



**EDMONTON
TRIBUNALS**

*Subdivision &
Development
Appeal Board*

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Date: August 9, 2018
Project Number: 279371939-001
File Number: SDAB-D-18-110

Notice of Decision

- [1] On July 25, 2018, the Subdivision and Development Appeal Board (the “Board”) heard an appeal that was filed on **June 25, 2018**. The appeal concerned the decision of the Development Authority, issued on June 21, 2018, to refuse the following development:

Construct a Garden Suite.

- [2] The subject property is on Plan 1459BA Blk 3 Lot 18, located at 9346 - 98 Street NW, within the (RF2) Low Density Infill Zone. The Mature Neighbourhood Overlay and Strathcona Area Redevelopment Plan apply to the subject property.
- [3] The following documents were received prior to the hearing and form part of the record:
- A copy of the Development Permit application with attachments, proposed plans, and the refused Development Permit;
 - The Development Officer’s written submission;
 - The Appellant’s reason for appeal; and
 - Two letters in support of the Garden Suite including one from an adjacent property.
- [4] The following exhibit was presented during the hearing and forms part of the record:
- Exhibit A – PowerPoint presentation of the Appellant.

Preliminary Matters

- [5] At the outset of the appeal hearing, the Presiding Officer confirmed with the parties in attendance that there was no opposition to the composition of the panel.
- [6] The Presiding Officer outlined how the hearing would be conducted, including the order of appearance of parties, and no opposition was noted.

[7] The appeal was filed on time, in accordance with section 686 of the *Municipal Government Act*, RSA 2000, c M-26.

Summary of Hearing

i) *Position of the Appellants, Mr. D. Findling and Ms. K. Findling*

[8] The Appellants used a PowerPoint presentation to address the reasons of refusal of the Development Officer (*Exhibit A*).

[9] The proposed garage is 2.89 metres from the house rather than the required 3.0 metres per section 814.3(20) of the *Edmonton Zoning Bylaw* (the *Bylaw*) and the proposed Garden Suite is 2.89 metres from the house rather than the required 4.0 metres per section 87.11.

a) The principal building is non-compliant as there is a very large front setback leaving limited space to the rear of the principal building. They have moved the garage as far back as possible to still meet the minimum required 1.2 metre garage pad while also maintaining a minimum garage depth of 21 feet to allow their vehicles to fit within it.

b) If these variances are not granted they cannot build a useable garage.

[10] The distance from the side landing to the side lot line is 0.3 metres rather than the required 0.6 metres per section 44.3 of the *Bylaw*.

a) The stairway will be metal, posing no fire hazard.

b) A privacy screen will be included at the top platform located at the entrance door to the Garden Suite.

c) Moving the stairway to the east or north side of the Garden Suite would be more intrusive on the neighbours in terms of privacy and a projection variance would still be required. Photographs were used to illustrate the overview into the adjacent yards from the proposed stairway and the potential east or north locations.

[11] The proposed development is in excess of the maximum permitted height per section 87.3(a) by 1.0 metres.

a) The Development Officer calculated the height at the midpoint of the small north portion of the roof. The Appellants request that the midpoint be calculated from the majority of the roof which would put the midpoint at 6.3 metres; below the maximum 6.5 metre height regulation. Slides 9 and 10 of their presentation show their requested midpoint calculation compared to the Development Officer's midpoint calculation.

- b) The Development Officer suggested they could drop the north slope of the roof to an 11/12 pitch and thereby meet the height regulation. The Appellants are not in favour of this as it interferes with the design element and changes the entire look. They request that the proposed roof line be allowed as it is a better design.
 - c) Two letters of support were received for the proposed roof line – one from the most affected neighbour to the north and one from YEG Garden Suites group. They also received positive comments from other neighbouring property owners.
- [12] The principal building is at the end of its life span and the Appellants plan to build a new house within the next five years.
- [13] The Appellants provided the following responses to questions from the Board:
- a) The Development Officer's suggested change to the roof line would not change the overall size, massing or scope of the proposed development as viewed by neighbours. Practically, the affected neighbour would simply see a steeper roof and less wall.
 - b) The windows in slide 10 will not be frosted as they are situated very high within the suite. A person would require a ladder or would have to stand on the kitchen counter to see out of these windows.
 - c) The property owners to the south were concerned that the proposed stair location would be too constricting between the two buildings and suggested that the stairs be moved to the east side of the Garden Suite. The Appellants feel there is no issue with constriction due to the presence of a fence and moving the stairs to the east would create more of an infringement on privacy.
 - d) Their neighbour's driveway to the south is 15 feet in length, more than double the length of their proposed driveway. This location reduces constriction and means that the garage also shields this neighbour's rear yard from oversight from the stairs. The main view from the stairs is of the garage and its roof.
- [14] The abutting corner site to the north is split into two lots and has two separate titles. The owners at 9807 provided a letter of support and the owners of 9801 have verbally advised them they support the design.
- [15] They have reviewed the suggested conditions of the Development Officer and are in favour of all of them with the exception of the Height restriction in Condition 3.
- ii) *Position of the Development Officer, Mr. G. Robinson*
- [16] The Development Authority provided a written submission and did not attend the hearing.

