



**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

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Project Number: 276602461-002
File Number: SDAB-D-19-040

Notice of Decision

- [1] On March 21, 2019, the Subdivision and Development Appeal Board (the “Board”) heard an appeal that was filed on **February 21, 2019**. The appeal concerned the decision of the Development Authority, issued on January 21, 2019, to approve the following development:

To demolish an existing commercial building and to construct an eleven (11) Storey mixed-use building (Convenience Retail Stores in basement and main floor; with Apartment Housing on the second floor and above with 34 Dwellings) (The Wedge Building).

- [2] The subject property is on Plan NB Blk 3 Lot 157, located at 10344 - Jasper Avenue 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 approved Development Permit;
- The Development Officer’s written submission including responses from other City departments;
- The Appellant’s written reasons, PowerPoint presentation, and a letter of support for the appeal from an adjacent property owner located east of the subject Site;
- A letter of support with conditions from the Edmonton Design Committee;
- A letter of support for the proposed development from the Downtown Business Association; and
- The Respondent’s written submission.

- [4] The following exhibits were presented during the hearing and form part of the record:

- Exhibit A – Letter of support from the Downtown Edmonton Community League submitted by Legal Counsel for the Respondent;

- Exhibit B – *Chrumka v. Calgary (Development Appeal Board)*, 1981 ABCA 282 submitted by Legal Counsel for the Respondent; and
- Exhibit C – A Sun Shadow Impact Study submitted by the Respondent.

Preliminary Matters

- [5] At the outset of the appeal hearing, the Chair disclosed that he has practiced law in Edmonton for many years and over that time has represented most of the affected parties, including Melcor Developments Ltd., the property owner, Mr. O. O'Connor and the City of Edmonton on various matters. These were all individual matters that occurred more than eight years ago. No one objected to the composition of the panel.
- [6] The Chair 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 Appellant, Mr. D. Rayburn, Ms. L. Margiotta and Mr. D. Eggert, representing Melcor Developments Ltd.:*
- [8] Melcor has been involved in Edmonton development for over 95 years and support developments that add value and inspiration to the city.
- [9] The Birks Building located directly west of the subject site was purchased in 1999 and refurbished in order to retain its historical design. Melcor also has a vested interest in three additional parcels of land and buildings located on 104 Street between Jasper Avenue and 102 Avenue.
- [10] While they support development, it is important to protect their assets and buildings as well as the tenants who occupy their buildings.
- [11] They were first informed of the redevelopment project through Clark Builders who coordinated a meeting with the property owner and the Architect on December 13, 2018. An overview of the proposed development was provided and they were informed that the project had gained the support of the Edmonton Design Committee and that a decision regarding the development permit was imminent.
- [12] Melcor was asked for an encroachment agreement on the Birks Building property; a crane encroachment agreement in order to swing a tower crane over top of the Birks Building; and to choose between two different building envelope proposals. It was also suggested to remove the “Birks Diamond” three dimensional sign from the east side of

the Birks Building and possibly incorporate it into a new mural to be painted on the side of The Wedge building.

- [13] Melcor did not make any commitments at the meeting but upon further internal consultation including a meeting with a structural and building envelope engineer, an e-mail response was provided to the developer that declined their participation in any easements/encroachments or provision of the Birks Diamond to be used on the proposed building. In addition, further information was requested regarding structural concerns and protection of the Birks Building during construction.
- [14] No further follow up was received from the developer and the development permit notice was received on February 8, 2019.
- [15] The appeal was subsequently filed based on several concerns, including the lack of meaningful neighbourhood consultation. The proposed development is located on lands that are within the Heritage Area Zone (“HA Zone”). Infill development can be sensitive and many developers understand that good consultation can be the key to the success of a project. It was their opinion that the exclusion of the requirement to conduct community consultation in the HA Zone is a gap in the development requirements and the process. Nothing is in place to ensure that the integrity of neighbouring properties is maintained and questions arise regarding the impact of additional snow loads on the roof of the Birks Building because of the height of the proposed building and whether or not this has been qualified by an Engineer. There is uncertainty about who is responsible for ensuring that the roof and foundations of the Birks Building are capable of carrying the additional loads and ensuring that the foundations of adjacent buildings will be protected during the construction process.
- [16] The Birks Building is fully leased, including main floor retail tenants. They would like to develop a plan with their tenants to address construction timelines, staging, and pedestrian disruption along Jasper Avenue. The construction process can significantly impact the success of current tenants, most of which are small businesses that cannot afford disruptions in their operations.
- [17] It is unclear where the loading zone for the potential retail/restaurant space in the basement and main floor of the proposed building will be located. The proposed building is only 25 feet wide which could result in loading vehicles using space behind neighbouring buildings. One section of the development permit indicated that loading will take place in the alley while another section indicated that loading would be provided along Jasper Avenue. This matter needs clarification and a condition should be imposed to address the concern because of a potential conflict with neighbouring properties.
- [18] There is a concern that the encroachment of the existing building (and possibly the new building) was not addressed in the conditions of the development permit. It is unclear from a review of the drawings whether or not the proposed building will encroach onto their property. However, a condition is included on the Lot Boundary Plan that was submitted as part of the development permit application. Furthermore, the existing

