



**EDMONTON
TRIBUNALS**

*Subdivision &
Development
Appeal Board*

*10019 - 103 Avenue NW
Edmonton, AB T5J 0G9
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SDAB-D-16-213

Application No. 180163072-002

An appeal by E&F Arquitel Construction to construct a Semi-Detached House with front verandas and to demolish the existing Single Detached House was **TABLED TO SEPTEMBER 28 or 29, 2016.**



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SDAB-D-16-214

Application No. 223356733-001

An appeal by 1665481 Alberta Ltd. to immediately cease the use of the basement as Secondary Suites and Decommission the Secondary Suite was **TABLED TO OCTOBER 5 or 6, 2016.**



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Date: September 16, 2016
Project Number: 183991152-001
File Number: SDAB-D-16-215

Notice of Decision

- [1] The Subdivision and Development Appeal Board (the “Board”) at a hearing on August 17 2016, made and passed the following motion:

"That the appeal hearing be scheduled for September 7 or 8, 2016, as per the written request of the Appellant."

- [2] On September 7, 2016, the Board made and passed the following motion:

"That SDAB-D-16-220 be raised from the table."

- [3] The Board heard an appeal that was filed on August 5, 2016. The appeal concerned the decision of the Development Authority, issued on July 19, 2016 to approve the following development:

To construct 88 Dwellings of Apartment Housing (4-storey building with underground parkade)

- [4] The subject property is on Plan 1621366 Blk 25 Lot 11, located at 2510 - 104 STREET NW, within the DC1 Direct Development Control Provision Zone (Ermineskin (17414)).

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

- Copy of the Development Permit application with attachments, proposed plans, and the approved Development Permit;
- The Development Officer’s written submissions;
- The Appellant’s supporting documents; and,
- Online responses.

Preliminary Matters

- [6] 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.
- [7] The appeal was filed on time, in accordance with Section 686 of the *Municipal Government Act*, RSA 2000, c M-26.
- [8] The Presiding Officer outlined how the hearing would be conducted, including the order of appearance of parties, and no opposition was noted.
- [9] The Presiding Officer explained to the parties that this site is zoned is DC1 Direct Development Control Provision pursuant to Bylaw 17414 passed November 2, 2015 (“DC1”). City Council has taken special control of the site. As a result of the DC1 designation, the Board’s usual authority is limited by Section 641(4)(b) of the *Municipal Government Act*, which states:

Despite section 685, if a decision with respect to a development permit application 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.

Summary of Hearing

i) Position of the Appellant, Ms. K. Germain accompanied by Mr. B. Jonah

- [10] The Appellant stated the neighbourhood is already densely populated. There is already a large concentration of multi-residential developments. This is a 4-storey building that will have a massing effect on the adjacent 2-storey homes and does not fit with current architecture of the area. This development will reduce property values of surrounding homes. She is concerned about the further deterioration of roads and sidewalks. She is also worried about the sewer capacity.
- [11] The Presiding Officer reminded the parties that the Board’s authority is limited pursuant to Section 641(4)(b) of the *Municipal Government Act*. Apartment Housing is a listed use in the DC1 and the maximum allowable Height is set and the pictures attached in the DC1’s appendix set out a 4-storey building. The Board must deal with the DC1 as written and the Board must determine whether the Development Authority followed the directions of City Council.

