

NOTICE OF DECISION SDAB HEARING MAY 24, 2023 6:30PM

**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** Karen Snyder, 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 Karen Snyder against the decision of the Municipal Planning Commission to deny a development permit application DP2023-059 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%. The proposed secondary suite encompasses the majority of the habitable floor area of the basement in a single family dwelling.

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:**

1. The property is legally described as LOT 34 BLOCK 5 PLAN 2310236
2. The civic address of the property is 2925-214 Street 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 (76m<sup>2</sup>) which is a discretionary use within a single-family dwelling.

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
Kim Kozak, Development Officer submitted her report (EXHIBIT H):

- The application for a 76m<sup>2</sup> Secondary Suite within the dwelling was taken to the Municipal Planning Commission on April 26, 2023.
- 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 ft<sup>2</sup> 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”; and (b) When a Secondary Suite is proposed in the basement of a single storey Single-family Dwelling (bungalow, split-level, etc.) and it would encompass the majority or all of the habitable space in the basement, then the application shall be refused and, where applicable, the applicant shall be directed to revise the application to an application for an up-down duplex.
- The Municipal Planning Commission denied the development permit application of the proposed Secondary Suite that does not encompass the entire habitable space in the basement, and the alternative 70% variance to the maximum floor area of the Secondary Suite because the Land Use Bylaw restricts the MPC’s variance authority to 10% related to a Secondary Suite.
- The applicant had advised the floor area of the proposed Secondary Suite would be 75.71m<sup>2</sup>; however, the floor plan shows access from the mechanical room leading to the laundry room and another bedroom. Therefore, that portion of the suite needed to be added to the floor area. •
- With an upper floor area of 143.75m<sup>2</sup> and the suite area of 143.05m<sup>2</sup> the proposed use is more of an up-and-down Duplex than a Secondary Suite.
- The Development Authority may not vary more than 10% of the floor area for a Secondary Suite; therefore, the application for the 70% variance to the floor area of the suite was refused. The Municipal Planning Commission denied a development permit application for a secondary suite.

Karen Snyder, appellant submitted the following documents (EXHIBIT G)

Thank you to the Subdivision and Development Appeal Board for considering this Development Permit Appeal. As the Owner, Gerard De Maio, and the Applicant (sister-in-law), Karen Snyder, we appreciate your consideration.

We ask that you approve the attached design for a 1166 square foot secondary downstairs suite for long term rental. This exceeds the 900 square foot maximum, but does not exceed the 40% of GFA maximum.

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We are not in favour of a duplex classification since this home will be opened up (demising door removed) to accommodate visiting family in the longer term.

Vision: quality custom build, warm and inviting

The vision of this home is to combine a part time (in the future, permanent) home upstairs with a high-quality, beautiful walkout living space downstairs, intended to be for a small family or couple. With the MDM adjacent and the school bus already arriving daily, this will be wonderful family residence.

What happened:

Initially the design was planned to be the attached 2-bedroom suite of 1166 sq ft. but, after consultation, we applied using a sub-optimal 815 square foot drawing with one bedroom, one bath.

This was because Municipal Development verbally informed the Applicant that the larger suite would result in DP denial (variance) and would need to be appealed. At that time the land use bylaw was not linked on the website so details were confusing.

In order to move the DP process forward, the suite was therefore redesigned to be only 815 square feet, 1-bed, 1-bath (see Timeline) and the DP Application was submitted. The intention was to take time and possibly re-submit in the future to extend the size of the suite, if and when it seemed the rental market Appeal of DP Application DP2023-2059 for a Secondary Suite at 2925 214 Street. De Maio page 2 was best suited for a 2 bedroom. In any case, the builder was ready to start spring of 2023 and a delay would change the costs.


The Application as an 815 sq. ft. 1-bed, 1-bath was presented by Municipal Development to the MPC and then denied for reasons we feel were in error.

Rather than simply appeal that decision on the 815 sq ft application, we are using this opportunity to appeal and build the "right home". We believe that a 2-bedroom, 2-bathroom suite is what should be in this neighborhood and rental market.

The suite will be a home:

- Large windows
  - Open, bright, happy spaces
  - Multiple points of entry for both tenants & visitors
  - Garage and driveway parking
  - Windows/natural light even in the bathroom(s)
  - Private patio and back yard access
  - Granite counter tops, quality cabinets, high end vinyl plank flooring
  - Large living room accessing the patio, and beautiful kitchen with island, lovely pendant lights
- Front and east side: Back and west side:

Per the Land Use Bylaw, Schedule 16:

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“Secondary Suite means a second dwelling unit located on the same property and land title as that on which an existing Single-family Dwelling is the principal use, but the Secondary Suite, regardless of its location, is sub-ordinate to the Single-family Dwelling in floor area.”

