



**EDMONTON
TRIBUNALS**

*Subdivision &
Development
Appeal Board*

*10019 - 103 Avenue NW
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SDAB-D-17-075

Project No. 242488221-001

An appeal to construct a two-storey Accessory Building (main floor Garage, 6.1 metres by 9.75 metres, second floor Garage Suite, 6.7 metres by 8.75 metres) was **TABLED** to May 3, 2017.



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Date: May 11, 2017
Project Number: 178464619-001
File Number: SDAB-D-17-076

Notice of Decision

- [1] On April 26, 2017, the Subdivision and Development Appeal Board heard appeals that were filed on **March 29 and March 30, 2017**. The appeals concerned the decision of the Development Authority, issued on March 9, 2017, to approve the following development:

To construct a Hotel (118 sleeping units) and General Retail Stores Use building, and to demolish existing Motel (Gateway Motel) - Comfort Inn & Suites.

- [2] The subject property is on Plan 4976KS Blk 34 Lots 9, 11U, 12, located at 10410 - Allendale Road NW and 6303 - 105 Street NW, within the DC1 (Bylaw 17112) Direct Development Control Provision. The Strathcona Junction Area Redevelopment Plan applies to the subject property.

- [3] The following documents were received prior to the hearing and form part of the record:

- Bylaw 17112;
- Strathcona Junction Area Redevelopment Plan;
- A copy of the Development Permit application with attachments, proposed plans, a memorandum from Transportation Services, support and conditions from the Edmonton Design Committee, a parking impact assessment, a sun shadow study, and several other assessments completed by other City Departments;
- The Development Officer's written submission;
- Documentation and written submissions from Appellant No. 1 and No. 2; and
- The Respondent's PowerPoint Presentation.

Preliminary Matters

- [4] At the outset of the appeal hearing, the Chair confirmed with the parties in attendance that there was no opposition to the composition of the panel.

- [5] The Chair outlined how the hearing would be conducted, including the order of appearance of parties, and no opposition was noted.
- [6] The appeal was filed on time, in accordance with section 686 of the *Municipal Government Act*, RSA 2000, c M-26.
- [7] The Chair explained to the parties that the subject Site is zoned DC1 (Bylaw 17112) Direct Development Control Provision (“DC1”) and the Board’s authority is limited under section 641(4)(b) of the *Municipal Government Act*, which states:

Despite section 685, if a decision with respect to a development permit application in respect of a direct control district, is made by a development authority, the appeal is limited to whether the development authority followed the directions of council, and if the subdivision and development appeal board finds that the development authority did not follow the directions it may, in accordance with the directions, substitute its decision for the development authority’s decision.

The Chair asked all parties to make submissions to the Board with respect to how the Development Officer did or did not follow the directions of Council.

Summary of Hearing

i) *Position of the Appellants:*

Appellant No. 1, Mr. D. Therrien:

- [8] Mr. Therrien indicated that the height of the proposed development is not characteristic of other buildings in this neighbourhood, and is approximately double the height of any buildings located within several blocks of the subject site.
- [9] He disagreed with the Development Officer’s height calculation that was determined using the main floor of the building rather than the average grade. Based on his calculations, per section 52.1(b) of the *Edmonton Zoning Bylaw*, he determined that the proposed height from grade to the midpoint of the highest parapet is 13.97 metres. He conceded that the proposed height is still under the maximum allowable height of 14 metres.
- [10] Section 8(g) of the DC1 states:

Development on Sites between Allendale Road, 105 Street, the Lane south of 64 Avenue and the Lane west of 104 Street shall be oriented to Allendale Road and 105 Street. There shall be a minimum setback of 6.0 m from lane south of 64 Avenue and a minimum landscaped yard of 2.0 m and site planning and building massing shall minimize the sun-shadow effect on properties to the north.

[11] It was his opinion that the proposed development does not comply with this requirement because there will be significant sun-shadowing onto properties located north of the subject site. He referenced the aerial photographs contained in the written submission provided by the Development Officer to illustrate that the properties to the north will be impacted for most months of the year by the building's massing.

