

**FOOTHILLS COUNTY
SUBDIVISION AND DEVELOPMENT APPEAL BOARD
Development Appeal Board Decision**

HEARING DATE: NOVEMBER 23, 2023

BOARD ORDER: D22/2023

APPELLANTS/APPLICANTS/LANDOWNERS: TYLER SUNQUIST AND
CASSANDRA LEHMANN

APPLICANT'S AGENT: PETER MCGAFFEY, FRONTIER HOMES

APPEAL AGAINST: REFUSAL OF DEVELOPMENT PERMIT 23D 171 FOR AN
OVERSIZED SECONDARY SUITE, ACCESSORY

SUBJECT PROPERTY: PLAN 1212691, BLOCK 1, LOT 2; PTN. NW 10-21-01 W5M
(THE "PROPERTY")

BEFORE: CHAIRMAN, G. BEACOM; BOARD MEMBERS R.D. MCHUGH, P. STIER, B.
ROBSON, G. WILKINSON; AND CLERK K. CONRAD.

DECISION

Having been satisfied that notice of this hearing was provided in accordance with the Municipal Government Act, R.S.A. 2000, Chapter M-26;

And upon having read the materials provided, and upon having heard the representations from the Applicant/Landowner, Appellant, Member of the Gallery and the Development Authority for Foothills County with respect to the appeal filed by the Appellants in accordance with Section 685 of the Municipal Government Act against the automatic refusal of Development Permit 23D 171 for an Oversized Secondary Suite, Accessory on Plan 1212691, Block 1, Lot 2; Ptn. NW 10-21-01 W5M (The "Property").

The Subdivision and Development Appeal Board for Foothills County (the "Board") has decided to:

DENY the appeal and UPHOLD the Development Authority's decision to refuse Development Permit 23D 171 for an Oversized Secondary Suite, Accessory on Plan 1212691, Block 1, Lot 2; Ptn. NW 10-21-01 W5M.

The application is thereby DENIED.

FINDING OF FACTS

- [1] The subject property is a 2.00 +/- acre Country Residential District parcel that is located on 43 Street W, approximately 100 metres south of 306 Avenue W, 1 kilometre west of Highway 552 W, and 3 kilometres north of Highway 549.
- [2] On October 12, 2023, the Development Authority refused Development Permit 23D 171 for an Oversized Secondary Suite, Accessory on Plan 1212691, Block 1, Lot 2; Ptn. NW 10-21-01 W5M.

- [3] An appeal was received from the Appellants, T. Sunquist and C. Lehmann October 31, 2023, against the refusal of Development Permit 23D 171.

ISSUES

1. OVERSIZED SECONDARY SUITE, ACCESSORY

- i. The Development Authority stated that the appeal before the Board was submitted by the Applicants as a result of the automatic refusal of Development Permit 23D 171. The application was submitted to allow for an oversized secondary suite; however, the proposed size of the suite exceeds the maximum allowable square footage variance that may be considered by a Development Officer.
- ii. The Development Authority submitted a parcel of 2.0-2.99 acres in size is permitted to have a maximum of three accessory buildings with a total cumulative size not to exceed 1,675 sq. ft. This does not include the primary residence.
- iii. The Development Authority submitted according to Foothills County's Land Use Bylaw 60/2014, the maximum allowable square footage for a secondary suite is 50% of the gross floor area of an accessory building, to a maximum of 900 sq. ft. Further, a 10% variance would make the maximum square footage 990 sq. ft. and the proposed secondary suite size is 1,406 sq. ft.
- iv. The Appellant's Agent submitted the reason for an oversized secondary suite is due to a four-foot by four-foot elevator to accommodate the appellant's mother, who will be a primary resident of the secondary suite. Further, the building code for elevators requires an allowance around each doorway for accessibility.
- v. The Appellant's Agent submitted the neighbours in the Fraser Ranch Estates subdivision provided letters of support for the development of the secondary suite.
- vi. The Appellant's Agent submitted based on the elevator and stairs, and overall building envelope, the size of the suite could be reduced by 200 sq. ft at most to accommodate the size of the shop structure and low points.
- vii. The Appellant's Agent submitted the 1,406 sq. ft. structure does not include the exterior deck, and that the main floor of the structure is a garage and storage space with living space above.
- viii. The Appellant C. Lehmann provided testimony the secondary suite is to be a home for her parents with limited mobility, and therefore requires an elevator and ample space to move around with walkers, wheelchairs, or motorized chairs while performing daily tasks.
- ix. The Appellant C. Lehmann provided testimony the secondary suite will be finished in the same siding and trim as the primary residence.

