



REGIONAL MUNICIPALITY
OF WOOD BUFFALO

SUBDIVISION AND DEVELOPMENT APPEAL BOARD

**NOTICE OF DECISION
OF THE SUBDIVISION AND DEVELOPMENT APPEAL BOARD**

FILE NO. **SDAB-2016/007**

APPLICATION No.: **2016-DP-01750**

DEVELOPMENT: **Two Bedroom Basement Suite**

LAND USE DESIGNATION: **R1 – Single Detached Residential District**

LEGAL DESCRIPTION: **Lot 31, Block 18, Plan 062 5490**

CIVIC ADDRESS: **128 Trillium Bay, Fort McMurray, Alberta**

IN THE MATTER OF AN APPEAL filed with the Regional Municipality of Wood Buffalo Subdivision and Development Appeal Board (“the Board”) pursuant to Sections 685 and 686 of the *Municipal Government Act*, R.S.A 2000, c. M-26 (“the Municipal Government Act”), the Appeal Hearing was held on Thursday, January 12, 2017 in the Jubilee Centre, Council Chamber, 9909 Franklin Avenue, Fort McMurray, Alberta.

BETWEEN:

B. and M. Gillis, D. Graham, K. Pardy, D. Roberts, T. and C. Scantland (“the Appellants”)
-and-
The Regional Municipality of Wood Buffalo (“the Municipality”)

BEFORE:

D. Secord, Chair
A. Austin
A. McKenzie
N. Messer
S. Schaffer
R. Wells

Administration:

J. Wall, Clerk for the Subdivision and Development Appeal Board

- [1] Following the introduction of the Board, the Chair confirmed with the parties in attendance that there were no objections to the constitution of the Board.

SUMMARY OF HEARING

- [2] This Appeal is related to the approval of Development Permit for a two-bedroom basement suite.
- [3] The Development Officer, T. Mendis started the proceedings with a verbal presentation of his written report. (Exhibit 9) The application for the development was received on August 18, 2016.
- [4] He stated that he reviewed the property file and found a decision of the Subdivision and Development Appeal Board dated June 7, 2013 that refused an application for a two bedroom basement suite. He stated that he conducted site visits on August 31 and September 12, 2016 and noted that the previous concerns of unsightly property, a loud dog and excess parking had been addressed. He explained that the front lawn had been reseeded, debris had been cleaned up, and the inside of the property had been repaired. He explained that the owners of the dog resided upstairs and will be moving out of the property. He then approved the permit on October 3, 2016.
- [5] He noted that in rendering his decision he considered the parking requirements of Section 130.9 of the *Land Use Bylaw* which states:

130.9 Basement Suites

- (a) a minimum of one on-site parking stall shall be provided for each bedroom in a basement suite to a maximum of two on-site parking stalls;*
- (b) the on-site parking stall requirement for basement suites is in addition to the parking requirement for the single detached or semi-detached dwelling;*
- (c) all on-site parking stalls shall remain accessible for parking by passenger vehicles at all times and shall be directly accessible to the street at all times.*

- [6] He further explained that on August 12, 2009 the Community Development Planning Branch issued an administrative directive that varied the parking requirements of Section 130.9 of the *Land Use Bylaw* with the following revisions:

Development Permit applications are reviewed with the focus on safety. One (1) additional stall for an application of either a one (1) or two (2) Bedroom Basement Suite, to a maximum of two (2) stalls for a three (3) Bedroom Basement Suite. Tandem Parking is permitted. Each stall shall meet the required dimensions as per the Land Use Bylaw that being 2.8m x 5.8m. On-street parking is not permitted.

- [7] The Planner stated that the subject property has a driveway large enough to accommodate three parking stalls and the garage can accommodate two additional vehicles.
- [8] During questioning, the Board inquired as to whether an Administrative Directive can supersede the *Land Use Bylaw*. B. McMurdo, Acting Manager, Community Development Planning explained that the Administrative Directive was issued in 2009 to address an increase in illegal basement suites. He stated that the Administrative Directive does not override a Bylaw and that the *Land Use Bylaw* should have been amended to include that directive.

