

In the Court of Appeal of Alberta

Citation: Conley v Calgary (City), 2026 ABCA 105

Date: 20260402
Docket: 2501-0332AC
Registry: Calgary

Between:

Arden Conley, David Baker, and Travis Brown

Applicants

- and -

**The City of Calgary, Calgary Subdivision and Development Appeal Board, and
MD Rawshanul Huq Saikat**

Respondents

**Reasons for Decision of
The Honourable Tamara Friesen**

Application for Permission to Appeal

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[1] The applicants seek permission to appeal a decision of the Calgary Subdivision Development Appeal Board (the Board).

[2] The City of Calgary approved a development permit for a New Townhouse (1 building), Secondary Suite (4 suites), and Accessory Residential Building (2 garages) in a neighbourhood that is, pursuant to the *City of Calgary Land Use Bylaw IP2007* (the Bylaw), designated as a “Residential – Grade-Oriented Infill” (R-CG) land use district. The proposed development includes a building with four above-grade units and four below-grade units, and two detached garages. Each of the eight units has its own at-grade entrance. The proposed development was approved as a “discretionary use” within the R-CG land use district under the Bylaw.

[3] The applicants, who own property near the proposed development, appealed the City’s decision to grant the development permit. The Board allowed the appeal in part, upholding the permit but adding a condition that requires the submission of revised plans to reduce the impact of the proposed development on the adjacent neighbour; however, the Board did not vary the use approved by the City.

[4] The applicants seek permission to appeal the decision of the Board to this Court on two grounds, arguing the Board erred in law or jurisdiction by 1) misinterpreting the definitions of “townhouse” and “secondary suite” in the Bylaw and approving a development that is not allowed under the Bylaw; and 2) failing to provide reasons, or adequate reasons, for its decision.

[5] For the following reasons, permission to appeal is granted on both grounds.

Analysis

[6] Under the *Municipal Government Act*, RSA 2000, c M-26, s 688(3), leave to appeal a Board decision may be granted on a question of law or jurisdiction if it is of sufficient importance to merit further appeal and if the proposed appeal has a reasonable chance of success: *Augustana Neighbourhood Association v Camrose (Subdivision and Development Appeal Board)*, 2021 ABCA 427 at paras 17-18; *Biernacki v Alberta (Land and Property Rights Tribunal)*, 2022 ABCA 56 at para 10.

[7] The applicants submit that their first proposed question is a question of law because it involves interpretation of a land use bylaw: *Edmonton (City of) Library Board v Edmonton (City of)*, 2020 ABCA 170 at para 17 [*Edmonton Library Board*]; *CFPM Management Services Ltd v Edmonton (City)*, 2020 ABCA 62 at para 4. They say the City did not have discretion to allow the proposed development because they misclassified it as being a “townhouse” with “secondary

suites” when in fact, it comprises four above-grade “dwelling units” and four entirely separate below-grade “dwelling-units”. They say the Bylaw, properly interpreted, does not allow townhouses to have secondary suites, which means the units *must* be classified as “dwelling units”, as per s 188 of the Bylaw. Further, they argue that the four below-grade units cannot meet the Bylaw definition of “secondary suites” because they are not “located within or part of and secondary to” the above-grade dwelling units, as required by s 295 of the Bylaw; rather, the below-grade units are fully independent from the above-grade units. Because the proposed development consists of four above-grade dwelling units and four separate below-grade dwelling units then it is a “multi-residential development – minor” under s 240 of the Bylaw. Multi-residential developments are not allowed in the R-CG district, therefore the proposed development violates the Bylaw and the Board lacked jurisdiction to approve it: *Municipal Government Act*, ss 687(3)(a.3) and (d).

