

MINUTES OF THE DEVELOPMENT APPEAL BOARD
of the Town of Banff in the Province of Alberta
Town Hall Council Chamber
Thursday, April 19, 2018

BOARD MEMBERS PRESENT

Ray Horyn	Public Representative
Doug Macnamara	Public Representative
David Bayne	Public Representative (Chairperson) <i>(left hearing at 11:38a.m.)</i>
Dak Kerr	Public Representative (Vice Chairperson)
Peter Eshenko	Public Representative
Grant Canning	Council Representative
Kendra Van Dyk	Parks Canada Representative

BOARD MEMBERS ABSENT

Karen Sorensen	Council Representative
Sheila Luey	Parks Canada Representative

ADMINISTRATION PRESENT

Randall McKay	Director, Planning and Development and Secretary to DAB
Dave Michaels	Planner
Jennifer Laforest	Planner
Kerry MacInnis	Administrative Assistant Planning (Recording Secretary)

1.0 CALL TO ORDER

The Chair called the Thursday, April 19, 2018 Development Appeal Board meeting to order at 9:00a.m.

2.0 APPROVAL OF AGENDA

DAB18 - 12 Moved by Kerr to approve the April 19, 2018 Development Appeal Board agenda as amended.

Move agenda item 4.3 to 4.1.

CARRIED

3.0 ADOPTION OF PREVIOUS MEETING MINUTES

DAB18 - 13 Moved by Kerr to approve the minutes of the March 13, 2018 meeting of the Development Appeal Board as presented.

CARRIED

4.0 APPEALS

4.1. APPEAL #04-18

Appeal by an adjacent neighbour against the decision of the Municipal Planning Commission to approved development permit 17DP34 for a proposed non-accessory parking lot at 327 Railway

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Avenue. **Administration noted this is a procedural meeting of the board as the appellant has requested that this matter be adjourned until Thursday, May 17, 2018.**

DAB18 - 14 Moved by Eshenko that the Development Appeal Board adjourn the hearing of Appeal #04-18 (17DP34) until Thursday, May 17, 2018.

CARRIED

4.2. **APPEAL #02-18**

Appeal #02-18 – Appeal by the applicant, Doug and Lynne Godfrey, against a decision of the Municipal Planning Commission to refuse the continued operation of Development Permit 14DP46 for a Bed and Breakfast Home located at 213 Otter Street.

Public Present Objecting to Any Board Member Hearing This Appeal

There were no objections from the public present to any board member hearing this appeal.

Declaration of Conflict of Interest by Board Members

No conflict was declared.

Notification to Affected Neighbours and Media Announcement

Notice of the appeal hearing has been given to the appellants, the applicant, the Municipal Planning Commission and all affected parties in accordance with the Municipal Government Act and Banff Land Use Bylaw 31-3.

Development Officer's Comments on both appeals (appeals #02-18/03-18)

The development officer spoke to the power point presentation included in this agenda package covering the following points:

- Background
- Renewal procedure and process
- MPC decision
- Considerations for DAB

Board Questions

- Distinction between bed and breakfast home and inns
- Parks Canada need to reside clarification and confirmation
- Information gathered at time of renewal confirming number of approved bedrooms of each applicant

Appellant Presentations

Mr. Doug Godfrey, owner of 213 Otter Street spoke to his written submission included in this agenda package.

Godrey is of the opinion that;

- The Town's business license and bed and breakfast process is confusing
- Is of the opinion that they had not received any correspondence from the Town as to their development permit and business license and didn't realize they were operating outside of their approved development permit

Board Questions

Q: For appellant - How many rooms are you approved for?

A: Appellant - Approved for 2 rooms but sometimes operated 4 rooms. (as the business license says "4 rooms or less")

Q: Asked administration for clarification as to how many rooms the appellant's bed and breakfast was approved for.

A: Administration - 2 rooms

Those in Favour of the Appeal

Peter Christou, adjacent neighbor, in favor of the appeal; poor wording of the business license led to the appellant's confusion.

Greg Christou, adjacent neighbor, in favor of the appeal; poor wording of the business license has led to the appellant's confusion.

Ken Beatty, in favor of the appeal and is of the opinion that there seems to be confusion over the wording of bed and breakfasts license and why didn't the Town of Banff engage the BnB owner instead of cancelling their business license?

