

NOTICE OF DECISION SDAB MAY 24, 2023 7:00PM

Municipality of Crowsnest Pass
Subdivision and Development Appeal Board

**NOTICE OF DECISION OF THE SUBDIVISION AND DEVELOPMENT APPEAL BOARD
OF THE MUNICIPALITY OF CROWSNEST PASS.**

DECISION DATE: MAY 24, 2023

BEFORE: Subdivision and Development Appeal Board

MEMBERS: Chair, Andy Vanderplas,
Rupert Hewison, Glen Girhiny, Marlene Anctil
Recording secretary, Glen Snelgrove


ATTENDING Michael Algra, Appellant
Johan Van Der Bank, Manager of Development and Trades,
Kim Novak, Development Officer.

In the matter of the Municipal Government Act, Statutes of Alberta, 2000, Chapter M-26, as amended (MGA); and in the matter of the Municipality of Crowsnest Pass Land Use Bylaw No, 868, 2013 and amendments thereto, and in the matter of an appeal by Michael Algra against the decision of the Municipal Planning Commission to deny a development permit application DP2023-027 for a secondary suite with a 71% variance to the maximum floor area, because the Land Use Bylaw restricts the MPC's variance authority to 10%.

Notice of the Hearing was sent to adjacent land owners, the property owner, The Development staff of the Municipality of Crowsnest Pass and, six members of the Subdivision and Development Appeal Board.

PERTINENT FACTS: Kim Kozak, Development Officer (EXHIBIT G)

1. The property is legally described as LOT 5 BLOCK 8A PLAN 8211078
2. The civic address of the property is 8122-26 Avenue in the Municipality of Crowsnest Pass
3. The property is zoned Residential (R-1)
4. An application for a development permit was received on February 28, 2023.
5. The proposed development is for a secondary suite (76m²) which is a discretionary use within a single-family dwelling.
6. The proposed Development Permit application DP2023-027 was refused for the following reasons: The Land Use Bylaw Schedule regarding the Standards for Secondary Suites does

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- not support a floor area that exceeds 900ft² or 40 percent of the total gross floor area of the Single-family Dwelling on the property.
7. The Municipal Planning Commission denied a development permit application of an 8% (sic – 50%) variance to the maximum coverage of an existing Single-family Dwelling, and a Secondary Suite (discretionary use) created within the existing two-storey walk-out basement Single-family Dwelling, with a variance to the maximum floor area of the Secondary Suite of 66%. The reason for the refusal was that the Land Use Bylaw restricts the MPC's variance authority to 10% related to the floor area of a Secondary Suite.
 8. Within the Land Use Bylaw, Schedule 15 Standards for Secondary Suites, subsection 15.1.7 states, "The total floor area of a Secondary Suite, regardless of its location in an accessory building or a principal building, or as a stand-alone building, shall not exceed 900 ft² or 40 percent of the total gross floor area of the Single-family Dwelling on the property, whichever is less. The Development Authority may approve a maximum 10% variance of this standard, and further: (a) When a Secondary Suite is proposed as a stand-alone building, or within an Accessory Building, or within a Single-family Dwelling, and it would exceed this standard, including the maximum variance, then the application shall be refused"
 9. The Development Authority may not vary more than 10% of the floor area for a Secondary Suite; therefore, the application for the 8% variance to the lot coverage and the 66% variance to the floor area of the suite was refused.
 10. The applicant requested approval for the 139.34m² Secondary Suite within the basement of the existing Single-family Dwelling so that he can "lock that part of the Single-family Dwelling" and guests of the Tourist Home do not have access to it.
 11. The Development Office offers the observation that a person does not need to obtain a development permit for a Secondary Suite to lock a part of your home so that the Tourist Home guests do not have access to it. It is your home and you may lock any portion of it.
 12. A development permit for a Tourist Home was approved on the subject property (DP2022-ST019). Section 3.6 of Schedule 18 re. Tourist Homes read together with section 1.3 of Schedule 15 re. Secondary Suites, is understood to prohibit the operation of a Secondary Suite together with a Tourist Home. On this basis, including the proposed variance for the Secondary Suite floor area in excess of the 10% variance authority, it was recommended that the Municipal Planning Commission cannot approve this application.
 13. The applicant received approval to operate a Tourist Home with six parking stalls, through DP2022-ST019 on appeal to the SDAB.
 14. The approved Development Permit for the Tourist Home states, "Maximum Number of Rental Units (maximum one) Clarification: If there are 2 dwelling units within the home, the tourist home may use the entire space as a single rental or if only using one unit, the other Page 4 of 4 unit must not be used by the landowner or long-term renter while the tourist home is in operation.
 15. The applicant has an approved active Business License to operate the Tourist Home.
 16. The applicant has advised that there are six off-street parking stalls available. However, two of these parking stalls are not entirely on the property and therefore shall not be counted towards the available off-street parking stalls.
 17. The parking requirements for a Secondary Suite is one off-street parking stall in addition to the two parking stalls required for the Single-family Dwelling / Tourist Home.
 18. The applicant has advised that the intent is NOT to operate the basement dwelling unit as an additional rental unit but to legalize the basement dwelling unit.

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- 19. The applicant stated that the primary purpose and use for the home in 2023, is a Tourist Home and that clients have no access to the basement dwelling unit.

Michael Algra Appellant submitted EXHIBIT B Secondary suite application which reads in part:

- 1. An existing secondary suite (illegal) currently exists in walk-out basement of our home. The suite existed prior to the purchase of the home by the current owners in May of 2021 and has never been occupied.
- 2. The suite has one bedroom, two bathrooms, 2 off-street parking spots
- 3. Access is through an at grade basement entrance door and egress from the bedroom/living room
- 4. There is a separate rear entrance and accessway from the rest of our home
- 5. Separate thermostat from upstairs for control of in floor heating.
- 6. The home currently operates as a Tourist Home (DP2022-ST019 on the top two floors.
- 7. No additional areas of the home can be occupied while the home is operating as a Tourist Home
- 8. The intention is to not operate the basement suite as an additional rental if approved as a Secondary Suite.
- 9. The intention is to legalize the basement suite so that, if the home is not operating as a Tourist Home in the future, a legalized rental until would be available for use in the basement.
- 10. They have decided to cease operating as a Tourist Home by September 1, 2023

The DECISION:

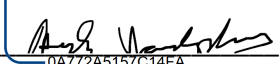
Having considered the written and oral submissions, including Exhibits A through N and having regard to the provisions of the Land Use Bylaw 1103, 2021, and the Municipal Development Plan, the decision of the Board is as follows:

The appeal is ALLOWED and Development Permit DP2023-027 hereby issued with conditions and is attached hereto.

REASONS:

- 1. The board is of the opinion that the proposed development would not unduly interfere with the amenities of the neighborhood and,
- 2. The board is of the opinion that the proposed development would not materially interfere with or affect the use, enjoyment or value of neighboring parcels of land

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CHAIR, Andy Vanderplas

5/28/2023

DATE

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