



NOTICE OF DECISION

FILE NO. **SDAB 2022-002**

APPLICATION No.: **2022-DP-00284**

DEVELOPMENT: **Two-Bedroom Basement Suite**

LAND USE DESIGNATION: **Low Density Residential District**

LEGAL DESCRIPTION: **Lot 37A, Block 4, Plan 2625TR**

CIVIC ADDRESS: **153 Silin Forest Road, 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 “MGA”) the Appeal Hearing was held on Thursday, November 17, 2022, in the Jubilee Centre, Council Chamber, 9909 Franklin Avenue, Fort McMurray, Alberta.

BETWEEN:

Len Savoy (“the Appellant”)

-and-

The Regional Municipality of Wood Buffalo (“the Municipality”)

BEFORE:

A. McKenzie, Chair
D. Cleaver
N. Mahgoub
T. Morris

Administration:

H. Fredeen – Clerk for the Subdivision and Development Appeal Board
S. Soutter – Manager, Legislative Services

- [1] Following the introduction of the Board, the Chair confirmed with the parties present that there were no objections to the constitution of the Board.
- [2] No member of the Board declared any conflict of interest with any parties present.

PRELIMINARY MATTERS

[3] No preliminary matters were raised.

SUMMARY OF HEARING**Development Authority**

- [4] This Appeal is related to the approval of a Development Permit Application, No. 2022-DP-00284, received for a Two-Bedroom Basement Suite for the Subject Property located at 153 Silin Forest Road, in Fort McMurray Alberta.
- [5] The Development Officer began the proceedings with a verbal presentation of his written report beginning with a brief description and chronology of the Development Permit Application for a Two-Bedroom Basement Suite. The Application for the Development Permit was received on July 21, 2022. Following a request for additional information, which was provided by the Applicant, the Application was deemed complete on August 31, 2022. Following a two-week circulation period to internal and external stakeholders, the Development Permit was issued on September 19, 2022. A Notice of Appeal was then filed on October 11, 2022, with the Subdivision and Development Appeal Board against the approval of the Development Permit Application.
- [6] The Development Officer indicated that thirty-four property owners within a 60-meter radius of the subject property were notified of the approved permit by regular mail sent on September 29, 2022. The notification was also advertised in the Fort McMurray Today newspaper on October 20, 2022.
- [7] The Development Officer submitted that the proposed use is a “*Discretionary Use – Planning Commission*”; however, in the absence of a Municipal Planning Commission, the authority falls to the Development Officer to render a decision on the Application.
- [8] The Development Officer referred to Part 7 of Land Use Bylaw No. 99/059, which stipulates that two on-site parking stalls are required per dwelling unit for a semi-detached residential use. Additionally, Section 130.9(a) of the Land Use Bylaw states “*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*”. Finally, Section 131(a) and Figure 7.1 defines that the minimum dimension of a parking stall shall be 2.8 meters wide by 5.8 meters long.

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- [9] Further to the above, a two-bedroom basement suite, requires a total of four on-site parking stalls. The Development Officer indicated that initially, the Applicant proposed one parking stall on the Application; therefore, the Development Authority worked with the Applicant to achieve a compliant design that would provide for four on-site parking stalls with the required dimensions.
- [10] A site inspection was completed October 30, 2022, which indicated that a temporary quonset and an accessory building were on the subject property and would need to be removed to accommodate the required four on-site parking stalls.
- [11] A summary of the Appellant's concerns were outlined as follows:
1. *The Subject Property has been used to house multiple people in illegal suites as a rental property.*
 2. *The Subject Property cannot accommodate the required on-site parking for the tenants.*
 3. *The increased activity of people in front of the Subject Property generates traffic and noise in the neighbourhood.*
 4. *The property owner's attitude is more along in the lines of 'don't worry about it' which will lead to more situations that are detrimental to the safety of the Appellant's family and neighbours in the area.*
 5. *The Subject Property is used by illegal businesses for distributing boxed security systems and other unknown items.*
 6. *The quonset at the rear of the Subject Property is used for commercial or business purposes.*

Use as a Rental Property

- [12] The Development Officer noted that the approval of the Two-Bedroom Basement Suite would result in two dwelling units on the subject property. Both dwelling units are required to meet safety code requirements. The Development Authority does not regulate if a dwelling is to be rented, all dwellings have the potential to be rented.

