

REGIONAL SUBDIVISION AND DEVELOPMENT APPEAL BOARD

UNIT B 4730 ROSS STREET
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403-343-3394

January 27, 2023

NOTICE OF DECISION

RE: Appeal of Refusal of Development Permit Application DP22-163 for two four-plex (four unit) housing developments on Lot 29 and Lot 30, Block 10, Plan 152 1226 located at 4812 and 4814 51 Street, Olds

SUMMARY OF APPEAL

This is an appeal of a refusal of a development permit application for two four-plex buildings (four housing units per building) on two lots located in the East Olds area. The application was refused by the Town of Olds Municipal Planning Commission. The refusal was based on a policy of the East Olds Area Redevelopment Plan requiring main entrances of dwelling units to be oriented towards the street. Half of the main entrances to the dwelling units in the proposed development are oriented towards the rear lane. The Appellant/Applicant, Yuri Faryna, appealed the decision. The reasons for the appeal are based on the creation of residential housing in an area of East Olds that is close to the central commercial core of Olds to provide affordable housing options within walking distances of commercial and public services. The Appellant/Applicant submits that their proposed development fits the goals and objectives of the East Olds Area Redevelopment Plan.

Notice of the appeal was provided to interested parties and a hearing was held on January 17, 2023.

Hearing Panel: Joe Henderson, Chair
 Heather Ryan, Board Member
 Mary Jane Harper, Board Member

SDAB Clerk: Craig Teal

BACKGROUND OF THE APPLICATION

The Development Authority, being the Town of Olds Municipal Planning Commission, refused Development Permit application DP22-163 on November 28, 2022. The subject site is Lot 29 and Lot 30, Block 10, Plan 152 1226 located at 4812 and 4814 51 Street. The subject site is designated C1 – Central Commercial District under the Town of Olds Land Use Bylaw. “Multi-plex” is a form

of residential housing allowed in this District. The Applicant proposed two four-plex buildings on the subject site. The site plan with the application indicates that two dwelling units in each building would have main entrances facing 51 Street and two dwelling units would have main entrances facing the rear lane. Onsite parking for each building was based on two parking stalls per dwelling unit. The parking stalls would be split between the rear yard, accessed by the lane, and the front yard, accessed by 51 Street.

The Municipal Planning Commission noted the following as their basis for the refusal:

“The East Olds Area Redevelopment Plan Policy 4.8.7 states:

New multi-dwelling developments or redevelopments should be oriented to the street with the main entry to the front of the property oriented in a prominent and clearly visible manner. Rear and side main entries should be prohibited unless for a building constructed on a corner parcel.”

Municipal Planning Commission applied Policy 4.8.7 since the application included dwelling units that were not oriented to the street.

An appeal was filed with the Regional Subdivision and Development Appeal Board on December 19, 2022 by the Applicant for DP22-163. Affected parties were notified on December 23, 2022, with public notification being distributed on December 28, 2022 and January 3, 2023.

MERIT HEARING

Summary of the Development Authority’s Submissions

The application involves two parcels of land and two four-plexes with a variance to driveway width. Each building has four dwelling units and the site plan shows parking on both the front (street) and rear (lane). One driveway, on 4814 51 Street, exceeded the maximum width allowed in the Land Use Bylaw.

Multi-plexes are a discretionary use in the Central Commercial District. The approval authority is the Municipal Planning Commission. A multi-plex means a building containing three to eight dwelling units sharing a common wall with at least one other unit and having separate access to the outside. Planning staff is of the view the proposed multi-plexes do not unduly affect the use and enjoyment of the neighbouring parcels. This location is on the western boundary of the East Olds Area Redevelopment Plan. To the west is the Uptowne Olds area or downtown. The C1 District on the subject site shows the connections between the areas. To the west is commercial use and it transitions to residential to the east. The block this site is on is currently a mix of residential, commercial and industrial. In the future it is intended to be a mix of residential and commercial.

