



**Decision**  
**Subdivision and Development Appeal Board**  
**Board Order 2023-07**

**SUBDIVISION & DEVELOPMENT APPEAL BOARD ORDER**

**PL20230120**

**630 1 Street**

**Lot 23, Block 77, Plan 9910432**

**Appeal Against a Refusal by the Development Officer**

ORDER OF THE SUBDIVISION & DEVELOPMENT APPEAL BOARD OF THE TOWN OF CANMORE, IN THE PROVINCE OF ALBERTA, DATED September 15, 2023.

Board Members Hearing the Appeal: Mr. John McClure (Vice Chair), Mr. Christoph Braier, Mr. Fraser MacIver,

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 Leah and Ron Lechelt against a refusal by the Development Officer to permit an air conditioning unit within a side yard setback;

This appeal hearing having been duly opened before the Subdivision & Development Appeal Board on September 7, 2023.

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 (LUB), the MGA and other relevant planning documents.

**RELEVANT STATUTORY & PLANNING DOCUMENT PROVISIONS:**

1. Bylaw 2019-06, the Town of Canmore Subdivision and Development Appeal Board Bylaw, in general.
2. Municipal Government Act ("MGA"), in general, and specifically:
  - a. Section 642
  - b. Section 687(3)(c) and 678(3)(d)
3. Municipal Development Plan ("MDP"), in general.
4. Land Use Bylaw 2018-22 ("LUB") in general, and specifically:
  - a. Section 1.9
  - b. Section 2.4.3
  - c. Section 1.14.1
  - d. Section 2.15
  - e. Table 2.4-1



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5. Community Standards Bylaw 2022-16.

**SUMMARY OF EVIDENCE PRESENTED:**

1. Subdivision and Development Appeal Board Staff Report, undated, submitted by the Town of Canmore's Supervisor of Planning & Development, Marcus Henry, and Development Planner, Eric Bjorge, inclusive of 6 Attachments.
2. Notice of Appeal, dated May 30, 2023, received from the Appellants Leah and Ron Lechelt
3. Notifications to the Appellant and Adjacent Neighbours, dated July 27, 2023, from Subdivision and Development Appeal Board Clerk, Sara Jones.
4. Summary presentation, including a power point presentation, from the Town of Canmore's Development Planner, Eric Bjorge.
5. Verbal presentation, including a power point presentation, and a written submission from Appellants Leah and Ron Lechelt
6. One written submissions from a member of the public in support of the appeal.
7. Thirteen written submissions from members of the public in opposition to the appeal.
8. Two written submissions from members of the public neither in favour nor in opposition of the appeal.
9. Verbal presentation at the hearing from one member of the public in opposition of the appeal.

**FINDINGS OF FACT:**

1. The Town of Canmore Development Officer received an application for a development permit to install an air conditioning unit within a side yard setback or a residence. The application proposes a 40% variance to the projection of the air conditioner unit in the side yard. The variance requested is beyond the maximum 10% allowed by a development officer and so the application was refused.
2. The Appellant filed a Notice of Appeal of the refusal on May 30, 2023.
3. A hearing was held on June 23, 2023, however the SDAB clerk confirmed afterward that the Appellant was not provided with at least 5 day's notice in writing as required by MGA s.686(3) and so the hearing was deemed out of order.
4. A second hearing was held on September 7, 2023.

**THE BOARD THEREFORE ORDERS THAT:**

The appeal be DENIED and application PL20230120 be REFUSED.

**REASONS:**

1. Under Canmore's LUB, the applicable side yard setback is 1.5 meters and an air conditioning (AC) unit is not permitted to encroach within that setback. Since the AC unit projects 0.6 meters into the setback it does not comply with the bylaw.



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2. The Board is of the opinion that the Appellant has a medical need for an air conditioning unit and that the AC unit is likely located in the most efficient and practical location. However, the Board is also of the opinion that the noise generated by the AC unit materially interferes with the use and enjoyment of neighboring lands.
3. Under the section 687(3)(d)(i)(B) of the MGA the Board is only permitted to order a development permit that does not comply with the LUB if certain requirements are satisfied. One of those requirements is that, in the opinion of the Board, the proposed development does not materially interfere with the use and enjoyment of neighboring lands. Since the Board is of the opinion that the noise from the AC unit does materially interfere with the neighbor's use and enjoyment of their property, the Board is not permitted to order the development permit, regardless of the Appellant's need for the AC unit or its most efficient and practical location.
4. There was considerable discussion at the hearing about whether the noise generated by the AC unit was permitted under applicable bylaws. The Board is of the view that it does not need to consider this issue. The Board is of the opinion that even if the noise generated by the AC unit is permitted under applicable bylaws that noise nevertheless materially interferes with the neighbor's use and enjoyment of their property for purposes of section 687(3)(d)(i)(B) of the Municipal Government Act.

9/18/2023 | 7:16 AM PDT

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**Date**

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*John McClure*  
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**CHAIRPERSON JOHN MCCLURE**  
**SUBDIVISION & DEVELOPMENT APPEAL**

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.