On-Site Parking

[13] The Development Officer addressed the Appellant's on-site parking concerns, noting that the proposed development provides for four on-site parking stalls measuring 2.8 meters by 5.8 meters which is compliant with the Land Use Bylaw. The proposed on-site parking is located at the rear of the subject property with access to the back lane. Additionally, the driveway and parking area was approved by the Engineering department under Boulevard Crossing Permit 2022-BU-00028.

Traffic and Noise

[14] The Development Officer noted that traffic related concerns are averted by the requirement of the four proposed parking stalls located at the rear of the property. Noise concerns are addressed in Part 4 of the Community Standards Bylaw No. 21/010.

Property Owner's Attitude

[15] The Development Officer ascertained that the attitude of the property owner is not a Land Use Bylaw issue and is not a consideration as part on the decision making process on a development permit application.

Illegal Businesses

[16] The Development Officer addressed the Appellant's concerns regarding an illegal business operating out of the Subject Property, indicating that a search of the property file revealed that no Business Licenses have been issued for the subject property. It was further noted that if the Development Permit is upheld, no further home business permits could be issued; and that any commercial or business activity on the subject property would be subject to Bylaw Enforcement.

Quonset at the Rear of the Subject Property

[17] The Development Officer submitted that in order to provide for the required parking, the temporary structures and shed currently located at the rear of the property would need to be removed.

[18] In closing, the Development Officer recommended that the Subdivision and Development Appeal Board uphold the Development Permit approval with an additional condition as follows:

“The existing temporary structure, Accessory Building (Shed) and retaining wall from the rear of the Subject Property must be removed to accommodate four (4) parking stalls and necessary alterations are required to ensure compliance with the Land Use Bylaw 99/059 and to meet Engineering Servicing Standards.”

[19] Following questioning from the Appellant who requested clarification on the removal of the retaining wall included in the proposed additional condition, the Development Officer confirmed that the retaining wall in question is not the retaining wall shared between the Appellant and the Subject Property. It is a retaining wall that is internal on the Subject Property and is located in the proposed tandem parking area.

[20] During questioning from the Board, the Development Officer confirmed the following:

- i. There are no property line setback requirements for parking areas in the districting of the subject property.*
- ii. The Board noted that the tandem parking area is only 11 meters. The Development Officer confirmed that the required length should be 11.6 meters, being that two parking stalls 5.8 meters in tandem adds to 11.6 meters in total length required. The Development Officer submitted that there is enough space to accommodate the required 11.6 meters. However, further questioning from the Board confirmed that the Development Officer had no additional evidence to confirm that there was, in fact, space to accommodate 11.6 meters in length.*
- iii. No review was completed to determine how many approved basements suites exist in the neighbourhood.*
- iv. A review of a basement suite application is based on compliance with the provisions of the Land Use Bylaw. The type of structure (ex: single detached dwelling, semi-detached dwellings, duplexes, etc.) is not considered when reviewing these types of permit applications.*
- v. The additional area needed to accommodate the parking area does not impact the minimum 30% soft landscaping coverage requirements of the Land Use Bylaw.*
- vi. When an application is under review, the Development Officer only considers if the “use” is compatible and not the “user” or their intention.*
- vii. The proposed condition, recommended by the Development Authority, requiring removal of the temporary quonset structure and accessory building currently located on the Subject Property, shall not be relocated to another area on the Subject Property.*