Encroachment Agreement is null and void if the height or any other changes are made to the building.

[19] The Birks Building is on the Inventory of Historic Resources in Edmonton because it represents features that tell a story about Edmonton's past. The Birks ghost sign is one of the many features that make this building a Historic Resource. Melcor does not want to disrupt the sign but understands that the building has not been designated as a Municipal Historic Resource and therefore, is not protected from inappropriate alteration. Because of the unresolved encroachment issue, it is unclear if the sign will need to be relocated and who is responsible for the relocation of the sign and to ensure that the condition of the sign does not degrade further. It is their opinion a condition should be imposed on the development permit to ensure that if the sign has to be relocated, an agreement shall be reached prior to the release of the building permit drawings.

[20] Section 910.7(1) of the HA Zone states that the General Purpose of this 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.

The proposed development does not comply with the architectural intent of the HA Zone.

[21] The proposed development requires variances to all of the stepback requirements and floor plate restrictions contained in section 910.7(5). The proposed front balconies dominate the front façade and negate the tower stepback. A variance for the protrusion of the balconies has not been granted on the approved development permit.

[22] The proposed new building will have a shadowing impact on the Birks Building and limit the amount of natural light for the tenants of the building. A sun shadow impact study should have been provided to address this issue.

[23] The Urban Design regulations for the HA Zone require that:

new buildings or additions recognize the scale, architecture and built form of the existing historical structures within the general area, particularly those on the same block face. The building shall include the following design elements to reduce the perceived mass and add architectural interest:

- All exposed building facades (within the first 5 storeys) shall be architecturally treated to create a unified building exterior.
- The architectural treatment of the building up to the first 5 storeys or 20 metres shall adhere to the general alignment of the horizontal elements and vertical elements of the adjacent buildings along the same block face.

These regulations were not varied. Therefore, if the developer wishes to deviate from these regulations, the site should be rezoned as a Site Specific Development Control District, which would require public consultation.

- [24] Combining historical building finishes with modern finishes does not create a unified building exterior and the horizontal and vertical elements of adjacent buildings were not respected in the proposed design. The intent of the Zone is to maintain the historical character along this street face.
- [25] The proposed development sets an undesirable precedent for future redevelopment in the HA Zone that only covers a few city blocks and unravels efforts made by others to preserve the historical character of the Zone.
- [26] The solution is to rezone the site or review and amend the proposed design to comply with the development requirements and the intent of the HA Zone. The proposed development should be refused and the regulations of the HA Zone enforced. Furthermore, if there were to be a future development permit application, clear definitive conditions should be imposed to address neighbourhood consultation, encroachment issues and the protection of existing buildings.
- [27] Mr. Rayburn, Ms. Margiotta and Mr. Eggert provided the following information in response to questions from the Board:
- a) It was acknowledged that *Appendix A, the Lot Boundary Survey*, prepared by Stantec Geomatics Ltd. is not a Real Property Report.
 - b) They have not done their own Real Property Report.
 - c) There is a Party Wall Agreement on title. It notes the use of the Birks (east) wall for the “proposed building” (subject site) and it identifies a two foot encroachment at the rear of the property that gives permission for the subject site to use that two foot portion of the Birks’ land. There is also a lease rate included that gives permission to use the land but states that it is null and void upon any additional building on the site.
 - d) They have not been asked to sell a portion of the lot to the Respondent.
 - e) They cannot verify if the subject building encroaches on their property. They could not confirm how much the Birks Diamond protrudes from the side of the building but are concerned that an encroachment could impact the sign.
 - f) Ms. Margiotta could not speak to the requirements of the Capital City Downtown Plan (“Downtown Plan”). However, it was noted that the Development Officer addressed these requirements in her written submission. Ms. Margiotta reviewed the development regulations of the HA Zone and the specific architectural requirements and prescriptive description in that Zone. It was their opinion that the proposed development does not comply with the HA Zone.

