

REGIONAL SUBDIVISION AND DEVELOPMENT APPEAL BOARD

UNIT B 4730 ROSS STREET
RED DEER AB T4N 1X2
403-343-3394

December 3rd, 2019

Notice of the Decision of the Regional Subdivision and Development Appeal Board

**RE: Appeal of Development Permit Application DP19-124 – Front Yard Relaxation
Request on Lot 11 Block 2 Plan 041 0118 106 Willow Green Olds, AB**

SUMMARY OF APPEAL

Virginia “Ginny” and Aaron Davis are appealing the rejections of Development Permit DP19-124 on the basis that the decision does not take all relevant information into account. The appeal describes the front yard relaxation request (“the Project”) and the reason the Project was refused and states their disagreements to this refusal.

Notice of the appeal was provided to interested parties on November 14th, 2019. Notice was advertised in the Olds Albertan on November 19th, 2019. A hearing was held on November 26th, 2019 at 4512 46th Street Olds, Alberta.

BACKGROUND ON THE APPLICATION

DP19-124 involves the request for front driveway relaxations (the width of it and to have no landscaping) as per an attached site plan located at 106 Willow Green, Olds, AB. The Applicant signed the application. The property is located in Low Density Residential District (R1). A brief description of the requested relaxation along with a site plan was included with the application.

The Project was refused as per Town of Olds Land Use Bylaw 01-23 Schedule C: District Regulations, Landscaped Area, “The minimum amount of site area to be landscaped shall be the front yard, excluding the front driveway (if applicable). Properties with a side yard abutting a street/boulevard shall also be landscaped.” The original approved driveway width as shown on the house build site plan of Development Permit 05-141 was considered to be the “front driveway”.

The additional hard surfacing of the front yard by the standards set in the Town of Olds Land Use Bylaw 01-23 would be considered an “accessory parking pad”. Land Use Bylaw 01-23 defines an “accessory parking pad” as “an area providing for the parking of vehicles and utility trailers but does not include a driveway and is located on the same parcel of land (2016-02).”

Schedule B: Supplementary Regulations, 3.0 Vehicles 3(1) Parking (l) A front yard or side yard accessory parking pad that is not part of a driveway shall have a landscaped area that is a minimum of 1.5m (5ft.) wide between the road way and the parking pad.

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The Land Use Bylaw 01-23 defines “landscape area” as “an area of land made attractive and desirable by the use of any or all of the following: grass, trees, shrubs, ornamental plantings, fences, walls and associated earthworks; however, it shall not include area occupied by garbage containers, storage, parking lots of driveways.”

PRELIMINARY MATTERS

At the start of the hearing on November 26th, 2019 the Appellant/Applicant and the Development Authority were given the opportunity to raise objections to the Panel Members assigned to the hearing. No objections were raised. The hearing proceedings were outline to the Appellant/Applicant and the Develep0ment Authority and no objections were raised to the proposed proceedings.

SUMMARY OF EVIDENCE AND ARGUMENT

The Appellant/Applicant

A package was received by the Board prior to the hearing. It contained a detailed outline of the history, copies of letters received from the Town, a copy of a Certificate of Compliance, pictures of the property and support letters from neighbouring properties.

Roy Brown presented on behalf of Ginny and Aaron Davis. The background and history of the driveway and what has taken place since the Davis’ purchased 106 Willow Green in 2014 was given. He explained that when the Davis’ purchased the house the driveway as it is now was already in place. The expansion of it occurred prior to them purchasing the property. The Davis’ financial institution requested a Certificate of Compliance which they received. In 2016 a letter from the Town was received that stated their driveway was not in compliance, it was much wider than was originally approved. After a meeting with the Town they received another letter stating the Town would not enforce the non-compliance of the wide driveway. Eighteen months later they received another letter from the CAO that stated due to a high number of complaints they were going to revoke the Certificate of Compliance. The Davis’ put in the application for the Project in hopes to be granted a relaxation and become compliant to put this issue at rest. It was stated that this was a neighbourhood issue and not a planning issue and had been complaint driven. Roy Brown outlined how important he believed a Certificate of Compliance was and that it should never be revoked. (The Development Authority addressed his statements regarding the Certificate being revoked, this is outlined below) He discussed the benefits to the cul-de-sac the large driveway provided, removing parking from the street. In conclusion he went over the time line again and restated the importance of Certificates of Compliance.

The Development Authority

A package was received by the Board prior to the hearing; it contained a copy of the application, a copy of the decision letter and the Municipal Planning Committee report.

