

Calgary Subdivision and Development Appeal Board
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CALGARY SUBDIVISION AND DEVELOPMENT APPEAL BOARD

Citation: 2014 CGYSDAB 160

Case Name: SDAB2014-0160 (Re)

File No: DP2014-1557

Appeal by: Dave Turner

Appeal against: Development Authority of The City of Calgary

Hearing date: December 18, 2014; and February 05, 2015

Decision date: February 19, 2015

Members present: Rick Grol, Chairman
John Attrell
Katherine Camarta
Heather Hiscock
Stefne Madison
Evan Woolley

DECISION

Basis of appeal:

This is an appeal from an approval by the Development Authority for a development permit made on the application of **Inertia** for a **new: multi-residential development (1 building, 3 units), accessory residential building (garage)** at 55 28 Avenue SW.

Description of Application:

The appeal before the Subdivision and Development Appeal Board (Board) deals with an approval by the Development Authority of a development permit for a new multi-residential development (1 building, 3 units) and accessory residential building (garage) 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.

Adjournment:

On December 18, 2014 the hearing commenced with consideration of procedural issues. The Board adjourned the hearing to February 05, 2015 with the consent of all parties involved.

Hearing:

The Board heard verbal submissions from:

Kenneth Melanson, representing the Development Authority;
Dave Turner, the appellant, in favour of the appeal;
Biran Kiers, an affected neighbour, in favour of the appeal;
Bill Fischer, representing the Erlton Community Association, in favour of the appeal;
Timothy Bardsley of Dentons Canada LLP, legal counsel for the applicant, in opposition to the appeal; and
Trent Letwiniuk with Inertia, the applicant, 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 the notice of appeal and any documents, materials or written submissions submitted by the appellant, 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;
 - Considered all the relevant planning evidence presented at the hearing and the arguments made; and
 - Considered the circumstances and merits of the application.
1. **The appeal is allowed in part and the decision of the Development Authority is varied.**
 2. **The development permit shall be issued as approved by the Development Authority subject to the following amendments/additions to the conditions of approval.**

Prior to release conditions

- Prior to release condition number one is deleted in its entirety and replaced with the following conditions:

Planning:

1. The applicant shall, to the satisfaction of the Development Authority, submit a total of three (3) complete sets of amended plans (file folded and collated) to the Planning Generalist.

The amended plans shall be in accordance with the directions of the Subdivision and Development Appeal Board as per decision SDAB2014-0160 and shall, among other things include:

- (a) The garage must be shifted to the west by a minimum of 0.6 metre away from the easterly property line; and
- (b) The roof of the garage must be changed to a cottage style roof, similar to the part and style of the roof of the garage on the west elevation.

In order to expedite the review of the amended plans, please include the following in your submission:

- (1) Two (2) of the plan set(s) shall highlight all of the amendments with annotations accordingly; and
- (2) Two (2) detailed written response(s) to the conditions of approval document that provides a point by point explanation as to how each of the prior to release conditions were addressed and/or resolved.

Please ensure that all plans affected by the revisions are amended accordingly.

Urban Development:

- 1.1 Remit a performance security deposit (certified cheque, bank draft, letter of credit) for the proposed infrastructure listed below within the public right-of-way to address the requirements of the Business Unit. The amount of the deposit is calculated by Roads and is based on 100% of the estimated cost of construction.

The developer is responsible to arrange for the construction of the infrastructure with their own forces and to enter into an Indemnification Agreement with Roads at the time of construction (the security deposit will be used to secure the work).

Roads

- a. Rehabilitation of existing sidewalks, curb and gutter, etc., should it be deemed necessary through a site inspection by Roads personnel.

Reasons:

1 The Board considered the written, verbal, and photographic evidence submitted, and notes that the appeal pertains to the Development Authority's approval of a development permit for a new multi-residential development (1 building, 3 units) and accessory residential building (garage) 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, who resides at 51 28 Avenue SW to the immediate east of the proposed development, objects to the rear detached garage situated at the top of the slope of the sloped lot. In the appellant's opinion the proposed garage will result in a complete shadowing of his rear yard. The appellant submitted that the Development Authority failed to consider the compatibility and impact of the proposed development

with respect to his adjacent home, and that the proposed development will materially interfere with or affect the use and enjoyment of my property. He requested design changes to the garage such as relocating the building away from the property line, reducing its height, and reducing its depth. He stated that he has no objection to the three dwelling units.

3 Mr. Kiers, who resides across the street from the proposed development, and Mr. Fisher, the community association's representative, appeared at the hearing and supported the appellant's appeal. The community association's representative provided a sun/shadow study pertaining to the shadowing of the proposed garage. In the opinion of Mr. Fisher his shadow study indicates that the oversized garage will result in overshadowing of the appellant's rear yard and therefore the garage will have a negative impact on the use and enjoyments of the appellant's property. In the opinion of Mr. Fisher, by allowing the design of the garage as proposed, the Development Authority failed to consider the impact on adjacent development as described in section 35(d) of the Land Use Bylaw and is not based on any sound planning principle as envisioned under section 35(j) of the Bylaw.

Legislative Framework

4 The Board has regard to the following sections of Land Use Bylaw 1P2007, among others:

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 587(1)(i) lists “Multi-Residential Development” as discretionary use in the M-CG District.

