



**Decision**  
**Subdivision and Development Appeal Board**  
**APPEAL 2024-02**

**SUBDIVISION & DEVELOPMENT APPEAL BOARD DECISION**

**1 Silvertip Trail**

**Lot 1, Block 17, Plan 971 1512 (Site)**

**Development Permit – Accessory Use and Accessory Buildings (Accessory Nordic Spa Amenity)**

**Appeal against an approval and conditions of approval by the Canmore Development Authority**

ORDER OF THE SUBDIVISION & DEVELOPMENT APPEAL BOARD OF THE TOWN OF CANMORE, IN THE PROVINCE OF ALBERTA, DATED MAY 24, 2024.

Board Members Hearing the Appeal: Andre Giannandrea (Chair), Larry Bohn (public member), Audrey Rogers (public member), and Tanya Foubert (councillor).

Hearing dates: April 18, 2024 and May 9, 2024.

**INTRODUCTION**

1. The Development Authority (Canmore Planning Commission) approved a development permit for the addition of an accessory use and accessory buildings in the form of a Nordic Spa on the Site. There is an existing hotel on the Site. The development consists of four accessory buildings and various outdoor hot and cold pools, as well as outdoor seating areas. The spa will be accessed through the existing hotel and will be available to hotel guests.
2. The Site is zoned Direct Control (DC) District pursuant to DC Bylaw 09-99 (DC zone). “Accessory Use” is a discretionary use in the DC zone.
3. The Appellant has appealed the development permit.

**RELEVANT STATUTORY & PLANNING DOCUMENT PROVISIONS**

1. Bylaw 2019-06, the Town of Canmore Subdivision and Development Appeal Board Bylaw.
2. Municipal Government Act RSA 2000 c. M-26 (MGA).
3. Municipal Development Plan Bylaw 2016-03 (MDP), in particular:
  - a. Map 2 Conceptual Land Use Areas
  - b. Map 5 Tourist Service Area
  - c. Section 10.4.1 Tourist/Service commercial areas should provide commercial accommodation developments and a variety of limited size retail and service uses that serve visitors and residents.

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4. Silvertip Area Structure Plan Bylaw 38-2007 (ASP), in particular:
  - a. Section 1.3 Areas where development has already occurred will not be subject to the policy provisions of this Plan and will be recognized as “Established Areas”.
5. Land Use Bylaw 2018-22 (LUB), in particular:
  - a. Section 14.11 Silvertip Trail DC District

**SUMMARY OF EVIDENCE PRESENTED**

1. Development Permit Application PL20230037 dated February 7, 2023.
2. Notice of Decision of Approval subject to conditions issued February 23, 2024 by Whitney Smithers, Chair of the Canmore Planning Commission.
3. Notice of Appeal submitted by the Stone Creek Resorts on March 22, 2024.
4. Applicant’s written submission dated April 15, 2024, submitted by Rick Grol, agent for the applicant.
5. Applicant’s additional written submission dated May 6, 2024.
6. Appellant’s written submission dated April 15, 2024, submitted by Churyl Elgart, Elgart Law, agent for the appellant.
7. Transportation Impacts Review dated April 14, 2024 by Bunt & Associates Engineering Ltd., submitted by the appellant.
8. Appellant’s additional written submission received May 9, 2024.
9. Staff report submitted by Anika Drost, Development Planner, and Riley Welden, Acting Manager of Planning and Development.
10. Written submissions:
  - a. Andrew Stephens, Silvertip resident – neither in support nor opposition
11. Verbal presentation, including slides, from Anika Drost, Development Planner.
12. Verbal presentations on behalf of the appellant:
  - a. Churyl Elgart, agent and legal counsel
  - b. Karin Finley, Stonecreek Resorts

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13. Verbal presentations on behalf of the applicant:

- a. Birol Fisekci, representative of the applicant (including slides)
- b. Chris Sparrow, METAFOR
- c. Robert Homersham, legal counsel
- d. Antoine Lagaree, Basecamp Resorts Ltd.
- e. Sky Mitchell, Basecamp Resorts Ltd.

14. Verbal presentations from 1 member of the public in support of the appeal:

- a. John Third, Stonecreek Resorts

**DECISION**

The Board allows the appeal and varies **Development Permit PL20230037** to add the following conditions in addition to the conditions of approval set out in Schedule A of the development permit approval:

1. The development agreement with the Town shall include the requirement to construct or pay for the construction of a pathway as part of offsite requirements with the alignment to be determined to the satisfaction of the Town.
2. The applicant shall provide an access easement to accommodate the location of the pathway as required.
3. The fence shall be screened by natural landscaping along Silvertip Trail in keeping with the context.
4. The emergency access shall be used for emergency access only and shall not otherwise be open to the public or any other users of the hotel and other related uses.
5. The spa is for hotel guest use only. Should the applicant wish to allow public access to the spa accessory use, a further development permit application will be required.

