



**Board Order
Subdivision and Development Appeal Board**

SUBDIVISION & DEVELOPMENT APPEAL BOARD ORDER

**APPEAL NO. 2022-004
PL20210499**

ORDER OF THE SUBDIVISION & DEVELOPMENT APPEAL BOARD OF THE TOWN OF CANMORE, IN THE PROVINCE OF ALBERTA, DATED MARCH 24, 2022.

Board Members hearing the Appeal: Jim Bell, Harry Scott, Peter Giraldeau, and Darlene Jehn.

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 Margaret and Steve Lee (c/o Arbus Mountain Homes) against an approval of Development Permit Application File Number PL20210499.

This Appeal hearing having been duly opened before the Subdivision & Development Appeal Board on March 9, 2022.

UPON hearing oral submissions from the Appellant/Applicant, Appellant Spokesperson, 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 0499

Application for Variances to Waterbody Setback and Driveway Width

14 Van Horne

Lot 23, Block 9, Plan 211 0400

Refusal 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 180(1)
 - b. Section 641
 - c. Section 685(4)
 - d. Section 687
2. Town of Canmore Subdivision and Development Appeal Board BYLAW 2019-06 (the “**SDAB Bylaw**”), section 24.
3. Town of Canmore Municipal Development Plan (the “**MDP**”) in general, and specifically
 - a. Section 4.2.23
 - b. Section 4.2.24
4. Engineering Design and Construction Guidelines (the “**EDCG**”), section 3.3.5.



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5. Town of Canmore Land Use Bylaw 2018-22 (the “**LUB**”) in general, and specifically;
 - a. Section 1.7
 - b. Section 1.14
 - c. Section 2.3
 - d. Section 2.4
 - e. Section 2.5.1
 - f. Section 13.2
 - g. Section 14.39

SUMMARY OF EVIDENCE PRESENTED:

1. 18-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 Development Planner, Tracy Woitenko, inclusive of nine Attachments (the “**Planning Department Report**”).
2. Notice of Appeal dated February 8, 2022 accompanied by a 23 page written submission from the Appellant Spokesperson, Arbus Mountain Homes/Dale Hildebrand.
3. One page letter of no objection to the Appeal provided with background information from the Appellant Spokesperson, dated February 14, 2022, from the owners of 15 Van Horne, Nancy Pon and Charles H. Smith.
4. Written authorization from the Appellant, Margaret and Steve Lee, dated March 1, 2022 authorizing Arbus Homes/Dale Hildebrand, to represent them at the SDAB hearing.
5. Notification to the Appellant and Applicant was dated February 15, 2022, from the SDAB Clerk, Katy Bravo-Stewart.
6. Notification to the Adjacent Neighbours was dated February 16, 2022, from the SDAB Clerk, Katy Bravo-Stewart.
7. One page letter in non-support dated March 1, 2022 from residents of 16 Van Horne, James and Clair Paulson.
8. Email dated March 3, 2022 in non-support from the owners of 18 Van Horne, Shelley and Guy Scott.
9. One page letter in non-support, dated March 2, 2022, from the resident of 11 Van Horne, Ken Davies.
10. Summary presentation, including a PowerPoint presentation, from the Town of Canmore’s Development Planner, Tracy Woitenko.
11. Verbal presentation, including a PowerPoint presentation, from the Appellant’s Spokesperson Dale Hildebrand.
12. Verbal presentation in opposition to the Appeal from the residents of 16 Van Horne, Jamie and Claire Paulson.
13. Verbal presentation in opposition to the Appeal from a resident of 12 Van Horne, Russell Stanley.
14. Verbal presentation in opposition to the Appeal from a resident of 11 Van Horne, Ken Davies.

FINDINGS OF FACT:

1. The Applicant, Arbus Mountain Homes, filed an application for two variances on December 13, 2021, Application File Number PL20210499 (the “**Application**”), seeking (a) a variance to permit encroachment of a deck into a waterbody setback of an additional 0.92 m for a total of 2.92 m and (b) a variance to allow the driveway to be an additional 3.5 m in width at the property line, for a total of 8.5 m.
2. The Development Officer issued a Notice of Decision on February 1, 2022 refusing the Application (the “**Refusal**”).
3. The Appellant filed a Notice of Appeal on February 10, 2022 (the “**Appeal**”) against the Refusal.
4. A hearing date for the Appeal was set on February 15, 2022, for March 9, 2022.
5. The Appellant, Margaret and Steve Lee, are the landowners of the subject property.