- x. The Appellant C. Lehmann provided testimony the Fraser Ranch Estates neighbours have been understanding of the purpose for building the structure and supportive of the secondary suite plans.

REASONS FOR DECISION

The Board is DENYING the appeal and UPHOLDING the Development Authority's decision to refuse Development Permit 23D 171 for an Oversized Secondary Suite, Accessory.

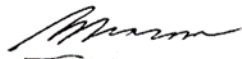
Based on testimony heard, the Board considered the application, the testimony of the Development Officer, Appellant, and Appellant's Agent, and determined the variance is 60% larger than allowable maximum square footage for a secondary suite, accessory as permitted in Section 10.26.10 of the Foothills County Land Use Bylaw 60/2014.

As such, the Board determined there was insufficient evidence to justify overturning the Development Authority's decision to refuse the application for an oversized secondary suite, accessory.

CLOSING

This decision can be appealed to the Court of Appeal on a question of law or jurisdiction. If you wish to appeal this decision you must follow the procedure found in Section 688 of the Municipal Government Act, R.S.A. 2000 Chapter M-26 which requires an application for leave to appeal to be filed and served within 30 days of this decision.

Dated at the Town of High River, in the Province of Alberta this 5th day of December, 2023 and signed by the Chairman of the Subdivision and Development Appeal Board who agrees that the content of this document adequately reflects the appeal hearing, deliberations and decision of the Subdivision and Development Appeal Board.



Mr. Gar Beacom, Chairman

RELEVANT LEGISLATION**FOOTHILLS COUNTY LAND USE BYLAW 60/2014****2.5 Definitions**

DWELLING, SECONDARY SUITE means a subordinate Dwelling Unit located on a parcel in addition to the principal Dwelling Unit, which constitutes a self-contained living accommodation unit comprised of kitchen facilities, sleeping amenities, and washroom facilities consisting of a full bathroom including tub and/or shower fixture and has a separate entrance or includes a door which can be physically closed or locked off from the remainder of the principal dwelling. A Dwelling, Secondary Suite may include a Secondary Suite, Principal or a Secondary Suite, Accessory, but does not include a Tourist Home.

SECONDARY SUITE, ACCESSORY means a dwelling, Secondary Suite, located within an accessory building or detached garage which is subordinate to the principal dwelling on the same parcel.

SECTION 4.2. NO DEVELOPMENT PERMIT REQUIRED

4.2.1 A Development Permit is not required respect to the following developments and/or uses but such developments and/or uses shall otherwise comply with the provisions of this Bylaw and must be carried out or performed in accordance with all other applicable legislation, regulations and bylaws:

Accessory Buildings/Structures:

4.2.1.7 A detached accessory building where it is accessory to a primary residence:

- a. having an area 20.8 sq. m. (224 sq. ft.) or less, where an accessory building is a permitted use in the land use district, including those lands designated as Sub-district "A", Direct Control District, or within the Flood Hazard Protection Overlay, provided the structure does not result in the cumulative accessory buildings on the property exceeding the size or number of accessory buildings allowed under Table 4.2.1.7A, and
- b. having an area greater than 20.8 sq. m. (224 sq. ft.) where an accessory building is a permitted use in the land use district and does not exceed the cumulative size of accessory buildings allowed under Table 4.2.1.7A except on any lands designated Sub-district "A", Direct Control District, or Flood Hazard Protection Overlay District or where the accessory building is being relocated from another property. Relocation of structures

requires a Development Permit in accordance with Section 9.21 of this bylaw.

