

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

**NOTICE OF DECISION
OF THE SUBDIVISION AND DEVELOPMENT APPEAL BOARD
HEARING NO. DP2023-TH023**

BOARD MEMBERS:

Bjorn Berg Evert Vandenberg Jim Welsch Glen Girhiny Lory Moore
(Chair)

In the matter of an Appeal of the Decision of the Development Authority of the Municipality of Crownsnest Pass, whereby a development permit application (DP2023-TH023) to operate a Tourist Home on land designated Residential R-1, legally known as the Lot 5, Block 1, Plan 801 0276, within Blairmore (11621 19 Avenue), was refused with reasons.

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

APPELLANTS: Patrica McCarthy Butt

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**

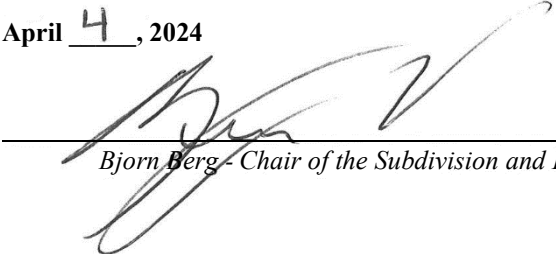
And upon hearing the evidence from and submissions made by the person(s) shown on Appendix B attached hereto, and upon considering the documents shown on a list attached to Appendix A, as being the documents produced and marked as exhibits at the Hearing, and having regard to the South Saskatchewan Regional Plan, the MGA, and the Municipality of Crownsnest Pass Land Use Bylaw No. 1165, 2023 and amendments thereto, the Board has rendered a Decision. The Decision and reasons for the Decision of the Municipality of Crownsnest Pass Subdivision and Development Appeal Board (the Board) after a Hearing duly convened in accordance with Sections 685 and 686 of the MGA on March 26, 2023, at 1:30 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 DP2023-TH023 is **APPROVED subject to CONDITIONS**.

Date: April 4, 2024

Signed:



Bjorn Berg - 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 appellant, Patricia McCarthy Butt, was not present at the hearing and was represented by Shelly Vanderplas, Karen Butt, and Jacqueline Butt. The landowner, Diane Butt, was also present at the hearing.
2. The land subject of the appeal [*subject property*] is legally known as the Lot 5, Block 1, Plan 801 0276 with a civic address of 111621 19 Avenue, Blairmore.
3. The subject property is designated as Residential R-1 within the Municipality of Crowsnest Pass Land Use Bylaw No. 1165, 2023 (LUB 1165, 2023).
4. A development permit application (DP2023-TH023) to operate a Tourist Home with a maximum occupancy of 6 guests on the subject property was submitted by the Applicants, Patricia McCarthy Butt, to the Municipality of Crowsnest Pass on December 19, 2023, which was deemed complete on January 18, 2024 (Exhibit E).
5. DP2023-TH023 was refused by the Development Officer on February 8, 2024, for the following reason (Exhibit G):

The Land Use Bylaw Schedule 17 regarding Short-term Rentals / Bed & Breakfasts and Tourist Homes, #2.2 (a) requires a minimum 200 meter separation distance between Tourist Home in the R-1 to R-5 Districts. The distance to an already existing tourist home is 192 m. The Development Authority shall not approve a variance to the 200m separation distance as per the Land Use Bylaw Administration (b)(ii).

6. The Notice of Decision for DP2023-TH023 advised that the decision of the Development Authority may be appealed within the appeal period until February 29, 2024.
7. On February 28, 2024, an Appeal with reasons (Exhibit C) was submitted by Patricia McCarthy Butt (Appellant). Notice of Appeal was issued by the Clerk of the Subdivision and Development Appeal Board on March 6, 2024.
8. LUB 1165, 2023 requires that a Tourist Home operation obtain a development permit and comply with the standards outlined in Schedule 17 Standards for Short-Term Rental / Bed & Breakfast and Tourist Home.
9. A Tourist Home is classified as a discretionary use within the Residential R-1 land use district under LUB 1165, 2023 and is defined in part 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...*
10. The proposed development complies with all standards for a Tourist Home prescribed in Schedule 17, except for the minimum separation distance prescribed within section 2.2, Schedule 17 of LUB 1165, 2023 (Exhibit F5).