- g) They have no concerns regarding the parking requirements.
- h) The top four floors are not sculpted back and therefore, the massing has not been reduced in accordance with the development requirements. The balconies protrude into the minimum stepback and negate the establishment of any stepback. This significantly impacts the shadow on the Birks Building. However, they have not been able to fully evaluate the impact because the Applicant is not required to submit a sun shadow impact study until later in the development process. Therefore, they have not been able to determine the difference in shadowing between a compliant development with the HA Zone and the proposed development.
- i) The front podium should maintain the full heritage architecture rather than a mix of heritage and modern architecture.

ii) *Position of an Affected Property Owner in Support of the Appellant*

[28] Mr. M. Kirwin is an Architect who owns a property located north of the subject site.

[29] He also expressed concern that the proposed balconies appear to encroach into the required front stepback and create a visual eyesore along Jasper Avenue. It was his opinion that the proposed development should comply with the stepback requirements.

[30] A sun shadow impact study is important because the proposed development will create a significant shadow on the Birks Building and block sunlight into the court yard.

iii) *Position of the Development Officer, Ms. R. Lee:*

[31] Ms. Lee provided the following information in response to questions from the Board:

- a) The requirement to submit a wind impact study and a sun shadow impact study has been imposed as a condition on the approved development permit. These are special requirements that can be added if the Development Officer determines they are applicable to ensure that the studies are prepared by a qualified professional and the information submitted can be relied upon by the City. The studies are typically submitted as part of the building permit process.
- b) The proposed development has received the support of the City Heritage Planner and the Edmonton Design Committee.
- c) It was confirmed that the proposed tower stepback abutting Jasper Avenue is 4.25 metres instead of 4.5 metres and a variance of 0.25 metres is required.

- d) The residential floor plate exceeds the 80 percent requirement of the podium floor plate by approximately 13 percent.
- e) Based on her review of the site plan and drawings, the proposed development is fully contained on the subject site. It was noted that there is an Encroachment Agreement under Jasper Avenue with the City that will be removed as a condition of the development permit approval.

iv) Position of the Respondent, Mr. F. Brisson, representing Holo-Blok Architecture Inc., Mr. J. Murphy and Mr. K. Haldane, Ogilvie LLP, Legal Counsel, and the property owner, Mr. O. O'Connor:

- [32] In addition to the Development Officer, two senior members of Development & Zoning Services have been involved in this project since its inception, specifically, the Senior Downtown Planner who was involved in drafting the development regulations for the HA Zone and the current Heritage Planner. A letter of support from the Downtown Edmonton Community League was submitted and marked as *Exhibit A*. The proposed design has also received support from the Edmonton Design Committee who reviewed the proposed development on two separate occasions. This is important because there are a number of aesthetic questions regarding the proposed development. The Downtown Plan provides direction for development along Jasper Avenue and there is some tension between this direction and development requirements in the HA Zone.
- [33] The Appellant raised the issue of a lack of meaningful neighbourhood consultation which is not a development requirement. However, the developer did meet with the Appellant but it has not been as congenial as possible. This is not unusual when a large developer owns both ends of the block and the development site is located in the middle of the block. Other concerns regarding protection of building foundations and construction related issues will be addressed as part of the building permit process.
- [34] The proposed development will be constructed entirely on the subject site. The front entrance to this building will encroach onto the sidewalk and a condition has been imposed that an Encroachment Agreement be entered into with the City.
- [35] The construction process will be challenging because the Appellant has chosen not to enter into a Crane Swinging Agreement or the ability to shore under their building.
- [36] A photograph was referenced to illustrate the location of the Birks Diamond on the east elevation of the building. It could not be confirmed whether or not the sign extends over the property line. However, the developer is willing to work with the Appellant to preserve the Birks Diamond which would be subject to another development permit.
- [37] The original building that was constructed in 1946 between the Birks Building and the Looby Block (building east of the subject site) encroached onto the Birks Building lot

and the two owners entered into an Encroachment Agreement at that time. However, the proposed development is confined completely on the subject site.