[8] The applicants submit that their second proposed question challenging the adequacy of the Board’s reasons is also a question of law: *Springfield Capital Inc. v Grande Prairie (City)*, 2017 ABCA 12 at para 30 [*Springfield*]. They say the Board provided sparse, conclusory reasons that did not explain how or why the below-grade units can be defined as “secondary suites.” They compare the Board’s reasons to those issued in *Zhuromsky v Calgary*, 2025 ABCA 352 [*Zhuromsky #2*] where permission to appeal was granted with respect to misinterpretation of this definition in the Bylaw, and the appeal was ultimately allowed on the basis of deficient reasons.

[9] The applicants argue that both grounds raise important, unresolved questions of law with a reasonable chance of success. They say the questions are important because of the potential impact on “the parties to the dispute, their neighbours, the rest of the community subject to the zoning bylaw, and other communities that have similar zoning bylaws”: *Edmonton (City) v Edmonton (Subdivision and Development Appeal Board)*, 2016 ABCA 129 at paras 46-50 [*Grewal*]. As such, it has potential implications that go beyond the current dispute between the parties: *Borgel v Paintearth (Subdivision and Development Appeal Board)*, 2019 ABCA 25 at para 11; *Gates v Standard (Village)*, 2021 ABCA 299 at para 47. They note that to prove their argument stands a reasonable chance of success on appeal for the purposes of the present application they only need to prove that their position is arguable, and not frivolous: *Osman Auction Inc v Edmonton (City)*, 2015 ABCA 135 at paras 33-34.

[10] The respondent City is a mandatory party to the action and takes no position on the merits of the application; however, it raises three procedural and policy considerations: (1) appellate courts should not generally hear new issues on appeal, although that may be possible where there are no concerns about the court’s ability to make a fully informed decision and there is no prejudice to the other parties; (2) the *Municipal Government Act* does not allow appeals on questions of mixed fact and law, and the Board’s weighing of evidence does not constitute a question of law; and (3) deference is owed to the Board respecting the specific issues of fact underlying its interpretation of the Bylaw.

[11] The respondent Saikat argues that the applicants did not raise the issue of the misclassification of the approved development before the Board. Rather, in that hearing, the applicants appeared to concede that the proposed development had been properly classified because it asked the Board to exercise its discretion to refuse to approve the development. As such, whether the use was properly classified as a “multi-residential development – minor” rather than a “townhouse” with “secondary suites” is a new issue raised on appeal. Saikat says he would be prejudiced if this Court considers this new issue at this stage. He says the Court should not grant permission to appeal a new issue where the Court will be deprived of a proper record on which to consider the issue.

[12] Further, he says this argument has no reasonable chance of success, as the Bylaw permits secondary suites within any type of “dwelling unit” and the definition of “townhouse” does not prohibit secondary suites.

[13] Saikat argues that the applicant’s first ground of appeal is not permitted by s 688(3) of the *Act* because it is not a question of law. He says the Board applied the correct legal test in categorizing the use —namely, the “use which most clearly fits” test under s 130(5) of the Bylaw— and a challenge to the Board’s application of this test to the facts raises a question of mixed fact and law.

[14] Finally, the respondent Saikat says that adequacy of reasons is not a standalone ground of appeal. The Board must give reasons, but these need not be perfect and must be considered in context. Here, the Board’s reasons were adequate. Ultimately, Saikat argues the applicants have not shown a question of law with a reasonable chance of success of sufficient importance to merit further appeal to this Court.

Decision

[15] The respondent Saikat’s preliminary objection to the first proposed ground of appeal is that the interpretation of the definition of “townhouse” under the Bylaw is a new issue on appeal. In the context of municipal planning, “this Court has stressed the importance of adhering to the general rule of not hearing new issues on appeal, while simultaneously allowing new issues to be raised where 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. Here, the respondent argues he would be prejudiced by consideration of this issue because had this issue been raised before the Board, he says he would have adduced evidence of materials before council related to various Bylaw amendments to inform the Board’s statutory interpretation.