Decision

[17] The appeal is **ALLOWED** and the decision of the Development Authority is **REVOKED**. The development is **GRANTED** as applied for to the Development Authority, subject to the following **CONDITIONS**:

1. The Garden Suite shall be constructed in accordance with the stamped and approved drawings.
2. Frosted or opaque glass treatment shall be used on windows on the red-lined stamped approved elevation plan to minimize overlook. (Reference Section 87.8).
3. Only one of a Secondary Suite or Garden Suite may be developed in conjunction with a principal Dwelling.
4. A Garden Suite shall not be allowed within the same Site containing a Group Home or Limited Group Home, or a Major Home Based Business and an associated principal Dwelling, unless the Garden Suite is an integral part of a Bed and Breakfast Operation in the case of a Major Home Based Business.
5. Notwithstanding the definition of Household within this Bylaw, the number of unrelated persons occupying a Garden Suite shall not exceed three.
6. The Garden Suite shall not be subject to separation from the principal Dwelling through a condominium conversion or subdivision.
7. Facades facing a Lane shall have exterior lighting (Reference Section 87.19).
8. The area hard surfaced for a driveway, not including the area used for a walkway, shall comply with Section 54.6 of the Zoning Bylaw 12800.
9. Except for the hard surfacing of driveways and/or parking areas approved on the site plan for this application, the remainder of the site shall be landscaped in accordance with the regulations set out in Section 55 of the Zoning Bylaw 12800.
10. All access locations and curb crossings shall have the approval of the City Transportation prior to the start of construction. Vehicular access shall be from the rear lane only (Reference Section 53(1)).

ADVISEMENTS:

- i. Lot grades must comply with the Edmonton Drainage Bylaw 16200. Contact Drainage Planning and Engineering at 780-496-5576 or lot.grading@edmonton.ca for lot grading inspection inquiries.

- ii. The driveway access must maintain a minimum clearance of 1.5m from all surface utilities.
- iii. Any hoarding or construction taking place on road right-of-way requires an OSCAM (On-Street Construction and Maintenance) permit. It should be noted that the hoarding must not damage boulevard trees. The owner or Prime Contractor must apply for an OSCAM online at:

http://www.edmonton.ca/bylaws_licences/licences_permits/oscam-permit-request.aspx

- iv. Unless otherwise stated, all above references to "section numbers" refer to the authority under the Edmonton Zoning Bylaw 12800.

[18] In granting the development the following variances to the *Edmonton Zoning Bylaw* (the *Bylaw*) are allowed:

1. The maximum allowable Height for a Garden Suite with a roof slope of 4/12 (18.4 degrees) or greater of 6.5 metres (per Section 87.3) is varied to allow an excess of 1.0 metres, thereby increasing the maximum allowed Height to 7.5 metres.
2. The minimum allowable distance of 4.0 metres between a Garden Suite and the principal Dwelling on the same Site (per Section 87.11) is varied to allow a deficiency of 1.11 metres, thereby decreasing the minimum allowed distance to 2.89 metres.
3. The maximum allowed projection for Platform Structures into the Setback along the south Side Lot Line (per Section 44.3) is increased from 0.6 metres to 0.9 metres to permit a minimum allowable distance of 0.3 metres from the side landing to the Side Lot Line.

Reasons for Decision

[19] The proposed development is a Garden Suite, a Permitted Use in the (RF2) Low Density Infill Zone.

[20] The Development Officer determined that the proposed Garden Suite would require four variances to the *Bylaw*. The Board has determined that only three variances apply and grants them for the reasons which follow.