- [38] The Birks Building and the Looby Block are both on the Register of Edmonton Historic Sites but they are not Municipal or Provincial Historic Resources. The Heritage Planner was involved in the review process because the building has been identified as a historic site.
- [39] A series of photographs were referenced to provide context for the proposed development. The development of residential housing in this area is being driven by the City and the only way to accomplish that is to build up. All of the towers that have been built along 104 Street are in keeping with the heritage theme of other buildings in the area at the podium level.
- [40] The building on the subject site has been vacant and boarded up for some time and should be replaced. Photographs were referenced to illustrate how the existing building was constructed so that it was not necessary to rely on adjacent buildings for support.
- [41] Renderings of the proposed building and suites were referenced to illustrate that the target market will be people who want to live downtown and probably do not own a vehicle.
- [42] A rendering of the building was referenced to illustrate that the proposed design respects the heritage nature of the HA Zone in the context of the vision for Jasper Avenue that is addressed in the Downtown Plan. Mr. Murphy reiterated that the Senior Downtown Planner, the Heritage Planner and the Edmonton Design Committee all agreed that the proposed design respects the nature of the Zone.
- [43] The proposed design incorporates a lintel which is a very old style of architecture; the windows are setback in casements to have the appearance of old historic windows; and the east façade of the building will be clad in brick at the request of the Edmonton Design Committee. The west façade will be finished in an engineered product that has the appearance of wood to highlight and emphasize The Wedge design also at the request of the Edmonton Design Committee.
- [44] The proposed design will not dominate either of the adjacent buildings and the new building will not offend any of the other buildings on the block. The lot is only 25 feet wide and 150 feet long which limits the development footprint. The proposed design will provide an adequate amount of commercial space on the main floor and it is the intent of the owner to open commercial space at the rear of the building to encourage pedestrian traffic from the rear lane.
- [45] The development regulations for balconies in the HA Zone do not apply to this development. The proposed balconies will allow residents of the building to interact with Jasper Avenue and become part of the streetscape. The proposed roof top patio is stepped back and will provide a nice outdoor amenity space for the residents.

- [46] A copy of the original Encroachment Agreement dated April 1946 was referenced. This Agreement allowed the construction of the building but would become null and void once that building is removed.
- [47] A copy of a second Encroachment Agreement dated November 1961 between the owners at the time and the City was referenced. This dealt with an encroachment under Jasper Avenue and the Agreement does not apply when the existing building is removed.
- [48] Pursuant to section 910.7, the proposed development is a Permitted Use with variances and the requirement of variances does not make it a Discretionary Use.
- [49] Section 12.4 of the *Edmonton Zoning Bylaw* (the *Bylaw*) describes the proposed development as a Class B Discretionary Development, not Discretionary Use. Section 12.4(1) states that “This use class includes all developments for which applications are required and are for a Discretionary Use or require a variance to any of the regulations of this Bylaw.” It does not state that any use that requires a variance becomes a Discretionary Use.
- [50] Section 11.1(1)(f) of the *Bylaw* states that “the Development Officer shall receive all applications for development and may relax a regulation in a Zone or other Section of this Bylaw in accordance with the regulations contained in that Zone or Section, or may relax regulations in accordance with Sections 11.3 and 11.4, and in such case, the development applied for shall be a Class B Discretionary Development”.
- [51] A Court of Appeal decision, *Chrumka v. Calgary (Development Appeal Board)*, 1981 ABCA 282 was submitted and marked *Exhibit B*. The Court determined that a development cannot be a Permitted Use and a Discretionary Use at the same time. Even though this case was heard in 1981 it is still relevant and relied upon by the Court of Appeal.
- [52] The variances required have to be assessed pursuant to section 687(3)(d) of the *Municipal Government Act* and the test is whether or not the proposed development would unduly interfere with the amenities of the neighbourhood or materially interfere with or affect the use, enjoyment or value of neighbouring parcels of land.
- [53] The proposed development complies with the maximum allowable floor area ratio.
- [54] The maximum building height in the HA Zone is 150 metres and the proposed building is 38 metres in height. Developments downtown will include towers which will have a sun shadow effect on every other building. The City is trying to intensify density downtown and the only way to accomplish that is to build up.
- [55] Mr. Murphy questioned why a condition was imposed to provide a sun shadow impact study but confirmed that a study was completed at the request of the Edmonton Design Committee.

