

**MUNICIPALITY OF CROWSNEST PASS
SUBDIVISION AND DEVELOPMENT APPEAL BOARD**

**NOTICE OF DECISION
OF THE SUBDIVISION AND DEVELOPMENT APPEAL BOARD
HEARING NO. DP2022-ST065**

BOARD MEMBERS:

**Rupert Hewison
(Chair)**

Ken Allred

Marlene Anctil

Glen Girhiny

In the matter of an Appeal of the Decision of the Development Authority of the Municipality of Crowsnest Pass, whereby a development permit application (DP2022-ST065) to operate a Tourist Home on land designated Residential R-1, legally known as the East Half of Lot 5, the Whole of Lot 6 and the West Half of Lot 7, Block 11, Plan 3319I, within Blairmore (13321 21 Avenue), was refused with reasons.

And in the matter of the Appeal in accordance with Section 686 of the Municipal Government Act by:

APPELLANTS: Glenda and Gerald McNair

And in the matter of an Appeal held under the authority of Sections 627 and 629 of the Municipal Government Act, Revised Statutes of Alberta 2000, Chapter M-26, as amended (MGA).

**THE PUBLIC PORTION OF THE HEARING WAS DOCUMENTED
AS A RECORD OF PROCEEDINGS**

And upon hearing the evidence from and submissions made by the person(s) shown on Appendix B attached hereto, and upon considering the documents shown on a list attached to Appendix A, as being the documents produced and marked as exhibits at the Hearing, and having regard to the South Saskatchewan Regional Plan, the MGA, and the Municipality of Crowsnest Pass Land Use Bylaw No. 868-2013 and amendments thereto, the Board has rendered a Decision. The Decision and reasons for the Decision of the Municipality of Crowsnest Pass Subdivision and Development Appeal Board (the Board) after a Hearing duly convened in accordance with Sections 685 and 686 of the MGA on February 22, 2023, at 7:00 p.m. are as follows:

DECISION:

The Board has decided the **Appeal be UPHELD** and the decision of the Development Authority be overturned. Development Permit Application DP2022-ST065 is **APPROVED subject to CONDITIONS**.

Date: March 3, 2023

Signed:



Rupert Hewison - Chair of the Subdivision and Development Appeal Board

FACTS:

Upon having heard what was alleged by the Appellants and **upon hearing** others listed in Appendix B of this Decision and **upon having read** the Exhibits noted in Appendix A of this Decision, the Board finds the facts to be as follows:

1. The land subject of the appeal [*subject property*] is legally known as the East Half of Lot 5, the Whole of Lot 6 and the West Half of Lot 7, Block 11, Plan 3319I with a civic address of 13321 21 Avenue, Blairmore.
2. The subject property is designated as Residential R-1 within the Municipality of Crowsnest Pass Land Use Bylaw No. 868-2013 (LUB 868-2013).
3. A development permit application (DP2022-ST065) to operate a Tourist Home with a maximum occupancy of 6 guests on the subject property was submitted by the Applicants, Glenda and Gerald McNair, to the Municipality of Crowsnest Pass on December 20, 2022, which was deemed complete on December 22, 2022 (Exhibit A).
4. DP2022-ST065 was refused by the Municipal Planning Commission on January 25, 2023, for the following reason (Exhibit G):

The proposed application does not meet the 200 meter separation distance for a Tourist Home in the R-1 to R-5 Districts and that the land use bylaw stipulates that the Municipal Planning Commission shall not approve a variance of this measurable standard.

5. The Notice of Decision for DP2022-ST065 advised that the decision of the Development Authority may be appealed within the appeal period until February 15, 2023.
6. On February 1, 2023, an Appeal with reasons (Exhibit D) was submitted by Glenda and Gerald McNair (Appellants). Notice of Appeal was issued by the Clerk of the Subdivision and Development Appeal Board on February 10, 2023.
7. LUB 868-2013 requires that a Tourist Home operation obtain a development permit and comply with the standards outlined in Schedule 18 Standards for Short-Term Rental / Bed & Breakfast and Tourist Home.
8. A Tourist Home is classified as a discretionary use within the Residential R-1 land use district under LUB 868-2013 and is defined as, *the operation of short-term commercial accommodation within a dwelling unit where the entire property is rented to only one reservation at a time for a period not exceeding 30 days and the owner of the property is not required to occupy the dwelling unit as their primary residence.*
9. The proposed development complies with all standards for a Tourist Home prescribed in Schedule 18, except for the minimum separation distance prescribed within section 2, Schedule 18 of LUB 868-2013 (Exhibit M).
10. In accordance with section 2, Schedule 18 of LUB 868-2013, a minimum separation distance of 200 metres is required between Tourist Homes within the Residential R-1 to R-5 land use districts. The Development Authority is not authorized to approve a variance to the 200 metre minimum separation distance. The proposed Tourist Home is located approximately 192 metres (Exhibit J) from the nearest

