

In the Court of Appeal of Alberta

Citation: Kamphuis v Calgary (Subdivision and Development Appeal Board), 2026 ABCA 280

Date: 20260826

Docket: 2601-0113AC

Registry: Calgary

Between:

Edwin Kamphuis

Applicant

- and -

**Calgary Subdivision and Development Appeal Board,
The City of Calgary Development Authority, and 2670000 Alberta Ltd.**

Respondents

**Reasons for Decision of
The Honourable Justice Karan M. Shaner**

Application for Permission to Appeal

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[1] The applicant, Edwin Kamphuis, applies for permission to appeal a decision of the Calgary Subdivision and Development Appeal Board (the Board) made March 31, 2026, 2025 CGYSDAB 142 [*Decision*], pursuant to s 688 of the *Municipal Government Act*, RSA 2000, c M-26 [*MGA*].

[2] The City of Calgary approved a development permit for phase one of the development of four dwelling units in one townhouse building, four secondary suites, four parking stalls in garages accessed from the rear lane, and two mobility storage lockers on the lot directly across a rear lane from the applicant. The parcel of land in question is in a community developed through the 1970s and 1980s consisting entirely of single detached dwellings. *Decision* at para 19. The parcel of land is designated as a Residential – Grade-Oriented Infill (R-CG) land use district, pursuant to the City of Calgary, revised Bylaw 1P2007, *Land Use Bylaw [LUB]*. *Decision* at para 30.

[3] The applicant appealed the development permit to the Board arguing: the development violated the policy requirements of Calgary’s Municipal Development Plan for established residential areas; the development was approved without any traffic impact assessments and with parking provisions that were inadequate for the site; and that no sanitary infrastructure capacity analysis was conducted. Ultimately, the Board varied conditions on the development permit and required revised plans to be submitted with additional landscaping instead of mobile storage lockers and additional obscuring of the second-floor bedroom windows. *Decision* at para 5.

[4] The questions for which the applicant seeks permission to appeal relate to the Board’s interpretation and application definition of secondary suite in the *LUB*. They are:

1. Did the Board err in law in interpreting and applying the definition of secondary suite in s 295 of the *LUB*, in particular ss 295(a)(iii) and 295(a)(v), by concluding that fully self-contained basement residential units having separate exterior entrances and no internal doorway, stairway, shared landing or other means of passage to the corresponding principal dwelling units above may nevertheless be “located within” and “part of and secondary to” those dwelling units merely because they occupy the same building footprint and space that would otherwise form part of the basements of these dwelling units?
2. Did the Board err in law in applying s 130(5) of the *LUB* to conclude that the lower-level units “more clearly fit” the definition of secondary suite rather than dwelling unit, including by relying on consequences that flow from secondary suite status under s 354(3), without first determining that the lower-level units satisfy every element of the definition in s 295?

[5] A party may appeal a decision of the Board to the Court of Appeal on a question of law or jurisdiction. *MGA*, s 688(1). Pursuant to s 688(3) of the *MGA*, the Court may grant permission to appeal if the proposed appeal involves a question of law of sufficient importance to merit a further appeal, with a reasonable chance of success. *Augustana Neighbourhood Association v Camrose (Subdivision and Development Appeal Board)*, 2021 ABCA 427 at para 16. If there is a reasonably arguable point of law or jurisdiction that could impact the result, leave should be granted. *Rendle v Edmonton (City) Development Appeal Board*, 1995 ABCA 499 at para 2.

[6] Key among the respondent's arguments in this application is that the applicant did not raise issues relating to the definition of secondary suite in his appeal to the Board. Rather, the applicant argued only about the suitability of the proposed development for the neighbourhood and the informational shortcomings leading to the development permit. The respondent points out that had this been raised in the appeal to the Board, it could have addressed it and perhaps considered changing its plans to accommodate the issues, if any. I agree and dismiss the application with respect to both questions on this basis.

[7] There are many reasons to preclude a party from raising new issues on appeal, including: (1) a lack of proper evidential foundation to decide the issue; (2) the absence of reasons from the lower tribunal; (3) counsels' lack of opportunity to refine their arguments in the lower tribunal; (4) prejudice to the other party; and (5) the societal interest in the finality of litigation. *St Paul-Butler v Leduc (Subdivision and Development Appeal Board)*, 2018 ABCA 3 at paras 75-77. However, this Court has allowed new issues to be raised on appeal if there are "no concerns about the appellate court's ability to make a fully informed decision and there is no prejudice to the other parties". *Canadian Natural Resources Limited v Municipal District of Greenview No. 16 Subdivision and Development Appeal Board*, 2019 ABCA 143 at para 59; see also *Conley v Calgary (City)*, 2026 ABCA 105 at para 15 [*Conley*]. Further, there is a difference between refining an argument made in the lower court or tribunal and raising an entirely new argument on appeal. *Conley*, at para 16, citing *Smith v St Albert (City)*, 2014 ABCA 76 at para 18; *Zhuromsky v Calgary*, 2025 ABCA 352 at para 20. Finally, if there is an adequate factual foundation for the Court to decide the new issue without prejudice to the parties, it should allow the appeal if refusing would result in unfairness. *R v Travis*, 2014 ABCA 217 at paras 3-4.

[8] In this case, the issue, whether the secondary suites fell outside the definition in the *LUB*, was never addressed by the applicant in either written or oral submissions. While at times the applicant used the terms dwelling unit and secondary suite interchangeably, he did not at any point suggest the secondary suites did not meet the definition set out in the *LUB*. The issues the applicant wishes to raise on appeal to this Court are not mere refinements of arguments made before the Board, they are entirely new arguments that are factually and legally distinct from what was argued in the earlier proceedings. This is prejudicial and unfair to the respondent, who did not have an opportunity to respond to that argument in the first instance. Moreover, the fact that neither party addressed the issue leaves an informational gap that would deprive this Court of the opportunity

to assess the Board's analysis on a complete record. See e.g.: *Urban v Calgary (Subdivision and Development Appeal Board)*, 2026 ABCA 21 at para 8.

[9] I note the Board acknowledged the applicant's submissions in its reasons "that the lower-level suites are Dwelling Units rather than Secondary Suites" and then followed this with a seemingly unprompted analysis of whether the secondary suites fell within the *LUB*. This does not change the fact that the applicant did not raise the issue on appeal to the Board and does nothing to resolve the informational and analytical deficits that would present if permission to appeal on either question is granted.

[10] The application is dismissed.

Application heard on August 19, 2026

Reasons filed at Calgary, Alberta
this 26th day of August, 2026

Shaner J.A.

Appearances:

R.A. Homersham
for the Applicant

J. Sykes
for the Respondent Calgary Subdivision and Development Appeal Board

N.J. Maynard
for the Respondent The City of Calgary Development Authority

K. Elhatton-Lake
for the Respondent 2670000 Alberta Ltd.