- [56] The proposed development complies with section 910.7(4)(c)(i) that requires the building to be built to the front and side property lines. There will be a setback at the rear of the site to accommodate waste disposal and access to the proposed commercial space.
- [57] The proposed development complies with section 910.7(5)(b)(i)(A) because it is under the maximum allowable residential floor plate of 900 square metres. Although the tower floor plate exceeds 80 percent of the podium floor plate, the section states "...to the satisfaction of the Development Officer." This section allows the Development Officer to consider the design of the building in order to make some concessions and consider granting a variance.
- [58] Floors 6 to 11 do not meet the minimum setback requirement of 4.5 metres. However, there is a 10 metre setback on the roof to accommodate the roof top amenity space.
- [59] The proposed building recognizes the scale, architecture and built form of the existing historical structures within the general area, particularly those on the same block face. This has been accomplished by extending the architecture and finishes to the top level of the Birks Building.
- [60] There is some discrepancy between the requirements of section 910.7(5)(d)(ii) and the setback requirements. It was his opinion that this is why some flexibility has been provided to the Development Officer. The first five storeys of the proposed building are flush to the street and floors 6 to 11 have been stepped back.
- [61] The proposed development complies with section 910.7(5)(d)(vi) that balconies are not allowed within the first five storeys of a building on those portions of the building facing a public roadway, other than a lane. There are no balconies proposed for the first five storeys of the proposed development. There is no other prohibition in the *Bylaw* for balconies related to this development.
- [62] The requirement that all exposed building facades shall be architecturally treated to create a unified building exterior does not mean that a building has to have a completely monolithic front façade. It speaks to bringing a unified building exterior. The developer tried to carry the unified wedge theme throughout the building.
- [63] Mr. Murphy reiterated that the proposed window casings and the inclusion of the lintel feature incorporate architectural design details or features that recognize the heritage character of the area.
- [64] Bunt & Associates Engineering Ltd. attended the subject site to review the parking and loading requirements. It was determined that varying the requirement for one loading space will not compromise the operations of the proposed building or overtax the current street side or alley access points. A loading space is not a requirement for the proposed residential component of the development. There are reasonable opportunities for loading to occur along Jasper Avenue as well as in the rear alley.

[65] Photographs of the alley were referenced to illustrate that it is currently used for loading. The Traffic Bylaw allows for loading and unloading by commercial vehicles as long as they use their flashers. Permission may have to be obtained from the City to allow loading/unloading at the front of the building on Jasper Avenue.

[66] Mr. Murphy and Mr. Brisson, the Architect, provided the following information in response to questions from the Board:

- a) Section 910.7(5)(d)(ii) is in conflict with the rest of the design provisions. It states that any front elevation abutting a public roadway other than a lane shall be no greater than five storeys. Any portion of the building height greater than this shall be stepped back. Any building taller than five storeys shall have a minimum of three storeys where the building façade is built to the property line abutting the street.

The first problem is the requirement to have residential floors that are smaller than the commercial footprint because the Downtown Plan drives development to main floor commercial units. Any portion of the building greater than this shall be stepped back from the property line but it cannot include balconies because balconies are not a portion of the building. The stepback does not include balcony projections because balconies are not permitted on the first five storeys. Balconies are a standalone feature that is addressed separately by development regulations contained in the *Bylaw*. He questioned how the balconies can create a problem for the Appellant or impact the amenities of the neighbourhood because they will not be visible to a pedestrian at street level.

