

**SUBDIVISION
AND
DEVELOPMENT APPEAL BOARD
AGENDA**

**Wednesday, 9:00 A.M.
June 19, 2019**

**Hearing Room No. 3
Churchill Building,
10019 - 103 Avenue NW,
Edmonton, AB**

**SUBDIVISION AND DEVELOPMENT APPEAL BOARD
HEARING ROOM NO. 3**

I	9:00 A.M.	SDAB-D-19-088	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) 10180 - 103 Street NW Project No.: 134240188-031
---	-----------	---------------	--

NOTE: *Unless otherwise stated, all references to “section numbers” refer to the authority under the Edmonton Zoning Bylaw 12800.*

ITEM I: 9:00 A.M.

FILE: SDAB-D-19-088

AN APPEAL FROM THE DECISION OF THE DEVELOPMENT OFFICER

APPELLANT:

APPLICATION NO.: 134240188-031

APPLICATION TO: 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)

DECISION OF THE DEVELOPMENT AUTHORITY: Refused

DECISION DATE: May 24, 2019

DATE OF APPEAL: May 27, 2019

MUNICIPAL DESCRIPTION OF SUBJECT PROPERTY: 10180 - 103 Street NW

LEGAL DESCRIPTION: Plan NB1 Blk 3 Lots 209-210

ZONE: (HA) Heritage Area Zone

OVERLAY: Special Area Downtown

STATUTORY PLAN: Capital City Downtown Plan

Grounds for Appeal

The Appellant provided the following reasons for appealing the decision of the Development Authority:

We are solicitors for Westrich Pacific and their architects, Dub Architects Ltd. in this matter. On behalf of our clients, we hereby appeal the attached Development Permit refusal. The grounds of the appeal are:

1. High rise development of this sort is an ongoing and evolutionary process. Developers must be able to react to the demands of the market even as construction of their development is in progress. The requested revisions to our clients' project are reflective of this tenet.
2. The requirement for additional FAR stems from the need to redesign the interior layout within floors 38 to 42, and is beyond the limited authority of the Development Officer to grant.
3. The minor increase in height — otherwise permitted by section 910.7(6)(d) — is directly related to the unit redesign and FAR increase.
4. The reduction in bicycle parking stalls reflects our clients' experience that many residents of downtown high rise developments prefer to store their bicycles in their Units. In addition, the re-design of the parking facilities allows for addition vehicle parking stalls which, again, is our clients' response to market demands.
5. The proposed variances will be unnoticed given the magnitude of the proposed development and will clearly meet the tests enunciated for such variances in the Municipal Government Act.
6. Such further and other reasons as may be presented at the hearing of this appeal.

<i>General Matters</i>

Appeal Information:

The *Municipal Government Act*, RSA 2000, c M-26 states the following:

Grounds for Appeal

685(1) If a development authority

- (a) fails or refuses to issue a development permit to a person,
- (b) issues a development permit subject to conditions, or
- (c) issues an order under section 645,

the person applying for the permit or affected by the order under section 645 may appeal to the subdivision and development appeal board.

Appeals

686(1) A development appeal to a subdivision and development appeal board is commenced by filing a notice of the appeal, containing reasons, with the board,

- (a) in the case of an appeal made by a person referred to in section 685(1)
 - (i) with respect to an application for a development permit,
 - (A) within 21 days after the date on which the written decision is given under section 642, [...]

Hearing and Decision

687(3) In determining an appeal, the subdivision and development appeal board

...

- (a.1) must comply with the land use policies;
- (a.2) subject to section 638, must comply with any applicable statutory plans;
- (a.3) subject to clauses (a.4) and (d), must comply with any land use bylaw in effect;
- (a.4) must comply with the applicable requirements of the regulations under the Gaming, Liquor and Cannabis Act respecting the location of premises described in a cannabis licence and distances between those premises and other premises;

...

