
TOWN OF BANFF DEVELOPMENT APPEAL BOARD

File No: 19DP62
Appeal: 05-19
Appeal by: Kevin and Shirley Feragen
Appeal against: Development Authority of the Town of Banff
Hearing dates: January 8th, 2020
Decision date: January 8th, 2020
Board members: David Bayne, Chair Public representative
Peter Eshenko, Public representative
Ray Horyn Public representative
Doug Macnamara Public representative
Kendra Van Dyk Parks Canada representative
Grant Canning Council representative
Board Secretary: Darren Enns

DECISION

Description of Application:

1. The appeal before the Development Appeal Board (the "Board") was brought by affected persons, Kevin and Shirley Feragen.
2. On November 20, 2019, the Municipal Planning Commission conditionally approved a development application permit for a change in location of a previously approved Bed and Breakfast Home containing two (2) Commercial Accommodation Units within the property at 137 Rainbow Avenue, to an Accessory Dwelling Unit on the property containing 1 bedroom, subject to the conditions of approval.

Procedural History:

3. The hearing began at 9:00 am on Wednesday, January 8th, 2020.

Decision:

4. The appeal is denied, and the decision of the Municipal Planning Commission is upheld. A development permit shall be issued by the Development Authority.

Appearances:

5. The Board received submissions from:
 - a. Emma Sanborn for the Development Authority
 - b. Jordan Otrhalek, agent for the appellant
 - c. Kevin Hann, the applicant

Background and Summary of Evidence:

Submissions of the Development Authority

6. Ms. Sanborn provided the following information regarding the application.
7. The subject property is located within the Rainbow Avenue (RRA) Land Use District. The existing single detached house was originally constructed in 1955 and extensively renovated in 2007/2008.
8. In 2016 an application for a Bed and Breakfast Home containing two commercial accommodation units was approved by the Municipal Planning Commission.
9. In 2018 a two-bedroom accessory dwelling above the garage was approved by the Municipal Planning Commission.
10. The key considerations for this appeal are that the current application is for a proposed change of location of the approved 'Bed and Breakfast Home' use within the property to the two bedroom dwelling unit above the garage, and for the creation of a one-bedroom accessory dwelling unit within the lower level of the single detached home. Bed and Breakfast Homes, Single Detached Homes, and Accessory Dwellings are all discretionary uses within this Land Use District.
11. Ms. Sanborn described the floor plan layouts and the parking arrangements on the site.
12. The proposed accessory dwelling meets the square footage requirement for the district. An amenity area, although not required, is provided.
13. The proposed bed and breakfast home has the required amenity area and meets the space requirements for commercial accommodation units. Removal of the existing kitchen is a condition of the approval.
14. The site currently has six parking stalls. The application requires five parking stalls on the site, with non-tandem stalls for the bed and breakfast.
15. The site has both lane and public roadway access.
16. Public notification was provided and the planning department also contacted individuals who had expressed concern with previous applications on the site.

17. Ms. Sanborn summarized by stating that bed and breakfast homes and accessory dwelling units are discretionary uses within the RRA land use district and that the application meets the requirements of the Land Use Bylaw.