11. In accordance with section 2.2, Schedule 17 of LUB 1165, 2023, 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 G4) 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.
12. The Appellant's representatives indicated their family owns the subject property and the family would like to use the house to visit their mother who has moved from the dwelling. In addition to family members staying at the home when they visit, they wish to use the property as a Tourist Home in the weeks that family would not be able to stay.
13. The Appellants indicated they are requesting an 8 metre variance (measured using the GIS online measuring tool) to the 200 metre setback requirement and explained the buffer touching only the far west corner of the property, which contains the driveway, and the dwelling is located outside of the 200 m buffer.
14. Development Officer, Katherine Mertz, confirmed that the proposed Tourist Home met all the criteria for the development except the 200 m separation distance.
15. No objections were submitted to the Board by adjacent landowners to the subject property.
16. 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. 1165, 2023, 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 DP2023-TH023** to allow for the operation of a “Tourist Home” on land legally described as the Lot 5, Block 1, Plan 801 0276 (11621 19 Avenue, Blairmore), is **APPROVED SUBJECT TO THE FOLLOWING CONDITIONS:**

CONDITIONS:

1. The landowner shall install and maintain for the lifetime of the Short-Term Rental / Bed & Breakfast, Tourist Home operation one wall sign or freestanding sign between 0.18m² (3ft²) and 0.72m² (8ft²), that shall not extend more than 1.5metres (5ft) above grade and shall be located in the front yard visible to the public. The sign shall be installed, and a photo of the installed sign submitted to the development office by no later than **3-months from the issuance of this permit.**
2. 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 and / or within the specific timelines and by the specific deadlines stated in this development permit, otherwise the permit shall be deemed to be null and void.
3. The Tourist Home shall not advertise for or accommodate more than six guests over the age of two.
4. The Landowner shall not operate more than one Tourist Home rental unit per certificate of title, regardless of the number of approved dwelling units on the parcel (e.g. Secondary Suite, Duplex/Semi-Detached, Multi-unit Residential Building or an Apartment).
5. Any portion of the building that is not rented as part of the approved Tourist Home rental unit (Secondary Suite, Duplex / Semi-Detached Dwelling) shall remain unoccupied during the rental period of the Tourist Home. More than one dwelling unit shall not be occupied unless the development permit for the Tourist Home is surrendered and revoked.
6. A recreational vehicle shall not be used as accommodation for the landowner / operator, other residents of the property or for the Short-Term Rental / Bed & Breakfast or Tourist Home guests.
7. The Short-Term Rental / Bed & Breakfast, 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.
8. The Short-term Rental / Bed & Breakfast, Tourist Home Landowner shall post their development permit number and business license number and the approved number of rental units 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.
9. A Short-Term Rental / Bed & Breakfast, 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. 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].
11. The operator of a Short-Term Rental / Bed & Breakfast or a Tourist Home shall make available to their guests a copy of this 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.
12. Contraventions/violations of this or any other municipal bylaw by the operator of a Short-Term Rental / Bed & Breakfast or a Tourist Home or by their guests shall result in the issuing of a Municipal Violation Tag (fine) pursuant to the Fees Rates and Charges Bylaw to the Landowner or guest depending on the infraction.
13. The development shall comply with and be carried out and completed in its entirety in accordance with the attached approved site plan and the development standards and yard setbacks in the Residential – R1 district in Land Use Bylaw 1165, 2023, as amended:

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	5 bedrooms Max 2 guests per room	N/A
Maximum Occupancy - Maximum 6 in the Residential R-1 district.	6 Guests	N/A
Maximum Number of Rental Units - Maximum one	1	N/A
Sign – one sign is required, between 0.18m ² and 0.72m ² in sign area, not exceeding 1.5m in height, and located in the front yard.	1 sign that shall meet the requirements.	N/A

14. The Land Use Bylaw 1165, 2023, as amended, 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. Failure to comply with any one or more of the conditions listed in this development permit either by a specified deadline or at any time throughout the lifetime of the development permit, as may be applicable, or implementation of the development contrary to the approved site plan and/or approved variances, shall result in enforcement through a Stop Order and corresponding fees, rates, charges, or fines pursuant to the Municipality's Fees, Rates and Charges Bylaw in effect at the time of the non-compliance.

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 Crownsnest 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, Historical Resources Act approval, 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 the following aspects as may be applicable to this development permit, at the sole risk and responsibility of the Applicant/property owner to the exoneration of the Municipality of Crownsnest Pass from any liability related to these matters, and at no cost to the Municipality of Crownsnest Pass:
- (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) Ensuring that all equipment, waste bins, portable toilets, building materials, and excavation stockpiles associated with construction activity approved under this development permit are placed within the subject property boundaries, and that where such items must encroach onto adjacent private property and/or adjacent boulevards, sidewalks, streets and /or lanes, that the adjacent landowner's consent has been obtained and/or that the Municipality has authorized such encroachment through a hoarding permit under the Traffic Bylaw (please contact the Manager of Transportation or a Community Peace Officer).
 - (vi) Making suitable arrangements with utility companies for the provision of all services and/or necessary easements for utility rights-of-way.
 - (vii) Notifying Utility Safety Partners at 1-800-242-3447 to arrange for field locating prior to construction, should any excavations be required near utility lines.
 - (viii) 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.
 - (ix) 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.

- (x) 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.
- (xi) Ensuring that a 2-meter separation is provided between the water table and footings for the buildings. The landowner should consult a professional engineer for this purpose.
- (xii) 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.
- (xiii) Being aware of FireSmart Regulations including the Municipality's FireSmart Bylaw and Safety Codes Permit Bylaw as may be applicable.
- (xiv) This document does not provide permission to commence a use, start construction or occupy a building (as may be applicable). It is the owner's responsibility to ensure that all development permit conditions have been satisfied, and other applicable permits are obtained, inspected, and closed, before commencing, starting, or occupying. It is the responsibility of the owner or owner's agent to make an application to the Municipality for an Occupancy and Completion Certificate prior to taking occupancy.

The Board makes the decision to **UPHOLD** the appeal and **APPROVE** Development Permit Application DP2023-TH023 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. 1165, 2023.
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 located on an arterial road and 192 m in distance from the existing tourist home which is located west and south in a cul-de-sac and not on the same street. Additionally, the other approved Tourist Home in proximity is located north of the railway tracks and 20th Avenue. 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 that 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 considered that no submissions or evidence was presented for the hearing which indicated the development, as proposed, would create impacts to neighbouring properties attributable to the proposed development. With respect to such matters, the Board advises that every development application that is subjected to an 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 DP2023-TH023.

APPENDIX A

Documentary Material Submitted to the Board:

EXHIBIT	ITEM
A.	Notice of Hearing and Location Sketch Map
B.	List of Persons Notified
C.	Notice of Appeal with reasons
D.	Notice of Decision - Refusal dated February 8, 2024
E.	Development permit application
F.	Excerpts from Municipality of Crownsnest Pass Land Use Bylaw No. 1165 (December 2023)
G.	Municipal Administration Report to SDAB and suggested conditions

APPENDIX B

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

CAPACITY	NAME
Appellants/Applicants:	Shelley Vanderplas, Karen Butt, and Jacqueline Butt
Municipal Representatives:	Katherine Mertz – Development Officer
Gallery	None

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.