Jon Whelan, in favor of the appeal and is of the opinion that the wording of the business license needs to be revised. The Town is being heavy handed in their approach to the stop order of this bnb.

Those Opposed to the Appeal

None

Development Officer's Response

The development officer made the following rebuttal points:

- The bylaw states "live in owner". While someone is away (not living in their house), they can't operate their bed and breakfast home.
- The original development permit states the number of rooms the appellant can operate and each year renewal notification states the number of rooms that can operate.
- The appellant signed off on the number of rooms (2 rooms) that they would operate at development permit application and each year during renewal, never 4 rooms.

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- The business license document is a Banff Lake Louise Tourism business license code 101 “bed and breakfast containing four rooms or less”, not to imply that each bnb can operate up to four rooms or less.
- During the original development permit application, the appellant applied for a 2 room bed and breakfast (not 4) and was able to provide the necessary parking for 2 rooms only (not 4).
- Booking sites/on line comments from those who had booked this bnb confirmed multiply times throughout the year that 4 rooms were being rented out at any given time.

Board Questions:

- Clarity on the business license categories and renewal process
- Definition of live-in owner
- Land Use Bylaw commercial accommodation in residential districts clarification (BnB Homes)

Correspondence:

Correspondence from Mr. Kendall was received after the agenda package was produced. This correspondence has been included with these meeting minutes and distributed to DAB members.

Appellant Rebuttal:

Godfrey stated that he was confused when seeing the business license stating “up to four rooms”. He is of the opinion that he was approved for two rooms but when he saw the business license invoice he thought he could potentially operate up to four rooms. Godfrey stated that when his home is rented out (all four rooms), he stays at another of his properties.

Motion to Continue Discussion In-Camera

DAB18 - 15 Moved by Macnamara that the DAB move in camera at 10:34a.m. to discuss a matter where public disclosure could be harmful to third party personal privacy as per Section 17 of the *Freedom of Information and Protection of Privacy Act*.

CARRIED

Motion to Leave In-Camera Discussion

DAB18 - 16 Moved by Horyn to return to the public meeting at 11:36a.m.

CARRIED

Verbal Decision Announced

In the matter of appeal #02-18, an appeal by the applicant against a decision of the Municipal Planning Commission to refuse the continued operation of the Bed and Breakfast Home at 213 Otter Street, specifically Development Permit 14DP46.

The Development Appeal Board upholds the decision of the Municipal Planning Commission. The appeal by the applicant is denied for the following reasons:

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1. Non-compliance with the original conditions of approval, relating to the applicant operating more commercial accommodation units than allowed;
2. Non-compliance with section 10.3.2 of the Land Use Bylaw which states that the Bed and Breakfast Home shall be operated exclusively by a live-in owner/operator as an accessory use.

The Board finds that the language and definition in the permit is clear and un-ambiguous and refers to two commercial accommodation units. The Board believes that it is incumbent upon all Bed and Breakfast Homes, to ensure that they are in full compliance with the terms of the Land Use Bylaw and conditions of this development permit.

A written decision to follow within the prescribed time frame.

Bayne left the meeting at 11:38a.m. Kerr continued as Vice-Chairperson of the hearing.

4.3. **APPEAL #03-18**

Appeal #03-18 – Appeal by the applicant, Kyla Conner and Peter Christou on behalf of the owner 387599 Alberta Inc., against a decision of the Municipal Planning Commission to refuse the continued operation of Development Permit 03DP16 for a Bed and Breakfast Home located at 138 Otter Street.

Public Present Objecting to Any Board Member Hearing This Appeal

There were no objections from the public present to any board member hearing this appeal.

Declaration of Conflict of Interest by Board Members

Bayne declared a conflict of interest in hearing this appeal as he is an adjacent neighbor.

Notification to Affected Neighbours and Media Announcement

Notice of the appeal hearing has been given to the appellants, the applicant, the Municipal Planning Commission and all affected parties in accordance with the Municipal Government Act and Banff Land Use Bylaw 31-3.

Development Officer's Comments

As above notes in 4.2.

Appellant Presentations

Kyla Conner, acting as agent for the appellant. Conner spoke to the written submission included in this agenda package.

Conner requested:

- A minor variance to the existing development permit;

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- Amend the existing development permit;
- If the appeal is upheld, to ask that the six month waiting period to apply for a new BnB application be waived.