existing Tourist Home (measured from property line to property line). A variance of 8 metres or 4% to the minimum separation distance would be required to approve the application.

11. The Appellants indicated they have owned the subject property for 20 years and had been renting the house to a long-term renter, as they live in Claresholm. They now wish to use the property as a Tourist Home and have plans to renovate the house and improve the property. They had intended on making an application for a Tourist Home earlier but had been advised to wait to make an application. Subsequently, several Tourist Homes have been approved since January 1st.
12. The Appellants indicated they are requesting only about a 7.45 metre variance (measured using the GIS online measuring tool) to the 200 metre setback requirement and explained that the nearest Tourist Home is far removed from their property and is located south of the railroad tracks and on the other side of the main street (20th Avenue).
13. The Appellants indicated a property manager has agreed to manage the Tourist Home, a book of rules will be made available for renters, and proper signage will be installed in accordance with the bylaw if the Tourist Home is approved. All of the parking requirements can be complied with, and renters will also be able to use the one car garage on the property.
14. Development Officer, Katherine Mertz, confirmed that the Tourist Home to the south, nearest to the subject property, was not one of the Tourist Homes that had been grandfathered for location and the application for the Tourist Home had been made in September of last year.
15. Manager of Development & Trades, Johan Van Der Bank, explained that there were provisions for grandfathering of existing tourist homes in operation before the bylaw amendments, but certain requirements had to be met for eligibility, including having had held a valid business licence.
16. Adjacent landowner, Jennifer Swail, to the east of the subject property indicated no opposition to the proposed Tourist Home and was encouraged to hear there were plans to improve the house and property given its current condition.
17. Two letters of objection were submitted to the Board by adjacent landowners to the north and south of the subject property (Exhibits L and N). The letters of objection expressed concern that approval of the variance request would set precedent for future applications and that in their opinions because the applicant does not meet the separation distance, there was no reason the appeal should be approved.
18. The MGA, section 687(3) states in part:
 - (3) *In determining an appeal, the board hearing the appeal referred to in subsection (1)*
 - (a.1) *must comply with any applicable land use policies;*
 - (a.2) *subject to section 638, must comply with any applicable statutory plans;*
 - (a.3) *subject to clauses (a.4) and (d), must comply with any land use bylaw in effect;*
 - (a.4) *must comply with the applicable requirements of the regulations under the Gaming, Liquor and Cannabis Act respecting the location of premises described in a cannabis licence and distances between those premises and other premises;*
 - (b) *must have regard to but is not bound by the subdivision and development regulations;*
 - (c) *may 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;*
 - (d) *may make an order or decision or issue or confirm the issue of a development permit even though the proposed development does not comply with the land use bylaw, if in its opinion,*

- (i) *the proposed development would not*
 - (A) *unduly interfere with the amenities of the neighbourhood, or*
 - (B) *materially interfere with or affect the use, enjoyment, or value of neighbouring parcels of land, and*
- (ii) *the proposed development conforms with the use prescribed for that land or building in the land use bylaw.*

HAVING REGARD TO THE FINDINGS OF FACT; and having regard for statutory plans, the South Saskatchewan Regional Plan, Land Use Bylaw No. 868-2013, and the MGA, the Board makes the decision to **UPHOLD** the appeal and overturn the decision of the Municipality of Crowsnest Past Development Authority. The **Development Permit Application DP2022-ST065** to allow for the operation of a “Tourist Home” on land legally described as the East Half of Lot 5, the Whole of Lot 6 and the West Half of Lot 7, Block 11, Plan 3319I (13321 21 Avenue, Blairmore), is **APPROVED SUBJECT TO THE FOLLOWING CONDITIONS:**