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6. The subject property is a Detached Dwelling as defined in the LUB, which is a Discretionary Use in the Van Horne Direct Control District.
7. The subject property is currently under construction as per approval of PL20210058 which was issued on April 21, 2021 by the Development Officer.
8. Three variances were approved under PL20210058 for the front yard setback, the deck encroachment into the front yard setback and the driveway length.
9. The Appellant's agent and spokesperson for the Appeal is Dale Hildebrand.
10. All parties were notified by the SDAB Clerk regarding the preliminary issues regarding Section 685 of the MGA and SDAB has limited abilities for granting variances within a Control District.
11. The Applicant has requested a variance to have the back yard deck project a maximum additional 0.94 m, for a total of a maximum of 2.94 m, into the 60 m rear yard setback from the southwest bank of the Bow River.
12. The Applicant has requested a variance relating to the driveway width to 8.5 m, which is a variance of 70% to the maximum width of 5 m stipulated by Section 2.3.0.2 of the LUB.
13. Section 3.3.5 of the EDCG requires that all driveways which connect to the municipal roadway not exceed the widths specified in the LUB.
14. No other driveways for Detached Dwellings on Van Horne currently exceed 5 m in width, other than one Detached Dwelling which also has an accessory dwelling unit and which has a driveway width of 7.5 m.
15. There is currently one on-street parking space between the two 5 m driveways.

THE BOARD THEREFORE ORDERS THAT:

The appeal be DENIED and Development Permit PL20210499 be REFUSED.

REASONS:

Variance to Deck Encroachment into Waterbody Setback

In its Application, the Applicant requested approval for a variance to the rear deck for up to an additional 0.94 m encroachment into the 60 m Bow River 60 m setback. The Application stated that the home was designed to be "square" with the lot orientation, regardless of the curvature of the 60 m Bow River setback. The Application further stated that the requested variance would be 0 m at the building setback adjacent to 12 Van Horne. The Applicant submitted that allowing for the rear decks to be under one meter wider will not impact the neighbouring properties, any users of the river pathway or the river itself. The Applicant submitted that prior development of certain homes on Van Horne utilized the "60 meter average setback" rather than the "60 meter legal setback" and that if the "60 meter average setback" were used then the quantum of the requested variance would be reduced.

In its Refusal of the Application, the Development Officer provided the following reason:

Section 1.14.2.2 of the Land Use Bylaw 2018-22 states "Notwithstanding the above provisions, the Development Authority shall not grant any variances not approved prior to the adoption of this Bylaw to setbacks from the bank of a waterbody except in accordance with Subsection 2.5.1." The maximum encroachment of a deck into a waterbody setback in accordance with 2.5.1 is 2 m. The Development Officer cannot approve a variance beyond the permitted 2 m encroachment into the 60 m waterbody set back.

The subject property is located within the Van Horne Direct Control District, established in Section 14.39 of the LUB ("The DC District") by the Town of Canmore Council in November 2020. The letter of non-support dated March 1, 2022 submitted by the residents of 16 Van Horne, James and Clair Paulson, and supported by the



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owners of 18 Van Horne, Shelley and Guy Scott, submitted that Subsection 14.39.47.7 [sic] of the LUB, taken together with Subsection 14.39.6.1 of the LUB restricting the Development Authority's variance power to a maximum of 2 m, means that "the larger variance powers that may otherwise be exercised by Canmore's development authority do not apply to the Van Horne rear yard setback. The Municipal Government Act, Section 685 (4), holds the Subdivision and Development Appeal Board to the same limit."

Subsection 14.39.4.7 of the LUB reads as follows:

The minimum rear yard setback shall be 60 m from the southwest bank of the Bow River.

Subsection 14.39.6.1 of the LUB reads as follows:

For the minimum rear yard setback of 60 m from the southwest bank of the Bow River, the variance power of the Development Authority shall be a maximum of 2 m.

Clause 685(4)(b) of the MGA reads as follows:

Despite subsections (1), (2) and (3), if a decision with respect to a development permit application in respect of a direct control district

(b) is made by a development authority, the appeal is limited to whether the development authority followed the directions of council, and if the subdivision and development appeal board finds that the development authority did not follow the directions it may, in accordance with the directions, substitute its decision for the development authority's decision.

As a preliminary matter at the Appeal hearing, the SDAB requested that each of the Town of Canmore's Development Planner and the Appellant's Spokesperson address the applicability of Clause 685(4)(b) of the MGA to the Board's consideration of the Appeal. The Appellant's Spokesperson submitted that DC District did not contain any directions of council, and therefore was not relevant to the Appeal. The Town of Canmore's Development Planner submitted that Subsections 14.39.4.7 and 14.39.6.2 constituted "directions of council". The Development Planner submitted, however, that in her view Subsection 14.39.4.7 apply to the setback of the building and not to the setback of a deck, and accordingly she did not rely on the provisions Subsection 14.39.6.2 in arriving at the Development Officer's decision to issue the Refusal. At the Appeal hearing, the SDAB held that the provisions of Subsections 14.39.4.7 and 14.39.6.2 of the LUB constitute "directions of council" and confirms that ruling in this Decision. Section 180(1) of the MGA provides that council may act only by resolution or bylaw, and in the SDAB's view the provisions of Subsections 14.39.4.7 and 14.39.6.2 of the LUB constitute "directions of council".

