

ECA appeal presentation for DP2016-4802 / SDAB2017-0042

I'm here on behalf of the Erlton Community Association.

First let me say that our community supports good development, and you'll see lots of it in the photo array showing redevelopment on both block faces of 31st Avenue SW.

Page 80 of your report lists the relaxations required. The building will not fit into the maximum building envelope. The Development Authority doesn't specify the magnitude of the height relaxations at the side-yard chamfers in either a percentage or measured amount.

As shown on plan 10 of 21, the ceiling height of 9 feet plus per storey contributes to this.

Other relaxations include insufficient private amenity space and the provision of excessive hard landscaping.

Additionally, we believe the Development Authority missed a further non-compliant item.

LUB Section 566 (1) Garbage containers and waste material must be stored either:

- (a) inside a building, or
- (b) in a garbage container enclosure approved by the Development Authority

No garbage container enclosure is shown on the plans. On page 9 of your report, point 3a specifies a total requirement of 8.4m in length for storage space.

Plan 2 of 21 shows the bins stored loose under the eaves of the 6.1m long garage wall with a door in it.

See Plan 15 of 21 for the wall detail. Insufficient storage space will result in bins being left in the alley in an unsightly manner. We mention this non-compliant item only to demonstrate the extent of lot coverage required for this design; land this development doesn't have; and its inability to conform to the rules of the Land Use Bylaw.

In total, the number and type of relaxations clearly show this development to be too much building for too little lot. They cumulatively contribute to excessive negative impacts on adjoining properties. The height, massing, and building penetration deep into the lot contributes significantly to shadowing.

The associated facades, depicted on plans 11 of 21 and 12 of 21, show windows, raised landings and decks staring down into adjoining residential yards, thus affecting the privacy of the homes to both the east and west.

The result is a development that doesn't meet the definition of good development. It is out of context with the adjacent homes and previous re-development on this avenue, adversely impacts neighbouring properties, and typifies insensitive development.

This portion of our community is zoned M-CG.

Section 578(1)(i) of the Land Use Bylaw 1P2007 lists multi-residential development as a discretionary use. Thus Section 35, items (a) through (j) apply.

Section 35 states: 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 City publishes the list of policy plans applicable to this property. The Municipal Development Plan and the Erlton Area Redevelopment Plan are two of these. Both are statutory documents approved by City Council. They govern this property, with each providing specific guidelines relative to the local context.

Pursuant to Section 687(3)(a.1) of the Municipal Government Act, the Board in determining an appeal must comply with statutory plans.

The MDP became effective in April 2010, and in Part 2 - City-wide policies, on page 2-2, it states: The city-wide policies presented in this section ... are the policies that guide growth and change across the city as a whole and speak to the kind of city Calgarians want for the future. The policies also have relevance and provide direction across many specific scales of planning in the city, (e.g. Local Area Plans, outline plans, land use amendments and development permits).

Please note that the MDP has relevance and provides direction in assessing development permits.

The MDP in section 2.2.5, on page 2-16, the Objective states:

The City promotes infilling that is sensitive, compatible and complementary to the existing physical patterns and character of neighbourhoods.

Please note the operative words sensitive, compatible, and complementary.

Section 2.2.5, on page 2-17, also states, in Policies, Neighbourhood Infill and Redevelopment:

- a. Encourage growth and change in low-density neighbourhoods through development and redevelopment that is similar in scale and built form ...

Please note the reference to scale and built form.

Later, in section 2.3.2, on page 2-21, Policies, it states:

- c. Ensure infill development complements the established character of the area and does not create dramatic contrast in the physical development pattern.

And in section 3.5.1, on page 3-16, General – Developed Residential Area Policies, Land use policies, it states:

- a. Recognise the predominantly low density, residential nature of Developed Residential Areas and support retention of housing stock, or moderate intensification in a form and nature that respects the scale and character of the neighbourhood.

Please note the reference to respect for scale and character.

Each of these MDP references recognises the importance of sensitivity to, compatibility with, and respect for the existing physical pattern, scale, built form, and character of neighbourhoods. This proposed form of a 4-unit two-story building that requires a relaxation in height, extends deep into the lot, and shadows and overlooks neighbouring homes and yards, is clearly foreign to our community. This is the exact opposite of the type of infilling the MDP promotes and is referenced throughout the MDP policy.

The developer's plan 2 of 21 and the various shadow studies also show the footprint context of the neighbouring homes and clearly demonstrate how the proposed development does not respond to or respect existing development.

City Council approved the Erlton Area Redevelopment Plan in March 1985 and last amended it in June 2014. It thus reflects their policy and wishes, and reaffirms those of our community.

In the Preface section of our ARP, on page i, it states the purpose of ARPs:

Area Redevelopment Plans are planning documents which set out land use policies and other planning proposals for communities within the City. As such, they are intended to supplement the Land Use By-law by providing a policy context within which the discretion of the Approving Authority should be exercised in a particular community.

