



## Board Order Subdivision and Development Appeal Board

### SUBDIVISION & DEVELOPMENT APPEAL BOARD ORDER

**APPEAL NO. 2021-01  
PL20210215**

ORDER OF THE SUBDIVISION & DEVELOPMENT APPEAL BOARD OF THE TOWN OF CANMORE, IN THE PROVINCE OF ALBERTA, DATED 9/23/2021.

Board Members Hearing the Appeal: Mr. Graham Lock, Mr. Greg Birch and Ms. Michelle Cooze.

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

AND IN THE MATTER of an appeal by K. Gordon Schultz against a Development Permit – Visitor Accommodation (10 Units). Variances to maximum building height, minimum front yard setback, required loading stall and building entrance. Appeal against an approval by the Canmore Planning Commission.

This appeal hearing having been duly opened before the Subdivision & Development Appeal Board on September 16, 2021.

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 Municipal Government Act, Revised Statutes of Alberta 2000, Chapter M-26, as amended and other relevant planning documents;

#### **APPEAL INFORMATION:**

**PL20210215**

**Development Permit Visitor Accommodation (10 Units)**

**Variances to maximum building height, minimum front yard setback, required loading stall and building entrance**

**Lot 2, Block 65, Plan 1095F**

**706 10 Street**

**Appeal against an approval by the Canmore Planning Commission**

#### **RELEVANT STATUTORY & PLANNING DOCUMENT PROVISIONS:**

1. Land Use Bylaw 2018-22 (“LUB”) in general, and specifically:
  - a) Section 2.7.3.1 Loading Stalls.
  - b) Section 4.1.3 TC Town Centre District - Regulations.
  - c) Section 4.1.5 TC Town Centre District - Design Requirements.
  - d) Section 11.4 Community Architectural & Urban Design Standards - Site Planning & Design
  - e) Section 11.5 Community Architectural & Urban Design Standards – Commercial & Mixed Use Building Design
  - f) Section 13 Definitions.
2. Municipal Development Plan (MDP) in general, and specifically:
  - a) Section 10, Commercial and Mixed Use, Goals 1 and 4.



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- b) Policy 10.2.1.d. Providing an engaging and comfortable pedestrian environment.
3. Municipal Government Act (“MGA”) in general, and specifically:
  - a) Section 687

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

1. Written report provided by Development Authority, Alaric Fish
2. Verbal and visual presentation by the Development Authority, Lauren Miller.
3. Verbal and written submission by the Appellant, K. Gordon Schultz
4. Two (2) written submissions in support of the appeal were received.
5. One (1) written submissions in support of the appeal was received after the deadline for submissions.
6. Nine (9) verbal presentations in support of the appeal.
7. One (1) verbal presentation by the Applicant for the Development Permit.

#### **FINDINGS OF FACT:**

1. The Appellant and several of those speaking in support of the appeal expressed concern that the LUB’s parking requirements were insufficient for the proposed use. The Board agrees but finds that the proposed parking complies with the LUB parking requirements.
2. Traffic on Mallard Alley will increase because of this proposed development.
3. The Appellant and several of those speaking in support of the appeal expressed concerns around safety in Mallard Alley due to the increased traffic because of the lack of sidewalks and narrow road.
4. The Appellant and several of those speaking in support of the appeal submitted that the roof height variance granted to the proposed development would adversely affect the views of residents of Mallard Alley and other neighbours.
5. A person speaking in support of the appeal described how the proposed roof pitch could be maintained by making internal changes to the building design.
6. The LUB only permits a height variance where the proposed variance will enhance the architectural integrity of the building (LUB s. 4.1.5.7).
7. Several of those speaking in support of the appeal submitted that a front yard setback variance will negatively affect the objective of achieving a pedestrian-orientated streetscape, as per section 4.1.5.2 of the LUB.
8. While front decks projections provide articulation to the building façade, articulation may be achieved without decks projecting almost to the property line by incorporating them into the proposed building, similar to the decks proposed for the rear of the building.
9. The Development Permit allowed a variance to the loading stall requirement, exacerbating the perceived shortage of parking supply.
10. The Development Permit provided a variance to the requirement that the development have a functional front entrance, in accordance with 4.1.5.3 of the LUB.
11. The Appellant suggested that the SDAB had the authority to not follow the LUB. The Board has reviewed the relevant sections of the MGA, namely section 687, and concludes that the SDAB must comply with the LUB.
12. Concerns were expressed that the LUB was not being complied with because it approved a development that failed to have retail on the main floor. The Board concluded the retail requirement only applies to “Apartment Building” developments.



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

The appeal be APPROVED and Development Permit PL20210215 be DENIED.

