



**SUBDIVISION AND DEVELOPMENT APPEAL BOARD
OF THE TOWN OF OKOTOKS
DATED MAY 17, 2018**

DECISION

Hearing held at: Town of Okotoks Municipal Centre
Council Chamber
5 Elizabeth Street, Okotoks

Date of Hearing: May 3, 2018

Members present: Jasse Chan, Chair
Councillor Matt Rockley
Todd Martin
Gerry Melenka
Kelly Rogers

Members absent: Corey Brandt
Andrew Cutforth

Staff present: Craig Davies, Development Planner
Colleen Thome, Development Planner
Karen Humby, SDAB Clerk

Basis of Appeal: This is an appeal against the conditions of approval of the Municipal Planning Commission for Development Permit 104-18 for a one bedroom Studio Suite at 2 Westmount Road, Okotoks, Alberta; Lot 1 Block 4 Plan 041 1351.

Summary of
Grounds for Appeal: *"I've had my business in Okotoks since 1986. For 20 years I was located downtown and for 12 years now I have been home based at 2 Westmount Road. The business is a one man operation (myself) and does not create a lot of traffic. I convert old film to video, transfer video tapes to DVD, digitize slides & negatives and edit videos. It is a quiet operation, with absolutely no disturbance to the neighbourhood."*

The fact that my garage is developed for an office is not harming anything. I only have one car, so I have no need for a garage. We have a basement suite and when there is a tenant he or she has only one car, so the driveway has sufficient parking. The bylaw calls for 5 parking spaces. I request that in my circumstance this bylaw be relaxed because 2 spaces have been enough for 12 years and will continue to be enough.

Condition 1.a.

This is a show home which I purchased from the builder in 2004. The garage came fully developed for an office and was left as is for my use. The only reason I bought this property was to move my business from downtown to a home-based location. We were not looking to buy another home. This location was perfect for my kind of business and the builder's layout was ideal for my purpose, with a direct entrance from outside rather than the typical spare bedroom or a basement den for an office, which is not conducive to my business image or space requirement.

A condition to my offer to purchase was the approval to operate my business from this location and change my existing business license to a home occupation license. I spoke with a lady at Town Office who gave me approval to go ahead. I bought "an office with a house attached" so to speak, as I would not have purchased this property if I couldn't have my business here.

I sold my downtown building and took possession here in 2006 when the builder was finished using it. For 12 years I have conducted business in this location without any parking issues. There has never been a need for more than 2 parking spaces in the driveway.

Asking me to tear out the office to make room for 2 vehicles is not only an unnecessary financial burden, it would destroy my livelihood as moving the office elsewhere is not an option. The amount of earnings my business generates is not sufficient to afford a rental space. Furthermore, the garage would stay empty as there are no vehicles to park in it. I have one car and when there's a tenant, he has one car. The double driveway has been adequate for 12 years and will remain so for as long as I live here. Should a future owner require more space for parking they can make the necessary renovations.

Please see the attached photos showing the location. It is spacious with ample parking, not situated between other houses, so there is no traffic congestion. The garage is perfectly suited for office space.

Condition 1.b.

The driveway is adequate as explained. However, I am prepared to expand the driveway according to the condition to provide a third parking space. Based on the estimate I received to do this work which includes gravel, rebar, bobcat and concrete, the cost would be \$1,300 to \$1,500 total.

Please see the attached site plan and photo.

Condition 1.c.

I don't have \$15,000. A performance security of \$2,000 would cover the cost of the work involved, should it be necessary to expand the driveway to create a third parking space.

I respectfully ask that you consider my appeal favourably."

Appeal Filing:

The appeal was filed by Manfred Huesken (applicant for the Development Permit and Registered Owner of the property).

The Subdivision and Development Appeal Board (the "Board") finds that the Appeal was properly filed within the time allowed, pursuant to Sections 685 and 686 of the *Municipal Government Act* ("MGA").

The appeal form was filed with the Board on April 5, 2018. The Notice of Decision from the Municipal Planning Commission was emailed and mailed to Manfred Huesken on March 16, 2018.

Notice of Hearing:

Sections 606 and 686 of the *MGA* set out requirements for giving notice of an appeal hearing. The Town of Okotoks Land Use Bylaw No. 40-98 (the "LUB") does not set out requirements for giving notice of an appeal hearing regarding a development permit application.

