



**EDMONTON
TRIBUNALS**

*Subdivision &
Development
Appeal Board*

*10019 – 103 Avenue NW
Edmonton, AB T5J 0G9
P: 780-496-6079 F: 780-577-3537
sdab@edmonton.ca
edmontonsdab.ca*

Date: June 24, 2019
Project Number: 134240188-031
File Number: SDAB-D-19-088

Notice of Decision

- [1] On June 19, 2019, the Subdivision and Development Appeal Board (the “Board”) heard an appeal that was filed on **May 27, 2019**. The appeal concerned the decision of the Development Authority, issued on May 24, 2019, to refuse the following development:

Construct an addition (increased Floor Area within floors 38 to 42), and to construct exterior and interior alterations (revise the interior layout, vehicular parking space layout and increasing the vehicular parking spaces from 206 to 215, and re-distribute bicycle parking spaces in the parkade) to a mixed-use development of Apartment Housing and main floor General Retail Uses (This is a revision to Development Permit numbers 134240188-001, 134240188-003, 134240188-005, 134240188-012 and 134240188-027). (Encore Condominiums).

- [2] The subject property is on Plan NB1 Blk 3 Lots 209-210, located at 10180 - 103 Street NW, within the (HA) Heritage Area Zone. The Downtown Special Area and the Capital City Downtown 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; and
- The Appellant’s written submission including photographs.

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.

Summary of Hearing

- i) *Position of Mr. J. Murphy, Legal Counsel, who was accompanied by Mr. M. Dub, representing the Appellant, Dub Architects Ltd.*
- [7] Mr. Murphy stated that the Development Officer did not express any concern with the proposed development but that she did not have the authority to grant the requested variances in Floor Area Ratio and Height.
- [8] Increasing the Floor Area Ratio and Height results from reconfiguring the mechanical room to a dwelling unit. Height is not included when calculating the mechanical space.
- [9] The building is under construction and there will be only minor physical changes to the building.
- [10] Increasing the floor area will be aesthetically pleasing for the owners.
- [11] With regard to the reduced bicycle parking, he stated that the bicycle parking was approved in a previous permit.
- [12] It is his opinion that tenants with expensive bicycles will store them in their dwellings rather than the bicycle parking area.
- [13] The proposed changes will not be noticeable from the street and will not have an impact on adjacent properties.
- [14] Mr. Murphy and Mr. Dub provided the following information in response to questions by the Board:
- a. They do not have concerns regarding the suggested conditions from the Development Officer.
 - b. The construction trailer is no longer at the subject site.
 - c. The exterior alterations of the top portion of the tower provide more articulation due to the stepbacks.

ii) Position of the Development Officer, Ms. C. Louie

[15] The Development Authority did not appear at the hearing and the Board relied on Ms. Louie's written submission.

Decision

[16] 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. All minor mechanical equipment on a roof of any building shall be concealed by screening in a manner compatible with the architectural character of the building, or concealed by incorporating it within the building. (Reference: Section 910.7(5)(c)(iii) of the Edmonton Zoning Bylaw 12800).
2. The ground floor level portion of the façade abutting a Public Roadway, other than a lane, shall be comprised of transparent, non-reflective, non-tinted, nonobscured glazing. (Reference: Section 910(8)(a) of the Edmonton Zoning Bylaw 12800).
3. Bicycle parking shall be provided in accordance to Section 54.3 and to the satisfaction of the Development Officer.
4. The off-street parking, loading and unloading (including aisles or driveways) shall be hardsurfaced, curbed, drained and maintained in accordance to Section 54.6.
5. The applicant/owner shall provide parking for People with Disabilities in accordance to Section 54.1(3) and to the satisfaction of the Development Officer.
6. Exterior lighting shall be developed to provide a safe lit environment in accordance with Sections 51 and 58 and to the satisfaction of the Development Officer.
7. Any outdoor lighting for any development shall be located and arranged so that no direct rays of light are directed at any adjoining properties, or interfere with the effectiveness of any traffic control devices. (Reference Section 51 of the Edmonton Zoning Bylaw 12800.)
8. All outdoor trash collection areas shall be located and screened to the satisfaction of the Development Officer in accordance with Sections 55(4) & (5).

NOTES:

1. This Development Permit is subsequent to issued Development Permit numbers 134240188-001, 134240188-003, 134240188-005, 134240188-012 and 134240188-027). Refer to the Development Permit conditions on the preceding issued permits, to the satisfaction of the Development Officer.
 2. All signage including for hoarding shall require a separate Development Application.
 3. This Development Permit is not a Business Licence. A separate application must be made for a Business Licence.
- [17] In granting the development the following variances to the *Edmonton Zoning Bylaw* are allowed:
1. The maximum allowable Floor Area Ratio of 14 per section 910.7(4)(a)(ii) and section 910.7(6)(c) is varied to allow an excess of 1.3, thereby increasing the maximum allowable Floor Area Ratio to 15.3.
 2. Section 910.7(4)(b)(i) is waived to allow a maximum Height of 134.0 metres pursuant to section 910.7(6)(d).
 3. The minimum required number of 59 Bicycle Parking Spaces per section 54.3, schedule 2(2) is varied to allow a deficiency of 17 Bicycle Parking Spaces, thereby decreasing the minimum required number of Bicycle Parking Spaces to 42.

Reasons for Decision

- [18] Apartment Housing is a Permitted Use in the (HA) Heritage Area Zone.
- [19] General Retail Stores is a Discretionary Use in the (HA) Heritage Area Zone.
- [20] The Board notes that the variances to the proposed development involve only minimal changes within the existing (previously approved) built form. The increase in Floor Area Ratio and Height results from reconfiguring the mechanical room to a dwelling unit. Height is not included when calculating the mechanical space under the *Edmonton Zoning Bylaw*; therefore, there will be no structural change in Height. The subject building is under construction and there will be no major physical changes to the building.

- [21] With respect to the deficiency of 17 Bicycle Parking Spaces, the Board accepts that the proposed number of Bicycle Parking Spaces was already approved in a previous Development Permit. The Board was provided with no evidence that granting a variance of 17 deficient Bicycle Parking Spaces would create a negative impact.
- [22] The Board accepts that the proposed changes will not be noticeable from the street and will not have an impact on adjacent properties.
- [23] Finally, the Board notes that there was no opposition to the appeal and no one appeared in opposition at the hearing.
- [24] Based on the above, it is the opinion of the Board 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.



Mr. B. Gibson, Presiding Officer
Subdivision and Development Appeal Board

Board Members in Attendance:

Mr. R. Handa; Mr. R. Hachigian; Ms. D. Kronewitt Martin; Ms. K. Thind

CC: City of Edmonton, Development & Zoning Services, Attn: Ms. C. Louie / Mr. H. Luke

Important Information for the Applicant/Appellant

1. This is not a Building Permit. A Building Permit must be obtained separately from Development & Zoning Services, 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 Development & Zoning Services, 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.