



SUBDIVISION & DEVELOPMENT APPEAL BOARD ORDER

APPEAL INFORMATION

PL20220342

127 Bow Meadows Crescent

Lot 5, Block 7, Plan 951 2298

Change of use above the main floor: from Contractor Service and Repair to Employee Housing (two units)

Appeal against a refusal by the Canmore Development Authority

ORDER OF THE SUBDIVISION & DEVELOPMENT APPEAL BOARD OF THE TOWN OF CANMORE, IN THE PROVINCE OF ALBERTA, DATED FEBRUARY 28, 2023.

Board Members Hearing the Appeal: Mr. Peter Moreland-Giraldeau, Mr. Fraser MacIver and Mr. Christoph Braier

AND IN THE MATTER of the Municipal Government Act, Revised Statutes of Alberta 2000, Chapter M-26, as amended (the "MGA");

AND IN THE MATTER of an appeal by Ashton Construction Services against a refusal by the Canmore Development Authority.

This appeal hearing having been duly opened before the Subdivision & Development Appeal Board on February 22, 2023.

AND UPON hearing oral and visual submissions from the Appellant and Development Officer.

AND UPON having regard to the Town of Canmore Land Use Bylaw No. 2018-22 (Bylaw), the MGA and other relevant planning documents.

RELEVANT STATUTORY & PLANNING DOCUMENT PROVISIONS:

1. Bylaw 2019-06, the Town of Canmore Subdivision and Development Appeal Board Bylaw, in general.
2. Municipal Government Act ("MGA"), in general, and specifically:
 - a. Section 638.2(3)
 - b. Section 687
3. Municipal Development Plan ("MDP"), in general, and specifically:
 - a. Policy 5.3.4
 - b. Policy 12.1.13
 - c. Policy 12.1.8



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- d. Affordable Housing Goal #4
- 4. Indian Flats Area Structural Plan (ASP), in general, and specifically:
 - a. Goal 3.1.1.1
- 5. Land Use Bylaw 2018-22 (“LUB”) in general, and specifically:
 - Section 1.10.0.3

SUMMARY OF EVIDENCE PRESENTED:

1. 23-page Subdivision and Development Appeal Board Staff Report, undated, of the Town of Canmore’s Manager of Planning & Development, Lauren Miller, and Development Planner, Nathan Grivell, inclusive of 5 Attachments.
2. 26-page Notice of Appeal, dated January 25, 2023, from the Appellants agent, Michelle Ouellette of McElhanney Ltd.
3. Notification to the Appellant and Adjacent Neighbours, dated February 2, 2023, from the Subdivision and Development Appeal Board Clerk, Louise Bates.
4. Summary presentation, including a power point presentation, from the Town of Canmore’s Development Planner, Nathan Grivell
5. Verbal presentation, including a power point presentation, from the Appellants agent, Michelle Ouellette of McElhanney Ltd.
6. Verbal presentation at the hearing from 3 community members in support of the appeal.

FINDINGS OF FACT:

1. The Town of Canmore Development Officer refused the Applicant’s Application for a Development Permit, Application File Number PL20220342, on January 11, 2023 (the “Refusal”). The Refusal was for a Change of Use above the main floor: from contractor service and repair to employee housing (two units).
2. The Appellant filed a Notice of Appeal to the refusal on January 25, 2023.
3. A hearing date for the Appeal was set for February 22, 2023

THE BOARD THEREFORE ORDERS THAT:

The appeal be ALLOWED and PL20220342 be APPROVED.

REASONS:

1. Both the Town Administration and the Appellant agreed that there was no clear direction in the ASP with respect to Employee Housing considerations in the Indian Flats Area Structure Plan.
2. Employee housing is a discretionary use in IND2 districts under the MDP. The criteria for determining whether an Employee Housing application should be granted can be found in s. 12.18 of the MDP and s. 5.3.6.1 of the LUB.
3. The Board heard from thirteen (13) impacted property owners in the Elk Run Industrial Park. All expressed their support of the development.
4. No one spoke at the hearing in opposition of the application and no correspondence was received in opposition.



