

SUBDIVISION AND DEVELOPMENT APPEAL BOARD MINUTES (SDAB)



Meeting:	Subdivision and Development Appeal Board (SDAB)
Meeting Date:	May 26, 2020
Originated By:	K. Babin
Title:	Minutes of SDAB Hearing 20-001
Agenda Item No.	3

BACKGROUND:

Minutes of SDAB Hearing 20-001



SUBDIVISION AND DEVELOPMENT APPEAL BOARD MINUTES

For SDAB Hearing No. 20-001

TIME: 6:00 pm
DATE: May 26, 2020
PLACE: Cochrane.ca/SDAB

Chairperson: David Helmer

Board Members: Scott Gibson-Craig
Jenna Graham
Brenda Samborski
Scott Shannon
Patrick Wilson, Councillor

Town Staff: Adam Nordquist, Planner II
Ryan Stewart, Acting Manager Planning Services & Civil Land
Development
Riley Welden, Acting General Manager, Development &
Community Services

Recording Secretary: Karen Babin

1. CALL TO ORDER

- a. Chairperson Helmer asked for a motion to open the hearing
 - i. MOVED by S. Gibson-Craig to open the hearing
~carried unanimously~
- b. Chairperson Helmer opened the hearing at 6:04 pm
- c. Introductions were made from the Board and Administration
- d. Chairperson Helmer asked if anyone had any objections to any member of the Board
 - i. There were no objections to any member of the Board

2. ADOPTION OF AGENDA AND MINUTES

- a. The Chairperson asked if there were any amendments or additions to the Agenda
 - i. Secretary Karen Babin, responded that the election of a Vice Chair should be added to the agenda
- b. The Chairperson asked for a motion to adopt the Agenda as amended
 - i. MOVED by S. Shannon to adopt the Agenda as amended
~carried unanimously~

- c. The Chairperson asked for a motion to adopt the Minutes from the previous hearing
 - i. MOVED by S. Shannon to adopt the Minutes from SDAB 19-007 as presented
~carried unanimously~

3. ELECTION OF VICE CHAIR

- a. The election of a Vice Chair is deferred to the next meeting when all members of the board will be present.

4. PRELIMINARY MATTER

- a. Appellants:
 - i. The Chairperson asked the Appellant to present their preliminary matter
 - ii. Debra DiSanto, Appellant #1 requested an adjournment
 - iii. Questions were asked from the Board to the Appellant
 - iv. The Chairperson called upon Appellant #2 to respond
 - v. Leland Styner, Appellant #2 replied they are not opposed to an adjournment
- b. Applicant:
 - i. The Chairperson called upon the Applicant to respond
 - ii. Shannon and Jason Hiebert replied they would like to proceed with the hearing
 - iii. Questions were asked from the Board to the Applicant
- c. Administration:
 - i. The Chairperson called upon Administration to respond
 - ii. Riley Welden, Acting General Manager, Development & Community Services replied that Administration is prepared to proceed
 - iii. Questions were asked from the Board to Administration

5. IN CAMERA

- a. Chairperson Helmer called for a motion to go in camera to discuss the request for an adjournment
 - i. MOVED by S. Gibson-Craig to go in camera
~carried unanimously~
 - ii. MOVED by S. Shannon to come out of camera
~carried unanimously~
- b. The Board's decision is to not grant an adjournment. Hearing 20-001 will proceed.

6. FIRST APPEAL

- a. The Chairperson asked the Secretary to read out the appeal
 - i. The Secretary read out the first appeal as follows:
DP2020-011
Lot 2, Block 27, Plan 951 1853

135 Quigley Drive
Accessory Suite (Basement)

- b. The Chairperson asked the Secretary if this Appeal had been duly advertised

The Secretary stated that the Notice of Appeal had been advertised in the May 21st edition of the Cochrane Eagle as well as sent out to adjacent landowners

7. **OUTLINE OF HEARING PROCESS**

- a. Chairperson Helmer outlined the hearing process for all present.

There were no concerns with the process from the Appellants, Applicant, Administration or any members of the audience.

- b. Chairperson Helmer asked the Secretary if each of the affected parties had received all materials in a timely fashion.