- (c) may confirm, revoke or vary the order, decision or development permit or any condition attached to any of them or make or substitute an order, decision or permit of its own;
- (d) may make an order or decision or issue or confirm the issue of a development permit even though the proposed development does not comply with the land use bylaw if, in its opinion,
 - (i) the proposed development would not
 - (A) unduly interfere with the amenities of the neighbourhood, or
 - (B) materially interfere with or affect the use, enjoyment or value of neighbouring parcels of land,

and

- (ii) the proposed development conforms with the use prescribed for that land or building in the land use bylaw.

General Provisions from the *Edmonton Zoning Bylaw*:

Under section 910.7(2)(a), **Apartment Housing** is a **Permitted Use** in the **(HA) Heritage Area Zone**.

Under section 910.7(3)(j), **General Retail Stores** is a **Discretionary Use** in the **(HA) Heritage Area Zone**.

Under section 7.2(1), **Apartment Housing** means:

development consisting of one or more Dwellings contained within a building in which the Dwellings are arranged in any horizontal or vertical configuration, which does not conform to the definition of any other Residential Use.

Under section 7.4(24), **General Retail Stores** means:

development used for the retail or consignment sale of new goods or merchandise within an enclosed building, not including the sale of gasoline, heavy agricultural and industrial equipment, alcoholic beverages, or goods sold wholesale. Accessory Uses may include the assembly or repair of products sold on Site, or minor public services such as postal services or pharmacies. This Use does not include Aircraft Sales/Rentals, Automotive and Minor Recreation Vehicle Sales/Rentals, Cannabis Retail Sales, Flea Market, Gas Bars, Greenhouses, Plant Nurseries and Garden Centres, Pawn Stores, Major Alcohol Sales, Minor Alcohol Sales, Major Service Stations, Minor Service Stations, Secondhand Stores, and Warehouse Sales.

Section 910.7(1) states that the **General Purpose** of **(HA) Heritage Area Zone** is:

to establish a special heritage character Zone, in which the existing concentration of historical resources shall be preserved, rehabilitated and reused, and to ensure new developments are pedestrian friendly and compatible in scale, function, built form and design continuity with the historical, architectural and urban village character of the area.

Section 910.1 states that the **General Purpose** of the **Downtown Special Area** is “To designate the Downtown area as a Special Area and to adopt the following land use regulations to achieve the objectives of the Capital City Downtown Plan.”

Floor Area Ratio

Section 910.7(4)(a) states:

Floor Area Ratio (FAR):

- i. the maximum Floor Area Ratio north of 102 Avenue shall be 8.0;
and
- ii. **the maximum Floor Area Ratio south of 102 Avenue shall be 10.0.**

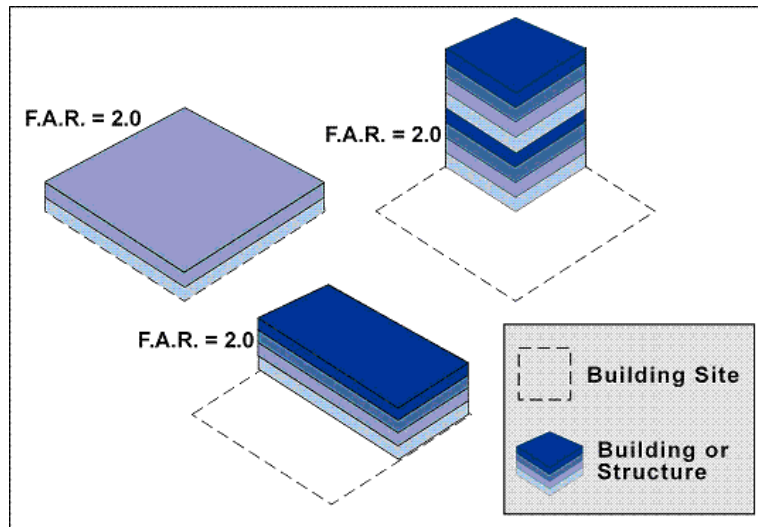
Section 910.7(6)(c) states:

Notwithstanding the requirements of subsection 910.7(4)(a), for new buildings, Residential Uses and Hotels shall be allowed an additional Floor Area Ratio of 4.0 where the Development Officer is satisfied that new developments fit within the urban context of the area and that adverse environmental impacts such as sun shadow and wind are minimized.