Appellant No. 2, Mr. G. Brightwell:

[12] Mr. Brightwell reiterated the concerns of Mr. Therrien that the height of the proposed building is excessive.

[13] He owns two properties located in close proximity to the proposed development. The proposed Hotel will not enhance the neighbourhood and it will impact the quality of life for nearby residents; create financial hardships; and safety concerns.

[14] The site needs to be redeveloped as the existing Motel has negatively impacted the neighbourhood but not with a development that completely lacks respect for longtime residents of this neighbourhood.

[15] He has been anxious and working against the proposed development for the past two years.

[16] Residents that live on the north side of 64 Avenue will have no access to the sun during winter months and limited access in the spring and fall. This eliminates any ability to use solar power and adds to heating bills during the winter. If this development is approved, he will not be able to build an eco-friendly house on his property.

[17] This development will have a significant impact on privacy because the hotel windows will overlook the yards to the north.

[18] It was his opinion that it was not Council's intent to adopt a DC1 Bylaw that would have such a negative impact on residential property owners in the area. He attended all of the public hearings and the regulation regarding a sun-shadow study was included in the DC1 as a direct result of his concerns.

[19] The DC1 for this site was not written properly to address the limitations of the subject site and protect property owners in the area. There is a utility right-of-way that runs through the entire site which limits the building pocket and has resulted in the proposed building being sited closer to the residential properties to the north. In his opinion, other options would be available if the existing restaurant was demolished.

[20] Residents had very little time to obtain information about the proposed development when the notice was sent out. The 60-metre notification radius should have been expanded and should have included the properties north of 64 Avenue. It was difficult to find information on the City website and a sign was never erected on the site.

- [21] The developer attended a hastily called meeting with the Community League to discuss the proposed development with hardly any notice to the neighbouring residents. In his opinion, the developer could design a development that is much more suitable for the site.
- [22] The Traffic Impact Assessment submitted by the Applicant was done in 2015 and did not consider the impacts of the new professional building located south of the subject site. A new Traffic Impact Assessment as well as a new Geotechnical Assessment should be conducted.
- [23] Tenants in his rental properties have already advised him that they will move if the proposed development is approved. He and his neighbours plan to launch a class action lawsuit against the City if the development is approved.
- [24] Mr. Brightwell provided the following with respect to questions from the Board:
- a) The developer provided some information to the Community League at the hastily called meeting. He sits on the Community League Board and was at the meeting. The other 12 board members do not live on 64 Avenue and are not directly impacted by the proposed development. In his opinion, there should have been a meeting with the most affected residents.
 - b) He asked the Community League President to list all of the concerns arising from the DC1 and the Strathcona Junction Area Redevelopment Plan. However, none of these concerns were addressed.
- ii) *Position of the Development Officer, Mr. N. Shah, Mr. H. Luke, Supervisor, Sustainable Development and Mr. C. Fremmerlid, Transportation Services:*
- [25] Mr. Shah explained that he determined the grade of the subject site by using the requirements of section 52.4(b) of the *Edmonton Zoning Bylaw* which states that the Development Officer may determine grade by calculating the average elevation at the corners of the site.
- [26] Mr. Shah referenced the sun-shadow aerial photographs submitted by the Applicant. In his opinion, the Applicant has made every attempt to comply with section 8(g) of the DC1 by increasing the required setback from the lane south of 64 Avenue from 6 metres to over 12 metres. He acknowledged that the sun-shadow impact has not been completely eliminated but has been minimized.
- [27] This site was originally zoned (CB2) General Business Zone, which would allow a Hotel to be developed with a maximum building height of 30 metres. The DC1 limits the building height to 14 metres and the proposed development does not exceed the requirement.

