



**MINUTES OF THE DEVELOPMENT APPEAL BOARD  
of the Town of Banff in the Province of Alberta  
Thursday, November 26, 2020**

**BOARD MEMBERS PRESENT**

Grant Canning	Council Representative ( <i>left the hearing at 12:07pm and not part of the decision making process</i> )
Stavros Karlos	Public Representative
Ray Horyn	Public Representative
Peter Eschenko	Public Representative (Vice Chairperson)
Kane Shepetunko	Public Representative
Dak Kerr	Public Representative (Chairperson)
Lachlan Mackintosh	Public Representative
Sheila Luey	Parks Canada Representative
Kendra VanDyk	Parks Canada Representative

**BOARD MEMBERS ABSENT**

Peter Poole	Council Representative
-------------	------------------------

**ADMINISTRATION PRESENT**

Darren Enns	Director Planning and Development and Secretary to DAB
Dave Michaels	Manager Planner and Development
Libbey McDougall	Municipal Clerk
Barbara McNeil	Decision Writer to DAB
Kerry MacInnis	Administrative Assistant Planning and Recording Secretary

---

**PLEASE NOTE:** Due to the extraordinary circumstances and measures being taken to slow the spread of COVID-19, this meeting will be held **electronically** and will be **live streamed** on [www.banff.ca/live](http://www.banff.ca/live)

**All Members of MPC will be participating remotely.**

**1.0 CALL TO ORDER**

Administration called the Thursday, November 26, 2020 Development Appeal Board hearing to order at 9:12 a.m.

1.1. Appointment of Chairperson

DAB20 - 7 Moved by Mr. Karlos to appoint Mr. Kerr as Chairperson of the Development Appeal Board.

**MOTION CARRIED**

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



1.2. Appointment of Vice Chairperson

DAB20 - 8 Moved by Mr. Karlos to appoint Mr. Eschenko as Vice Chairperson of the Development Appeal Board.

**MOTION CARRIED**

1.3. Introduction of the DAB Decision Writer

Mr. Enns introduced Ms. McNeil as the DAB Decision Writer.

1.4. DAB Hearing Procedure Overview

Mr. Kerr reviewed the DAB hearing procedures as included with this agenda package.

Mr. Kerr introduced the municipal staff and members of the development appeal board.

**2.0 APPROVAL OF AGENDA**

DAB20 - 9 Moved by Mr. Eschenko to approve the November 26, 2020 Development Appeal Board agenda as presented.

**MOTION CARRIED**

**3.0 ADOPTION OF PREVIOUS MEETING MINUTES**

DAB20 - 10 Moved by Councillor Canning to approve the minutes of the January 8, 2020 meeting of the Development Appeal as presented.

**MOTION 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.

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. Request for adjournment, Appeal #01-20, from the appellants; Ms. Critchley and Dr. Nielsen, as included in this agenda package.

Those In Favor of the Request for Adjournment - Appellant Presentation

Mr. Timothy Bardsley, legal counsel for the appellants Ms. Critchley and Dr. Nielsen, addressed the DAB and spoke to the request for adjournment written submission included in this agenda package.

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



Ms. Critchley addressed the DAB in support of the request for adjournment as included in the written submission in this agenda package.

Those Opposed to the Request for Adjournment – Applicant Presentation

Mr. Nigel Boehm and Mr. Tom Wilder, applicants, addressed the DAB in opposition of the request for adjournment.

Mr. Mark Erickson, applicant, addressed the DAB regarding the storm water management plan for this proposed development as included in this agenda package.

Board Questions

Asked and answered.

Development Officer's Comments

Mr. Michaels spoke to the written report included in this agenda package and answered questions from the Board.

Appellant's Rebuttal

Mr. Timothy Bardsley and Ms. Critchley addressed the Board.

Motion to Continue Discussion In-Camera

DAB20 - 11 Moved by Mr. Eshenko that DAB move in camera at 9:53 a.m., to deliberate the request for adjournment, Appeal #01-20, and reach its decision in accordance with section 197(2.1) of the Municipal Government Act and section 3.2.12 of the Town of Banff Land Use Bylaw.

**MOTION CARRIED**

DAB reconvened in public hearing at 10:37 a.m., with Chairperson Kerr in the chair.

Motion to Leave In-Camera Discussion

DAB20 - 12 Moved by Mr. Eshenko that the Board rise and report.

**MOTION CARRIED**

Board Questions

Asked and answered.

Request for Adjournment Announced

DAB20 - 13 Moved by Mr. Karlos that in the matter of Appeal #01-20, the request for adjournment be granted and the appeal be postponed and heard on January 21, 2021.

**MOTION DEFEATED  
In Favor: Councillor Canning**



#### 4.2. APPEAL #01-20

Appeal has been filed with the Development Appeal Board regarding a decision of the Municipal Planning Commission as follows:

Appeal on grounds that the decision did not recognize an existing encroachment and its maintenance and access to property and that a condition of development approval regarding stormwater management was worded vacuously.

