
CALGARY SUBDIVISION AND DEVELOPMENT APPEAL BOARD

Hearing held at: Calgary, Alberta

Date of hearing: May 30, 2013

Members present: Rick Grol, Chairman
Jo Anne Atkins
John Attrell
Meg Bures
Brian Corkum
Terry Smith

Basis of appeal: This is an appeal from a refusal by the Development Authority for a development permit made on the application of **Neoteric Architecture** for a **new: multi-residential development (1 buildings, 3 units)** at 55 28 Avenue SW.

Appeal filed by: **Curtis Drul**

This appeal was originally scheduled for April 18, 2013 but was adjourned to May 30, 2013 due to a request filed by legal counsel for the applicant/ appellant.

Description of Application:

The appeal before the Subdivision and Development Appeal Board (Board) deals with a refusal by the Development Authority of a development permit application for a new multi-residential development (1 buildings, 3 units) at 55 28 Avenue SW. The property is located in the community of Erlton and has a land use designation of Multi-Residential – Contextual Grade-Oriented (M-CG d72) District.

Hearing:

The Board heard verbal submissions from:

Andy Orr representing the Development Authority;
Timothy Bardsley of Dentons LLP, legal counsel for the appellant/applicant, in favour of the appeal;
Curtis Drul of Neoteric Architecture Inc., the appellant/applicant, in favour of the appeal;
Sean Reid of Neoteric Architecture Inc., the appellant/applicant, in favour of the appeal;
Bill Fischer of the Erlton Community Association, in opposition to the appeal;
Brian Kiers, an affected neighbour, in opposition to the appeal;
Greg Pauling, an affected neighbour, in opposition to the appeal; and
Marc Clement, an affected neighbour, in opposition to the appeal.

Summary of Evidence:

The Board report contains the Development Authority's decision respecting the development permit application and the materials submitted by the Development Authority that pertain to the application, and forms part of the evidence presented to the Board. The Board report contains notice(s) of appeal(s) and any documents, materials or written submissions submitted by the appellant(s), applicant and any other parties to the appeal.

Appendix A attached to this decision contains the summary of evidence from the parties submitted at the hearing and forms part of the Board's decision.

Decision:

In determining this appeal, the Board:

- Complied with the provincial legislation and land use policies, applicable statutory plans and, subject to variation by the Board, The City of Calgary Land Use Bylaw 1P2007, as amended, and all other relevant City of Calgary Bylaws;
- Had regard to the subdivision and development regulations; and
- Considered all the relevant planning evidence presented at the hearing, the arguments made and the circumstances and merits of the application.

- 1. The appeal is denied and the decision of the Development Authority is upheld.**
- 2. A development permit shall not be issued.**

Reasons:

1 Having considered the written, verbal, and photographic evidence submitted, the Board notes that the appeal pertains to the Development Authority's refusal of a development permit application for a new multi-residential development (1 buildings, 3 units) at 55 28 Avenue SW. The property is located in the community of Erlton and has a land use designation of Multi-Residential – Contextual Grade-Oriented (M-CG d72) District pursuant to Land Use Bylaw 1P2007.

2 The appellant, representing the applicant, submitted in his notice of appeal that the design is sensitive to the existing character and scale of the local streetscape and area, and is compatible with the existing development. In the appellant's opinion the proposed design adheres to the spirit and intent of the Area Redevelopment Plan (ARP). At the hearing the appellant elaborated in detail in support of the application.

3 The Development Authority refused the application on the grounds that the Erlton ARP intends that new development in the South Erlton area be compatible in scale with existing development and with the local streetscape. It is expected that new development will typically be larger and more intensive than the older existing development but that new development must be designed in a manner that is sensitive to and respectful of the established built form and pattern of development in this part of the community. The proposed development has a building height, building depth, mass and overall size that, in combination, is excessive in relation to existing development in the surrounding area and is not compatible with its context, in a manner consistent with the Erlton ARP or section 35 of the Land Use Bylaw, which states that when considering a discretionary use the Development Authority must, among other things, take into account "the compatibility and impact of the proposed development with respect to adjacent development and the neighbourhood". In the Development Authority's opinion the proposed development is not compatible with adjacent development and the neighbourhood in general and will have an adverse impact on nearby properties.

4 The Board has particular regard to Land Use Bylaw 1P2007, including but not limited to the following sections:

Section 35 states:

Discretionary Use Development Permit Application

35 When making a decision on a *development permit* for a *discretionary use* the *Development Authority* must take into account:

- (a) any plans and policies affecting the *parcel*;
- (b) the purpose statements in the applicable land use district;

- (c) the appropriateness of the location and *parcel* for the proposed *development*;
- (d) the compatibility and impact of the proposed *development* with respect to *adjacent development* and the neighbourhood;
- (e) the merits of the proposed *development*;
- (f) the servicing requirements;
- (g) access and transportation requirements;
- (h) vehicle and pedestrian circulation within the *parcel*;
- (i) the impact on the public transit system; and
- (j) sound planning principles.

Section 37(2) states:

Development Authority's Decision

- (2) The *Development Authority* may refuse a *development permit* application for a *discretionary use* even though it meets the requirements and rules of this Bylaw.

Section 576 states:

Purpose

576 The Multi-Residential – Contextual Grade-Oriented District:

- (a) is intended to apply to the *Developed Area*;
- (b) has **Multi-Residential Development** that will typically have higher numbers of **Dwelling Units** and traffic generation than low density residential dwellings;
- (c) has **Multi-Residential Development** designed to provide some or all **Units** with direct access to *grade*;
- (d) provides for **Multi-Residential Development** in a variety of forms;
- (e) has **Multi-Residential Development** of low height and low *density*;

- (f) allows for varied **building height** and **front setback areas** in a manner that reflects the immediate context;
- (g) is intended to be in close proximity or **adjacent** to low density residential development;
- (h) provides outdoor space for social interaction; and
- (i) provides landscaping to complement the design of the **development** and to help screen and buffer elements of the **development** that may have impacts on residents or nearby **parcels**.