Those in Favour of the Appeal

Fabienne Moser, daughter of Albert Moser, spoke to a written submission included in these meeting minutes prepared by Mr. Moser.

Jim Karras, spoke in favor of the appellants.

Randy Tarchuk, adjacent neighbor to the appellant. Tarchuk spoke in favor of the appellants.

Peter Christou, representing the family company who owns the bed and breakfast. Christou spoke in favor of the appellants. Christou made the follow points:

- The home has been developed specifically as a bed and breakfast home;
- The BnB has been family run since 1988;
- The partnership with the Moser Family is first class;
- The establishment operates a unique hospitality offering in Banff;
- #1 rated place in Banff accommodation;
- Fully booked through 2018

Those Opposed to the Appeal

None

Development Officer's comments:

- Only approved for two bedroom bed and breakfast (not 4);
- BnB must be operated by the live-in owner;
- The BnB is being operated by the Moser's not a live-in owner;
- Section 5.19 of the Incorporation Agreement speaks to the ability of the DAB to issue variances; If there was a variance to number of bnb bedrooms, parking requirements would have to be met as per the Land Use Bylaw. Thus, the variance would not be minor in nature;
- MPC deemed that when reviewed, this BnB was not operated by a live-in owner.

The Development Officer answered questions from the Board.

Appellant Rebuttal

Conner addressed the board;

- This is a long standing bnb operation that has had no complaints until now;
- We are of the opinion this business is under scrutiny because of an administrative procedural change;

- The bnb has been operated for years in this manner and we are of the opinion that only now the Town has opposition to it whereas in the past, the Town was in favor of the bnb;
- The BnB was approved and operating as such for years and it has been understood that the Moser's would be hosting/operating the BnB. The Town approved this previously;
- There is no specific clarity in the LUB as to live-in owner/operator.

Motion to Continue Discussion In-Camera

DAB18 - 17 Moved by Macnamara that the DAB move in camera at 12:26p.m. to discuss a matter where public disclosure could be harmful to third party personal privacy as per Section 17 of the *Freedom of Information and Protection of Privacy Act*.

CARRIED

Motion to Leave In-Camera Discussion

DAB18 - 18 Moved by Van Dyk to return to the public meeting at 01:41a.m.

CARRIED

Verbal Decision Announced

In the matter of appeal #03-18, an appeal by the applicant against a decision of the Municipal Planning Commission to refuse the continued operation of the Bed and Breakfast Home at 138 Otter Street, specifically Development Permit 03DP16.

The Development Appeal Board upholds the decision of the Municipal Planning Commission. The appeal by the applicant is denied for the following reasons:

1. Non-compliance with the original conditions of approval, relating to the applicant operating more commercial accommodation units than allowed;
2. Non-compliance with section 10.3.2 of the Land Use Bylaw which states that the Bed and Breakfast Home shall be operated exclusively by a live-in owner/operator as an accessory use.

The Board finds that the language and definition in the development permit is clear and un-ambiguous and refers to two commercial accommodation units. The Board finds that the Land Use Bylaw states clearly to be approved as a Bed and Breakfast Home it shall only be operated exclusively by the live-in owner as an accessory use. The Board believes that it is incumbent upon all Bed and Breakfast Homes, to ensure that they are in full compliance with the terms of the Land Use Bylaw and conditions of this development permit.

A written decision to follow within the prescribed time frame.

Minutes approved by: _____

5.0 CORRESPONDENCE

There was no correspondence presented.

6.0 NEW BUSINESS

There was no new business presented.

7.0 INQUIRIES

There were no inquiries.

8.0 ADJOURNMENT

The next regularly scheduled meeting of the Development Appeal Board is scheduled for Thursday, May 17, 2018 at 9:00 a.m.

DAB18 - 19 Moved by Horyn to adjourn the meeting at 1:43p.m.

CARRIED

David Bayne
Chairperson

Kerry MacInnis
Recording Secretary

Minutes approved by: _____

From: Glacier Holdings Ltd. [<mailto:ghlbanff@telus.net>]
Sent: April 17, 2018 12:41 PM
To: McKay, Randall <randall.mckay@banff.ca>
Subject: Scrutiny of Bed and Breakfast Establishments

Hi Randall,

Thank you for the Notice of Appeal letter re: 213 Otter Street which was dated April 3, 2018 but which I did not receive until April 16, 2018, three days after the deadline for written submissions.