- [28] Mr. Luke advised that the proposed development was reviewed by the Edmonton Design Committee. The Committee reviewed the proposed development in relation to overall design principles and urban design. The Committee supported the proposed development with recommended conditions regarding lighting, trash collection, the pedestrian connection and landscaping. Concerns were not raised regarding the height of the building or sun-shadowing.
- [29] The DC1 was adopted by Council in March 2015. Council held public hearings and there was a pre-consultation with respect to the land development application. In his opinion, neighbouring property owners had every opportunity to provide feedback at that time.
- [30] Council established the development regulations for this site and it is the responsibility of the Development Authority to review development applications based on those regulations.
- [31] Mr. Fremmerlid advised the Board that 189 parking spaces are required for the subject site and 193 parking spaces are proposed.
- [32] He acknowledged that the Traffic Impact Assessment was completed in 2015 and is outdated.
- [33] They provided the following with respect to questions from the Board:
- a) This site has a unique shape with a utility right-of-way in the centre, running east to west.
 - b) The main entrance of the Hotel is oriented towards Allendale Road.
 - c) The logistics of the site were reviewed and the Development Authority cannot direct the developer to demolish the existing Restaurant.
 - d) In their opinion, proper notification was provided to affected property owners.
 - e) The developer will not be required to make any improvements to the lane located east of the subject site that runs north to south.
 - f) In their opinion, privacy will not be a concern because the proposed building does not exceed the maximum 14 metre height requirement.
 - g) Conditions recommended by Transportation Services have been imposed on the approved development permit.

iii) Position of the Respondent, Mr. M. Lomaszkiewicz, representing Kumar Architecture Ltd.:

- [34] The proposed development complies with all of the requirements of the DC1.
- [35] Every attempt was made to address the concerns of the community and neighbouring property owners by increasing the north setback, increasing the landscaping, and adjusting the on-site parking.
- [36] The Landscape Architect has included some trees in the landscape buffer along the north property line in an attempt to provide more privacy for the neighbours to the north.
- [37] In his opinion, the concerns of the Appellants are not related to the DC1.
- [38] The recommendations from the Edmonton Design Committee and the Crime Prevention Through Environmental Design Criteria (CPTED) Assessment will be implemented.

iv) Rebuttal of the Appellants, Mr. Therrien and Mr. Brightwell:

- [39] Mr. Therrien reiterated his opinion that there is a discrepancy in the way in which the height was calculated by the Development Officer.
- [40] It was noted that the Edmonton Design Committee only provided conditional approval.
- [41] The Traffic Impact Assessment was completed in 2015 and was based on a review of the original plans. It did not consider the recommendations contained on page 20 and 21 of that study, regarding the installation of a traffic signal at the intersection of Allendale Road and 105 Street and the impacts of the Allendale Professional Centre. The installation of this traffic signal is not included as a condition on the approved development permit.
- [42] The Traffic Impact Assessment was prepared by an Engineer based out of Calgary and the number of site visits is questionable. The proposed on-site parking contained on page 5 of the study was based on a previous plan. The approved plan shows 11 parking spaces at the front of the Hotel and none at the rear.
- [43] Mr. Therrien referenced the photographs contained in his written submission to demonstrate the current parking situation on and around the subject site.
- [44] There has been a large truck and trailer parked on the north side of 64 Avenue for a number of days. Employees from businesses located on 104 Street also park on 64 Avenue.

- [45] It is difficult to determine the exact location of the utility right-of-way on the subject site. The property owner has never contacted EPCOR to inquire about the exact location or if any adjustments or revisions could be made.
- [46] The Development Authority never provided notice of the approved development even though several requests were made to make sure they received notice.
- [47] Mr. Brightwell used his laptop to display a 3D design that he prepared for an alternate Hotel on the subject site.
- [48] He referenced photographs to illustrate different views of the subject site from his properties. He also referenced a photograph of a 4 ½ storey Hotel that has recently been built on Calgary Trail to support his opinion that a Hotel should be located in a commercial or industrial area, not a residential neighbourhood.
- [49] Photographs were referenced to show the state of the lanes located east and north of the subject site. He questioned how large service vehicles would access the proposed Hotel.
- [50] Increased traffic from the Hotel will create a safety concern for children playing in the neighbourhood.
- [51] They reiterated their concern that the proposed development does not comply with the requirements of section 8(g) of the DC1 and does not comply with the Strathcona Junction Area Redevelopment Plan.