Section 578(1)(i) lists “Multi-Residential Development” as a discretionary use in the M-CG District.

5 The Board also has regard to the Erlton Area Redevelopment Plan (ARP).

6 The Board acknowledges the written and oral submissions of all parties, including but not limited to the appellant/applicant and interested/affected parties, as well as letters and correspondence regarding the application contained in the Board report.

7 For the reasons that follow, the Board finds the appellant provided insufficient compelling planning rationale for the application and the appellant’s arguments are not persuasive.

8 The application is for a multi-residential development in the form of three dwelling units (as townhouse style development). The application requires a number of relaxations of the rules and requirements of Land Use Bylaw 1P2007 which are outlined in the chart provided by the Development Authority at the hearing.

9 The Board reviewed the context of the proposed development and the required relaxations having regard to sound planning considerations, the merits of the application, the circumstances of the case and the evidence presented.

10 The development permit application is for a discretionary use development pursuant to Land Use Bylaw 1P2007. Pursuant to section 37(2) of Land Use Bylaw 1P2007, the Development Authority may refuse a development permit application for a discretionary use even though it meets the requirements and rules of the Bylaw. Therefore the Development Authority can refuse an application for a discretionary use development based on sound planning considerations and planning rationale.

11 Pursuant to section 35 of Land Use Bylaw 1P2007, when making a decision on a development permit application for a discretionary use the Development Authority must take into account the things listed in subsections (a) through (j). Subsection (a) of this

section lists the plans and policies affecting the parcel. Therefore, the ARP must be taken into account by the Development Authority. In addition, among other things, the compatibility and impact of the proposed development with respect to adjacent development and the neighbourhood, the appropriateness of the location and parcel for the proposed development, the merits of the proposed development and sound planning principles must be taken into account.

12 Pursuant to section 687(3)(a.1) of the *Municipal Government Act*, RSA 2000, c. M-26, as amended the Board in determining an appeal must comply with statutory plans. The ARP is a statutory plan.

13 The Board notes that both the Land Use Bylaw and the ARP have designated the South Erlton area, in which the subject parcel is located, for low density residential development, including low density multi-residential development.

14 Furthermore, the ARP is clear in its directives. It states in section 2.1.2.1, among other, that infill development is encouraged and should be compatible with the scale of the surrounding development and the local streetscape.

15 The Board agrees with the Development Authority that section 1.3.2 (page 2) of the ARP reiterates conservation as the guiding policy for South Erlton and recognizes the role of the established residential community in revitalizing and enhancing the area.

16 The land use designation M-CG District is in accordance with the policies and directives of ARP for development on the subject land, which is a factor to be considered.

17 The Board agrees with the appellant that the Land Use Bylaw does allow for multi-residential development on the parcel. However, it is of significance to the Board that section 576(e) and (f) of Land Use Bylaw 1P2007, which contains the purpose statement of the M-CG District, provides that this district has multi-residential development of low height and low density and allows for varied building height and front setback areas in a manner that reflects the immediate context. While the purpose statement of a District under the Land Use Bylaw is not binding, it does provide the intent, purpose and context of the land use district that governs the parcel.

18 The development has an overall depth (north/south) of about 85 percent of the parcel depth. The parcel depth is approximately 122 feet and building is almost 104 feet in depth. The two northernmost units are placed 1.2 metres from the property line shared with the single detached home to the east. The southernmost unit, except for a projecting corner balcony which overlooks the neighbour's rear garage, is stepped back further from the shared property line, by about 3.6 metres.

19 The Board further notes from the photographic evidence that South Erlton has been characterized by bungalows, bi-levels and two storey homes. However, the area is in

transition and properties are being redeveloped. The immediate context is the streetscape of 28 Avenue SW, as well as the streetscape along Erlton Street SW, both of which consist mainly of two storey and low profile residential dwellings. Some of the parcels along the avenue and street have already been redeveloped, over the past number of years.

20 The appellant presented a map and photographs of a number of similar project types and architectural styles in South Erlton, and submitted that those similar developments establish the context within which their proposed development would fit. However, the Board notes from map evidence that almost all of the examples presented by the appellant back onto or are adjacent to a park, cemetery or some other sort of green space, and that very few, if any, of the examples presented of similar developments were similarly located adjacent to a single detached dwelling, such that the multi-residential dwelling units back onto and overlook into the adjacent parcels, as is the case with the proposed development. Therefore, the Board disagrees with the appellant's opinion that the proposed development fits within the context of other multi-residential developments in South Erlton.

21 The Board notes that at the hearing the surrounding immediate neighbours pointed out that the garages and driveways of the proposed dwelling units are oriented onto Erlton Street. In their opinion, this will add to the significant safety issues and traffic challenges along this part of Erlton Street that they are already experiencing, due to the nature of the street, the extremely steep slope of the hill, and the traffic flow. This is a factor to be considered. Having regard to the photographic evidence and the steep grade of the street at this location, the Board accepts this evidence for the purpose of the appeal and application. Having reviewed the evidence, the Board finds that, from a planning and transportation perspective, access to the garages for the dwelling units should be from the lane.