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- viii. *In the appeal hearing package, there were multiple versions of the Basement Suite floor plan; one version included two kitchenettes (Exhibit 5, Pg. 166). It was confirmed that the Basement Suite would only have one kitchen and the version included in the Development Permit (Exhibit 2, Pg. 12) is the approved floor plan.*
- ix. *There were no additional studies completed on the potential impacts of removing the retaining wall, internal to the Subject Property, to be removed to accommodate the required parking area. Based on the topography of the neighbourhood, it is not anticipated that the removal of said wall would have any impact on the Appellant's property.*
- x. *Underground service lines are likely present in the same location of the proposed parking area. Therefore, it is also likely that the proposed parking area, needing to be a hard paved or similar material, would be built over the underground service lines. It was confirmed, per Advisory Note 9 of the Development Permit (Exhibit 2, Page 8), there shall not be anything constructed over the service line or within 1.5 meters horizontally. If the Applicant constructs any hard surface parking over the service line, it is the Applicant's responsibility for the replacement cost of the driveway should the underground service line ever need repair.*

Appellant

- [21] The Appellant began his verbal presentation indicating that he has no issue with anyone wishing to further develop their property, but that such developments must be completed, inspected, and be compliant with all bylaws and safety codes and regulations.
- [22] The Appellant noted concerns regarding increased traffic and safety resulting from a higher density of residents living in the neighbourhood due to excessive legal, or illegal, basement suites or boarding houses. Furthermore, it was observed that there was a security system distribution business operating out of the Subject Property, further increasing traffic, and affecting the safety of the neighbourhood.
- [23] It was submitted by the Appellant that the Subject Property and the Appellant's dwelling are semi-detached and share a common wall. The Subject Property has had two recent structural fires with the second fire causing significant losses. Both fires are believed, by the Appellant, to be a result of poor construction of the prior basement development and non-compliance with applicable safety codes and standards.

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- [24] The Appellant submitted that the property located at 161 Silin Forest Road, which is located on the other side of his dwelling, recently had the rear parking area rebuilt and expanded. The Appellant noted that it was his understanding that 161 Silin Forest Road and 153 Silin Forest Road (Subject Property), are owned by the same person. The reconstructed parking area of 161 Silin Forest Road has caused significant damage to his fence and encroaches on the rear yard of his property which has had a negative impact on his use and enjoyment of the rear yard.
- [25] The Appellant submitted that post-fire reconstruction of the Subject Property, including the Basement Suite, will be completed with no regard for safety codes or regulations which will put his property at risk for another fire. Furthermore, the noise from construction of the Subject Property will be prolonged with the construction of the Basement Suite.
- [26] The Appellant indicated that use and enjoyment would be further negatively affected since there will now be a “parking lot” on each side of the Appellant’s property degrading the visual aesthetics of the neighbourhood. Additionally, with the potential of up to eight vehicles parked adjacent to his, in winter it is possible that all eight vehicles could be running during winter to warm up. Therefore, the exhaust from these vehicles could enter his home, preventing him from opening windows to enjoy fresh air.
- [27] In wrapping up his submission, the Appellant emphasized his reasons to why the permit for the Two-Bedroom Basement Suite should be denied and indicated that should the permit be upheld, he would want to be sure that all safety codes and regulations are complied with throughout the entirety of construction and occupation of the Basement Suite.
- [28] The Development Officer had no questions for the Appellant.
- [29] Through questioning of the Board, the Appellant confirmed the following:
- i. *The Subject Property and the Appellant’s property are part of the same duplex and share a wall.*
 - ii. *An approved basement suite would inherently be safer since the plans would be reviewed by the Development Authority and the construction of the development would need to meet all safety codes and regulations and would be inspected by the Safety Codes Department to ensure compliance.*

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- iii. *There is a loss of enjoyment resulting from the construction of the parking area located at the address 161 Silin Forest Road, on the other side of his property, and that construction of the parking area on the Subject Property, could potentially have the same impact. Furthermore, the negative effects of the additional density, traffic and vehicle exhaust will impact use and enjoyment.*
 - iv. *It was the Appellant's opinion that the Subject Property and 161 Silin Forest Road would be used as boarding houses; however, the Appellant submitted he had no evidence to support the claim.*
 - v. *There was no opposition with the proposed additional condition recommended by the Development Authority, regarding removal of the temporary quonset structure and shed however, the Appellant's opposition to the Development Permit remains unchanged.*

Submission in Favour of the Appeal

[30] No parties were present to present in favour of this appeal.