Submission In Favor Of The Appeal

- [9] D. Graham, of 237 Trillium Road spoke in favor of the appeal and raised the issue of a Restrictive Covenant that was part of his purchase agreement that no basement suites would be allowed in the area. He feels that he paid more money for the lot due to the Restrictive Covenant being in place. He stated that there have been many issues with parking and Bylaw has been to the property several times. Mr. Graham stated that vehicles have been parking on the sides of the road and on the lawn.
- [10] C. Scantland, of 112 Trillium Bay spoke in favor of the appeal and noted that she was speaking on behalf of B. and M. Gillis of 120 Trillium Bay who were not able to attend in person. Ms. Scantland stated that she in agreement with the statements presented by D. Graham. She explained that she bought her home as well with a Restrictive Covenant on the property to eliminate the potential of having numerous basement suites in the area. She stated that there is one other basement suite on Trillium Bay and that property is maintained, however, indicted that she was out of town when she was notified of that approval and would have appealed that basement suite as well. She noted that the lawn was reseeded and cleaned up and that a month later it was unsightly again. She referenced photos that she submitted on January 4, 2017 that show vehicles parked on the lawn and an excessive number of vehicles parked in the driveway. (Exhibit 8) She questioned how often this issue has to be dealt with as this is the second time that adjacent property owners have appealed this development.

- [11] A. Gulamhusein, Legal Counsel for the Municipality came forward to explain that Restrictive Covenants or Architectural Controls are a contract between the developer and the land owner as means to create a more consistent neighbourhood. She went on to say that a developer will enter into an agreement with the property owner and the Municipality is not privy to the contract. She explained that the Municipality must abide by the *Land Use Bylaw* and Restrictive Covenants are not considered by the Planning and Development Department and that sometimes the mechanism to remedy to this situation is for the homeowners to seek legal action against one another. As well, she stated that if the application for the basement suite is denied the homeowner can reapply in six months.

Submission Opposed To The Appeal:

- [12] M. Mann, property owner of 128 Trillium Bay, spoke in opposition to the appeal and that he regrets the impact these issues have had on the neighbours. He is aware that Bylaw has investigated the property. He stated that there are seven-eight basement suites in the neighbourhood and that renting out the whole home is difficult and wanted to rent the basement suite separately as a more affordable option for families. He further stated that he does have a business; however, the business is not located at 128 Trillium Bay.
- [13] He presented a plan to address concerns of the neighbours and to mitigate potential issues at the property. He also outlined his Tenancy Standard and Plan which included new tenant selection, removal and replacement of tenants of concern, parking, yard maintenance/house cosmetics and a zero tolerance policy. (Exhibit 12)
- [14] When asked how often he visits the property, he said every three months. He indicated that at the present time there are about four or five vehicles parked at the property, two of which are not in working order.
- [15] Upon conclusion, the Chair asked the parties present, if they felt that the hearing was conducted in a fair manner. No issues were brought to the Board's attention.

FINDINGS OF FACT

- [16] The Board makes the following findings of fact:
- a. The Property is zoned R1 – Single Detached Residential District;
 - b. The use is a Discretionary use; which means the Board may approve if it determines that the use is compatible with neighbouring uses;

- c. Restrictive Covenants are not enforceable under the *Land Use Bylaw* as they are a private agreement between the developer and the property owner.

DECISION

- [17] **It is the decision of the Subdivision and Development Appeal Board to overturn the decision of the Development Officer and deny Development Permit 2016-DP-01750.**

REASONS FOR THE DECISION

- [18] The Board gave particular regard to the following:
Section 687(3)(d) of the *Municipal Government Act*, RSA 2000, c. M-26

687(3) In determining an appeal, the subdivision and development appeal board

[...]