22 In the Board's opinion, the applicant has tried to maximize the building envelope as much as possible. The size of the dwelling units is relatively large in relation to the size of the parcel. Either the parcel is too small for the development, as proposed, or the development is too large for the site and is comprised of too many dwelling units. From a planning perspective, the proposed development is, in the Board's view, too intensive for the site. In addition, the potential for overlooking and the significant massing presented by such a large development are exacerbated by the slope of the parcel and the elevation of the proposed development in relation to adjacent and nearby parcels to the east.

23 The Board also agrees with the Development Authority that the massing of the street-side façade of the development will be significant because of the close proximity of the west façade to the street due to the narrowness of the lot. The Board notes the contrast in this regard with the three storey multi-residential development across Erlton Street which has a much greater setback from the street, and because of that, appears

more in proportion to the parcel and location, and does not appear to dominate the streetscape.

24 While the Board, to a certain extent, is sympathetic to some of the appellant's arguments regarding the site constraints, the Board is not convinced that the applicant sufficiently explored alternatives to develop the parcel in accordance with the intent of the Land Use Bylaw and ARP. In the Board's view, having regard to sound planning considerations, the parcel could be developed in a manner that would be more sensitive to the immediate surrounding developments.

25 The Board further takes into account that the development requires a significant number of relaxations of Land Use Bylaw 1P2007.

26 The Board, based on the balance of all the evidence, finds that the proposed development creates substantial overlooking issues onto the adjacent properties. In the Board's view the proposed privacy walls/screens are insufficient to mitigate the privacy issues resulting from the development, which have an adverse impact on the adjacent neighbouring properties.

27 The Board, based on the evidence, finds that, compounded, the required relaxations of Land Use Bylaw 1P2007 result in a development that due to its size, height, massing, situation on the lot and proximity to the adjacent properties, has a negative impact on the adjacent neighbouring properties and affects the use and enjoyment of the neighbouring properties. In the Board's view, in particular the height relaxation contributes to the massing of the development. Therefore, the Board, based on the evidence, finds that the development and its relaxations do not meet the criteria of section 687(3)(d) of the *Municipal Government Act*.

28 Accordingly, pursuant to section 687(3)(d) of the *Municipal Government Act*, the Board finds that the development would materially interfere with or affect the use or enjoyment of neighbouring parcels of land.

29 In the Board's opinion, having regard to all the evidence and aforementioned factors, the proposed development is not compatible with the streetscape. It is not sensitive and responsive to the context of the adjacent developments and the streetscape, as envisioned by the ARP and the Land Use Bylaw.

30 Based on the evidence and aforementioned factors, the Board thus finds the proposed development does not meet the policies of the ARP.

31 Having regard to the merits of the application, or lack thereof, and sound planning considerations, the Board based on the evidence and aforementioned factors, in keeping with section 35 of Land Use Bylaw 1P2007, finds the proposed development is not compatible with the adjacent developments and the immediate neighbourhood. The

Board, based on planning rationale, finds the development as proposed is not appropriate for the site.

32 In reviewing and weighing all of the evidence, the Board thus finds the application does not warrant approval.

33 For the above reasons, the Board denies the appeal and upholds the decision of the Development Authority.

34 Therefore a development permit shall not be issued.

Rick Grol, Chairman
Subdivision and Development Appeal Board

Issued on this 4th day of July, 2013

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APPENDIX A**Summary of Evidence:**

Evidence presented at the hearing and considered by the Subdivision and Development Appeal Board.

The Development Authority:

Mr. Andy Orr of the Development Authority presented exhibits including the report, maps, viewgraphs and photographs, and submitted the following:

The item being presented is an appeal of a decision of the Development Authority to refuse an application for a new three unit multi-residential development on a M-CG d72 Multi-Residential Contextual Grade Oriented district site located at 55 28 Avenue SW in the community of Erlton and this is a discretionary use application. The property is a 50 foot wide site located at the corner of 28 Avenue and Erlton Street SW. The site slopes significantly (\pm 4 metres) from the 28 Avenue frontage up to the rear lane to the south.

The area is currently in transition as properties are being redeveloped, principally for two and three storey infill homes and low profile multi-residential developments.

The site was notice posted and circulated to affected parties. Written objections were received from neighbours and the community association expressing concerns over building massing, height and privacy infringements.

Front elevation - the proposed development has three side by side units that are offset vertically in a slope sensitive manner, in response to the significant change in grade from north to south. The units all face west, toward Erlton Street SW and back onto the property of the neighbouring single detached home to the east. Each unit has a double front garage facing Erlton Street.

The three units are all four storeys in height. In addition, each unit has a subsurface basement level. The first storey level is principally for the double garage, storage and utilities. The second storey level is the main floor, with kitchen, dining room and living room. The third storey level identified as second storey on the plans typically has two bedrooms, bathrooms for each bedroom and accessory room (e.g. study hall, flex room). On the fourth storey level identified as third floor on the plans each unit has a bedroom and bathroom and an extensive outdoor rooftop garden.

The building has an overall depth north/south of about 85 percent of the parcel depth. Parcel depth is approximately 122 feet and building is almost 104 feet in depth. The two northernmost units are placed 1.2 metres from the property line shared with the single detached home to the east. The southernmost unit, except for a projecting corner balcony which overlooks the neighbour's rear garage, is stepped back further from the shared property line, by about 3.6 metres.

The Erlton Area Redevelopment Plan (ARP) which applies allows for new low density residential development that is larger and more intensive than is the typical older development but that this new development should be supported only if it is sensitive to and respectful of the established built form and evolving low profile pattern of development in this part of the community. Furthermore, the Land Use Bylaw applies the M-CG d72 district to this area. The M-CG district is a "contextual" district that is designed to help ensure new development is sensitive to its context. Amongst other things, the M-CG district encourages a building height that reflects its immediate context. These aforementioned references from the ARP and the Land Use Bylaw are key principles guiding the Development Authority in the review of this application. In particular the Land Use Bylaw states;

Section 35(a) of Land Use Bylaw 1P2007:

"When making a decision on a development permit for a discretionary use the Development Authority must take into account:

(a) any plans and policies affecting the parcel..."