5 The Board has regard to the Municipal Development Plan (MDP).

6 The Board further has regard to the Erlton Area Redevelopment Plan (ARP).

Analysis

7 The Board acknowledges all submissions (written and oral) of the appellant, applicant, affected parties and the Development Authority, and in rendering this decision has regard to all the submissions, including but not limited to the written submissions and correspondence received and contained in the Board report.

8 The application requires several relaxations of Land Use Bylaw 1P2007, which are outlined in the matrix provided by the Development Authority at the hearing and contained in Appendix A to the Board’s decision. The relaxations pertain to: (a) Private amenity space (balconies); (b) The Accessory residential Building (garage), which requires relaxations for the (i) maximum gross floor area and (ii) maximum overall and eave line height; and (c) Building Height and Cross Section.

9 The Board reviewed the context of the proposed development and having regard to, among other things, the applicable legislation, plans and policies, sound planning considerations, the merits of the application, the circumstances of the case and the evidence presented.

10 The main issue of the appeal is the proposed garage. There is no need to discuss the rest of the multi-residential development in detail (i.e. the three dwelling units).

11 The Board notes that the development is a discretionary use. Therefore, the development permit application can either be granted or refused on the basis of sound planning considerations.

12 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. Thus, the MDP, ARP and other applicable policies must be taken into account by the Development Authority. In addition, the compatibility and impact of the proposed development with respect to adjacent development and the neighbourhood as well as the merits of the proposed development and sound planning principles, among other things, must be taken into account.

13 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 MDP and ARP are statutory plans.

14 The Board takes into account that one of the objectives of the MDP is densification and adding more dwelling units to inner city communities. The proposed multi-residential development of three dwelling units advances family accommodation which contributes to inner city living.

15 The Board finds that the community is in transition. Older homes are being replaced by newer developments. The ARP specifically acknowledges and addresses how these developments should occur. The Board notes that the ARP envisions redevelopment in the community.

16 The proposed garage is to serve and provide the proposed three dwelling units with parking for motor vehicles and storage. The garage is located off of the lane and is situated adjacent to the appellant's garage at the rear of this property.

17 As stated above, the proposed garage requires several relaxations; some of the relaxations are significant in terms of size. The Board notes that the size of the garage is double the maximum size allowed under the Land Use Bylaw (requiring a 100 percent relaxation). The relaxations for the area size of the garage and additional height are a result of the applicant's wish to provide six parking stalls in the garage through a lift system and additional storage (including for garbage and recycling bins). Furthermore, the height relaxations are result of the significant grade and cross slope of the parcel.

18 The Board found neither Mr. Fisher nor applicant's sun shadow study convincing. Mr. Fisher's shadow study was anecdotal in nature rather than scientific. The applicant's shadow study provided the shadow from the development for limited times of the day (10 a.m. and 3 p.m.) rather than on times which are the industry standard for shadow studies and are also recommended by The City of Calgary in the Infill Guidelines. The Board finds that more relevant is the late afternoon and early evening hours when people typically use and enjoy their back yards more often. Therefore the Board found it difficult to assess the shadow impact of the garage in this case. However, in weighing the evidence the Board finds that because the garage is oversized and over height, and is located to the immediate west of the appellant's property, it will negatively impact the use and enjoyment of the appellant's property, in particular the appellant's rear yard.

19 The Board takes into account that at the hearing the applicant stated that they would be willing to shift the garage to the west if necessary. The Board accepts this evidence for the purpose of the appeal and application. In the Board's opinion this would mitigate the impact of the garage on the appellant's property. Furthermore, the Board finds that the shadowing impact can be lessened by changing the whole roof of the garage to a cottage style roof. The east gable of the roof can be changed similar to the roof style of

the garage on the west elevation. In the Board's opinion this would allow for more light penetration to the appellant's rear yard. Accordingly, the Board finds modifications to that effect necessary for approval of the development.

20 Shifting the garage to the west on the parcel would, however, affect the size of the visitor parking stall. Insofar as under the Land Use Bylaw this would require a relaxation for the dimension-width of the stall or any other relation, the Board finds such relaxation(s) appropriate.

21 With the aforementioned modifications to the proposed garage the Board finds that the proposed development and required relaxations would have no undue impact on and not materially interfere with the use and enjoyment of the adjacent property. Therefore as modified the proposed development would meet the criteria of section 687(3)(d) of the *Municipal Government Act*.

22 The Board finds that the relaxations required for the three dwelling units pertaining to the private amenity spaces (balconies) and building height and cross section of the building appropriate from a planning perspective. These relaxations have no negative impact on the surrounding properties and meet the criteria of section 687(3)(d) of the *Municipal Government Act*.

23 Accordingly, pursuant to section 687(3)(d) of the *Municipal Government Act*, the Board finds that the proposed development with the aforementioned required modifications to the garage would not unduly interfere with the amenities of the neighbourhood, or materially interfere with or affect the use or enjoyment of neighbouring parcels of land.

24 The Board, having regard to the evidence and aforementioned factors, finds that the proposed development with the aforementioned required modifications would meet the policies of the ARP and MDP.

25 Having regard to the merits of the application and to sound planning considerations, the Board, based on the evidence and aforementioned factors, in keeping with section 35 of Land Use Bylaw 1P2007, finds that the proposed development with the required modifications as stipulated by the Board is compatible with the adjacent developments and the immediate neighbourhood. The Board, based on planning rationale, finds that the proposed development as modified is appropriate for the site.

