
TOWN OF BANFF DEVELOPMENT APPEAL BOARD

File number: 16DP75
Appeal numbers: 03-22
Appeal by: Robert Wilson (03-22)
Appeal against: Development Authority of the Town of Banff
Hearing date: August 18, 2022
Decision date: August 31, 2022
Board members: Ray Horyn, Chair, public representative
Robin Tuck, public representative
Lachlan MacIntosh, public representative
Grant Canning, Council representative
Ted Christensen, Council representative
Sheila Luey, Parks Canada representative
Kendra VanDyk, Parks Canada representative

DECISION

Description of Application

1. The appeal before the Development Appeal Board (the 'Board') was brought forward by the permit holder (Robert Wilson) who was an affected person by nature of being the leaseholder of 115 Spray Avenue and the operator of a Bed and Breakfast Home at the property, authorized by Development Permit 16DP75.
2. The appeal is against the decision of the Development Officer on June 20, 2022 to revoke Development Permit 16DP75 for a Bed and Breakfast Home at 115 Spray Avenue. The property is leased by Robert Wilson and has a land use designation of RSA (Spray Avenue) District.

Procedural History

3. A hearing was held on July 28, 2022 for the purpose of the applicant to request an adjournment. At that time an adjournment was granted and a new hearing date set for August 18, 2022.
4. The hearing commenced on August 18, 2022.
5. There were no objections to any Board member hearing the appeal.

Decision:

6. The appeal is denied and the decision of the Development Authority is upheld. Development Permit 16DP75 is revoked as of the date of this written decision.

Appearances

7. The Board received submissions from:
 - i. Emma Sanborn for the Development Authority
 - ii. Robert Wilson, appellant for 03-22
 - iii. Mr. Lee O'Donnell neither in support or favour of appeal 03-22
 - iv. Mr. Thomas Couture in support of appeal 03-22

Background and Summary of Evidence

Submissions of the Development Authority

8. Ms. Sanborn provided background information regarding the original permit application and subsequent revocation.
9. 16DP75 was a Development Permit authorizing the use of four (4) bedrooms on the upper floor of the house for use as Commercial Accommodation Units within a Bed and Breakfast home. The Town of Banff received a complaint on June 13, 2022 and began an investigation.
10. Ms. Sanborn presented evidence that online advertisements for the Bed and Breakfast Home were showing a room available for rent which was not approved for commercial accommodation as part of 16DP75, notably the master bedroom located on the main floor.
11. Ms. Sanborn presented evidence of online reviews posted by guests who attested to the use of the master bedroom as commercial accommodation.
12. On June 20, 2022 the Development Officer revoked Development Permit 16DP75. The revocation notice cited the failure to adhere to conditions 1a, 1c, 1d, 1m of Development Permit 16DP75, including evidence suggesting use of an unapproved Commercial Accommodation Unit being operated as one of the reasons for revocation.

13. Relevant sections of the Land Use Bylaw which relate to permit revocation were reviewed for the Development Appeal Board by Ms. Sanborn, in particular section 4.13.2.
14. Ms. Sanborn noted the existing process for an applicant to amend their Bed and Breakfast permit to change the specific rooms offered as Commercial Accommodation Units either through the annual renewal process or any other time.
15. Ms. Sanborn highlighted the receipt of a second complaint on July 26, 2022 and the evidence gathered during that investigation.

Submissions of the Appellant – Robert Wilson (03-22)

16. Mr. Wilson spoke in his role as appellant and development permit holder.
17. Mr. Wilson noted that one instance of using the master bedroom as a commercial accommodation unit was related to a guest with mobility challenges and that in that instance he stayed off site.
18. Mr. Wilson noted that photos of the master bedroom he used in online advertising were intended to illustrate the character of the property and not advertise the specific room for rent.
19. The appellant noted that subsequent to the approval of 16DP75 he had gone through a separate Development Permit process and at that time the Town did not raise any issues with the online advertising of the master bedroom.
20. Mr. Wilson noted the high level of investment he had made in the property and the positive reviews received from guests.

Submissions of those in favour of the appeal.– Lee O'Donnell

21. Mr. O'Donnell spoke to his interest in the Development Permit revocation process and stated that due to a lack of details about the process and interactions between the Town and Mr. Wilson he could not say whether he was in favour or opposed.
22. Mr. O'Donnell spoke to his role in a previous Town of Banff initiative referred to as the Bed and Breakfast Working Group and provided his perspective on that process relative to enforcement.