Under section 6.1, **Floor Area Ratio** means:

the numerical value of the Floor Area of the building or structure relative to the Site upon which it is located, excluding:

- a. Basement areas used exclusively for storage or service to the building, or as a Secondary Suite;
- b. Parking Areas below ground level;
- c. Walkways required by the Development Officer;
- d. Floor Areas devoted exclusively to mechanical or electrical equipment servicing the development, divided by the area of the Site; and
- e. indoor Common Amenity Area, divided by the area of the Site.



Under section 6.1, **Floor Area** means:

the total Floor Area of the building or structure, contained within the outside surface of the exterior and Basement walls, provided that in the case of a wall containing windows, the glazing line of windows may be used.

Development Officer’s Determination

1. The maximum Floor Area Ratio (FAR) south of 102 Avenue exceeds 10.0. For new buildings including Residential Use Classes, an additional FAR of 4.0 shall be allowed. The proposed development exceeds the maximum total FAR of 14.0. (Reference: Sections 910.7(4)(a)(ii) and 910.7(6)(c) of the Edmonton Zoning Bylaw 12800)

Required: 14.0
Proposed: 15.3
Exceedance: 1.3 [unedited]

Height

Section 910.7(4)(b)(i) states:

Building Height:

- i. the maximum Height shall not exceed 115.0 m.

Section 910.7(6)(d) states:

Notwithstanding Section 11.4 and the requirements of subsection 910.7(4)(b) and having regard for 910.7(6)(d), additional Height may be allowed to accommodate the additional Floor Area Ratio for Residential Uses and Hotels where the Development Officer is satisfied that new developments fit within the urban context of the area and that adverse environmental impacts, such as sun shadow, wind and massing are minimized. In such cases, the application shall be processed as a Class B application.

Under section 6.1, **Height** means “a vertical distance between two points.”

Development Officer’s Determination

2. The Height is increased to 134.0 meters from 129.0 meters. (Reference: Section 910.7(6)(d) of the Edmonton Zoning Bylaw 12800)

NOTE: Additional Height may be allowed to accommodate the additional Floor Area Ratio for Residential Uses. [unedited]

Bicycle Parking

Section 54.3, Schedule 2(2) states:

Area of Application	Minimum Number of Bicycle Parking Spaces
Areas where Section 54.2 Schedule 1(B) applies	For all Residential and Residential-Related Use Classes of 20 Dwellings or more, and all Non-residential Use Class developments: 40% of the number of vehicular parking spaces required under Section 54.2 Schedule 1(B) with 5 Bicycle Parking spaces being the minimum to be provided. At least 10% of Bicycle Parking spaces shall be short term spaces.

Under section 6.1, **Bicycle Parking** means:

a space designed for the securing of one or more bicycles in an orderly fashion. Bicycle Parking can be either:

- a. long term, meaning a weather-protected, secure location where access to the enclosure is limited to authorized individuals only. For example: a room within a residential building or workplace; an enclosure within a parking garage; or a cluster of bicycle lockers.

- b. short term, meaning a publicly-accessible location that is visible from and close to the entrance of the building it serves. For example: a bicycle rack or bicycle corral.

Development Officer’s Determination


3. A minimum of 59 Bicycle Parking Spaces is required, with 42 spaces provided. (Reference: Section 54.3, Schedule 2(2) of the Edmonton Zoning Bylaw 12800) [unedited]

Previous Subdivision and Development Appeal Board Decision

Application Number	Description	Decision
SDAB-D-16-048	To construct an addition (increase of Dwellings from 179 to 188 units on a new loft floor and adding an interconnected mezzanine floor that connects to the General Retail Use units within the main floor podium; and adding a penthouse mezzanine floor within the Dwelling unit on the 40th floor); and to construct exterior and interior alterations to a mixed-use development Apartment Housing and main floor General Retail Uses. (This is a revision to Development Permit numbers 134240188-001 and 134240188-003). (Encore Condominiums)	July 13, 2016; 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 CONDITIONS.

