

**NOTICE OF DECISION
SUBDIVISION AND DEVELOPMENT APPEAL BOARD
CITY OF SPRUCE GROVE**

Pursuant to Part 4 of the City of Spruce Grove Land Use Bylaw C-824-12 (the "Land Use Bylaw"), as amended, and Part 17, Division 10 of the *Municipal Government Act*, RSA 2000, cM-26, as amended.

DATE OF DECISION: February 1, 2022

IN THE MATTER OF: An appeal by Denis and Shelley Ouellette and Conrad and Amy Procter against a conditional approval of Development Permit No. PL20210000820 to locate a Limited Group Home for the purposes of providing assistance to individuals who require assistance in their daily living at 38 Hartwick Manor (Plan112-3685, Block 7, Lot 35).

DATE OF HEARING: January 26, 2022

SUMMARY OF THE HEARING:

1. Notice of the appeal was given to all interested parties in accordance with the Land Use Bylaw and the requirements of the *Municipal Government Act* and a hearing was opened virtually via Zoom on January 26, 2022.
2. The following members of the Subdivision and Development Appeal Board were in attendance throughout the hearing:
 - Paul Hanlan
 - Sean Cunningham
 - Christina Kortmeyer
 - John Fraser
 - Liam McGrath
 - Tim Tully
 - Tim Ormsbee
3. Lindsay O'Mara served as Clerk to the Board for the hearing.
4. Following an introduction of the Board and the Chair outlining the hearing process, no persons present voiced any objections to the members of the Board hearing the appeal and the process of the hearing as outlined by the Chair.

5. The Board received and considered written submissions from each of the following:
 - Development Officer's Report
 - Development Officer's PowerPoint presentation
 - Applicant's Written Submission
 - Appellant Ouellette's Written Submission
 - Appellant Procter's Written Submission
 - Adjacent Property Owner's (66 Hartwick Manor) Written Submission

6. The following persons were in attendance at the hearing of the appeal and made oral submissions which were considered by the Board:
 - Karen Majeau, Senior Development Officer
 - Lori Kustra, Supervisor of Development
 - Denis Ouellette, Appellant
 - Conrad and Amy Procter, Appellants
 - Brittani Norstrom (I Have a Chance Support Services Ltd.), Applicant
 - Arlene Penner (I Have a Chance Support Services Ltd.), Applicant
 - Anna Goebel Arlene Penner (I Have a Chance Support Services Ltd.), Applicant
 - Lori Parker, Other Affected Party

7. All those who provided evidence at the hearing indicated that they had a fair hearing.

SUMMARY OF EVIDENCE

8. The Board marked the following documents as exhibits in the hearing. There were no objections to them being marked as exhibits.

Exhibit	Description
1.	Timelines
2.	Development Permit Application
3.	Development Permit Decision
4.	Notice of Appeal – Ouellette (1) and Procter (2)
5.	Notice of Hearing
6.	Adjacent Property Owner List (Confidential)
7.	Site Plan Showing Adjacent Property Owners
8.	Site Plan Showing Adjacent Property Owners
9.	Development Officer's Report

Exhibit	Description
10.	Applicant Submission
11.	Written Submission (66 Hartwick Manor)

9. The Board heard oral testimony from Karen Majeau, Senior Development Officer, including:
- A summary of the content of the Development Officer's report (Exhibit 9) and Powerpoint presentation.
 - Answers to questions including:
 - There are currently three tenants living in the property; however, the Development Permit does permit up to four tenants.
 - The determination of whether traffic is characteristic of a neighbourhood is based whether traffic is generated for residential purposes.
 - The properties in the R1 District require two parking stalls. The Group Home has one in the garage and one on the parking pad in front of the garage.
 - Many other residential properties generate traffic via visitors, deliveries and repairmen.
 - The crushed gravel adjacent to the parking pad could be considered landscaping; however, if it is being used as a parking stall there is nothing in the Land Use Bylaw that requires that the private property portion of that area be hard surfaced. There is a section closer to the curb that is considered City right of way. The portion in the City right of way would need to be hard surfaced in order to be used as a parking stall.
 - Although there may be overlap of Group Home staff coming and going, it is the opinion of the Development Authority that such coming and going does not create excessive traffic.
 - Two staff members attending the Group Home would generate two vehicles for the two onsite parking stalls.
 - If the use of the property is not in compliance with the Development Permit or the conditions, a complaint can be made to the City. The City would then evaluate, investigate and validate the complaint and take action if it is found that the property is not in compliance with the Development Permit conditions.
 - There was a complaint made to the City regarding the Group Home prior to the Development Permit application submission; however, no action was taken or follow-up occurred stemming from the complaint. If there had been follow-up, the outcome likely would not have been different. It is the City's goal to obtain compliance. Had it been determined previously that the Group Home was acting without a Development Permit, the City would have reached out to the Applicant to ensure they submitted an application.

