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 for a studio suite/duplex at 182 Woodhaven Drive (Lot 22, Block 3, Plan 7911098).
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;
Cody Kaminski, in favour of the appeal;
Anthony Crulc, in favour of the appeal;
Steve Hunt, opposed to the appeal; and
Garnet Rountree, 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 1981, the date of construction of the second dwelling unit is unknown.

In 2006, the Town received a complaint. A stop order was issued and a subsequent site inspection revealed that the basement development did not include a stove (which was the key indicator for a basement suite at that time). The compliance file was closed at that time.

In 2017, the Town followed up on this property and the existence of the second dwelling unit was acknowledged. The second dwelling unit was identified in response to an ad noted by a Town employee. The basement dwelling unit includes an independent access, locking door, bedroom, weight room, living room (rec room), dining room, bathroom, mechanical room shared with the main floor, independent laundry facilities and a full kitchen.

The weight room was deemed to be a second bedroom. This is Administration's practice, as accessory rooms have the potential to be used as bedrooms.

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 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 81% 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.

Further, if this development were a studio suite, it would be a discretionary use on the subject site, meaning that it is in the development authority's discretion to issue a permit or not. The MPC noted that the proposed development involved safety issues because of its proximity to a sports field and school and location on a collector road. Driveway widening would increase the risk of a vehicle-pedestrian conflict and could add to the shortfall of on-street parking.

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

First, the Appellant noted that one of the photos in the report shows the building without siding. This photo was taken during renovations, and the building now has siding. She also noted that the ad which triggered this matter was for the upstairs unit, not the basement unit.

The weight room, which Administration has treated as a bedroom, is too small to be used as a bedroom. At one time this unit did have two bedrooms, but the Appellant has taken down a wall to change that.

When looking into this matter, the Appellant found that no development permit was ever issued for this property.

The Appellant believed that the second dwelling unit was legal when she bought it. There are 38 other approved basement suites in the R1 district. 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 weight room could be cut off and made into a common area if required by the Board.

The Appellant offers safe, clean and affordable housing. She is careful when selecting tenants and only rents to single individuals in the basement, up to 2 adults upstairs.

The neighbour across the way has numerous large vehicles including a tractor, truck and trailer. These create parking issues and are unpleasant to look at.

The tenants in this property cut the grass and shovel the snow.

The tenants support local business.

The Appellant has never lived on this property but a friend of hers has, so she was there often and never noted any parking issues. She could adjust the parking to avoid collector route issues or create a 3-car wide driveway. She doesn't agree that more parking is necessary for this development in any event.

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 had a cough).

One of the Appellant's neighbours keeps an eye on the property and would notify her of any issues.

The Appellant would be prepared to plant trees in the backyard to screen the parking area.

The widened driveway will not create safety issues, there is not a school bus pick up spot in the immediate vicinity. There is no evidence that parking problems in the area are related to her tenants.

Submissions of Other Persons

Lisa Marie Neilson has lived in the upstairs unit in the past. She looked at both the upstairs and downstairs units before she moved in. She bought her own home in 2013, but she is regularly in the area. She never had any parking issues when she lived there. She parked in tandem 3 cars deep on the driveway and the basement tenant parked on the street. The biggest safety issue for children in the area is the high school students nearby.

Cody Kaminski is the current upstairs tenant. He submitted that the driveway is long enough for 3 large vehicles. He and the basement tenant make parking in tandem work. It is excessive to expect this site to provide parking for 5 vehicles. This is a good location for him, as it is near his child's mother. The neighbours in this area shovel snow for each other. Mr. Kalinski inquired about whether there are any studies that verify the claim that backing out of the driveway creates safety concerns. He works out of town so is often not there.

Anthony Crulc is the basement tenant. He is going through a divorce and appreciates the affordability of the unit. He works out of town and is often away. He hasn't had a vehicle

for some time, so the complaints about parking in the area being caused by this development are false. He regularly shovels snow in the area.

Steve Hunt is an area resident. He presented a letter from another neighbour, Joane Leach. She is concerned about increasing density and an unsafe situation being created by a widened driveway due to the proximity of a school bus pick up point.

Mr. Hunt also presented his own concerns. He deliberately chose to live in a low density district and has been paying higher R1 taxes. The widened driveway creates safety concerns for him and will make the property look like a business. It will be out of character with the neighbourhood. He has brought many complaints about this development. The tenants block his driveway, and the property is poorly maintained at times. There are other affordable housing options in the Town. He is concerned that the widened driveway could negatively impact his resale value. The Appellant should have done her due diligence when she bought the property.

Mr. Rountree is an area resident. He has seen past problems with this site with respect to poor upkeep. The house is too small to accommodate more than one family.

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 rearranging the parking and turning the weight room into a common area.

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 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, 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 is 110.69m^2. The portion of the basement developed as an independent unit is 89.15m^2. This means that the lower unit is 80.5% 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 (and even if the weight room is not counted as a bedroom). 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.

[redacted]

Michael MacIntyre
Acting SDAB Clerk