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5. Section 1.10.0.3 of the LUB speaks to what needs to be considered when assessing Development Permits for discretionary use.
 - a. Any plans or policies affecting the parcel. The Board identified the following plans and policies in the Town of Canmore that relate to the proposed use:
 - i. MDP, the Board's reasons in relation to the MDP criteria is outlined below.
 - ii. LUB, the Board's reasons in relation to the LUB criteria is outlined below.
 - iii. Indian Flats ASP, as noted, the Indian Flats ASP is silent in relation to the proposed use.
 - iv. Council Strategic Plan 2023-2026 with respect to Employee Housing. Both the Town Administration and the Applicant acknowledge that the Strategic Plan places a heavy emphasis on finding solutions to the housing crisis in Canmore.
 - b. The location of the parcel and the appropriateness of the proposed development.
 - i. The Board finds that the location of the parcel is conducive with the proposed use for the following reasons.
 1. The parcel is located in an industrial area designated for 'clean, light industry'. Our understanding from both the Town Administration's presentation and that of the Appellant is that this precludes industrial developments which would produce pollution or noxious fumes.
 2. Although the Board acknowledges that there are industrial factors which cannot be eliminated at this location, we are satisfied that these can be sufficiently mitigated through conscientious construction and targeted building practices.
6. The MDP outlines the requirements for Employee Housing under s. 12.1.8
 - a. Residential uses are limited to housing for employees.
 - i. The board is satisfied that the property owner's intention is that the units will be used exclusively for employee housing. We are satisfied that the owner is willing to place a caveat on the title of the property enforcing this. The Board heard from the Town Administration that this requirement is unenforceable. We agree. The town has no inherent interest in the property to direct or enforce such a caveat. However, the Appellant's representative indicated that the property owner intends to do so. The Board is satisfied that this criterion is met.
 - b. Impacts from the industrial uses are sufficiently small to make residential uses appropriate.
 - i. The Board is satisfied that the property's location in an IND2 designated district and the district's limitation to clean light industrial usage will allow for the mitigation of the industrial impact on the Employee Housing units to a level that is sufficiently small. We are satisfied that this can be accomplished through conscientious construction and building practices as indicated by the Appellant and it's representative.
 - c. Residential uses will not displace or inhibit the operation of existing or future industrial uses.



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- i. The Board is satisfied that any future light industrial projects can be controlled through design to mitigate or eliminate the impact of the proposed Employee Housing units on surrounding industrial usage. The Town Administration suggested that industrial projects with building code restrictions that require a safe distance from residential units may be inhibited due to any Employee Housing units at the site. Upon questioning of the Appellant, the Board is satisfied that any such restrictions may be addressed through risk management and building practices.
 - d. Residential units are subordinate to industrial uses.
 - i. As the units will be used explicitly for the purpose of housing employees of the ground level business, the Board finds that this criterion is met. The footprint of the proposed Employee Housing units is approximately 25% of the total useable space and the intended use does not supersede or take primacy over the industrial and commercial use of the building.
- 7. Section 5.3.6.1 of the LUB:
 - a. Adequate long-term and legally binding provisions are in place to ensure the units remain as bona fide Employee Housing and are demonstrably subordinate in terms of area and intensity to other uses in the building.
 - i. The Board is satisfied, based on the representation by the Appellant, that the property owner is willing to place a caveat on the Title of the property to ensure the units remain as bona fide employee housing.
 - ii. Additionally, the units will be used explicitly for the purpose of housing employees of the ground level business, the Board finds that this criterion is met. The footprint of the proposed Employee Housing units is approximately 25% of the total useable space and the intended use does not supersede or take primacy over the industrial and commercial use of the building.
 - b. The space proposed for Employee Housing would not be reasonably used for commercial or industrial purposes.
 - i. The Board is satisfied, based on the submissions from the Appellant and those of the property owners speaking in support of the appeal, that the space proposed for employee housing would not be reasonably used for commercial or industrial purposes. We accept that second floor space in industrial buildings is a loss leader, or rather, it is used for purposes other than industrial usage at a loss, because it is not viable as industrial space. Additionally, as this is a new addition to the existing building, the addition of two employee housing units and commercial office space is a net benefit to the building and to the industrial park.
 - c. Employee Housing units would not constrain any future permitted or discretionary, commercial, or industrial uses from developing on the site or on surrounding areas.
 - i. The Board is satisfied that future clean light industrial projects can be controlled through design to mitigate the impact of the proposed employee housing units.



