

**TOWN OF OLDS  
SUBDIVISION AND DEVELOPMENT APPEAL BOARD  
BOARD ORDER 2013-01**

**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 Roxanne Baker (the "Developer")  
respecting Development Permit Application 13-032.**

**BEFORE:**

Leonard Brandson     Chairman  
Debbie Bennett     Vice-Chairman  
Edie Connelley  
Doreen Curniski  
Don Dwyer  
Joe Overwater

This is an appeal to the Town of Olds Subdivision and Development Appeal Board (the "SDAB") of a deemed refusal under section 684 of the Act by the Town of Olds Development Authority and the Municipal Planning Commission respecting a proposed development of a three unit apartment on Lot 21, Block 20, Plan 0310360 located at 5111-48 Street Olds, Alberta, T3H 4H3 (the "Lands") in the Town of Olds (the "Town").

The hearing of the appeal was convened by the SDAB on July 15, 2013, commencing at 9:00 a.m. in the Town of Olds Council Chambers. The SDAB gave careful consideration of all of the relevant evidence presented at the hearing and the issues arising therefrom.

**SDAB DECISION**

That a development permit for a three unit apartment be APPROVED subject to the following conditions:

**Prior to Release Conditions:**

1. Developer must submit revised site grading drawings using the public sidewalk as the relevant reference point of zero. The drawings are to be to the satisfaction of the Town of Olds Director of Operational Services.

2. To ensure compliance with the Land Use Bylaw and this development permit, the Developer shall submit security in the form of an irrevocable letter of credit to the satisfaction of the Development Officer. The amount of the security shall be 10% of the construction cost of the project which is accepted as \$250,000.00.

**Conditions of Development Permit No. 13-032:**

General Conditions:

3. The development must be completed in its entirety, in accordance with the approved plans and conditions. Any revisions to the plans (including non-completion of the development) must be submitted for approval to the Development Authority.
4. The Developer shall maintain a single water service connection with one water meter to service the parcel. The Developer shall also maintain a single sanitary sewer service connection to the parcel. Water service connections to the individual dwelling units comprising the Development may be connected to the water service line, but shall not be connected in a manner that bypasses the Town's water meter.
5. The parking lot must be paved, the swale and sidewalk constructed and a fence constructed along the property line.
6. All surface drainage arising from this development must be directed toward the lane without impacting adjacent properties. Surface drainage from the existing restaurant must be directed to the street without impacting adjacent properties.
7. After the foundation has been constructed, further work on the development must cease until such time as a drawing prepared by an Alberta Land Surveyor has been submitted to and approved by the Development Authority confirming that the building foundation is consistent with the approved plans. Failure to submit the required drawings may result in a Stop Order being issued by the Development Authority.

8. The provision of services or relocation of services, if required, shall be at the Developer's expense.
9. The address of the subject property must be posted on the front of the building facing 46<sup>th</sup> Street as well as on the facade of the building facing the lane at all times.

Additional Responsibilities of the Developer:

10. Weeping tile, roof drainage and surface drainage must not be directed or conveyed to the sanitary sewer.
11. It is the Developer's responsibility to:
  - a. Ensure that the terms and conditions of the Utility Excavation Permit are complied with, should a Utility Excavation Permit be required;
  - b. Contact Alberta First Call at 1-800-242-3447 and obtain utility locations prior to commencing any excavation.
  - c. Contact Operational Services at 403-507-4833 at least 48 hours :
    - i. Prior to commencing an excavation for underground services, to arrange for inspection of the sidewalk and boulevard; and
    - ii. Prior to backfilling the excavation for the water and sewer connections, to arrange for an inspection of the connections.

Note that the security deposit will not be returned if the water and sewer connections are not inspected prior to backfilling;

- d. Ensure that the curb stop (i.e. water shut off valve) is properly installed and fully operational;
- e. Obtain a Building Permit and comply with the Alberta Building Code. Contact D.R. Inspections Ltd. at 403-391-6962.