[16] However, before evaluating whether it is appropriate to make an exception to permit appellate consideration a new issue, one must determine whether the issue is “genuinely ‘new’ in the sense of being legally and factually distinct” from the issues raised at first instance: *Quan v*

Cusson, 2009 SCC 62 at paras 38-39. It is not unusual for parties to an appeal to “take a different angle on an existing point or make an additional submission relating to the existing issue on appeal”: *Smith v St Albert (City)*, 2014 ABCA 76 at para 18. This possibility is particularly salient in review of Board decisions, given that many applicants are self-represented before the Board. For example, in *Zhuromsky #2* this Court rejected the argument that a particular issue was new on appeal, reasoning that the issue itself was “squarely raised” before the Board, while recognizing that “the arguments may have been refined with the benefit of counsel on appeal”: *Zhuromsky #2* at para 20.

[17] I agree with the respondents that the specific theory of statutory interpretation to be advanced by the applicants regarding the definition of “townhouse” was not clearly articulated before the Board; however, the broader issue of the applicable use under the Bylaw *was* before the Board. In his submissions, the applicant Travis Brown argued the below-grade units were not truly “secondary suites”. Building on this, he argued the developer’s interpretation of the Bylaw had become “a loophole, which allows developers to build eight-unit apartment buildings disguised as a townhouse”. Speaking on his own behalf before the Board, Brown did not define the applicable use as “multi-residential development – minor”, as he now does through counsel on this application, but his characterization of the development as an “eight-unit apartment building disguised as a townhouse” arguably put the applicable “use” definition into issue. Selecting the appropriate “use” definition in the Bylaw is a legal prerequisite to any application for approval: *Zhuromsky #2* at paras 20, 22-24. Therefore, in my view, the applicant’s argument with respect to the definition of “townhouse” should not be barred as a new issue at the permission to appeal stage.

[18] I am satisfied that the applicant’s assertion that the Board erred in its interpretation of “townhouse” and “secondary suite” under the Bylaw is a question of law: *Edmonton Library Board* at para 17. Further, the proposed argument stands a reasonable prospect of success, and the Court’s determination on that interpretive issue will impact “the parties to the dispute, their neighbours, the rest of the community subject to the zoning bylaw, and other communities that have similar zoning bylaws”: *Grewal* at paras 46-50. I grant permission to appeal on the first ground.

[19] Of course, with respect to the first ground, it remains open to the panel to determine whether any issue before it is new; enhanced costs have been awarded against appellants who unsuccessfully raised a new issue on appeal, even where permission to appeal was granted on that issue: see e.g. *Legacy Inc v Red Deer (City)*, 2020 ABCA 105 at paras 25-27.

[20] With respect to the applicant’s second ground of appeal, I note that a challenge to sufficiency of reasons will rarely be considered a question of law of sufficient importance to warrant appellate review: *Stubicar v Calgary (Subdivision and Development Appeal Board)*, 2022 ABCA 299 at para 62. However, conclusory reasons that fail to disclose a reasonable basis for the Board’s conclusion may ground appellate intervention: *Springfield* at paras 14-20. The applicant observes that the Board’s explanation as to why the below-grade units meet the

definition of “secondary suite” on their face seem to simply restate the constituent elements of the definition. Where, as here, the “sufficiency of reasons argument is wholly intertwined with the interpretive issue on which permission to appeal has been granted”, there may be “no harm in granting permission to appeal on the sufficiency of reasons issue as well”, given that “[t]he applicant would be entitled to raise the sufficiency of the reasons as an argument on the interpretive issue in any event”: *Zhuromsky v Calgary (City)*, 2025 ABCA 106 at para 11. I adopt this reasoning in the present case and grant permission to appeal on the second ground.

Application heard on February 12, 2026

Reasons filed at Calgary, Alberta
this 2nd day of April, 2026

Friesen J.A.

Appearances:

J.A. Agrios, KC

for the Applicants, Arden Conley, David Baker, and Travis Brown

N.J. Maynard

for the Respondent, The City of Calgary

J. Sykes

for the Respondent, Calgary Subdivision and Development Appeal Board

K. Elhatton-Lake

for the Respondent, MD Rawshanul Huq Saikat