[21] The Board considered the submissions of the Appellant as well as the report of Development Officer. The Development Officer denied the requested variances as he did not find there was a hardship with respect to the subject Site. The Board disagrees and notes that a hardship is created for the construction of a fully compliant Garden Suite

with space sufficient for parking vehicles given that the Principal Dwelling is set back 13.36 metres from the Front Lot Line and the minimum Setback for a Driveway off the Lane is 1.2 metres for a Garden Suite. The Board does find a hardship, particularly with respect to the separation distance to the Principal Dwelling.

[22] The Board grants the variance to Height for the following reasons:

- a) This roof design for the proposed Garden Suite is unique and includes several asymmetrical slopes. Given this configuration, the midpoint of 75 percent of the roof has a Height of 6.3 metres which complies with the 6.5 metres Height requirement and reduces the aggregate Height and massing impacts.
- b) The highest elevation for the Garden Suite is the north elevation. The neighbour directly facing this elevation, and therefore most directly affected by it, provided strong written support for this development and for the roof design in particular.
- c) Upon observation of the plans and 3D mock-ups, the Board notes that the alternative design suggested by the Development Officer to meet the Height regulation would not change the overall Height of the peak, nor the highest ridgeline. The Appellant's evidence shows that the massing of the north wall would simply be replaced by the massing of a very steep roof. A fully compliant Height would therefore have the same impact on the most affected neighbour as the proposed design.
- d) The variety of materials and the frosted window used along the north elevation, together with the unique roof line break up the massing and provide articulation which also lessens any adverse impacts of the variance to Height.

[23] The Board grants the variance to section 44.3 to enable the stairs and raised side landing to be located 0.3 metres from the Side Lot Line for the following reasons:

- a) The impact of the projection is lessened given the relative location of the rear detached Garage and 3 metre Driveway on the abutting lot to the south.
- b) Based on the photographs provided by the Appellants, the raised landing overlooks the rear detached Garage of the property to south, there are limited sight lines into that neighbour's Rear Yard and House.
- c) In any event, the Appellants have added screening along the south and east portions of the raised landing at the entrance to the Garden Suite which also lessens its overlook to the south.
- d) Given the footprint constraints, in order to make the Garden Suite useable, a variance would also be required if the stairs were re-located to either the east or the north elevations.

- e) If the stairs were relocated to the east, the structure would be even closer to the principal residence increasing the needed separation variance and creating significant privacy impacts for the abutting property to north located closest to 98 Street. The stairs would point directly toward the kitchen windows of this House which is located in very close proximity to the shared south Side Lot Line given the size and configuration of its Lot.
- f) If the stairs were relocated to the north elevation, the stairs and landing would have direct oversight of the only private yard area and the rear entrance to the abutting property to the north located closest to the rear lane.
- g) Based on the photographs provided, the Board finds that re-locating the stairs to the either east or to the north elevations would infringe more on the abutting lots to the north than the proposed design.

[24] The Board grants a variance to section 87.11 allowing a separation distance of 2.89 metres instead of the required 4.0 metres from the Principal Dwelling for the following reasons:

- a) As noted above, given the location of the Principal Dwelling and the Driveway requirements, a useable Garden Suite with a Parking Area is not possible without a variance.
- b) For this development to comply with the 4.0 metre separation requirement per section 87.11, the overall length of the Garden Suite could be no more than approximately 5.18 metres. As the minimum length of an allowable parking space is 5.5 metres, the elimination of the separation variance would create the need for a parking variance of two parking spaces.
- c) All three of the most immediately impacted abutting neighbours support the Garden Suite.

[25] The Development Officer indicated a variance is required to section 814.3(20) of the Mature Neighbourhood Overlay which requires a separation distance of 3.0 metres between a Principal Dwelling and a rear detached Garage. The Board disagrees and finds that this variance is not required for the following reasons:

- a) The proposed development is a Garden Suite Use and not a Garage.
- b) Section 6.1 of the *Bylaw* defines the term Garage as “an Accessory building, or part of a principal building designed and used primarily for the storage of motor vehicles and includes a carport.” By contrast, a Garden Suite is a specific Use class and defined in section 7.2(3) as “an Accessory building containing a Dwelling, which is located separate from the principal Use which is Single Detached Housing, and which may contain a Parking Area. A Garden Suite has cooking facilities, food preparation, sleeping and sanitary facilities which are separate from those of the principal Dwelling located on the Site. This Use Class

does not include Secondary Suites, Blatchford Lane Suites, or Blatchford Accessory Suites.”