The Secretary replied that they had

8. **PRESENTATIONS**

- a. Administration:

- i. Chairperson Helmer called upon the Development Planner to come forward and present their report
- ii. Development Planner Adam Nordquist provided an oral and visual presentation to the Board
- iii. Questions were asked from the Board to Administration

- b. Appellant:

- i. Chairperson Helmer called upon the first Appellant to come forward and make their presentation
- ii. Debra DiSanto provided an oral and visual presentation to the Board
- iii. Questions were asked from the Board to Ms. DiSanto
- iv. Chairperson Helmer called upon the second Appellant to come forward and make their presentation
- v. Leland Styner provided an oral presentation to the Board
- vi. Questions were asked from the Board to Mr. Styner

- c. Applicant:

- i. Chairperson Helmer called upon the Applicant to come forward and make their presentation
- ii. Shannon and Jason Hiebert provided an oral and visual presentation to the Board
- iii. Questions were asked from the Board to Mr. and Mrs. Hiebert

- d. Chairperson Helmer called for a five minute recess

- i. MOVED by S. Gibson-Craig to recess at 8:48

e. Additional Presentations:

- i. Lama Al-Yafi, joint Appellant with Ms. DiSanto, spoke in favour of the appeal

9. QUESTIONS AND SUMMARIES

- a. Final questions for clarification were asked
- b. Summaries were presented from Administration, the Appellants and the Applicant
- c. Chairperson Helmer asked if all parties involved felt they were given a fair hearing
 - i. All parties agreed they were given a fair hearing

10. CLOSE

- a. Chairperson Helmer advised the Board has 15 days to reach their decision
- b. Chairperson Helmer adjourned the hearing at 9:20 pm and called for a motion to go in-camera
 - i. MOVED by P. Wilson to go in-camera
~carried unanimously~

DATED this 2nd day of June 2020

Original signed by David Helmer

David Helmer, Chairperson

Original signed by Karen Babin

Karen Babin, Recording Secretary

**TOWN OF COCHRANE
SUBDIVISION AND DEVELOPMENT APPEAL BOARD**

BOARD ORDER: 20-001

**IN THE MATTER OF THE *Municipal Government Act*, R.S.A. 2000 Chapter M-26
(the "Act")**

AND IN THE MATTER OF A DEVELOPMENT APPEAL lodged by Debra DiSanto
and Leland and Ellen Styner, of Cochrane, AB (the "Appellants")

BEFORE:

David Helmer, Chairperson
Scott Gibson-Craig
Jenna Graham
Brenda Samborski
Scott Shannon
Patrick Wilson, Councillor

Karen Babin, Recording Secretary

This is an appeal to the Town of Cochrane Subdivision and Development Appeal Board (SDAB) of the Development Authority, being the Notice of Decision of Development Permit 2020-011 for Accessory Suite (Basement) at 135 Quigley Drive, Lot 2, Block 27, Plan 951 1853, in the Town of Cochrane (Town).

A hearing to consider the appeal was convened by the SDAB on May 26, 2020, commencing at 6:00 pm via video conferencing. The live stream was available for viewing on the Town's website at Cochrane.ca/SDAB.

I. BACKGROUND

Development Permit application DP2020-011 is for an Accessory Suite (Basement) located at 135 Quigley Drive. The subject property is designated as Residential Single Detached Dwelling District (R-1) where accessory suites are listed as a discretionary use. In accordance with Section 3.1.1 c) of the Land Use Bylaw 01/2004 (LUB), the Development Officer shall consider and decide on applications for development permits for accessory and garden suites.

The Development Officer approved the application for reasons listed in Section III Review of Submissions below.

The Appellants appealed this decision as per section 685(2) of the *Municipal Government Act, RSA 2000, c. M-26* (MGA), any person affected by an order, decision or development permit made or issued by a development authority may appeal to the Subdivision and Development Appeal Board.

II. DETERMINATION OF THE BOARD

The Appeal is denied and the decision of the Development Authority is upheld as per the reasons outlined in Section IV Decision.

III. REVIEW OF SUBMISSIONS

a) Development Officer

The Development Planner submitted a comprehensive Administrative Report and provided an oral presentation to the Board.

The Development Permit application was for an accessory suite (basement) located at 135 Quigley Drive in a Residential Single Detached Dwelling District (R-1) where the purpose and intent is:

“to provide for single-detached residential development. New neighbourhoods will be designed to provide for integrated and varied lot sizes. A limited number of these lots may also contain accessory or garden suites.