- If a property continues to act without compliance, the City can issue a stop order.
 - The Development Permit process is as follows: Council passes the Land Use Bylaw which divides the City into districts. Under each district is a set of permitted and discretionary uses and regulations. When an application is made, the land use is ascertained. In this case, the use is discretionary. The practice is to send notification of the conditional approval of the Development Permit to all properties within 30 metres of the subject site. There is no requirement under the Land Use Bylaw for advance consultation of property owners prior to a decision being made by the Development Authority.
 - The Development Officer can ask for additional information of the Applicant, if needed. This was done with respect to this Development Permit application.
 - The Development Officer, Tanya Ouellette who issued the Development Permit is a relation of the Appellant, Denis Ouellette.
10. The Board heard oral testimony from the Appellant, Denis Ouellette, including:
- A summary of the content of the Appellant's Written Submission (Exhibit 4).
 - The Board had no questions for Mr. Ouellette.
11. The Board heard oral testimony from the Appellants, Conrad and Amy Procter, including:
- A summary of the content of the Appellants' Written Submission (Exhibit 4).
 - Answers to questions including:
 - It is a neighbourhood with two schools and the conduct of the tenants exposes children to unsavory activities.
 - The Appellants filed a complaint with the City about the Group Home and the activities of the tenants, but received no follow-up on the complaint.
 - Bylaw Officers have come out more than once because of parking issues.
 - Many vehicles come and go from the property. There are often two vehicles on the property's driveway and one or two on the street.
12. The Board heard oral testimony from the Applicant, Brittani Norstrom, Anna Goebel and Arlene Penner of I Have a Chance Support Services Ltd.
- A summary of the content of the Applicant's Written Submission (Exhibit 10).
 - Answers to questions including:
 - The Group Home provides community based support to individuals with disabilities. The goal is to teach these individuals life skills through scheduled activities to allow them to return to their familial home or to live independently in the community.

- A staff member is at the Group Home every day, all day and night. Shift change of staff occurs every two days or sometimes every 12 hours.
 - The Applicant does not plan to have more than three tenants in the Group Home.
 - Although there was reference by Appellants to a shuttle vehicle, the Applicant does not have a shuttle vehicle. This was likely a fleet vehicle. The fleet vehicle is part of the care model. There will be times when two staff vehicles and a fleet vehicle are parked at the property or on the street in front of the property; however, the Applicant wishes to mitigate the concerns of neighbours and would be willing to no longer utilize the fleet vehicle.
 - Tenants do not own their own vehicles.
 - The neighbourhood has many children and eventually those children will become teenagers who will likely have vehicles, also increasing the traffic in the neighbourhood.
 - The Group Home was in existence since July 2020. They were acting without a Development Permit due to administrative oversight. The Applicant was working with many stakeholders during COVID and in error did not submit a development application. The Applicant is committed to following development guidelines.
 - The Applicant's team supports the Group Home, as needed, including with property maintenance. The Applicant's Quality Assurance Manager attends once a month and performs a visual inspection.
 - The square footage of the house is 2,000 square feet.
 - There are lawn care devices stored at the property and the staff maintains the lawn.
 - The Applicant does not have an Alberta Health Services license. A license is only required for Group Homes with four or more tenants, and this Group Home only has three. Alberta Health Services does inspections of the property even though a license is not required through them.
 - The Applicant is certified by the Canada Accreditation Council, which governs the standards of care for the Group Home.
 - It is possible the tenants engaged in inappropriate or illegal behaviour and activities; however, staff try to steer the tenants away from these behaviours and activities, and reinforce positive behaviour.
 - The Applicant takes seriously any complaints and wishes to develop a successful partnership with the neighbours.
13. The Board heard oral testimony from Lori Parker:
- Ms. Parker lives in the neighbourhood.
 - Staff park on the yard of the property, thereby dragging mud onto the street.

