



**Board Order  
Subdivision and Development Appeal Board**

**SUBDIVISION & DEVELOPMENT APPEAL BOARD ORDER**

**APPEAL NO. 2022-002  
PL20210394**

ORDER OF THE SUBDIVISION & DEVELOPMENT APPEAL BOARD OF THE TOWN OF CANMORE, IN THE PROVINCE OF ALBERTA, DATED MARCH 17, 2022.

Board Members hearing the Appeal: Jim Bell, Michelle Cooze, Harry Scott, Peter Giraldeau, and Councillor Karen Marra

IN THE MATTER of the *Municipal Government Act*, RSA 2000, c. M-26, as amended (the “**MGA**”);

AND IN THE MATTER of an appeal by Carmen Colborne & Greg Kletke against an approval of Development Permit Application File Number PL20210394.

This Appeal hearing having been duly opened before the Subdivision & Development Appeal Board on March 3, 2022.

UPON hearing oral submissions from the Appellant, Applicant, Members of the Public, and Development Officer;

AND UPON having regard to the Town of Canmore Land Use Bylaw No. 2018-22, the MGA and other relevant planning documents;

**APPEAL INFORMATION:**

**PL20210394**

**Application for a Renewal of a Bed and Breakfast Operation**

**17 MacDonald Place**

**Lot 17, Block 5, Plan 4171JK**

**Approval of Development Permit Application by a Development Officer**

**RELEVANT STATUTORY & PLANNING DOCUMENT PROVISIONS:**

1. **Municipal Government Act**, RSA 2000, c M-26 (the “**MGA**”), in general, and specifically:
  - a. Section 638.2(3)
  - b. Section 687
2. **Town of Canmore Subdivision and Development Appeal Board Bylaw**, 2019-06 (the “**SDAB Bylaw**”), section 24.
3. **Municipal Development Plan** (the “**MDP**”), section 6.2.3.
4. **Land Use Bylaw 2018-22** (the “**LUB**”) in general, and specifically:
  - a. Section 1.5
  - b. Section 1.10
  - c. Section 3.1



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### **SUMMARY OF EVIDENCE PRESENTED:**

1. 24-page Subdivision and Development Appeal Board Staff Report, undated, of the Town of Canmore's Acting Manager of Planning & Development, Marcus Henry, and Planning Technician, Eric Bjorge, inclusive of 7 Attachments.
2. 17-page Notice of Appeal, dated February 3, 2022, from the principal Appellants, Carmen Colborne and Greg Kletke.
3. 20-page Written Submission, dated February 23, 2022, from the Applicant, Doreen Saunderson, inclusive of 6 Attachments.
4. Notification to the Appellant, Applicant and Adjacent Neighbors, dated February 9, 2022, from the Subdivision and Development Appeal Board Clerk, Katy Bravo-Stewart.
5. 2-page Letter of Non-Support, dated February 19, 2022, from residents of 15 MacDonald Place, Sandy Last and Don Blackett.
6. 1-page Letter of Non-Support, dated February 19, 2022, from Jackie Lefavre.
7. 1-page Letter of Non-Support, dated February 23, 2022, from the President of the Canmore-Bow Valley Bed and Breakfast Association, Anne Wood.
8. Summary Presentation, including a power point presentation, from the Town of Canmore's Planning Technician, Eric Bjorge.
9. Verbal presentation, including a power point presentation, from the Principal Appellants, Carmen Colborne and Greg Kletke.
10. Verbal presentation in favour of the Appeal from a resident of 292B Three Sisters Drive, Jerry Auld.
11. Verbal presentation in favour of the Appeal from a resident of 13 MacDonald Place, Brian Cooke.
12. Verbal presentation in favour of the Appeal from residents of 19 MacDonald Place, Catherine and Pat Sullivan.
13. Verbal presentation in favour of the Appeal from a resident of 16 MacDonald Place, Louise Crawford.
14. Verbal presentation from the Applicant, Doreen Saunderson.
15. Verbal presentation in opposition to the appeal from the past president of the Canmore-Bow Valley Bed and Breakfast Association, Carol Poland.
16. Verbal presentation neither in favour nor in opposition to the Appeal from resident of 16 MacDonald Place, Louise Crawford.
17. Verbal presentation from the Town of Canmore's Acting Manager of Planning and Development, Marcus Henry.

