SUBDIVISION AND DEVELOPMENT APPEAL BOARD OF THE TOWN OF OKOTOKS DATED JUNE 14, 2018

DECISION

Hearing held at:	Town of Okotoks Municipal Centre Council Chamber 5 Elizabeth Street, Okotoks
Date of Hearing:	May 30, 2018
Members present:	Jasse Chan, Chair Councillor Tanya Thorn Todd Martin Gerry Melenka Andrew Cutforth Corey Brandt
Staff present:	Jamie Dugdale, Planning Services Manager Kari Idland, Development Planner Cindy Power, SDAB Clerk
Board Solicitor:	Jennifer Sykes, Caron & Partners LLP
Summary of Appeal:	This is an appeal against the decision of the Municipal Planning Commission to refuse Development Permit Application Number 110-18 for a studio suite/duplex at 240 Cimarron Boulevard (Lot 61, Block 14, Plan 0213894)
Appeal filed by:	Alanna Fagervik of S.O.M. Investments Ltd.

The Board heard verbal submissions from the following:

Kari Idland, Development Planner ("Administration"); and
Alanna Fagervik (the "Appellant").

The Board reviewed the materials contained in its agenda package.

SUMMARY OF SUBMISSIONS:

The following is a summary of the submissions made to the Board in respect of this appeal.

Submissions of Administration

The application is for a new dwelling unit in the basement of a bungalow which was constructed in 2004. This property is in the Residential Narrow Lot Single Detached (R1N) District.

The application was for a studio suite, but the proposal did not meet the definition of a studio suite. Instead, the proposal met the definition of a duplex – up and down (referred to in the rest of this decision as a "duplex"), which is not a listed use in the R1N District.

The original application showed 3 bedrooms and 2 bathrooms. Before the application was reviewed by the Municipal Planning Commission ("MPC"), the applicant submitted a revised plan showing one bedroom and one bathroom. The revision showed the original living room relabelled as "Common Area", and one of the bedrooms having a wall removed and the room relabelled "Living Room". The MPC based its decision on this revised plan.

The proposed development falls under the definition of a duplex, not a studio suite, for the following reasons:

a. The entire basement is being used as a second dwelling unit within the bungalow. The second dwelling unit is 72% of the size of the principal dwelling above grade, while the maximum for a studio suite is 40%.
b. The proposed dwelling unit exceeds the allowable bedroom count for a studio suite.
c. There is a dwelling unit on the main floor which meets the definition of "dwelling unit".
d. The proposed development in the basement will meet the definition of "dwelling unit".
e. The building will contain two dwelling units, one above the other.
f. Each dwelling unit has a separate entrance from grade level.

The floor area of the principal dwelling unit is 102.03m^2. (When the matter was before the MPC, this floor area was stated to be 105.1m^2. The revised area came from the 2013 real property report submitted to the Town.)

No other safety codes or planning permits exist in respect of this development.

The *Municipal Government Act* does not authorize the Board to amend the Land Use Bylaw by approving a use that is not listed for the relevant district.

In order to be a studio suite, the second dwelling unit must be clearly accessory to the principal dwelling unit. The restrictions concerning floor area and maximum bedroom count are designed to ensure that this is the case, and that the second dwelling is not another principal dwelling on the same site.

The location of the dwelling unit also would require a relaxation. The Land Use Bylaw specifies that studio suites will be located in certain parts of the building, to create more livable spaces. Walk-out basements are a listed location, but this is a standard basement, not a walk-out basement (as Council would have intended the phrase).

The Appellant provided revised plans after filing an appeal for consideration by the Board. Planning reviewed these plans, but the other departments have not. Notice of the revised plans has not been posted or provided to neighbours.

Submissions of the Appellant

The proposed development meets all of the requirements in the Land Use Bylaw except for size, including parking, landscaping and lot coverage requirements. The Land Use Bylaw would require this site to have 3 parking stalls and 4 are provided on the site.

The size of the downstairs unit cannot be reduced because of the location of the load bearing walls and rough-ins.