I wanted to put forward my comments regarding Banff B&B establishments in general...

First, it's great to see that B&B operators are being scrutinized in regard to how many units they are renting out. As someone who has often seen situations where authorized limits were greatly exceeded in the past, it underscores the Town of Banff's intention and authority much better if these limits are actually enforced;

Second, individual B&B establishments need to be inspected regularly to ensure that they are of a good standard and reflect well on the accommodation offerings of the Town. Sub-standard maintenance of dwellings, messy yards and potentially aggressive animals are all things that affect the visitor experience and each of these should be considered in the re-licensing process;

Third, existing B&Bs need to be expected to operate a reasonable minimum number of days per year in order to renew their license. With only a very limited number of B&B licenses granted for any particular area of Banff, it is not fair nor reasonable that persons wanting to establish a B&B in an area are kept from doing so by one or more operators who have licenses but seldom open their doors for visitor stays.

Subject to the above, I do not have any particular problem with the Godfreys getting their B&B license back. But I am glad that the fact that their license was not simply renewed makes the Town look effective and serious about its B&B licensing process. It is now my hope that this can be extended to consider the other issues (good standard and minimum operating days) set out above. The end result will be a much better regulated, higher standard for B&B establishments in Banff.

Thank you for your consideration,

Don
C: (403) 996-0044

Members of the Development Appeal Board, my name is Fabienne Moser and I am Albert's eldest daughter.

My father has asked me to read his letter to you due to recent medical treatments and his emotions being a bit unpredictable. At this time we would also like to highlight that we have submitted letters of support and hope that these have been read and acknowledged by the board.

Dear Members of the Development Appeal Board,

Since my arrival in Canada and Banff in 1975 - starting at the Banff Springs Hotel and subsequently owning and operating Le Beaujolais Restaurant for 36 years with my wife Esther - we have devoted our lives to hospitality with pride, commitment, and always a high standard. We enjoyed great support from a large, affluent customer base, locals, and the countless occasions of clients celebrating special milestones. We did our part to contribute to the local community, raised our three children here (Fabienne, Alexandra and Sandro), sat on the Banff Lake Louise Tourism Board, and spent countless hours running the Banff Gymnastics Club. Having spent so many years here running our Four Diamond operation, our family identity became known simply as 'Beaujolais'.

After we sold the Beaujolais in 2016, I was thinking of what to do next and it didn't take long until I found a new future. The Christou family approached me to see if I might be able to help with their B&B and bring it some 'Beaujolais Hospitality Service'. It seemed like a perfect fit! An opportunity to share my experience, work a bit, and continue to be part of the Banff Hospitality scene.

I consulted with the Banff Planning Department at that time and followed their suggestion to acquire a Service Contractor-Mobile Chef business license. This license was recently renewed, # 4125 Beaujolais Hospitality Services. I was advised that this license allowed me to be hired by the Christou family and provide services to their B&B. With this license in place along with the Christou's Development Permit for '4 Rooms or Less' we ventured forward.

For the past 2 years we have worked hard to help Greg Christou and his family build up their business at Thea's House and are very proud of our contributions to this endeavour. The accolades, endorsements, and reviews have been overwhelming. Booking.com, the world's largest booking engine, gives Thea's House a 9.7 rating - the highest rating of any Banff accommodations (including all Hotels). We are proud recipients of the 'Certificate of Excellence' from Trip Advisor and have also received the highest rating in Banff from Airbnb.

We are also proud to be contributing to Banff tourism: the restaurants, shops, other services and to the surrounding community. The bookings have exploded. This past December, Thea's House was already 90% booked for this 2018 summer season, which is a matter of 3 weeks away! This represents more than 550 room nights with their deposits paid. Imagine how stunned we were when the Christou's Business Permit renewal was denied with no warning. The consequences of this decision could be devastating - not only to our livelihoods, but to the hundreds of guests who would no longer have accommodations in Banff this summer. What will they do, what will we do, and what could this do to the reputation of Banff?

We therefore ask that you please reinstate the Christou's license, just as it has been for the last two years - 4 Rooms or Less, and at the bare minimum at least for the summer season which many people have already booked and are relying on. We've relied on this license to go forward with our business; a reasonable thing to do. We believe we've been running an honest business and are long-term residents and contributors to this community. Thank you very much.

Sincerely,
Albert & Esther Moser