



**EDMONTON
TRIBUNALS**

*Subdivision &
Development
Appeal Board*

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Notice of Decision

[1] On August 25, 2016, the Subdivision and Development Appeal Board (the “Board”) heard an appeal that was filed on **July 27, 2016**. The appeal concerned the decision of the Development Authority, issued on July 13, 2016, to refuse the following development:

To develop a Secondary Suite in the Basement of an existing Semi-detached House

[2] The subject property is on Plan 2960MC Blk 11 Lot 8, located at 16426 - 89 Avenue NW, within the RF1 Single Detached Residential Zone. The Mature Neighbourhood Overlay applies to the subject property.

[3] The following documents, which were received and form part of the record:

- A Development Permit Application, including the plans of the proposed Development;
- The refused Development Permit;
- The Development Officer’s written submissions; and
- The Appellant’s written submissions.

Preliminary Matters

[4] At the outset of the appeal hearing, the Presiding Officer confirmed with the parties in attendance that there was no opposition to the composition of the panel.

[5] The Presiding Officer outlined how the hearing would be conducted, including the order of appearances, and no opposition was noted.

[6] The appeal was filed on time, in accordance with Section 686 of the *Municipal Government Act*, R.S.A 2000, c. M-26 (the “*Municipal Government Act*”).

Summary of Hearing*i) Position of the Appellant, A. Plamondon*

- [7] The Appellant reviewed his written submission with the Board.
- [8] As set out in Submission #1, there has been an initiative in the City to provide more affordable housing.
- [9] As set out in Submission #2, it was his understanding that the basement suite that existed when he purchased the property was legal. He was looking for an investment property that would generate income. He included copies of his property assessment notice from 2013 to 2015 as evidence that taxes were paid on a Semi-detached Dwelling with a Suite. In conversation with the Tax Department, he confirmed his “duplex” status and was advised that because of the increase in property value, the taxes also increased.
- [10] As set out in Submission #3, the Appellant can provide onsite parking for 3 cars and would not impact on street parking. There is a 30 feet wide by 20 feet deep parking pad at the rear of the property.
- [11] As set out in Submission #4, the Appellant clarified his Reasons for Appeal. He knew there was a basement suite but was not aware that it was not properly permitted. He should have investigated the property more when he purchased it but now wants to rectify the problem by obtaining a development permit for the existing suite. He collected revenue by renting the suite and properly claimed costs and profits with Canada Revenue. The suite has been reflected on his annual tax assessment from the City of Edmonton. He received a violation notice in 2015 and applied for a permit to have the suite decommissioned, which was granted. He subsequently applied for and was granted a permit to complete some basement alterations which included the installation of egress windows.
- [12] As set out in Submission #5, the Appellant has support from directly adjacent neighbours, including the neighbour who shares the Semi-detached unit and the adjacent neighbour.
- [13] As set out in Submission #6, the Appellant researched the zoning bylaws in several other municipalities. Most communities allow basement suites in Semi-detached Housing in some zones, provided the suites meet any applicable safety requirements.
- [14] As set out in Submission #7, the Appellant purchased the property not only to move into it, but to cover the operating costs and as an investment. He performed extensive upgrades. The tenants in the upper floor have been there since 2010 and the tenants in the basement from 2007-2015. Adding a basement suite is not inconsistent with the built environment of the area.

- [15] As set out in Submission #8, the basement suite has been occupied without interruption since 2007. Permitting the basement suite will not result in an increase to the infrastructure or the traffic load.
- [16] As set out in Submission #9, the Appellant has written to his MLA and Councilor. The latter indicated that the City of Edmonton may adopt changes to the Zoning Bylaw to allow for Secondary Suites in Semi-detached housing.
- [17] As set out in Submission #10, the Appellant can meet all of the new Secondary Suite requirements with the completion of a few more alterations.
- [18] The Appellant could not communicate with the first owner and the second owner only had the property for less than a year.
- [19] In response to questions from the Board, the Appellant stated that he bought the property in 2007, but it has only been taxed as a suite since 2013. It was his understanding that the property was built in the early 1960's. It was owned by the original owner for a significant period of time. The basement suite has one bedroom and there are two bedrooms on the main floor, for a total of 3 Sleeping Units.
- [20] The Chair reviewed the Board's jurisdiction and explained that a quasi-judicial board is like a court. It cannot set policy and must comply with the requirements of the *Municipal Government Act* and the *Edmonton Zoning Bylaw*. Only in certain circumstances, does the Board have the power to vary. The *Municipal Government Act* and *Edmonton Zoning Bylaw* set out the uses that are allowed under the RF1 Single Detached Residential Zone. The proposed use needs to fit in one of the Use classes and there are no variance powers in regards to the Use.
- [21] The Chair reviewed with the Appellant the Permitted and Discretionary Uses allowed under the RF1 Single Detached Residential Zone. The existing suite does not meet the Secondary Suite definition because it is a Dwelling located within a structure in which the principal use is Semi-detached Housing not a Single Detached House. The proposed development does not meet the definition of a Duplex because it consists of three Dwellings. The proposed development does not meet the definition of a Lodging House because it does not meet the definition of Congregate Living. The proposed development does not meet the definition of a Semi-detached Housing because it consists of three Dwellings. The proposed development does meet the definition of an Apartment house, which is not a listed use in the RF1 Single Detached Residential Zone. The Chair confirmed with the Appellant that the Board has no discretion to vary use.
- ii) *Position of the Development Officer, M. Ziober*
- [22] The Development Officer reviewed her written submission. This application should have been reviewed as an Apartment House, which is neither a Permitted nor Discretionary Use in the RF1 Single Detached Residential Zone.

