



**Board Order
Subdivision and Development Appeal Board**

SUBDIVISION & DEVELOPMENT APPEAL BOARD ORDER

**APPEAL NO. 2022-005
PL20210358**

ORDER OF THE SUBDIVISION & DEVELOPMENT APPEAL BOARD OF THE TOWN OF CANMORE, IN THE PROVINCE OF ALBERTA, DATED APRIL 25, 2022.

Board Members hearing the Appeal: Graham Lock, Harry Scott, Peter Moreland-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 Dana Ursulescu and Trevor Sundbo against the refusal of Development Permit Application File Number PL20210358.

This Appeal hearing having been duly opened before the Subdivision & Development Appeal Board on April 25, 2022.

UPON hearing oral submissions from the Appellants/Applicants, 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:

PL2021 0358

813 4TH Street, Unit 4

Condominium Plan 171 2172, Unit 4

External Air Conditioning Unit

Appeal against a refusal by the Development Officer.

RELEVANT STATUTORY & PLANNING DOCUMENT PROVISIONS:

1. Municipal Government Act, RSA 2000, c M-26 (the “**MGA**”), in general, and specifically;
 - a. Section 197 (2.1)
 - b. Section 642
 - c. Section 687 (3)(c) and (d)
2. Town of Canmore Subdivision and Development Appeal Board BYLAW 2019-06 (the “**SDAB Bylaw**”).
3. Town of Canmore Municipal Development Plan (the “**MDP**”) in general, and specifically
 - a. Section 6
4. Town of Canmore Noise Control Bylaw (the “**Noise Bylaw**”), section 4.4.4.
5. Town of Canmore Land Use Bylaw 2018-22 (the “**LUB**”) in general, and specifically;
 - a. Section 1.14.1



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- b. Section 1.19
- c. Section 2.4.3
- d. Section 2.4-1
- e. Section 2.15

SUMMARY OF EVIDENCE PRESENTED:

1. 19-page Staff Report to the Subdivision and Development Appeal Board (the “SDAB”) from the Town of Canmore’s Supervisor of Planning & Development, Marcus Henry, and Planning Technician, Eric Bjorge, inclusive of seven Attachments (the “Planning Department Report”).
2. Notice of Appeal dated March 28, 2022 accompanied by a 4 page written submission from the Appellants/Applicants, Dana Ursulescu and Trevor Sundbo.
3. (3) letters of support to the Appeal provided with background information from the Appellants/Applicants from various speakers.
4. Notification to the Appellants/Applicants was dated April 1, 2022, from the SDAB Clerk, Katy Bravo-Stewart.
5. Notification to the Adjacent Neighbours was dated April 7, 2022, from the SDAB Clerk, Katy Bravo-Stewart.
6. (3) letters of non-support to the Appeal were received and provided within the Agenda Package.
7. Summary presentation, including a PowerPoint presentation, from the Town of Canmore’s Planning Technician, Eric Bjorge.
8. Verbal presentation, from the Appellants/Applicants, Dana Ursulescu and Trevor Sundbo.
9. Verbal presentation, from Adrian Hayne with ARH HVAC, as a speaker In-Support for the subject appeal.

FINDINGS OF FACT:

1. The Appellants/Applicants, Dana Ursulescu and Trevor Sundbo, filed a Notice of Appeal for the refusal issued on March 9, 2022, Application File Number PL20210358 (the “Application”), for an External Air Conditioning Unit that projects into the side yard setback.
2. The Development Officer issued a Notice of Decision on March 9, 2022 refusing the Application (the “Refusal”).
3. The Appellant filed a Notice of Appeal on March 28, 2022 (the “Appeal”) against the Refusal.
4. A hearing date for the Appeal was set on April 1, 2022, for April 25, 2022.
5. The Appellants/Applicants, Dana Ursulescu and Trevor Sundbo, are the landowners of the subject property.
6. Appellant did not initially apply for variance to install the A/C Unit.
7. Installation is not in compliance with required setbacks as outlined in the LUB.
8. Section 1.14.1. of the LUB does not provide the Development Officer sufficient flexibility to grant relief.
9. Adjacent neighbour filed a complaint objecting to noise. However, under Section 4.4.4. of the Noise Bylaw the Board could set that aside. A/C Unit objection due to proximity to neighbour bedroom/quality of enjoyment of their property.
10. Two other complaints related to environmental issues and fire safety in Canmore. There are no environmental restrictions for A/C units. The Fire department indicated no access issues.
11. No consultation with neighbours prior to installation.
12. MGA 687 (3)(d) the Board must consider if the request will unduly interfere with the amenities of the neighbourhood, or materially affect the use, enjoyment, or value of neighbouring parcels of land.
13. Acoustical Screening (may help address concerns).
14. Consultation indicated that it could be moved but would be at an increased cost and not aesthetically pleasing for the neighbourhood.



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THE BOARD THEREFORE ORDERS THAT:

The appeal be **APPROVED** and Development Permit PL20210358 be **APPROVED** subject to conditions outlined in Schedule "A".

REASONS:

1. The subject development does not materially affect the adjacent neighbour.
2. Noise level provided in evidence show the machine operating at 66 dB and that an average street level is 70 dB, and evidence that periods of use are reasonable.
3. Passes the test set by Section 687 of the MGA.
4. Primary complainant claimed hot air being pushed into their home from the unit. Evidence provided was that heat from the condensing unit blows against the Appellant home and not directly at the neighbour property.

5/3/2022 | 7:46 AM PDT

Date Signed

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CHAIRPERSON, GRAHAM LOCK
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.