26 Having regard to sound planning consideration the Board finds it necessary to impose the following additional prior to release conditions of approval: (a) The garage must be shifted to the west by a minimum of 0.6 metre away from the easterly property line; and (b) The roof of the garage must be changed to a cottage style roof, similar to the part and style of the roof of garage on the west elevation.

27 In reviewing and weighing all of the evidence, the Board therefore finds that the application warrants approval subject to the additional aforementioned conditions.

Conclusion

28 For the above reasons the Board allows the appeal in part and varies the decision of the Development Authority.

29 The development permit shall be issued as approved by the Development Authority subject to the aforementioned amendments/additions to the conditions of approval.

Rick Grol, Chairman
Subdivision and Development Appeal Board

Issued on this 19th day of February, 2015

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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:

The Development Authority presented exhibits including the report, maps, viewgraphs, relaxation chart and photographs, and stated the following:

The item being presented is an appeal of the Development Authority's decision to approve a new multi-residential building containing three units and an accessory residential building at 55 28 Avenue SW in the Community of Erlton. The subject site is designated Multi-Residential – Contextual Grade – Oriented (M-CG) District under Land Use Bylaw 1P2007, with a density modifier of 72 units per hectare. Multi-residential development is a discretionary use in this land use district.

The site is located in a portion of Erlton that is surrounded by mainly low density residential development such as single and semi-detached dwellings to the north, south, east and west. However, as the entire area is designated multi-residential development, there are several older and newer multi-residential developments located throughout the area. An example of another multi-residential development in the area is located directly to the west of the site. Other multi-residential buildings are located in the same block to the east.

The site was notice posted and circulated to affected parties. Several neighbours and the community association expressed concerns about the design of the building, initial deficiencies and several design elements of the proposal.

After considerable review and negotiation with the applicant, satisfactory amended plans were received and approved by the Development Authority.

Following discussions with the applicant on deficiencies and concerns expressed by the neighbours, amended plans were submitted and the Development Authority reached a decision to approve the permit, based upon the plans before the board today. Four relaxations were approved with the application and two temporary relaxations were granted, with appropriate prior to release conditions to resolve those items. Several relaxations were granted related to the significant slope of the site in terms of building height and the accessory residential building size, which will be discussed later.

Drawing DP1 of the approved plans provides the site plan and landscaping plan for the proposal. It should be noted that the site plan shows the significant changes in grade from the lane to 28 Avenue and also a cross slope from west to east. The change in grade from the lane to 28 Avenue is greater than 4.0 metres while the cross slope is roughly 1 metre (or more) which represents a significant challenge to design a building for the site.

The site plan shows the proposed three unit building with parking provided via the lane, including visitor parking. Garbage and waste will be collected from the lane with bins being moved onto the lane in front of the visitor parking stall for the short period to collect and then being moved back into the garage (as noted on the site plan).

The site plan also shows the loss of 13 trees, the preservation of five existing trees and planting of 15 new trees. Amenity space for each unit has been noted for each unit on the site plan as shown. The two perspectives provided also demonstrate that the applicant has taken into consideration the grade changes on the site and how the applicant has designed the site to be slope adaptive, a consideration which the Development Authority encourages on sites such as these.

Basement/Main Floor Plans

DP2 of the approved plans provides the basement and main floor plans of the proposal. The basement floor provides a fourth bedroom and recreation area, while the main floor provides the location of the kitchen, living room and main entry which faces the streets. Also shown is the layout of the proposed garage which includes the main storage area for bins when collection is not occurring.

Second/Third Floor Plans

DP3 of the approved plans shows the layout of the second and third floors. Consisting of mainly bedrooms, we can see that each unit contains four bedrooms which exceed the expectations of the Municipal Development Plan (MDP) to support family oriented dwelling units in Established Communities. The third floor plans show the master bedroom level layout where each unit had a private balcony space. The balconies face the street, where there is no expectation of privacy and do not overlook neighbouring properties.

North/South Main Elevations (North/South Garage elevations)

The elevations provide perspectives from both the north and south for both the main building and the garage. As noted on the north elevation of the proposed building, because of the slope adaptive design of the home,

the roof peak adjusts as the grade changes and so the three roof peaks of each unit can be seen. Portions of the roof elements of units B and C as well as portions of the building for each unit project into the chamfer of the building height rule when an adjacent parcel is also designated M-CG.

This relaxation was granted as part of the approval of the permit as it was considered appropriate because the proposal was designed to be slope adaptive and that the protrusions were unavoidable in light of the various grade changes from the lane to 28 Avenue and cross slope.

The garage design also shows that it is built directly to the property line and the materials provided in the plan comply with the Land Use Bylaw requirements to allow a zero lot line garage as the materials are considered maintenance free and there are no overhangs of the garage roof onto adjacent property. The garage was designed this way to ensure that sufficient parking for both residents and the required visitor parking stall can be provided. The appellant has indicated concern with this design, although the location at the property line is compliant with the Land Use Bylaw standards. One option which the board could consider to elevate this issue is to relax the visitor parking stall and require the garage be moved to the west.

East/West Elevations (East/West Garage elevations)

These elevations provide the design of the building as seen from Erlton Road and from the adjacent property to the east. The slope adaptive design is more clearly seen from these perspectives and the steep grade changes are quite plainly seen. Front entry of each unit is clearly visible to the street which complies with the MDP expectations that the front entry face the main street.

