

SDAB NO. 024-STU-001

APPEAL & ORDER NO. 2024-02

Date and Location of Hearing: September 16, 2024
Town of Morinville - Council Chamber

SDAB Members present: Daniel Pawlick (Chair), Jennifer Anheliger, Fred Bahr

Staff present: Rachelle Gilbert, Legislative Officer;
Tracy Dalzell-Heise, Manager, Communications &
Legislative Services

Board Clerk: Bryan Marback, Kennedy Agrios Oshry Law

Summary of Appeals: Against the decision of the Town of Morinville
Development Officer to refuse Development Permit
Application Number 24-D0090 for the creation of an
Accessory Dwelling Unit (basement suite).

Against the decision of the Town of Morinville
Development Officer to refuse Development Permit
Application Number 24-D0091 for the creation of an
Accessory Dwelling Unit (basement suite).

Against the decision of the Town of Morinville
Development Officer to refuse Development Permit
Application Number 24-D0092 for the creation of an
Accessory Dwelling Unit (basement suite).

Appeal filed by: Mannu Ahlawat for Statement Builders Ltd.

NOTICE OF DECISION

PRELIMINARY MATTERS

1. There were no objections to the composition of the Board.
2. There were no objections to the proposed hearing procedure.

3. In regard to the Notice of Appeal being filed by email, the Board is satisfied that the Notice of Appeal was received within the time period as required by section 686 of the *Municipal Government Act*.
4. The parties agreed to have all of the appeals heard together.
5. There were no adjournment requests.

EVIDENCE

6. The Board heard verbal submissions from the following:
Abdikani Elmi, Development Officer
Mannu Ahlawat on behalf of Statement Builders Ltd. ("Appellant")
Blair Carmichael on behalf of Statement Builders Ltd. ("Appellant")
7. The Board received written submissions from the following:
Abdikani Elmi, Development Officer
Mannu Ahlawat, for the Appellant Statement Builders Ltd.
Valde Homes Ltd., Affected Person

The Board reviewed the materials contained in the agenda package, which are on the Board's file.

SUMMARY OF SUBMISSIONS

Submissions of the DA

8. The Development Authority ("DA") summarized the written submissions on the Board's file, together with the relevant bylaws, policies, plans, and legislation at issue in these appeals.
9. The proposed developments are within the Westwinds Area Structure Plan ("ASP"). The ASP provides a detailed framework for current and future development in a defined area.
10. The ASP shall be used in conjunction with the relevant provisions of the MDP and LUB, in guiding the exercise of discretion in making decisions on development permit applications (ASP Policy 5.2.3).

11. The exercise of discretion or variance in deciding an application must be both reasonable and defensible within the letter and spirit of the ASP as well as widely accepted planning principles (ASP Policy 5.2.4).
12. The proposed developments are within a low-density residential subdivision, and the proposal to use permanent on-street parking does not align with the development concept of the ASP.
13. The parcel is zoned Residential Mixed Form (R-X) under the LUB. In the R-X district, an Accessory Dwelling Unit (“ADU”) is a permitted use. An application for a permitted use shall be granted, provided that the proposed development with the LUB.
14. The LUB requires one additional on-site parking space for ADUs in addition to the parking required for the principal dwelling unit (LUB Section 6.2). Municipal roadways are not intended for permanent parking and may impede snow removal, maintenance, or street sweeping.
15. The Appellant did not request a variance in the applications. Based on the information provided, the DA did not consider any variance.
16. The DA advised that construction of the ADUs commenced prior to any development permits being issued.
17. The proposed developments were identified in the applications as “New Construction”. The principal use was fully constructed at the time of the applications.
18. The Board asked the DA for context in regard to construction already commencing prior to obtaining development permits. The DA advised that the Appellant had indicated they would be constructing the ADUs at the same time as the principal dwelling units. After advising the Appellants that 3 parking spaces would be needed for each development, the Appellant then stated they would not be proceeding with the ADUs.

