

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

NOTICE OF DECISION – January 5, 2016

SUBJECT SITE:	4738-48 Street, Olds Alberta
APPEAL:	Appeal of a Refusal of Development Permit 15-163 dated November 19, 2015
APPLICANT:	Town of Olds
APPELLANT:	595202 Alberta Ltd., represented by Rob and Cathy Spicer
DATE OF HEARING:	December 21, 2015
MEMBERS PRESENT:	Leonard Brandson, Debbie Bennett, Edie Connolley, Doreen Curniski

The Subdivision and Development Appeal Board has approved the appeal from 595202 Alberta Ltd., for the side yard relaxation on the west side of 48th Avenue at 4738-48 Street.

A. Introduction

595202 Alberta Ltd. applied for a development permit to develop the property at 4738-48 Street, Olds, Alberta. The application was for a relaxation of the minimum side yard on the west side of 48th Avenue. The application was denied by the Municipal Planning Commission. 595202 Alberta Ltd. filed an appeal to the Subdivision and Development Appeal Board was received on December 2, 2015.

B. Summary of Hearing

The hearing was held on Monday, December 21, 2015 where the Board first heard from the Development Authority. An application for a Development Permit was received by the Development Authority on October 21, 2015. It was for a duplex at 4738-48 Street requesting a side yard relaxation to allow a 1.5 meter (5') side yard on the street side of 48th Avenue. As per the Land Use Bylaw 01-23, the minimum required side yard is 1.5 meters (5'), except where the proposed development site abuts a road, then 3 meters (10') is required.

The Development Authority advised the SDAB that on the west side of the lot (street side) there is a 7.3 meter (24') boulevard between the property line and the curb. It is the west side yard requirement of 3 meters (10') that the applicants are requesting be relaxed to allow for 1.5 meters (5'). Due to the 7.3 meter (24') boulevard between the west property line and the street, staff had no issues with the requested relaxation. The applicants also proposed to plant 3 trees in the boulevard as required by the East Olds Area Structure Plan. Since this relaxation was beyond the scope of the Development Officers authority, this application was referred to the Municipal Planning Commission (MPC) for decision.

The application was presented to the Municipal Planning Commission on November 19, 2015 with a staff recommendation for approval of the duplex with a west side yard relaxation to allow 1.5 meters (5') as this relaxation would not unduly interfere with the amenities of the neighbourhood, or materially interfere with or affect the use, enjoyment or value of the neighbouring parcels of land, and that the requested relaxation does not impact residents or Town operations.

The Municipal Planning Commission refused the application as they concluded the 1.5 meters (5') side yard relaxation was unnecessary.

After hearing the Development Authority, the SDAB members asked the Development Authority two questions: Are other developments in line with the same meters of property line to curb to the north of the property in question? The air photo in the Development Authority's submission shows that there is the same boulevard to the north as well. The second question was who owned the boulevard. The SDAB was advised that the boulevard is owned by the Town of Olds as it is part of the road allowance.

The Appellant, 595202 Alberta Ltd., and its agents, Rob and Cathy Spicer, were in attendance and gave a presentation.

595202 Alberta Ltd. indicated that they did not attend the Municipal Planning Commission meeting and once they received the notice of refusal found the reason for refusal to be very general and vague.

The Appellant advised the SDAB that the lot they propose be developed with a side by side duplex is 50' x 120' and is designated as R2 – General Residential District. The side by side duplex is 40' W and 50' L where the east side of the building fits within the 1.5 meters (5'). The west side yard does not abut to a road or sidewalk, but a 24' boulevard that is located along the entire side of 48th Avenue. The boulevard is identified in the East Olds Area Restructure Plan as a boulevard where trees are to be planted.

The Appellant believes there is room on the corner lot to provide a 1.5 meters (5') relaxation as there is 29' total from the side of the building to the curbside. In other developments, the Appellant understands where a 3 meter (10') setback is necessary, but given that there is already 7.3 meters (24') to the edge of the property line from the road, there are still very good sightlines.

The existing boulevard was previously used as a gravel driveway that the Appellant would turn into a green space, at their expense, to be consistent with East Olds Area Redevelopment Plan. The Appellant noted that they have had five previous project builds in East Olds on properties where the dwellings were either party houses or condemned. The Appellant believes that those projects have been a big improvement and hopes that East Olds benefits from that. None of the projects have been built as rental properties, but homes to purchase that will ultimately contribute to the tax roll.