The rear elevation (seen from the east) shows the minimal window openings to reduce potential privacy impacts to the adjacent neighbour and shows the impact of grade particularly to the design of the rear garage.

Relaxations

| Regulation | Standard | Provided |
|-----------------------------------------------------------------------------------------------------|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| 557 Amenity Space (may be provided as common amenity space, private amenity space or a combination) | (8) Private amenity space must: (b) have no min. dimensions of less than 2.0m... | Plans indicate that the width of the balconies provided as private amenity space is 1.47m (-0.53m). Relaxation granted – balconies are front facing. When combined with at grade amenity space, relaxation was deemed reasonable. |
| 563 Accessory Residential Building (Garage) | (2) The maximum gross floor area of an Accessory Residential Building is: (b) 100.0m ² when approved and used as a private garage. | Plans indicate that the gross floor area of the garage is 208.10m ² (+108.10m ²) Relaxation granted – garages will house cars and recycling bins, plus a lift for resident's bags when unloading. |
| 563 Accessory Residential Building (Garage) | (3) The maximum height of an Accessory Residential Building, when approved as a private garage is: (a) In the Multi-Residential Contextual Grade-Oriented District: (i) 4.6 metres, when measured from grade at any point adjacent to the building... | Plans indicate that the garage height, measured on the North elevation is 7.34m (+2.74m). Relaxation granted – height relaxations on this parcel are unavoidable due to the significant grade and cross slope. |
| 563 Accessory Residential Building (Garage) | (3) The maximum height of an Accessory Residential Building, when approved as a private garage is: (a) In the Multi-Residential Contextual Grade-Oriented District: (ii) 3.0 metres to any eaveline, when measured from the finished floor of the building... | Plans indicate that the height from finished floor to the eaveline is 6.43m (+3.43m). Relaxation granted – height relaxations on this parcel are unavoidable due to the significant grade and cross slope. |
| 563 Accessory Residential Building (Garage) | (3) (ii) 3.0 metres to any eaveline, when measured from the finished floor of the building... | Plans indicate the wall height to be 3.25m (+0.25m) when measured from the finished floor of the building. Relaxation granted – due to slope of the lane at garage, additional height required to ensure proper access of vehicles and clearance of overhead doors. |

| | | |
|--------------------------------------------------------------------------------------------------------------------|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <p>M a n y 585 Building Height and Cross Section o f t h e E R</p> | <p>(2) The maximum building height on a parcel that shares a property line with another parcel that has no buildings or that has a building with a height greater than 6.0 metres above grade at the shared property line, and where the other parcel is designated with a low density residential district or M-CG District: (b) increases proportionately to a maximum of 12.0 metres measured from grade at a distance of 4.0 metres from the shared property line.</p> | <p>Plans indicate a small portion of the roof line of each unit and the end of the balcony for unit 'a' protrudes through the height chamfer. Relaxation granted due to significant natural slope of the site from south to north and cross slope from south west to north east of the site. Relaxation also supported as the proposal has a slope adaptive design.</p> |
|--------------------------------------------------------------------------------------------------------------------|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|

Relaxations that were granted relate to the significant grade changes on the parcel.

The relaxation of the private amenity space relates to the front facing balconies. Given the at grade amenity spaces provided for each unit on the site, the Development Authority felt that relaxing the minimum dimension was acceptable as additional amenity space is provided on site.

Several relaxations related to the proposed garage have been granted. The gross floor area of the garage was allowed beyond the typical maximum to allow for the storage of the waste and recycling bins, provision of a small lift device to help future residents unload items from their vehicles and provide additional parking stalls.

The garage height relaxation relates to the height requirement breach, although it should be noted that all elevations for the garage exceed the maximum height requirements due to the slope and height measurement methods. On sites with challenging grades this is not unusual and the height relaxation granted is the point that is the worst breach – these relaxations were supported by the Development Authority given the challenging natural slope of the site.

The relaxation regarding the overall height of the garage is due in part to the slope of the lane to the garage and is to take into account the movement of overhead doors and ensure proper clearance for vehicles. As mentioned previously, the building height chamfer related to the south elevation of the building was breached by the height of the roof peaks and portions of each unit. This height relaxation was supported as the proposed design of the main building is slope adaptive in order to

minimize the height impacts of the slope of the parcel to the street and adjacent parcel.

Erlton ARP

The subject site falls within the boundaries of the Erlton Area Redevelopment Plan and is also subject to the Municipal Development Plan. The MDP designates this community as Inner City, which provides a number of policies to encourage sensitive intensification of our inner city neighbourhoods.

The Erlton ARP designates this site as Low Density Residential. The ARP does not provide any direction related to what Low Density Residential means; however page 12 of the ARP recommended Council redesignate sites to the former RM-2 district of Bylaw 2P80 – which is the equivalent to the M-CG district.

The land use of the site encourages a variety form of multi-residential development but also allows the development of single and semi-detached dwellings and buildings allowing additional dwelling units through suites. This land use recognizes the close proximity of this community to the Erlton Stampede LRT station and Council's desire to encourage intensification around inner city LRT stations where possible. The M-CG district also recognizes that some parcels may be insufficient to achieve the density allowed in the density modifier (d72) and lists singles and semi's to provide alternative options for infill development.