The application, floor plan and site plan were reviewed for compliance with the regulations set out in Section 12.3.0 the LUB, specifically:

- that the suite be an accessory to the principal residence and be fully serviced through the existing utility connections;
- a separate access from the principal dwelling be provided. A side entrance with below-grade stairwell is proposed and meets the minimum side yard setback requirement of 0.59 m;
- no structural changes be made to the front exterior;
- that the suite's floor area meets the minimum of 30m² and be a maximum of 40% of the total gross floor area; and
- the provision of two off-street parking stalls with safe unimpeded access to the suite.

The proposed application was compliant with each of the requirements except the maximum gross floor area. The suite's gross floor area was in excess by 0.89 m² or 10 ft². Section 3.1.2 of the LUB permits the Development Authority to grant a variance of less than 10% if the development conforms to the use prescribed; it would not unduly interfere with the amenities of the neighbourhood; or materially interfere with or affect the use, enjoyment or value of the neighbouring properties. The proposed 1.2% variance was deemed to be acceptable and granted.

In addition to two parking stalls for the primary residence, two stalls are required for the two-bedroom suite. A parking pad with rear lane access was proposed to accommodate four vehicles. Each stall meets the minimum size of 2.75 m x 6.0 m.

Section 12.2.2 of the LUB states that the clustering of accessory residential uses within the subject block face or adjacent block face must also be considered. The subject block face does not contain any other suites and there is only one on an adjacent block face. Further, the surrounding accessory developments are Home-Based Business Minors which do not allow client visits and therefore do not impact traffic or parking in the area.

The development of accessory suites aligns with the following guiding policy documents:

- *Cochrane Sustainability Plan*
Pathway 9, "Everyone has a roof over their head": diverse, accessible, safe and affordable housing options for all income levels, for either ownership or rental.
Pathway 11, "Wherever you are in Cochrane, you are close and connected": includes a target of increasing density within the existing 2009 footprint.
- *Municipal Development Plan*
Section 1.1.8, Diversity of Housing: Cochrane's goal is to ensure that housing is available to all, regardless of income, lifestyle or life cycle.

The DP application was circulated to internal departments and external agencies for comment; no objections were received. Safety Codes noted the final design of the exterior stairwell must bear the stamp of an engineer when the building permit is applied for.

The Development Authority issued the Notice of Decision approving the application, subject to eleven (11) conditions and nine (9) advisory notes, on March 12, 2020.

In response to the COVID-19 pandemic, Ministerial Order 022/20 dated March 25, 2020 was issued by the Province lengthening timelines for a variety of legislated activities under the MGA. SDAB appeal deadlines were extended to October 1, 2020. In order to correct a number of unintended consequences of this action, the Order was rescinded and replaced by Ministerial Order 036/20 on April 17, 2020. Under this Order, original timelines were reinstated; however, for matters that started or ended between these two dates, the "clock was reset" for applicable appeal periods. The appeal period for the subject application ended on April 2, 2020 thus a new Notice of Decision and appeal period were required. A second Notice of Decision was issued on April 23, 2020 with a new appeal period. No new appeals were filed during that time.

b) Appellants

The SDAB received two Notices to Appeal filed against the application for the proposed accessory suite. Both Appellants, Debra DiSanto and Leland Styner, represented additional joint complainants. Oral and visual presentations were made to the Board outlining their grounds for appealing the Development Authority's decision to approve the development application.

Ms. DiSanto, and on behalf of joint appellants Lama Al-Yafi, [REDACTED] and John Gillis, provided the following arguments:

- Ms. DiSanto feels that the consultation process is flawed and that there is a lack of consideration for long-term homeowners. Concerns regarding development can be submitted only after the permit has been approved and as part of an appeal process.
- The addition of an accessory suite with a separate entrance, four parking stalls and double the number of waste and recycling bins re-develops this residence into a duplex. The Appellants purchased their homes in an R-1 district area because they are all single-detached dwellings, not multi-family units. The physical, economic and social fabric of the neighbourhood will be negatively impacted.

