

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

**HEARING DATE:** JULY 27, 2021

**BOARD ORDER:** D7/21

**APPLICANTS / LANDOWNERS:** STEPHEN BEAUDOIN & CHERYL WORTHY

**APPELLANTS:** STEPHEN BEAUDOIN & CHERYL WORTHY

**APPEAL AGAINST:** THE AUTOMATIC REFUSAL OF DEVELOPMENT PERMIT 21D 119 FOR AN EXISTING OVERSIZED SECONDARY SUITE, PRINCIPAL

**SUBJECT PROPERTY:** PTN. SE 30-21-01 W5M; PLAN 911121, BLOCK 1 (THE PROPERTY")

**BEFORE:** CHAIRMAN, G. BEACOM; BOARD MEMBERS, D. MILLER, R. TAYLOR; T. MILLS, R. PERCIFIELD AND CLERK, S. BOGART

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**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 Applicants/Appellants 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 21D 119 for an Existing Oversized Secondary Suite, Principal on PTN. SE 30-21-01 W5M; PLAN 911121, BLOCK 1 (The "Property");

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

ALLOW the appeal and OVERTURN the Development Authority's decision for the automatic refusal of Development Permit 21D 119 for an Existing Oversized Secondary Suite, Principal on PTN. SE 30-21-01 W5M; PLAN 911121, BLOCK 1.

The application is thereby APPROVED subject to the following conditions:

**APPROVAL DESCRIPTION:**

This approval allows for the existing Oversized Secondary Suite, Principal having a total habitable area of 1,450 sq.ft., located above the garage attached to the existing primary dwelling, on the subject property.

**PRE-RELEASE CONDITIONS:**

Pre-release conditions must be complied with before the Development Permit will be signed and issued. Failure to complete the pre-release condition(s) on or before **December 27, 2021**, will see this approval be deemed null and void, unless a time extension is issued under agreement between the Development Authority and the Applicant.

1. The applicant shall submit verification from a septic installer that confirms adequate capacity of the existing system (an executed Private Sewage Treatment for Additions and Renovations);

**CONDITIONS OF APPROVAL:**

Please note that the following requirements must be completed within the twenty-four (24) month completion period for this Development Permit unless a time extension is issued under agreement between the Development Authority and the Applicant(s). Failure to complete the conditions of approval will see the Development Permit deemed null and void.

1. The applicant shall maintain the development in accordance with all conditions of approval and plans that have been acknowledged by the municipality to be appropriate. **Any revisions and/or additions to use of this land shall not proceed except under benefit of appropriate approvals and permits;**
2. The applicant shall obtain all necessary building, plumbing, gas, septic, and electrical permits and inspections from Foothills County for the Secondary Suite, Principal, to the discretion of the Safety Codes Officer. Acknowledgement from the Safety Codes Officer that the Secondary Suite, Principal, is suitable for its proposed use and occupancy must be obtained prior to occupancy;
3. It is the applicant's responsibility to obtain and properly post an independent County address for the Secondary Suite, Principal. Emergency address signage shall be installed and maintained for the life of the development;
4. It is the applicant's responsibility to provide written notification to the Development Authority upon completion of the development, as approved herein.

**ADVISORY REQUIRMENTS:**

The following requirements are provided by Foothills County as a courtesy to the applicant(s) and property owner(s). These comments will not form the basis of the decision to approve the development permit application. They are simply provided for information purposes.

1. A minimum of two parking spaces located entirely within the boundaries of the legally titled parcel shall be available for use by the occupant(s) of the Secondary Suite, Principal, at all times;
2. Development on the property shall comply with the requirements of the Alberta Building, Safety, and Fire Codes, at all times;
3. Emergency address signage shall be installed and maintained. The installation of any farm identification signage, or directional signage shall occur only under appropriate permit/authorization from the Foothills County, and as identified within the Land Use Bylaw;
4. The applicants are responsible to comply with the requirements of Alberta Health Services, including but not limited to the regulatory requirements under the Alberta Public Health Act, Housing Regulation 173/99 and the Minimum Housing and Health Standards (MHHS);
5. It is the applicants' responsibility to ensure that water servicing and sanitary sewer servicing are adequately provided, maintained, and operated, in compliance with all pertinent regulatory requirements, for the life of the development;
6. The Secondary Suite, Principal, shall not be operated as a Tourist Home/short-term vacation rental unit, nor shall the Secondary Suite, Principal, be used for any business related purposes; including a Home Based Business or Bed and Breakfast;

