

MINUTES OF THE DEVELOPMENT APPEAL BOARD
of the Town of Banff in the Province of Alberta
Town Hall Council Chamber
Thursday, May 2, 2019

BOARD MEMBERS PRESENT

David Bayne	Public Representative (Chairperson)
Dak Kerr	Public Representative (Vice-Chairperson)
Ray Horyn	Public Representative
Stavros Karlos	Public Representative
Peter Eshenko	Public Representative
Karen Sorensen	Council Representative
Kendra Van Dyk	Parks Canada Representative
Sheila Luey	Parks Canada Representative

BOARD MEMBERS ABSENT

Grant Canning	Council Representative
Doug Macnamara	Public Representative

ADMINISTRATION PRESENT

Randall McKay	Director, Planning and Development and Secretary to DAB
Darren Enns	Manager, Planning and Development
Dave Michaels	Planner
Tara Johnson	Municipal Clerk
Barbara McNeil	TBA – Recording Clerk
Kerry MacInnis	Administrative Assistant Planning (Recording Secretary)

1.0 CALL TO ORDER

The Chair called the Thursday, May 2, 2019 Development Appeal Board hearing to order at 9:00a.m.

2.0 APPROVAL OF AGENDA

DAB19 - 17 Moved by Kerr to approve the May 2, 2019 Development Appeal Board agenda as presented.

CARRIED

3.0 ADOPTION OF PREVIOUS MEETING MINUTES

DAB19 - 18 Moved by Kerr to approve the minutes of the April 11, 2019 meeting of the Development Appeal as presented.

CARRIED

DAB19 - 19 Moved by Eshenko to approve the minutes of the April 18, 2019 meeting of the Development Appeal as presented.

CARRIED

Minutes approved by: _____

Public Present Objecting to Any Board Member Hearing This Appeal

There were no objections from the public present to any board member hearing this appeal.

Declaration of Conflict of Interest by Board Members

Bayne made note that he has hired Leader Service and Renovation over the years but doesn't feel this would create a bias in hearing this appeal.

There was no conflict of interest declared by any board members.

Notification to Affected Neighbours and Media Announcement

Notice of the appeal hearing has been given to the appellants, the applicant, the Municipal Planning Commission and all affected parties in accordance with the Municipal Government Act and Banff Land Use Bylaw 31-3.

4.0 APPEAL

4.1. APPEAL #03-19

Appeal by three affected persons against a decision of the Municipal Planning Commission to approve a change of use from Contractor Service to Apartment Housing at Unit #11, 149 Eagle Crescent on grounds that required onsite parking should not have been reduced from 0.75 to 0 and that the proposed amenity area is not screened from a public roadway nor permitted by the condominium corporation board of directors.

Development Officer's Comments

Enns spoke to the written report included in this agenda package:

- On March 13, 2019, MPC approved a change of use from existing commercial 'contractor service' floor area to 'residential apartment housing' (bed-sitting room) at 149 Eagle Crescent, Unit 11 with the following variances to:
 - s8.16.1 to reduce the number of required parking stalls from .75 to 0; and,
 - s8.20.1 (a) and (b) to allow for the amenity area associated with this development to be available to all property owners and not screened from a public roadway.
- 149 Eagle Crescent is part of a condominium and as such has common property as well as their own bylaws. The shared space is controlled by the condominium corporation. Everything that is not included in the boundaries of the building envelope is common area to the condominium corporation.
- First application came in 2014 - 14DP39 – 1(e) conditions of approval required the common areas (parking and amenity space to be endorsed by the condominium corporation). This condition wasn't met and the permit expired.
- 2019 application, MPC granted these variances. Thus, the condominium endorsement/approval wasn't required.
- Variance test (page 28 of the DAB agenda package) was discussed and MPC agreed that the variance test was met.

Board Questions

Q: Does the apartment currently exist?

A: Yes, the apartment does exist and has existed for a number of years. Administration has been directed to respond on a complaint basis only. No complaint was received until recently. When a complaint was received, planning took action and addressed the complaint.

Q: s.2.3.3 Amenity areas, what does 'where required in a district mean'?

A: s.2.3.3 definition of amenity area... 'which may be for private use or group of owners' s.12.5 Amenity area is required in the compound area. s.8.20.1 (b) variance given by MPC

Q: Is there a parking ratio that is required in the compound district?

A: Yes there is. MPC granted the variance for parking.