Written notice of the May 3, 2018 hearing was mailed on April 11, 2018 to the Appellant (applicant for the Development Permit and Registered Owner of the property), and those persons identified by the Board as "affected" persons. This provided at least five (5) days advance notice

of the hearing (counting the seven (7) days presumed for regular mail).

As an alternative (and in addition) to personally delivered notice, notice of the May 3, 2018 hearing was published in two issues of the Okotoks Western Wheel (April 18, 2018 and April 25, 2018), both issues being published more than five (5) days prior to the hearing.

The Board heard verbal submissions from the following:

Craig Davies, Development Planner;
Manfred Huesken, Appellant

The Board reviewed the agenda package and PowerPoint presentation prepared by Administration.

The Board hereby adopts the May 3, 2018 summary attached hereto as Schedule "C".

LEGISLATION:

Authority of the Subdivision and Development Appeal Board

Section 687(3) of the *MGA* states:

"In determining an appeal, the subdivision and development appeal board

- (a) must act in accordance with any applicable ALSA regional plan;*
 - (a.1) must comply with any applicable land use policies;*
 - (a.2) subject to section 638, must comply with any applicable statutory plans;*
and
 - (a.3) subject to clause (d), must comply with any land use bylaw in effect;*
 - (b) must have regard to but is not bound by the subdivision and development regulations;*
 - (c) may confirm, revoke or vary the order, decision or development permit or any condition attached to any of them or make or substitute an order, decision or permit of its own;*
 - (d) may make an order or decision or issue or confirm the issue of a development permit even though the proposed development does not comply with the land use bylaw, if, in its opinion,*
 - i. the proposed development would not*
 - (A) unduly interfere with the amenities of the neighbourhood, or*
 - (B) materially interfere with or affect the use, enjoyment or value of neighbouring parcels of land,*
- and*

- ii. *the proposed development conforms with the use prescribed for that land or building in the land use bylaw.*

Development Permit Required

Land Use Bylaw, Section 1.1.0 - Development Permits Required

“Except as provided in Section 1.2.0 of this Bylaw, the approval of a development permit application and the release of a development permit must be obtained before development can commence or be allowed to continue.”

Land Use Bylaw, Section 1.2.0 - Development Permits Not Required

“A development permit is not required for the following developments but they shall otherwise comply with the provisions of the Bylaw. Proponents of any development not requiring a permit should consult with the Development Officer to ensure compliance with this Bylaw:

- (a) *works of maintenance, repair or alteration, on a structure, both internal and external, or on a site if, in the opinion of the Development Authority, such work:
 - (i) *does not include major structural alterations,*
 - (ii) *does not change the use or intensity of the use of the structure or the site, and*
 - (iii) *is performed in accordance with obligatory legislation or other government regulations;**
- (b) *the erection, construction, or the maintenance of gates, fences, walls, or any other means of enclosure 2m or less in height, in any district, provided it does not contravene any other provision of this Bylaw and does not form part of a development which requires a development permit;*
- (c) *the construction and maintenance of a public road, public utility, utility building or public park within a public road, public easement or publicly owned parcel;*
- (d) *single detached dwellings, duplexes, studio suite dwellings and additions thereto in a district in which it is listed as a “Permitted Use”, except where it is located in the flood risk area;*
- (e) *the use of a building or part thereof as a temporary polling station for a Federal, Provincial, or Municipal election, referendum or plebiscite;*
- (f) *the construction, maintenance, and repair of walkways, pathways and driveways at grade, except where they form part of a development which requires a development permit;*
- (g) *excavations, importing, removal or stockpiling of soil associated with an approved development permit, Stripping and Grading Permit or executed Subdivision Servicing Agreement;*
- (h) *the construction of an accessory building in a residential district, except where the accessory building is located in the flood risk area or is a*