#### Development Officer's Comments

Mr. Michaels spoke to the written report included in this agenda package:

- 20DP41 proposed triplex housing and 06DP71 home occupation type 2 at 514 Buffalo Street;
- Property contains an existing historic cabin (single detached dwelling) which is a Municipal Historic Resource;
- Proposed addition to the cabin would result two additional dwelling units on the property, changing the use of the property to Triplex Housing;
- Proposed amendment to 06DP71 for Home Occupation Type II on the property includes a revised floor plan, and the removal of a dedicated parking stall for the Home Occupation;
- Two variances are proposed for the parking plan, maximum rear driveway width, and parking within the required side yard;
- Triplex housing is a Discretionary Use in RTM Tunnel Mountain District; The purpose of this district is to provide for duplex housing with eventual redevelopment to triplex and fourplex housing;
- Triplex Housing means a building containing three dwelling units, each having a separate entrance at or near grade.

#### Appellant Presentation

Ms. Critchley and Dr. Nielsen, appellants, addressed the DAB and spoke to the written documents included in this agenda package.

- No recognition of the retaining wall currently encroaching and its maintenance and access to property;
- Vacuous worded conditions of approval appendix 'A' 1(i)(f) regarding stormwater management plan and drainage details for the property relating to neighboring properties;
- Previous flooding issues from this site.

Mr. Timothy Bardsley, legal counsel for the appellants Ms. Critchley and Dr. Nielsen, addressed the DAB and spoke to the written documents included in this agenda package.

- Client's concerns about the proposed development including the encroachment of the existing retaining wall and the issues of the proposed stormwater management plan.
- Clients request some input in the stormwater management plan.



Those Opposed to the Appeal

Mr. Nigel Boehm and Mr. Tom Wilder, applicants, addressed the DAB and spoke to the written documents included in this agenda package.

- Committed to finding a solution to the storm water management issue and incurring the costs necessary to work with a civil engineer to design an appropriate system and plan;
- Willing to put into place an encroachment agreement with the neighbour to ensure that if anything is disturbed on their property, it will be returned to its original condition at the owner's expense.

Development Officer's Comments

Mr. Michaels spoke to the Land Use Bylaw district regulations on the stormwater management plan, the environmental design standards and the setback requirements.

Appellant's Rebuttal

Mr. Timothy Bardsley, legal counsel for the appellants Ms. Critchley and Dr. Nielsen, addressed the DAB and summarized his client's appeal.

Dr. Nielsen, appellant, addressed the DAB and summarized the appeal.

Councillor Canning excused himself from the DAB hearing at 12:07p.m. due to a previously scheduled meeting commitment at 1:00pm thus making him unavailable to continue to be part of this hearing. As a result, Councillor Canning will not be part of the DAB decision making process for Appeal #01-20.

Board Questions

Asked and answered.

Motion to Continue Discussion In-Camera

DAB20 - 14 Moved by Mr. Hoynr that pursuant to Sections 24 (advice from officials) of the *Freedom of Information and Protection of Privacy Act* and Section 3.2.12 of the Land Use Bylaw, DAB moved into virtual closed meeting at 1:00 p.m., to deliberate and discuss confidential matters with respect to Appeal #01-20.

**MOTION CARRIED**

Advice: Ms. B. McNeil

DAB reconvened in public hearing at 2:22p.m., with Chairperson Kerr in the chair.

Motion to Leave In-Camera Discussion

DAB20 - 15 Moved by Mr. Eshenko that the Board rise and report.

**MOTION CARRIED**

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



Verbal Decision Announced

In the matter of Appeal #01-20, an appeal against an approval made by the Municipal Planning Commission for a proposed triplex housing 20DP41 and home occupation type 2 06DP71 at 514 Buffalo Street, the Development Appeal Board upholds the decision of the Municipal Planning Commission and denies the Appeal# 01-20 related to 20DP41 and 06DP71.

- 1) The Development Appeal Board finds that there is no evidence that the Municipal Planning Commission erred in their decision and their application of law;
- 2) The MPC did consider site conditions and possible site impacts to adjacent neighbors; and
- 3) The DAB knows that the MPC did require that a stormwater management plan is to be provided to the plan. We further note that this is not a typically required condition for this development under the Banff Land Use Bylaw

To address the concerns raised by the appellant, this board requests the Town of Banff to provide the required storm water management plan and any subsequent amendments to the appellant when they are received.

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**

DAB20 - 16 Moved by Mr. Horyn to adjourn the meeting at 2:26p.m.

**MOTION CARRIED**

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.

\_\_\_\_\_  
Mr. Dak Kerr  
Chairperson

\_\_\_\_\_  
Ms. Kerry MacInnis  
Recording Secretary

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