

## DEVELOPMENT APPEAL BOARD ORDER

**File No.:** 17DP63  
**Order No.:** 01-18  
**Appeals:** 01-18  
**Legal Description:** Lot 17, Block 32, Plan 638HD  
**Municipal Address:** 508 Deer Street

ORDER OF THE DEVELOPMENT APPEAL BOARD OF THE TOWN OF BANFF, IN THE PROVINCE OF ALBERTA dated the 21<sup>st</sup> day of March, 2018.

Development Appeal Board Members present: David Bayne (Public Representative), Dak Kerr (Public Representative), Doug Macnamara , (Public Representative), Karen Sorensen (Council Representative), Grant Canning (Council Representative) and Sheila Luey (Minister of the Environment and Climate Change Representative).

AND IN THE MATTER of the Municipal Government Act, Revised Statutes of Alberta, 2000, Chapter M-26, or as in accordance with the Town of Banff Incorporation Agreement between the Government of Alberta and the Government of Canada dated December 12<sup>th</sup>, 1989;

AND IN THE MATTER of a decision made on the 17<sup>th</sup> day of January, 2018 by the Municipal Planning Commission wherein a development permit application for a duplex and two accessory dwellings was approved at 508 Deer Street;

AND IN THE MATTER of an appeal by an affected neighbour from the said decision of the Municipal Planning Commission;

This appeal having come to be heard before the Development Appeal Board on the 15<sup>th</sup> day of March, 2018 in the presence of the Development Officer, the appellant and the applicant;

AND UPON hearing the verbal submission of the Development Officer, the appellant, and the applicant;

AND UPON having regard to the Town of Banff Land Use Bylaw, as amended, the Municipal Development Plan, and other relevant planning policies;

AND UPON considering the relevant planning evidence adduced at this hearing and the circumstances and merits of this application;

## **IT IS ORDERED:**

1. That Appeal No. 01-18 be denied and that the decision of the Municipal Planning Commission be upheld.
2. That the Development Permit be approved with a minor variance to s.8.16.27(a) of the Land Use Bylaw to allow for the driveway width to exceed 3.6m for the first 2.0m inside the front property line and that administration work with the applicant to minimize the driveway width.
3. That the Development Permit be approved subject to the original conditions of approval imposed by the Municipal Planning Commission.

### **Background Facts**

From the evidence presented, the Development Appeal Board found that Shawn Jensen, from New Century Design applied for a development permit to construct Duplex Housing with two Accessory Dwellings at 508 Deer Street. Details of the proposed development are set out in the reports prepared by administration and presented at the outset of the hearing by Darren Enns, Manager of Development Services, on behalf of the Planning and Development Department.

The Board found that the Municipal Planning Commission (MPC) conditionally approved that permit on December 14<sup>th</sup>, 2017 with a variance to the maximum allowable site coverage. MPC also imposed a condition that prior to the issuance of a Development Permit the applicant obtain approval from MPC for an updated site plan/landscape plan for the Deer Street driveway, with a preference for a single throat driveway.

The Board was provided evidence that the Notice of Decision was mailed to affected neighbours on December 15<sup>th</sup>, 2017 and that the decision of MPC was advertised in the local newspaper on December 21<sup>st</sup>, 2017 in accordance with the requirements of s.4.9.3 of the land Use Bylaw, stating the location, the nature of the development approved, the nature of the variance granted and that there was a right of appeal by affected persons.

The Board found that the applicant then submitted revised drawings and site plan/landscape plan to narrow the width of the Deer Street driveway. MPC approved this aspect of the application on January 17<sup>th</sup>, 2018. It involved a minor variance to the maximum allowable driveway width and adjacent neighbours were again notified of the decision of MPC. A neighbour subsequently filed an appeal within the legislated 14 day time period but also referenced a number of reasons for the appeal that pertained to the original December 14<sup>th</sup>, 2017 decision.