- f. Obtain the necessary Electrical, Plumbing and Gas Permits. Contact any one of the following: Davis Inspection Service 800-639-0912/403-275-3338, IJD Inspections Ltd. 877-617-8776/403-346-6533, Park Enterprises 800-621-5440/403-329-3437, Superior Safety Codes 888-717-2344, The Inspections Group 866-554-5048/780-454-5048; and
- g. Comply with Bylaws of the Town of Olds including the Land Use Bylaw No. 01-23, the Unsightly Premises and Snow Removal Bylaw No. 04-06 and the Traffic Bylaw No. 04-15.

Return of Security:

- 12. Once the Building Inspector has determined that the building is suitable for occupancy, the security deposit will be returned on completion of the following to the satisfaction of the Development Authority:
  - a. Submission of the "Request for Performance Bond" form. This form is available from Planning and Development. Please hand deliver, fax (403-507-4856) or email (planning@olds.ca) the completed form to Planning and Development;
  - b. Completion of the development as approved including, but not limited to the paving of the parking lot, the installation of a fence, the swale and sidewalk construction, and installation of wheel stops;
  - c. Proper installation of the curb stop and ensuring it is fully operational;
  - d. Confirmation that the sidewalk, curb, gutter, boulevard and curb stop have not been damaged. If any of these are damaged then repair or rehabilitation of same by the Developer will be required. See Utility Excavation Permit's pre-excavation inspection of the sidewalk and boulevard; and
  - e. Proper installation of eaves troughs and, where applicable, a sump pump.

## Parking Requirements

13. There shall be a relaxation of the number of parking spaces as required by the Land Use Bylaw from six parking spaces to three parking spaces with no consideration of cash in lieu of parking being required.

### **Notes to Applicant:**

14. This development permit takes effect and will be issued at such time as the Prior to Release conditions have been met.
15. Upon receipt and approval of the revised site grading drawings, the Development Authority shall, if the revised site grading drawings comply with the requirements set out by the decision of the SDAB, endorse the Development Authority's approval on those Plans and return them to the Developer.
16. A Building Permit and an Occupancy Report are required prior to occupancy of the development.

### **BACKGROUND INFORMATION**

The Developer, Mrs. Roxanne Baker, submitted a development permit application for the Lands to the Town of Olds Planning & Development Authority on March 18, 2013 as Application No. 13-032 (the "Application"). The description of the proposed development contained in the application was "Addition – Three Unit Apartment."

The Application was circulated internally for comment and on April 15, 2013, the Developer was notified that the Application was considered incomplete. The Developer was informed that additional information was required, as well as revised drawings regarding grading. On April 28, 2013, the Developer submitted the requested information to the Development Authority. Attempts were made to schedule a meeting between the Town's Development Authority and the Developer regarding issues that the authority considered to be outstanding with respect to the Application; however, a meeting was never held.

On June 14, 2013, counsel for the Developer advised the Town that it was the Developer's position that as per Section 684 of the *Municipal Government Act*, the Application would be "deemed refused" on June 8, 2013, being forty (40) days from April 28, 2013.

On June 19, 2013, the Developer submitted an appeal of the deemed refusal to the SDAB. It should be noted that although both Section 624 and 684 of the *Municipal Government Act* are referenced as the grounds of appeal in the letter of appeal submitted by the Developer, the SDAB has heard the appeal pursuant to both Section 684 and Section 686(1)(a)(ii) of the Act.

### **SUMMARY OF THE PLANNING & DEVELOPMENT SUBMISSION**

The Development Officer described the development as 3 dwelling units to be located at the rear of the restaurant already located on the Lands with each unit having an entrance from a common hallway. The dwelling unit at the rear is designed to have a building footprint of 408 sq. ft. while the two at the front will have a footprint of 312.5 sq. ft. The Development Officer confirmed that Apartments are a discretionary use in the applicable Central Commercial District (C1), and therefore must be referred to the Municipal Planning Commission for a decision, or to the SDAB on appeal. The Development Authority is prepared to support the Application provided functional issues are addressed by the Developer.

The Development Officer provided background information on the processing of the Application. The Officer noted that despite the Developer submitting the additional information on April 28, 2013, the Development Authority continued to consider the Application as incomplete; therefore, the Application was not circulated to adjacent landowners or external agencies or processed further. The Officer stated that the Development Authority attempted to set up a meeting with the Developer to discuss the outstanding issues, but that potential meetings were deferred as the Developer advised she had a broken leg.