The ARP:

"The conservation policy for south Erlton is reaffirmed and redesignation of the conservation area from R-2 to RM-2 is provided for."

The ARP states that the policy of conservation applies in south Erlton. For new development, conservation means design that is respectful of and sensitive to the existing character. The existing character is determined by many things, including scale, mass, height, overall design and pattern of development. The Development Authority must determine if the proposed development is respectful of and sensitive to these features of the existing character of this part of south Erlton.

Section 1.1 (17) - page 1

"The neighbourhood is divided into two components. North Erlton (the area north of 25th Avenue S.E.) lies within close proximity to the Erlton L.R.T. Station and exhibits a strong potential for redevelopment to L.R.T.-

related uses. South Erlton (the area south of 25th Avenue S.E.) has an established, low-rise, residential character which should be maintained and revitalized.”

The Development Authority must determine if the proposed development maintains the established, low rise residential character of the South Erlton area.

Section 1.3.2, Goals (18) - page 2

“To reaffirm the conservation policy for the South Erlton area and to revitalize and enhance the established residential community.”

The ARP reiterates conservation as the guiding policy for South Erlton and recognizes the role of the “established” residential community in revitalizing and enhancing the area.

Section 2.1.1 Objective (19) - page 4

“To preserve and enhance the established residential character in south Erlton and to encourage L.R.T.-supportive development in north Erlton.”

The ARP clearly distinguishes between North Erlton and South Erlton. It recognizes that major redevelopment (i.e. LRT supportive development) will take place in North Erlton. In contrast, in South Erlton preservation and enhancement of the “established residential character” is a priority. The proposed development must be evaluated, in part, on the basis of its contribution to preserving and enhancing the established residential character.

Section 2.1.2.1 - page 4

“Reaffirm the policy of conservation for south Erlton. Infill development is encouraged; this should be compatible with the scale of surrounding development and the local streetscape.”

The ARP states that new infill development in South Erlton should be compatible within its context. The proposed development must be assessed on its physical, visual and functional compatibility with the surrounding development that currently exists in the immediate area.

Land Use Recommendations Table (20) - page 12

The following to be encouraged:

(a) a variety of housing types excluding apartments,

(b) wall-face, rooflines and building details reflective of the community character...”

The ARP excludes apartments as a form of residential development that is encouraged. Presumably this is, in part, due to the building form, scale and mass that is typically associated with the apartment form of development. It appears apartment buildings were excluded to help ensure that new developments did not have building form, scale and mass that are not compatible with the low profile, smaller scale character of the existing development in South Erlton. The Development Authority must determine if the proposed development has an appropriate form. For example, are “wall-faces” appropriate in relation to the community character.

Figure 12, South Erlton Conservation Area (21) - page 16

Figure 12 of the Supporting Information in the ARP provides a schematic that illustrates, by example, development that is envisaged for the low density multi-residential areas of South Erlton. The illustrated buildings are all two and three storeys with relatively modest building mass.

Figure 12 provides a point of reference for assessing the merits of proposed low density multi-residential development. The Development Authority must determine if the building proposed by this application is reasonably consistent with the types of buildings illustrated in Figure 12 of the ARP.

In the opinion of the Development Authority, the proposed development is not compatible with the streetscape and is not sensitive and responsive to the context of the adjacent homes and the streetscape, in a manner consistent with the intent of the ARP. In addition, the site is designated M-CGd72. M-CG is a “contextual” district. It is noted that contextual districts of the land use bylaw are designed, in part, to help ensure that new development is sensitive to its context.

The rules of the Land Use Bylaw that are also not met by the proposed development and are identified in the following table:

Bylaw Relaxations DP2012-2727			
Rule	Standard	Provided	Discrepancy
Building Height & Cross-Section <i>Section 585</i>	12.0 m	12.6 m	+0.6 m
	Bylaw defines an angled plane next to property line shared with low density residential or M-CG. The proposed development must not project through that plane	The proposed development projects through the plane	Non-compliance
Planting Req'ts <i>Section 552</i>	Min. 2 shrubs per 45 sq. m. of landscaped area	0.0	No shrubs provided <i>Reed grass indicated</i>
	Min. calliper for deciduous trees 50mm, with at least 50% having 75mm	Not indicated on plans	Non-compliance
Retaining Walls <i>Section 570</i>	Max. ht 1.0 m within 3.0 m of a property line	1.07 m	0.07 m
Garbage <i>Section 556</i>	Enclosure of maintenance-free material	Pressure-treated wood enclosure proposed Not maintenance-free	Non-compliance

Some of the relaxations noted are minor however the required relaxation for height infringements contributes marginally to building mass. In addition, the Erlton Area Redevelopment Plan intends that new development in the South Erlton area be compatible in scale with existing development and with the local streetscape. It is expected that new development will typically be larger and more intensive than the older existing development but that new development must be designed in a manner that is sensitive to and respectful of the established built form and pattern of development in this part of the community.

The proposed development has a building height, building depth, mass and overall size that, in combination, is excessive in relation to existing development in the surrounding area and is not compatible with its context, in a manner consistent with the Erlton Area Redevelopment Plan or section 35 of the Land Use Bylaw which states that, when considering a discretionary use, the Development Authority must, amongst other things, take into account "the compatibility and impact of the proposed development with respect to adjacent development and the neighbourhood".