### **SUMMARY OF EVIDENCE RECEIVED AS NEW INFORMATION AFTER THE HEARING:**

1. The Applicant provided a copy of the "Town of Canmore B&B Inspection Report Checklist" that the Applicant said was provided to her by the Canmore Planning Department prior to the design of her home and the bed and breakfast. While the SDAB acknowledges receipt of this document, the SDAB has afforded it little weight because it is not a LUB policy posted on the Town of Canmore website pursuant to Section 638.2 (3) of the MGA.
2. The Appellant provided written confirmation from (10) local landowners of their support of the Appeal after the hearing.

### **FINDINGS OF FACT:**

1. The Town of Canmore Development Officer approved the Applicant's Application for a Development Permit, Application File Number PL20210394, on January 14, 2022 (the "**Approval**"). The Approval was for the renewal of a "Bed and Breakfast (2 Accommodation Units)" Approved Use in a "R1-Residential" Land Use District at 17 MacDonald Place (the "**Property**") without variances. The Approval contained the following standard and specific conditions (among others):



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- The operation and approval of this Bed and Breakfast Development Permit shall comply with the regulations of the Land Use Bylaw (LUB) 2018-22.
  - Development Permit is valid to November 30, 2024.
  - The Bed and Breakfast shall not contain cooking or food preparation facilities in bedrooms or attached common areas for use by guests.
  - Access to guest bedrooms must be provided through the principal Dwelling Unit and not solely through a separate private entrance.
  - The number of accommodation units approved for this Bed and Breakfast development is two (2), with a total of three (3) bedrooms, and a maximum of two (2) guests per bedroom for a maximum of six (6) guests.
2. The Appellants filed a Notice of Appeal to the Approval on February 3, 2022.
  3. A hearing date for the Appeal was set on February 9, 2022 for March 3, 2022.
  4. The Applicant, Doreen Saunderson, is an owner, occupant, and permanent resident of 17 MacDonald Place, Canmore.
  5. The Property is in the “R1-Residential” District of the Town of Canmore.
  6. The Property consists of a detached dwelling with the Applicant’s primary residence on the main floor and two accommodation units (“Units”) on the lower floor.
  7. The Units are rented by the Applicant to tourist guests on a short-term basis.
  8. One Unit contains two bedrooms, a living area, a kitchen area, an eating area, laundry facilities and an outside patio with BBQ for guest use.
  9. The other Unit contains bedroom, a living area, a kitchen area, an eating area, laundry facilities and an outside patio with BBQ for guest use.
  10. Both Units have access through the Applicant’s primary residence via doors with locks on each side (“Principal Dwelling Unit Access”).
  11. Both Units have access via a door to and from the back of the Property (“Secondary Private Access”).
  12. The Applicant has operated the Units, with assistance from third-party service providers, for approximately 14 months under a prior Development Permit issued October 2, 2020, 2020 and approved by the SDAB with the replacement of one condition on November 27, 2020.
  13. Except for when the Applicant prepares the Units for the next guests, the Principal Dwelling Unit Access doors are usually locked. Except for a “few times”, all guests access the Units via the Secondary Private Access.
  14. The Applicant is the “permanent”, “principal” and “primary” resident of the Principal Dwelling.

### **THE BOARD THEREFORE ORDERS THAT:**

*The appeal be APPROVED and Development Permit PL20210394 be DENIED.*

### **REASONS:**

#### **ISSUE 1: IS A BED AND BREAKFAST A PERMISSIBLE USE FOR THE PROPERTY?**

Section 3.1 of the LUB provides as follows:

#### ***R1 RESIDENTIAL DETACHED DISTRICT***

##### ***Purpose***

*to provide for detached dwelling units on standard lots with provisions to allow for accessory dwelling units and other compatible residential neighbourhood uses.*

...

##### ***3.1.2 Discretionary Uses***



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...  
*Bed and Breakfast ...*

The SDAB concludes that a “Bed and Breakfast” is a permissible “Discretionary Use” at the Property.

