

**MINUTES OF THE DEVELOPMENT APPEAL BOARD**  
**of the Town of Banff in the Province of Alberta**  
**Town Hall Council Chamber**  
**Thursday, May 16, 2019**

**BOARD MEMBERS PRESENT**

David Bayne	Public Representative (Chairperson)
Ray Horyn	Public Representative
Stavros Karlos	Public Representative
Grant Canning	Council Representative
Karen Sorensen	Council Representative
Kendra Van Dyk	Parks Canada Representative
Sheila Luey	Parks Canada Representative

**BOARD MEMBERS ABSENT**

Peter Eshenko	Public Representative
Doug Macnamara	Public Representative
Dak Kerr	Public Representative (Vice-Chairperson)

**ADMINISTRATION PRESENT**

Darren Enns	Manager, Planning and Development
Dave Michaels	Planner
Jennifer Laforest	Planner
Tara Johnson	Municipal Clerk
Barbara McNeil	TBA – Recording Clerk
Kerry MacInnis	Administrative Assistant Planning (Recording Secretary)

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**1.0 CALL TO ORDER**

The Chair called the Thursday, May 16, 2019 Development Appeal Board hearing to order at 9:00a.m.

**2.0 APPROVAL OF AGENDA**

DAB19 - 23 Moved by Sorensen to approve the May 16, 2019 Development Appeal Board agenda as presented.

**CARRIED**

**3.0 ADOPTION OF PREVIOUS MEETING MINUTES**

DAB19 - 24 Moved by Karlos to approve the minutes of the May 2, 2019 meeting of the Development Appeal as presented.

**CARRIED**

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.

Minutes approved by: \_\_\_\_\_

#### Declaration of Conflict of Interest by Board Members

There was no conflict of interest declared by any board members.

#### 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.

### **4.0 APPEAL**

#### **4.1. APPEAL #04-19**

Appeal by the applicant against a decision of the Municipal Planning Commission to approve an extension to Development Permit 17DP94 for a proposed Bed and Breakfast Home at 510 Deer Street, subject to conformance with revised conditions of approval which require the registration of an access agreement on title (condition 1(e)) and registration of a restrictive covenant on title prohibiting the operation of more than three commercial accommodation units and prohibiting the use of any commercial accommodation units while the owner is not residing at the property (condition 1(f)).

#### Development Officer's Comments

Laforest spoke to the written report included in this agenda package:

- On February 14th 2018, Municipal Planning Commission provided a conditional approval for 17DP94 - an application for a bed and breakfast home and residential renovation at 510 Deer Street;
- The application, although similar in nature to other bed and breakfast homes, requires the applicant obtain and register an Access Easement with adjacent property owners by February 14<sup>th</sup> 2019. The original decision from Municipal Planning Commission has expired and the deadline associated with condition 1(e) has expired. The applicant requested an extension on February 12<sup>th</sup> 2019 in order to provide additional time to meet this condition;
- Development Permits are valid for a period of one year upon which time they expire. Where a development permit expires, a new development permit application for the same development permit is required. Such an application shall be dealt with as a new application and there shall be no obligation to approve or extend a development permit on the basis that a previous permit has been issued;
- The intent with the expiration of a development permit is to ensure that development permits are not speculative. The expiration of a development permit, is also provided to give the development approving authority the opportunity to capture changes to the land use bylaw or conditions as considered appropriate by the Development Approving Authority;
- In situations where modifications are required to the conditions of approval and the application is associated with a discretionary use, the decision is forwarded to Municipal Planning Commission for consideration;
- On April 10, 2019, MPC approved an extension to this proposed development permit subject to conformance with the revised conditions of approval and the plans dated February 5<sup>th</sup> 2018;
- Revised conditions were as follows:

