



March 5, 2018

Re: SECONDARY AND BACKYARD SUITE LAND USE BYLAW REFORM, PUBLIC HEARING OF CALGARY CITY COUNCIL MARCH 12, 2018

Via email

Jeromy.farkas@calgary.ca

publicsubmissions@calgary.ca

Dear Mayor Nenshi and Members of Calgary City Council

The Elboya Heights-Britannia Community Association (EHBCA) is writing to express opposition to the Proposal that Secondary and Backyard Suites be a discretionary use, without the requirement for a Land Use redesignation (The Proposal). We ask that R-1, R-C1 and R-C1N districts with any historic Caveats/Restrictive Covenants registered on property titles be exempt from the change, that the land use remain as is in these districts, that Secondary and Backyard Suites NOT become a discretionary use and are expressly disallowed in exempted communities.

The reasons for this position follow:

1. One size does not fit all – ours is a character community. The Municipal Development Plan and the 50th Avenue ARP is rife with references that support reinforcing community character. Ours is a master planned, complete, mixed use community, designed and developed by the City of Calgary in the late 1940's and 1950's. In 2010, the Britannia area, including the historic commercial centre that also services the Elboya Heights area, was acknowledged, through a City historic resource evaluation, as having heritage significance. The historic Caveats and Restrictive Covenants registered on our single-family property titles have helped to define our community character for seven decades. And as valued as our character is, we are not the only community with these types of legal instruments.
2. To date, NO land use redesignations for Secondary or Backyard Suites have been approved in the R-C1 districts of Britannia or Elboya, and the respective Planning Committees report that only one such application (on the boundary of Elboya) has been received for comment (it was unsuccessful). We would have expected to have seen a number of applications and approvals under the current process, if residents wanted these suites.
3. An on-line survey of community association members conducted in Feb/Mar 2018, confirmed that the clear majority **do not** support allowing Legal Secondary Suites or Backyard Suites in our community. We conclude that the majority of our resident-members respect the community's single-family character and appreciate the choice available now to reside in a community with this land-use option.

EHBCA ON-LINE SURVEY COMMENTS

We as the CA development committee appreciate and support the rights of all households to offer their opinions on this issue – summarized below.

Reasons Cited to Oppose Secondary and Backyard Suites in Our Community

The reasons cited centred around their decision to buy-in to a calm, quiet community with the understanding that it was a low density, single-family district. These residents want to keep that character – had they wanted to live in a community that allowed two units per lot, they would have chosen that. They said they paid a premium for this option and continue to pay high property taxes assessed accordingly. Some bought specifically because the Caveat/Restrictive Covenants were in place. Changing the rules for R-1 is wrong and a community should have to vote overwhelmingly in favour of Secondary Suites if they are to be allowed in their community. Allowing Secondary Suites contravenes the Caveat/Restrictive Covenant and residents who have it on title don't want that jeopardized because of the other restrictions that the Caveat/Restrictive Covenant provides. One resident expressed outrage that this was being debated again. Concerns expressed with increased density with suites were noise and street safety from increased traffic and parking congestion – already a problem near the commercial area because of the new development; also an increased burden on existing infrastructure that was designed for our single-family neighbourhoods. Concerns with Backyard Suites were loss of privacy (especially back yards/rear facing windows), a loss of trees, and loss of light penetration into neighbouring properties. One resident submitted a detailed assessment of privacy impacts from Backyard Suites (see attached). Some residents noted that secondary suite occupants tend to be transient and don't contribute to community spirit the way that families do. Finally, some feared increased vandalism, crime, loss of property value, and a decline in community standards due to lower upkeep of rental properties, especially if the main home is not owner-occupied. *Note, the EHBCA understands that these last few reasons are conjecture and not valid reasons to deny a planning application.*

Reasons Cited to Support Secondary and Backyard Suites in our Community

The minority of responses to the on-line survey that supported suites did so to accommodate family members and aging in place. Rental income could help cover mortgages. Increased density with suites results in housing diversity, smart growth, less sprawl, better utilization of infrastructure, and reduced costs. Other reasons included individual property rights and freedoms, and a way to address existing (illegal) suites. There may be instances, where, with proper consultation from neighbors a gradual, non-creeping version could be allowed, i.e. along 50th Ave zone only.