7. All installation(s) of exterior lighting must adhere to the guidelines and technical specifications as outlined within the Dark Sky Bylaw;
8. All storage on the property shall be in compliance with the requirements of the Land Use Bylaw and the Community Standards Bylaw;
9. All structures shall be located as to adhere to Municipal setback requirements from the boundaries of the legally titled property. No additional variance for setback requirements has been considered under this approval;
10. The issuance of a development permit by the County does not relieve the landowners of the responsibility of complying with all other relevant County bylaws and requirements, nor excuse violation of any provincial or federal regulation or act which may affect use of the land;
11. The applicants shall be responsible for payment of any professional costs including legal fees that may be incurred by the County with respect to the implementation of this permit.
12. The applicants agree to indemnify and hold harmless Foothills County from any and all third party claims, demands, or actions for which the applicants are legally responsible, including those arising out of negligence or willful acts by the applicants or the applicants' agents. In addition, the applicants will carry insurance to cover general liability including bodily injury and property damage to a third party;

**INTRODUCTION**

- [1] The subject property is an existing 4.99 +/- acre Country Residential District parcel, located on the Northwest corner of 80th Street West and 274th Ave West, and approximately 3 miles West of Highway 552.
- [2] The application requests approval to bring an Existing Oversized Secondary Suite into compliance with the Land Use Bylaw 60/2014.
- [3] On June 23, 2021, the Development Authority refused Development Permit 21D 119 for an Existing Oversized Secondary Suite, Principal on PTN. SE 30-21-01 W5M; PLAN 9111121, BLOCK 1.
- [4] An appeal was received from the Appellants, Stephen Beaudoin and Cheryl Worthy on July 5, 2021, against the refusal of Development Permit 21D 119.

**ISSUES**

**1. OVERSIZED SECONDARY SUITE, PRINCIPAL**

1. The Development Authority submitted that the Secondary Suite over the garage was built by a previous owner and was permitted as part of the original development plans on the subject parcel. The Suite became the principal residence on the property when the original owners failed to complete their plans to build a home attached to the triple garage. A building permit was obtained in 2004 for an addition to the residence to complete phase two of the original development. The current owners now seek to bring the suite into compliance as a Secondary Suite on the property.

2. The Development Authority submitted that per Section 10.26.1 of the Land Use Bylaw 60/2014, Secondary Suite, Principal means a Dwelling, Secondary Suite, located within the principal residence or above an attached garage.
3. The Development Authority submitted that Section 10.26.10 of the Land Use Bylaw 60/2014, Secondary Suite, Principal requires the Suite to be a minimum of 400 square feet (37 square meters) and no larger than 40% of the habitable dwelling, to a maximum of 900 square feet (83.6 square meters). "Habitable Area" is defined as the sum of the floor areas of all livable space contained within the structure, not including garage, mechanical, or storage areas.
4. The Development Authority submitted that Section 5.6.9 of the Land Use Bylaw 60/2014 addresses variances to the Secondary Suites provisions and states that for a two-year period beginning April 17, 2019, the following variances may be considered on previously existing Suites:
  - a. The Development Authority may issue a Development Permit for an oversized Secondary Suite if:
    - i. *The Secondary Suite existed prior to the date of the adoption of these regulations; and*
    - ii. *The Secondary Suite is no more than 25% greater than the size permitted under Section 10.26 Secondary Suites; and*
    - iii. *A Development Permit has been granted approval within two years of the date which Bylaw 8/2019 received third reading on April 17, 2019.*
5. The Development Authority submitted that the 25% variance under Section 5.6.9 would allow them to approve an existing oversized Secondary Suite up to 1,125 square feet, however the Secondary Suite over the garage on this parcel has a livable area of 1,450 square feet. As such, the permit was considered an automatic refusal.