Map of Erlton new multi-redevelopment

The Erlton community has been undergoing significant redevelopment over the years and many new infill multi-residential development projects have occurred. For the information of the board, this was created using information from the POSSE permitting system and shows that the move to build multi-residential is not confined to one area of Erlton, but throughout the community. This block where this site sits has a number of multi-family projects around it, which is consistent with the zoning applied by Council. The red dots indicate sites where an application was appealed and refused; yellow are sites which were appealed but the board upheld or varied the decision allowing the approval to stand. Green are sites which were approved and no appeal filed. Orange is active applications, blue are cancelled applications and purple is the subject site.

In this case, the parcel is of sufficient size to achieve the density allowed and is a reasonable size to accommodate the proposed building. Council's intention in applying this land use to achieve greater level of density, in the opinion of the Development Authority, is being satisfied by this proposal.

Transit Oriented Development Area

It should be noted that the proposed site is located 415 metres (based on POSSE maps) to the Erlton LRT station.

Proposed Location Criteria for Multi-residential Infill

In 2014 March 18, the Standing Policy Committee of City Council on Planning & Urban Development recommended City Council adopt report PUD2014-0156 which was a recommended set of guidelines for multi-residential infill development. The guidelines were to provide planning guidance and consistency in the review of multi-residential land use redesignation applications.

These guidelines are not generally used for development applications and it should be noted this site was not subject of a site specific land use redesignation; however, the Development Authority feels that these guidelines do provide supportive information for why the Development Authority supports this application.

While these criteria are not a checklist and not all items need to be achieved to be supportive of a redesignation, the Development Authority feels that all of the requirements are directly or the intention of the requirement is achieved.

Sun Shadow Study

The appellant and the community association have indicated in their submitted appeal statements that the Development Authority should have required a sun shadow study. Given the size and scale of the building and the orientation of the site, the Development Authority did not require a study be submitted. Given the slope adaptive design and the attempts of the applicant to design in light of the slope, the Development Authority believes that the shadow impacts of this building will be reasonable. Shadow impacts will likely occur in the late day once the sun begins moving to the west and considering that there is no policy within the Land Use Bylaw, ARP or the MDP regarding absolute or minimal requirements for right to light, the impact of the proposal is reasonable.

This said, the Development Authority is aware the applicant has a shadow study for presentation during this appeal.

Conclusion

Given the significant slopes on the site, the applicant has achieved a reasonably designed proposal that generally complies with the Land Use Bylaw and achieves Council's goal to intensify around the Erlton LRT

station. The relaxations granted for this proposal are reasonable given the site constraints and the impacts of the design should be minimal to adjacent properties. For these reasons, the Development Authority approved the application with the conditions found in your report. We therefore recommend the board uphold the decision of the Development Authority to approve the development.

Upon questioning, Mr. Melanson clarified the following:

- He explained that the line for the chamfer was taken at the front property line on the north side.
- He clarified that the Development Authority does not consider the foundation wall for the garage that is exposed a retaining wall because it has a structure above it.
- Mr. Melanson advised how the garage eave line height was calculated.
- Parking on Erlton street is permitted on the west side but not on the east side and does have signage stating no parking.
- He explained that the proposed development could be considered a TOD development because of its proximity to the Erlton C-Train station; however, the reductions do not apply to it because the proposed development does not have a shared entry.
- He confirmed that the minimum width for parking stalls with barriers on both sides is 3.0 metres.
- Mr. Melanson confirmed that a relaxation would be required in order to move the garage to the west as it would then be in the front yard setback; and that the Development Authority would support that relaxation.

In Favour of the Appeal:

Dave Turner, the appellant, submitted photographs and stated the following in favour of the appeal:

My home is at 51 28 Avenue SW, immediately east of this development. The issue here is not the residential building, which houses three units totalling over 6000 square feet above grade. The issue is the rear detached garage situated at the top of the sloped lot, directly on our common east property line. It is designed with an interior ceiling height of 11 plus feet and an excessive depth. The total of this design provides a near complete shadowing of my rear yard. This is the basis of the appeal.

When this development was approved, the file manager advised via email that the garage height relaxation was 2.74 metres. When I reviewed the SDAB report, I found the relaxation to be 1.8 metres. Nevertheless, that is a relaxation for no good purpose. The desire for a tall ceiling is not a sound planning reason to relax the rules and requirements of the Land

Use Bylaw, especially when viewed in light of the massive negative impact on the use and enjoyment of the neighbour's home and property. Finally, there is no valid reason to allow the width of each stall, at 3.84 metres, to so greatly exceed the minimum 3.0 metres require by section 122(4)(a) of the Bylaw, especially since it results in the garage interfering with the use and enjoyment of my home and property.

There is much the developer could have done, but did not, to reduce the shadowing of my property by his garage. The garage height could have complied with the bylaw rule at section 563(3)(a). The width of each stall could have been reduced to allow the garage to shrink in total width, and be located 1.2 meters from our common property line. And finally, the peaked roof on the east end of the garage could have been designed as a cottage roof, identical to the roof design on the west end of the garage, or better still, designed with a 0.5 / 12 pitch to mimic the main building.

In my May 6 comment to the file manager I asked for a shadow study in order to understand the impact of the garage height on my property. None was ever provided. I cannot understand how The City's planning department could approve these gross relaxations with no facts available upon which to base such a decision. Therefore, I asked the Ertlon Community Association to assist me in drafting and presenting a study showing the shadow cast on my back yard. You will hear from their representative in a moment.