4. Among other elements, the Caveats and Restrictive Covenants provide wording such as *“Only one single family dwelling house and private garage attached or unattached to such dwelling house, may be erected on each lot”*. The definition of “Dwelling Unit” in the City’s Land Use Bylaw (188) *“(a) means a use that contains two or more rooms used or designed to be used as a residence by one or more persons; and that contains a kitchen, living, sleeping and sanitary facilities”*. By definition, Secondary Suites and Backyard Suites are distinct dwelling units. Two dwellings is two dwellings, no matter how configured or whether covered by one title or two. This Proposal removes the single dwelling choice from citizens as defined by the Land Use Bylaw and these legal

instruments. One-dwelling land use is what we all bought into when choosing our community.

5. The Caveats and Restrictive Covenants in our community also provide wording such as *“No lot in the scheme or any building erected thereon shall be used for any trade or business or otherwise than for private residential purposes”*. This means that the construction of a secondary suite for rental income, including such uses as operating a Bed and Breakfast (with a discretionary development permit), would not be allowed. There is recent legal precedent for this. In *Deagle v. 1678452 Alberta Ltd.* (Judgement: December 2, 2013) an Edmonton judge interpreted a similar Restrictive Covenant to preclude a property owner from building a secondary suite despite approval from the City of Edmonton.
6. It is up to the community, not the City to enforce the Caveat and Restrictive Covenants – but changing the land use to allow Secondary and Backyard Suites, when the legal instruments prevent them, creates confusion for home owners, wasted time for the City in dealing with enquiries, applications and appeals that will **not** result in a suite, and places an unnecessary burden on community volunteers to communicate and review the development permit applications. It causes unnecessary litigation and pits neighbour against neighbour. This is wrong. A list of court cases demonstrating the enforceability of these instruments is appended to this letter. Parties to the Britannia Caveat have recently re-confirmed the commitment to enforcing it. If the intent is to make the City’s process more efficient, save money and improve communities, this Proposal will fail.
7. Our position is not about NIMBYism (Not-In-My-Backyard). We have housing diversity now with more multi-family options in the works. At the Neighbourhood Activity Centre (NAC) alone we have approximately 100 original apartments, about 100 new condos under construction at Elbow and 50th Ave and a new 80 bed senior’s care facility. The east side of Elboya has another 226 apartments and multi family units. The Britannia and Elboya areas combined have about 650 single family homes. We are classified as being in the “Established Area” in the Municipal Development Plan. This means that “land use policies encourage modest redevelopment... and redevelopment opportunities should be focused on the Neighbourhood Activity Centres”. Together, Britannia, Elboya Heights and Windsor Park fully participated in the preparation of the 2013 Area Redevelopment Plan for our shared 50th Ave SW neighbourhood corridor. The corridor, when developed, including the now near-redeveloped commercial and multifamily NAC at Elbow and 50th will absorb the required densities to achieve the minimum jobs and people per hectare target. The ARP process identified the option of inclusion of low density infills that may contain Secondary Suites, along the corridor. And the community consultations were clear – leave the core R-C1 districts as is and concentrate density on the corridors. Our community recognizes that Calgary must adapt and limit sprawl; this includes absorption of increased density in established communities. We have a City-endorsed plan for that. It does not include Secondary and Backyard Suites in the R-C1 districts.