- [12] Mr. Jonah submitted two documents, one personally and one for a group of 50 people. Many of their concerns about this project were already raised before City Council at the public hearing implementing this DC1. Studies should have been done before the project was even started. City Council intended due process of law to be followed, which did not occur because studies were not done to determine how the proposed development's size and location would truly impact the neighbourhood.
- [13] Asked to specify the nature of these studies, Mr. Jonah clarified that a traffic analysis should have been done on 23 avenue and 105 street to see how the proposed development affects infrastructure. There will be parking issues and noise issues. Extra studies are typical of any engineering project. The public is entitled to know the results of these studies. Mr. Jonah does not believe the Development Officer followed directions of council because he did not have the required technical information and he should have arranged for review by the public. The parties have a fiduciary duty to ensure the public is not at risk with this project. Work performed must meet or exceed best practices and should be reviewed by accredited professionals. City Council would have never intended this.
- [14] The Presiding Officer stated this Board reviews the proposed development permit at the development stage and not the building permit stage. The Board does not have jurisdiction to look at engineering studies, but must first confine itself to examining whether the Development Authority followed the directions of Council in the DC1 in issuing a Development Permit.
- [15] Asked to identify any provisions in the DC1 which require these studies, Mr. Jonah indicated that DC1.4(1) provides "Unless otherwise specified in this Provision, development shall comply with the General Development Regulations found in Sections 40 to 60, inclusive, of the Zoning Bylaw." The Presiding Officer gave the parties a short adjournment to review sections 40 to 60 of the *Edmonton Zoning Bylaw*.
- [16] Mr. Jonah submitted the following General Development Regulations had not been followed:
- (a) Section 54 as off street parking is insufficient and there will be some parking on the street. Further there will be front yard parking.
 - (b) Section 58 which speaks to enjoyment of the property and crime and safety has not been properly addressed.
 - (c) Section 45 which prohibits garbage bins in the front yard. The bins should be located in the side or back yards.

(d) Section 42 which provides requirements for Separation Space, Amenity Area and Setbacks. The proposed development will have sun shadowing effects on adjacent neighbours.

ii) *Position of the Development Officer, Joselito Angeles*

- [17] The Development Officer referred the Board to his written submission. The proposed development is in full compliance with the DC1 regulations and does not require any variances. He consulted Transportation Services and Drainage Services and relied upon their answers to make a decision.
- [18] Upon questioning from the Board, the Development Officer stated that the DC1 sets out the exact location of the garbage bins in the Appendices, thus overrides sections 40-60 of the *Edmonton Zoning Bylaw*. The location of garbage is as shown on plans and thus complies with the regulations of the DC1.
- [19] The Development Officer stated the DC1 requires no additional studies. These matters were already dealt with when the City Council approved the DC1.
- [20] The Development Officer confirmed the proposed number of parking spaces complies with the requirements. The surface parking is as depicted by the plan in the Appendix and thus complies with the DC1.
- [21] The Development Officer confirmed there are 88 Dwelling units proposed as compared to 100 Dwelling units that could be allowed under DC1.4(b).
- [22] The Development Officer stated as a condition of the Development Permit approval, the Respondents must complete a Crime Prevention Through Environmental Design assessment prior to the drawings being released for a Building Permit review. Thus Section 58 of the *Edmonton Zoning Bylaw* has been complied with.
- [23] The Development Officer confirmed there are no prohibited objects on the plans for the proposed development. The plans conform to Appendix A in the DC1.
- [24] The Development Officer confirmed the proposed development does not exceed the maximum allowable Height and meets all of the minimum allowable Setbacks.
- [25] The Development Officer confirmed that drainage is a separate issue that cannot be dealt with by this Board.
- [26] The Development Officer confirms all private Amenity Areas comply with those shown in Appendix A in the DC1.

[27] The Development Officer confirmed that Section 4(r) of the DC1 has been complied with which states “Prior to issuance of any development permit, the Development Officer shall ensure that a signed agreement has been executed between the City of Edmonton and the owner, requiring the owner to provide the City of Edmonton, at the time of development permit approval, the option to purchase 4 Dwellings at 85 percent of the list price.”

iii) Position of the Respondent, Mr. J. Der and Mr. R. Dhunna

[28] The Respondents are in favour of the proposed development. The proposed development is in full compliance with the DC1 regulations and does not require any variances.

iv) Rebuttal of the Appellant

[29] The parties had nothing to add in rebuttal.