- [23] Alberta Health Service referred the matter to Bylaw Enforcement and a Violation Notice was issued.
- [24] The Secondary Suite requirements vary as compared to the Apartment Housing requirements. In zones that permit Apartment Housing, several more regulations come into play.
- [25] The Development Officer does not work in conjunction with the Tax Department. They do not share information. The Tax Department does not refer to Development Permits when classifying properties for tax purposes.
- [26] The subject site has two addresses, one for the main Dwelling and one for the basement suite. The Development Officer indicated that in the past it was easy to get an additional address assigned to a property. Now, the requirements are a lot more restrictive.
- [27] Upon questioning from the Board, the Development Officer could not confirm if a permit was ever issued for the proposed development. Their records go back to approximately 1975. Only recently did Secondary Suites require permits and even basement Development Permits are new.
- [28] Upon questioning from the Board, the Development Officer confirmed that to make an application for an Apartment House, a person needs to own the whole building and the use must be allowed in the Zone.
- [29] The Chair reviewed the *Municipal Government Act* sections on non-conforming Use:
- 616(r) “non-conforming use” means a lawful specific use (i) being made of land or a building or intended to be made of a building lawfully under construction at the date a land use bylaw affecting the land or building becomes effective, and (ii) that on the date the land use bylaw becomes effective does not, or in the case of a building under construction will not, comply with the land use bylaw.
- 643(1) If a development permit has been issued on or before the day on which a land use bylaw or a land use amendment bylaw comes into force in a municipality and the bylaw would make the development in respect of which the permit was issued a non-conforming use or non-conforming building, the development permit continues in effect in spite of the coming into force of the bylaw.
- (2) A non-conforming use of land or a building may be continued but if that use is discontinued for a period of 6 consecutive months or more, any future use of the land or building must conform with the land use bylaw then in effect.
- [30] The Development Officer did not believe the proposed development could qualify as a non-conforming use. It was the Development Officer’s understanding that even if a Permit was not previously required for a basement suite, but is now required, the

proposed development would not be “grandfathered” in unless the permits for the principal use could be located, and made reference to a basement suite.

iii) Rebuttal of the Appellant

- [31] The Appellant stated that it would be difficult to locate any permits pertaining to the basement suite if the city no longer has those records. Based on the building material used in the basement suite, he believed it was built in the late 1970s or early 1980s. The Appellant stated that if the Board granted the permit, he could meet all the Secondary Suite regulations.
- [32] At this point, the Chair of the Board asked the Development Officer to re-comment on Section 643(2) of the *Municipal Government Act*. The Development Officer reiterated that that even if a permit was not previously required, but is now required, the proposed development would not be “grandfathered” in unless the permits could be located. The Development Officer found very few properties that had proper permits. She was not sure if there was enforcement of Secondary Suites prior to 2007.
- [33] The Appellant opined that the proposed development met section 643(2) of the *Municipal Government Act* and is a legal non-conforming use.

Decision

- [34] The appeal is DENIED and the decision of the Development Authority is CONFIRMED. The development is REFUSED.