8. We have no objection to the incorporation of living arrangements for caregivers, nannies, extended family members or boarders in single family residences in our community. In fact, the minority that expressed support for allowing legal Secondary and Backyard Suites (in our on-line CA member survey) cited these uses as their reason. The desire for an owner-occupied condition was expressed. Our Community Association is concerned with safety of all our residents, the ability for our seniors to age in place with live-in support, or for young people to be able to afford to live in the community. This can be accomplished without changing the land-use in R-C1 to provided living quarters that are defined as separate dwelling units.
9. City policies, included in the Municipal Development Plan (MDP), identify goals to increase the tree canopy and minimize impermeable surfaces as part of responsible water management. Large infills that incorporate Secondary Suites, the construction of new accessory buildings or expansion of existing buildings will cause the 45% lot coverage restriction to be maxed out. This, as well as the requirement that Secondary and Backyard Suites include off street parking, means an increase in impermeable surface area over what we have now and a decrease in green space on private land that could otherwise support the tree canopy. This has implications for sustaining wildlife biodiversity, storm water management and the health of our Elbow and Bow Rivers. It impacts our historic streetscapes and the privacy afforded by abundant vegetation along our lane-ways. Some 170,000 parcels will be affected by this Proposal city-wide. This is significant as it includes most of the inner-city and established communities that were originally built up along the river valley system. In communities that have Caveats/Restrictive Covenants, set back restrictions maintain greenspace and support the tree canopy. The environmental risk associated with this Proposal was not identified in Administration's report on this matter. Reducing sprawl is not the only way to satisfy the "environmental" in the City's "triple bottom line" accountability.

In conclusion – Secondary and Backyard Suites are undoubtedly an important mechanism to increase availability and diversity of housing in Calgary – but only where it is needed most. Britannia/ Elboya Heights are NOT located near a major employment or post-secondary area, nor near a transit hub. The question remains – where is it suitable to allow Secondary and Backyard Suites? Blanket approval in R-1 type communities is NOT the answer!

1. Developed communities with historic Caveats and Restrictive Covenants should be exempt from blanket redesignation that would allow Secondary and Backyard Suites in all R-1 type districts. The sanctity of land-use should be respected. Our residents bought properties with these legal instruments in place, and therefore understood that R-1 means one single family dwelling unit per lot. Other developed communities may welcome blanket Secondary and Backyard Suite approval if their community character and design support it and where there is a dearth of rental units. The process should be streamlined for these communities. Ours is not one of them. Without exemption, are communities like ours forced to seek a Direct Control District?

2. Local Area Planning (LAP) as directed by the Municipal Development Plan, is the democratic vehicle for community consultation and determination of where it is appropriate to designate Secondary and Backyard Suites (e.g. along or adjacent to a corridor serviced by public transit). We believe this can be done through existing land use, with careful consideration of how this housing type fits with other local densification plans and the existing local infrastructure available to support it.

On March 12th, we urge you to respect community specific character, history, housing needs and design in your deliberations and decision making regarding this important issue and vote to allow exemptions to the Secondary and Backyard Suite reform Proposal for communities with any historic Caveats/Restrictive Covenants. Voting for this Proposal, without exemptions, will cause divisiveness in our community.

Yours truly

Michael Sainas
Vice President, Development
development@elboyabritannia.com

and

Karen Paul
Chair, Britannia Caveat Sub-Committee
britanniacaveat@elboyabritannia.com

Elboya Heights-Britannia Community Association
Box 20573 Chinook Po Box 30573, Calgary AB, T2H2W2

Attachment 1: Examples of Cases Supporting Historic Caveats and Restrictive Covenants

Case # 1:

- Crump versus Kernahan
- Judgement July 24, 1995
- Area - Britannia
- Britannia Caveat Registered 1954
- Ruled in favour of enforcing side yard restrictive setback requirement. The judge found that the Caveat registered against Crump's property was a valid and enforceable Restrictive Covenant. The Restrictive Covenant does not conflict with the City of Calgary's land use by-law and as such Mr. Crump is therefore not entitled to a court order to modify the Restrictive Covenant. The Judge ruled that there were no exceptional circumstances contemplated by the terms of the covenant that would allow a relaxation of the 10% side yard requirement. A permanent injunction was ordered prohibiting Mr. Crump from proceeding with construction in violation of the 10% side yard requirement.
- Ruling in Alberta Court of Queen's Bench, J. Rawlins.

