

DEVELOPMENT APPEAL BOARD ORDER

File No.: 03DP16
Order No.: 03-18
Appeals: 03-18
Legal Description: Lot 14, Block 27, Plan 6719BC
Municipal Address: 138 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: 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 a development permit application for a bed and breakfast home was approved at;

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, the appellant and the applicant;

AND UPON hearing the verbal submission of the Development Officer, the agent for 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. 03-18 be denied and that the decision of the Municipal Planning Commission be upheld.
2. That the Development Permit be refused.

BACKGROUND FACTS

From the evidence presented, the Development Appeal Board found that the applicant applied for a development permit to renew their development permit for a Bed and Breakfast Home at 138 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 four 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 on behalf of the applicant

Kyla Conner represented the applicant at the hearing.

Ms. Conner began by respectfully requesting that the Board consider granting a variance to the provisions of the Land Use Bylaw in order to allow the bed and breakfast home to continue to operate for the remainder of the calendar year. Should a variance not be granted, Ms. Conner then asked that the Board to consider waiving the six month resubmission interval for the submission of a new development permit application.

Ms. Conner submitted that she did not dispute the facts presented by the Development Authority but that the operation of Thea's House meets the general intention of what bed and breakfast accommodation should be in Banff. She noted it was a very well run establishment operated on and off at different times by two local families without any complaint or incident for 10 years.

Other submissions in favour of the appeal

Fabienne Moser, on behalf of her father, Albert Moser, spoke of their family's outstanding record as hospitality providers in Banff and 36 year history as owners and operators of the renowned Le Beaujolais Restaurant. She also spoke of their many contributions to the community and Banff Lake Louise Tourism.

It was noted Mr. Moser previously consulted with the Planning and Development Department and followed their suggestion to acquire a Home Occupation for Service Contractor – Mobile Chef to allow him to provide hospitality services to the Christou bed and breakfast home. He obtained a permit and business and then proceeded to assist Greg Christou and his family build up their business to one of the highest rated accommodations in Banff.

Ms. Moser asked that the development permit and business license be reinstated for four rooms or less, if only for the summer season, given many guests have already previously booked accommodation, and that consideration should be given to the fact that they believed they were running an honest business, are long term residents and have made significant contributions to the Banff community.

In response to Ms. Moser's comments, The Board acknowledges the exemplary level of service provided by the operator but notes that the Board is bound in its decision making by the Act, the Agreement, the Banff National Park Management Plan, all applicable statutory plans, and the Land Use Bylaw.

Jim Karras, a Banff resident, spoke to the character of the Christou family and their high degree of principle and integrity in all of their business dealings.

Randy Tarchuk, an adjacent neighbor, indicated that the Christou family were excellent neighbours, that the bed and breakfast home was an asset to the town and neighbourhood, that he always assumed it was authorized for four guest rooms, and that parking was never a problem. He also questioned why Town of

Banff administration did not communicate with the owners to advise them that there were issues with the requirements of the approved development permit or compliance with the Land Use Bylaw.

Peter Christou, one of the shareholders of the numbered company that owns the subject property, provided an overview of the history of the property and when and why it was redeveloped. He also explained the purpose of the recent partnership with Mr. Albert Moser that was done in the interests of providing the highest quality customer service and guest accommodation to visitors to Banff.

The Board also received letters in favour of the appeal from Wim and Nancy Pauw of 121 Grizzly Street and Neil Tanner of 126 Grizzly Street.

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 (03DP16) 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 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 thus accepts the evidence of the Development Authority over the evidence of the appellant.

The Board believes that it is incumbent upon the owner 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.

CONCLUSION

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.

With regard to the appellants' request to waive the six month resubmission interval for a new development permit application for the same or similar use, the Board notes that the discretion to waive the waiting period rests with the Development Officer under the provisions of s.4.14.1 of the Land Use Bylaw.



Dak Kerr, Vice-Chairman
Development Appeal Board

May 4th, 2018