



Decision
Subdivision and Development Appeal Board
APPEAL NO. 2022-011

SUBDIVISION AND DEVELOPMENT APPEAL BOARD ORDER

APPEAL INFORMATION

PL20220090

706 10 Street

Lot 2 Block 65 Plan 1095F

Appeal against an approval by the Canmore Development Authority for Visitor Accommodation.

ORDER OF THE SUBDIVISION & DEVELOPMENT APPEAL BOARD OF THE TOWN OF CANMORE, IN THE PROVINCE OF ALBERTA, DATED December 8, 2022.

Board Members Hearing the Appeal: Mr. Graham Lock (Chair), Mr. Jim Bell and Mr. Harry Scott.

AND IN THE MATTER of the Municipal Government Act, Revised Statutes of Alberta 2000, Chapter M-26, as amended (the “MGA”);

AND IN THE MATTER of an appeal by K. Gordon Schultz against an approval by the Canmore Development Authority for Visitor Accommodation.

This appeal hearing having been duly opened before the Subdivision & Development Appeal Board on December 5, 2022 at 2.00 p.m.

AND UPON hearing oral submissions from the Appellant and Development Officer.

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

REASONS FOR DECISION

A. Introduction

1. The Development Authority for the Town of Canmore (the “DA”) approved a development permit for a 10 unit Visitor Accommodation at 706 – 10 Street (the “Site”). The Site is located within the TC Town Centre District (“TC District”). Visitor Accommodation is a permitted use in the TC District. The Appellant is a neighbouring property resident and has appealed the DA’s decision on his own behalf and on behalf of a number of other neighbouring property owners and residents.

B. Preliminary Issues

2. The Chair asked all parties whether there was any objection to:
 - (a) the composition of the Subdivision and Development Appeal Board (the “Board”);
 - (b) the materials in the Agenda package;
 - (c) the proposed hearing procedure.

There were no objections.

3. The Chair confirmed that the Appellant and Applicant provided written consent to this hearing being held outside the 30 day time limit set out in the *Municipal Government Act* (“MGA”).

4. Stacy McFarlane, legal counsel for the Applicant and owners, raised a preliminary issue related to the scope of the hearing pursuant to section 685(3) of the MGA. Her argument is summarized in her letter to the Board, which is on file. In short, while she acknowledged that there was a relaxation to the Land Use Bylaw (“LUB”) with respect to the loading space, the Board could only consider whether the conditions for a relaxation were met and did not have authority to consider the entire development. In support of this argument, she distinguished a relaxation from a variance (which would engage section 687(3)(d) of the MGA). The Appellant disagreed with these submissions and asked that the Board hear the appeal on its merits. The Board determined that it had authority to hear the appeal on its merits for the following reasons:

- (a) Section 685(3) of the MGA provides that “no appeal lies” from a development permit for a permitted use unless the provisions of the LUB were relaxed, varied or misinterpreted. In this case, it is acknowledged that the LUB was relaxed. Therefore, the Board has authority to hear the appeal.
- (b) In terms of the scope of the appeal, once there is a valid appeal before the Board, the Board has broad authority pursuant to section 687(3)(c) of the MGA, which gives the Board broad authority to “confirm, revoke or vary the order, decision or

development permit or any condition attached to any of them or make or substitute an order, decision or permit of its own”.

- (c) In the present case, many of the provisions of the LUB in issue provide the DA with discretion in that the standard to be met is “to the satisfaction of” the DA. On appeal, the Board has the same discretion as the DA. Therefore, for those provisions that are expressed as being “to the satisfaction of” the DA, the Board has the authority to give fresh consideration to whether the development has met the standard to the Board’s satisfaction and to substitute any requirements that the Board considers appropriate.