In the opinion of the Development Authority, the proposed development is not compatible with adjacent development and the neighbourhood in general and will have an adverse impact on nearby properties.

Upon questioning by the Board, the Development Authority's representative clarified and stated the following:

- The modest mass indicated on figure 12 in the ARP as illustrated and the massing as proposed does not compare as the proposed development's massing is quite substantial. The main reason why the proposed is refused is due to massing.
- The sample of a similar 3 unit structure is about a block away from the project and they back onto a green space.
- The maximum allowed density by the Bylaw is four units. A three unit would work and achievable but not with the proposed development. Rear lane access garages can still be achieved.
- He further referred to the Plan IT document which encourages new infill developments to be compatible with the adjacent properties and the neighbourhood.
- Mr. Orr also clarified that the Development Authority have not seen the sun shadow study and stated that even if they would have seen the study, it would not have made any difference to their decision.

In Favour of the Appeal:

The appellant/applicant and their legal counsel distributed documentation to the Board including photographs sun shadow studies, letter of support from a neighbour, google maps and raised the following points in favour of their appeal:

Site analysis of external elements and neighbourhood context:

- Mr. Curtis Drul illustrated with several photographs of the area to demonstrate that the site is a very complex site to work with due to the slope not only from south to north but also from west to east.
- The grades going down Erlton is a 14 feet difference and then from 28 Avenue towards memorial is another 5 feet. Sloping also occurs in the back lane but not as much with only about 3 foot drop. In the adjacent property line the grade drops there from 16 feet down. The sloping is not from one direction and reality in two directions.
- Furthermore, he stated that the house adjacent to the subject site with a very similar sloping issue is recessed into the grade rather than on top of the grade on 28 Avenue.

Existing site conditions:

- The appellant reiterated the grade issue of the site is a great issue which is the major point to address and deal with.

- He further stated that aside from the sloping issue, there is an electric pole located very close to the site and this is a fixed item that they have to work around in the design.
- For landscaping, the appellant/applicant's intention is to preserve as much trees but unfortunately, some trees has to be demolished as it is hazardous to the pole or they will not survive when the current house is to be demolished as their roots will be compromised.
- Moreover, other element that has to be taken into consideration is the No Parking sign along Erlton Street as well as a Permitted Parking Sign. In addition to those two signs, there is a also a fire hydrant located close to the site so combining the external elements of slope, the signs, the electrical pole and the fire hydrant, designing the proposed development was challenging.
- Mr. Drul further submitted that with the several restrictions and elements in the site influencing the design, parking was also a big factor to consider.
- The applicant/appellant also illustrated that the subject site is sunk in by 2 feet and the site has not even brought up to be of the same level as Erlton Street. It is similar to a project across the street that has to be sunk in to make up for the grade difference.
- Furthermore, he pointed out there are some steps leading up towards the site to build up the grade so the site will not have to take all the site's grading differences for the whole street of 28 Avenue. Currently there is a 24 inches retaining wall which is in place to preserve what is currently on the site.
- Mr. Drul went on to another photograph depicting the back lane of the subject site towards the east of the property. Currently, there is a garage and some mature trees which unfortunately have to be removed as both the garage and the trees are encroaching in the back lane and not inside the subject property line.
- He also pointed out that the whole lot has to be rebuilt up as drainage is a big issue for this site. In the applicant's view, the proposed development has kept the height, massing and other issues into consideration on a very challenging site which has about 14 to 16 foot drop on either direction.
- Moreover, the appellant submitted another photograph that depicts the edge of the garage in the subject property as well as the edge of the adjacent property. It shows that there is a 5 foot fence as well as a grade difference of over 5 feet.

M-CG Land Use and Similar Projects and Architecture Style:

- The appellant submitted that there are already similar projects in the area with the same land use designation and with the similar architectural designs.
- He added that with different styles and architectures, Erlton is transforming into a higher density from the previous zoning.

Erlton Street Streetscape:

- Mr. Drul showed some photographs highlighted in green where the houses/developments are facing Erlton Street. These developments have a pedestrian front door from Erlton as well as a garage. These sites do not have a back lane and so they are forced to have both those features facing Erlton Street.
- Moreover, the development across the street from the subject site has a pedestrian bridge to access the house. Other development samples were also shown illustrating garages are accessed via the side street and not from the rear lane.
- He further stated that the Bylaw suggested the subject site only needs three parking stalls plus one stall for a visitor. The applicant took into consideration that since there is no on-street parking available close by to the site, they integrated onsite parking that resulted in designing and proposing a double-car garage with a double driveway to mitigate the parking issue and also accommodate possible guests to the site.

Maximum Buildable Area:

- Mr. Drul submitted that the setbacks in the subject site are 1.2 from the rear yard and on 28 Avenue; they have a contextual setback which is 4.5 metres. The front setback is 3.0 metres as per the Bylaw.
- He then illustrated that the proposed project, in his opinion, is not overbuilt and the design is sensitive to the neighbouring properties by providing some landscaping between the façade as well as in the property line. In the appellant's view, the proposed development is more visual as well and it will enhance the enjoyment of the backyard for both the subject property and the neighbouring properties.
- Furthermore, in each of the units the site coverage does not exceed over 85 percent of the maximum buildable area. In this project particularly the last unit which is the rooftop unit, the Bylaw allows 1,272 square feet and unit provided only 919 square feet therefore, the project is as efficient as possible to be more sensitive to the nature of the project.
- He also addressed the issue raised by the Development Authority that the maximum buildable area was protruding through. The appellant admitted it is hard to analyze in their own first calculation, but in their view they thought they are within the building height as per the Land Use Bylaw. However, they are willing to redesign that portion so that it will be under the building mass height due to the complexity of the site and the grading differences.