Submission of the appellants

18. Mr. Otrhalek submitted that the appellants, who live at 132 Park Avenue, do not oppose development generally; they oppose the use of a multi-year, multi-stage development permit application process in order to obtain two discretionary use development permits.
19. The appellants raised the issues below in their appeal. These issues are described in detail in the appellant's written submission:
 - a. Granting the original bed and breakfast license was contrary to the Land Use Bylaw
 - b. The original accessory dwelling development permit was granted based on assurances from the developers that there was no intention to transfer the existing license to the accessory dwelling
 - c. The Municipal Planning Commission erred by not imposing appropriate conditions on the proposed accessory dwelling (18DP05) in 2018.
 - d. As a result of the Municipal Planning Commission's failure to impose conditions, application 19DP62 will result in the loss of one bedroom of housing and that this is contrary to the Banff Community Plan
 - e. The current application may result in the Floor Area Ratio being exceeded
 - f. The application affects traditional vehicular use, traffic and parking in the neighbourhood.
 - g. The application affects neighbourhood character and would unduly interfere with the use, enjoyment, safety and aesthetics, and value of the neighbouring properties.
 - h. A series of individual applications should not be used to achieve a cumulative result that would not be approved if applied for under a single development application.
20. The appellants submitted that the Municipal Planning Commission decision is inconsistent in the application of the Banff National Park Management Plan and the Banff Community Plan and that the justifications of the need for additional housing were inconsistently applied in the multi-stage process.
21. The appellants stated that the cumulative applications would not have been approved in a single application and the result is a misapplication of the Land Use Bylaw and discretionary use provisions. They further submit that the multi-stage process does not conform with the housing goals and objectives of the Banff Community Plan and results in the loss of at least one room of long-term rental accommodation.
22. The appellants argued that the over-development of the site blurs the line between the use of a single detached housing as a primary use and commercial accommodation. They submit that if the accessory dwelling is not rented, the result is an increase of the floor area ratio of the property.

23. The appellants requested that if the development permit is confirmed that the Development Appeal Board apply two conditions:
 - a. that the accessory dwelling must be rented as a condition of the bed and breakfast license, and
 - b. that the window in the commercial accommodation units facing the rear lane be glazed to provide privacy for the appellants.

Submission of the applicant

24. Mr. Hann presented a written submission and addressed reasons against the appeal. He pointed out that the granting of the original bed and breakfast license and the original development permit for the accessory dwelling are not part of this appeal.
25. The current application is in full compliance with Land Use Bylaw section 10.3.2.
26. The applicant stated that with regarding to assurances, that there are no 'valid' or 'invalid' assurances in the development permit process. An application is either refused, granted, or granted with conditions. If conditions are not met the permit is not granted. If conditions are breached, the development permit can be revoked.
27. Mr. Hann pointed out that under the Land Use Bylaw, a property can have both an accessory dwelling and bed and breakfast accommodation. The application for an accessory dwelling in 2018, rather than a duplex, allowed for the consideration of both a bed and breakfast and an accessory dwelling.
28. Loss of housing should not be considered by the Board; unlike commercial developments, there is no requirement in the Land Use Bylaw to replace a bedroom when there is a change of use to a bed and breakfast. Mr. Hann pointed out that both developments on the site have added to the housing inventory.
29. The maximum allowable Floor Area Ratio for the Rainbow Avenue District is .45 and the actual Floor Area Ratio of the site is below that, at .40.
30. The new development will not increase traffic in the laneway.
31. Mr. Hann submitted that the development will not negatively impact neighbourhood character. The purpose of the Rainbow Avenue District is to provide for intensification through eventual redevelopment of single detached homes into duplex housing. The new garage and accessory dwelling met all the requirements of the Banff Design Guidelines and was not built to maximum height or site coverage.
32. Finally, Mr. Hann stated that the primary reason for the current application is that the bed and breakfast operation is better suited for the two bedrooms with adjoining bathroom in the suite above the garage. The suite in the basement of the house is better suited to long term tenants.