C. Summary of Hearing

5. Riley Welden, Town Development Planner, made a presentation on behalf of the DA. He provided the Board with a written report, which is on the Board’s file. He advised the Board that a previous application for Visitor Accommodation on the Site required variances and was refused by the Board. This application has eliminated the variances. Mr. Welden reviewed the development for compliance with the LUB. He also provided the justification for the relaxation of the LUB requirements relating to the loading stall. The DA recommends approval of the proposed development with the recommended conditions (on file). In response to questions from the Board, Mr. Welden, Claire Ellick, Town Transportation Engineer and Brian Kinzie, Town Community Development Engineer advised that:

- (a) The Town Transportation department reviewed the anticipated traffic generation associated with the development and determined that changes to Mallard Alley were not required.
- (b) The Town is considering improvements to Mallard Alley. This development provides adequate pedestrian connection to 10 Street.
- (c) A construction management plan will be required to deal with traffic and parking impacts during construction. As well, the Town will likely require a traffic

accommodation plan for this development that will address construction parking, material storage and delivery management.

6. Gordon Schultz made a presentation on behalf of the Appellants. Mr. and Mrs. Schultz are residents of Mallard Alley. The Appellants' concerns are summarized in the Notice of Appeal and a written submission, both of which are on file. Mr. Schultz indicated that while the variances from the previous application have been removed, the impacts are the same as the previous application. The overriding theme is that this development is too intense for the Site. Specific concerns include increased noise, increased traffic, inadequate parking, inadequate landscaping and lack of onsite management. Dealing with these impacts through enforcement is not adequate.

7. The Board then heard presentations from other residents of Mallard Alley:

- (a) Doug Proll (on his own behalf and on behalf of Sylviane Lippert) – Mr. Proll and Ms. Lippert provided a written submission, which is on file.
- (b) Michael Shugarman – Mr. Shugarman provided a written submission, which is on file. Mr. Shugarman also questioned the Town's threshold for requiring traffic mitigation as traffic is a major concern associated with this development.
- (c) Phillip van der Merwe – Dr. Van der Merwe expressed concern about the Town's enforcement.
- (d) Drew Osborne (on his own behalf and on behalf of Katrina Osborne) – Mr. and Mrs. Osborne provided a written submission which is on file. He outlined concerns about safety for children on Mallard Alley.
- (e) Robin Gardiner (on his own behalf and on behalf of Nicola Gardiner) – Mr. and Mrs. Gardiner provided a written submission which is on file. Mr. Gardiner raised a misinterpretation of the LUB related to the number of parking stalls and classification of Visitor Accommodation as meeting the requirement for ground floor commercial use.

- (f) William Lawes (on his own behalf and on behalf of Julie Bradner) – Mr. Lawes and Ms. Bradner provided a written submission, which is on file.
- (g) David Lefebvre (on his own behalf and on behalf of Nichole Allen) – Mr. Lefebvre echoed concerns regarding safety.

8. The Board then heard submissions from Stacy McFarlane, legal counsel for the Applicant. Ms. McFarlane provided the Board with a written submission (which included a presentation and exhibits), which is on the Board's file. To summarize:

- (a) Ms. McFarlane reviewed the context of the Site and its relationship with Mallard Alley.
- (b) According to the applicable plans and policy from the Town's Municipal Development Plan, the Town Centre (where the Site is located) is intended for mixed commercial and residential uses and increased density.
- (c) Pursuant to the LUB, Visitor Accommodation is a permitted use in the TC District.
- (d) The Board is stepping into the shoes of the DA. Pursuant to Section 642 of the MGA, the DA must approve a development for a permitted use with no variances. In this case, the previous application had variances but those variances have been eliminated in the current development.
- (e) There is a relaxation with respect to a loading stall.
- (f) Ms. McFarlane reviewed and responded to the concerns raised by the Appellants and the various other Mallard Alley residents who supported the appeal.
- (g) In response to a question from the Board, Ms. McFarlane addressed section 4.1.5.9 of the LUB regarding impacts on adjacent residential. She pointed out that it did not require impacts to be eliminated, only minimized. She also indicated that the development complies with the mandatory portions of section 4.1.5.9 of the LUB.

- (h) Ms. McFarlane referred the Board to a decision of the Edmonton Subdivision and Development Board in *J. and P. Cote v Development Authority of the City of Edmonton*, 2021 ABESDAB 10081 in support of her position that even though section 4.1.5.9 of the LUB provides discretion to the DA, the Board cannot interfere with the DA's exercise of discretion on appeal unless the discretion was arbitrarily or unreasonably exercised.
- (i) In response to a question from the Board regarding the owners' intention with respect to sale of the units once developed, Ms. McFarlane pointed out that ownership of the units is not a land use consideration. She further referred to section 8.5 of the LUB and the DP conditions, which require a central reservation and management system to deal with any issues related to the development.