Building Height and Setback Study and Privacy issue:

- Mr. Drul then discussed the building height in relationship to the setback. In their illustration/artist rendering highlighted in yellow, the building height is projected and it never exceeds the 12 metre height rule. As shown by the Development Authority, it was submitted that there was 3 plus with the roof but the appellant disagrees with this calculation. He then broke down the setback calculation and enumerated from the rendering.

- The studies were done for all the four sides of the proposed development and they enumerated the building heights on all four elevations. The height roof difference of the project's projected eaves is only less than 6 feet. He also showed the elevation on 28 Avenue indicating the 5 foot drop from the corner of 28 Avenue going east along 28 Avenue. The height of the building height is articulated how the building is away from the setback and the maximum building envelope height.
- Lastly, he illustrated with a rendering of the rear lane indicating the proportioning and the differences of the planes and where they are in relation to the setback. The critical one on the east side which is set back the furthest where the applicant allowed the 3.5 metres setback to accommodate for the adjacent property.
- The appellant/applicant submitted that in order to mitigate the privacy concerns from adjacent property owners, they are proposing for all the windows in the corridor to be frosted as well as the windows in the balcony and any of the windows that are facing adjacent properties will be glazed to avoid any overlooking issues. These measures would avoid the overlooking and at the same time still let the light into the subject site's spaces.

Shadow Study:

- Mr. Drul submitted that they provided four shadow studies. The first scenario is without a building. The study was done for March and September 21 which are both the same solstice a study of the summer solstice in June 21.
- The first scenario illustrates the minimum impact when the lot is left without a building to the adjacent lots. The studies in March/September were done at 1 p.m., 3 p.m., and at 5 p.m. and the studies for June were done at the same time of the day. The appellant pointed out that there are already shadowing even without a building but there is a minimal impact to the enjoyment and use of the adjacent properties.
- He further illustrated the impact when proposing a building with a two storey development on the adjacent properties and noted that in March 21 and September 21, no one gets the sunlight due to the slope. In the June 21 study, it has similar impact/result as the March and September study.
- The third scenario presented how is the proposed development is going to impact the neighbours from the east going west. The sun in this case when the time is set at 7 to 7:35 illustrates that there are some shadowing at this time and it can also be noted that the adjacent house casts it own shadow from the Evergreen on their own site.

Mr. Sean Reid addressed the Board next and discussed the following points in favour of their appeal:

Neighbourhood Precedents:

- He stated that there are already developments in South and North Erlton that have similar contextual style and similar massing and scale as the proposed development. These houses have fairly modern style. The one sample on 2605 has a modern style with a two-story with a bump up at the back that is set back on the property. The garages of this development face onto Erlton Street.
- He went on to elaborate on a sample at 36 27 Avenue SW with a zoning of R-C2. This development is a two storey building. The appellant explained the reason why they are showing this to the Board. This is due to the materials used with wood, stones, and large windows facing the street to activate the street. He pointed out that the proposed development unlike some of the other modern buildings in the area that are monotone in colour and texture; the applicant is choosing to use accents as the sample shown to better fit in to the community and show articulation in the building mass and texture.
- Mr. Reid showed more samples of similar developments already in the area with setback roof top upper floors. Some samples of Erlton where negative and positive spaces again reiterated with setbacks and driveways onto Erlton Street. He emphasized the articulation on the massing of this samples is very similar to the approach that they plan to be taking as articulated in their design of the proposed development.
- A further sample was shown on 30 Avenue that depicts a rooftop access in a modern design style, which in the appellant's view is quite pleasing to the street and responds well to pedestrians.
- Mr. Reid also used a sample of a development similar to the proposed. This development is in South Erlton. This sample is larger that has raised entrances to the units with front garages and three story massing up at the front and setback. He also showed positive and negative spaces and articulation of the penetration.

Colour Elevations:

- The appellant reminded the Board of the sample of the storey housing and showed with an artist rendering their approach is similar to that. The proposed development will not be of a monotone colour to really help break up the massing and, in their view that is where the idea of having positive and negative spaces in the articulation of the planes came from.
- Furthermore, above the windows, the proposed have wood sunshades that projects out a bit for further articulation in the design and texture.
- He then pointed out that the rooftops of the proposed development are setback significantly as indicated on the two dimensional study shown earlier by the appellant.
- On the east elevation of the proposed development facing the neighbours' property, the appellant stated that they left ample room to further enhance landscaping to allow the neighbours their enjoyment of their backyard. He reiterated that the windows facing the neighbours will be frosted to protect the neighbours' privacy.

- Mr. Reid then discussed the rooftop unit and stated that from a pedestrian scale, a pedestrian will not necessary see or notice the tops of these suites unless that pedestrian is far away from the subject site.
- He then summarized that they paid so much attention in addressing both 28 Avenue and Erlton Street. In his opinion, the overall design of the proposed project responded well in addressing all sides of the elevation to an extreme. The articulation and detail of the public spaces that activates the street on this unit are, in the appellant's opinion, exceptional. The project warrants the Board's approval as it fits well in the neighbourhood. In his opinion, it will not have a negative impact to neighbouring properties' enjoyment and value.