- swimming pool, hot tub or water feature located within 30m of an escarpment;*
- (i) a change in use on a site in any commercial or industrial district where:
 - (i) the development has been approved,*
 - (ii) the proposed use is a permitted use in the district, and*
 - (iii) any additional parking requirements have been met on the site;**
 - (j) home occupation-minor;*
 - (k) awnings and canopies which do not project over a public road, setback or public property;*
 - (l) landscaping where the existing grade and natural surface drainage pattern is not materially altered, except where landscaping forms part of a development which requires a development permit;*
 - (m) the temporary use of a portion of a building or structure for which a development permit has been granted under this Bylaw, for the marketing of the building or structure;*
 - (n) a satellite dish less than 0.6m in diameter;*
 - (o) a family day home in a residential district;*
 - (p) placement of a shipping container on any non-residential or multi-residential site for use during construction of a development for which a development permit has been issued, notwithstanding that shipping containers may not be a listed use in the district, provided the placement is satisfactory to the Town and the shipping container is removed from the site prior to occupancy of the development or upon thirty days written notice by the Town, whichever is sooner;*
 - (q) a deck, balcony or retaining wall that conforms to all requirements of this Bylaw;*
 - (r) development within the Aerodrome (AD) District directly related to aviation;*
 - (s) the placement or replacement of a manufactured home in the Residential Manufactured Home (RMH) District where a development permit has been approved for the development of the entire site; and*
 - (t) the use of a building or site for a maximum of one (1) year resulting from and directly related to the declaration of a state of emergency provided the use is a listed use in the district."*

Land Use Bylaw, Section 1.3.0 – Compliance with Other Bylaws and Regulations

- 1.3.1 *"Compliance with the requirements of the Bylaw does not afford relief from compliance with the Act, other relevant Acts, or other Bylaws, or regulations affecting the development in question."*

Development Authorities

Land Use Bylaw, 2.1.2 – Development Officer

"The Development Officer is authorized to act as Development Authority in those matters prescribed in this Bylaw."

Land Use Bylaw, 2.1.3 – Development Officer

"The Development Officer:

- ...
- (c) *shall receive, consider, and may decide on applications for a development permit for:*
 - (i) *permitted uses,*
 - (ii) *excavations, importing, removal or stockpiling of soil not associated with a Stripping and Grading Permit or an executed Subdivision Servicing Agreement or Development Agreement,*
 - (iii) *discretionary uses on a site for which a development permit has been issued,*
 - (iv) *time extensions,*
 - (v) *bed and breakfast accommodation,*
 - (vi) *major and minor home occupations,*
 - (vii) *single-detached dwellings,*
 - (viii) *shipping containers,*
 - (ix) *signs, and*
 - (x) *temporary buildings;*
 - (d) *shall receive and refer with a report to the Municipal Planning Commission for its consideration and decision, applications which have not been assigned to the Development Officer pursuant to clause (c); ..."*
 - (e) *shall receive and may refer with a report to the Municipal Planning Commission for its consideration and decision, applications which have been assigned to the Development Officer pursuant to clause (c); ..."*

Land Use Bylaw, 2.2.0 – Municipal Planning Commission

2.2.1 *"The Municipal Planning Commission is authorized to act as Development Authority in those matters prescribed in this Bylaw and the Committees Bylaw."*

2.2.2 *"The Municipal Planning Commission shall consider and decide on all development permit applications referred to it by the Development Officer."*

Land Use Bylaw, Section 4.3.0 - Decisions of a Development Authority

4.3.2 *"In making a decision on an application for a development permit for a "Discretionary Use", the Development Authority shall:*

- (a) *approve the application; or*
- (b) *approve the application subject to conditions and restrictions considered appropriate or necessary; or*
- (c) *refuse the application."*

- 4.3.3 *"The Development Authority shall not allow the use of land or a building not listed as a "Permitted Use" or "Discretionary Use" in the district in which the building or land is situated."*
- 4.3.6 *"The Development Authority may require a developer to provide a performance security in a form and amount satisfactory to the Town to ensure completion of any requirement set out as a condition of approval of a development permit."*

Land Use Bylaw, Section 4.4.0 - Discretion of the Development Authority

- 4.4.1 *"The Development Authority may approve a development permit application for a proposed development with variances if:*
- (a) the development does not unduly interfere with the amenities of the neighborhood or materially interfere with or affect the use, enjoyment or value of neighboring properties;*
 - (b) the development conforms with the use prescribed for that land or building in the Land Use Bylaw; and*
 - (c) notice is given in accordance with Sections 4.5.1 and 4.5.3 of this Bylaw."*

Land Use Bylaw, Section 9.3.0 – Parking and Loading Facilities

- 9.3.3 *"General Rules:*
- (a) the Parking spaces shall be provided on-site in accordance with the minimum parking requirements listed for each use."*
- 9.3.3 *"General Rules:*
- (g) Parking areas shall be designed and located so as to minimize any disruption to the continuity of the pedestrian system and adjacent public roadways."*
- 9.3.4 *"Parking Space Design:*
- (f) The minimum dimensions for parking spaces for Duplexes, Duplexes-Side by Side in a Dwelling Group, Manufactured Homes, Single Detached Dwellings, Studio Suites, Studio Suite Dwelling, and Home Occupations is 2.50m in width by 5.80m in depth."*
- 9.3.7 *"Tandem Parking:*
- Tandem parking may only be permitted for the following:*
- (b) Single Detached Dwellings."*