9. The Board then heard from Chad Russill of Systemic Architecture. Mr. Russill provided the Board with a written presentation, which is on file. He reviewed the context of the development, overview of the design, community engagement, revisions from the previous application and interface with Mallard Alley residences. In response to questions from the Board:

- (a) Mr. Russill addressed the impacts of the balconies. He noted that the balconies were reduced in size from the previous application in order to address noise considerations. The balconies are now quite small and could not accommodate large gatherings.
- (b) Mr. Russill addressed potential for snow accumulation at the rear of the property. The stairs are partially covered. The walkway is covered by an overhang. Regarding where snow will be put, Mr. Russill indicated that the amount of snow would not be significant and pointed out an area in the rear that would allow for snow storage.
- (c) Mr. Russill advised that it is expected that air conditioning will be provided.

10. The Board then heard from Brendan Stevenson of Watt Consulting. The Board qualified him as an expert in transportation. Mr. Stevenson provided the Board with a written presentation, which is on file. To summarize, Mr. Stevenson concluded that:

- (a) The traffic generation from the proposed development is very small and will not impact traffic or safety on Mallard Alley.
- (b) The proposed parking meets the LUB requirements.
- (c) Given the anticipated short-term rental use and the anticipated loading activity for the development, a designated loading stall is not required. On-street parking and a nearby designated on-street loading zone within the area of the Site can accommodate the occasional food delivery or other miscellaneous loading activities.
- (d) In response to questions from the Board, Mr. Stevenson explained how trip generation was calculated for this development.

11. Claire Ellick made final comments on behalf of the Town:

- (a) Upgrades to Mallard Alley are still on the list of Town capital projects, subject to being approved for funding.
- (b) The parking complies with the mandatory requirements of Section 4.1.5.9 of the LUB.

12. Riley Welden made additional final comments on behalf of the Town:

- (a) In his opinion, the issues raised in Section 4.1.5.9 of the LUB have been adequately addressed.
- (b) The Board cannot modify allowable uses.
- (c) Conditions remain with the property even if it is sold.

13. Mr. Schultz provided final comments on behalf of the Appellants:

- (a) Mr. Schultz challenged the Applicant's comments regarding the possibility of the Town opening of 11 Street and also as to the existence of similar uses adjacent to each other in other areas of the Town.
- (b) The Appellants acknowledge that Visitor Accommodation is a permitted use; however, this development is too intense and the DA should have exercised its discretion to refuse as not complying with Section 4.1.5.9 of the LUB.
- (c) Mr. Schultz expressed concern about mechanical for air conditioning.
- (d) Balconies invite outside activity regardless of size.
- (e) Enforcement is not an adequate remedy.
- (f) The decision of the Edmonton subdivision and development appeal board is not binding.
- (g) The transportation study is inadequate as it was conducted under a short time during a shoulder season. The parking requirement under the LUB is inadequate for this development.

14. The Chair asked whether any parties had concerns with the hearing process. No parties raised any concerns with the hearing process.

D. Decision

15. The Board dismisses the appeal and upholds the DA's decision, subject to revisions in the conditions as set out below. The development permit is therefore approved with conditions as proposed by the DA, subject to the revisions set out below.

The Specific Conditions are removed and replaced with the following:

SPECIFIC CONDITIONS:

- 1) The Applicant shall provide security to the Town of Canmore to ensure the completion of the project, in the form of cash or an irrevocable Letter of Credit.

The amount should be equal to or no less than 1.25 (125%) of the estimated project costs for the project for landscaping and all hard surfacing, paving; and site servicing; both to the satisfaction of the Town. The Letter of Credit shall be supplied at the time of signing of the Development Agreement, and shall be in a format acceptable to the Town of Canmore.