CONDITIONS:

1. The development shall comply with and be carried out and completed in its entirety in accordance with the approved site plan and the development standards in the Residential R-1 district and in Schedule 18 of the Land Use Bylaw pertaining to Tourist Homes, as shown on the attached approved site plan (Appendix C) or listed below:

TOURIST HOME - STANDARDS	PROPOSED	VARIANCE APPROVED
Minimum separation distance between Tourist Homes- 200m	192m	8m 4%
# of off-street parking stalls (1 stall per 4 guests)	2	N/A
# of Guests Per Bedroom - Maximum two guests per bedroom	3 bedrooms 6 guests	N/A
Maximum Occupancy - Maximum of 6 guests over the age of two in the Residential R-1 district.	6 Guests	N/A
Maximum Number of Rental Units - Maximum one	1	N/A

2. The Tourist Home shall not advertise for or accommodate more than six guests over the age of two years during any reservation.
3. A recreational vehicle shall not be used as accommodation for the landowner / operator, other residents of the property or for the Tourist Home guests.
4. A minimum of 2 off-street parking spaces shall be maintained as required in the Land Use Bylaw Schedule 6, Section 8. Parking of vehicles associated with the business shall be confined to within the subject parcels only. Parking of all vehicles including recreation vehicles, utility trailers and ATV trailers shall not be allowed on the street regardless of the provisions in other municipal bylaws.

5. The Tourist Home development permit owner shall provide to the Development Officer the name and phone number of a local person (an adult) who can respond to any complaints in person within a 30-minute contact time, and who is authorized to act as their representative. The owner of the Tourist Home shall be required as a condition of approval to keep this information up to date throughout the lifetime of the Tourist Home operation.
6. The Tourist Home Landowner shall post their development permit number and business license number and the approved maximum of one rental unit and approved maximum occupancy on all of their advertisements of the rental property as a condition of development permit approval. Failure to advertise correctly will result in land use bylaw enforcement, including a Municipal Violation Tag and fine.
7. The landowner shall install and maintain for the lifetime of the Tourist Home operation one wall sign or freestanding sign between 0.18m² (3ft²) and 0.72m² (8ft²), that shall not extend more than 1.5 metres (5ft) above grade and shall be located in the front yard visible to the public.
8. The operation of a dwelling unit in a residential land use district as a Tourist Home shall not alter or detract from the appearance or use of the subject property as a residential property, or from the general residential character of the immediate neighbourhood.
9. A Tourist Home development permit shall only be valid as long as it coincides with an active Business License and a development permit. If the Business License lapses, is transferred to another person, or is revoked for any reason, the development permit will expire, and a new application will be required to reinstate the development permit and subsequently the business license. The development permit shall be temporary and the period for which it shall be valid shall coincide with the period during which the original applicant for the development permit holder continues to be the property owner - for greater clarity, in the event that the property is transferred to a third party the development permit expires, and a new development permit application by the new property owner would be required to continue the operation.
10. At the annual renewal of the business license, if the Land Use Bylaw has been amended regarding the standards for a Tourist Home since the initial issuance of the development permit or since the previous business license was issued, the initial development permit shall expire and the applicant for the business license is required to obtain a new or revised development permit in compliance with the revised standards.
11. It is the responsibility of the Landowner to comply with federal and provincial legislation (e.g. Alberta Health, Safety Codes Act and Fire Code regulations) and other municipal bylaws [e.g. the Community Standards Bylaw regarding the control of wildlife attractants (e.g. by providing a bear proof garbage receptacle), restrictions on noise, loud music or other disturbances, and the requirement to obtain a business license under the Business License Bylaw].
12. The operator of a Tourist Home shall make available to their guests a copy of the Short-Term Rental / Bed & Breakfast and Tourist Home schedule of the Land Use Bylaw, the Community Standards Bylaw, the Fire and Rescue Services Bylaw, and shall ensure that guests are aware of and adhere to fire bans in the area – albertafirebans.ca.
13. Contraventions/violations of this or any other municipal bylaw by the operator of a Tourist Home or by their guests shall result in the issuing of fines and penalties to the perpetrator, pursuant to the Fees Rates and Charges Bylaw.
14. The Land Use Bylaw contains development standards and regulations that apply to this development permit and for which the landowner is responsible, at no cost to the Municipality of Crowsnest Pass. These regulations address matters relating to many aspects of the approved development or use e.g., access to the property, lines of sight, public safety setbacks, parking requirements, lot grading,