Minutes approved by: \_\_\_\_\_

- 1(e) Applicant to submit an executed Access Agreement (easement) ensuring perpetuity to the satisfaction of the Director of Engineering and to the satisfaction of the Development Officer that allows for the unobstructed access across Lots 15, 16, 17, 18, 19, Block 32 Plan 638HD and Lot 20 Block 32 Plan 6719BC as per Schedule C within one (1) year; and further provide proof of registration of the Access Agreement from Alberta Land Title's Office by August 13th 2019. Should 1 or more Bed and Breakfast allocations be available in the RTM land use district on August 13th, 2019 then the deadline for fulfilling this condition will automatically extend to February 13th, 2020;
- 1(f) Enter into a Restrictive Covenant with the Town of Banff to be registered against the Certificate of Title for the property for the purposes of prohibiting the operation more than three (3) Commercial Accommodation Units and prohibiting the use of any Commercial Accommodation Units while the owner is not residing at the property. The terms and wording of the Agreement shall be to the satisfaction of the Development Officer. Pay the Town of Banff the Legal Agreement Surcharge of \$600.00 as established by Town of Banff Development Fee Schedule Bylaw 389;
- Notification of this development was given to the applicant and adjacent neighbors.

Enns comments provided a brief summary of the proposed development:

- The appeal is focused on both original and revised conditions of approval;
- Why have a restrictive covenant? The history comes from the educational challenges for all bed and breakfast operations; to ensure everyone knows the ground rules before they begin operating a BnB (restrictive covenant). Restrictive covenant is consistent with the Land Use Bylaw. All BnB applicants are required to adhere to this restrictive covenant condition of approval;
- The required easement; this informal driveway is at the rear of the property and it is not a legal entity. An easement requirement is focused on securing legal access to required parking for 17DP94 but is also being used to ensure perpetual access for all;
- In 2018 Town reassessed Lot 14 against corporate safety and risk standards and asset divestment policies and as a result removed Lot 14 from consideration for the easement.
- The engineering standards of Lot 14 are such that it is not safe to be used for accessibility;
- Lot 21 was part of the original easement request but has since been removed as it's not required for accessibility;
- Lot 15 is required to be part of this easement.

Board Questions

Q: Would it have been easier to provide access to the proposed bnb by having access from Lot 14?

A: Lot 14 (TOB lot) has no interest in giving away property and by granting access (which has been deemed unsafe) would limit the potential residential redevelopment of Lot 14.

Q: Why didn't the TOB address this informal driveway previously?

A: This is an informal driveway that is more of a civil matter between owners.

Q: Is there any feedback from the adjacent property owners?

A: TOB has had previous meetings with adjacent property owners and there is an interest in having this informal laneway cleared up.

#### Appellant Presentation

O'Donnell made the following comments:

- The laneway, which is people's private property, has been used for over 70 years;
- Each neighbor could put a fence up around their properties today, however, it is no one's desire to put up a fence and block their neighbors;
- Mr. Horyn sold the property to me;
- Discussions have taken place with members of MPC and DAB around bnb's and this laneway;
- Council went in camera to discuss road closure of Lot 14.

#### Secretary to the Board

- Does anyone on the board believe they have a conflict in hearing this appeal? Does the applicant have any issues with anyone on the board hearing this appeal? No objections were made.

#### Appellant Presentation

- The revised conditions of approval wasn't communicated effectively.

#### Board Questions

Q: When you had requested an extension of your proposed development, were you not aware of the revised conditions of approval?

A: The administration's prepared package of the revised conditions of approval was never communicated with me prior to the MPC meeting on April 10<sup>th</sup>.

#### Appellant Presentation

- The proposed development is encouraging this easement. A lot of work has been done to move this proposal forward. Lot 15 should be removed from the easement agreement;
- Appealing conditions of approval 1(e), 1(f) and 1(h)iii;
- Condition 1(e); the six month extension was recommended by administration. Six-month extension is not enough time.
- Remove Lot 15 easement from the conditions of approval;
- Appealing condition 1(f) restrictive covenant;
- What does "not in residence" actually mean?
- What about using a stat declaration tool versus a restrictive covenant?
- The restrictive covenant shouldn't be applied to any proposed BnB developments;
- Appealing condition 1(h) iii "cannot rent rooms when not in residence". This condition needs to be amended to allow for renting a room to eligible residents for an appropriate timeframe.

- We have a heritage bylaw that allows for a BnB to operate without an in-resident operator?
- What is the definition of “in residence” mean?
- Condition 1(h) iii needs to be change “to allow for eligible residents to stay in the BnB when owner is not living in the residence”.

#### Board Questions

Q: Why does the appellant think Lot 15 should be removed from the easement requirements?