The Development Officer submitted that there were two outstanding issues with respect to the Application that required addressing prior to the release of a development permit. The first issue was servicing. The Development Authority was concerned about the manner in which the development would be serviced with water and sewer as the information provided by the

Developer was not satisfactory on this point. The Development Authority required confirmation of the exact servicing going to the Lands.

The second issue was lot grades and storm drainage. The Development Authority was concerned because the drawings provided showed drainage to be directed from the lane to the rear of the restaurant along the west side of the building. The drawings did not clearly show how grading would be addressed by the Developer, and the Development Authority wanted to ensure that surface drainage to the rear of the restaurant would be directed to the rear of the property and not to the front street.

In his presentation, the Development Officer addressed the parking requirements for the proposed development, as set out in the Land Use Bylaw. While 6 stalls would typically be required for a three unit apartment development, it was the Development Authority's position that a relaxation from 6 to 3 stalls would be acceptable.

The Development Officer summarised the SDAB's options on the appeal as follows:

- a. Deny the Appeal – as the Application was deemed incomplete, the SDAB could deny the Appeal and require the Developer to submit a new Application;
- b. Table the Appeal – the SDAB could request that further information regarding grading be submitted for the Development Authority to review and provide a recommendation to the SDAB; or
- c. Allow the Appeal – the SDAB could direct the Development Authority to issue the development permit subject to conditions; recommended conditions were provided for the SDAB's consideration.

#### **SUMMARY OF THE DEVELOPER'S SUBMISSION**

The Developer's written submission was submitted by her agent, Art Baker. Mr. Baker confirmed that the Application was for the approval of permit 13-032 to build three bachelor apartments adjoining the existing building on the Lands which houses the Developer's coffee shop, Cowboys & Co. Mr. Baker submitted that it was the position of the Developer that the

Application was deemed complete on April 28, 2013 and that the Developer fully complied with all the requirements for the permit.

The Developer disputed that any issues remained outstanding following the Developer's submission of additional information on April 28, 2013. Specifically, it was submitted that the Development Authority's concerns regarding servicing were unfounded because servicing was properly addressed when the Developer built the restaurant on the Lands three years ago. Mr. Baker quoted Scott Chant, Manager of Public Works for the Town, to demonstrate that sufficient services were installed, inspected and approved by the Town during the last development.

With respect to grading, Mr. Baker submitted that there was nothing wrong with the grading and that the grading as depicted in the drawings provided to the Development Authority was sufficient.

Mr. Baker also addressed the recommended development permit conditions submitted by the Development Officer and submitted that the conditions regarding servicing, grading, lane paving, fees for excavation and the Utility Excavation Permit were not required. Mr. Baker also addressed in detail, the submissions of the Development Officer. Mr. Baker's response is set out at page 7 -9 of his submission.

Mr. Baker requested that the development permit be approved.

### **REASONS FOR DECISION**

After having heard, reviewed and considered the details of the proposed development, the submissions of the Developer, the submissions of the Development Authority and the letters of support in favour of the development, and after having reviewed and analyzed the documents submitted prior to the hearing and during the hearing as listed in Appendices "A", "B" and "C", the SDAB is of the view that the proposed development is an appropriate land use and that the development permit Application should be approved subject to conditions.

### **Jurisdiction of the SDAB**



The Act provides the framework for the SDAB's authority:

Grounds for appeal

**685(1)** If a Development Authority

- (a) fails or refuses to issue a development permit to a person,
- (b) issues a development permit subject to conditions, or
- (c) issues an order under section 645,

the person applying for the permit or affected by the order under section 645 may appeal to the subdivision and development appeal board.

**686(1)** A development appeal to a subdivision and development appeal board is commenced by filing a notice of appeal, containing reasons, with the board within 14 days,

- (a) in the case of an appeal made by a person referred to in section 685(1), after
  - (ii) if no decision is made with respect to the application within the 40-day period or within any extension under section 684, the date the period or extension expires,

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

- (a) must act in accordance with any applicable ALSA regional plan;
  - (a.1) must comply with the land use policies and statutory plans and, subject to clause (d), the land use bylaw in effect;
- (b) must have regard to but is not bound by the subdivision and development regulations;
- (c) may confirm, revoke or vary the order, decision or development permit or any condition attached to any of them or make or substitute an order, decision or permit of its own;
- (d) may make an order or decision or issue or confirm the issue of a development permit even through the proposed development 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,

and

(ii) the proposed development conforms with the use prescribed for that land or building in the land use bylaw.