Approval was recommended subject to the conditions shown in the draft development permit attached to the report to Municipal Planning Commission as follows:

- 1) The development of the buildings and site improvements must be constructed in accordance with the approved plans and conditions. Any modifications or changes to the approved plans (including non-completion of the development) must be submitted for approval to the Development Authority. The approved site plan is attached.
- 2) Prior to the issuance of a Building Permit, the developer/applicant shall submit a development security in the form of an irrevocable letter of credit in the amount of 10% of the construction value or a mutually agreed upon amount satisfactory to the Development Authority.
- 3) Prior to the issuance of a Building Permit, the developer/applicant shall submit a Site Servicing Plan subject to the approval of the Town of Olds.
- 4) Prior to the issuance of a Building Permit, the developer/applicant shall submit a site grading plan showing geodetic grades, to be approved by Town of Olds Engineering staff.
- 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 and grade elevations at top of footings is consistent with the approved plans.
- 7) A minimum of 16 parking stalls shall be provided.
- 8) A variance is granted to the maximum driveway width at the property to allow for the driveways at 4814 51 Street to be 10.97 metres. All driveways and parking stalls in the front yard must be hard surfaced within one year of the effective date of this permit.
- 9) Completion of landscaping must occur within one year of the completion of construction or the commencement of the use, whichever first occurs. All landscaping must be maintained for the life of the development. The approved landscaping plan is attached.

- 10) The address of the property must be posted on the front of the building and/or on the front entrance gate facing the street. Each letter and number must be not less than 10 cm in area and be plainly visible at all times.
- 11) 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.
- 12) If the development authorized by this development permit is not commenced within 12 months from the date of its issue, or the date of decision of the Subdivision and Development Appeal Board upon appeal, nor carried out with reasonable diligence as determined by the Town of Olds development authority, this development permit ceases to be effective, unless an extension of this period, being no longer than an additional 12 months, has previously been granted by the development authority.
- 13) 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.

The primary rationale for approving the variance for the driveway width was the concern that the adjacent building to the west, which has a curved sloped roof, could cause snow and ice to fall onto parked cars. A landscaped area is shown on the site plan on the west boundary for this purpose and the four parking stalls are combined into one driveway. Municipal Planning Commission did not have a concern with the requested variance.

The application meets all of the requirements for residential development in the C1 District. Landscaping does not have a set standard and leaves it to the discretion of the Development Authority. The Municipal Planning Commission was comfortable with the amount of landscaping shown in the site plan.

The discussion on the policies in the East Olds Area Redevelopment Plan was not part of the planning report and was brought up by a Commission member. The key policy is 4.8.7 and relates to building orientation which says new development should have front entrances oriented to the street and that rear and side entrances should only be allowed on corner parcels. Municipal Planning Commission was of the view that the proposed development did not meet this policy as main entrances to some dwellings faced the rear lane and subsequently refused the application. The policy states "should" rather than "shall" and planning staff did not feel this required a variance as the term "should" gives discretion to the approval authority on applying the policy.

The application was circulated to nine adjacent landowners. One letter, from the Anglican Church across the rear lane, was received after the report was written. The Commission

discussed the concerns but noted that the lane was no wider or narrower than any other lane in Olds. It was noted that the site plan meets the residential parking requirements. The two parcels on the east part of the block and most traffic will likely access from 48 Avenue to the east and not travel the length of the lane to the west towards the Church property. The condition of the lane was acknowledged as possibly in poor condition. The responsibility to maintain the lane is the Town's through the Operations staff and is not appropriate to be placed on an applicant or decided by the Municipal Planning Commission.

Summary of the Appellant/Applicant's Submissions

The intent for the multi-plex buildings is to provide housing for low income families and seniors and increase traffic for the local area. The Applicant used to live in Olds and the downtown core can use more housing in walking distance. Traffic increase will improve business activities and opportunities for living.

The Appellant/Applicant notes that:

- Developing the lot to become two fourplex lots will create multiple opportunities for residential development providing affordable housing for many target audiences;
- Residents will include established families, seniors and retired individuals all within walking distance to many major amenities such as the downtown area, post office, banks and grocery stores;
- Residents from the development will provide traffic to the community and small businesses in the Town's core;
- The development will feature high efficiency building materials with possible use of renewable source of energy;
- The proposed development will be within the Town of Olds redevelopment policy and area development requirements.

The development of the two lots will not have negative impacts on the neighbours relating to access from back alley or front. Up until a few years ago Town facilities were located to the west and future development of those properties will also improve the area. As developer, they are open to any suggestions to adjust the site plan for parking or landscaping.

