a cul-de-sac and parking is tight with most residents parking one or more of their vehicles on the street in front of their homes, leaving little space for overflow parking. Adding an additional space to the property will not alleviate the parking challenges on this street. There has been a history of parking issues at 113 Thorson Place since the suite was developed and Okotoks Municipal Enforcement has been involved in the towing of unlicensed vehicles and blocked driveways. The upstairs suite has tandem parking for their exclusive use and with the recent approval of a new client based business (Home Occupation Business License customer #170740) more parking congestion is anticipated.

The appellant questioned if the secondary suite would have been approved by the Town if there had been no suite in the home at the time of application. The best solution would be to have the use of the site revert back to a single family dwelling. Another issue to consider with the secondary suite is the interference with basic Town services that provide amenities to the neighbourhood. The configuration of the cul-de-sac requires the consideration of all residents to accommodate collection day, street cleaning and snow removal. This has been challenging as a second vehicle from the secondary suite has often been parked in a manner requiring the Town waste collection driver to manually deal with bins. Street cleaning and snow removal have also been minimized or incomplete

in this area due to 113 Thorson Place' non-compliance with Town signage to remove all vehicles from the street.

113 Thorson Place has the narrowest frontage on the cul-de-sac making it a poor choice for a secondary suite and parking variance. The property line angles create additional parking challenges for this property and adjacent homes, as vehicles associated with this residence often park in front of the appellant's home. Section 4.4.g) of the Town's Traffic Bylaw states that vehicles cannot stop or park within 1.5 metres from an access to a garage, private road or driveway. The non-availability of the required second parking space for the two bedroom secondary suite will result in on-street parking in front of the appellant's home or other properties on a permanent basis during tenancy. The appellant submitted that it would be impractical that vehicles associated with the subject property would utilize on-street parking on Thorson Crescent.

The appellant disagrees with Administration's submission that their neighbourhood has better available on-street parking than newer neighbourhoods as these areas have two and three car garages, plus two and three car parking pads. Many of the properties on Thorson Place have tandem parking resulting in residents and visitors often utilizing on-street parking. The appellant noted that three of the five residents on the bulb of the cul-de-sac have objected to the suite. The appellant also noted that there are numerous unauthorized suites in the neighbourhood and is aware of at least five that are current or recent suites within 75 metres of their home.

The appellant summarized the main points in favour of this appeal:

- The parking does not meet the Town's secondary suite regulations;
- The variance and approval of the secondary suite is not justified as it has been demonstrated that the use of the property as a two unit residence has negatively interfered with the amenities of the neighbourhood, affected town services, and negatively affected the value of adjacent properties;
- Three neighbours immediately adjacent to the subject property have objected to the approval of the development permit; and
- They have clearly demonstrated that this specific property is not suitable to accommodate a secondary suite due to the specific parking issues related to the lot design and its location in the bulb of this busy cul-de-sac.

Submissions of the Applicant

At the hearing the applicant indicated that they wish to be respectful neighbours and have worked toward addressing concerns that have resulted from tenant's use of their property. They have added provisions in their lease agreement with tenants to address neighbours concerns, such as a no dog policy, and have raised rents to try to remove tenants causing issues. The appellant indicated that their current tenant in the secondary suite does not

have a vehicle and that the upstairs tenant has one vehicle. They noted that the appellant has four spaces on their property to accommodate their parking needs.

Though there were maintenance issues in the past with this property, a number of upgrades have been made over the last five years, including rebuilding the fence and repainting the home. There was one domestic disturbance on the property and the tenant was evicted shortly thereafter. This happens in homes that are not rented. At another time the police were called due to an unregistered vehicle parked on the street. The appellant is in a financial position to make the necessary upgrades to the secondary suite and the property to comply with the development permit and safety codes requirements. The appellant would be willing to add another parking space on their property if there was space to accommodate it.

DECISION:

The Board upholds the appeal and refuses to grant a parking variance for the proposed development, thereby refusing Development Permit Application 165-20 for a Dwelling – Secondary Suite at 113 Thorson Place.

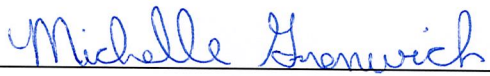
REASONS:

In rendering this decision, the Board has an obligation to only consider evidence relating to legitimate planning considerations. During the hearing, the Board heard a number of concerns from the appellant related to matters such as the upkeep of the property, form of tenancy, waste collection challenges, and issues with tenants of the site parking on the street in front of other properties. Many of the concerns expressed at the hearing are addressed through other Bylaws such as the Traffic Bylaw or Community Standards Bylaw and were not considered to be relevant planning matters. This appeal is about whether or not it is appropriate to grant a variance to the minimum required parking spaces to accommodate the Dwelling – Secondary Suite and therefore, this was the focus of the Board in rendering this decision.

The Board notes that the intent behind minimum parking requirements in the LUB is to ensure that the parking needs of a particular use can be accommodated entirely within the site. Section 11C.2.1 and 11C.2.2 of the LUB requires two parking spaces to be provided for the single detached dwelling, and two parking spaces to be provided for the two bedroom secondary suite, resulting in a total of four required on-site parking spaces. As outlined in the notice of decision and approved site plan, a total of three parking spaces can be provided on the site, which resulted in a variance of one parking space. There is a Home Occupation – Minor on this site and as per section 9.24.6 of the LUB, a minor home occupation is permitted to occur on the same titled lot as a Dwelling – Secondary Suite.

In this instance, the Board finds that it is not appropriate to grant a parking variance to allow three on-site parking spaces instead of the required four parking spaces to accommodate the two bedroom secondary suite. Given the properties' narrow frontage and location at the bulb of a cul-de-sac, the Board is of the opinion that to approve a secondary suite at this location the minimum parking requirements set out in the LUB must be met. The Board is not satisfied that Thorson Place can reasonably accommodate the additional parking needs associated with a two bedroom secondary suite at this property due to the absence of a rear lane for properties on this street, and the tandem parking arrangements of many of the properties in this area. The Board is of the opinion that tandem parking arrangements lead to higher on-street parking utilization.

The Board considered the high level policy direction in the MDP which encourages the creation of additional secondary suites in established neighbourhoods; however, in this instance and for the reasons outlined above, the Board finds that granting a variance to the minimum parking requirements for the proposed use would negatively impact on-street parking availability on Thorson Place and unduly interfere with the amenities of the neighbourhood.



Michelle Grenwich
SDAB Clerk