- b) The balconies do not create a solid façade. Half of each balcony is open with a solid guardrail in order to maintain the views.
- c) The guardrail is solid but everything above that is open. The balconies will allow wind penetration.
- d) Mr. Brisson questioned how to interpret the requirement that all exposed building facades be architecturally treated to create a unified building exterior. Does this mean that architectural treatments have to be repeated or does it address a unified theme for the entire building?
- e) The decision was made to use brick as an exterior finish for the 6th to 11th storeys in addition to the first five storeys because it respects the heritage character of the area and it creates an interesting building. The subject site is located on a lot between two buildings that compete with each other in terms of alignment and finishes.
- f) The front elevation includes architectural features from each of the adjacent buildings. A cornice has been included because they want to acknowledge the heritage of the area and there is a cornice on the Birks Building. Lintels have been incorporated and the alignment and spacing of windows has been designed to match

- the windows on the Birks Building. The windows will be framed so that they stand out visually from the brick façade.
- g) The alignment and spacing of the windows and the incorporation of cornices in the design maintain the vertical and horizontal requirements of the architectural requirements.
 - h) If it is determined that the building cannot be built entirely on the subject site, a new development permit application will be required. The property owner has a Real Property Report that shows the building is fully contained on the subject site.
- [67] A copy of the sun shadow impact study was submitted and marked *Exhibit C*. The Birks Building will be impacted by sun shadowing from the proposed development but that is the reality of downtown development. That is why the *Bylaw* and other relevant legislation contain words like “unduly” and “materially”.
- [68] This is an interesting project because of the location and the unusual nature of the lot. There are many challenges but the proposed development is a Permitted Use that will enhance the amenities of the area and drive the intent of the Downtown Plan.
- v) *Rebuttal of the Appellant:*
- [69] The definition of Stepback is “the horizontal distance a building façade is stepped back, on a horizontal plane, from the building façade immediately below it.”
- [70] The definition of Façade is “the exterior outward face of a building. Typically, the façade of interest is that surface that serves as the front of that building and faces a building’s primary street. Buildings on the corner of two streets or a street and an alley present two public facades.”
- [71] It was their opinion that the overwhelming size and solid wood construction of the balcony guardrails create a perceived façade at the front of the building.
- [72] The sun shadow impact study was reviewed as part of the package received from the Edmonton Design Committee. However, the study should be evaluated on the difference in shadow between the allowable three dimensional building massing and the proposed three dimensional massing. In this case the massing was based on the building that currently exists on the site. The study does not show the difference in shadowing based on what should be built according to the requirements of the *Bylaw* and what is proposed.
- [73] It was acknowledged that the development of a taller building would be permitted on the subject site but they could not comment on the impacts of a taller building on light penetration into the windows and skylights of their building because the difference between the 80 percent reduction and the 10 to 15 percent reduction on the upper floors is not understood.

[74] The Downtown Special Area addresses parking, access, bicycles, environment, wind and transparency. There is nothing in this document, the Downtown Plan, or the Jasper Avenue land use policies that validate or supersede the HA Zone that would validate the violation of the development regulations contained in the HA Zone.

[75] Policy 13.5 (Redevelopment of Heritage Resources) of the Downtown Plan states:

Preserve historic buildings through zoning regulations that require the retention and integration of Character Defining Elements while allowing redevelopment opportunities.

[76] Policy 13.6 (Development Adjacent to Heritage Resources) of the Downtown Plan states:

Require that proponents of development being proposed adjacent to heritage buildings in the Downtown consult with the City Heritage Officer and provide a design which respects the character of the adjacent heritage building and other heritage buildings in the vicinity. Respect should be manifest in authentic design responses that meet the objectives of design excellence outlined in Chapter 9 – Downtown Urban Design. Simplistic architectural mimicry or banal pastiche that does not further the design richness and vibrancy of the Downtown should be discouraged.

Where the numbers of heritage resources in a neighbourhood or unique place are significant, they should form a key element of any plans or improvement projects to develop neighbourhood identity.

[77] Policy 12.14 (Tower and Spatial Arrangement) of the Downtown Plan states:

New development will be massed to fit harmoniously into its existing and/or planned context, and will limit its impacts on neighbouring streets, parks, open spaces and properties by:

- Providing for adequate light and privacy;
- Adequately limiting any resulting shadowing of, and uncomfortable wind conditions on, neighbouring streets, properties and open spaces, having regard for the varied nature of such areas; and
- Minimizing any additional shadowing and uncomfortable wind conditions on neighbouring parks as necessary to preserve their utility.