Notice to Applicant/Appellant

Provincial legislation requires that the Subdivision and Development Appeal Board issue its official decision in writing within fifteen days of the conclusion of the hearing.

	<p>Application for Major Development Permit</p>	<p>Project Number: 134240188-031 Application Date: APR 09, 2019 Printed: May 28, 2019 at 10:20 AM Page: 1 of 2</p>		
<p>This document is a Development Permit Decision for the development application described below.</p>				
<p>Applicant</p>	<p>Property Address(es) and Legal Description(s) 10180 - 103 STREET NW Plan NB1 Blk 3 Lots 209-210</p> <p>Specific Address(es) Entryway: 10176 - 103 STREET NW Entryway: 10180 - 103 STREET NW Entryway: 10309 - 102 AVENUE NW Building: 10180 - 103 STREET NW</p>			
<p>Scope of Application To 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)</p>				
<p>Permit Details</p> <table border="0" style="width: 100%;"> <tr> <td style="width: 50%;"> Class of Permit: Gross Floor Area (sq.m.): 378.27 New Sewer Service Required: Y Site Area (sq. m.): 1393.6 </td> <td style="width: 50%;"> Contact Person: Lot Grading Needed?: N NumberOfMainFloorDwellings: Stat. Plan Overlay/Annex Area: Downtown </td> </tr> </table>			Class of Permit: Gross Floor Area (sq.m.): 378.27 New Sewer Service Required: Y Site Area (sq. m.): 1393.6	Contact Person: Lot Grading Needed?: N NumberOfMainFloorDwellings: Stat. Plan Overlay/Annex Area: Downtown
Class of Permit: Gross Floor Area (sq.m.): 378.27 New Sewer Service Required: Y Site Area (sq. m.): 1393.6	Contact Person: Lot Grading Needed?: N NumberOfMainFloorDwellings: Stat. Plan Overlay/Annex Area: Downtown			
<p>I/We certify that the above noted details are correct. Applicant signature: _____</p>				
<p>Development Application Decision Refused Issue Date: May 24, 2019 Development Authority: LOUIE, CINDY</p>				
<p>THIS IS NOT A PERMIT</p>				



Application for Major Development Permit

Project Number: **134240188-031**
 Application Date: APR 09, 2019
 Printed: May 28, 2019 at 10:20 AM
 Page: 2 of 2

Reason for Refusal

The proposed development is refused for the following reasons:

1. The maximum Floor Area Ratio (FAR) south of 102 Avenue exceeds 10.0. For new buildings including Residential Use Classes, an additional FAR of 4.0 shall be allowed. The proposed development exceeds the maximum total FAR of 14.0. (Reference: Sections 910.7(4)(a)(ii) and 910.7(6)(c) of the Edmonton Zoning Bylaw 12800)

Required: 14.0
 Proposed: 15.3
 Exceedance: 1.3

2. The Height is increased to 134.0 meters from 129.0 meters. (Reference: Section 910.7(6)(d) of the Edmonton Zoning Bylaw 12800)

NOTE: Additional Height may be allowed to accommodate the additional Floor Area Ratio for Residential Uses.

3. A minimum of 59 Bicycle Parking Spaces is required, with 42 spaces provided. (Reference: Section 54.3, Schedule 2(2) of the Edmonton Zoning Bylaw 12800)

