

---

**TOWN OF BANFF DEVELOPMENT APPEAL BOARD**

---

File No: 19DP09

Appeal: 03-19

Appeal by: Fabio Wagner, Wade Charlton, Slavik Kosmala

Appeal against: Development Authority of the Town of Banff

Hearing dates: May 2<sup>nd</sup>, 2019

Decision date: May 2<sup>nd</sup>, 2019

Board members: David Bayne, Chair, public representative  
Dak Kerr, Vice Chair, public representative  
Peter Eshenko, public representative  
Ray Horyn, public representative  
Stavros Karlos, public representative  
Karen Sorenson, council representative  
Kendra Van Dyk, Parks Canada representative  
Sheila Luey, Parks Canada representative

---

**DECISION**

---

**Description of Application:**

1. The appeal before the Development Appeal Board (the "Board") was brought by three affected persons, Fabio Wagner, Wade Charlton, and Slavik Kosmala.
2. On March 13, 2019, the Municipal Planning Commission (the MPC) conditionally approved a development permit application for a change of use from *Contractor Services* to *Apartment Housing* at Unit 11, 149 Eagle Crescent.

**Procedural History:**

3. The hearing commenced on May 2<sup>nd</sup>, 2019.

**Decision:**

4. The appeal is allowed, and the decision of the Development Authority is overturned. A development permit shall not be issued.

**Appearances:**

5. The board received submissions from:
  - a) Darren Enns for the Development Authority
  - b) Fabio Wagner, Wade Charlton, and Slavik Kosmala, the appellants
  - c) Chris Beecroft, the applicant and Mr. Angelozzi, on behalf of the applicant

**Background and Summary of Evidence:**

*Submissions of the Development Authority*

6. Mr. Darren Enns provided background information to the application. The existing mixed-use commercial property at 149 Eagle Crescent has 11 condominium units within three separate two-storey buildings.
7. As part of a condominium, the property has common property and its own bylaws. 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.
8. The proposed project involves the renovation and conversion of 61.8m<sup>2</sup> of the second storey of Unit 11 from 'Contractor Services' to residential 'Apartment Housing' (bed-sitting room). No significant structural changes are proposed. The redevelopment would provide a new 'Apartment Housing' dwelling accessible through a common second floor landing from the existing at-grade building entrance.
9. Floor plans and site plans were provided as evidence and illustrated the dwelling layout and the location of a potential additional parking space located on condominium common property. The plans also showed the location of a shared, non-exclusive exterior amenity area (the front yard of the property adjacent to Eagle Crescent), and the surrounding land uses within the property.
10. Mr. Enns submitted that the property could accommodate the required off-street parking of one stall, however the applicant has requested a variance to remove the parking requirement as the condominium board, which controls the parking area, has indicated it will not approve the additional stall as required by this application. The building is fully subscribed in terms of parking.
11. The proposed outdoor amenity space partially satisfies the requirements of Land Use Bylaw as stated in Sections 8.20.0 and 12.5.8 (i), however it is not screened from an adjacent public roadway and will not be available for the exclusive use of the residential tenant.

12. Mr. Enns submitted that the proposal would increase the supply of affordable housing in Banff, an identified goal in both the 2012 Banff Housing Needs Study and the Banff Community Plan.
13. The Development Authority recommended approval of the proposal with the following two variances:
  - to Land Use Bylaw s.8.16.1 to reduce the number of required parking stalls to 0; and,
  - to Land Use Bylaw s.8.20.1 (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.

Submissions of the appellants.

14. Mr. Charlton is the Owner of Bay #3 in the condominium corporation at 149 Eagle Crescent. He argued that residential accommodation within the Industrial Compound space would create potential liabilities for businesses operating in this area. As well, residential accommodation would add a strain to existing infrastructure because of additional foot traffic and overcrowding.
15. Mr. Charlton submitted that 149 Eagle Crescent has limited parking available; every unit is allotted three parking spaces and the owners within the complex find three stalls is not enough.
16. Mr. Charlton stated that the proposed parking plan was not approved by the condominium board.
17. Mr. Charlton confirmed that the proposed shared amenity space was not approved by the condominium board.
18. Mr. Wagner is the owner of 149A Eagle Crescent. He stated that 149 Eagle Crescent currently cannot accommodate parking stalls for tenants and guests. If other units were also permitted to be converted to residential uses, accommodating parking needs would be insurmountable and commercial operators would be pushed out due to economies. He submitted that this would not be in the best interest of the community.
19. Mr. Kosmala is the owner of a bay at 149 Eagle Crescent. He stated that parking is an issue in this area. He submitted that the proposed change of use would increase liability due to traffic.

Submissions on behalf of the applicant

20. Mr. Chris Beecroft is the owner of unit #11-149 Eagle Crescent. He stated that the condominium corporation and the entire industrial compound has parking issues at various times throughout the business day. However, at night, parking is not an issue. He submitted that a single residential tenant would decrease the need for more parking in the area.