The approval of this development permit, with its garage height relaxation, will completely shadow my rear yard and interfere with and negatively affect the use and enjoyment of my property. The Development Authority's approval violates section 35(d) and 36(a) rules of the Land Use Bylaw 1P2007. The Development Authority failed to consider the compatibility and impact of the proposed development with respect to my adjacent home, and approved it when the proposed development will materially interfere with or affect the use and enjoyment of my property.

Since this is a discretionary use, it may be denied if it is deemed inappropriate in the specific circumstances due to its adverse impact on neighbouring properties. However, if design changes can reduce the negative impact on neighbours to a better standard such as relocating the building away from the property line, reducing its height, and reducing its depth, this appeal board can do so. That is my request.

Upon questioning, Mr. Turner clarified the following:

- He advised that his two car garage does shadow a portion of his rear yard; however it does not shadow his two tiered outdoor patio area which the proposed development will.

- He showed a photograph of his rear yard and explained that maximum shadowing occurs on the first tier of his patio.
- The appellant confirmed that the west side of 28 Avenue is a restricted parking by permit area with the exception of the area to the far east end adjacent to Macleod Trail which is not restricted. There are parking issues on 28 Avenue mainly in the evening and not so much during the day.
- He pointed out on the site plan where his patio is located and advised that 1/3 of his patio is higher up than the other 2/3; and there is approximately a 4 foot difference in elevation between the two tiers. He estimated the elevation difference to be approximately 4 feet from the upper portion of his patio to the lane behind his garage.
- Mr. Turner explained that his garage was built at same time as home; therefore, he is not sure if the garage has relaxations because he was not involved in the developing of the property.
- He stated that he knows there will be issues of over shadowing by the proposed development into his rear yard as the community association did a sun shadow study demonstrating so.

Brian Kiers, an affected neighbour, submitted the following in favour of the appeal:

- He advised that he resides in the three unit condominium that is located across the street from the subject site. He also stated that he is speaking on behalf of the other two owners/residents of this condo.
- He is concerned that in the case where an application is circulated to the neighbours and community association for comment, should the Development Authority not require certain things to be addressed before a decision is made, such as requiring the applicant to provide a shadow study as it was requested by a neighbour?

Upon questioning from the Board, Mr. Kiers advised that he is not directly impacted by the proposed development; he is simply here to support Mr. Turner's appeal and assist him in presenting his arguments and evidence regarding the appeal.

Bill Fischer, representing the Erlton Community Association, stated the following in favour of the appeal:

I am here on behalf of the Erlton Community Association. We fully support Mr. Turner in his appeal against this discretionary development.

As the result of its placement on the lot, roof design and height, ceiling height, and depth, the garage proposed for this development casts such a significant shadow that it covers Mr. Turner's rear yard, and partially that of his east neighbour, Mr. Stanic.

In our May 10 community comment (board report pages 96 and 97), we asked for a shadow study, among other items. We even directed the file

manager's attention to Section 26(3) so she could fulfil the Development Authority's basic due diligence requirements by compelling production of this study. Mr. Turner and Mr. Stanic, neighbours to the east of this development, also requested a shadow study (pages 99 and 100) in order to determine the impact of the development on their homes and properties. Despite these multiple requests, no shadow study was ever received. In an email from the file manager (page 101), dated November 20, she stated: "I did not request a shadow study but I did suggest the applicant touch base with the Community Association to discuss the application."

The purpose of asking for the shadow study was to enable all the participants in this file, neighbours, community, and the file manager/ Development Authority, to make an informed decision based on facts. Decisions were made in the absence of fact.

Mr. Turner asked for our association's assistance in providing a shadow study and documentation to support it. We are happy to do so. Page A14 of the Low Density Residential Housing Guidelines For Established Communities (page 104) provides the detail necessary to enable anyone to construct a shadow study.

The section 563(3)(a)(i) and (ii) relaxations (page 24), along with the zero lot line, the garage ceiling height, and the excessive garage depth are the cause of the shadowing.

These March 21 at 4 pm shadow studies (page 104) use an angle of 34 degrees and a shadow length of 2.2 times the height of the building at grade. The time of day determines the angle of the shadow line, and the height of the sun above the horizon on a specific day determines the shadow line length to height ratio. Garage height was determined from plan DP5 since it shows the variation in grade along the east wall. The detailed calculations are attached to our submission.

Drawing 1 shows the shadow cast by the garage, as approved, displayed on plan DP1. This is a massive imposition on the use and enjoyment of Mr. Turner's home, and has a substantial impact on Mr. Stanic's home.

Drawing 2 shows that changing just the pitch of the roof to 0.5/12 to match that of the main building does little to reduce the shadowing except on Mr. Stanic's rear yard.

Drawing 3 shows that changing both the roof pitch and implementing a 1.2 metre setback from the property line again does little to reduce the shadowing except on Mr. Stanic's rear yard.

Drawing 4 shows that some improvement occurs with a 0.5/12 roof pitch, a 1.2 metre side setback, and a 6.0 metre depth similar to the garages to the east.

Plan DP6, bottom right corner, shows the garage ceiling height as 11 feet 1 inch, or 3.38 metres.

Drawing 5 shows a large improvement when an 8 foot ceiling height is coupled with a 0.5/12 roof pitch, a 1.2 metre side setback, and a 6.0 metre garage depth. It results in a noticeable reduction in shadowing to the rear yards of both homes.