Decision

[30] The appeal is DENIED and the decision of the Development Authority is CONFIRMED. The development is GRANTED as approved by the Development Authority and subject to the CONDITIONS as stated in the Development Permit.

Reasons for Decision

[31] The subject Site is located within the DC1 Direct Development Control Provision (Ermineskin) passed by Bylaw 17414 on November 2, 2015 (the DC1).

[32] Due to the DC1 designation, the appeal is governed by Section 641(4)(b) of the *Municipal Government Act* which states in part, “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.”

[33] In this case, the directions of council contained in the DC1 are very specific. Apartment Housing is the sole residential Listed Use in the DC1 Zone per DC1.3(a). Further, DC1.4(a) provides “The development shall be in general accordance with attached Appendix A- Illustrative Site Plan (Concept), to the satisfaction of the Development Officer. Appendix A to the DC1 shows an “Illustrative Site Plan (Concept) and Appendix B to the DC1 shows an “Illustrative Landscape Plan (Concept). These Appendices depict a 4 storey Apartment Building. They identify surface parking spaces, garbage and amenity areas and points of access for the underground parkade and the adjacent streets.

- [34] In their written submissions, the Appellant, other neighbours and the Community League cite concerns about the appropriateness of wood frame Apartment Housing in general; its impact on surrounding roads, and pre-existing neighbourhood congestion; sunshading; nuisance associated with construction; failure to provide drawings, technical information and evaluations to the public; and, failure to comply with other legislation including the *Safety Codes* and *Alberta Engineering and Geoscience Professions Act*. According to the materials, many of these issues were raised at the 2015 community consultation meetings and Council meetings which led to enactment of the DC1 Bylaw. The Board notes that the Ermineskin Community League letter on file for this appeal is dated October 27, 2015 and is addressed to an employee of Stantec.
- [35] Given that Apartment Housing is the only Listed Residential Use and the DC1 Appendices demonstrate that a 4 storey Apartment building is intended to be developed on the subject Site, the Board finds that these submissions fail to establish that the directions of council as contained in the DC1 were not followed. The Board also notes that the Appellants could not identify any provision in the DC1 requiring a study or disclosure that had not been provided.
- [36] Three neighbours within the notification radius (including the Appellant) attended the hearing in opposition to the development at which time they also alleged that the Development Officer failed to comply with section DC1.4(1) which provides that “unless otherwise specified in this Provision, development shall comply with the General Development Regulations found in Sections 40 to 60, inclusive, of the Zoning Bylaw.”
- [37] In particular, they suggested that the proposed development does not comply with: Section 54 of the *Edmonton Zoning Bylaw* regarding parking, including number of spaces and front yard location; Section 45 regarding garbage bins; Section 42 regarding sun shading impacts, and Section 58 regarding a Crime Prevention Through Environmental Design assessment; and, Section 42 regarding requirements for separation Space, Amenity Area, Setbacks and ultimately sunshading.
- [38] Each of these additional objections were reviewed with the Development Officer and the respondent who indicated the proposed development is fully compliant with all of development regulations stipulated DC1 and its attached appendices and with the general development regulations found in sections 40 to 60 of the *Edmonton Zoning Bylaw* where the DC1 is silent.
- [39] The Board accepts the evidence of the Development Officer that the proposed development requires no variances, that all required studies from various city departments were provided and considered in making his decision and that the requirement for a Crime Prevention Through Environmental Design assessment has been addressed through a condition attached to the Development Permit.

[40] Based on the evidence provided and for the reasons above, the Board finds that the Development Authority did follow the directions of City Council in approving the proposed development. Therefore, in accordance with Section 641(4)(b) of the *Municipal Government Act*, the Board may not substitute its decision for the development authority's decision and the appeal must be denied.

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

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 5th Floor, 10250 – 101 Street, Edmonton.
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 5th Floor, 10250 – 101 Street, Edmonton.

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.