Mr. Bardsley, counsel for the appellant, also addressed the Board and referred to his submission at the hearing, and stated the following points in favour of the appeal:

- He responded to the Bylaw relaxations presented by the Development Authority. The issue about the height, this issue is, in his opinion, not a building wide issue and there are only a couple of portions of the building that are over the height restrictions. Should the Board want that matter addressed, the appellant/applicant is willing to deal with that through a prior to release condition if necessary.
- The appellant is also willing to plant shrubs and trees should it be deemed necessary.
- In regard to the relaxation for the retaining wall, the appellant is proposing to keep this very small retaining wall (0.57 of a metre) facing Erlton Street.
- The garbage materials are made of pressure treated wood and the Development Authority interpreted that as maintenance free. The appellant can change the materials of the proposed if necessary by way of a prior to release condition.
- Mr. Bardsley submitted that in his view in the reasons for refusal there is a piece missing in the explanation, namely the policy piece. When the ARP document was introduced and accepted by Council, it was a re-designation of Erlton from R-2 to RM-2 zoning. He stressed that the document continues to speak of preservation and the concept. In his opinion, what was missed is the fact that this new zoning was in fact an up-zoning from the previous zoning. In his view, it changed the context. The reasons for refusal did not address this land use re-designation issue. Counsel reiterated that RM-2 was an up-zoning.
- Counsel further submitted that one of the applicants who lived in the house wants to move back living in one of the units when the project is finalized. Therefore, he is aware and sensitive to his neighbours' needs.
- He summarized that the proposed development is design wise, a good development, very typical of the area, complies with the Bylaw rules, and setback from 28 Avenue. The sun shadow study, in his opinion, showed there is not much of an impact to the neighbours and the privacy issue raised is mitigated by proposing frosted windows and setback top floor. It is for the Board to decide if all this is sufficient to fit into the context.

- Furthermore, counsel advised that the difficulty of this whole process comes down to what sensitivity of development actually would look like on this particular site. In the appellant's view, the proposed development warrants the Board's approval.

Upon questioning by the Board, the appellant and their counsel clarified and stated the following:

- The outdoor private amenity space for the first unit along 28 Avenue: for the middle unit on the main floor it is off of the kitchen. And the roof top unit will have its amenity spaces facing 28 Avenue and Elton. The amenity spaces will have privacy screening on the east elevation which is 6 feet.

During rebuttal, the appellant/applicant stated the following points.

- Regarding the access to Erlton Street and the concerns in particular to pedestrian connectivity, the appellant did investigate the possibility of accessing the site through the rear lane but due to the extreme slope and retaining wall, that idea was abandoned.
- With regard to the balcony and the overlooking issues, the appellant does not agree with the Development Authority's assessment. Counsel pointed out there is a tree in between the proposed development and the appellant is willing to have some privacy screen to mitigate any privacy issues

Opposed to the Appeal:

Mr. Bill Fischer, the community association's representative, referred to various pages of the Board's report, submitted photographs and site plans. He and affected neighbours submitted the following points opposed to the appeal:

- Before he submitted the community association's presentation, he made comments regarding the appellant's presentation on the ARP. He advised that the ARP was amended in 2008 so it is quite current and he referred to section 2.1.2.1 that encourages developments to be compatible within the context of the neighbourhood.
- He also submitted that there is a park on 25 Avenue and Erlton Street which is a short cut to a bike path. There is also another park at the terminating point of 27 Avenue where there used to be a house. The land was donated to The City Parks and now is a continuation of the pathway. He also commented on the samples of houses that the appellant submitted where they either backs on parks or the river or the cemetery, grassland, monastery and the laneway.
- Mr. Fischer stated that Mr. David Turner and Mr. Marc Clement are the two homeowners most affected by this discretionary development. To avoid repetition, and in the interest of brevity, they asked to have their comments being incorporated into the community's presentation.

Next Mr. Fisher submitted the following:

Our community fully supports re-development, but only those projects that integrate into a developed block-face without negatively impacting adjacent homeowners. This discretionary development does not meet that test, since for its success; it relies on the de facto expropriation of the neighbours' rights to privacy, sunlight, and protection from massing. It thus fails the compatibility test of Section 35(d) of the Land Use Bylaw 1P2007.

As noted on page 63 of the Board's report, the file manager had great insight into the fundamental flaws of this proposal when she asked for a cross-section showing the proposed building and Mr. Turner's home to the East. Plan A3.1, shown on page 117 of the Board's report, and in larger format as plan sheet 10/12, depicts his home overlaid on the East elevation of the proposed building. It clearly demonstrates the excessive height and massing in relation to his home, as well as pointing out the two balconies and the rear entrance on unit 2 that overlook his private rear yard.

Mr. Turner wrote a comment, shown on page 71 of the Board's report, outlining the many negative impacts of the original design. The re-design shown today has eliminated none of those impacts, and will adversely affect the use and enjoyment of his property.

As noted on page 65 of the Board's report, our community asked for a shadow study. None was provided. We sketched in the shadow cast on Mr. Turner's home on March 21st at 4 p.m., using the shadow cast information shown on page A14 of the Infill Guidelines and the roof and balcony heights from plan 3.0. The shadowing is so significant it also impacts Mr. Darko Stanic, the homeowner even further to the east.

Mr. Clement lives at 60 29 Avenue SW, directly south across the lane from this development. You can see his home in drawing 2, Roof Plan, on sheet A1.1. The proposed Unit 3 is located nearly at the lane, with the floor of a roof top garden 3 stories above grade. This balcony, shown on sheet A3.0, will overlook his rear yard and look directly into his bedroom windows. This result will negatively impact both his privacy and the use and enjoyment of his home and property. He identified these concerns in a comment on the first set of plans, as shown on page 74 of the Board's report. This re-design did not resolve his concerns, either.