New development will be massed to define the edges of streets, parks and open spaces at good proportions. Taller buildings will be located to ensure adequate access to sky view for the proposed and future use of these areas.

[78] A person walking along Jasper Avenue will not be able to differentiate between the balconies that will be finished with the same fascia materials as the foundation of the building, particularly given the massing of the building. The proposed balconies create an additional 4.5 metres of shadowing onto their adjacent building. Aesthetics and design matter.

- [79] There has been much discussion regarding the unification of the front façade. Dictionary.com defines unify as “to make a single unit”. The proposed architectural facades do not unify the building, in fact, they intentionally create a wedge as acknowledged by the name of the building “The Wedge”. The proposed design elevation creates a division and a definite contrast in design which is a blatant violation of the development requirements of the HA Zone.
- [80] There is only one Heritage Zone in the City and the development requirements should be met in order to maintain the character of the zone.
- [81] Melcor supports downtown development but is not convinced that the proposed design is appropriate on a site located in the HA Zone.
- [82] Mr. Murphy clarified that the property owner has obtained an updated Real Property Report which shows 7.61 and 7.65 metres in terms of property width. The Looby Block encroaches onto the subject site by 0.16 metres. However, the proposed building can be constructed entirely on the subject site.

Decision

- [83] The appeal is **DENIED** and the decision of the Development Authority is **CONFIRMED**. The development is **GRANTED** as approved by the Development Authority, subject to the **CONDITIONS** imposed by the Development Authority.

Reasons for Decision

- [84] Apartment Housing is a Permitted Use in the (HA) Heritage Area Zone (“HA Zone”), pursuant to section 910.7(2)(b) of the *Edmonton Zoning Bylaw* (the *Bylaw*).
- [85] Convenience Retail Stores is a Permitted Use in the HA Zone, pursuant to section 910.7(2)(i) of the *Bylaw*.
- [86] Section 910.1 states that the General Purpose of the Downtown Special Area Zoning Regulations is to “Designate the Downtown area as a Special Area and to adopt land use regulations to achieve the objectives of the Capital City Downtown Plan.”
- [87] Section 910.7 states that the General Purpose of the HA 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.

[88] The Appellant raised concerns that granting the following variances for the proposed “Wedge” building does not meet the architectural intent of the HA Zone.

[89] Section 910.7(5)(b)(i)(A) states:

Tower Floor Plate, Stepbacks, and Spacing

Building Setback, Tower spacing and sculpting shall be used to reduce building mass and augment views, light and privacy.

For buildings greater than 20 metres in Height, the maximum residential Floor Plate shall not exceed 900 square metres, but in no case shall it exceed 80 percent of the podium Floor Plate, to the satisfaction of the Development Officer.

[90] Section 910.7(5)(b)(i)(B) states:

Tower Floor Plate, Stepbacks, and Spacing

Building Setback, Tower spacing and sculpting shall be used to reduce building mass and augment views, light and privacy.

Tower Stepback from the Street Wall shall be a minimum of 4.5 metres.

[91] Section 910.7(5)(c)(v) states:

Roof Tops and Skyline Effects

The Tower Floor Plate(s) of the top 4 floors shall be reduced a further 10 percent to 15 percent, to the satisfaction of the Development Officer, through Stepbacks to create the articulation, visual interest, and reduced massing effects.

[92] The Board finds that the proposed development is pedestrian friendly and includes design elements that exist on the adjacent buildings to ensure that the historical, architectural and urban village character of the area are maintained and is therefore, consistent with the General Purpose of the HA Zone.

[93] The Board grants the required variances for the following reasons:

- a) The Board does not accept the argument of the Appellant that the proposed balconies will impact the massing of the building and do not comply with the minimum required Stepback requirements contained in section 910.7(5)(b)(i)(B). Based on the evidence provided and a review of the renderings submitted, the balcony guardrails will be constructed of a solid building material and the top portion of the balcony will be open to allow air flow and sunlight penetration. Therefore, the building Façade

behind the balcony guardrails will be visible at street level. For that reason, the Board finds that the proposed balconies do not substantively impact the Stepback requirements and do not constitute a building Façade pursuant to the definition of Façade contained in section 6.1 of the *Bylaw*.