Decision

- [52] The appeals are **DENIED** and the decision of the Development Authority is **CONFIRMED**. The development is **GRANTED** as approved by the Development Authority.

Reasons for Decision

- [53] Section 641(4)(b) of the *Municipal Government Act*, Chapter M-26 states:

if a decision with respect to a development permit application in respect of a direct control district is made by a development authority, the appeal is limited to whether the development authority followed the directions of council, and if the subdivision and development appeal board finds that the development authority did not follow the directions it may, in accordance with the directions, substitute its decision for the development authority's decision.

[54] The Board finds that the Development Authority did follow the directions of Council for the following reasons:

- a. Section 7(e) of DC1 (Bylaw 17112) Direct Development Control Provision (“DC1”) states that “Buildings shall not exceed 14.0 metres nor four Storeys.” One of the Appellants questioned the Height calculation provided by the Development Authority. Based on the evidence provided it was determined that the discrepancy arose from a misinterpretation of section 52.1(b) of the *Edmonton Zoning Bylaw* which states:

For a flat roof, Height shall be determined by measuring from the horizontal plan through Grade to the midpoint of the highest parapet, provided the resulting top of the parapet is no more than 0.4 metres above the maximum Height allowed in the Zone or Overlay.

The Appellant calculated the building Height to the top of the highest parapet instead of to the midpoint of the highest parapet. The Board determined based on a review of all of the Height calculations provided by the Appellant and the Development Authority, that the Height from average Grade to the midpoint of the highest parapet was less than 14.0 metres and therefore the Development Authority did follow the directions of Council as set out in section 7(e) of the DC1 regarding the maximum building Height.

- b. Section 8(g) of the DC1 states:

Development on Sites between Allendale Road, 105 Street, the Lane south of 64 Avenue and the Lane west of 104 Street shall be oriented to Allendale Road and 105 Street. There shall be a minimum setback of 6.0 metres from the lane south of 64 Avenue and a minimum landscaped yard of 2.0 metres and site planning and building massing shall minimize the sun-shadow effect on properties to the north.

Based on a review of the plans and the evidence provided, the Board determined that the proposed development is oriented towards Allendale Road and 105 Street. Allendale Road and 105 Street are both located south of the subject Site and curve southward forming a V-shaped intersection rather than a straight roadway. The main entrance of the proposed Hotel is oriented towards the V-shaped intersection created by Allendale Road and 105 Street south of the subject Site and complies with the regulations of section 8(g) of the DC1.

- c. The Appellants also raised concern regarding whether or not site planning and building massing minimized the sun-shadow effect on properties to the north. The Board acknowledges that the proposed development will create sun-shadowing impacts on the properties to the north during the winter months. However, the Board had to determine whether or not the Development Authority took steps to ensure that the site planning and building massing minimized the sun-shadow effect on properties to the north. Based on the evidence provided, the

Board is satisfied that this was done by increasing the north Setback from 6.0 metres to 12.83 metres. This significant increase in the north Setback will minimize the sun-shadowing effect by virtually eliminating any sun-shadow during the summer months and reducing it during the spring and fall. Evidence was provided to illustrate that there will be no impact at either the autumnal or vernal equinox. Accordingly, the Board finds that the Development Authority followed the directions of Council to require site planning and building massing to minimize the sun-shadow effect on properties to the north.

- d. The Board also considered section 7(d) of the DC1 which states:

At the discretion of the Development Officer in consultation with the Transportation Services Department, a Traffic and/or Parking Impact Assessment prepared by a registered Professional Engineer shall be required as part of the application for a development permit. Issuance of the development permit shall be subject to there being sufficient capacity on the adjacent roadway network, adequate access to and from the Site and where warranted a Development Agreement to construct or pay for the construction of any offsite improvements needed to accommodate the additional pedestrian and/or vehicular traffic associated with the development.