**2. SIZE OF THE EXISTING OVERSIZED SUITE**

6. The Appellant C. Worthy submitted that the footprint of the Secondary Suite was determined decades ago when the triple garage was built. The garage and the Suite above were designed and built by the original owners. She and her husband have made no changes to the size of the Suite and have no plans to increase its size, they are only seeking to bring the existing Suite in its original state into compliance.
7. The Appellant C. Worthy submitted that the Suite matches the size and scale of the garage and has a unique design with a high-pitched roof, and cathedral ceilings. She also noted that due to the raised garage bay for RV storage, one section of the Suite, the loft area, has lower ceiling height. As a result, the actual livable space is significantly less than that submitted by the Development Authority. She submitted that the actual livable square footage with proper ceiling height is approximately 1,150 square feet, with 960 square feet in the main area, and 190 square feet in the upper loft.
8. The Development Authority confirmed that the building is below the maximum height for a structure in this Land Use District; the ceiling height being approximately 28 feet.

**REASONS FOR DECISION**


The Board considered the information presented by the Development Authority and the Applicants/Appellants. The Board is allowing the appeal and overturning the Development Authority's decision for the automatic refusal of Development Permit 21D 119 for an Existing Oversized Secondary Suite, Principal, subject to the conditions noted, for the following reasons:

In their consideration of the information presented, the Board determined that the existing oversized Secondary Suite, Principal has a livable space very close to that which would be allowable with a standard variance, as outlined in the Land Use Bylaw 60/2014. In addition, the Board determined that the Suite, which has been in existence for over 25 years, does not unduly interfere with the use, enjoyment, or value of neighboring parcels of land.

**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 27<sup>th</sup> day of July 2021 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.



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Mr. Gar Beacom, Chairman

**RELEVANT LEGISLATION**

**FOOTHILLS COUNTY LAND USE BYLAW 60/2014**

**SECTION 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.

**SECTION 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.

**SECTION 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:

- a. The proposed development would not unduly interfere with the amenities, use, enjoyment, or value of adjacent lots;
- b. The proposed development would be consistent with the general purpose or character (urban or rural) of the district
- c. 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
- d. There are mechanisms to mitigate the effect on adjacent lots.

**SECTION 5.6.9**

Within two years from the date the Secondary Suite provisions were adopted under Bylaw 8/2019 (April 17, 2019), the following variances may be considered on previously existing suites:

- a. The Development Authority may issue a Development Permit for an oversized Secondary Suite if:
  - i. The Secondary Suite existed prior to the date of the adoption of these regulations; and
  - ii. The Secondary Suite is no more than 25% greater than the size permitted under Section 10.26 Secondary Suites; and
  - iii. A Development Permit has been granted approval within two years of the date which Bylaw 8/2019 received third reading on April 17, 2019;

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
- (c) may confirm, revoke or vary the order, decision or development permit or any condition attached to any of them or make or substitute an order, decision or permit of its own.

**APPENDIX “A”**

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

<u>NAME</u>	<u>CAPACITY</u>
1. Brittany Hornsby	Foothills County Development Officer
2. Cheryl Worthy	Applicant/Appellant

**APPENDIX “B”**

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

<u>NO.</u>	<u>ITEM</u>
1.	Development Permit Decision - 21D 119 (June 23, 2021)
2.	Notice of Appeal submitted by Cheryl Worthy & Stephen Beaudoin (July 5, 2021)
3.	Written Submission – Neighbors C. & T. Sloan (July 21, 2021)

**APPENDIX “C”**

EXHIBITS MADE AVAILABLE AT THE HEARING

<u>NO.</u>	<u>ITEM</u>
1.	Power Point Presentation by the Development Authority, Brittany Hornsby
2.	Verbal Presentation by Appellant Cheryl Worthy