KEY FINDINGS OF FACT

The Board makes the following key findings:

1. The subject site is in the C1 District of the Town of Olds Land Use Bylaw and "multi-plex" is a discretionary use in this District.

2. The subject site is located in the area covered by the East Olds Area Redevelopment Plan and is subject to the policies of said plan and the Design Guidelines found in the area redevelopment plan and the Town of Olds Land Use Bylaw.
3. The subject site is in an area that is currently a mix of residential, commercial and industrial. In the future, based on the East Olds Area Redevelopment Plan, it is intended to be a mix of residential and commercial.
4. The subject site is not on a corner parcel as both Lot 29 and Lot 30 have only one property line abutting 51 Street and one property line abutting a lane.
5. The maximum driveway width allowed in the Town of Olds Land Use Bylaw is 10m or 60% of lot frontage, whichever is less.
6. The landscaping that is required under the C1 District is not a set amount and is left to the discretion of the Development Authority.

DECISION

The appeal filed by Yuri Faryna is allowed and the decision of the Development Authority is replaced with the following:

The proposal to develop two residential multi-plexes (four-plexes) on Lot 29 and Lot 30, Block 10, Plan 151 1226 at 4812 and 4814 51 Street is deemed a discretionary use under the C1 – Central Commercial District. The proposed use and development of Lot 29 and Lot 30 is **APPROVED** subject to the following conditions:

- 1) The development of the buildings and site improvements must be constructed in accordance with the site plan and building elevation drawing presented at the January 17, 2023 appeal hearing with the following changes to the site plan:
 - a) Re-arranging the parking stalls and landscaped areas in the front and rear yards so that a 7 ft wide landscaping area abuts the west boundary of Lot 29 and a 7ft wide landscaping strip separates each pair of two parking stalls moving east across the two lots;
 - b) Providing at least one sidewalk on each of Lot 29 and Lot 30 to connect the sidewalk along the front of the buildings to the sidewalk along the rear of the buildings to enable movement of people and solid waste bins to the front and rear of the buildings;

- c) Adding areas for the storage of 3 solid waste (garbage, composting, recycling) bins per dwelling unit to the satisfaction of the Development Officer; and
- d) Adjusting the type, number and location of plantings allocated to each landscaped strip in the front, rear and side yards in a manner satisfactory to the Development Officer with the aim of balancing the need to create attractive landscaping and accommodate areas for on-site snow storage, pedestrian circulation and solid waste bin storage.

Any further modifications or changes to the approved plans (including non-completion of the development) must be submitted for approval to the Development Authority.

- 2) Prior to the issuance of a Building Permit, the developer/applicant shall submit a development security in the form of an irrevocable letter of credit in the amount of 10% of the construction value or a mutually agreed upon amount satisfactory to the Development Officer.
- 3) Prior to the issuance of a Building Permit, the developer/applicant shall submit a Site Servicing Plan subject to the approval of the Town of Olds.
- 4) Prior to the issuance of a Building Permit, the developer/applicant shall submit a site grading plan showing geodetic grades, to be approved by Town of Olds Engineering staff.
- 5) Final grading of each lot must:
 - a) be in accordance with the geodetic grades shown on the site grading plan that is approved by Town of Olds Engineering staff;
 - 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 for each building 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 and grade elevations at top of footings is consistent with the approved site plan and site grading plan.
- 7) A minimum of 16 parking stalls shall be provided onsite. All driveways and parking stalls must be hard surfaced within one year of the effective date of this permit.
- 8) Completion of landscaping must occur within one year of the completion of construction or the commencement of the use, whichever first occurs. All landscaping must be maintained for the life of the development.

- 9) The civic address of the property and each unit must be posted on the same building face as the main entrance of each unit. Each letter and number must be not less than 10 cm in width and height and be plainly visible at all times.
- 10) 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.
- 11) If the development authorized by this development permit is not commenced within 12 months from the date of its issue, or the date of decision of the Subdivision and Development Appeal Board upon appeal, nor carried out with reasonable diligence as determined by the Town of Olds Development Authority, this development permit ceases to be effective, unless an extension of this period, being no longer than an additional 12 months, has previously been granted by the Development Authority.
- 12) 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.