Reasons for Decision

- [35] The Appellant described the development as an application to develop a Secondary Suite in the Basement of an existing Semi-detached House. Secondary Suites are a Permitted Use in the RF1 Single Detached Residential Zone. However, Secondary Suites are defined in the *Edmonton Zoning Bylaw* as

“development consisting of a Dwelling located within, and Accessory to, a structure in which the principal use is Single Detached Housing. A Secondary Suite has cooking facilities, food preparation, sleeping and sanitary facilities which are physically separate from those of the principal Dwelling within the structure. A Secondary Suite also has an entrance separate from the entrance to the principal Dwelling, either from a common indoor landing or directly from the side or rear of the structure. This Use Class includes the Development or Conversion of Basement space or above Grade space to a separate Dwelling, or the addition of new floor space for a Secondary Suite to an existing Single Detached Dwelling. This Use Class does not include Apartment Housing, Duplex Housing, Garage Suites, Garden Suites, Semi-detached Housing, Lodging

Houses, Blatchford Lane Suites, Blatchford Accessory Suites, or Blatchford Townhousing.”

As a result of this definition, the proposed development is not a Secondary Suite because a Secondary Suite is, by definition, limited to being within a structure in which the principal use is Single Detached Housing. This structure has the principal use as Semi-detached Housing.

[36] The Board examined each Permitted Use and Discretionary Use in the RF1 Single Detached Residential Zone (Sections 110.2 and 110.3 of the *Edmonton Zoning Bylaw*) and concluded that the proposed application does not fit the definitions of any Permitted or Discretionary Uses in the RF1 Single Detached Residential Zone.

[37] The Board briefly considered the Discretionary Use of Lodging House (Section 110.3(6) of the *Edmonton Zoning Bylaw*) but noted that a Lodging House is used for Congregate Living and Congregate Living under Section 6.1(16) of the *Edmonton Zoning Bylaw* means “four or more individuals occupying Sleeping Units in a building where the occupants share access to facilities such as cooking, dining, laundry, or sanitary facilities.” It was clear from the evidence of the Appellant that four or more individuals would not be sharing cooking, dining, laundry or sanitary facilities and therefore the proposed development cannot be characterized as a Lodging House.

[38] The only residential use class which matches the applied for development is Apartment Housing. Under Section 7.2(1) of the *Edmonton Zoning Bylaw*, Apartment Housing means

“development consisting of one or more Dwellings contained within a building in which the Dwellings are arranged in any horizontal or vertical configuration, which does not conform to the definition of any other Residential Use Class.”

This is the only residential use class which can encompass the proposed development. As Apartment Housing is neither a Permitted nor Discretionary Use in the RF1 Single Detached Residential Zone, this application must be denied. Section 687(3)(f) of the *Municipal Government Act* makes it clear that this Board has no jurisdiction to vary any use classification as set out by City Council.

[39] The Board then considered whether or not this development could be considered a non-conforming use and whether the non-conforming use can be continued by the application of section 643 of the *Municipal Government Act*. Under Section 616(r) of the *Municipal Government Act*, a non-conforming use

“means a lawful specific use

- (i) being made of land or a building or intended to be made of a building lawfully under construction at the date a land use bylaw affecting the land or building becomes effective, and

- (ii) that on the date the land use bylaw becomes effective does not, or in the case of a building under construction will not, comply with the land use bylaw.”

The Board was unable to determine whether or not this Secondary Suite was a “lawful specific use” at the time it was built and evidence was not provided regarding the date of construction or the exact state of the Land Use Bylaw at the date of construction. The Board was not provided with a copy of any development permit issued for this existing development. As such, there is no evidence upon which this Board could conclude that the current use of the subject site was a “lawful specific use” at the time that the Secondary Suite was developed and therefore cannot conclude that the current use of the subject site was a non-conforming use as defined in 616(r) of the *Municipal Government Act*. Accordingly, the Board cannot determine whether section 643 of the *Municipal Government Act* has any application to this appeal.

[40] For these reasons, this appeal is denied.

Mr. I. Wachowicz, Chairman
Subdivision and Development Appeal Board

Important Information for the Applicant/Appellant

1. This decision may be appealed to the Alberta Court of Appeal on a question of law or jurisdiction under Section 688 of the *Municipal Government Act*, R.S.A. 2000, c. M-26. If the Subdivision and Development Appeal Board is served with notice of an application for leave to appeal its decision, such notice shall operate to suspend the Development Permit.
2. When a decision on a Development Permit application has been rendered by the Subdivision and Development Appeal Board, the enforcement of that decision is carried out by the Sustainable Development Department, located on the 5th Floor, 10250 – 101 Street, Edmonton.

NOTE: The City of Edmonton does not conduct independent environmental checks of land within the City. If you are concerned about the stability of this property for any purpose, you should conduct your own tests and reviews. The City of Edmonton, when issuing a development permit, makes no representations and offers no warranties as to the suitability of the property for any purpose or as to the presence or absence of any environmental contaminants on the property.