- c) Garages and Garden Suites have unique characteristics, raise unique issues and are subject to differing development regulations for Height, separation and Setbacks. Per section 50.2 of the *Bylaw*, the proposed development is subject to the regulations specific to Garden Suites in section 87 rather than those applicable to Accessory buildings generally, including those applicable to Garages. Similarly, the Board is of the view that the requirement of section 814.3(20) which is specific to Garages should not apply in this case. Consequently, the Board finds that there was no requirement for neighbourhood consultation per section 814.5.

[26] In the event that the Board is incorrect and the development regulation in the Mature Neighbourhood Overlay pertaining to Garages applies to the Garden Suite, it finds that there was substantial compliance with the requirement for neighbourhood consultation based on the Development Officer’s report. Several neighbours called about the development and one formal response from an abutting neighbour was received. If it were required, the Board would grant the variance to section 814.3(20) for the reasons outlined regarding the variance in separation distance required under section 87.11 which is a larger variance.

[27] For the reasons above, the Board finds that the proposed development will not unduly interfere with the amenities of the neighbourhood nor materially interfere with or affect the use, enjoyment or value of neighbouring parcels of land.

[28] The Board has applied the conditions and advisements as recommended by the Development Officer and agreed to by the Appellant, with the exception of the condition that the proposed Garden Suite comply with the Height regulation as a variance was granted to that regulation.

Ms. K. Cherniawsky, Presiding Officer
Subdivision and Development Appeal Board

Board Members in Attendance:

Mr. V. Laberge; Mr. A. Nagy; Ms. S. McCartney; Ms. D. Kronewitt Martin

cc: Development & Zoning Services – Mr. G. Robinson / Mr. A. Wen

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.



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Date: August 9, 2018
Project Number: 277199744-001
File Number: SDAB-D-18-111

Notice of Decision

- [1] On July 25, 2018, the Subdivision and Development Appeal Board (the “Board”) heard an appeal that was filed on **July 3, 2018**. The appeal concerned the decision of the Development Authority, issued on June 8, 2018 to approve the following development:

Construct a 68 Dwelling Apartment House.

- [2] The subject property is on Plan 1275HW Blk 3 Lot 15, located at 11503 - 76 Avenue NW, within the DC2.988 Site Specific Development Control Provision.
- [3] The following documents were received prior to the hearing and form part of the record:
- A copy of the Development Permit application with attachments, proposed plans, and the approved Development Permit;
 - The Development Officer’s written submission;
 - The Appellant’s reasons for appeal and PowerPoint presentations;
 - Two on-line responses; and
 - An e-mail from a property owner with concerns about proposed development.

Preliminary Matters

- [4] At the outset of the appeal hearing, the Presiding Officer confirmed with the parties in attendance that there was no opposition to the composition of the panel.
- [5] The Presiding Officer 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 Presiding Officer explained that as the Appellant is located outside of the 60 metre notification area he must first explain how he is affected by the proposed development per section 685(2) of the *Municipal Government Act* that states:

In addition to an applicant under subsection (1), any person affected by an order, decision or development permit made or issued by a development authority may appeal to the subdivision and development appeal board.

Summary of Preliminary Matter

i) Position of the Appellant, Mr. M. Huculak

- [8] Mr. Huculak referred the Board to his PowerPoint presentation “How am I affected” to illustrate that he is just beyond the 60 metre notification area and has a more open view of the proposed development than some of the properties within the notification area. He will be able to see all of the 4th storey and most of the 3rd storey of the proposed development.
- [9] The City contemplates that parties outside of the 60 metre area could be affected as it advertises proposed developments in the local newspaper.
- [10] Mr. Huculak will also see the proposed development through his travel patterns through the neighbourhood. He regularly passes directly past the subject site.
- [11] He is concerned that the proposed bicycle parking of the development will be non-functional as too many bicycles will be sardined into the bicycle facilities. This will result in bicycles being parked on balconies which impacts the building aesthetics and may lessen the likelihood that residents will travel by bicycle.
- [12] He has been a Belgravia resident for 25 years. He is the Facilities Director of the Community League. He feels the proposed development could provide an ideal retirement location for him but he does not want to drag a bike up and down stairs due to the deficiency in bicycle parking. He is directly affected by this development because of his upcoming life choices.
- [13] His intention is not to stop construction of the building; he just wants a small change to the bicycle parking.

ii) Position of the Development Officer, Mr. G. Robinson

- [14] Mr. Robinson advised that the City is not taking an official position as to whether or not the Appellant is an affected party.
- [15] He directed the Board to section 20 of the *Edmonton Zoning Bylaw* outlining development permit notification requirements.
- [16] He confirmed that occasionally property owners beyond the standard 60 metres are notified such as for large industrial projects that have an environmental impact. This is a

residential Use in a residential neighbourhood and in such cases, the City does not add to the notification radius.