Table 4.2.1.7A

PARCEL SIZE	SIZE OF ACCESSORY BUILDING
Less than 1 acre	Maximum of two (2) buildings with a total cumulative size not to exceed 41.8 sq. m. (450 sq. ft.) accessory to the residence
1.0 - 1.99 acres in size	Maximum of three (3) buildings with a total cumulative size not to exceed 88.26 sq. m. (950 sq. ft.) accessory to the residence
2 - 2.99 acres in size	Maximum of three (3) buildings with a total cumulative size not to exceed 155.6 sq. m. (1,675 sq. ft.) accessory to the residence
3.0 - 4.99 acres in size	Maximum of four (4) buildings with a total cumulative size not to exceed 285.7 sq. m. (3,075 sq. ft.) accessory to the residence
5.0 - 9.99 acres in size	Maximum of four (4) buildings with a total cumulative size not to exceed 325.2 sq. m. (3,500 sq. ft.) accessory to the residence
10.0 - 14.99 acres in size:	Maximum of five (5) buildings with a total cumulative size not to exceed 380.9 sq. m. (4,100 sq. ft.) accessory to the residence
15.0 - 20.99 acres in size:	Maximum of five (5) buildings with a total cumulative size not to exceed 422.7 sq. m. (4,550 sq. ft.) accessory to the residence
21.0 acres and over in size:	Maximum of six (6) buildings with a total cumulative size not to exceed 478.5 sq. m. (5,150 sq. ft.) accessory to the residence.
Agricultural District and Agricultural Business District Parcels	Any size accessory building to be used for agricultural, general purposes on agricultural zoned parcels when an agricultural operation exists on the property, in accordance with Section 4.2.1.7 of this Bylaw.

SECTION 5.6 – VARIANCES

5.6.1 The Development Authority may exercise its variance powers, prescribed in Sections 5.6.2 to Section 5.6.13, and approve a development permit for a permitted or discretionary use, with or without conditions, which does not comply with the regulations of this Bylaw, if the Development Authority determines that:

- c. The proposed development would not unduly interfere with the amenities, use, enjoyment, or value of adjacent lots;
- d. The proposed development would be consistent with the general purpose or character (urban or rural) of the district;
- e. There are factors unique to the development, use and site (such as the location of existing buildings) which are not generally common to other development and land in the same district, and which would result in unnecessary hardship or practical difficulties for the proposed development to comply with the provisions of this Bylaw; and
- f. There are mechanisms to mitigate the effect on adjacent lots.

5.6.10 The Development Authority may allow a 10% variance to the maximum size requirements of a new Secondary Suite, where the Development

Authority is of the opinion it will not materially interfere with or affect the use, enjoyment, or value of the neighboring properties.

SECTION 10.26 – SECONDARY SUITES

- 10.26.1** A Secondary Suite may be located within a principal Dwelling Unit or above a garage attached to the principal dwelling, or within an accessory building or detached garage on the same parcel, as per the definitions in Section 2.5 in accordance with all provisions under this section;
- 10.26.2** Secondary Suite shall be subordinate to a principal dwelling and shall only be located on a parcel where Secondary Suite, Principal or Secondary Suite, Accessory is listed as a permitted or discretionary use under the appropriate land use district;
- 10.26.3** Where a Secondary Suites is a permitted use under the applicable land use District but does not meet all other provisions under this bylaw, it shall be considered a Discretionary use;
- 10.26.4** A Development Permit shall be obtained for all Secondary Suites in the County;
- 10.26.5** All Secondary Suites shall have an approved Building Permit and shall comply with all applicable Building and Safety Code requirements;
- 10.26.6** All Secondary Suites shall comply with the Land Use and Development Requirements such as height requirements, setback regulations, dwelling density, and lot coverage, for the applicable land use district;
- 10.26.7** A Secondary Suite shall not be operated as a Tourist Home or as a short term vacation rental unit or include a Home Based Business Minor or Major, or Bed and Breakfast;
- 10.26.8** A parcel shall be limited to one Secondary Suite;
- 10.26.9** Occupancy shall be restricted to a maximum of two bedrooms per suite;
- 10.26.10** Secondary Suites shall meet the following size requirements:
- a. Secondary Suite, principal:
 - i. Minimum habitable area: 37 sq. m. (400 sq. ft.)
 - ii. Maximum size: no larger than 40% of the habitable area of the principal dwelling to a maximum of 83.6 sq. m. (900 sq. ft.) in size