Land Use Bylaw, 9.9.0 - Home Occupations

Performance Standard	Minor and Major
<i>May operate in a garage</i>	<i>Provided at least the minimum number of parking spaces required for all other uses on the site are available for the intended uses at all times</i>

Performance Standard	Minor	Major
<i>Parking *in addition to the minimum requirement of the district</i>	<i>One (1) additional on-site parking space required if two (2) or more clients visit concurrently and their methods of transportation are separate motor vehicles</i>	<i>One (1) additional on-site parking space required if two (2) or more clients visit concurrently and their methods of transportation are separate motor vehicles One (1) additional on-site parking space required for a non-resident assistant/employee</i>

Land Use Bylaw, Section 9.24.0 – Studio Suites

9.24.1 *"In residential districts, a studio suite may be located within either:*

- (a) a raised basement, the third level of a split level basement or the walkout basement portion of a principal building;"*

9.24.2 *"A studio suite shall comply with all safety code requirements including but not limited to fire wall separations, separate accesses to each dwelling unit and separate heating systems for each dwelling unit."*

9.24.4 *"Sites containing studio suites shall be developed so that:*

- (a) the portion of the principal building or accessory building containing the suite reflects the design of the principal building on the site incorporating similar design features such as window and door detailing, exterior cladding materials and colors, and roof lines; and*
- (b) all buildings on-site are compatible in scale to single detached development in the immediate vicinity; and*
- (c) all site improvements associated with a studio suite such as site landscaping, parking and fencing is consistent in design to site improvements associated with single detached development in the immediate vicinity; and*

(d) *there is only one (1) bedroom.*"

9.24.6 *"Sites containing studio suites shall be developed so that the parking space for the studio suite is not a tandem parking space."*

9.24.7 *"Floor area of a studio suite:*

- (a) *Means the total area measured to the outside surface of the exterior walls, or, where there is separation by firewalls, to center line of the common firewall.*
- (b) *The minimum floor area required for a studio suite is 30m².*
- (c) *The maximum allowance for a studio suite is 40% of the area of the principal dwelling unit to a maximum of 75m².*
- (d) *The calculation for the floor area of the principal dwelling is based on the area of the main floor and above and does not include an attached garage or any area intended for the studio suite above the main floor.*
- (e) *The calculation for the floor area of a studio suite is based on the area to be used exclusively for the suite and excludes shared areas such as stairways and utility rooms."*

Residential Single Detached (R1) District

Land Use Bylaw, Section 11C.1.1 – Purpose and Intent

"The purpose and intent of this district is to provide for low density single detached residential development."

Land Use Bylaw, Section 11C.2.1 – Permitted Uses

Permitted Uses	Minimum Parking Required
<i>Home Occupation - Minor</i>	<i>discretion of Development Authority</i>
<i>Single Detached Dwelling</i>	<i>2 spaces/dwelling – laned 4 spaces/dwelling – no lane</i>

Land Use Bylaw, Section 11C.2.2 – Discretionary Uses

Discretionary Uses	Minimum Parking Required
<i>Home Occupation - Major</i>	<i>discretion of Development Authority</i>
<i>Studio Suites</i>	<i>1 space/suite in addition to the parking requirement for the single detached dwelling</i>

Land Use Bylaw, Section 17 - Interpretation

"accessory use means a use on a site which is normally incidental and subordinate to the main use on the same site."

“basement means that portion of a building which is wholly or partly underground and has not more than one-half of its height from finished floor to finished ceiling above finished grade.”

“collector street means a public thoroughfare designed to conduct traffic from local streets and cul-de-sacs to arterial streets and designated as such in the Okotoks Transportation Study. Controlled access to adjacent properties may be allowed.”

“discretionary use means a use of land or of a building which is listed as a “Discretionary Uses” in a district in the Bylaw. An application for a discretionary use may, subject to the provisions of this Bylaw, be approved with or without conditions by the development authority.”

“duplex - up and down means a building containing two (2) dwelling units one (1) above the other, each with separate entrance from grade level.”

