

MINUTES OF THE DEVELOPMENT APPEAL BOARD
of the Town of Banff in the Province of Alberta
Town Hall Council Chamber
Thursday, August 31, 2006 at 9:00 am

BOARD MEMBERS PRESENT

Philip Carmody	Public Representative – Vice-Chair
Diana McRoberts	Public Representative
Peter Watts	Parks Canada Representative
Chip Olver	Council Representative
Ossi Treutler	Council Representative

BOARD MEMBERS ABSENT

Neil Tanner	Public Representative – Chair
Greg Thompson	Parks Canada Representative

ADMINISTRATION PRESENT

Randall McKay	Secretary to the Development Board
Troy Pollock	Senior Planner/Development Officer
Megan Squires	Planner/Development Officer
Tara Johnston	Administrative Assistant (Recording Secretary)

1.0 CALL TO ORDER

The Vice-Chairperson called the meeting to order at 9:08 a.m.

2.0 APPROVAL OF AGENDA

DAB05-15 Moved by Treutler to approve the agenda as presented.

CARRIED

3.0 ADOPTION OF PREVIOUS COMMITTEE MINUTES

DAB05-16 Moved by Treutler to approve the minutes of the March 6, 2006 meeting of the Development Appeal Board as presented.

CARRIED

DAB05-17 Moved by Treutler to approve the minutes of the March 9, 2006 meeting of the Development Appeal Board as presented.

CARRIED

4.0 REPORTS

4.1. Appeal #02-06

Appeal 02-06 represents the appeal of a decision by the Municipal Planning Commission to refuse Development Permit 06DP26 for a bed and breakfast home located at 120 Kootenay Avenue on the grounds of non-compliance with Section 10.3.8 of Land Use Bylaw 31-3, which requires a minimum separation of 75.0 metres between bed and breakfast homes.

Notification to Affected Neighbours and Media Announcement

Administration confirmed that notice was given to the appellants and all affected parties in accordance with the Municipal Government Act and Banff Land Use Bylaw 31-3.

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Declaration of Conflict of Interest by Board Members

Councillor Treutler stated that his parents own and operate a Bed and Breakfast home. Treutler declared a conflict of interest and left the meeting at 9:12 a.m.

Public Present Objecting to Any Board Member Hearing This Appeal

No members of the public present objected to any of the remaining board members hearing the appeal.

Development Officer's Comments

Megan Squires, Planner and Development Officer provided the board with background of Development Permit Application 06DP26. Administration provided the following comments:

Background

The applicant purchased the property from the current owner/operator in June 2006. As a result of the change in ownership, a new Development Permit application is required. A bed & breakfast has been operating at 120 Kootenay since 1994 with issuance of Development Permit 94DP58.

At the time of the original report to the MPC the proposed bed & breakfast home was located less than 75m from four other existing bed & breakfast homes including 116 Mountain Avenue (97DP04), 117 Spray Avenue (91DP87), 104 Mountain Lane (98DP17), and 119 Mountain Avenue (98DP63). The bed and breakfast home at 117 Spray Avenue was in closest proximity to the proposed bed and breakfast. At the time that the MPC made its decision, the ownership of the bed and breakfast home at 117 Spray Avenue was in question. Planning and Development has since confirmed that ownership of 117 Spray Avenue has changed and as a result the current owners require a new development permit to operate the bed and breakfast home, should they choose to do so. The present owner has been notified of this requirement and at this time 117 Spray Avenue is not authorized to operate as a bed and breakfast home.

Planning and Development is of the opinion that a variance to s. 10.3.8 of the Land Use Bylaw is warranted to reduce the minimum separation distance between the proposed bed and breakfast home and the bed and breakfast home located at 119 Mountain Avenue from 75 metres to 24 metres. The variance is warranted given:

- a. The site configurations, and in particular the large villa lots in the RSA and RRA Land Use Districts, which ensure that there is significant distance between bed and breakfast homes; and
- b. The differing orientations of the access routes to the approved bed and breakfast homes.

Development Overview

The subject property is located in the 'RSA' (Spray Avenue) Land Use District. There are three buildings located on this property: one single-family home and two detached garages. The principle dwelling contains seven bedrooms on two floors; two bedrooms located on the ground floor are proposed to be used in conjunction with the bed and breakfast home. One guest room contains one queen-sized bed (2 pillows total). The second bedroom contains one queen sized bed and one single bed (3 pillows total). Both rooms contain ensuite bathrooms and are approximately 13 m². An inspection of the property confirmed that improvements have been made to the two guest rooms.