The Development Officer is instructed to issue a development permit in the format customarily used by the Town of Olds that matches the contents of the above decision.

REASONS FOR DECISION

The Board determines that the proposed development meets the definition of a “multi-plex” which is an allowable discretionary use for the subject property under the C1 District. The Board acknowledges the current mixture of uses in the immediate vicinity of the subject site. The proposal for stand-alone residential use meets the intent of the East Olds Area Redevelopment Plan and the C1 District in achieving a transition towards a mixed residential and commercial area. The discretionary residential use on this site is appropriate.

Based on the evidence provided by the Development Authority, the Board is satisfied that the proposed development meets the applicable requirements of the Town of Olds Land Use Bylaw such as minimum yard, parking and landscaping requirements. The design guidelines contained in Schedule E of the Land Use Bylaw, which set out specific building appearance and site development criteria for properties in the East Olds area, have also been met.

The Board does not agree with the use of Policy 4.8.7, pertaining to the orientation of main entrances to dwellings units, as the sole reason for refusing to approve the application. Both parts of Policy 4.8.7 employ the term “should” rather than “shall” where “should” affords discretion to the approving authority and “shall” offers no discretion. The Board is of the view

that Policy 4.8.7 has been purposefully worded to enable flexibility in housing design and layout on individual sites as the East Olds area moves towards the desired mixed-use area comprising multiple unit residential use and commercial use. This flexibility may be required at times to achieve some of the goals and objectives pointed out by the Applicant; which include provision of affordable units and increasing the number of households close to the Uptowne commercial core. In the Board's view this flexibility is appropriate for this site and the form of housing that is proposed.

The Board accepts and agrees with the assessment of the Development Authority regarding the status of the rear lane and the ability to accommodate both traffic and drainage from the development. The lane is similar to most other lanes in Olds in terms of width and surfacing and regular maintenance of the gravel surface and drainage patterns in the lane falls to the Town of Olds. If there are currently deficiencies then these should be remedied independently of this development application. Further, traffic from the development is most likely to use the lane to reach 48 Avenue to the east rather than the longer route to the west. The Board is of the view that several of the conditions proposed by the Development Authority seek to ensure drainage to the lane and street takes place without negatively impacting other properties.

Finally, the Board determined that some changes to the site plan to address issues of pedestrian circulation, storage and movement of solid waste bins, and onsite snow storage are warranted. The first change is adjusting the landscaping areas in relation to the onsite parking stalls so that each pair of two parking stalls has a landscaped area to one side. This provides space to store snow and creates smaller driveways that comply with the maximum width requirement of the Land Use Bylaw. The second change is the addition of at least two sidewalks connecting the front and rear of each building. The intent is to enable pedestrian access to the dwelling units facing the lane from the street and the movement of solid waste bins to the lane or street depending on the location of pick-up. The third change is the identification of more areas for the outdoor storage of solid waste bins. Finally, the Board notes that the above changes will lead to changes in the type, number and placement of vegetation in each landscaped area and leaves this level of detail to the Development Officer.

CLOSING:

This decision can be appealed to the Court of Appeal on a question of law or jurisdiction. If you wish to appeal this decision you must follow the procedure found in section 688 of the Municipal Government Act which requires an application for leave to appeal to be filed and served within 30 days of the date of this decision.

Dated at Ponoka County, in the Province of Alberta this 27th day of January, 2023 and signed by the Chair on behalf of all three panel members who agree that the content of this decision adequately reflects the hearing, deliberations and decision of the Board.



Joe Henderson, Chair

APPENDIX “A”

PARTIES WHO ATTENDED, MADE SUBMISSIONS, OR GAVE EVIDENCE AT THE HEARING:

<u>Name</u>	<u>Capacity</u>
Yuri Faryna	Appellant/Applicant
Kyle Sloan	Development Authority

APPENDIX “B”

DOCUMENTS RECEIVED PRIOR TO THE HEARING:

<u>Reference Tab</u>	<u>Item</u>
TAB A	Notice of Appeal
TAB B	Application
TAB C	Notice of Refusal
TAB D	Information Provided by Development Authority
TAB E	Notices for Hearing
TAB F	Additional Submission by Appellant