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Carey Keleman, the Development Officer stated that the Application was received at the Planning and Development counter on September 26th, 2019. The Development Officer was not the person acting as the decision maker for this application. The application went before the Municipal Planning Committee (MPC) who acted as the Development Authority and made the decision.

The MPC determined that the original approved driveway width as shown on the house build site plan of Development Permit 05-141 was considered to be the "front driveway".

The application requested a front yard relaxation for the width of the current driveway and to have no landscaping.

The application was refused as per Town of Olds Land Use Bylaw 01-23 Schedule C: District Regulations, Landscaped Area, "The minimum amount of site area to be landscaped shall be the front yard, excluding the front driveway (if applicable). Properties with a side yard abutting a street/boulevard shall also be landscaped."

The additional hard surfacing of the front yard by the standards set in the Town of Olds Land Use Bylaw 01-23 would be considered an "accessory parking pad". Land Use Bylaw 01-23 defines an "accessory parking pad" as "an area providing for the parking of vehicles and utility trailers but does not include a driveway and is located on the same parcel of land (2016-02)."

Schedule B: Supplementary Regulations, 3.0 Vehicles 3(1) Parking (l) A front yard or side yard accessory parking pad that is not part of a driveway shall have a landscaped area that is a minimum of 1.5m (5ft.) wide between the road way and the parking pad.

The Development Authority stated that the Appellant/Applicant was informed that large, permanent planters would be accepted as the required landscape buffer.

It was noted that twelve area landowners were notified of the application and one letter speaking against the approval of the relaxation was received.

It was noted that in 2014 when the Davis' received their Certificate of Compliance the Town of Olds policy regarding Certificates of Compliance only covered buildings. Since 2014 the policy has been updated and improved to include other items such as driveways. If this property received a Certificate of Compliance today the fact that the driveway is too wide and does not comply with Land Use Bylaw 01-23 would be noted. In 2014 noting the non-compliant driveway was not required and was not done.

During the question time after the Appellant/Applicant presented Carey Keleman pointed out that the original Certificate of Compliance was never revoked. This was the interpretation of the letters sent from the Town of Olds, in reality the original Certificate of

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Compliance never mentioned the driveway one way or the other, and it only pertained to the buildings. The Compliance Certificate is still valid.

Other Parties

Dave Becker

A CIR realtor in Olds read a letter; he spoke to his history regarding this property. He was the realtor that represented the seller when the Davis' bought the house. He talked at length about the importance of Certificates of Compliances and that buyers and sellers rely on the information provided on them.

Jaeme Redgewell

A neighbouring landowner submitted two e-mails, Clerk Jamie Collins read them. The letters discussed their concerns with the current large driveway and discussed some disagreements they have had in the past with the Davis'.

Doreen Wolff

A resident in the cul-de-sac lives at 110 Willow Green. She added that a lot of the problem goes back to the fact there is a sidewalk in front of the Davis' and not in front of the Redgewell's so the rules for parking in the driveway are different for each property.

DECISION

The decision made by the Town of Olds Municipal Planning Committee is upheld with modifications.

The front yard relaxations at 106 Willow Green is refused. The relaxations excessively vary from the front yard driveway and landscaping requirements of Land Use Bylaw 01-23.

The additional hard surfacing of the front yard is considered an accessory parking pad. The minimum 1.5 m (5 ft.) landscape buffer is reduced to 1 m (3 ft.). A large box or round planter minimum 2 feet wide and 5 feet long will be accepted as landscaping.

FINDINGS AND REASONS

The Project was refused because the relaxations excessively varied from the front yard driveway and landscaping requirements of Land Use Bylaw 01-23.

Development Permit DP19-124 application was received on September 26th, 2019 the Board must use the current Land Use Bylaw 01-23 when making a decision. Any bylaws

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existing at the time of the house being built or when the Davis' purchased the property are not relevant to the decision before the Board at this hearing.

The Board considered it appropriate to review the Town of Olds Land Use Bylaw 01-23 in light of all of the submissions put before the Board at the hearing.

The Board acknowledges that Town of Olds Land Use Bylaw 01-23 Schedule C: District Regulations, Landscaped Area, "The minimum amount of site area to be landscaped shall be the front yard, excluding the front driveway (if applicable). Properties with a side yard abutting a street/boulevard shall also be landscaped."