Submissions of those in favour of the appeal.– Thomas Couture

23. Mr. Couture spoke to his impression of the community benefits of Mr. Wilson's Bed and Breakfast.
24. Mr. Couture spoke to the revocation and enforcement process and his perspective on how the enforcement process should have occurred.

Rebuttal of the Development Officer

25. Ms. Sanborn spoke to the process of how applicants and the Development Officer work closely during the application to identify authorized rooms to be used as Commercial Accommodation Units within a Bed and Breakfast Home.
26. Ms. Sanborn noted that there was clear evidence of use of an unauthorized bedroom (master bedroom) as a Commercial Accommodation Unit and that the property owner had acknowledged that in this submission.

Response of the Appellant– Robert Wilson (03-22)

27. Mr. Wilson noted that he had never received a warning in relation to the Bed and Breakfast operation previous to the permit being revoked.
28. Mr. Wilson noted comparable enforcement cases which involved revocation.

Questions from the Board

29. The Board asked a series of questions of the appellant and the Development Officer.
30. Mr. Wilson noted that his Bed and Breakfast had an on-site manager employed on an annual basis and that the live-in owner or on-site manager were present whenever guests were present. Mr. Wilson noted that Condition 1(d) of his Development Permit authorized the presence of an on-site manager.
31. Ms. Sanborn submitted that the inclusion of an on-site manager in the wording of Condition 1(d) likely represented an administrative error, and that subsequent discussions with Mr. Wilson and the annual renewal process clarified the live-in owner requirement.
32. Ms. Sanborn was asked whether the use of an on-site manager was permitted by the Land Use Bylaw for a Bed and Breakfast Home and replied that it was not.
33. Mr. Wilson answered questions regarding the operation of the Bed and Breakfast and the control of content on online advertising platforms.
34. Ms. Sanborn clarified the Land Use Bylaw regulations around the maximum number of Commercial Accommodation Units within Bed and Breakfast Homes and Bed and Breakfast Inns.
35. Ms. Sanborn responded to a question that the revocation of the permit stemmed from the use of an unauthorized Commercial Accommodation Unit (master bedroom) and that because the master bedroom was the only bedroom available for the owner, then the owner could not have been on site at that time.

36. Ms. Sanborn stated that the Development Permit requires compliance with the Land Use Bylaw on the first page of the Development Permit.

37. Ms. Sanborn noted the Land Use Bylaw clauses which enabled enforcement, including revocation.

Reasons

38. The Board reviewed all evidence and arguments, written and oral, submitted by the parties and focused on key evidence and arguments in outlining its reasons. The Board has considered the context of the approved Development Permit, applicable legislation, plans and policies, sound planning considerations and the merits of the application.

39. The Board recognizes that the Development Permit process for Bed and Breakfast Homes are of a highly detailed nature, and that the application, approval, and renewal processes ensure a high level of understanding amongst applicants with respect to what rooms within a Bed and Breakfast home can be used for Commercial Accommodation as well as other requirements for legal operation of a Bed and Breakfast Home. All requirements are specified in the Development Permit, including the requirement for adherence to the Land Use Bylaw.

40. With respect to the use of an unauthorized room as Commercial Accommodation, the Board acknowledges that the appellant admitted that this had occurred. The operation of an unauthorized bedroom as a Commercial Accommodation Unit is grounds to revoke the Development Permit under Section 4.13.2 of the Land Use Bylaw.

41. With respect to the advertisement of an unauthorized room, the Board did not accept that this was intended to provide a sense of character of the property as stated:

42. With respect to the enforcement process, that the annual Development Permit renewal process for Bed and Breakfast Homes affords an opportunity for operators of these facilities to propose changes, or to request clarification regarding permit conditions.

43. In respect of the Development Permit condition 1(d) for this permit, the Board finds that there is conflicting language between the permit condition and the Land Use Bylaw, where the former indicates an option for an on-site manager while the latter does not. In this situation, the Board takes the position that the conflicting language does not absolve a permit holder from complying with the Land Use Bylaw as required in the Development Permit where it states "This Development Permit is issued subject to conformance with the Town of Banff Land Use Bylaw and all of the Bylaws of the Town of Banff applicable thereto...". While the Board recognizes the potential confusion this may have caused, it also acknowledges that multiple opportunities existed for the applicant to gain clarity including through the renewal process.

Conclusion

44. On this basis, the Board finds the operation of an unauthorized operation of a Commercial Accommodation Unit did occur. This is grounds for revocation of Development Permit 16DP75.



Ray Horyn, Vice-Chair
Development Appeal Board

August 31, 2022

Date