- There has been no effort to alleviate dandelions and the seeds blow into the neighbouring yards.
- She is concerned that the property value of homes in the area will be reduced due to the Group Home.
- It is her view that the Group Home is better located in a neighbourhood with primarily single family detached dwellings.

RELEVANT LEGISLATION

14. The Board considered the following sections of the Land Use Bylaw in its decision:

- Land Use Bylaw Section 7 – Interpretations and Definitions
- Land Use Bylaw Section 69 – Group Care Facilities and Limited Group Homes
- Land Use Bylaw Section 85(2) – Number of Onsite Parking Stalls Required
- Land Use Bylaw Section 115 – R1 – Mixed Low to Medium Density Residential District

DECISION

15. Having considered all relevant planning evidence presented at the hearing, the arguments made and the circumstances and merits of the application and the appeal, and having regard for the relevant provisions of *Municipal Government Act*, any applicable statutory plans, the Subdivision and Development Regulation and the Land Use Bylaw, this appeal is denied and Development Permit No. PL20210000820 is hereby approved, subject to the following conditions:

1. That the Applicant shall not permit any of the required parking to occur on any portion of the front yard other than on the existing driveway.
2. No later than 30 days from the date of this Notice of Decision, the Applicant shall submit to the City of Spruce Grove a Traffic Management Plan to limit the impact of daily vehicle movements in the neighborhood.
3. The residential character of the Dwelling shall be maintained; with the occupants living together as a single housekeeping unit and using shared cooking facilities.
4. The Limited Group Home shall be limited to providing care for a maximum of four (4) persons, exclusive of staff or family members residing in the home.

5. The Limited Group Home shall not generate pedestrian or vehicular traffic or parking in excess of that which is characteristic of the district in which it is located.
6. The approved use shall not include active treatment centers such as drug or alcohol treatment or housing facilities for convicts or ex-convicts.

REASONS:

16.
 - (a) The Appellants are all residents of the neighbourhood, near the lands on which the proposed use is located. As a result of their proximity to the lands, the Board finds that they are affected by the proposed use.
 - (b) Ms. Parker lives in the neighbourhood, near the lands on which the proposed use is located. As a result of her proximity to the lands, the Board finds that she is affected by the proposed use.
 - (c) The first question for the Board is to determine what the proposed use is. The definition of "Limited Group Home" (set out below) includes a comment that it is a residential care facility which is "recognized, authorized or certified by a public authority". The Board heard evidence that the Applicant does not have an Alberta Health Services license because a license is only required for Group Homes with four or more tenants, and there will be only three tenants. The Board also heard evidence that the Applicant is certified by the Canada Accreditation Council, which governs the standards of care for the Group Home.

GROUP HOME, LIMITED A residential care facility which is recognized, authorized, licensed or certified by a public authority such as a social care facility intended to provide room and board for six residents or less, exclusive of staff or family members residing in the home, for disabled persons or persons with physical, mental, social or behavioural problems. The facility may provide for the personal rehabilitation of its residents either through self-help or professional care, guidance and supervision. The residential character of the Dwelling shall be primary; with the occupants living together as a single housekeeping unit and using shared cooking facilities. This Use does not include active treatment centers such as drug or alcohol treatment or housing facilities for convicts or ex-convicts (see Group Care Facility).

- (d) In determining what the use is, the Board notes that there are no other uses which this proposed use could be. Even though the proposed use is not licensed by Alberta Health Services, the Board finds that the proposed use is a "Limited Group Home" because it is a residential care facility, and it provides room and board for less than six residents, which the Board finds to be within the intention of the definition of a Limited Group Home.

- (e) Having found that the proposed use is a Limited Group Home, the Board notes that the proposed use is a discretionary use in the R1 – Mixed Low to Medium Residential District.
- (f) When considering a discretionary use, the Board is tasked with determining whether the proposed use is reasonably compatible with neighbouring uses or can be made reasonably compatible with neighbouring uses through the imposition of conditions.
- (g) The Board heard concerns regarding operation of the Limited Group Home without development approval and alleged illegal activities of the tenants; however, this does not fall within the scope of authority of the Board. The Board does not regulate the users of land, but rather land uses. As a result, the Board did not consider the comments made in relation to these concerns when considering whether to uphold or deny the appeals.
- (h) The primary concerns raised that fall within the scope of the Board were parking concerns, increased traffic, property maintenance and compatibility with neighbourhood characteristics. The Board considers them below.