Through a question, SDAB members confirmed that the Appellant purchased the property without knowing whether or not a relaxation could be granted. Members then asked the Appellant what the scenario would look like if the relaxation does not become approved. The Appellant noted that further expenses such as a redesign would have to occur. Further to that, the duplex would then become a 50' by 17' unit that will be small and narrow and will eliminate an upstairs bedroom (bringing the total down to two) that is critical for the target market/demographic the Appellant is after.

The public notice for the hearing was placed in the December 16th Olds Albertan newspaper edition and the notice was circulated to four adjacent landowners. During the hearing, there were no other members of the public who spoke in support or opposition to the application.

C. Decision

The Subdivision and Development Appeal Board approves the appeal from 595202 Alberta Ltd. A development permit for the construction of a duplex on the subject property at 4738-48 Street is approved with a variance to the west side yard from the 3.0 meters specified in the Land Use Bylaw to 1.5 meters (5') as requested by the applicants. The west side yard is the yard abutting the west side of 48th Avenue. The development permit is approved and the variance granted for the following reasons:

- The SDAB notes that
 - the Development Authority recommended that the variance to the side yard be approved; and
 - the Appellant has worked with the Development Authority to comply with the Land Use Bylaw as well as the East Olds Area Redevelopment Plan.
- The SDAB does not agree with the conclusions of the MPC that the variance in the side yard is not required. The SDAB heard from the 595202 Alberta Ltd. about how the proposed development would need to be modified if the relaxation to the side yard is not granted. The SDAB is satisfied that even with a reduction in the side yard of the property the adjacent boulevard will adequately buffer the development from the adjacent roadway. The SDAB is satisfied that the requested relaxation will not impact on other town residents or Town operations. Finally, the SDAB is satisfied that the proposed development is in keeping with the character of development anticipated by the East Olds Area Redevelopment Plans. For all of these reasons the SDAB has concluded that the development with the reduced side yard will not unduly interfere with the amenities of the neighbourhood, or materially interfere with or affect the use, enjoyment or value of the neighbouring parcels of land.

This decision is approved subject to the following conditions:

1. The development must be constructed in accordance with the approved plans and conditions. Any revisions to the approved plans (including non-completion of the development) must be submitted for approval to the Development Authority. The approved plans are attached.
2. Relaxation of the minimum side yard requirement to allow 1.5 meters on the west side.
3. A development agreement must be entered into with the Town for the requirement of west boulevard landscaping, as required in the East Olds Area Redevelopment Plan prior to commencement of construction.
4. Four (4) on-site parking stalls shall be provided.
5. Final grading of the lot must:
 - (a) be in accordance with the geodetic grades shown on the approved site plan;
 - (b) direct surface water drainage away from the building to the street and the rear of the lot;and

- (c) ensure that surface drainage does not affect adjoining properties.
6. After the foundation has been constructed further work on the building must cease until such time as a drawing prepared by an Alberta Land Surveyor has been submitted to and approved by the Development Officer confirming that the building's foundation is consistent with the approved plans. Failure to submit the required drawing may result in a Stop Order being issued by the Development Authority.
 7. Front and side yard landscaping must be completed to the satisfaction of the Development Officer in accordance with Land Use Bylaw #01-23. Said landscaping must be completed within 1 year of occupancy or commencement of the use.
 8. The address of the property must be posted on the front of the dwelling facing the street and if the dwelling has access to a lane, address identification shall be displayed at a location plainly visible at all times from the lane as well. Each letter and number must be not less than 10 cm character size and be plainly visible at all times.
 9. The Development Officer may, by notice in writing, suspend a Development Permit where development has occurred in contravention to the terms and conditions of the permit and/or Land Use Bylaw.
 10. If the development authorized by a development permit is not commenced within 12 months from the date of issue, nor carried out with reasonable diligence, such permit approval ceases and the permit itself is deemed void, expired, and without effect, unless an extension of this period has been previously granted.
 11. Use and development of the subject site shall conform to all other applicable requirements of the Town of Olds Land Use Bylaw 01-23 except where a relaxation has been expressly granted.

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.



Leonard Brandson, Chair
Subdivision and Development Appeal Board

January 4 2016

Date