iii) Position of the Respondents, Mr. J. Clarke and Mr. W. Fleming

- [17] An appeal should not be allowed simply because an individual drives by a building or can observe a development; if that were the case anyone could appeal a building such as the Stantec Tower.
- [18] A 60 metre notification area is a reasonable cut-off.
- [19] The Appellant has been involved with this project since the beginning; however, he was not one of the 12 representatives from the Belgravia Community that attended the DC2 zoning meeting.
- [20] They confirmed that the Appellant is not one of the purchasers of the 50 units which have been sold to date.

iv) Rebuttal of the Appellant

- [21] Mr. Huckulak stated that he attended the DC2 zoning meeting and was the seventh speaker. The proposed bicycle parking provisions are largely due to his involvement with the project from the beginning.
- [22] He reiterated that he drives and cycles by the property every day; therefore he is affected. If he lived further north there would be less of an impact.
- [23] The *Municipal Government Act* does not specify a 60 metre notification area – it only contemplates affected parties.

Decision Regarding Preliminary Issue

- [24] The Board finds that the Appellant is an affected party and assumes jurisdiction to hear this appeal.

Reasons for Decision on Preliminary Issue

- [25] The Board considered whether the Appellant had standing per section 685(2) of the *Municipal Government Act* (the Act) that states:

In addition to an applicant under subsection (1), any person affected by an order, decision or development permit made or issued by a development authority may appeal to the subdivision and development appeal board.

[26] The Board finds that the Appellant is affected for the following reasons:

1. While the City generally uses a 60 metre notification radius as set out in the *Edmonton Zoning Bylaw* (the *Bylaw*), the *Act* does not set a specific distance. The Board also notes that *Bylaw* requires approvals for Class B Discretionary Developments to be advertised in the daily newspaper which suggests there may be cases where parties outside of the 60 metres radius are “affected” by an approval.
2. In this case, the Appellant’s property is located in close proximity to the subject Site. It is approximately 75 metres from the subject Site and it was demonstrated through photographic evidence that the Appellant has direct sightlines to the proposed development, including some which are less obscured than those of other properties located within the 60 metre notification radius.
3. In addition to the Appellant’s close proximity, the Appellant regularly passes the subject Site and the Board accepts that there is potential that the Appellant may be impacted by the *Bylaw* requirements imposed with respect to bicycle parking in this Transit Oriented Development location.

[27] The Board does not accept the Appellant’s argument that he is affected by the proposed development based on the notion that at a future point he may purchase a Dwelling unit within the Apartment House. The Board finds that this factor is speculative and that accepting the Appellant’s argument on this point would unreasonably expand the potential number of Appellants and create uncertainty contrary to the wording and purpose of section 685(2) of the *Act*.

[28] Based on the above, the Board finds the Appellant is sufficiently affected by the decision of approval and has standing to commence this appeal. The Board therefore assumes jurisdiction.

Summary of Hearing

[29] The Presiding Officer explained that, because the proposed development is located within a Development Control Zone, the authority of the Board is limited by section 685(4) of the *Municipal Government Act*, which states:

Despite subsections (1), (2) and (3), 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.

[30] The Appellant was advised that the Board cannot vary the Development Authority's decision unless it is satisfied that the Development Authority did not follow the directions of Council. Accordingly, the Appellant was asked to indicate how the Development Authority failed to follow the directions of Council, specifically with respect to the bicycle parking regulations.

i) *Position of the Development Officer, Mr. G. Robinson*

[31] Whenever there is an approval of a listed Use in a Development Control Zone, it is approved as a Class B Discretionary Development. The proposed development complies with all of the regulations in the DC2.988 Site Specific Development Control Provision (the DC2) and the *Edmonton Zoning Bylaw* (the *Bylaw*).

[32] Mr. Robinson referenced the specific sections of the *Bylaw* which govern the Development Authority's actions.

[33] The regulations regarding bicycle parking in section 54.3 of the *Bylaw* deal with horizontal bicycle parking spaces. In this case, the bicycle parking will be oriented in a vertical fashion; therefore this section does not apply and the Development Officer, in consultation with Transportation Services, determined that the proposed bicycle parking complies with the regulations and the minimum number of required bicycle parking spaces has been provided.