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The Town Administration suggested that industrial projects with building code restrictions that require a safe distance from residential units may be inhibited due to any Employee Housing units at the site. Upon questioning of the Appellant, the Board is satisfied that any such restrictions may be addressed through risk management and building practices.

- d. Employee Housing would not unduly interfere with existing and any potential industrial development in the area.
 - i. The Board is satisfied that future clean light industrial projects can be controlled through design to mitigate the impact of the proposed employee housing units. The Town Administration suggested that industrial projects with building code restrictions that require a safe distance from residential units may be inhibited due to any Employee Housing units at the site. Upon questioning of the Appellant, the Board is satisfied that any such restrictions may be addressed through risk management and building practices.
- 8. As the Board is satisfied that the proposed development meets the criteria under the LUB for the proposed usage, we are satisfied that the development requires no variances.

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Date Signed

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**CHAIRPERSON Peter Moreland-Giraldeau
SUBDIVISION & DEVELOPMENT APPEAL BOARD**

IMPORTANT INFORMATION FOR APPELLANTS

This decision may be appealed to the Alberta Court of Appeal on a question of law or jurisdiction under Section 688 of the Municipal Government Act, R.S.A. 2000, c. M-26.

SCHEDULE A – CONDITIONS OF APPROVAL

DEVELOPMENT PERMIT No.:	PL20220342
LAND USE DISTRICT:	IND 2
APPROVED USE(S):	CHANGE OF USE: TWO UNITS OF EMPLOYEE HOUSING (PORTION OF the 2nd FLOOR)
APPROVED VARIANCE(S):	THREE VARIANCES TO REQUIREMENTS FOR EMPLOYEE HOUSING
MUNICIPAL ADDRESS:	127 BOW MEADOWS CRESCENT, CANMORE, AB
LEGAL ADDRESS:	PLAN 9512298 BLOCK 7 LOT 5

APPROVED VARIANCES

1. None.

STANDARD CONDITIONS

1. All construction associated with the approval of this Development Permit shall comply with the regulations of the Land Use Bylaw (LUB) 2018-22, unless otherwise stated under the approved variances section of this document.
2. All construction associated with the approval of this Development Permit shall comply with the Town of Canmore Engineering requirements outlined in the Engineering Design and Construction Guidelines (EDCG).
3. All construction associated with the approval of this Development Permit shall comply with the Tree Protection Bylaw and ensure all tree protection measures are appropriately put in place prior to development of the site, where determined necessary by the Town of Canmore Parks Department.
4. All construction, landscaping and exterior finishing materials are to be as shown on the approved plans and other supporting material submitted with the application.
5. Access to the site for emergency vehicles shall be to the satisfaction of the Manager of Emergency Services.

SPECIFIC CONDITIONS

1. The developer shall ensure the approved Employee Housing units comply with the definition for Employee Housing in Land Use Bylaw 2018-22:

“Employee Housing means one or more Dwelling Units used exclusively for the residence of employees and members of their family.”

“Employee means a person who is primarily employed by an employer within the municipal boundaries of the Town of Canmore. For the purpose of this definition, a person is primarily employed if that person is performing, or is reasonably expected to perform, the services of an employee for an

employer, for a minimum of an average of twenty (20) hours per week. The employee shall not be the same person as the employer. This provision may be varied at the discretion of the Development Authority where a proposed development meets the purpose of the applicable land

use district and/or meets the intent of the Town's employee housing policies (e.g. in a building designed for a Live/Work Studio where a person is self-employed and living adjacent to their place of employment). In addition to the above, those individuals who can provide written proof (through such means as lease or rental agreements) of continuous residency within the Town of Canmore for a minimum of twenty-four (24) continuous months and who are primarily employed by an employer within the boundaries of the M.D. of Bighorn west of and including the hamlet of Seebe, or within the Town of Banff or Banff National Park, shall be considered an "employee" for the purposes of this Bylaw and shall be eligible to occupy a unit in an approved employee housing project."

ADVISORY COMMENTS

1. None.

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Signature

Subdivision and Development Appeal Board, Chair

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Date