Arguments were heard by the appellant, Mr. Guenther Boenish and his agent, Mr. Hugh Pettigrew, against the decision of MPC on the following grounds:

1. That MPC should not have approved a variance to s.12.18.6 of the Land Use Bylaw for site coverage from 40 to 45%. It was argued that MPC did not have the authority to grant a variance of this magnitude to site coverage, that the RTM (Tunnel Mountain) Land Use District does not allow for a variance of this nature, that the definition of duplex housing in the Land Use Bylaw is inconsistent with what is actually being proposed and that the building in question should be considered fourplex housing;
2. That MPC failed to acknowledge or recognize that the proposed building is over the maximum allowable height as shown on the east and west elevation drawings. It was also noted that the roof lines are irregular and all massed toward the front of the building;
3. That MPC should not have approved a variance to the proposed driveway given that it is wider than what is allowed for in the Land Use Bylaw. The appellant stated that to approve such a variance is contrary to previous decisions of both administration and MPC and will result in a further reduction of parking on Deer Street;
4. That the design of the building is not consistent with the vernacular architecture of the neighbourhood and is not reflective of its existing character. It was also noted that the comparison used by administration with regards to the east end of Deer Street is misleading and inconsistent with the look and appearance of the majority of the neighbourhood. Concerns were also expressed that the proposed height of the building would cast a shadow on neighbouring properties and block access to sunlight from the appellants home;
5. That the unregistered access lane across the rear of the property should be deemed a public road right-of-way under the provisions of the Province of Alberta Municipal Government Act.

The Board found that the subject property is located in the 'RTM' (Residential Tunnel Mountain) Land Use District and that Duplex Housing is a permitted use in the district, while Accessory Dwellings are listed as a discretionary use. It was noted that the stated purpose of the 'RTM' Land Use District is "*to provide for duplex housing with eventual redevelopment to triplex and fourplex housing*" and that the proposed development is consistent with the purpose of the district.

The Board found that an informal laneway located along the rear of the property has allowed for vehicle access since the 1950's and that there is no formal access easement or agreement registered on title of 508 Deer Street of any of the properties affected along the south side of the street.

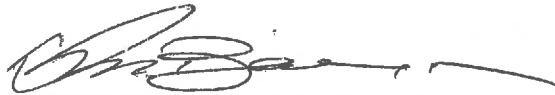
The Planning and Development Department made note of the fact that since Incorporation, Town of Banff has indicated to prospective developers and property owners, that if they wish to use the private laneway to accommodate parking, a 'grant of access' easement would be required. The Board was advised that that while the access arrangement along the rear lane presents an unusual site condition, property owners and or developers still benefit from the land at the time of redevelopment given the lane area is considered part of the developable site area when calculating floor area ratio.


The Board found that the applicant had conducted an overshadowing calculation to assess the likely impact on a neighbouring property and to determine whether any shadows cast directly impacted the appellants home. It was determined that shadows did not extend across Deer street nor interfere with the appellants home.

**REASONS FOR THE DECISION:**

The Board takes the position that the appeal period for any matter arising from the initial decision of the Municipal Planning Commission on December 14, 2017 including site coverage, building height and design, expired before the Notice of Appeal was filed and was therefore beyond the 14 day time period for filing an appeal. It is clear that the MPC made the first decision to approve the development permit; that they did not reserve their position on the issue of approving a duplex housing with two accessory dwellings, rather they only reserved their position on the site plan/landscaping plan and width of the driveway for the first 2.0m inside the front property line. The Board is of the view that whatever site plan was finally settled on would not alter the MPC decision to approve the development (use).

On the matter of the variance, the Board concurs with January 17, 2018 decision of MPC to consider a variance to s.8.16.27(a) of the Land Use Bylaw for a driveway width to exceed 3.6m for the first 2.0m inside a property line and that administration work with the applicant to minimize the driveway width. The Board is of the opinion that there are unusual site conditions along this side of Deer Street not common in the district that may result in unnecessary hardship or practical difficulties for the proposed development to comply with the provisions of the Land Use Bylaw. The Board focused on s.4.7.1 and s.4.15.6 of the Land Use Bylaw and concluded that the proposed development conforms with the use prescribed for the land in the RTM (Tunnel Mountain) Land Use District, that deviation from the bylaw can be considered minor in nature and would not unduly interfere with the amenities of the neighbourhood or materially interfere with, or affect the use, enjoyment, aesthetics, or value, of the neighboring properties.

  
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David Bayne  
Chairperson

  
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March 21<sup>st</sup>, 2018