“dwelling unit means two (2) or more rooms designed to be used as a residence for a household and containing kitchen, living, sleeping and sanitary facilities.”

“floor area means the total floor area of all floors of a building above grade measured to the outside surface of the exterior walls or, where buildings are separated by firewalls, to the center line of the common firewall.”

“garage means an accessory building or part of the principal building designed primarily for the storage of motor vehicles.”

“gross floor area - residential means the sum of the area of all floors of a principal dwelling unit in a residential district above established grade.”

“hard surfacing means asphalt, concrete, paving stone, or similar material that is acceptable to the Town of Okotoks.”

“home occupation means a use of a residential building which is incidental and subordinate to the principal use of the building and meets the special requirements of this Bylaw but does not include adult entertainment uses; and

- (a) **home occupation - minor** means a zero or low impact business;
- (b) **home occupation - major** means a moderate impact business.”

“permitted use means the use of land or of a building which is listed as a “Permitted Uses” in a district of the Bylaw. An application for a permitted use shall, if the application otherwise conforms to the Bylaw, be approved with or without conditions by the development authority.”

“single-detached dwelling means a building which contains only one (1) dwelling unit but does not include a manufactured home. The dwelling may allow for accommodation

to be offered to up to two (2) boarders, however, except as otherwise allowed in this Bylaw, is used for no other purpose."

*"**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."*

DECISION:

Following the conclusion of the public portion of the appeal hearing on May 3, 2018, the Subdivision and Development Appeal Board upheld the appeal and amended the conditions of approval for Development Permit Application Number 104-18 for a 1 bedroom Studio Suite with variances at 2 Westmount Road (Lot 1, Block 4, Plan 041 1351). Development Permit Number 104-18 is therefore amended as follows:

1. Prior to the release of the Development Permit the Developer shall:
 - a. submit a revised site plan demonstrating expansion of the hard-surfaced driveway by at least 1.64m on the south side to accommodate a non-tandem parking stall for the studio suite with minimum dimensions of 2.5m in width and 5.8m in depth. and the Developer shall indicate on the Site Plan the driveway expansion will be designed and constructed to the satisfaction of the Town, and all work shall be undertaken by the applicant at the applicant's expense; and
 - b. provide performance security in the amount of \$8,000.00 in a form satisfactory to the Town (see Schedule "A") to ensure completion of conditions;

All prior to release conditions must be met by June 29, 2018, or the approval will be deemed to be void.

2. Development Conditions:
 - a. the Developer shall construct the development in accordance with:
 - i. all conditions of this approval; and
 - ii. the floor plan approved as Schedule "B" and the site plan revised in accordance with conditions of approval by the Subdivision and Development Appeal Board on May 3, 2018;
 - b. there shall be no residential occupancy or use of the studio suite as a dwelling unit unless and until an authority having jurisdiction under the Safety Codes Act has issued a certificate of occupancy or written confirmation that the studio suite is safe for residential occupancy, a copy of which shall be provided to the Town's Development Officer;
 - c. the performance security required under this approval will be returned after all site work has been completed including driveway widening to the satisfaction of the Development Officer, and occupancy has been granted by Okotoks Safety Codes;
 - d. in accord with Land Use Bylaw Sections 4.5.1(a) and 9.24.2, issuance of this development permit is not a building permit. Work or construction requiring a building permit shall neither commence nor proceed until a

- building permit has been issued pursuant to applicable bylaws and regulations; and
- e. the issuance of a development permit by the Town of Okotoks does not relieve the permit holder of the responsibility of complying with all other relevant municipal bylaws and requirements, nor excuse violation of any regulation or act, which may affect this project.

VARIANCE

The following Sections of the Land Use Bylaw are varied pursuant to Section 4.4.1 of the Land Use Bylaw:

1. Section 9.24.1 [Location of a studio suite] to allow a studio suite within a standard basement where the Land Use Bylaw provides for location within a raised basement, the third level of a split level basement or the walkout basement portion of a principal building.
2. Section 9.24.7(c) [Floor Area] to allow a studio suite with a floor area that is 79.17m² (49% of the area of the principal dwelling unit) where the maximum permitted is 64.45m² (40% of the area of the principal dwelling unit), a variance of 14.72m².
3. Section 11C.2.1 [Parking] to allow a single detached dwelling with 2 parking spaces where the minimum required is 4 spaces, a variance of 2 parking spaces; and
4. Section 9.9.1 [Home Occupations] to allow a home occupation – minor to operate in a garage, making 2 required on-site parking spaces for the principal dwelling unavailable for parking.