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**REASONS**

1. General

- a. The proposed development is located in a DC zone.
- b. Section 685 (4) (b) of the MGA states that if a decision with respect to a development permit application in respect of a direct control district is made by a development authority, the appeal may only be made to the subdivision and development appeal board and is limited to whether the development authority followed the directions of council."
- c. Therefore, the Board focused on whether the development permit complied with the direct control zone. As set out below, the Board finds that with the additional conditions, the development permit complies with the direct control zone.

2. Path

- a. The Board finds that the development permit follows council direction in requiring the applicant to enter into an agreement to provide a pedestrian and cycling connection and followed council direction with respect to how that infrastructure should be designed as part of a complete street design.
- b. Section 10.1.8 of the MDP states: Pedestrian infrastructure shall be provided to increase connectivity between neighbourhoods, the Town Centre and other commercial areas.
- c. The Integrated Transportation Plan (council approved) and Engineering and Design Guidelines establish design standards for the street network and the active transportation network.
- d. The connectivity of the path and its exact alignment will be determined through the development agreement between the applicant and the Town.
- e. The Board finds that closure of a lane is not a road closure under the MGA as the road will remain open to vehicular traffic.

3. Landscaping

- a. The Board finds that the development permit follows council direction with respect to landscaping.
- b. Section 14.11.6.1 of the DC states: a minimum of 25% of a site shall be landscaped. Outdoor amenity space including, but not limited to, plazas, patios, and other pedestrian gathering places may be substituted for some natural landscaping to the

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extent that it achieves a blend of natural environment and value as a people place. Outdoor amenity space must be located adjacent to a sidewalk or public trail in order to be considered as landscaping.

- c. The 25% landscaping requirement applies to the entire Site. As per information provided during the hearing from the applicant and administration, the development permit meets the 25% requirement for onsite landscaping. None of the proposed landscaping inside the spa, or offsite, is included in the calculation.
- d. Without the inclusion of any landscaping as part of the accessory use, landscaping is already at 26% of the Site. With the landscaping associated with the accessory use, landscaping will be at 33% of the Site.

**4. Parking**

- a. The Board finds that the development permit follows council direction with respect to screening of the parking area.
- b. Section 14.11.5.3 of the DC zone states: in order to achieve a pedestrian-oriented streetscape, parking shall be designed to effectively screen vehicles when viewed from streets.
- c. The hotel was approved before the DC zone was established and met all requirements of the Town with regard to parking as well as landscaping.
- d. There is existing screening of the parking due to berms and trees.
- e. There is no requirement for additional parking for the accessory use.
- f. The Site conforms to the requirement of the DC zone to achieve a pedestrian-oriented streetscape by providing screening through landscaping (existing) and berms.

**5. Fence Height**

- a. The Board finds that the development permit follows council direction with respect to the fence.
- b. The appellant raised concerns regarding the visual impact of the increase height and length of the fence as currently approved.
- c. Fence height is regulated by the LUB. Authority to grant the variance to fence height is in section 1.14.1.2 of the LUB.

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- d. An EIS reviewed by a third party and the Lower Silvertip Corridor Management Committee recommended a 2 m fence, which exceeds the maximum height of 1.8 (LUB section 2.13) by 0.35 m or 19 per cent. The building code requires a fence height minimum of 2 m if it surrounds a water basin that is uncovered.
- e. Council has a role in stewarding the environment. Council recently accepted the Human Wildlife Coexistence Implementation and Action Plan and recommendations for an implementation plan for the lower Silvertip wildlife corridor. The variance follows council direction and the Board is satisfied that the fence will be visually mitigated through design and landscaping elements.

6. Accessory Use

- a. The LUB provides the following definitions:

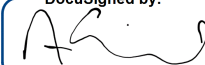
Accessory Use: means a use which is subordinate, incidental, and directly related to the principal use of the premises, building, or site and which does not substantially add to the patronage, volume of traffic, or intensity of the use of the premises building or site. An accessory use must be located on the same site as the principal use and may not precede the development of the principal use.

Visitor Accommodation: means 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.

- b. The definition of accessory use and visitor accommodation in the Land Use Bylaw provides clear expectations that the spa is for hotel guest use only. Should the applicant wish to allow public access to the spa accessory use, a further development permit application will be required.
- c. The Board acknowledges that accessory use is discretionary. The Board finds that a spa in this location is appropriate and is consistent with the neighborhood. In particular, a spa is a typical use with a hotel and fits with the existing hotel use.

5/24/2024 | 3:19 PM MDT

**Date Signed**

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**Andre Giannandrea, Chair**  
**Subdivision & Development Appeal**

In accordance with section 688 of the Municipal Government Act, this decision may be appealed to the Alberta Court of Appeal on a question of law or jurisdiction within 30 days after the issue of the decision.