Case # 2:

- Fleischaker versus Scott and Hartronft
- Judgement May 16, 2007
- Area - Hillhurst
- Restrictive Covenant dated February 5, 1910 "that he will not erect, or use, or suffer or permit, or cause to be erected any dwelling house on less than two aforesaid lots, and any dwelling house erected or placed on the aforesaid lots shall be placed at least 20 feet from the Street or Avenue and rear of the said lots.
- The application by the applicant to remove the Restrictive Covenant was dismissed
- Master of Chambers, L. Alberstat

Case # 3

- Deagle, Vaitkunas and Mitchell Verstus 1678452
- Judgement December 2, 2013
- Area - Glenora Edmonton
- Restrictive Covenants contained in the Carruthers Caveat registered December 1911.. "no trade or business of any kind shall be carried on"
- Ruling on Secondary suite issue: "the rental of the basement Secondary suite would contravene the limitation in paragraph w of the Carruthers Caveat. Is a valid and enforceable Caveat protecting the Restrictive Covenant to therein which run with the lands".
- Ruled in favour of the applicants to not allow Secondary Suites.
- Justice Donald Lee

Attachment 2: Backyard Suites and Privacy Issues

Backyard Suite = 2nd House

The Land Use Bylaw states that a Backyard Suite is a residence for one or more persons located in a detached building and can have a maximum floor area of 75 m² (807 ft²) and a maximum height of 8.5 m (27.9 ft) above ground level. It can be 8.6 m x 8.6 m (28 ft x 28 ft) single story building, the 2nd story above a 8.6 m x 8.6 m garage) or 4.2 m x 4.2 m (14 ft x 14 ft) two story building. This is not a suite, it is a house.

The Oxford dictionary defines a “Suite: A set of rooms designated for one person's or family's use or for a particular purpose. Synonyms: apartment, flat”. The use of the term “Backyard Suite” to describe a detached building is incorrect use of the word suite, and the common understanding of what a suite is.

Using the term Backyard Suite is misleading and masks what they really are: they are a 2nd house built in your neighbours back yard.

R1 Zoning Lifestyle and Values

We applaud and support the City’s initiative to increase residential density and design options in parts of the city. As a young couple, we lived in the Mission/Cliff Bungalow neighbourhood and thoroughly enjoyed the vibrant high density urban lifestyle, neighbours and values.

However, the arrival of our children changed our view. We wanted more room (both house and yard), more privacy, and more greenspace/garden where we could raise our children. R1 zoning perfectly aligned with our changed lifestyle and values so we moved into a R1 neighbourhood, Britannia. The R1 zoning gave us the choice and peace of mind that we could raise our children in a neighborhood that valued our wish for privacy and greenspace/gardens.

Impact of Backyard Suites (2nd house): Privacy

The building of a Backyard Suite (2nd house) in our neighbors’ back yard would have a significant negative impact on our lifestyle and values. There are physical impacts from increased traffic and street parking pressures, removal of neighbourhood greenspace from additional buildings and off-street parking, and possible shading issues. However, the biggest impact will be the inevitable loss of privacy.

The attached sketches (borrowed from the City’s Sample Plots on the Backyard Suites webpage) show how the back windows of the Backyard Suite would look directly into our backyard and the back windows (kitchen, dining room, bedroom) of our home. And we would look directly into their windows. We know there are “privacy measures” that can be added. However, in our climate, vegetation screens are useless in the winter unless they are evergreens. Privacy fences and screens are not effective for 2nd story windows. Any add-on measure to protect the privacy would have a negative effect on our home.

Choice and Values

We support that Calgary is a wonderfully diverse city and offers Calgarians an amazing verity of housing options to match lifestyles and values. We understand that many Calgarians value social connectiveness and intimate contact with their neighbors. We value our privacy. The current R1 zoning allows us to choose a neighbourhood that matches our values. Allowing Backyard Suites in R1 neighbourhoods would negatively impact our privacy and arbitrarily removes our freedom to choose a home in Calgary where we can live the lifestyle we enjoy and value.

Backyard suite