The first three studies show little improvement in access to sunlight. Studies 4 and 5 provide relief when height and depth are modified.

Implementing the changes shown in drawing 5 would result in each bay measuring 3.6 metres in width, 6.0 metres in depth, with a 2.44 metre ceiling height. To put these measurements in perspective, I drive a 2005 Toyota 4Runner SUV. It is 1.87 metres wide, 4.8 metres in length, and 1.75 metres tall.

A Bunt & Associates Parking Dimensions study, initiated and funded by The City of Calgary, is included in your report to provide further detail. On page 3, the report recommends parking dimensions of 3.0 metres width, 5.9 metres depth, and 2.1 metre ceiling height in residential applications. These are reflected in the Land Use Bylaw rules (pages 3 and 4).

Access to basic parking is a necessity, and we fully support that. The developer, however, is asking for enhanced parking space at the expense of the neighbours. The Development Authority, by way of relaxation, has expropriated the neighbours' access to sunlight, and conveyed that to the developer to enable him to sell an enhanced parking product as part of his development. Please note the main building also shadows Mr. Turner's rear yard.

If the garage design were amended to that of drawing 5, Mr. Turner would have access to a slice of sunlight. That is much better than the nearly no sunlight as proposed and approved.

The decision to allow the existing garage design, by relaxation, failed to consider its impact on adjacent development as described in Land Use Bylaw section 35(d) and is not based on any sound planning principle as envisioned under section 35(j).

We support Mr. Turner in his application to deny this development permit or effect substantial changes to the garage to eliminate the negative impact of its design and location on the lot. We strongly support a 0.5/12

roof pitch to match that of the main building, a 1.2 metre east property line setback, a reduced garage depth of 6.0 metres, and a ceiling height of 8 feet. These changes would mitigate the severe shadowing of the two backyards to the east. It would also allow the gas and electric meters to be moved to the east wall of the garage to improve the visual aspect of the west facade (plan DP5 - upper right), which faces Erlton's major north/south roadway.

The detailed calculations of shadow line lengths are:

A: Plan DP5 shows the south-east corner roof height at 3.86m above grade.

[$2 \frac{3}{8}$ " = $38/16$ " @ $3/16$ " per foot = $38/3 = 12.66$ feet or 3.86 m. $3.86\text{m} \times 2.2 = 8.49\text{m}$ shadow and 4.25cm line length at a scale of 1:200]

A': If the ceiling height of the garage were reduced to 8 feet, the south-east corner roof height would become 9.66 feet or 2.94 metres. The shadow length would become 2.94 metres $\times 2.2 = 6.47$ metres and 3.23 cm line length at a scale of 1:200]

B: Plan DP5 shows the roof peak height at 5.69m above grade.

[3.5 " = $56/16$ " @ $3/16$ " per foot = $56/3 = 18.66$ feet or 5.69m. $5.69\text{m} \times 2.2 = 12.52\text{m}$ shadow and 6.26cm at a scale of 1:200]

C: Plan DP5 shows the north-east corner roof height at 5.49m above grade.

[$3 \frac{3}{8}$ " = $54/16$ " @ $3/16$ " per foot = $54/3 = 18$ feet or 5.49m. $5.49\text{m} \times 2.2 = 12.08\text{m}$ shadow and 6.04cm line length at a scale of 1:200]

D: Plan DP5 shows the middle of the roof height at 4.88m above grade if it were a cottage or flat roof.

[3.0 " = $48/16$ " @ $3/16$ " per foot = $48/3 = 16$ feet or 4.88m. $4.88\text{m} \times 2.2 = 10.74\text{m}$ shadow and 5.37cm line length at a scale of 1:200]

E: Plan DP5 shows the middle of the roof height at 4.67m above grade if it were a cottage or flat roof with a building depth of 6.0m.

[$2 \frac{7}{8}$ " = $46/16$ " @ $3/16$ " per foot = $46/3 = 15.33$ feet or 4.67m. $4.67\text{m} \times 2.2 = 10.27\text{m}$ shadow and 5.14cm line length at a scale of 1:200]

E': If the ceiling height of the garage were reduced to 8 feet, the middle of the roof height would become 12.33 feet or 3.76m. The shadow length would become 3.76m $\times 2.2 = 8.27\text{m}$ and 4.14cm line length at a scale of 1:200.

F: Plan DP5 shows the north-east corner roof height at 5.28m above grade if it were a cottage or flat roof with a building depth of 6.0m.

[3.25" = 52/16" @ 3/16" per foot = 52/3 = 17.33 feet or 5.28m. 5.28m x 2.2 = 11.62m shadow and 5.81cm line length at a scale of 1:200]

F': If the ceiling height of the garage were reduced to 8 feet, the north-east corner roof height would become 14.33 feet or 4.37m. The shadow length would become 4.37m x 2.2 = 9.61m and 4.81cm line length at a scale of 1:200.

Upon questioning from the Board, Mr. Fischer clarified the following:

- He reviewed the shadow study he provided, which was for March 21 at 4 pm, with the Board, explained how he conducted it and stated that he did take into account the different tiers of the appellant's rear yard patio.