maintaining positive drainage towards abutting roads and/or lanes, outdoor storage, etc. It is the Landowner's and/or Applicant's responsibility to ensure that they are fully aware of all the applicable development standards and regulations in the Land Use Bylaw that may apply to the proposed development or use by contacting the Municipality's Department of Development, Engineering & Operations.

15. Development must be commenced or carried out with reasonable diligence, in the opinion of the Development Officer, within 12 months from the date of issuance of the development permit, otherwise the permit shall be deemed to be null and void.
16. Failure to comply with all permit conditions listed herein will result in the development or use being deemed illegal and/or being reflected on a Real Property Report as non-conforming, or the development permit being revoked and/or the issuance of a stop order.

Important Information & Notes:

- a) The issuance of a Development Permit indicates only that the development to which the Development Permit relates is authorized in accordance with the provisions of the Municipality of Crowsnest Pass Land Use Bylaw and does not in any way relieve or excuse the Landowner and/or the Development Permit holder from obtaining any other permit (including authorization to modify a wetland, safety codes permits e.g. building, electrical, gas, plumbing, etc.), license, or other authorization required by any Federal or Provincial Act or regulation, or under any Bylaw of the Municipality (e.g. a business license), or complying with the conditions of any easement, covenant, agreement, or other instrument affecting the building or land. The Landowner and/or the Applicant is responsible to ensure compliance with these matters.
- b) The Applicant/property owner is responsible for, as may be applicable
 - (i) Determining the legal property boundaries and any applicable easements through a survey by an Alberta Land Surveyor before foundations are excavated or poured and before construction proceeds above ground level.
 - (ii) Ensuring that any structures approved under this Development Permit are constructed such that they are correctly set back from the property boundaries in compliance with the front, rear, and side yard setbacks approved in this Development Permit. The landowner should consult an Alberta Land Surveyor for this purpose.
 - (iii) Ensuring that the development and the associated excavation and/or construction activity approved under this Development Permit shall not disturb, affect, or alter conditions of all utilities and appurtenances, drainage rights-of-way, utility rights-of-way, access rights-of-way, and any easements as they may exist, over, under, or through the Lands. The landowner should consult a professional engineer and/or an Alberta Land Surveyor and/or the relevant utility company / utility owner for this purpose.
 - (iv) Ensuring that the development and/or any associated structures and/or the associated excavation and/or construction activity approved under this Development Permit is undertaken in a manner that does not cause or result in a public safety risk or concern, or a nuisance, disturbance, or damage to adjacent properties and/or roads, lanes, or other municipal infrastructure. The landowner should consult a legal professional, a professional engineer and/or an Alberta Land Surveyor for this purpose.
 - (v) Making suitable arrangements with utility companies for the provision of all services and/or necessary easements for utility rights-of-way.
 - (vi) Notifying Alberta 1st Call at 1-800-242-3447 to arrange for field locating prior to construction, should any excavations be required near utility lines.
 - (vii) Ensuring that permanent structures are located outside the 1:100-year flood plain of any water body. The landowner should consult a wetland assessment practitioner and/or an Alberta Land Surveyor for this purpose.
 - (viii) Ensuring that construction activity approved under this Development Permit does not result in the modification of a wetland without provincial approval. The landowner should consult a wetland assessment practitioner for this purpose.
 - (ix) Ensuring that foundation and drainage systems on a property with an effective grade / slope of greater than 15% are designed in accordance with the recommendations in a slope stability assessment and/or a grading plan / stormwater management plan, as may be applicable, prepared by a professional engineer, and that the same are constructed under the supervision of a professional engineer, to protect the bank from erosion and to ensure slope stability.
 - (x) Ensuring that a 2-metre separation is provided between the water table and footings for the buildings. The landowner should consult a professional engineer for this purpose.