- The Appellants noted that a limitation in storage options for future tenants could lead to the addition of a storage unit in the back yard or a cluttered backyard and unsightly premises.
- It is the Appellants' position that suites should be accessory to the homeowner's primary residence and not an investment property.
- Ms. DiSanto noted that the new side entrance will be located in close proximity to her rear deck and will be visible from her kitchen window. The additional noise and lack of privacy will disrupt her ability to enjoy her property.
- Quigley Drive is a busy thoroughfare so many residents spend time in their back yards away from the traffic. The Appellants feel the additional parking stalls, increased number of vehicles and extra waste and recycling bins will create a visual disturbance, increase noise and affect air quality. The removal of mature trees for the expansion of the parking pad will cause further negative aesthetics.
- Ms. DiSanto cited concerns that property values would decrease, and future sales of nearby homes be negatively impacted with a multi-family rental property nearby. The risk of having a variety of short-term renters could potentially impact the community's safety, security and stability.
- From a traffic perspective, the Appellants noted that there is potential for increased street parking, adding to the traffic congestion if the provided off-street parking is not used appropriately by the addition of tenants. Quigley Drive is the only route in and out of the community and the back lane has higher volumes of traffic due to nearby schools.
- Ms. DiSanto stated the plans submitted were incomplete as they were marked "work in progress"; unfinished plans cannot be approved. The Appellants were not provided with detailed drawings nor shown plans stamped by an engineer for the proposed exterior stairwell. There is concern that this poses a risk to the adjacent property during construction (excavation in particular) and with potential future drainage and foundation issues.
- The Appellants indicated that the density target for West Terrace has been exceeded. The Town's website states the target density is 8 to 10 dwellings per hectare and it currently sits at approximately 8. A map (2016) of the community of West Terrace shows the density at 12.38 units per hectare, exceeding the target and above the average.

Mr. Styner, and on behalf of joint appellants Brian and Gail Morgan, Tammy and Harv Davies, Robert and Joanne Gauthier and Anthony Renwick, provided the following arguments:

- The Appellants question the process as the Notice of Decision states the development permit has been approved. It is their opinion that approval should not be granted until after the appeal period passes with no appeals filed.
- The Appellants are long time residents, many having built their homes. The community was promoted as an R-1 single-family dwelling area and they were advised other areas would be designed for lower-income housing. Multi-family dwellings change the structure and dynamics of a street and may lead to parking issues, neighbour conflicts and occasionally bring in criminal activity.
- It is the Appellants' view that not all accessory suites are being developed to provide affordable housing but rather as a revenue property for the new property owner.
- Mr. Styner noted that property maps and zoning are used for establishing property values that are taken into consideration by lenders for mortgages. Changing the structure of the area will affect the value of properties already facing challenges in the current market.
- Homes in the area are cared for by owners who have a vested interest in maintaining their property. The Applicants are of the view that multi-unit rental properties do not receive the same level of attention. When properties get rundown, the whole neighbourhood suffers.

- Mr. Styner noted the addition of accessory suites is causing animosity between homeowners and neighbouring renters in some areas in Cochrane. Sub-letting, waste and recycling bins and parking issues are some of the concerns they have been made aware of.
- The Appellants feel that the proposed four (4) parking stalls in the rear will cause ongoing issues with additional traffic, parking and waste and recycling bins. Based on the Town's spacing requirements for bins on collection days, there is insufficient room to store them properly.
- The Appellants pointed out the Town's website states the density target for Cochrane is eight to ten dwelling units per hectare and that the current density is approximately eight units. The 2016 Unit Density map for West Terrace identified the area's density as 12.38 units per hectare. This well exceeds the Town's target and is reason enough for not allowing any further accessory suites.
- In preparing for this appeal, the Appellants reviewed past decisions regarding accessory suites and noted that all had been approved. They feel that the applicant meeting planning and development requirements should not be reason enough to approve an application, the views of the residents in the area must also be taken into consideration. Further, they question the term "discretionary use", at whose discretion?

The Appellants are requesting the Board overturn the Development Authority's decision to approve the development permit.

c) Applicant

The Applicants submitted an oral and visual presentation to the Board in response to the Appellants' concerns:

- The Applicants purchased the home as a foreclosure and immediately made improvements to the property. All Building and Safety Codes and Development and Building Permit requirements will be met to ensure the planned suite is compliant.
- Mr. and Mrs. Hiebert explained the proposed exterior stairwell will provide a separate entrance for tenants and the design will encourage use of the rear parking pad instead of on-street parking. Stamped engineered drawings for the construction of the stairwell will be completed if the development permit receives approval. Extra precautions will be taken during excavation and construction to ensure adjacent properties are not affected.
- The current parking pad will be expanded to include the addition of two (2) new stalls. The Applicants dismantled an old shed and anticipate only two of the current six (6) trees will need to be removed to accommodate this. The Town does not have any landscaping requirements for the rear yard.
- Mrs. Hiebert noted that other homes have large trailers or multiple vehicles parked along the back lane. Two additional parking spots will not add more visual disturbance to an already busy back lane.
- The Applicants provide extra garbage, recycling or compost bins only if needed by the tenants. Three bins are sufficient at their other properties. There is enough room along the fence line to store three (3) bins while maintain the 1m spacing for collection days. Extra bins may be placed behind vehicles on the parking pad.
- Mr. and Mrs. Hiebert have a robust screening process for prospective tenants and numerous rules and regulations in the lease agreement and look for long term renters.
- The Applicants have had rental properties since 2017 with no complaints about tenants to-date. All existing tenants have extended their leases. They also provided a letter of support from a current tenant, Gary Dyck.
- The Applicants included a letter from local realtor Ken Morris that stated having an accessory suite next door does not decrease property value if it is managed properly and the exterior shows well.

The Applicants' intention with this application is to provide safe, legal rental options for individuals and families at all income levels.

IV. DECISION

The Board reviewed all evidence and arguments, written and oral, submitted by the parties when making its decision.

The Board recognizes that the Appellants feel some form of consultation with neighbours during the review process could be beneficial as opposed to having to use the appeal process however, this is not within the Board's jurisdiction.

The Board is satisfied that this application meets the requirements as outlined in Section 12.2.0 of the [LUB](#) for an accessory suite and does not re-designate the property as a duplex or multi-unit dwelling.

The design detail issues raised by the Appellants relating to the exterior stairwell are, in the Board's opinion, addressed by Section 4.1.1 of the [LUB](#) and Advisory Notes a), b) and d) in the Notice of Decision, dated April 21, 2020. The Board accepted the Applicant's statement that excavation and construction will be undertaken with care and attention to the adjacent property.

In the Board's view, the privacy of the Appellant has not been materially affected. While some overlooking may occur when the side entrance is in use, the fence between the properties and the entrance being below-grade will mitigate this impact.

The Board considered Section 12.2.2 of the [LUB](#), in particular, subsection c) when making their decision. It was shown that there were no other accessory suites within the subject block face, only one on an adjacent block face and no accessory developments in the area allowing client visits. It is the Board's opinion that this development will not negatively impact traffic in the area nor result in clustering.

The proposed development provides sufficient parking for both the primary and accessory dwellings and is compliant with Section 11.3.1 d) of the [LUB](#). The Board believes the impact to parking in the area will be negligible.

Unightly premises, noise complaints and nuisance bins are matters for Municipal Enforcement and are not under this Board's authority.

The Board is satisfied with Administration's explanation of a clerical error on the [Density](#) page of the Town's website. Where it stated density targets *per hectare*, it should have read *per acre*. The error has since been corrected. West Terrace unit density, as recorded in 2016, is 5.01 units per acre, under the Town's target of eight to ten per acre.

The Board notes that trees to be removed related to the extension of the parking pad are on private property and therefore outside the jurisdiction of the Board to consider. Similarly, concerns expressed about potential tenants and revenue properties are not before this Board as they are not planning considerations.

The Board acknowledges that there were difficulties and delays in the processing of the applications to appeal. Specifically, the onset of COVID-19, the impacts of closing the RancheHouse to the public and the confusion surrounding the Ministerial Orders. The Board determined that they were not determinative to the decision of the Board.

The Appellants were not able to provide evidence to support that accessory suites and/or revenue properties result in a decrease in property values however, evidence to the contrary was provided by the Applicants.

In summary, the Appellants failed to convince the Board that the proposed development would unduly interfere with the amenities of the community, or materially interfere with or affect the use and enjoyment of neighbouring properties.

CONCLUSION

For the reasons set out above, the appeal is denied, and the decision of the Development Authority is upheld. A development permit shall be issued.

Dated this 8th Day of June 2020

Original signed by David Helmer

Original signed by Karen Babin

David Helmer, Chairperson

Karen Babin, Recording Secretary

An appeal of this Decision, on a question of law or jurisdiction, may be made to the Alberta Court of Appeal in accordance with section 688 of the Municipal Government Act, RSA 2000, c.M-26 within 30 days of the date of this Decision.