(d) may make an order or decision or issue or confirm that the issue of a development permit even though the proposed development permit does not comply with the land use bylaw if, in its opinion,

(i) the proposed development would not

(A) unduly interfere with the amenities of the neighbourhood, or

(B) materially interfere with or affect the use, enjoyment or value of neighbouring parcels of land.

Section 93.4 of the *Land Use Bylaw*

Land Use Bylaw

93.4 Discretionary Uses - Planning Commission

i) The following are discretionary uses that may be approved by the Municipal Planning Commission:

ii) Basement Suite

...

- [19] The use as a basement suite is a discretionary use in the R1 district as stated in section 93.4 of the *Land Use Bylaw* and as such the Board must determine through the evidence presented as to the compatibility of the proposed development.

After considering the legislation and the examination of the evidence the Board determined that the development of this two bedroom basement suite is incompatible with the surrounding neighbourhood and that approval of the Development Permit would unduly interfere with the amenities of the neighbourhood, and interfere with the use, enjoyment and or value of the neighbouring properties.

- [20] The Board paid particular regard to the evidence presented by the Appellants who provided photos taken of the subject property with vehicles parked on the front lawn and six vehicles parked in the driveway.
- [21] The Board notes that the property owner did not provide evidence to illustrate that he had taken steps to mitigate issues at the property. He stated that he does have a tenancy plan to address the concerns of the neighbours however; this did not show that the existing parking issues had been resolved. He stated that he only visits the subject property every three months. The Board is of the opinion that, given the history of the issues at the property, an inspection every three months is not sufficient to mitigate any problems that may arise. As well, he indicated that there are broken down vehicles still in the driveway that have yet to be removed.
- [22] The Board heard evidence on the issuance of Restrictive Covenants and the questions from the Appellants as to the whether it is in the jurisdiction of the Municipality to enforce these agreements. It was clarified that the Municipality is not a party to the contract and in turn are outside of the Board's jurisdiction to ensure that they are adhered to.
- [23] The decision of the Subdivision and Development Appeal Board is final and binding on all parties, subject only to appeal to the Court of Appeal under Section 688 of the *Municipal Government Act*, R.S.A 2000, c. M-26

Dated at the Regional Municipality of Wood Buffalo in the Province of Alberta, this 27th day of January 2017.

Per CHAIR:

Vice-Chair, Sean Schaffer

APPENDIX "A"

DOCUMENTS RECEIVED AND CONSIDERED BY THE SDAB:

EXHIBIT NO.	FILED BY:	ITEM	DATE FILED
1.	Appellant	Notice of Appeal – Scantland	10-17-2016
2.	Appellant	Notice of Appeal – Gillis	10-17-2016
3.	Appellant	Notice of Appeal – Roberts	10-17-2016
4.	Appellant	Notice of Appeal - Pardy	10-17-2016
5.	Appellant	Notice of Appeal – Graham	10-18-2016
6.	Respondent	Development Permit	11-04-2016
7.	Appellant	Supplemental Submission – Scantland	11-17-2016
8.	Affected Party	Submission – Jhanwar	11-20-2016
9.	Planner	Planner’s Report	01-03-2017
10.	Appellant	Supplemental Submission – Scantland	01-04-2017
11.	Appellant	Supplemental Submission – Graham	01-04-2017
12.	Property Owner	Submission – Mann	01-12-2017

APPENDIX “B”

REPRESENTATIONS

	PERSON APPEARING	CAPACITY
1.	T. Mendis	Development Officer , Planning and Development, Regional Municipality of Wood Buffalo
2.	B. McMurdo	Acting Manager, Community Development Planning, Regional Municipality of Wood Buffalo
3.	A. Gulamhusein	Legal Counsel, Legal and Legislative Services, Regional Municipality of Wood Buffalo
4.	D. Graham	Appellant - Adjacent Property Owner
5.	C. Scantland	Appellant - Adjacent Property Owner
6.	M. Mann	Applicant - Subject Property Owner