21. Mr. Beecroft asked the Board to consider fairness and noted that the near-by CrossFit gym runs up to seven classes per day and uses far more than its allocated parking.
22. He suggested that the tenant could park a vehicle during the day inside Mr. Beecroft's own unit.
23. The proposed change of use at Unit #11-149 Eagle Crescent supports the Banff Community Plan goal to increase the supply of affordable housing in Banff.
24. Mr. Angelozzi has been the tenant at unit #11-149 Eagle Crescent for four years. He submitted that the zero-parking ratio at this location is enough. In his view, much of the existing parking is currently used for storage and long term seasonal, recreational vehicle parking and not the use for which the stalls are intended.
25. Mr. Angelozzi stated that rental vacancy is a major issue in Banff and that increasing residential accommodation in the compound is a positive move.

#### The Development Authority

26. Mr. Enns submitted that the fact of non-compliance of the unit cannot be used in the Board's decision making. He further submitted that consistency of the application with the condominium bylaws is not a matter for the Board's consideration.
27. He pointed out that 149 Eagle Crescent is the only condominium corporation structure in the industrial compound.
28. Screening is defined in the Land Use Bylaw and includes fences, berms, walls and landscaping.
29. Mr. Enns submitted that intensification of general use in the compound district is being addressed by the Town and the issues before the Board are the two variances that the Development Authority granted.

#### Rebuttal from the appellants

30. Mr. Kosmala argued that the DAB should not make a decision that would override the condominium bylaws.

#### Reasons

31. The Board considered the context of the proposed development, along with applicable legislation, plans and policies, and key Land Use Bylaw provisions, as well as the design and development regulations for the district, sound planning considerations and the merits of the application.
32. Based on the evidence presented through the written and oral submissions from the appellant, the applicant and the Development Authority, the Board finds that that the requested parking variance does not meet all three elements of the variance test described in Article 5.19 of the *Town of Banff Incorporation Agreement*. Therefore, the Board does

not support the Development Authority's decision to grant a variance to reduce the amount of required parking or allow for the amenity area associated with the development to be available to all property owners and not screened from a public roadway.

33. Specifically, the Board considered the requested parking variance against the Incorporation Agreement variance test as follows:

5.19 a) *Is the deviation from the bylaw minor?* The Board finds that the variation from the required 1 parking stall (rounded up from .75) to 0 parking stalls, is a 100% variance from what is required under the Land Use Bylaw, and therefore cannot be considered "minor".

5.19 b) *Would strict application of the bylaw cause unnecessary hardship to the applicant arising out of circumstances peculiar to the land?* The Board's view is that there are no circumstances peculiar to the land in question, but rather the situation exists because of a difference of views between the applicant and the appellants.

5.19 c) *Would the deviation from the bylaw unduly interfere with the amenities of the neighbourhood or materially interfere with or affect the use, enjoyment or value of the neighbouring properties?* Based on the evidence provided, the Board is not able to clearly determine whether or not the proposal would affect the use or enjoyment of neighbouring properties.

34. The Board finds that the requested variance for the amenity area does not meet all three elements of the test described in Article 5.19 of the *Town of Banff Incorporation Agreement*; on this basis the Board does not support the Development Authority's decision to grant this variance.

35. Specifically, the Board considered the variance requested to the amenity area against the Incorporation Agreement variance test as follows:

5.19 a) *Is the deviation from the bylaw minor?* The Board notes that the wording in the Town of Banff Land Use Bylaw s. 8.20.1 (b) states that "*amenity areas shall be screened*", and the Board does not interpret this to allow for flexibility in the requirement and confers no discretion to grant a variance. Given that the proposal has no screening at all, the Board's view is that the applicant is seeking a complete (100%) variance from the requirement; the Board finds that this is not "minor".

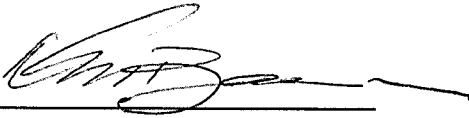
5.19 b) *Would strict application of the bylaw cause unnecessary hardship to the applicant arising out of circumstances peculiar to the land?* The Board's view is that there are no circumstances peculiar to the land, but rather the situation exists because of a difference of views between the applicant and the appellants.

5.19 c) *Would the deviation from the bylaw unduly interfere with the amenities of the neighbourhood or materially interfere with or affect the use, enjoyment*

*or value of the neighbouring properties?* The Board finds that the deviation from the bylaw may unduly interfere with the enjoyment or use of the neighbouring properties.

Conclusion:

For the reasons set out above, the appeal is allowed, and the decision of the Development Authority is overturned. A development permit shall not be issued.



---

David Bayne, Chairman  
Development Appeal Board

---

May 22<sup>nd</sup>, 2019