To determine what width of the front driveway would be permitted the Board reviewed the site plan of 106 Willow Green attached to Development Permit 05-141. The determination was that the approved driveway width was 7.32 metres.

The site plan attached to Development Permit DP19-124 shows the current driveway with the entire width of the front yard (9.279 metres).

The Board acknowledges the additional hard surfacing of the front yard by the standards set in the Town of Olds Land Use Bylaw 01-23 would be considered an "accessory parking pad". Land Use Bylaw 01-23 defines an "accessory parking pad" as "an area providing for the parking of vehicles and utility trailers but does not include a driveway and is located on the same parcel of land (2016-02)."

The Board acknowledges that Schedule B: Supplementary Regulations, 3.0 Vehicles 3(1) Parking (l) A front yard or side yard accessory parking pad that is not part of a driveway shall have a landscaped area that is a minimum of 1.5m (5ft.) wide between the road way and the parking pad.

The Board acknowledges that the Land Use Bylaw 01-23 defines "landscape area" as "an area of land made attractive and desirable by the use of any or all of the following: grass, trees, shrubs, ornamental plantings, fences, walls and associated earthworks; however, it shall not include area occupied by garbage containers, storage, parking lots of driveways."

The Board acknowledges that letters sent to the Davis' from The Town of Olds on February 22, 2017 and August 21, 2019 illustrate an intention to work with the Davis' and not have them cut out the portion of the driveway required to create a landscape buffer. The most recent letter from CAO Merritt supported the earlier letter from CAO Vincent and added the town would allow the property owner to put in a planter in the landscape buffer allowing them to still drive around it to park.

The Board acknowledges that in the Town of Olds Municipal Planning Commission Request for Decision Report provides suggestions that allow the Davis' to become compliant

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without having to cut out a portion of their driveway. This illustrates an intention from The Town of Olds to work with the Appellant/Applicant.

The Certificate of Compliance that was issued on October 15th, 2014 for Lot 11, Block 2, Plan 041 0118 106 Willow Green was discussed in length at the hearing.

The Board considered it appropriate in light of these discussions to review the Certificate of Compliance issued on October 15th, 2014 for Lot 11, Block 2, Plan 041 0118 106 Willow Green.

The Board acknowledges that the Certificate of Compliance does not contain any information about the driveway.

The Board acknowledges point #4 on the Certificate of Compliance “This letter relates only to the land use designation of the parcel and building setback requirements a specific in the Town of Olds land Use Bylaw. This document does not release the property from any other federal provincial or municipal legislation and/or regulation that may pertain to the property”

The Board acknowledges that no documentation was provided that ever stated the Certificate of Compliance was revoked. The board acknowledges the property does have a valid Certificate of Compliance that pertains to the single detached dwelling.

The Board considered it appropriate to review Certificates of Compliance Policy No. 3002 and Certificates of Compliance Policy No. 703C.

The Board acknowledges that in 2014 when the Certificate of Compliance was issued for Lot 11, Block 2, Plan 041 0118 106 Willow Green the current policy was Policy No. 3002. Policy No. 703C was approved on April 25, 2016 and replaced Policy No. 3002.

The Board acknowledges that the primary difference between these two polices is the inclusion of; “Encroachment” meaning “anything constructed or erected with a fixed location on the ground or attached to something having a fixed location on the ground (excluding sound attenuation structures, sidewalk, fences, or any other municipal improvement required and owned by the Town), that extends over a property line and shall include but not be limited to the following:

- (i) Buildings and all projections (including eaves, cantilevers, etc.) and siding;
- (ii) Sheds including those attached to a dwelling and/or a fence;
- (iii) Fences;
- (iv) Asphalt, concrete or brick sidewalks, curbs, parking pads, aprons or driveways;
- (v) Structures (including decks, stairs, patios, balconies, etc.);
- (vi) Retaining walls;
- (vii) Swimming pools and hot tubs;

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- (viii) Shrubs, trees or other organic landscaping materials planted in Reserves or Town owned parcels;
- (ix) Hard landscaping (including but not limited to fire pits and planters);
- (x) Light standards; and
- (xi) Signs"

The Board acknowledges that today Certificates of Compliance include items such as driveways, in 2014 they did not.

CLOSING

For the reason state above, the Permit is refused.

The 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 this decision.

Dated at PENHOLD, in the Province of Alberta this 6th day of December 2019 and signed by the Chair on behalf of all three board members who agree that the content of this document adequately reflects the hearing deliberations and decision of the Board.



Julia King
Board Chair