REASONS:

The Board heard evidence that the development permit application for the studio suite was a result of a complaint, and that during investigation of the studio suite complaint, it came to the Administration's attention that the attached garage had been developed as an office, impeding its use as a garage. The Board determined that the property, as currently developed, is being used for the following: a Single Detached Dwelling, a Home Occupation – Minor; and a Studio Suite.

The Board determined that a development permit would be required for a studio suite as a studio suite is not a listed exemption under Section 1.2.0 of the Land Use Bylaw ("LUB"). Although Section 1.2.1(d) states that a permit is not required for "single detached dwellings, duplexes, *studio suite dwellings* and additions thereto in a district in which it is listed as a "Permitted Use", the Board determined that a permit was required as a studio suite is listed as a discretionary use in the R1 District (Section 11C.2.2).

The Board determined that development permits would not be required for the single detached dwelling and the home occupation – minor as both uses are listed as exemptions under Section 1.2.1. Furthermore, both the single detached dwelling and the home occupation – minor are permitted uses in the R1 District.

Section 2.1.3(c) identifies the type of development permit applications the Development Officer may decide on, and Section 2.1.3(d) states that applications not assigned to the Development Officer shall be referred to the Municipal Planning Commission. Although the Development Officer may make a decision on single-detached dwellings (Section 2.1.3(c)(vii)) and a home occupation – minor (Section 2.1.3(c)(vi)), a studio suite is not identified under Section 2.1.3(c); therefore, an application would be referred to the Municipal Planning Commission. Furthermore, Section 2.1.3(e) states that the Development Officer may refer any applications assigned to the Development Officer to the Municipal Planning Commission. The Board determined that the Municipal Planning Commission (as Development Authority) was acting within its authority in issuing a decision regarding the development permit.

Home Occupation:

The Board heard evidence from both Administration and the appellant that the attached garage had been developed as an office, impeding its use as a garage.

The Board heard evidence from Administration that the home occupation would be classified as minor, which would not require a development permit. As the Board heard no evidence to the contrary, the Board agreed with Administration's classification of the home occupation as minor and determined that no development permit for this use is required.

Section 9.9.1 states that a home occupation may operate in the garage, provided at least the minimum number of parking spaces required for all other uses on the site are available for the intended uses at all time. The Board determined that this is not the case as the required number of spaces for the single detached dwelling use is 4 (see Parking for Single Detached Dwelling below), and the required number of spaces for the studio suite is 1 (see Parking for Studio Suite below).

Section 9.9.2 states that for a home occupation – minor, in addition to the minimum parking requirement of the district, 1 additional on-site parking space is required if 2 or more clients visit concurrently and their methods of transportation are separate motor vehicles.

Section 11C.2.1 states that the minimum required parking for a home occupation – minor in the R1 district is at the discretion of the development authority (in this case the SDAB).

The Board heard evidence from the appellant that he does not have any non-resident employees, and that the volume of customers varies from day-to-day; however, client visits are minimal.

Based on the evidence of the appellant, the Board determined that the requirement for 1 additional on-site parking space for the home occupation – minor was not warranted. The Board was of the opinion that any customer parking could be accommodated off-site along the east side of Westmount Road.

Parking for the Single Detached Dwelling:

Section 11C.2.1 states that a single detached dwelling in the R1 District with no lane requires 4 spaces. The property at 2 Westmount Road does not have lane access.

When considering the variance to the parking for the single detached dwelling, the Board considered Section 11C.2.1 which states that a single detached dwelling in the R1 District with lane access requires 2 spaces. The Board was of the opinion that if 2 spaces are sufficient in a lane situation, they would also be sufficient in a non-laned situation, and granted a variance of 2 spaces.

Furthermore, as the Board was of the opinion that 2 spaces would be sufficient for the single detached dwelling, the home occupation – minor would be allowed to remain in the garage, the Board amended the original March 15, 2018 Notice of Decision conditions to remove condition 1.a (*“submit a revised floor plan showing the removal of the office and all associated improvements from the attached garage to meet the Land Use Bylaw requirement for parking spaces for the principal dwelling”*).

Parking for Studio Suite:

Section 11C.2.2 states that a studio suite in the R1 District requires 1 space in addition to the parking requirement for the single detached dwelling.