### **REASONS:**

#### **Commercial Developments Abutting Residential Districts**

1. Sections 4.1.5.9, 4.1.5.1 and 11.4.1.6 of the LUB provide as follows:

*“4.1.5.9 Developments abutting residential districts shall be designed to minimize the impacts of parking, loading, ... noise and business hours of operation on the residential environment to the satisfaction of the Development Authority...”*

*“4.1.5.1 Developments within this District shall comply with the regulations in Section 11: Community and Architectural Design Standards of this Bylaw.”*

*“11.4.1.6 Commercial developments adjacent to residential districts must be designed and intensively landscaped to mitigate their impact on residential properties to the satisfaction of the Development Authority.”*

The SDAB has concluded that this requirement has not been met and the proposed change of use, proposed change in intensity of use and proposed building (the “proposed Development”) should not be approved because:

- Parking for the proposed Development is likely to be insufficient for the proposed use leading to increased parking on Mallard Alley and blocking of residential driveways.
- Traffic on Mallard Alley will increase because the sole vehicular access to the proposed Development is via Mallard Alley, which is narrow.
- Increased traffic on this narrow road that has no sidewalks is likely to cause safety concerns for residents of Mallard Alley, particularly children.
- Noise will likely increase in the neighbourhood due to the 24-hour operation nature of the proposed Visitor Accommodation development, negatively impacting residential homeowners.
- There is no rear yard landscaping shown on the Development Permit application nor required by the Development Permit.

#### **Building Height Variance**

2. Sections 4.1.3.8 and 4.1.5.7 of the LUB provide as follows:

*“4.1.3.8 The maximum building height shall be 11.0 m with a maximum eaveline height of 7.0 m.”*

*“4.1.5.7 Where the Development Authority is satisfied that the architectural integrity of a building would be enhanced, variances may be granted to allow 20% of the building to exceed the maximum height by up to 20%....”*

The SDAB has concluded that this requirement has not been met and that a variance should not be permitted because:

- The height of the proposed building is 11.61 m.



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- No evidence was presented suggesting that the architectural integrity of the building would be enhanced by the additional 0.61 m height of the building.
- Suggestions were made during the hearing indicating how the proposed roof pitch could potentially be maintained by making other changes to the building design.
- A building height variance of 0.61 m would adversely impact the views of Mallard Alley residents and other neighbours.

#### Front Yard Setback Variance

3. Sections 4.1.3.5 and 4.1.5.2 of the LUB provide as follows:

*“4.1.3.8 The front yard setback shall be 1.0m, as illustrated in Figure 4.1-1.”*

*“4.1.5.2 A pedestrian-oriented streetscape shall be established incorporating such design elements as: wide sidewalks, arcades, pedestrian scale street lighting, bicycle parking, canopies, vestibules, façade treatments that are sensitive to sidewalk location on a site specific basis and permeability of façades by the use of glass and doors.”*

The SDAB has concluded that this requirement has not been met and that a variance should not be permitted because:

- The front yard set back of the proposed Development varies between approximately 1.0 m and “almost to the front property line”.
- None of the recommended LUB s. 4.1.5.2 design elements have been incorporated into the front (street) side of the proposed Development.
- The lack of 1.0 m to 2.0 m front yard setbacks is likely to negatively impact the community’s objective of achieving a pedestrian-orientated streetscape.
- The lack of recommended pedestrian interface design elements is likely to negatively impact the community’s objective of achieving a pedestrian-orientated streetscape.

#### Loading Stall Variance

4. Section 2.7.3.1 of the LUB provides as follows:

*“2.7.3.1 A minimum of one (1) loading stall shall be required per ... non-residential building, unless it can be otherwise demonstrated to the Development Authority that loading can reasonably take place without a dedicated stall on-site, or that it can be shared amongst multiple developments and/or tenants to minimize the number of loading stalls required.”*

The SDAB has concluded that this requirement has not been met and that a variance should not be permitted because:

- No loading stalls have been provided for the proposed Development.
- No evidence was provided that a loading stall can be shared with another development.
- A loading zone is a practical requirement that would offset issues resulting from limited parking at the proposed Development, particularly with respect to guests arriving in multiple vehicles or large vehicles that will not fit into the covered parking area, and building maintenance and cleaning personnel.



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### Front Entrance Variance

5. Sections 4.1.5.3, 4.1.5.1 and 11.5.2.4 of the LUB provides as follows:

*“4.1.5.3 All businesses adjacent to a public street and/or sidewalk shall have a functional entrance that faces that street/sidewalk.”*

*“4.1.5.1 Developments within this District shall comply with the regulations in Section 11: Community and Architectural Design Standards of this Bylaw.”*

*“11.5.2.4 Entrance ways and doorways should be clearly marked as prominent points of access into buildings. They should punctuate the street and offer some form of shelter. It is preferable that doors are modest in scale. The treatment of a primary and/or secondary entry to a building should be obvious and apparent from the street.”*

The SDAB has concluded that this requirement has not been met and that a variance should not be permitted because:

- The proposed Development does not provide for a prominent front entrance of the style required.

9/23/2021

**Date Signed**

DocuSigned by:

*Graham Lock*

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**CHAIRPERSON**

**SUBDIVISION & DEVELOPMENT APPEAL**

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 Statutes of Alberta, 2000, Chapter 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.