The Board considered this section based on concerns raised by the Appellants regarding the efficiency of the Traffic Impact Study submitted by the Applicant. The Appellants stated that the Traffic Impact Study was outdated because it was prepared in 2015 and did not specifically consider the background traffic volumes or the impact of the relatively recent development of the Allendale Professional Centre which is located south of the subject site. The representative from Transportation Services conceded that the Traffic Impact Study was outdated.

The Board finds that a Traffic Impact Assessment is not a mandatory requirement of the DC1. It is only required at the discretion of the Development Officer. In this case the Development Officer exercised discretion and required a Traffic Impact Assessment as part of the development permit application. The Development Officer concluded that the Traffic Impact Assessment was adequate and met the requirements of section 7(d) of the DC1. In reviewing the Traffic Impact Assessment, the Board finds that the authors of the Study were aware of the development of the nearby Allendale Professional Centre because it is referenced on page 21 of the Study. One of the recommendations contained in 7.2 of the Study states:

The Allendale Professional Centre commercial complex is likely to open prior to the Comfort Inn as the building is already constructed, so any impact to the transportation network from this other development will need to be mitigated before improvements are needed to support the Comfort Inn.

The Board finds that the Traffic Impact Assessment provided information to the Development Authority that the proposed development would have little impact on the 2025 full build out scenario contained in 7.1 of the Study. Based on this information, the Board finds that the Development Authority did follow the directions of Council pursuant to section 7(d) of the DC1.

- [55] Based on the reasons above, the Board finds that the Development Authority did follow the directions of Council in approving the proposed development and pursuant to section 641(4)(b) of the *Municipal Government Act*, the appeal is denied.

Mr. I. Wachowicz, Chairman
Subdivision and Development Appeal Board

Board members in attendance: Mr. K. Hample, Mr. R. Hobson, Ms. S. LaPerle, Mr. M. Young

Important Information for the Applicant/Appellant

1. This is not a Building Permit. A Building Permit must be obtained separately from the Sustainable Development Department, located on the 2nd Floor, Edmonton Tower, 10111 – 104 Avenue NW, Edmonton, AB T5J 0J4.
2. Obtaining a Development Permit does not relieve you from complying with:
 - a) the requirements of the *Edmonton Zoning Bylaw*, insofar as those requirements have not been relaxed or varied by a decision of the Subdivision and Development Appeal Board,
 - b) the requirements of the *Alberta Safety Codes Act*,
 - c) the *Alberta Regulation 204/207 – Safety Codes Act – Permit Regulation*,
 - d) the requirements of any other appropriate federal, provincial or municipal legislation,
 - e) the conditions of any caveat, covenant, easement or other instrument affecting a building or land.
3. When an application for a Development Permit has been approved by the Subdivision and Development Appeal Board, it shall not be valid unless and until any conditions of approval, save those of a continuing nature, have been fulfilled.
4. A Development Permit will expire in accordance to the provisions of section 22 of the *Edmonton Zoning Bylaw, Bylaw 12800*, as amended.
5. 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*, RSA 2000, c M-26. If the Subdivision and Development Appeal Board is served with notice of an application for leave to appeal its decision, such notice shall operate to suspend the Development Permit.
6. When a decision on a Development Permit application has been rendered by the Subdivision and Development Appeal Board, the enforcement of that decision is carried out by the Sustainable Development Department, located on the 2nd Floor, Edmonton Tower, 10111 – 104 Avenue NW, Edmonton, AB T5J 0J4.

NOTE: The City of Edmonton does not conduct independent environmental checks of land within the City. If you are concerned about the stability of this property for any purpose, you should conduct your own tests and reviews. The City of Edmonton, when issuing a development permit, makes no representations and offers no warranties as to the suitability of the property for any purpose or as to the presence or absence of any environmental contaminants on the property.