

DEVELOPMENT APPEAL BOARD ORDER

File No.: 14DP46
Order No.: 02-18
Appeals: 02-18
Legal Description: Lot 24, Block 9, Plan 6719BC
Municipal Address: 213 Otter Street

ORDER OF THE DEVELOPMENT APPEAL BOARD OF THE TOWN OF BANFF, IN THE PROVINCE OF ALBERTA dated the 4th day of May, 2018.

Development Appeal Board Members present: David Bayne (Public Representative), Dak Kerr (Public Representative), Doug Macnamara, (Public Representative), Ray Horyn (Public Representative), Peter Eshenko (Public Representative), (Grant Canning (Council Representative) and Kendra Van Dyk (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 12th, 1989;

AND IN THE MATTER of a decision made on the 14th day of March, 2018 by the Municipal Planning Commission wherein the renewal of a development permit application for a Bed and Breakfast Home was refused by the Municipal Planning Commission;

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

This appeal having come to be heard before the Development Appeal Board on the 19th day of April, 2018 in the presence of the Development Officer and the appellant;

AND UPON hearing the verbal submissions of the Development Officer and the appellant;

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. 02-18 be denied and that the decision of the Municipal Planning Commission be upheld.
2. That the Development Permit application be refused.

Background Facts

From the evidence presented, the Development Appeal Board found that Mountain Magic Investments on behalf of Doug Godfrey applied for a development permit to renew their development permit for a Bed and Breakfast Home at 213 Otter Street. Details of the renewal process and nature of the proposed development are set out in the reports prepared by administration and presented at the outset of the hearing by Mr. Dave Michaels, Development Planner, on behalf of the Planning and Development Department and Development Authority.

The Board found that the Municipal Planning Commission (MPC) denied the renewal of the development permit for the following reasons:

- a) Non-compliance with the requirements of Section 10.3.2(l) of the Land Use Bylaw which states that no person shall operate or permit to operate more commercial accommodation units in a Bed and Breakfast establishment or Guest Home than have been authorized by the Development Approving Authority and are shown on the valid license issued for the establishment. Evidence was provided to the Development Authority indicating that the original conditions of approval for the Bed and Breakfast Home allowed for a maximum of two accessory guest accommodation bedrooms but that up to five accessory guest accommodation bedrooms were being provided to the travelling public for remuneration without a development permit; and
- b) Non-compliance with the requirements of Section 10.3.2(e) of the Land Use Bylaw which states that a bed and breakfast home shall be operated exclusively by a live-in owner as an accessory use and shall not change the principal residential character, use or external appearance of the dwelling. Evidence was provided to the Development Authority that the entire home was being provided to the travelling public for remuneration indicating that the owner neither lived in the bed and breakfast home and/or managed the bed and breakfast home while maintaining eligible residency status.

Submissions of the appellant

The Board heard a verbal submission from Doug Godfrey, the appellant, who is also the applicant. The appellant confirmed that he had purchased the dwelling unit in 1979 and that it had been used as a single family dwelling for over 30 years. He stated that the reason he chose to open bed and breakfast home was to earn additional income following his retirement and admitted that he initially applied and received approval for two guest accommodation bedrooms.

Mr. Godfrey argued that the business license that was issued following approval of the development permit application was confusing and unclear in that it indicated up to four guest accommodation units could be rented for lodging. The appellant made other statements regarding the nature and intent of the bed and breakfast home guidelines and apologized for not adhering to the strict requirements of the bylaw.

Other submissions in favour of the appeal

Peter Christou, whose family owns and operates a bed and breakfast home at 138 Otter Street, supported Mr. Godfrey's appeal and concurred with his arguments.

Greg Christou, whose family owns and operates a bed and breakfast home at 138 Otter Street, supported Mr. Godfrey's appeal and expressed similar concerns with regards to the wording of the business license and number of bedrooms that were authorized to be rented as commercial accommodation.