Submission Opposed to the Appeal:

- [31] The Board heard from Alexander Bondar, authorized Agent for the Development Permit Applicant and owner of the Subject Property, Ms. Elena Bondar (the "Applicant").
- [32] The Applicant declared that all construction within the Subject Property has been completed in accordance with all safety codes and regulations, and that work completed to date has been inspected and approved by the Safety Codes Department. (Exhibit 5, Pgs. 72, 75, 153, 229)
- [33] The Applicant acknowledged that the Appellant's property has been negatively affected by the reconstructed parking area on 161 Silin Forest Road; however, he emphasized that issues that have arisen from this property are not relevant to the Subject Property.
- [34] To alleviate any neighbourhood grievances, the Applicant encouraged the Appellant to contact him with any concerns and extended an invitation for the Appellant's attendance during safety inspections.
- [35] The Applicant noted that traffic and on-street challenges are shared amongst all residents in the neighbourhood, including the Appellant.

[36] During Questioning of the Board, the Applicant confirmed the following:

- i. *To comply with the Land Use Bylaw, the intention was to have four parking stalls noted in the site plan.*
- ii. *It is unknown if there was an approved development permit for the basement development prior to the fire as the basement had already been developed when the property was purchased.*
- iii. *Compliance of all Bylaws and safety codes and regulations is of great importance.*
- iv. *It is unlikely that there could be any negative impacts to the use and enjoyment the Appellant may have resulting from the required additional parking. The Appellant's property is fully fenced ensuring privacy for the Appellant. The fence also blocks the view to the Subject Property mitigating any negative aesthetic impacts of the additional parking area.*
- v. *The retaining wall recommended for removal is internal to the property and is made of wood, therefore it is not structural in nature and likely serves no useful purpose. In addition, both the subject property and the Appellant's property are on a hill with the Appellant's property at the higher elevation on the hill. Thus, any potential impact of removing this wall could not affect the Appellant.*

[37] Upon conclusion, the Chair asked the parties present if they felt that they had sufficient opportunity to present their evidence and argument to the Board. Both the Appellant and Municipality confirmed there was sufficient opportunity to present their case.

FINDINGS OF FACT

[38] The Board makes the following findings of fact:

1. The Property is zoned R2 – Low Density Residential District;
2. The proposed use is a Two-Bedroom Basement Suite, a discretionary use

DECISION

[39] **It is the decision of the Subdivision and Development Appeal Board to overturn the Decision of the Development Authority and grant the appeal. Development Permit No. 2022-DP-00284 for a Two-Bedroom Basement Suite is DENIED. Additionally, the Board waives the six-month waiting period to resubmit the permit application.**

REASONS FOR THE DECISION

[40] The Board's jurisdiction is found within Section 687(3) of the *MGA*. The Board hears appeals *de novo* and weighs the evidence brought before it in making its decision. Further, the Board has carefully examined the provisions of the Land Use Bylaw and has considered the oral and written submissions of the Development Authority, the Appellant and Affected Parties.

[41] The Board identified the following three issues relevant to this appeal:

Issue 1. Is there sufficient parking per Part 7 of Land Use Bylaw, to support the proposed development?

Issue 2. Will the proposed development negatively affect the use and enjoyment of the Appellant?

Issue 3. Will the proposed development create negative impacts resulting from increased density?

Is there sufficient parking per Part 7 of Land Use Bylaw, to support the proposed development?

[42] The Board reviewed the site plan for the proposed Development and noted that the tandem portion of the parking (area denoted in red of the site plan) is 11 meters. Section 131(a) and Figure 7.1 of the Land Use Bylaw defines a parking stall to be 2.8 meters wide by 5.8 meters long. The Board acknowledges that tandem parking is permitted under the Land Use Bylaw; however, to comply with the parking requirements, the parking area is required to be a minimum of 11.6 meters long in order to accommodate two parking stalls at 5.8 meters long. The site plan only provides for tandem parking at a length of 11 meters.