A large kitchen and seating area (17.2m²) are proposed for the required indoor amenity area. The total area allocated for outdoor amenity space for guests is approximately 30 m². In accordance with the Land Use Bylaw s. 8.16.1, one parking stall is required per guest room in addition to the parking requirements of the owner's dwelling. Four parking stalls can be provided

Applicable Regulations

Bed and breakfast homes are a discretionary use in the 'RSA' (Spray Avenue) Land Use District. Eight bed and breakfast homes are permitted in this district. Currently there are three homes in operation.

Municipal Planning Commission (MPC) Decision

On June 14, 2006 the MPC postponed a decision on Development Permit 06DP26 for a bed and breakfast home located at 120 Kootenay Avenue pending:

- (a) Submission of a revised site plan addressing parking access/egress and safety.
- (b) Solicitation of comments by the Town of Banff of neighbouring property owners regarding clustering of bed and breakfast homes in the 'RSA' Residential Spray Avenue and 'RRA' Residential Rainbow Avenue Land Use Districts.

On July 12, 2006 the applicants provided a revised site plan showing two new parking stalls in the front yard to address the concerns regarding parking that were raised by the MPC at the previous meeting.

The Town issued a letter to all of the property owners in the 'RSA' district, as well as adjacent owners in the 'RRA' district. Recipients were asked to provide feedback on the impacts, if any, of multiple bed and breakfast homes operating in close proximity to one another. The Town received six comments all in support of the proposed bed & breakfast home.

On July 12 the Municipal Planning Commission (MPC) refused a Development Permit application for a bed and breakfast home at 120 Kootenay Avenue on the grounds of non-compliance with Section 10.3.8 of Land Use Bylaw 31-3, which requires a minimum separation of 75.0 metres between bed and breakfast homes.

Appellant Presentations

Shane Yarmaloy and Amber Cameron

The appellants, Shane Yarmaloy and Amber Cameron submitted a written appeal appealing on the grounds that both properties (120 Kootenay Avenue and 117 Spray Avenue) are large lots compared to all surrounding lot sizes. The distance between the houses is such that guest areas and entrances would not be visible to each other. The appellants feel that this decision would set precedence and jeopardize future approvals for all other bed and breakfast locations that are within 75m allowance. In addition to that, current bed and breakfast homeowners may hesitate to put any improvements into their operation, as they may never get a return on investment.

Yarmaloy noted that they would have submitted an application for a development permit prior to possession of the property but felt that improvements to the property were necessary before an application could be made.

Those in Favour of the Appeal

Barbara Christou, President of the Banff Bed and Breakfast Association, spoke to their written submission to the DAB in support of the proposed application to operate a bed and breakfast home at 120 Kootenay Avenue.

Those Opposed to the Appeal

There was no one in opposition to the appeal.

Development Officer's Response

Minutes approved by: _____

The Development Officer reiterated that Planning and Development is of the opinion that a variance to s. 10.3.8 of the Land Use Bylaw is warranted to reduce the minimum separation distance between bed and breakfast homes given the unique configuration of the area and that the orientation and access to each of the subject properties are from different roadways.

Appellant Rebuttal

The appellant had no rebuttal.

Board Discussion

Administration and the Appellants provided the following information in response to questions asked by the Board:

- Letters of support were received from the property owners of 138 Kootenay Avenue, 124 Kootenay Avenue, 116 Mountain Avenue, 128 Kootenay Avenue, 119 Spray Avenue and 127 Spray Avenue.
- There is no valid business licence or development permit for a bed and breakfast at 117 Spray Avenue.
- The unique configuration of the RSA Land Use District is such that an unusual number of bed and breakfast homes are clustered in the area.
- The present floor plan of the subject property shows seven bedrooms, which exceeds the number allowed in the RSA district in the bylaw. One of the bedrooms is currently being used as an office/den.
- The kitchen as shown on the floor plans contains only a refrigerator and sink. It will be used only as a preparation area and amenity area for guests.
- Administration confirmed that at the time of the first MPC report 6 of 8 available bed and breakfast licences were in existence that included 120 Kootenay Avenue and 117 Spray Avenue. Presently there are four valid development permits for bed and breakfast homes in the RSA district.
- Two bedrooms will be permitted to be used as bed and breakfast accommodation. A new development permit would be required if the owners wished that other bedrooms be used as guest rooms.
- It is possible that the parcel of land at 117 Spray Avenue could be subdivided in the future.

Motion to Continue Discussion In-Camera

DAB05-18 MOVED by McRoberts to go in camera at 9:40 a.m.