Parking Concerns and Increased Traffic

- (i) The Appellants all included concerns in relation to parking from the proposed use. They advised that many vehicles come and go from the property. They advised that there are often two vehicles on the property's driveway and one or two on the street. The Board heard that staff park on the yard of the property, thereby dragging mud onto the street.
- (j) The Applicant advised that tenants do not have their own vehicles, but that staff do come and go. The Applicant advised that it is committed to working with the area residents regarding parking of the fleet vehicle.
- (k) The Development Authority advised that the parking was not uncharacteristic with other residential areas in the City.
- (l) Under section 85(2) of the Land Use Bylaw, the number of required parking stalls is at the discretion of the Development Officer, who has advised that there are 2 parking stalls on the lands.
- (m) The Board notes that there should be 2 staff workers on site at all times (one worker for two tenants), and that there may be supervisors who come and go. The Board finds that this number of vehicles is not so large that it is uncharacteristic or that it would lead to incompatibility of this use with other uses in the area. Further, the Board finds that since there are 2 stalls on the lands, if there were 3 vehicles, then only 1 of them would have to

park on the street. The Board does not find one additional vehicle on the street would lead to incompatibility of use.

- (n) However, the Board did note the concerns of those speaking in favour of the appeal that the parking on the lands where the lands are not hard surfaced has caused mud to be tracked onto the street. In order to address this impact on the neighbours, the Board imposes condition #1 which requires that the Applicant cannot permit parking to occur on any portion of the front yard other than on the existing driveway. The Board finds that by doing this, the impact of mud on the neighbourhood streets should be lessened.
- (o) In addition, in order to address the concerns of the neighbours in relation to traffic, the Board imposes condition #2, which requires that no later than 30 days from the date of this Notice of Decision, that the Applicant submit to the City of Spruce Grove a Traffic Management Plan to limit the impact of daily vehicle movements in the neighborhood. The Applicant and the City can then work together to examine the possible impacts of the daily vehicle movements and address potential concerns.

Property Maintenance and Compatibility with Neighbourhood Characteristics

- (p) The Appellants argued that due to the lack of property maintenance, the proposed use was not appropriate in the neighbourhood and should be re-located.
- (q) The Applicant stated that the staff are to do yard maintenance and there are inspections of the lands.
- (r) The question of how the Applicant maintains the lands does not fall directly within the scope of the regulation of the use. However, the Board notes that the Applicant noted its desire to work with the neighbours in relation to the parking. The Board finds that the stated concerns about property maintenance do not result in an incompatibility of use since any property anywhere in the City may have maintenance concerns. The Board also recognized that the City enforces other bylaws that would adequately address property maintenance issues. The Board urges the Applicant to take note of the state of the lands and try to keep it a similar state of maintenance to the other properties in the area, to minimize concerns.
- (s) In relation to the neighbourhood characteristics, the Board notes that the definition of Limited Group Home requires that the use be a residential care facility. The evidence is that the use is in a residence. Further, the Board notes that the written submissions of the Applicant indicate that the agency vehicles are unmarked and cannot be identified as belonging to a supportive

living environment. The Board finds that such actions support the residential nature of the proposed use, and that there is insufficient evidence to support a conclusion that the residential character of the neighbourhood is negatively affected by the proposed use.

Dated at the City of Spruce Grove in the Province of Alberta, February 1, 2022

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Lindsay O'Mara, Clerk, on behalf of
Paul Hanlan, Chairperson
SUBDIVISION AND DEVELOPMENT APPEAL BOARD

NOTICE:

If you wish to appeal this decision, you must follow the procedure prescribed in Section 688 of the *Municipal Government Act*. An appeal lies to the Court of Appeal on a question of law or jurisdiction with respect to a decision of the Subdivision and Development Appeal Board. An application for leave to appeal must be filed and served within 30 days after the issue of the decision sought to be appealed.