From a community perspective, the exposed basements present these units to the street as four storey buildings. The living spaces commence one level above grade. This is shown on sheet 1/12. The front driveways dominate the length of the lot, are pedestrian un-friendly, and are unnecessary since a fully serviceable lane exists to provide access to all required parking. With the exception of

Macleod Trail, which few pedestrians use due to high vehicle speeds, noise, and dust, Erlton Street is the only North/South walkable route through South Erlton.

As noted on page 78 of the Board's report, Alderman Carra supports our community in this issue, stating, 'Vehicle access should be from the alley, not on the main street. Erlton Street already has many garage fronted properties, which is affecting the walkability and pedestrian friendliness of the area.'

Since this is a discretionary development, Land Use Bylaw section 35(a) applies. The Erlton Area Redevelopment Plan is one of the policies. In the Development Authority's reasons for refusal, starting on page 5 of the Board's report, the author provides a highly professional, thorough, and well-documented analysis of the Erlton ARP relative to this development. We are impressed, and offer our sincere thanks for a job well done. If this is one of the outcomes of the Transforming Planning Initiative, we are highly in favour of it. We hope to see this level of professionalism carried over to future files. The Development Authority accurately summed up the major defects in this proposal in the final sentence of their conclusion on page 8 of the Board's report:

The proposed development is not compatible with adjacent development and the neighbourhood in general and will have an adverse impact on nearby properties.

Section 37(2) of Land Use Bylaw 1P2007 states "the Development Authority may refuse a development permit application for a discretionary use even though it meets the requirements and rules of this Bylaw. It's not a huge leap in logic to believe the Development Authority can thus refuse an application for a discretionary use where the development permit application does not meet the requirements and rules of this bylaw". Those deficiencies are clearly demonstrated and supported by fact.

Mr. Kiers of Condo Corp 0814732, Terraces of Erlton, also addressed the Board and submitted the following issues in opposition of the appeal:

I am writing on behalf of the five condo owners/residents of Condo Corp 0814732 which comprises 2705 to 2709 Erlton Street SW and occupies the lot directly across Erlton Street from this proposed development. We are opposed to this proposal for the following reasons:

General:

The proposed development in general does not conform with the Municipal Development Plan and Erlton Area Redevelopment Plan (ARP) in terms of scale

and pattern and does not fit in with the north-south orientation of the other homes on 28 Avenue.

Orientation:

Because it faces west with garages/driveways emptying directly onto Erlton Street, it would cause further safety issues on a part of the street that already presents challenges given the nature of the street and the traffic flow. The proposed development is midway down a long steep hill and the street is relatively narrow, with no parking on the east side and a jog to the left where it meets 28 Avenue. Backing out of our driveways already requires particular care because of the typical speed of traffic cresting the hill from the south and addressing the ascent from the north. These safety concerns are exacerbated in snowy, icy, and rainy weather especially at night. These issues would be severely compounded with cars also backing out of the driveways/garages included in the proposed development.

Parking:

Parking presents a further concern. Demand for parking spaces in our area frequently overwhelms supply because of events at the Saddledome. The proposed development would further increase the demand for guest parking in the immediate area but does not include enough parking spaces to meet that demand. Since parking is only available on our side of Erlton Street we would expect a significant increase in the number of people walking across the street from their cars to the proposed development, further compounding the safety concerns outlined above.

Mass:

The mass of the proposed development will unreasonably shield afternoon sun from homes to the east and morning sun from homes to the west, including our building.

Trees:

The lot as it is holds a significant set of trees, including a particularly large one that adds to the colour and beauty of the neighbourhood. The proposed development includes the removal of those trees and will diminish the aesthetic and environmental aspects of the area.

We also share the comments and concerns expressed by the Erlton Community Association and our neighbours.

Mr. Gregory Pauling of Condo Corp 0814732, Terraces of Erlton, also addressed the Board and submitted the following issues in opposition of the appeal:

Parking:

The proposed placement of the garages and driveways on Erlton Street, rather than on the lane, could cause safety issues. Backing out of a driveway on the Erlton Street Hill is already tricky proposition, because vehicles often travel at excessive speed on the hill, traction can be poor in the winter months, and it takes very little time for a vehicle to reach our location from the time it first becomes visible cresting the hill to the south. The proposed development would add two new hazards:

- a) Occupants of both our building and the proposed building would also have to deal with the potential of vehicles backing up from directly across the street; and
- b) When cars are parked on the west side of Erlton Street across from the south unit of the proposed development, vehicles backing out from the driveway of that unit particularly if backing out in a southerly or uphill direction, will have very little room, to do so. Erlton Street is relatively narrow on this block, so parking is not allowed on the east side of street. On the rare occasion that cars are illegally parked on the east side of the street across from our unit, we found it quite challenging to exit our driveway without either damaging vehicles or landscaping, or holding up oncoming traffic like backing out of a parking spot at Safeway, except traffic is going 50 plus rather than 10 kilometres per hour.

Trees

We are concerned that the proposed development would result in the loss of a number of mature trees, including one of the largest trees in the neighbourhood. We believe that this would be undesirable from an environmental and aesthetic standpoint.

We understand that Erlton Community Association has expressed concerns in relation to height, mass, and overlooking/privacy issues arising from the proposed development. We also share those concerns. In particular, we note that the proposed building would extend more than twice as far along Erlton Street as the four storey triplex in which we own a unit, and which we consider to be substantial building on its own right.

Mr. Marc Clement also addressed the Board and reiterated the massing, privacy issue on the patio roof top and the orientation of the garages. The proposed garages will have a negative impact when backing out. In his opinion, a good plan for a 50 foot lot will be

side by side infill units which, in his opinion, will be more reasonable and will be more conforming with Erlton's ARP. He clarified that the height of his garage in relation to his deck is probably about a 20 feet difference.