Opposed to the Appeal:

Timothy Bardsley of Dentons Canada LLP, legal counsel for the applicant submitted a sun shadow study and raised the following in opposition to the appeal:

- He clarified that because neither the appellant nor anyone in favour of the appeal had an issue with the proposed development, he and the applicant would only address the concerns regarding the garage.
- He presented two photographs to demonstrate how steep the slope of the street is.
- Mr. Bardsley presented two shadow studies and reviewed them with the Board; the first one (blue) is a comparison of the approved development with what the Board is going to see the shadow impact would be of exactly the same home as the appellant's placed on this lot; the second one (green) is based on the appellant's request to redesign the garage slope and move it over to the west.
- He clarified that the shadow cast into the appellant's rear yard is not due to the size of the garage but instead has to do with the location of it; and no matter what development gets built on the subject site, parking will have to be accommodated in the same location as the proposed garage (has to have lane access to the site).
- He advised that the proposed garage is the size it is for two reasons: 1) to park three cars and 2) to accommodate the lift in order to park six cars and accommodate a visitor stall, as there are street parking issues; therefore, the relaxations are reasonable and meet the test of section 687(3)(d).

Upon questioning from the Board, Mr. Bardsley advised that his client would be willing to amend the garage if the Board so chooses and include a prior to lease condition to the satisfaction of the Development Authority to that effect.

Trent Letwiniuk of Inertia, the applicant, submitted the following in opposition to the appeal:

- He referred to a photograph submitted by the Development Authority showing the appellant's rear yard and explained that the photograph was taken a week and a half ago with nothing on the subject site and yet the appellant's rear yard is almost completely in shadow which has to do with his own garage not the proposed one. What is important for the Board to keep in mind is not even comparing what the applicant is proposing or what has been approved with nothing because there will be a development on the subject site at some point. Even the most modest garage that could be possibly built would not increase the shadowing into the appellant's rear yard.
- He reviewed the two sun shadow studies with the Board, that were done with software, and advised that there is very little difference in shadow cast (approximately 2 feet) between the garage they are proposing versus building two infills with two detached garages.
- Mr. Letwiniuk explained that it is the eave line of the garage that ends up casting most of the shadowing at 3 p.m. rather than the peak of the roof; therefore they find that even reducing the height of the hip roof does not make much difference in the shadowing in the appellant's rear yard.

Upon questioning from the Board, Mr. Letwiniuk clarified the following

- He explained that the shadow study shown with the height of the garage did not change when showing the hip roof on both sides. In regard to the shadow study showing the single detached garages, they have a ceiling height of 9 feet, lower than the proposed, as they were modeled as closely as possible off the neighbouring garages.
- The reason for proposing the hip roof on only one side of the garage is to have a more modest massing presented towards Ertton Street which was requested by the Development Authority, and in order to accommodate the lift.
- The applicant explained that drainage is not an issue; therefore, a hip roof is not necessary on both sides of the roof.
- He clarified that there is an error on drawing DP6 showing the draining tile on adjacent property; it is on the subject site. In addition, he advised that there are techniques that allow excavation to be done at the property line, it is not ideal but it is possible; therefore, construction will be maintained on the subject property.
- He explained that the differing elevations of the appellant's rear yard were not taken into account when conducting the shadow study as they did not have access to the yard; however, the shadow study was modeled on a consistent slope.
- The visitor stall shown on the site plan has a width of 3.04 metres; he stated that if the minimum required is less than that, they could reduce it and push the garage more to the west.
- Mr. Letwiniuk explained that the dimensions of the garage are at the minimums required to accommodate the lift. Due to the steep slope of the street and the width needed for the lift, the depth proposed is needed to accommodate the blue and black bins.

- He clarified that this development does not qualify as a TOD and the MDP talks about wanting more families in the inner city; therefore, being able to provide two car parking for each unit is more attractive to families. Furthermore, in his opinion the additional parking proposed does not make a substantial difference on the neighbouring properties.
- He confirmed that the reason for the pitched roof and the scissor tresses are to accommodate the lift.
- The applicant does not know why his team used 3 p.m. on the shadow study rather than 4 p.m., which he agreed is, according to industry standards, the usual time used when conducting these studies.

Rebuttal:

Upon rebuttal, the Development Authority raised the following:

- Mr. Melanson advised that Mr. Turner's garage has an exposed foundation as well and therefore is subject to roughly the same grading conditions as the proposed development. Furthermore, he explained that, from what they can tell, the appellant's house and garage were approved under the previous Bylaw 2P80 and therefore the height calculation methods are different and were calculated as a low density use. So, he concluded that, in his opinion, by eyeballing it, the height of the appellant's house was relaxed.
- He read out the definition for visitor parking stall and advised that the width of the stall could be reduced or the whole stall could be relaxed in order to shift the garage to the west.
- In regard to TOD parking in general, he explained that many families moving from a suburb to inner city still have more than one vehicle; therefore, the option of having two parking stalls is very appealing to them as they are not accustomed to the lifestyle of inner city, such as being very walkable and being close to transit. Therefore, the Development Authority supports the relaxation in order to provide six parking stalls for this development.

Upon rebuttal, Mr. Fischer, raised the following:

- He advised that the rationale for having the gas and electric metres on the east side of the garage is the mechanical rooms for the residential units are on the east side of the property line; therefore moving them to other side is not a practical option.
- In response to the shadow study presented by the applicant, he stated that there was no data to support the images shown, such as heights, angles, etc.
- He referred to page 104 of the Board report, which has a sketch of how the shadow works, and advised that that is what he based his shadow study on.

In rebuttal, counsel for the applicant confirmed that his client would be amenable to shifting the garage to the west if the Board so chooses.

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