Appellant Presentation

Charlton spoke to the written material included in this agenda package (page 40 and 41):

- Owner of bay #3 in this condominium corporation;
- Residential accommodation within the industrial compound space opens up liabilities for businesses operating in this area as well as puts a strain on existing infrastructure;
- 149 Eagle Crescent has limited parking available, there are designated parking stalls and common parking stalls in the condominium common spaces.

Board Questions

Q: Was the parking plan approved by the Town of Banff. Was the proposal approved by the condominium corporation?

A: The parking plan was part of the proposal. The condo corporation has not approved this proposal.

Q: DAB package page 39. Shared amenity space wasn't approved by the condo corporation?

A: The condo board hasn't approved the proposed shared amenity space.

Those in Favour of the Appeal

Wagner spoke to the written material included in this agenda package:

- Owner of 145A Eagle Crescent;
- 149 Eagle Crescent building currently cannot accommodate parking stalls for tenants and guests;
- Parking plan is still under discussion by the condominium corporation.

S. Kosmalta addressed DAB:

- Owner of a bay at 145 Eagle Crescent;
- Parking is an issue in this area;
- This proposal will have increased liability and future issues if residential apartments are permitted.

Those Opposed to the Appeal

Beecroft, owner of unit 11-149 Eagle Crescent, spoke to the written material included in this agenda package;

- The condominium corporation and the entire compound has parking issues at various times throughout the business day. At night, parking isn't an issue.

Angelozzi, tenant at unit #11-149 Eagle Crescent, spoke to the written material included in this agenda package;

- The zero parking ratio/variance at this location is sufficient;
- Much of the existing parking is being used for storage and long term/seasonal/recreational vehicle parking and not being used for what the stall is intended for;
- Rental vacancy is a major issue in Banff, increasing residential accommodation in the compound is a positive move.

Board Questions

There were none.

Development Officer's Comments

Enns summarized with the following points;

- Non-compliance can't be used in DAB's decision making;
- This is the only condominium corporation structure in the compound;
- Screening is defined in the LUB;
- Intensification of general use in the compound district is being addressed by the Town;
- The issue before DAB is the two variances that MPC granted.

Board Questions

Q: Are variances to parking typical or not typical?

A: The push for more residential development has seen variances to parking by MPC and hence, legislative change.

Appellant's Rebuttal

Kosmalta, DAB is making a decision that may override the condo bylaws. DAB may be in conflict here.

Board Questions

There were none.

Motion to Continue Discussion In-Camera

DAB19 - 20 Moved by Eshenko that the DAB move in camera at 10:05a.m. to discuss a matter where public disclosure could be harmful to third party personal privacy as per Section 17 of the *Freedom of Information and Protection of Privacy Act*.

CARRIED

Motion to Leave In-Camera Discussion

DAB19 - 21 Moved by Kerr to return to the public meeting at 11:40a.m.

CARRIED

Verbal Decision Announced

In the matter of appeal #03-19, an appeal by three affected persons against a decision of the Municipal Planning Commission to approve a change of use from Contractor Service to Apartment Housing at Unit #11, 149 Eagle Crescent on grounds that required onsite parking should not have been reduced from 0.75 to 0 and that the proposed amenity area is not screened from a public roadway nor permitted by the condominium corporation board of directors.

The development appeal board upholds the appeal on the grounds that in its opinion;

Neither variance requested meets the Development Appeal Board variance test as contained within the Town of Banff Incorporation Agreement s.5.19

The Board does recognize that this decision affects citizens personally but the Board is obligated to interpret the laws of the day.

In accordance with the Municipal Government Act, the decision of the Development Appeal Board is not final for 15 calendar days after concluding the hearing. The written decision together with reasons for the decision will be sent to the appellant and to those present who have identified themselves to the Recording Secretary by name and mailing address.

5.0 CORRESPONDENCE

There was no correspondence presented.

6.0 NEW BUSINESS

There was no new business.

7.0 INQUIRIES

There were no inquiries.

8.0 ADJOURNMENT

The Banff Development Appeal Board meetings are held only when an appeal has been received. Meetings are tentatively scheduled for the first and third Thursdays of each month.

DAB19 - 22 Moved by Horyn to adjourn the meeting at 11:45a.m.

CARRIED

David Bayne
Chairperson

Kerry MacInnis
Recording Secretary

Minutes approved by: _____