The proposed common area was an attempt to reduce the relative square footage of the downstairs unit compared with the upstairs.

The proposed development will have good access to amenities.

The Appellant acknowledged during the hearing that this development could be technically a duplex.

The proposed development involves removing the stairwell connecting the units for space and security. The placement of the access stairwell outside of the lower unit creates privacy.

The existence of an outside stairwell to access the unit means that the basement is a walk-out, so there is no relaxation of the Land Use Bylaw with respect to the location of the unit in the building.

The Appellant submitted revised plans for the Board's consideration.

DECISION:

The Board denies the appeal and upholds the decision of the Development Authority. A development permit shall not be issued.

REASONS:

As an initial comment, this decision is based on the plans which were provided to the MPC, not the revised plans which were submitted to the Board as part of the appeal.

The Board finds that it is more appropriate for the revised plans to follow the usual application process. They represent a significant departure from the plans reviewed by

the MPC and have not been reviewed by the Town's various departments or advertised in accordance with the requirements of the Town's Land Use Bylaw.

This appeal is about whether the proposed development meets the definition of a studio suite or a duplex, as such definitions are found in the Town's Land Use Bylaw. These definitions are as follows:

> "**duplex – up and down** means a building containing two (2) dwelling units one (1) above the other, each with a separate entrance from grade level"
>
> "**studio suite** means a self-contained dwelling unit on a site that is accessory to the principal dwelling unit where both dwelling units are registered on the same land title".

At the hearing, the Appellant verbally acknowledged that the proposed development could technically meet the definition of a duplex. She also submitted arguments suggesting that it is her position that this development is a studio suite. Accordingly, the Board considered which use definition this development fits under.

The key distinction between a studio suite and a duplex is that a studio suite is accessory to the principal use of the parcel.

Council has not defined "accessory" in this context, but it has used this word elsewhere in the Land Use Bylaw, such as by defining accessory use as "a use on a site which is normally incidental and subordinate to the main use on the same site". This is not determinative, since Council did not refer to studio suites as an "accessory use", but it does suggest that when Council used the word "accessory" it may have meant subordinate or incidental.

Another indicator as to what makes a studio suite accessory to the principal dwelling unit is the fact that Council restricted the size of these units, as well as the number of bedrooms. A studio suite can only be 40% of the size of the principal dwelling unit and can have a maximum of 1 bedroom. While these restrictions might be development standards that could be varied, they suggest that Council intended that a studio suite would be significantly smaller than the principal dwelling unit and have a limited number of bedrooms.

In this instance, there was conflicting evidence as to the size of the dwelling units and the number of bedrooms. Administration calculated that the upper dwelling unit was 103.03m^2 and the lower dwelling unit would be 73.43m^2 (71.2% of the size of the upper dwelling unit). The Appellant submitted plans on February 20th, 2018 to the Development Authority indicating a main floor area of 98.85m^2 and a lower level unit area of 60.23m^2 (60.9% of the size of the upper level).

Regardless of which measurements are applied, the proposal represents a significant departure from the size of a studio suite contemplated in the Land Use Bylaw. Whichever

measurements are used, the two dwelling units are close in size and lack features suggesting that one is subordinate to the other, and the Board finds that the proposed development is a second principal dwelling unit, not an accessory one to the upstairs unit.

The Appellant also included in her proposal a "common room" which was added to reduce the area of the lower dwelling unit as compared with the upper dwelling unit. The Board is not satisfied that this is truly a common space. Even if it is, this is not sufficient to change the Board's reasoning. The lower level unit is still considerably beyond what is contemplated as a studio suite in the Land Use Bylaw and still more closely fits the definition of a duplex.

The Appellant argued that the fact that the two dwelling units are on a single title suggests that this development is a studio suite rather than a duplex. The Board disagrees. While studio suites are required by the Bylaw to be on a single title with the principal dwelling unit, the definition of duplexes is silent regarding this issue, suggesting that duplexes could be on a single title or more than one.

[redacted]

Michael MacIntyre
Acting SDAB Clerk