For the purpose of determining Secondary Suite size, the habitable area is the sum of the floor areas of all livable space contained within the exterior walls of the structure including the basement. This does not include the garage area, or basement areas used exclusively for storage, or areas devoted exclusively to mechanical or electrical equipment servicing the building.

b. Secondary Suite, accessory:

- i. Minimum Habitable area: 37 sq. m. (400 sq. ft.)
- ii. Maximum size: up to 50% of the gross floor area of the accessory building to a maximum of 83.6 sq. m. (900 sq. ft.)

The Gross Floor Area is the total floor area of each floor of Building measured to the outside surface of the exterior walls, including covered patio or deck areas, or where buildings are separated by fire walls, to the centerline of the common fire wall and does not include basements or uncovered decks.

10.26.11 Existing unpermitted Secondary Suites may be allowed some variances, within two years from the date these provisions were passed April 17, 2019 under Bylaw 8/2019, in accordance with Section 5.6 of this bylaw.

10.26.12 Secondary Suite, accessory shall be considered as part of the total Allowable number of accessory buildings and total accumulated area of accessory buildings in accordance with parcel size as identified in Table 4.2.1.7A of the Land Use Bylaw;

10.26.13 All Secondary Suites shall provide proof of adequate water servicing and sanitary sewer servicing to the satisfaction of the Development Authority;

10.26.14 Each Secondary Suite shall provide a minimum of one on-site parking space per bedroom in accordance with Section 9.19 of this bylaw;

10.26.15 All Secondary Suites shall have their own distinct County address to facilitate accurate emergency response;

10.26.16 All restrictive covenants existing on title shall be submitted with applications for Secondary Suites. Should a restrictive covenant be contrary to allowing for a Secondary Suite, the application shall be considered a Discretionary Use under the land use district in which the Development Authority may refuse the Development Permit application;

10.26.17 A Secondary Suite shall not be a mobile home;

Permit Considerations

- 10.26.18** In considering a Development Permit application for Secondary Suites, the Development Authority may consider factors such as:
- a. Any significant adverse impacts on the adjacent properties and dwellings (for example: drainage, fire protection, access, etc.);
 - b. Adequate water and wastewater services for the additional use on the site;
 - c. The architectural character of the Secondary Suite, including:
 - i. In the case of a Secondary Suite, principal, the use of design strategies that minimize structural changes to the exterior of the principal dwelling, so that it maintains the appearance of a single dwelling; and
 - ii. The availability of an indoor storage area located on the property for use of the residents of the Secondary Suite to minimize visual impact to neighboring properties;
 - d. Site design features, including:
 - i. The need for landscaping or screening to provide privacy between the Secondary Suite and adjacent properties and dwellings;
 - ii. The need for adequate space to accommodate parking and loading for use by residents of the Secondary Suite;
 - e. Such other considerations as the Development Authority may deem to be relevant.

All Secondary Suites, with a valid Development Permit will be recorded on the Secondary Suite Registry for public information

MUNICIPAL GOVERNMENT ACT, R.S.A. 2000, CHAPTER M-26

Hearing and Decision

687(3) In determining an appeal, the subdivision and development appeal board

(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

APPENDIX "A"

PERSONS WHO WERE IN ATTENDANCE, MADE SUBMISSIONS OR GAVE EVIDENCE AT THE HEARING:

<u>NAME</u>	<u>CAPACITY</u>
1. B. Domenjoz	Foothills County Development Officer
2. P. McGaffey	Appellants Agent
3. C. Lehmann	Appellants/Applicants/Landowners

APPENDIX "B"

I. DOCUMENTS RECEIVED PRIOR TO THE HEARING AND MADE AVAILABLE AT THE HEARING:

NO. ITEM

1. Decision from the Foothills County Development Officer
2. Notice of Appeal submitted by C. Lehmann and T. Sunquist
3. Development Permit 23D 171 File Documents

APPENDIX "C"

EXHIBITS MADE AVAILABLE AT THE HEARING

NO. ITEM

1. Presentation by the Foothills County Development Officer