[34] Mr. Robinson provided the following responses to questions from the Board:

- a. He believes that the bicycle parking is fully compliant with all applicable regulations in the *Bylaw*, no variances are required.
- b. It is his opinion that the dimensional regulations in sections 54.3 deal implicitly with horizontal bicycle parking and do not apply in cases where vertical parking is utilized. When bicycle parking requirements were added to the *Bylaw* in 2011, only a horizontal parking situation was conceptualized. Since then, technology has changed dramatically and it has become common practice in a number of office buildings to provide vertical racking which may require different dimensions. The *Bylaw* has not yet been updated to reflect vertical spaces although a comprehensive review is coming.
- c. Under the present *Bylaw* the Development Authority is only able to look at the number of bicycle parking spaces required for vertical racks; no analysis of spacing is done.
- d. Mr. Robinson confirmed that Transportation Services was consulted on this matter and expressed no concerns.

- e. He suggested that if the Board is of the opinion that the Development Officer erred, they could vary section 54.3 to allow vertical racking.
- f. The regulations specific to this DC2 have been met. The required 68 secure bicycle parking spaces have been provided at several separate locations. There are 50 vertical hooks in the bicycle rooms on the first floor of the parkade and 18 in a locked main floor room. There are also 12 bicycle parking spaces for visitors outside the main entrance. The Development Officer confirmed the location of all of these bicycle parking spaces on the stamped plans.
- g. All of the 68 bicycle parking stalls shown on the plans are a minimum of 0.6 metres in width and the length does not apply for the vertical racks. However, the spaces also meet the requirement of 2.0 metres vertical clearance and would therefore meet the requirement for 1.8 metres in length if measured in a vertical orientation along the wall.

ii) *Position of the Appellant, Mr. M. Huculak*

- [35] Mr. Huculak reviewed his PowerPoint presentation.
- [36] Council has expressed via the *Bylaw*, the DC2 regulations and *The Way We Move* document that active modes of transportation are a preferred choice and Council's intent is to create a high quality bicycle network.
- [37] DC2.988.5(a) and (b) outline the specific requirements for bicycle parking within this Development Control Zone. Section (b) directs the reader to section 54 of the *Bylaw*. It is Mr. Huculak's opinion that the minimum stall width, stall depth and drive aisle width contained in section 54.3(2) are not being met in the proposed development. In his view these dimensions are just like vehicular stalls and they apply to all bicycle parking. The requirement of six feet in length per stall plus a 1.5 metre aisle cannot be met given the dimensions of the room. He alerted the Development Officer of these deficiencies in April.
- [38] He was informed that the Development Officer applied "best practices" to review this application and used his discretion under section 11 of the *Bylaw* to grant a variance. The Development Officer would not share the nature of these "best practices" but advised him that the City is currently working to update the *Bylaw* to recognize vertical bicycle parking. Mr. Huculak does not believe there is any hardship that would justify granting a variance, the plans can be changed to meet "best practices".
- [39] As a traffic engineer he is familiar with "best practices" and presented information obtained from the Association of Pedestrian and Bicycle Professionals and two different vertical rack manufacturers to establish what "best practices" would look like. Some bikes such as cargo bikes, bikes with trailers and e-bikes cannot be hung vertically and some users lack the strength or height to hang a bike. Therefore, appropriate horizontal

bicycle parking must be provided and should accommodate a variety of bikes as depicted in his submitted photographs. Here 100 percent of the bicycle parking is vertical and does not accommodate all types of bikes nor users who cannot lift bikes.

- [40] In his submissions, he provided his own dimensions for suggested stall size and reviewed these dimensions against the stall sizes of the proposed bicycle rooms. The main floor bicycle room does not meet reasonable dimensions for parking and will not function. It therefore, does not meet Council's intention of good quality infrastructure as demonstrated in the Development Control Zone.
- [41] In Mr. Huculak's opinion the plans can be amended to meet Council's intention by making two changes. First the main floor bicycle room should be widened by 19 inches and then the minimum suggested dimensions would be met. The Development Officer had suggested adding two feet to the width of the proposed main floor bicycle room but this was rejected by the Applicant. Second, two of the car parking stalls should be converted to accommodate some other types of bikes such as large bikes and family users. This is possible since the minimum required parking stalls for vehicles has been exceeded. The remaining rooms could be left as shown on the plans.