Section 9.24.6 states that sites containing studio suites shall be developed so that the parking space for the studio suite is not a tandem parking space.

The Board heard evidence from the appellant that he has 1 vehicle, and that any tenants are limited to 1 vehicle. The Board recognizes the character or personal situation of the user is generally not a valid planning consideration as that can change upon sale of the property.

Therefore, the Board determined that 1 additional space is required for the studio suite in addition to the 2 spaces required for the single detached dwelling, and that the additional space should be non-tandem. Even if a future owner converted the garage back to parking, the Board was of the opinion that 1 additional non-tandem parking stall would allow for the studio suite parking to remain independent of the parking for the single detached dwelling.

The Board heard evidence from Administration that the driveway widening to accommodate the non-tandem space would include widening of the apron, changes to the curb, and replacement of the catch basin in the boulevard. The Board heard evidence from Administration that as this required work would take place in the boulevard, it must be constructed to the Town's General Design and Construction Specifications (see page 26 of Administration's PowerPoint presentation).

The Board determined that condition 1.b. from the original March 15, 2018 Notice of Decision should remain; however, the Board amended this condition to identify that the 1 additional space be non-tandem and included the minimum dimensions required for a parking space outlined in Section 9.3.4(f).

Performance Security:

Condition 1.c of the original March 15, 2018 Notice of Decision contained a requirement for a \$15,000 performance security in a form satisfactory to the Town to ensure completion of conditions.

The Board heard evidence from Administration that \$15,000 was determined by the Town's Engineering Services Business Centre. The estimated cost of the driveway widening would be \$8,000 (see Page 26 of Administration's PowerPoint presentation), and the remaining \$7,000 was an estimated cost for removing the office (see page 26 of Administration's PowerPoint presentation).

As the Board was allowing the home occupation – minor to remain in the garage, the Board determined that the performance security could be reduced by \$7,000, and amended this condition to reduce the amount of the performance security to \$8,000.

Variance to allow in standard basement:

Section 9.24.1(a) states that a studio suite may be located a raised basement, the third level of a split level basement or the walkout basement portion of a principal building. The studio suite is located within a standard basement.

The Board heard evidence that Administration was supportive of the studio suite being in a standard basement as the appellant has modified the property with an external stairway to provide direct exterior access to the studio suite and increased the size of the window in the studio suite bedroom. The Board heard evidence from Administration that the variance was not expressed in the original Notice of Decision.

The Board agrees with Administration that the studio suite be allowed in the standard basement, and included a variance in their conditions.

 *for* **Karen Humby**
Subdivision and Development Appeal Board Clerk

SDAB Order 2018-02
Schedule "A"
FORM OF IRREVOCABLE LETTER OF CREDIT

[Date]

Town of Okotoks
Box 20,
Okotoks, Alberta
T1S 1K1

Attention: The Chief Administrative Officer

Dear Sirs:

Re: Standby Letter of Credit No. _____

We hereby authorize you to draw on the (issuing Bank's name) (the "bank"), [location], (City, Province) for the account of (the "customer") up to an aggregate amount of \$

Pursuant to the request of the customer, we the bank, hereby establish and give the Town of Okotoks an Irrevocable Letter of Credit in favour of Okotoks in the above amount which may be drawn on by Okotoks at any time and from time to time, upon written demand for payment made upon us by Okotoks, which demand we shall honour without inquiring whether Okotoks has the right as between Okotoks and the customer to make such demand, and without recognizing any claim of the customer, or objection by the customer to payment by us.

This Letter of Credit we understand relates to an Agreement between _____ and the Town of Okotoks and referred to as the Development Agreement.

The amount of this Letter of Credit may be reduced from time to time as advised by notice in writing to us from time to time by Okotoks.

It is a condition of this Letter of Credit that it shall be deemed to be automatically extended without amendment from year to year from the present or any future expiration date hereof, unless at least 30 days prior to any such expiration date, we notify Okotoks in writing by registered mail, that we elect not to consider this Letter of Credit to be renewable for any additional period.