Ken Beatty, a Banff resident, questioned why Town of Banff administration did not contact the owner/operator of the subject property to advise him that he was not operating his Bed and Breakfast Home in accordance with the requirements of the approved development permit or that he was in violation of the Land Use Bylaw.

Jon Whelan, a Banff resident, expressed similar concerns with regards to the wording of the business license and number of bedrooms that were authorized to be rented as commercial accommodation. He believed the previous decision of the Development Authority and enforcement action was too heavy handed.

The Board also received a written submission from Don Kendal regarding the regulation and enforcement of Bed and Breakfast Homes in general. The Board notes that he was neither for nor against the appeal.

REASONS FOR THE DECISION:

The Board reviewed the context of the proposed development, having regard to sound planning considerations, the merits of the application, the circumstances of the case, the evidence presented and the arguments made by the parties.

The Board notes that the development permit application is for a discretionary use development pursuant to Land Use Bylaw 31-4. Therefore the development permit application can either be granted or refused on the basis of sound planning considerations.

The Board takes the position that the regulatory framework for Bed and Breakfast Homes under the provisions of Section 10.3.0 of the Land Use Bylaw is explicit and offers little or no discretion with respect to the fact that:

- a. a bed and breakfast home must be operated exclusively by a live-in owner as an accessory use and shall not change the principal residential character, use or external appearance of the dwelling;
- b. the applicant is required to provide a floor plan to the Town of Banff to identify the rooms which are to be licensed by name, number or physical description and location, and to identify those bedrooms that are intended for the exclusive use of the owner;
- c. no person shall operate or permit to operate more bedrooms or commercial accommodation units in a Bed and Breakfast Home than have been authorized by the Development Approving Authority and shown on the valid business license issued for the establishment;
- d. the number of licenced rooms must be limited to the number of dedicated parking spaces available and the number of bedrooms available. Dedicated parking spaces are determined by subtracting the total spaces used by the resident owner's vehicles from the total number of spaces available. The total number of parking spaces available must be shown on the plan submitted with the application; and
- e. each owner is responsible for ensuring that each guest is advised that they must park in the areas designated on the application and not on a public roadway.

The Board also observed that the wording and language in the Breakfast Home Development Permit and Business License Renewal Form sent by registered mail to the applicants which includes, among other things, the conditions of approval for the original development permit (14DP46) and a signed declaration with regards to the number of approved rooms is clear and unambiguous and consistently refers to the operation of two (2) commercial accommodation units or bedrooms and four pillows.

The Board does not accept the arguments presented by the appellant that that the regulatory framework for bed and breakfast homes is confusing or unclear. The Board finds that the appellant's assertions and arguments regarding the vagueness of the development permit application and renewal process are insufficiently substantiated and are lacking in evidentiary foundation or sound planning considerations. The Board thus accepts the evidence of the Development Authority over the evidence of the appellant.

The Development Appeal Board agrees with the assessment of the application by the Development Authority in that the applicant was operating more commercial accommodation units than allowed and was not being operated exclusively by a live-in owner/operator as an accessory use.

The Board believes that it is incumbent upon the operator of the Bed and Breakfast Home, to ensure that they are in full compliance with the terms of the Land Use Bylaw, the conditions of approval of their development permit and the terms and conditions of their business license. In weighing the evidence, or lack thereof, and having regard to the abovementioned factors, the Board therefore finds that the rule of the Bylaw should prevail in this instance.

Accordingly, the Board also finds that Planning and Development and the Development Authority followed the direction of Council to proactively enforce the provisions of the Land Use Bylaw pertaining to the use and occupation of residential properties as commercial accommodation units, including vacation rentals by owner, unauthorized Bed and Breakfast Home operations and existing Bed and Breakfast Home establishments operating outside of the scope of their approved development permit.

For the above reasons, the Board denies the appeal and confirms the decision of the Development Authority. Therefore, a development permit shall not be issued.



David Bayne, Chairman
Development Appeal Board

May 4/18
May 4th, 2018