- (xi) Ensuring that the property is graded in such a manner that positive drainage directing the flow of all surface stormwater away from building foundations towards adjacent streets and lanes is maintained without adversely affecting (e.g. erosion, flooding) adjacent properties, roads, lanes, public property, or public infrastructure, including where applicable in such a manner that the post-development rate and volume of surface stormwater drainage from the subject property do not exceed the pre-development rate and volume of surface stormwater drainage. Should retaining walls be required as part of the stormwater drainage system, additional development permits are required, and construction shall be completed by the landowner at no cost to the municipality. Where an approved stormwater management plan exists, the property must be graded in accordance with the stormwater management plan. The landowner should consult a professional engineer and an Alberta Land Surveyor for this purpose.
- (xii) Being aware of FireSmart Regulations including the Municipality's FireSmart Bylaw, if applicable.

The Board makes the decision to **UPHOLD** the appeal and **APPROVE** Development Permit Application DP2022-ST065 to allow for the operation of a "Tourist Home" on land legally described as the East Half of Lot 5, the Whole of Lot 6 and the West Half of Lot 7, Block 11, Plan 3319I (13321 21 Avenue, Blairmore), for the **following REASONS:**

REASONS:

1. The Board finds that the requested variance of 8 metres from the required 200 metre setback from the nearest approved Tourist Home, located approximately 192 metres to the south, constitutes a 4% variance to the standard. The Board is of the opinion the variance request is minor in nature and has deemed the request reasonable and in keeping with the spirit and intent of the standards for Tourist Homes established in Land Use Bylaw No. 868-2013.
2. In granting the approval, the Board considered the location of the proposed development and finds it to be far removed from the nearest approved Tourist Home. The proposed development is separated from the nearest Tourist Home by two major arteries, those being the railway tracks and the main street (20th Avenue), which serve as a significant physical separation. Additionally, there are no other approved Tourist Homes north of the railway tracks and 20th Avenue in proximity of the proposed development. As such, the Board is of the opinion the operation of a Tourist Home at the proposed location is acceptable subject to the conditions of approval.
3. The Board is of the opinion approval of the proposed development with the granted variance will not unduly interfere with the amenities of the neighbourhood or materially interfere with or affect the use, enjoyment or value of neighbouring properties. In determining so, the Board finds there was no evidence submitted to indicate any such impacts to the neighbourhood or neighbouring properties attributable to the proposed development and is of the opinion the comments submitted in the two letters of objection are representative of general concerns regarding the matters of precedence and the issuance of variances in principle. With respect to such matters, the Board advises that every development application subject of appeal is required to be evaluated on its own merits and in accordance with section 687(3)(d) of the MGA when a variance to a bylaw standard is granted.

INFORMATIVE:

This decision serves as the development permit approval subject to conditions for DP2022-ST065.

APPENDIX A

Documentary Material Submitted to the Board:

EXHIBIT	ITEM
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| A. | Development Permit Application DP2022-ST065 |
| B. | Municipal Planning Commission Request for Decision Report |
| C. | Site and Parking Plan |
| D. | Letter of Appeal |
| E. | Location Map |
| F. | Development Appeal Fee Receipt |
| G. | Notice of Decision |
| H. | Development Officer Report to SDAB |
| I. | Notice of SDAB Hearing |
| J. | Schedule Showing Separation Distance |
| K. | Notice of Decision Template If Approved |
| L. | Letter from Notified Person |
| M. | Excerpts from Municipality of Crowsnest Pass Land Use Bylaw No. 868-2013 <ul style="list-style-type: none">Schedule 18 Standards for Short-term Rental/Bed & Breakfast and Tourist Home (LUB Amendment 1134,2022; Effective February 7, 2023) |
| N. | Letter from Notified Person |
| O. | Map Showing Lot Location of Notified Persons Who Submitted Letters |

APPENDIX B

List of persons who gave oral evidence or made submissions at the hearing:

CAPACITY	NAME
Appellants/Applicants:	Glenda and Gerald McNair
Municipal Representatives:	Johan Van Der Bank – Manager of Development & Trades Katherine Mertz – Development Officer
Gallery	Jennifer Swail

IMPORTANT: This Decision of the Subdivision and Development Appeal Board is final and binding on all parties and persons, subject only to Appeal to the Provincial Court of Appeal.
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APPENDIX C
Approved Site Plan
Back Alley.