b) Section 6.1 defines Façade as:

The exterior outward face of a building. Typically, the façade of interest is that surface that serves as the front of that building and faces a building's primary street. Buildings on the corner of two streets or a street and an alley present two public faces.

c) Balcony guardrails do not constitute the exterior outward face of a building. A balcony, whether transparent or solid construction, is a projection from a building.

d) The Board finds that the actual requested variances (which do not involve the balconies) are only minimally impactful. First, the variance granted for the Tower Floor Plate is imperceptible at street level and will not impact the streetscape. Second, the Development Authority confirmed that the proposed Stepback required for the proposed Tower abutting Jasper Avenue is 4.25 metres and not 3.24 metres as originally calculated and contained on the development permit approval. A 0.25-metre variance in the Stepback from the tower to the podium located six storeys below will not be visible at street level and will not have any material impact.

e) The Appellant raised a concern that the proposed development did not comply with sections 910.7(5)(e)(i)(A) and (B) and 910.7(5)(e)(iii) which state:

Architectural Treatment:

- i. The building shall include the following design elements to reduce the perceived mass and add architectural interest. These requirements shall apply consistently to all building facades within the first 5 Storeys of 20.0 metres that face a public roadway, other than a lane:
 - A. exposed building facades shall be architecturally treated to create a unified building exterior; and
 - B. Building facades shall incorporate architectural design details or features that recognize the heritage character of the area.
- iii. The architectural treatment of the building up to the first 5 Storeys or 20.0 metres shall adhere to the general alignment of the horizontal elements and vertical elements of the adjacent buildings along the same block face.

- f) The Board finds that a major portion of the proposed Façade complies with these requirements. The podium Façade is comprised primarily of brick which is consistent with the exterior finishes on adjacent buildings. Design features, including cornices and lintels have been incorporated into the design in order to be consistent with architectural detailing used on the adjacent buildings and to recognize the heritage character of the area.
- g) The alignment and finishing treatments of the proposed windows, including detailed casements of a style similar to that of the windows on adjacent buildings, maintains a similar vertical grid and adheres to the general alignment of the horizontal and vertical elements of the adjacent buildings along the block face. It is acknowledged that the wooden portion of the front Façade creates diagonal movement but it is not significant enough to remove the vertical congruency established by adjacent buildings.
- h) The Appellant did not express any concern regarding the parking variance that is required pursuant to section 54.2, schedule 1(B) of the *Bylaw*. The variance has been granted because it will not materially impact the amenities of the neighbourhood based on the pedestrian oriented location of the building on Jasper Avenue. In fact, eliminating on-site parking further enhances the historical nature of the neighbourhood by allowing development to the property line.
- i) A variance of one loading space has been granted pursuant to section 54.4, schedule 3 of the *Bylaw* based on a review of the photographic evidence provided that illustrates an adequate loading space available at the rear of the subject site along the commercial laneway. The City Traffic Bylaw 5590 permits commercial vehicles with hazard warning lights to park in an alley for no more than 30 minutes in a manner that does not lock or obstruct the movement of traffic. A loading space is also available at the front of the site, along Jasper Avenue.

[94] The Board notes that the Appellant raised concern about the lack of neighbourhood consultation. However, the Board concurs with the Respondent, that the proposed development is a Permitted Use and that community consultation is not a development requirement pursuant to section 910.7 of the *Bylaw*.

[95] The Board notes that the proposed development has received support from the City Heritage Planner, the Edmonton Design Committee, the Downtown Business Association, and the Downtown Edmonton Community League.

[96] The Board acknowledges the concerns of the Appellant regarding possible encroachment issues. However, the Board does not have any jurisdiction to grant a development permit for a development that encroaches onto adjoining land.

[97] The Board also notes the concerns raised by the Appellant regarding the construction process and the possible deleterious impact on surrounding buildings. However, the Board declines comment on these concerns because they are related to private ownership issues

and the building permit process that is regulated by the Safety Codes Act which are matters that are outside the purview of the Board.

[98] For all of the above noted reasons, the Board finds that the proposed development with the conditions and variances granted 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.

[99] The appeal is denied and the development is granted.

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

Board members in attendance: Mr. M. Young, Ms. M. McCallum, Mr. L. Pratt, Ms. E. Solez

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.