- 2) The Applicant or Developer shall pay off site levies according to the approved bylaw adopted by Council at the time of the signing of the Development Agreement. The Development Agreement shall specify the manner of the payment of these monies and all other relevant fees and contributions as determined by approved Town of Canmore policy(ies).
- 3) The Development shall provide a minimum of 10 vehicle parking stalls, 3 long-term bicycle parking stalls, and 2 short-term bicycle parking stalls, all designed and located as shown in the approved plans, and calculated as:

Automobile Parking

1.00 stalls per 1 visitor accommodation unit = 10 units x 1 stall = 10 parking stalls
10 parking stalls provided

Short-term Bicycle Parking

10 visitor accommodation units x 0.15 = 1.5 = 2 short-term bicycle parking stalls.
4 short-term bicycle parking stalls provided

Long-term Bicycle Parking

10 visitor accommodation units x 0.30 = 3 = 3 long-term bicycle parking stalls
4 long-term bicycle parking stalls provided

Loading Stall Not required

- 4) The Applicant, Developer, property owner or their successors shall manage on-site parking to ensure the use of on-site parking stalls by employees or for the purpose of loading does not at any time result in a situation where parking is not available for customers scheduled to stay at the visitor accommodation facility.
- 5) All on-site parking stalls shall be graded and constructed to dispose of drainage to the satisfaction of the Town of Canmore.
- 6) Commitments expressed in the Developer's Sustainability Screening Report become conditions of approval upon the signing of this Schedule A and will be included in the development agreement.
- 7) The site shall be landscaped generally in accordance with the Landscaping Plan. If there are any landscaping discrepancies between the Site Plan and the Landscaping Plan, the Landscaping Plan shall prevail.
- 8) Any plant material proposed between 0.0m and 1.5m from the building shall be non-combustible, low growing and of low fire risk.
- 9) The development is approved for Visitor Accommodation use, which is defined in the Town of Canmore's Land Use Bylaw 2018-22 as, "a building or group of buildings not intended for residential use where sleeping facilities are provided for persons for periods of up to 30 days and which may also contain a variety of services and amenities for the benefit of guests". A visitor accommodation development shall:
 - a. Provide a central management and reservation service
 - b. Have a single address for mail (not for individual units);
 - c. Not serve as a residential address for utility billing or electoral enumeration purposes; and
 - d. Provide signage designating the development as a "hotel" or similar visitor use.

Prior to Commencement of Construction Conditions

- 10) Prior to commencement of construction, the Applicant or Developer shall submit and have approved a Construction Management Plan. The Construction Management Plan submitted shall specifically address the enjoyment and safety of Mallard Alley residents and shall be followed through all stages of construction.

Prior to Occupancy and Operation Conditions

- 11) Prior to occupancy of the building, the Applicant or Developer shall apply for, receive approval for, and install signage for the development that designates the development as a hotel or similar use, to the satisfaction of the Development Officer.
- 12) Prior to occupancy of the building, the Applicant or Developer shall apply for and obtain approved construction completion certificates for water and sanitary services.
- 13) Prior to occupancy of the building, the Applicant or Developer shall submit and have approved a maintenance agreement satisfactory to the Town regarding the proposed landscaping and bicycle rack located within the municipal Road Right-of-Way. This agreement shall include construction/installation, maintenance, replacement, and any other matters the Town deems necessary.

E. Reasons

16. The Site is located in the TC District. Visitor Accommodation is a permitted use.
 - (a) The LUB does not restrict the location of a Visitor Accommodation development within the DC District to any particular street.
 - (b) The LUB does not require a Visitor Accommodation development within the TC District to have some other form of commercial development on the ground floor.

- (c) The LUB does not prohibit a ten unit Visitor Accommodation development in the TC District that otherwise complies with the requirements of the LUB.
- (d) This development is consistent with section 10.2.2 of the Town's Municipal Development Plan ("MDP") which promotes increases in density, while respecting the mountain town character through regulations for building height, massing, setbacks and floor area ratio (FAR).

17. The Board concurs with the relaxation granted by the DA for the loading stall that is otherwise required by section 2.7.3.1 of the LUB for the following reasons:

- (a) The Applicant has agreed to Specific Condition 4.
- (b) A written submission from Sky McLean, the CEO and owner of Basecamp Resorts Ltd. which owns Basecamp Suites, an 11-unit development located at 721 10 Street that is similar in format and size to this development, states that the absence of a loading stall at Basecamp Suites has not materially impacted traffic.
- (c) This development is designed exclusively for the overnight accommodation of guests and does not include other amenities. As a result, it is reasonable to expect that the development will not experience frequent deliveries or loading/unloading of goods that other commercial businesses, such as retail, eating and drinking establishments or even other visitor accommodations may require.
- (d) Since the municipal address for this development is on 10th Street, it is reasonable to expect that deliveries to the development will be made through the 10th Street entrance. There is street parking on 10th Street, including a loading zone a short distance east of the development.