### **ISSUE 2: IS THE APPLICANT’S PROPOSED DEVELOPMENT A “BED AND BREAKFAST”?**

Sections 1.5, 1.10, 13.2, 8 and 8.3 of the LUB provide as follows:

#### **1.5 Rules of Interpretation**

...  
1.5.0.3 *the words ‘shall’ or ‘must’ require mandatory compliance except where a variance has been granted pursuant to the Act or this Bylaw. ‘may’ means a choice is available, with no particular direction or guidance intended. ...*

#### **1.10 PROCESSING OF DEVELOPMENT APPLICATIONS**

...  
1.10.0.4 *the development Authority **shall not** approve a development Permit for a use that is not listed as a Permitted or Discretionary Use in the relevant Land Use district.*

#### **13.2 Definitions**

...  
**Dwelling Unit** *means a self-contained room or suite of rooms ..., which normally provide sleeping, washing, sanitary and kitchen facilities, ... A Dwelling Unit **shall not include more than one room which, due to its design, plumbing, equipment, and furnishings is or may be used primarily as a kitchen. Examples of this include upper cupboards, a full size fridge, a stove using 220V, and other aspects that may define a kitchen. ...***

...  
**Tourist Home** *means a Dwelling Unit operated as a temporary place to stay, with or without compensation, and includes all vacation rentals of a Dwelling Unit. The characteristics that distinguish a Tourist Home from a Dwelling Unit used as a residence **may include any of the following**:*

- a. *the intent of the occupant to stay for short-term vacation purposes rather than use the property as a residence; and/or*
- b. *the commercial nature of a Tourist Home; and/or*
- c. *the management or advertising of the Dwelling Unit as a Tourist Home or “vacation property”; and/or*
- d. *the use of a system of reservations, deposits, confirmations, credit cards or other forms of electronic payment.*

*These examples do not represent an exhaustive list of operating practices that may constitute a Tourist Home.*

...  
**Bed and Breakfast** *means an ancillary commercial use operated by the permanent resident of the dwelling and providing a maximum accommodation of three **guest rooms** to a maximum of six persons for periods of 14 days or less.*



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### ...8.3 *Bed and Breakfast Developments*

...

#### 8.3.0.11 *a Bed and Breakfast development shall:*

...

*b. not contain cooking or food preparation facilities in bedrooms or suites for use by guests; [Emphasis Added.]*

While Bed and Breakfasts may be permissible “Discretionary Uses” in R-1 Land Use Districts, the SDAB concludes that it cannot approve a Development Permit for the proposed development as a “Bed and Breakfast” because the Units are “self-contained ... suites of rooms ... which ... provide sleeping, washing, sanitary and kitchen facilities” that are “operated as a temporary place to stay” as “vacation rentals”, more akin to “Tourist Homes” than “guest rooms”. This conclusion is based upon the following findings of fact:

- The Units contain, as evidenced by the floor plans, one or two bedrooms, a living area, a kitchen area, an eating area and laundry facilities. While the kitchen areas do not contain “upper cupboards, a full size fridge [and] a stove” the Applicant confirmed that they do contain “other aspects that may define a kitchen” such as a counter, below counter cabinetry, below counter refrigerator, sink, dishwasher, toaster, kettle, coffee maker, plates and bowls, glasses and cups, cutlery, cutting boards, salad bowls and BBQ tools and maybe also pots and pans, a blender, serving spoons and chopping knife. The Applicant also indicated that BBQs were provided for guest use on the outside patios.
- While different words were used during the hearing and in the written materials submitted to describe the Units (such as “units”, “suites”, “condo”, “bed and breakfast” and “AirBnB”), the SDAB is satisfied, on the balance of all evidence provided, that the Units are self-contained apartment style dwelling units used for short-term rental to tourist guests and not “guest rooms” as contemplated in Section 13.2 of the LUB.
- Further, while there was discrepancy in the words used during the hearing and in the written materials submitted as to what types of facilities, appliances and tools were included in the Units for use in preparing breakfasts and potentially other meals, the SDAB is satisfied that the Units contain sufficient facilities, appliances and tools, or “food preparation facilities”, that guests may prepare breakfasts and other meals, or “food”, in the Units. The Applicant confirmed same via her use of the word “kitchen” in her “Check-in Instructions” and during her verbal presentation where she indicated that she supplied “food” directly to guests for “preparation” by the guests in their suites.
- The provision of food preparation facilities in the Units for use by guests is contrary to Section 8.3.0.11(b) of the LUB and to one of the Standard Conditions contained in the Approval.