The Development Authority

33. Ms. Sanborn addressed points raised by the appellants in their written submission.
34. The Land Use Bylaw discourages, but does not prohibit, below grade bed and breakfast rooms. In the original application for the bed and breakfast home in 2016, The Municipal Planning Commission was satisfied that the space provided sufficient natural light.
35. The Land Use Bylaw does not require that a bed and breakfast be rented for a minimum number of nights, nor that there is signage for a bed and breakfast operation.
36. Regarding multi-stage applications, the Development Approving Authority makes decisions based on the application before it and the then current planning considerations. A landowner has the right to apply for development permits. In all three of the applications regarding the subject property, the Municipal Planning Commission considered the current situation and the specific application before it.
37. The particular floor plan change proposed by the applicant did not qualify as Development under the Land Use Bylaw and therefore did not require public notification.
38. In the policy context, the highest level of consideration is the Banff Incorporation Agreement which indicates that the primary purpose of the Town is to serve as a visitor centre and provide accommodation and services. The Banff Community Plan speaks of the need for housing, but also emphasizes the need for positive visitor experiences.
39. With regard to the impact of the development on neighbourhood characteristics, the town imposes quotas on bed and breakfast licenses according to district. The Rainbow Avenue District has a quota of only two bed and breakfasts. This application is appropriate for the district.
40. Floor Area Ratio exceedance is not an issue for this development.
41. The site meets the parking requirements for a single detached home, a bed and breakfast, and an accessory dwelling.
42. Regarding the requested condition for window glazing, privacy is not a bylaw concern and is not guaranteed by the Land Use Bylaw.

Rebuttal from the appellants

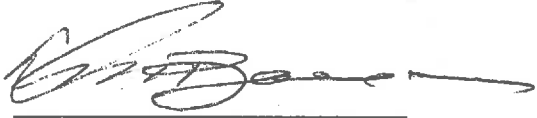
43. Mr. Otrhalek clarified that the appellants are not asking that the original permits be revoked. He asked that the board look at the cumulative effects of the new application.

Reasons

44. The Board considered the context of the proposed development, along with applicable legislation, plans and policies, key Land Use Bylaw provisions, as well as guidelines, sound planning considerations and the merits of the application.
45. Based on the evidence presented through the written and oral submissions from the appellant, the applicant and the Development Authority, the Board finds the following:
46. The subject of the current application and appeal is for a change in location of a previously approved bed and breakfast home within the property, to a previously approved accessory dwelling on the property. The original bed and breakfast application is not the subject of this appeal.
47. The requirements for the original accessory dwelling application were met, the application was approved by the Municipal Planning Commission and was not appealed.
48. The Board acknowledges the concern of the appellant for the loss of one bedroom of housing. The Board notes that the Banff Community Plan encourages the development of housing and speaks of dwellings, but not bedrooms specifically. The Plan does not address the loss of bedrooms.
49. The allowable Floor Area Ratio for the site is .45. With this application, the Floor Area Ratio will be .40 and will not be exceeded.
50. The site requires five parking stalls and the Board notes that six stalls will be provided. Non-tandem parking is available for the bed and breakfast operation. The site also has access to both a public road and a laneway. The Board finds that traditional vehicular use, traffic and parking in the neighbourhood will not be negatively affected.
51. The Land Use Bylaw describes that the purpose of the Rainbow Avenue Land Use District is to provide for eventual redevelopment of single detached homes into duplex housing. Accessory dwellings and bed and breakfast homes are discretionary uses in the district. The new garage and development meet the Banff Design Guidelines. Other homes in the district have undergone redevelopment. The bed and breakfast home on the subject property is one of two allowed in the district by the quota system for bed and breakfast homes in Banff. The previous development applications for the site were approved by the development authority and met the necessary conditions. Additional conditions are to be met before a development permit is granted for the current application. For these reasons, the Board finds that the development meets the requirements of the Land Use Bylaw and will not unduly interfere with the use, enjoyment, safety, aesthetics, and value of neighbouring properties.
52. In this appeal, the board has considered only the current application and the planning requirements related to it.
53. The board finds that the conditions requested by the appellant are not supported by provisions within the Land Use Bylaw.

Conclusion:

On this basis, the Board finds that the proposed development application permit for a change in location of a previously approved Bed and Breakfast Home containing two (2) Commercial Accommodation Units within the property at 137 Rainbow Avenue, to an Accessory Dwelling Unit on the property containing 1 bedroom complies with Land Use Bylaw. Accordingly, the Board upholds the decision of the Municipal Planning Commission and denies Appeal #05-19.



David Bayne
Chair
Development Appeal Board



January 21, 2020