iii) Position of the Respondents, Mr. J. Clarke and Mr. W. Fleming

- [42] Mr. Clarke and Mr. Fleming agree entirely with the position of the Development Officer and while there may be deficiencies in the current *Bylaw*, it is their view the development complies with all of the regulations under section 54 as well as the regulations contained in the DC2.
- [43] They attempted to make the bicycle parking as large as possible. This development has a significantly larger number of bicycle stalls than required for any other similar Apartment development. In their opinion, they have provided more than ample bicycle parking space, and they doubt that any number even close to 68 bicycles will ever be parked there.
- [44] The bicycle rooms have 3 metre high ceilings and were professionally designed by their architects.
- [45] They confirmed that there is no bicycle parking in front of any of the vehicular parking stalls and all bicycle parking stalls are at least 0.6 metres wide and 1.8 metres long, even though they are being measured vertically.
- [46] They were never approached by the Development Officer about increasing the size of the bicycle rooms.

iv) Rebuttal of the Appellant

- [47] Mr. Huculak indicated that the bicycle rack being used by the Respondent needs a staggered approach and the implication of that is the width requirements will not be met.
- [48] He has asked both the Respondent and the Development Officer for evidence as to how the bicycle rooms were designed.

Decision

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

Reasons for Decision

- [50] The proposed development, a 68 Dwelling Apartment House, is a listed Use in the DC2.988 Site Specific Development Control Provision (the DC2).
- [51] As the proposed development is located in a direct control district, the Board's authority is limited by section 685(4)(b) of the *Municipal Government Act* (the *Act*) that states:

Despite subsections (1), (2) and (3), 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.

- [52] In making its decision, the Board has been mindful that this DC2 is relatively new and specific. It was passed in 2018 and contemplates the proposed Apartment Use, the proposed number of Dwelling units and various other building attributes in its appendices. Accordingly, the Board is not persuaded that the directions of Council were not followed by the letters in opposition which object to the proposed Apartment Housing on the basis that the increased density will add to existing traffic problems in the immediate area.
- [53] The sole issue in this appeal is whether or not the Development Authority followed the directions of Council in approving the bicycle parking set out in the approved plans. The DC2 regulations require significantly more bicycle parking than is typically required for

other comparable Apartments as well as locational requirements for some of these spaces. There is nothing expressed in the DC2 which addresses the orientation of bicycle parking spaces or further adds to the section 54.3 regulations.

[54] The directions of Council relevant to bicycle parking are found in the DC2 and section 54:

DC2.988.5(b) states:

Vehicular and bicycle parking shall be provided in accordance with Section 54 of the Zoning Bylaw except:

- i. a minimum of 5 on-Site visitor parking spaces, located at the rear of the building off the Lane, shall be required;
- ii. one (1) secured bicycle parking space shall be provided per unit which can be provided as individual wall mounted racks on the wall at the front of the vehicular parking spaces. If provided in this manner, the required length of the parking space shall increase by 0.6 m;
- iii. A minimum on 10 bicycle parking spaces for visitors shall be provided in an easy accessible location and available for public use; and
- iv. A minimum of 15 secured Bicycle parking spaces shall be provided in a secured facility within the building on the main floor.

Section 54.3(2)(a)(b)(c) states:

Size and Location of Bicycle parking Facilities

- a. Each Bicycle parking space shall be a minimum of 0.6 m in width with a minimum clear length of 1.8 m. Bicycle parking spaces shall have a vertical clearance of at least 2.0 m.
- b. Required Bicycle parking spaces shall be wholly provided on the same Site as the building.
- c. Adequate access to and exit from individual Bicycle parking spaces shall be provided with an aisle of not less than 1.5 m in width, to be provided and maintained beside or between each row of Bicycle parking.

[55] During the hearing the parties all agreed that the requirements under DC2.988.5(b)(i)(ii)(iii)(iv) were satisfied. The parties differed with respect to the meaning of section 54 and whether the preamble to DC2.988.5(b) which states that bicycle parking shall be provided in accordance with section 54 had been satisfied.

[56] The Appellant argued that the Development Authority granted a variance to section 54 in contravention of the directions of Council because: the minimum dimensions for spaces are not met; there was no unique hardship; and, the variance did not follow the Appellant's own interpretation of best practices in bicycle parking and storage.

[57] In his view, the minimum length and width apply in the same manner to both vertical and horizontal bicycle parking spaces. Both must be measured on a horizontal plane.

According to the Appellant, the directions of Council would be met if the Board altered the approved plans by widening the main floor bike room by 19 inches and converting two car parking stalls to bicycle parking spaces to meet the needs of certain users and types of bikes (to accommodate families, large bikes and accessories such as trailers). He believed that the rest of the bicycle parking areas could be approved as indicated on the stamped plans.