Submissions of the Appellants

Mannu Ahlawat, Appellant

19. The Appellants relied on the written submissions that are on the Board's file. The Appellants did not make a presentation.
20. The Board asked the Appellant why they did not continue with the ADUs at the same time as the principal dwelling units. The Appellants advised that this was done for financial and organizational reasons.
21. The Board asked why they proposed on-street parking for the ADUs rather than on-site parking as required by the LUB. The Appellants replied that they assumed the third parking space would be permitted on the street.
22. The Board asked if there was available room to have 3 on-site parking spaces for each development. The Appellants advised that there was room, but, due to the layout, people would likely park on the road anyway to avoid blocking people in.

Parties in Support

23. The Board received a letter in support of the developments from Valde Homes, affected party, on Wednesday September 11, 2024 at 12:30pm. Valde Homes believes there is sufficient on street parking to allow for a tenant in the basement.

Closing Comments

24. The parties did not have closing comments.

DECISION

25. The appeal is allowed and the decision of the Development Authority is revoked. The Development Permit Applications are granted, subject to the following condition:
 - (a) The Appellant shall submit to the Development Authority updated or revised parking plans, for each respective development, showing compliance with the LUB to the satisfaction of the Development Authority.

REASONS

26. The applications are for Accessory Dwelling Units and the subject lands are located in the Residential Mixed Use (R-X) district. ADUs are a permitted use in the R-X district, provided that the development fully complies with the LUB.
27. One additional on-site parking space is required for ADUs in addition to the parking requirements of the principal dwelling unit.
28. The proposed developments are not fully in compliance with the LUB. If the Board were to approve the developments as submitted, a variance would be required.
29. The proposed developments are located within the Westwinds Area Structure Plan. The ASP directs that discretionary decisions must be reasonable and defensible within the letter and spirit of the ASP (Policy 5.2.3).
30. The ASP shall be used in conjunction with the MDP and LUB in guiding the exercise of discretion in making decisions on subdivision and development permit applications (Policy 5.2.4)
31. The ASP speaks to aesthetically attractive neighbourhoods with predominantly rear-based parking and emphasizes connectivity of road networks. The Board finds that permanent on-street parking does not align with the letter and spirit of the ASP.
32. The Board believes that a variance is not appropriate in the present case. Permitting three permanent on street-parking spaces would unduly interfere with the amenities of the neighbourhood and may materially interfere with the use, enjoyment, or value of neighbouring lands.
33. As acknowledged by the Appellants in the hearing, there is sufficient space at the rear of the parcels to bring the proposed developments into compliance with the LUB.
34. While the Appellants do not wish to have all the parking on-site, as it would incur extra costs, business and economic impacts on the developer are not relevant

considerations for the Board. It is the developer's responsibility to ensure that development complies with the LUB.

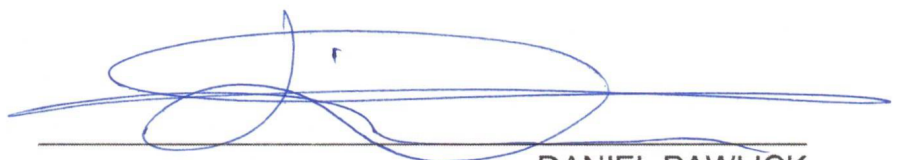
35. While SDAB decisions do not set precedent, the Board is mindful that SDABs are to strive for consistency, where appropriate, to promote fairness for similar uses in similar circumstances. Permitting on-street parking for similar uses in the area could lead to proliferation of on-street parking, which would be contrary to the ASP.
36. As the letter in support from Valde Homes Ltd. was received after the deadline for written submissions, the Board places little weight on the letter.
37. The Board notes that the Appellant may have commenced construction on the ADUs prior to obtaining development permits. The Board cautions the Appellants against beginning or continuing any construction prior to receiving approved development permits.

SUMMARY

38. Accessory Dwelling Units are a permitted use in the R-X district, provided that the development complies with the LUB. It is possible for the Appellants to bring the proposed developments into compliance.
39. A variance is not appropriate for the proposed developments. Permitting the use of permanent on-street parking would unduly interfere with the amenities of the neighbourhood, and may materially interfere with the use, enjoyment, or value of neighbouring lands.

The Board allows the appeal and revokes the decision of the Development Authority. The application for Accessory Dwelling Units are approved subject to the condition set out, above.

Dated this 30 day of September, 2024.



DANIEL PAWLICK
Subdivision and Development Appeal Board Chair