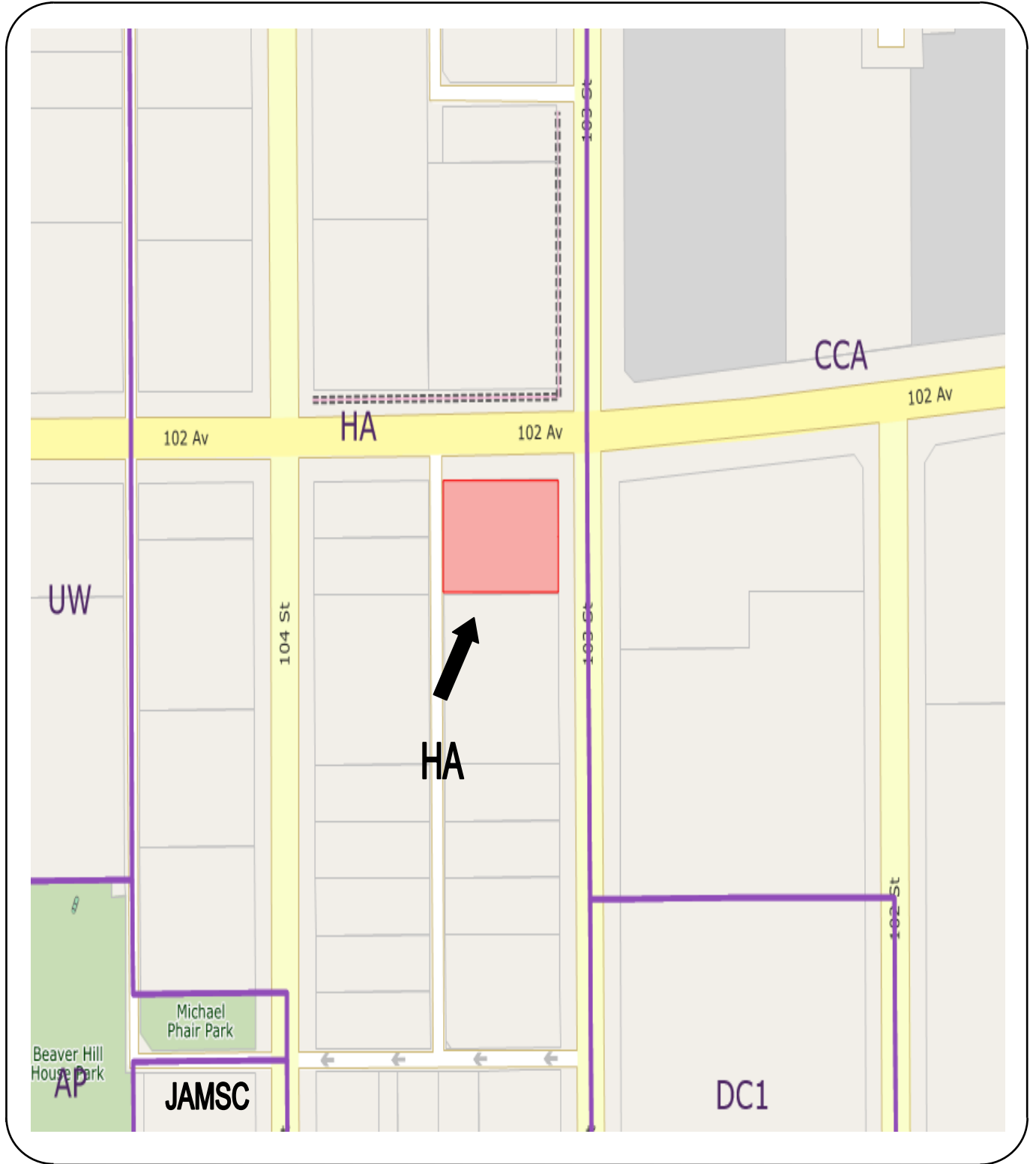
Rights of Appeal

The Applicant has the right of appeal within 21 days after the date on which the decision is made, as outlined in Section 683 through 689 of the Municipal Government Act.

Fees

	Fee Amount	Amount Paid	Receipt #	Date Paid
Major Dev. Application Fee	\$963.00	\$963.00	05772659	Apr 10, 2019
Total GST Amount:	\$0.00			
Totals for Permit:	\$963.00	\$963.00		

THIS IS NOT A PERMIT



SURROUNDING LAND USE DISTRICTS

Site Location ←

File: SDAB-D-19-088