18. The Board concurs with the determination by the DA that this development meets the requirements of section 4.1.5.1 and section 11.4.1.6 of the LUB that commercial developments adjacent to residential districts must be designed and intensively landscaped to mitigate their impact on residential properties to the satisfaction of the DA, for the following reasons:

- (a) Landscaping is proposed for the front of the Site and within the 10th Street boulevard boundary and sidewalk, taking into account the “FireSmart” requirements of section 2.16 of the LUB. No objection was raised by the Appellants relating to the proposed landscaping of the Site along 10th Street.
- (b) Although the Appellants raised the fact that no landscaping is proposed for the rear of the Site as a reason for appeal, in written and oral submissions to the Board the Appellants did not articulate why the lack of landscaping in the rear of the Site is a concern for them.
- (c) Based on photographic evidence provided to the Board, the Board is of the view that the design of the rear yard of the Site consisting of three parking stalls and a driveway to the covered parking structure is largely consistent with the design of properties opposite the Site on Mallard Alley.
- (d) The rear yard of the Site and development have been designed to mitigate impacts on the adjacent residential district along Mallard Alley as follows:
 - (i) The building is setback 5.6m from the rear property line;
 - (ii) The rear balconies are relatively small and recessed from the rear building face;
 - (iii) On-site lighting will be provided to minimize impact at the rear of the Site, including cut off fixtures and no lighting within the roof soffit;
 - (iv) Garbage enclosure is located within the covered parking structure and is not visible from Mallard Alley;
 - (v) Mechanical equipment is enclosed within the building;
 - (vi) Bicycle parking is provided internal to the Site; and
 - (vii) Pedestrian access to the Site is from 10th Street.
- (e) The TC District provisions of the LUB do not require a minimum landscaped area.

- (f) The lack of landscaping at the rear of the Site complies with the FireSmart provisions of Section 2.16 of the LUB.

19. Section 4.1.5.9 of the LUB provides the DA with discretion when addressing impacts on adjacent residences, while also providing for three mandatory design and construction requirements:

4.1.5.9 Developments abutting residential districts shall be designed to minimize the impacts of parking, loading, garbage storage, sun shadow, lighting, noise and business hours of operation on the residential environment **to the satisfaction of the Development Authority**. Specifically, such developments shall be designed and constructed as follows:

- a. no more than four (4) parking stalls, or two (2) parking stalls and a loading bay, shall have direct access to a lane from the rear of a development. Additional parking stalls or loading bays shall be accessed by a driveway and be screened from the lane to the satisfaction of the Development Authority.
- b. Where a proposed development is adjacent to or across a lane from a residential district, the façade facing the residential district shall be considered an additional “frontage” for the purposes of architectural design and materials.
- c. Mechanical equipment may not be mounted on walls adjacent to or across a lane from a residential district.

[emphasis added]

20. The Board is of the view that the land use principle that a “permitted use” within a land use district includes all aspects that are inherent and fundamental to that use, including the associated effects and impacts, is tempered by Section 4.1.5.9 of the LUB when the development abuts a residential district, as is the case with this development. In considering section 4.1.5.9, the Board notes that the list of impacts is an exhaustive list and that the design requirement is to “minimize” such impacts and not “eliminate” such impacts. Having considered the foregoing “permitted use” land use principle together with Section 4.1.5.9 of the LUB, the Board concurs


with the determination by the DA that this development meets the requirements of Section 4.1.5.9, for the following reasons:

- (a) Parking:
 - (i) The mandatory requirement of clause 4.1.5.9 (a) of the LUB is met as the total of three parking stalls accessed from the rear of the development is within the limit of four, and all remaining parking stalls are accessed by a driveway to the covered parking area that is screened from Mallard Alley.
 - (ii) The total of ten parking stalls for this development complies with the minimum and maximum number of parking stalls required by section 2.7.6.2 of the LUB.
 - (iii) Parking is not allowed on Mallard Alley.
 - (iv) Both paid and unpaid street parking and paid municipal lot parking is available within the vicinity of this development.
- (b) Loading:
 - (i) Loading impacts have been considered by the Board in paragraph 17 above and have been minimized to the Board's satisfaction.
- (c) Garbage:
 - (i) This development is designed to store garbage within the covered parking structure.
- (d) Sun Shadow:
 - (i) The Appellants did not raise sun shadow as a concern.
 - (ii) Building and eave-line heights and building setbacks meet the requirements of the LUB.
- (e) Lighting:
 - (i) The Appellants did not raise lighting as a concern.
 - (ii) The lighting design meets the requirements of the LUB.
 - (iii) The lighting design includes cut-off external light fixtures at the rear of the building and no lighting within the roof soffit.

- (f) Noise and business hours of operation:
- (i) The Appellants expressed concern about the four rear balconies becoming a major source of late-night parties and noise. The Board notes that the rear balconies are relatively small in size and are recessed from the rear building face. The building is setback 5.6m from the rear property line. The design of the size of the rear balconies has been reduced as a result of consideration by the Applicant of concerns raised by residents of the abutting residential district.
 - (ii) The Appellants expressed concern that noise would likely increase due to the 24-hour operation nature of this development, including 24-hour traffic on Mallard Alley, and lack of onsite management to control noise. The Board is of the view that 24-hour operation and increased traffic are inherent in the operation of a Visitor Accommodation such as this development. The Board cannot assume that guests at this development will cause noise that is in violation of the Town's noise bylaw. Some impacts of the 24-hour operation on the abutting residential district are minimized by having pedestrian access to the site from 10th Street, unit access provided internal to the site and bicycle parking provided internal to the site. With regard to the concern about increased traffic noise, the Watt Study indicates that while traffic on Mallard Alley is expected to increase as a result of this development, based on data from the Institute of Transportation Engineers, the Watt Study expects that the ten units of this development would be expected to generate four additional trips along Mallard Alley during the morning peak period and give additional trips along Mallard Alley during the afternoon peak period. Considering the foregoing, the Board is of the view that this development is designed to minimize the impacts of noise and business operations in the context of a permitted use Visitor Accommodation development.
- (g) Mechanical Equipment:
- (i) Mechanical equipment will be located indoors in compliance with the requirement of clause 4.1.5.9.
 - (ii) The Appellants did not raise a concern regarding the location of the mechanical equipment.
- (h) Rear Façade:
- (i) The façade design and materials of the rear building are high quality and meet design requirements of the LUB.
 - (ii) The Appellants did not raise a concern regarding the rear façade.

21. The Appellants raised concerns that due to the current design of Mallard Alley, increased traffic on Mallard Alley as a result of this development raises safety concerns. Among safety concerns raised were the lack of sidewalks, use of the Alley by children from the residential district for purposes of accessing other streets and play, two way traffic on a narrow street and a “blind” corner at the east end of the Alley. The Board notes that Ms. Ellick, the Town’s Transportation Engineer, stated at the hearing that she does not anticipate that increased traffic from this development requires any traffic calming measures on Mallard Alley. She also stated that the Town’s Engineering Department has a process for addressing traffic calming requests. The Engineering Department considers priority based on safety, subject to available funds under the Town’s capital budget. She further stated that Mallard Alley is on the list for traffic calming measures but there is currently no capital budget. While the Board sympathizes with safety concerns raised by the Appellants, the Board is of the view that the Appellants’ concerns relating to the design of Mallard Alley are ones that are more properly the responsibility of Town Council and Town Administration rather than concerns that should lead the Board to grant the appeal and deny the development permit application.

Dated this 8th day of December, 2022

Per: 
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Chair 12/8/2022 | 10:56 AM PST
Town of Canmore
Subdivision and Development Appeal Board

IMPORTANT INFORMATION FOR APPELLANTS

This decision may be appealed to the Alberta Court of Appeal on a question of law or jurisdiction under Section 688 of the Municipal Government Act, R.S.A. 2000, c. M-26.