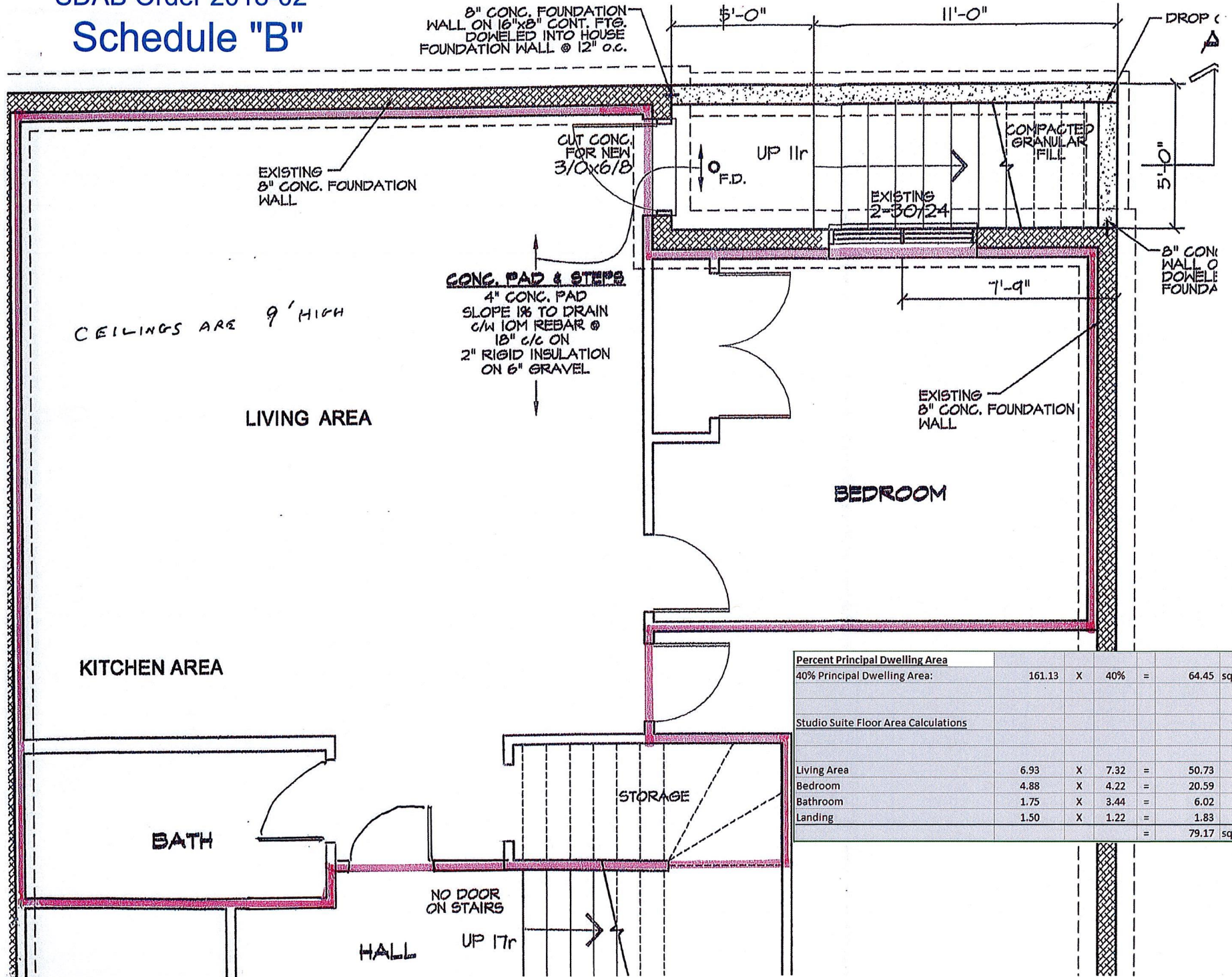
We engage with Okotoks that all drawings presented under, or in compliance with, the terms of this credit will be duly honoured on delivery of documents as specified, if present at the counters of the bank, on or before (expiry date), or any automatically extended date as hereinbefore set forth.

Except so far as otherwise expressly stated, this Letter of Credit is subject to the "Uniform Customs and Practice for Documentary Credits" published by the International Chamber of Commerce (Publication No. 600)

Countersigned

Authorized Signature

SDAB Order 2018-02
Schedule "B"



Percent Principal Dwelling Area					
40% Principal Dwelling Area:	161.13	X	40%	=	64.45 sqm
Studio Suite Floor Area Calculations					
Living Area	6.93	X	7.32	=	50.73
Bedroom	4.88	X	4.22	=	20.59
Bathroom	1.75	X	3.44	=	6.02
Landing	1.50	X	1.22	=	1.83
				=	79.17 sqm