



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

**DECISION**

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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 105-18 for a studio suite/duplex at 2 Alcock Close (Lot 1, Block 35, Plan 7610972).

Appeal filed by: Emma Godley

The Board heard verbal submissions from the following:

Kari Idland, Development Planner ("Administration");  
Emma Godley (the "Appellant");  
Lisa Marie Neilson, in favour of the appeal; and  
Vicki McGrath, opposed to the appeal.

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 to approve a second dwelling unit in the basement of a bungalow. The bungalow was constructed in 1978, the date of construction of the second dwelling unit is unknown.

In 2011, the Town received a complaint about a second dwelling unit on this parcel. No written complaint was provided so the Town did not proceed with enforcement action at that time.

In 2017, the Town followed up on this property and the existence of the second dwelling unit was acknowledged. The basement currently exists with a full kitchen, dining area, two living areas, two bedrooms, a full washroom and laundry facilities. The basement is accessed through a separate door in the garage.

To make this second dwelling unit legal, the owner applied for a development permit for a studio suite. 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 R1 District.

The only permits which have been issued in respect of this property are (1) a 1976 safety codes permit for a bungalow with an unfinished basement, and (2) a 2007 safety codes permit for a deck in the north side of the yard.

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 86% 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 (the proposal shows 2 bedrooms, only one is allowed).
- 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 *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 duplex cannot be “grandfathered”. A legal non-conforming use is one that either had development approval under a previous land use bylaw or previously did not require a permit. No permit was issued for the duplex or any other dwelling unit in the basement, and at no time since the house was built would a duplex have been allowed without a permit on this parcel.

The distinction between a studio suite and a duplex is that the studio suite is accessory. This means it is incidental to the principal dwelling unit. In a duplex, the two dwelling units are equal. Intensity of use is relevant to determining whether the units are equal or one is accessory to the other.

#### Submissions of the Appellant

The Appellant believed that the second dwelling unit was legal when she bought it. The Appellant indicated there are 38 other approved basement suites in the R1 district and there are probably a lot of other unapproved suites.

The dwelling unit exceeds the size rule for a studio suite. The size rule is difficult to comply with in a bungalow. The floor plan also makes compliance with this rule difficult.

The Appellant offers safe, clean and affordable housing. She is careful when selecting tenants. She has received letters of support from her neighbours and no opposition.

The windows are large enough to get out through. The unit has fire and carbon monoxide detectors. Alberta Health has inspected this unit (this inspection was done because at one time she had a tenant who was on AISH). Alberta Health accepted the access through the garage.

The only way to access the mechanical room for the house is to go through the basement dwelling unit. The landlord has a key, and this has not caused problems.

The Appellant is offering affordable housing because there are people who cannot afford to rent an entire house.

Parking is available on-site for both the upstairs and downstairs tenants. With respect to noise concerns, the Town has a noise bylaw, which allows for noise to be made until 11.

The upstairs suite is bigger than the basement unit and has more bedrooms. If desired, the Appellant could make the basement into a 1 bedroom suite.

Submissions of Other Persons

Lisa Marie Neilson has lived in this basement suite in the past. She had difficulty finding a place in Okotoks and couldn't afford to live anywhere else. She lived in this unit for 3 months, then moved into an upper level unit in a different property owned by the Appellant. Renting from the Appellant was a positive experience. The Appellant responded well and quickly to any concerns (such as flooding when a tree damaged pipes).

Ms. Neilson also noted that she bought her own home in 2013, at that time she also ran into realtors who weren't telling her about permit requirements.

Vicki McGrath is concerned about parking, at one time a lower level tenant told her that the basement unit was required to park on the street. She has difficulty with parking in front of her house. Noise has also been an issue for her. She doesn't want apartment buildings springing up. Ms. McGrath stated that she isn't necessarily opposed to this development but wanted to clarify these points.

**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, the Board acknowledges the Appellant's offer to amend the application such as by reducing the number of bedrooms.

The Board finds that revisions of that nature should 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 decision is based on the plans reviewed by the MPC.

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".

The Board notes that when this matter was before the MPC, the Appellant acknowledged in her written materials that this development falls under the category of a duplex. At the hearing, she also submitted arguments suggesting 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 <sup>[MT3]</sup>indicator<sup>[JS4]</sup> 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, these restrictions suggest that Council intended that a studio suite would be significantly smaller than the principal dwelling unit and have a limited number of bedrooms.

The size and bedroom restrictions point toward an intention of Council to limit the intensity of the use of these studio suites.

The main floor (without the garage) is 119.79m<sup>2</sup>. The portion of the basement developed as an independent unit is 103.51m<sup>2</sup>. This means that the lower unit is 86.4% of the size of the upper level, a significant departure from the 40% contemplated in the Land Use Bylaw.

The Board finds that the two dwelling units are sufficiently close in size that they will have similar intensities of use, even though the lower level has less bedrooms than the upper level. The requested relaxation of the basement unit size would be significant enough to change the character of the use from a studio suite to a duplex. The basement dwelling unit is not accessory to the upstairs dwelling unit.

The fact that both dwelling units are on a single title does not change this finding. The Board acknowledges that studio suites are required by the Land Use Bylaw to be on a single title with the principal dwelling unit, but there is no restriction that duplexes cannot have both units on the same title.

The Appellant is asking that this use be “grandfathered”, ie. approved as a legal non-conforming use. This would be outside of the Board’s authority. A legal non-conforming

use must have either been granted a permit in the past or existed at a time when a permit was not required for it. Neither situation applies in this instance. There is no evidence that any form of planning approval was issued for the development, and at no time since the house was constructed could a duplex have lawfully existed at this location without a development permit. The Board cannot approve a development permit for a use that is not listed in the applicable land use district.

The Board appreciates the comments made at the hearing and in response to the appeal. Nothing in this decision is intended to comment on the quality of the landlord, the tenants, or the unit as a place to live. However, as noted above, it would be outside of the Board's jurisdiction to approve a use that is not listed for the district.

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Michael MacIntyre  
Acting SDAB Clerk