Because this home is primarily a residence, with the suite planned as a secondary non-permanent purpose, we feel submitting as a secondary suite (not a duplex) is appropriate. The homeowner does not wish to build a duplex since that is not the purpose of this home. The purpose is to build a lovely house with a suite to be rented out for the next few years and in the future remove the demising door and use the lower level for family when they stay (eventually with grandchildren), with a summer kitchen and their own laundry.

Point 5: “The total floor area of a Secondary Suite shall not exceed 900 ft<sup>2</sup> or 40 percent of the gross floor area of the building in which it is located, whichever is less, except that when the Secondary Suite is located in the basement of the building it may exceed this standard to the extent that is required to optimize the use of the habitable floor space in the basement.”


Using these stated guidelines within the Land Use bylaw, the attached drawing of the lower-level shows 1166 square feet of habitable space. The total GFA of this build (including attached garage) is 4071 square feet, without the garage it is 3231 square feet (garage is 840 sq ft). At 3231 square feet, for the primary residence, the suite is 36% of the GFA. This plan clearly optimizes the habitable space of the basement, so we ask that it be approved even though it exceeds the 900 sq ft.

The 1166 square feet of habitable space totals 36% of the GFA, within the guideline of 40%. It exceeds the 900 square foot maximum by 266 square feet. It optimizes habitable space.

We ask that you Approve this Appeal for a Secondary Suite DP for the following reasons:

- The design optimizes the space; it will be done right
- 1166 sq ft, 2 bed, 2 bath provides tenants a spacious home, not just a suite
- The 900 sq ft limit seems arbitrary; if the goal is to limit suites to 2 bedrooms, this build achieves that goal
- It should be a secondary suite, not a duplex, since the suite is clearly a secondary use
- In the future, use by the homeowner will be as a single-family home with no suite; with the lower level hopefully used by a visiting kids and grandkids
- Sufficient off-street parking has been planned (tenant in garage and driveway), 6 in total
- Lovely outdoor patio and yard space has been planned for the tenant
- The homeowner is clearly committed to a quality result in support of the neighbourhood
- This well-designed home will add to the community and uphold the vision of Mohawk Meadows
- Neighbours are supportive (letters/emails of support to follow) Note: the builder is ready to start construction, once the BP is achieved. We are hoping to move this forward as presented now, so that the suite can be constructed optimizing the space and not require revisiting this in the future and then potentially renovating a new build.

We thank you for your time and consideration.

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Appendix: Timeline De Maio Timeline

The timeline is only important to provide context to the current Appeal. The intent was always to build a beautiful suite optimizing the lower level. Planning was only altered to a 1-bedroom suite to achieve the bylaw criteria as understood by the Applicant.

Timeline and some background:

January 2023: House design and drawings completed

February 2023: Land possession finalized, contract signed with builder, specifications and finishings selected, pricing locked in for spring 2023 start Drawings had 2-bed, 2-bath suite of 1166 sq ft

March 2023: Discussions with CNP – land use bylaw details unclear: no on-line access to bylaw Decision to decrease suite to meet land use bylaw maximum of 900 sq ft so that DP and BP process would not be slowed Drawings revised to 1-bed, 1-bath, 815 sq ft

April 2023: DP for SFD approved, subject to appeal period (DP variance due to attached garage, land coverage 47%) DP suite denied due to square footage; per CNP the suite is 1500 sq ft We strongly disagree with this CNP summary assuming 1500 sq ft 1-bed suite Per CNP: door through mechanical room provided tenants access to the nonsuite bedroom and laundry. Therefore, it was included in square footage, even though the 1-bedroom design clearly excluded this space as with any secondary suite, this door would be locked, preventing tenant access, so we believe this conclusion by the MD is not valid Note: the door as planned also provided access to the entire upstairs, so it would logically remain locked Mechanical room is not habitable space, nor are stairs to owner space Mechanical room is for the entire home and access is required for code

May 2023 Appeal is now necessary, so we are pursuing the design intended for the longer term This negates the need for a future re-application and appeal to request 2-bedroom Revised Suite size does not include mechanical room or stairs. They are clearly owner spaces. Suite square feet only includes habitable space. Habitable space is interior measurements. Requesting approval for 1166 sq ft, 2-bed, 2- bath secondary suite as attached

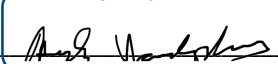
DECISION:

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 DENIED and the refusal of the Development Permit stands as decided by the Development Authority.

REASONS:

1. The Board is of the opinion that the best way to legalize this suite within the land use bylaw is through the designation of an up/down duplex.

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5/28/2023

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CHAIR, Andy Vanderplas

DATE

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