Site Plan Excerpt (Exhibit 2, Page 10)

- [43] In addition to the approved site plan, the Board was persuaded by the verbal submission of the Appellant who submitted that there is insufficient space to accommodate the necessary four on-site parking stalls to support the proposed Two-Bedroom Basement Suite
- [44] The Board was not swayed by the verbal submission of the Development Officer that there is “enough space” to support the parking requirements contrary to what the site plan illustrates, and without further evidence to the contrary, concludes that the Development Officer erred in approving the proposed site parking plan.
- [45] The Board finds that the location of the proposed parking area which is required to be “*hard surfaced with asphalt, concrete or other similar paving material*” as noted by Condition 7 on the Development Permit, contravenes Advisory Note No. 9 which states:
- “it is the responsibility of the applicant to ensure that hard surface parking is not placed on top of the service line to the home and that 1.5 meters of horizontal clearance is kept.”*
- [46] The Board is aware that Development Permit Advisory Notes are not compulsory as submitted by the Development Authority; however, the Board finds that the intention of advisory notes in the Development Permit are directive in nature, thus the Board interprets Advisory Note No. 9 as directive as well.
- [47] The Board is convinced by the Development Officers submission that underground services are likely located under the proposed parking area and that the requirement of Advisory Note No. 9 cannot be met.

- [48] Having concluded that there is insufficient parking to support the proposed development, the Board need not to address the issue of use and enjoyment nor density. Despite that, the Board will address the Appellant's arguments regarding these issues.

Will the proposed development negatively affect the use and enjoyment of the Appellant?

- [49] The Board heard from the Appellant who submitted that his use and enjoyment of his property is negatively affected because of the unsightly and congested parking areas assigned to 161 Silin Forest Road and the Subject Property, 153 Silin Forest Road and that he can no longer enjoy his backyard or open his rear windows in the winter, due to exhaust fumes caused by the excess vehicles.
- [50] The Board notes that there are already two parking spots on the Subject Property and heard no evidence that the addition of two more parking spots on the Subject Property could have additional negative impacts. The Board was unconvinced of the negative impact to the Appellant's use and enjoyment of his property. The subject property parking area is opposite and downhill to the shared property line and retaining walls between the shared property line will remain intact.

Does the proposed development create negative impacts resulting from increased density?

- [51] The Board heard from the Appellant that he was generally not in opposition of anyone wishing to build legal Basement Suites, provided they are built to appropriate codes and standards and inspected by relevant safety authorities prior to occupancy. The Board emphasizes that one of the objectives of the permit process is to ensure that all codes and standards are met and inspected.
- [52] The Appellant advised to the Board that excessive traffic and a lack of on-street parking is resultant from other legal, or illegal, Basement Suites or Boarding Houses in the neighbourhood. Other than the Appellant's verbal testimony, no evidence was provided to support this argument.
- [53] The Development Officer advised that no study or analysis on density was completed. It was not part of the permit review to identify if there are, and how many, Basement Suites are in the neighbourhood.
- [54] The Board placed no weight on the arguments brought forward on this issue as no evidence was presented to support these claims. Furthermore, the Development Officer provided no evidence on this issue as it was not part of the permit review. Considering this, the Board was unable to come up with a conclusion on this issue. However, since this Decision was based on the conclusion that there is insufficient parking to support the proposed development, the Board need not address this issue.

[55] 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 1st day of December, 2022.

CHAIR:

FOIP section 17(1)

Alex McKenzie

APPENDIX "A"

DOCUMENTS RECEIVED AND CONSIDERED BY THE SDAB:

Exhibit #	Description	Filed By:
	Subject Area Map	
1.	Notice of Appeal (2 pages)	Appellant
2.	Development Permit 2022-DP-00284	Development Authority
3.	Appellants Disclosure (18 pages)	Appellant
4.	Planners Report (30 pages)	Development Authority
5.	Applicants Disclosure (170 pages)	Applicant

APPENDIX "B"

REPRESENTATIONS

PERSON APPEARING

CAPACITY

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| 1. | Purnesh Jani | Development Officer, Planning and Development
Regional Municipality of Wood Buffalo |
| 2. | Lee-Anne Kumka | Supervisor, Development Control
Regional Municipality of Wood Buffalo |
| 3. | Len Savoy | Appellant – Adjacent Property Owner |
| 4. | Alexander Bondar | Agent for Applicant and Subject Property Owner |