A: Lot 15 isn't required for accessibility to Lot 16.

Q: If lot 15 is removed, couldn't the lot become essentially “orphaned”?

A: Why would I (appellant) be responsible for that?

Q: What progress has been made with the adjacent neighbors to have easement agreements?

A: I (appellant) has informal agreements with all adjacent property owners except for one.

#### Those in Favour of the Appeal

None

#### Those Opposed to the Appeal

None

#### Development Officer's Comments

Laforest provided clarification on timelines with the proposed development;

- The appellant had requested that the extension request not go to MPC however, TOB received legal counsel that because of the discretionary use of the application, the extension request would need to go to MPC for review.

#### Enns Comments

- The easement condition is to the satisfaction of the development officer and manager of engineering;
- There are 19 conditions of approval and zero have been met to date;
- Condition 1(e) six month extension. A pending approval of a BnB will take up a potential “spot” of the BnB allocation;
- Restrictive Covenant - Not in residence “offering a room for the travelling public/non-resident commercial accommodation BnB. This is a tool that adds another layer of transparency of what has been approved;
- Restrictive Covenant condition has not been applied to all BnB's but to all new BnB applications or any existing applications that have modified their development permit;
- Condition 1(h) iii – commercial hotels and BnB homes aren't comparable when considering “live in owner/operator”;

### Board Questions

- Timeline – April 5, 2019 MPC agenda was posted on Banff.ca; April 10, 2019 MPC meeting, April 17, 2019 MPC decision/conditions mailed out to applicant and adjacent neighbors, May 1, 2019 the appeal was received and the deadline for appeals was May 2 2019.
- What if a resident is operating a BnB without the appropriate approval? TOB proceeds with enforcement.
- What does the DAB have the authority to do/not do?
- Condition 1(h) iii; applies to all BnB operators.

Q: Restrictive Covenant is this embedded in the LUB?

A: It is an administrative practice.

Q: “Live In Owner while in residence”; is that embedded in the LUB?

A: Yes

### Appellant’s Rebuttal

O’Donnell made the following comments:

- Manager of Engineering stated that Lot 21 wasn’t required;
- More time is required in order for this easement agreement to be met;
- A statutory declaration would be a better tool for clarity/enforcement versus the restrictive covenant;

### Board Questions

There were none.

### Motion to Continue Discussion In-Camera

DAB19 - 25 Moved by Canning that the DAB move in camera at 10:50a.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

DAB19 - 26 Moved by Horyn to return to the public meeting at 11:57a.m.

**CARRIED**

### Verbal Decision Announced

In the matter of appeal #04-19, an appeal by the applicant against a decision of the Municipal Planning Commission to approve an extension to Development Permit 17DP94 for a proposed Bed and Breakfast Home at 510 Deer Street, subject to conformance with revised conditions of approval which require the registration of an access agreement on title (condition 1(e)) and registration of a restrictive covenant on title prohibiting the operation of more than three commercial accommodation units and prohibiting the

use of any commercial accommodation units while the owner is not residing at the property (condition 1(f)).

The appeal is denied on the basis on the basis that the MPC and the development authority did not err in their application of the law. Specifically, the Municipal Planning Commission is granted the authority to issue conditions under section 4.8.3. There was no new information presented to DAB that would provide a basis for different conditions or conclusions from those made by MPC on any of the 3 items appealed by the applicant.

In accordance with the Municipal Government Act, the decision of the Development Appeal Board is not final for 15 calendar days after concluding the hearing. The written decision together with reasons for the decision will be sent to the appellant and to those present who have identified themselves to the Recording Secretary by name and mailing address.

**5.0 CORRESPONDENCE**

There was no correspondence presented.

**6.0 NEW BUSINESS**

There was no new business.

**7.0 INQUIRIES**

There were no inquiries.

**8.0 ADJOURNMENT**

The Banff Development Appeal Board meetings are held only when an appeal has been received. Meetings are tentatively scheduled for the first and third Thursdays of each month.

DAB19 - 27 Moved by Canning to adjourn the meeting at 12:00p.m.

**CARRIED**

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David Bayne  
Chairperson

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Kerry MacInnis  
Recording Secretary

Minutes approved by: \_\_\_\_\_