[58] The Development Authority affirmed his earlier position as indicated on the Approved Development Permit and written report: the proposed development is a listed Use in the DC2 with no variances as the proposed spaces for bicycle parking are fully compliant with DC2.988.5(b) and section 54.3(2)(a)(b)(c).

[59] The Respondent agreed with the Development Authority.

[60] The Board accepts the Development Authority's position that the proposed bicycle parking spaces are fully compliant with the *Bylaw* for the following reasons:

- a. Taking a purposive and contextual approach, the Board finds that section 54.3(2) was drafted to apply only to horizontal bicycle parking spaces and that it would be unreasonable to require the same minimum dimensions, measured in the same manner, for both vertical and horizontal bicycle parking spaces.
- b. The Board accepts the Development Authority's position that section 54.3(2) which regulates the size and location of bicycle parking facilities is implicitly limited to horizontal parking spaces because vertical bicycle parking spaces and facilities were not in use nor contemplated at the time the regulations in section 54.3(2) were promulgated.
- c. The Development Authority's interpretation is supported by the plain meaning of the terms width and length which are commonly measured as horizontal distances. This is distinct from Height which is used to denote vertical distances by definition. This interpretation is also affirmed by other portions of the *Bylaw* such as those applicable to vehicular parking spaces, site width, separation spaces, cantilevered projections and amenity spaces which measure width and length as horizontal distances.

- d. According to the parties, minimum widths and lengths are required to accommodate the dimensions of a typical bicycle: width is based on the space across the handle bars and length on the space between the front and rear wheels. Accordingly, vertically oriented bicycle parking spaces will have significantly different floor area requirements than horizontally oriented bicycle parking spaces. Vertical parking and storage facilities have been developed precisely because of their floor space saving attributes.
- e. The City is currently developing appropriate regulations to apply to vertical bicycle parking spaces which the Development Authority has indicated will not be equivalent to dimensions currently required for horizontal bicycle parking spaces.
- f. Based on the evidence before it, the Board finds that it would not be reasonable to find that Council intended to apply the same width and length requirements measured in the same manner to vertical and horizontal bicycle parking spaces.
- g. Furthermore, the Board notes that no third minimum dimension in the form of Height is specified, nor is one needed for a horizontal orientation as the minimum third dimension is addressed by the only other specified dimension - vertical clearance of at least 2.0 metres. The same is not true for vertically oriented spaces, which may require an additional dimension to meaningfully address depth.
- h. Finally, the Board recognizes that larger bicycle parking spaces designed to accommodate less common types of bicycle and bicycle accessories such as trailers may be a laudable goal. However, no such requirements currently exist in the *Bylaw*. In the absence of express development regulations or direction within the specific DC2, the Board disagrees with the Appellant and is not prepared to infer that it is Council's intent to require an indeterminate number of larger spaces of indeterminate dimensions.

[61] Accordingly, the Board finds that the Development Authority was correct in his interpretation of the *Bylaw* - the proposed development is a listed Use with no variances.

[62] For the above reasons, the Board finds that Development Authority followed the directions of Council. Having found that the Development Authority did follow the directions of Council, the Board has no jurisdiction to consider the merits of the appeal or to substitute its own decision for decision of the Development Authority.

[63] If the Board has erred in law by adopting the Development Authority's interpretation of the *Bylaw* and concluding that the directions of Council have been followed because the minimum dimensions in section 54.3(2) do apply to vertical bicycle parking spaces, it would nonetheless dismiss the Appeal and approve the proposed development.

[64] In the event that the stated minimum width and length requirements apply to the proposed bicycle spaces, the Board finds that they should be measured logically with reference to the measurements of a typical bicycle and taking account of its orientation. The evidence provided by the Development Authority and supported by Respondents and by the stamped plans indicates that when measured on a vertical plane along the wall where they will hang, the proposed spaces provide 0.6 metres in width, 1.8 metres in length and a vertical clearance of 2.0 metres. Further, the minimum 1.5 metre aisle has been provided given that there is no minimum depth for a bicycle parking space.

Ms. K. Cherniawsky, Presiding Officer
Subdivision and Development Appeal Board

Board Members in Attendance:

Mr. V. Laberge; Mr. A. Nagy; Ms. S. McCartney; Ms. D. Kronewitt Martin

cc: Development & Zoning Services – Mr. G. Robinson / Mr. A. Wen

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.