Based on the above analysis of the findings of fact, the SDAB finds that the proposed development does not meet the criteria for a Bed and Breakfast. The proposed development is closer to a Tourist Home, which is neither a Permitted nor a Discretionary Use in R-1 Land Use Districts, and it would be outside of the SDAB’s power and authority to stretch interpretation of the words “Bed and Breakfast...guest rooms” to include the short-term rental of self-contained apartment style dwelling units to tourist guests at 17 MacDonald Place.

### **ISSUE 3: DOES THE SDAB HAVE AUTHORITY TO APPROVE THE DEVELOPMENT PERMIT EVEN THOUGH THE PROPOSED DEVELOPMENT DOES NOT COMPLY WITH THE LUB?**

Section 687(3)(d) of the MGA provides as follows:

#### ***Hearing and decision***

***687...***

***(3) In determining an appeal, the SDAB hearing the appeal ...***



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- (d) may make an order or decision or issue or confirm the issue of a development permit even though the proposed development does not comply with the land use bylaw if, in its opinion,
- (i) the proposed development would not
    - (A) unduly interfere with the amenities of the neighbourhood, or
    - (B) materially interfere with or affect the use, enjoyment or value of neighbouring parcels of land,
  - and
  - (ii) the proposed development conforms with the use prescribed for that land or building in the land use bylaw. ...

The SDAB has considered its power to grant a variance to the Development Permit pursuant to Section 687(3)(d) of the MGA. In doing so, the SDAB considered the recent decision of the Alberta Court of Appeal in *Edmonton (City of) Library Board v. Edmonton (City of)*, 2021 ABCA 335 (CanLII). In paragraph 38 of that case, the Court provided the following guidance to an appeal board in considering its power to grant a variance under Section 687(3)(d) of the MGA:

“Accordingly, to grant a variance, an appeal board must be satisfied *in its opinion* as to two conditions. First, that the proposed development would not have certain effects as set out in s 687(3)(d)(i) – namely, that the proposed development *would not* unduly interfere with the amenities of the neighbourhood or materially interfere with or affect the use, enjoyment or value of neighbouring parcels of land. For ease of reference, these effects of the proposed development collectively are sometimes referred to as the “negative effects” and the requirement that the proposed development would not, in the appeal board’s opinion, have the negative effects as the “negative effects condition”. Second, an appeal board must also be satisfied that the proposed development conforms with the use for the land or building in the bylaw. This condition in s687(3)(d)(ii) is referred to as the “use condition”.

The SDAB has considered whether it has the power to grant a variance to the LUB pursuant to Section 687(3)(d) of the MGA so as to approve Development Permit PL20210394 and concludes that it does not. In the SDAB’s opinion, as it concluded in its analysis of Issue 2 above, the Applicant’s proposed development does not conform with the use prescribed for this land. Accordingly, in the SDAB’s opinion, the “use condition” has not been met and the SDAB does not have the power to grant a variance.

3/17/2022 | 10:59 AM MDT

**Date Signed**

DocuSigned by:

*Jim Bell*

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**ACTING CHAIRPERSON, JIM BELL**

**SUBDIVISION & DEVELOPMENT APPEAL BOARD**

A decision of the Subdivision and Development Appeal Board is final and binding on all parties and persons subject only to an appeal upon or questions of jurisdiction or law pursuant Section 688 (1) & (2) of the *Municipal Government Act*, RSA 2000, c. M-26, as amended.

An application for leave to appeal to the Court of Queens Bench shall be made:

- a) to a judge of the Appellant Division, and;
- b) within 30 days after the issue of the order, decision, permit or approval sought to be appeal.