CARRIED

Motion to Leave In-Camera Discussion

DAB05-19 MOVED by Watts to leave in-camera at 10:07 p.m.

CARRIED

Verbal Decision Announced

DAB05-20 That Appeal 02-06 be upheld and Development Permit Application 06DP26 for a bed and breakfast home at 120 Kootenay Avenue be approved with a variance to Section 10.3.8 of Land Use Bylaw 31-3 to vary the minimum separation between bed and breakfast homes from 75m to 24m and subject to the following conditions:

(1) Conditions to be met prior to issuance of the Business Licence:

Minutes approved by: _____

- (a) Pay to the Town of Banff an application fee of \$325.00 (\$300 + \$75/room - \$125)
- (b) Pay to the Town of Banff a variance fee in the amount of \$250.00 (\$250.00 / variance).
- (c) Pay to the Town of Banff a Municipal Planning Commission processing fee of \$100.00.
- (d) Submit detailed floor plans for the dwelling showing compliance with section 12.31.8 (b) of Land Use Bylaw 31-3 "*No dwelling shall contain more than six bedrooms*". A maximum of two bedrooms have been approved for use as commercial accommodation units.
- (e) Submit a detailed plan and cost estimate for the two parking stalls to be constructed in the front yard. The plan shall specify all materials to be used to construct the parking stalls, as well as detailed information about the location and dimensions of each stall, and all landscaping to be retained on the site. The plan will be subject to review and approval by the Development Officer. Provide an irrevocable letter of credit in the amount of 125% of the cost estimate to secure completion of this work.

(2) General Conditions:

- (a) Obtain a Business Licence from the Town of Banff for the operation of a Bed & Breakfast Home. The number of commercial accommodation units shall be restricted to two (2) and the number of pillows to five (5);
- (b) The Development Permit is valid for a period not to exceed the term of the Business Licence or two (2) years from the date of issuance, whichever first occurs;
- (c) On-site parking shall conform to the approved site plan. No parking of guest vehicles is permitted on adjacent public roadways;
- (d) All signs require a separate Development Permit in accordance with the Land Use Bylaw;
- (e) The Bed and Breakfast Home shall be operated exclusively by the live-in owner as an accessory use. The Bed & Breakfast Home shall not change the principal residential character, use or external appearance of the dwelling;
- (f) No commercial accommodation units shall contain a kitchen;
- (g) Vehicular traffic generated by the Bed and Breakfast Home shall not be in excess of that which is characteristic of the neighbourhood in which it is located;
- (h) Contact the Calgary Health Region at 762-2990 regarding Alberta Health *Guidelines for Bed and Breakfast Establishments* and to arrange an inspection of the property prior to operation.
- (i) Contact the Calgary Health Region at 762-2990 to obtain a food establishment permit prior to operating the bed and breakfast; and
- (j) Comply with the Alberta Fire Code 1992.
- (k) The applicant shall arrange to have all site improvements completed no later than one year from the date of this Order. In the event that this work is not completed by this date, the Town shall cash the Letter of Credit and arrange the completion of this work at the expense of the property owner;

REASONS FOR THE DECISION:

From the evidence presented, the Development Appeal Board found that a variance to the minimum separation between the bed & breakfast homes was warranted in consideration of the following:

- 1) The unique configuration of the RSA Land Use District primarily containing large villa lots;
- 2) The differing orientations and points of access to the existing bed and breakfast homes within 75m of the subject property;
- 3) The letters of support received from adjacent neighbours;
- 4) The closest existing bed and breakfast home being located 24 metres away and it being separated by a roadway;
- 5) All other bed and breakfast homes in the area have been in operation for approximately ten years with no apparent concerns about concentration of bed and breakfast homes.

CARRIED

5.0 CORRESPONDENCE

No correspondence was considered.

Minutes approved by: _____

6.0 NEW BUSINESS

6.1 Refund Requests

With respect to development appeal 01-05 and 01-06 the following applicants have requested a refund of their \$50.00 application fee in accordance with provisions of the Land Use Bylaw.

6.1.1 Dowling

6.1.2 Tarchuk

6.1.3 Wilcox

The Board discussed granting the refunds and is of the opinion these refunds are not warranted. Administration will draft letters notifying the applicants of the Board's decision.

7.0 INQUIRIES

There were no further inquiries.

8.0 ADJOURNMENT

DAB05-21 MOVED by McRoberts to adjourn the meeting at 10:13 a.m.

CARRIED

Phillip Carmody
Vice Chair

Tara Johnston
Recording Secretary