### Planning Framework

#### *Land Use Bylaw*

The Lands are located within the Central Commercial District (C1) District pursuant to the Town of Olds Land Use Bylaw 01-23, as amended. Schedule C sets out the uses and regulations for the C1 District. The general purpose of the District is:

To provide an area for intensive commercial use, offering a wide variety of goods and services, and other uses, herein listed, which are compatible with the area, which will create an attractive environment for pedestrians, but which will be accessible to motor vehicles.

Apartments are listed as a discretionary use within the C1 District, and Section 1.3 of the Land Use Bylaw provides the following definition:

**"apartment"** means a residential building consisting of at least 3 dwelling units, but shall not include buildings containing units with separate exterior entranceway(s);

The SDAB considered the submissions put forward by the Developer and the Development Officer and determined that the proposed development is for a discretionary use within the C1 district.

## Factors Considered

### *Lane Paving*

It was not demonstrated in either the written evidence or the oral argument that there is a plan to pave the lane behind the development; therefore, the SDAB finds that a paving fee is not required for this development.

### *Reimbursement for Confirmation of Services*

The SDAB does not consider the Town's actions in confirming water and sewer services to the Lands as a recoverable cost against the Developer. The Town should not be reimbursed for the work done to confirm what water and services exists from the main to the property line.

### *Site Grade Drawings*

The SDAB accepts that the public sidewalk is an acceptable reference point of zero for grade elevations. The Developer is to submit revised site grading drawings, to the satisfaction of the Director of Operational Services, using this reference point.

### *Utility Excavation Permit*

No evidence was presented to support or refute the requirement for a Utility Excavation Permit. The SDAB finds that utility services, such as water, sewer, natural gas and electricity, currently service the Lands; therefore, the Board anticipates that a Utility Excavation Permit may not be required, but the Developer should refer to the appropriate Town Bylaws and policies to determine for herself whether such a Permit will be required for any aspect of the Development.

### *Security Calculation*

The SDAB does not agree with the submissions of the Developer that "Residential Single Family Dwelling (new)" is the correct categorization of the required security for the proposed development of a three unit apartment adjoining an existing restaurant. The SDAB reviewed

the Development Permit Fees Schedule of the Town of Olds Rate Bylaw No. 2008-03 and finds that the following security is appropriate for this development:

Schedule G(2)(d): all other construction/projects: 10% of construction/project costs.

Further, the SDAB accepts that \$250,000.00, as provided in the Application, is an acceptable construction cost for the calculation of the development permit fee. Therefore, \$250,000.00 will be used to calculate the letter of credit to be provided as security for the development.

*Parking*

The SDAB accepts the evidence of the Development Officer that a relaxation should be granted for the number of parking spaces required by the Land Use Bylaw. The number of parking spaces required for this development shall be relaxed from six (6) to three (3) parking spaces.

**CONCLUSION**

The SDAB appreciated the submissions made by all parties to this appeal.

The Town may enforce the terms of the development permit.

Given the foregoing, the SDAB is of the view that the proposed development is an appropriate land use and that the Application should be approved subject to conditions.

DATED at the Town of Olds, in the Province of Alberta this 29<sup>th</sup> day of July, 2013.

  
Leonard Brandson, Chair

  
Debbie Godfrey, Secretary

**NOTE:**

A decision of the Subdivision & Development Appeal Board is final and binding on all parties and persons subject only to an appeal on a question of law or jurisdiction pursuant to Section 688 of the *Municipal Government Act*, R.S.A. 2000, c. M-26, as amended. An application for leave to appeal must be made to a Justice of the Court of Appeal within 30 days after the issuance of the decision sought to be appealed, and notice of the application must be given to:

- (a) The Municipal Government Board or the subdivision and development appeal board,  
and
- (b) Any other person the judge directs.