The DC District does not state if the setback applies to the main building or to the deck. The LUB defines "building" as a structure with a roof and walls. It defines "deck" as "a constructed and elevated platform, the height of which exceeds 0.6 m above grade and is accessible from an entryway of a building. A deck is accessible by exterior stairs and may also be covered by a roof, cantilever or canopy when the deck is compliant with the building yard setback regulations of the Land Use Bylaw. A deck may function as a private amenity space." Section 2.4.3 of the LUB concerns "Building Projections". Section 2.4.3.1 provides that "Every part of any front, rear or side yard setback, or waterbody setback, required by this Bylaw shall be open and unobstructed by any structure from the ground to the sky except for the items listed in Table 2.4-1. Unless otherwise specified, the structures listed in Table 2.4-1 may encroach into a waterbody setback to the same extent, but not in addition to, as that permitted for a yard setback." Table 2.4-1 shows that "uncovered decks and porches" that are less than 4 m above grade are allowed a rear yard setback of 2 m.



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In the SDAB's view, it would be reasonable to apply the approach to waterbody setbacks contained in Section 2.4.3 and Table 2.4-1 in interpreting the "directions of council" contained in the DC District. Accordingly, the SDAB interprets the variance power of the Development Authority in Section 14.39.6.1 to apply to the deck for which the variance is sought by the Applicant/Appellant.

Both the Appellant and the Development Officer submitted that the SDAB should reach its decision by considering its powers under Section 687(3) (c) and (d) of the MGA. For the reasons set out above, the SDAB is of the view that it must concurrently consider its power under Section 685(4) of the MGA. The SDAB finds that for purposes of Section 685(4) the Development Authority reached the result required by the directions of council contained in the DC Control District, but its reasons for decision should have relied on the provisions of the DC Control District rather than on Section 2.5.1.1 of the LUB. Accordingly, the SDAB confirms the Development Officer's Refusal of the Application for a variance to deck encroachment into waterbody setback, but substitutes reference to Subsection 2.5.1.1 with reference to Subsection 14.39.6.1 of the LUB as the reason for the Refusal.

Variance to Driveway Width

The Appellant has requested a driveway width variance of 3.5 m resulting in a total driveway width of 8.5 m at the property line. This constitutes a variance percentage of 70% to the 5 m width specified in the LUB. The Appellant argues that the requested variance will not result in the reduction of on-street parking stalls on Van Horne, but will result in two additional parking stalls on the subject site, resulting in a net increase of on-street and on-site parking on Van Horne of two parking stalls. The Appellant further argues that it requires the variance due to the funneling effect resulting from the shorter front yard setback on the site as a result of the front yard setback and driveway length variances that were approved under PL20210058, all of which the Appellant contends resulted from the amendment of the LUB in 2020 to include the Van Horne Direct Control District.

The Planning Department Report states that the Town's Engineering Design and Construction Guidelines (EDCG) sets out standards for roads and utilities, and other municipal infrastructure. Section 3.3.5 of the EDCG requires that all driveways (which connect to the municipal roadway) must not exceed the widths specified in the LUB. In the case of a Detached Dwelling, Section 2.3.0.2 of the LUB specifies that the maximum driveway width is 5 m. The Planning Department Report also states that on-street parking on Van Horne is only allowed on the same side of the roadway as the subject site and that the cul-de-sac at the road end is required for emergency vehicle turn-around. The Development Officer does not support variances to increase driveway width at property line which reduce the provision of on-street parking stalls. At the hearing, the Town's Development Planner stated that variances are rarely granted to the driveway width standards in the LUB.

Four neighbours of the subject site who reside on Van Horne made submissions to the SDAB in writing and/or at the hearing objecting to the driveway width variance request and supporting the Development Officer's decision to deny the variance request. The submissions contend that if the variance were granted then it will negatively affect the availability of on-street parking and will change the aesthetic of the neighbourhood. At the hearing, the resident owner of 11 Van Horne stated at that no detached home on Van Horne has a driveway width of more than 5 m, although the Appellant stated that 15 Van Horne has a driveway width of 7.5 m because it has an accessory dwelling unit.

The SDAB finds that the driveway width variance request would be materially inconsistent with (a) the applicable driveway width standard in the LUB and the EDCG, (b) the Town's historical application of that



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standard throughout the Town, (c) the driveway width of similar dwellings on Van Horne and (d) the aesthetic of the neighbourhood. Further, the SDAB finds that the variance request would reduce the availability of on-street parking.

For the foregoing reasons, the SDAB is **not** of the opinion that the requested driveway width variance would **not** (a) unduly interfere with the amenities of the neighbourhood, or (b) materially interfere with or affect the use, enjoyment, or value of the neighbouring parcels of land. Accordingly, the conditions required under Section 687 (3) (d) of the MGA for the SDAB to grant the requested driveway width variance have not been met and the request is denied.

The SDAB confirms the Development Officer’s Refusal of the Application for a variance to driveway width, but substitutes reference to “2.3.0.1.h.iii” with reference to “2.3.0.2” and substitutes “a 50% increase” with “a 70% increase”.

3/24/2022 | 12:45 PM MDT

DocuSigned by:

Jim Bell

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Date Signed

**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.