In the ordinary meaning of words, should is used to indicate obligation, duty, or correctness.

The Executive Summary, on page ii, under Land Use and Development states:

The conservation policy for south Erlton is reaffirmed ...

In the Introduction, on page 1, the Overview of the Study Area states in point 1.1:

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

In the Goals portion of our ARP, on page 2, Section 1.3.2 states:

To reaffirm the conservation policy for the south Erlton area and to revitalise and enhance the established residential community.

In the Objective portion of our ARP, on page 4, Section 2.1.1 states:

To preserve and enhance the established residential character in south Erlton ...

Further on page 4, Section 2.1.2.1 states:

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.

Please note the reference to scale of surrounding development.

In our view, conservation means new development that is respectful of and sensitive to the character of existing homes. Form being one of them. Due to its inability to conform to the building height envelope, and with a form extending deep into the lot, the proposed development does nothing to maintain the established, low-rise, residential character of our community, nor conserve, or enhance, or preserve the established nature of the original and infill homes on this avenue. It is not consistent with the ARP and is not compatible with the surrounding development. This incompatibility will negatively impact adjacent properties.

The Land Use Bylaw rules establish a minimum level of fairness, transparency, and certainty. In our opinion, they are not a maximum that can then be relaxed just because a developer demands them. The needs of a community and surrounding property owners must be considered along with the desires of a developer. In this instance, we believe that the Development Authority has lost sight of this dual objective.

In our community comment on the first set of plans, shown on page 85 of your report, we identified that the Development Authority failed to detect non-compliance with Section 581(2)(b) of the Land Use Bylaw. This item, and others, including non-compliance with policy direction in the MDP and Erlton ARP with respect to scale and character of the established neighbourhood, resulted in the Authority's non-support of the application as noted in point 1 on page 43 of your report.

Page 80 of your report provides the Authority's review of the approved plans. They omit reference to the non-compliance with Section 566(1) of the Land Use Bylaw and the specific requirement shown at point 3a on page 9 of your report. The Authority states that

the re-design is now compliant with the policy directions in the MDP and Erlton ARP, and minimises the impact on adjacent neighbours. The massing of the long penetrating wall, the shadowing, and the overlooking that contributed to the rejection of the original plans still exist, however are not mentioned.

In the discrepancies list, under building height, the Authority seems to believe that this development is now located on 31st Avenue SE.

At the bottom of page 81, under the Community Association Comments, they believe Erlton's comments originated from the Windsor Park Community Association.

In our view, the Development Authority performed only a cursory review, by rote, of this development permit. They failed to exercise due diligence to identify and critically examine the plan to identify and acknowledge features that negatively impact affected parties. Had they done so, they would have arrived at a logical conclusion reasonable people could support. They did not do so.

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

(c) the appropriateness of the location and parcel for the proposed development;

This is not an appropriate site for the development given the number and type of relaxations and the amount of developed space proposed for the site. It is not compatible with, and has a significant negative impact upon adjacent homes.

As shown on page 4 of your report, the building extends deep into the lot, with a tall wall set approximately 4 feet from both side property lines and is coupled with the garage set directly on the west property line. It is thus insensitive and unresponsive to the context of the neighbouring homes and significantly impacts their enjoyment and quality of life by creating a canyon-like feel to their yards, and shadowing and overlooking their properties.

(d) the compatibility and impact of the proposed *development* with respect to *adjacent development* and the neighbourhood;

This building, mid-block, does not respect the adjacent development or re-development that has set the tone for new builds on 31st Avenue. Re-development in this portion of our community has been in the form of single family and semi-detached homes.

This plan view shows typical lot coverage on both block faces of 31st Avenue, with red dots indicating redevelopment. The proposed building depth and lot coverage shown on plan 2 of 21 is not consistent with other homes on 31st Avenue.

Here are some photos of the infill and other redevelopment on 31st Avenue SW.

Redeveloped properties starting at the west end of 31st Avenue on the north side,

3030 Erlton Street
#64 and 62
58 and 60, 54 and 56
52, 42 and 46

... and starting at the east end of 31st Avenue on the south side,
27 and 47
... and finally 53 and 65.

A total of 7 single family homes, 1 second storey addition, and 6 semi-detached homes.

They are examples of respectful development maintaining the established scale, form, massing, and character of the area. All were built without controversy and without negative impact on neighbouring homes.

This development will materially interfere with or affect the use and enjoyment of the two adjacent homes and is out of context with other development on both block faces on this avenue.

Furthermore, in our view, there is no sound planning principal as envisioned under Land Use Bylaw Section 35(j) to allow this discretionary development.

On page 143 of your report, at point 8, the developer comments on the measurement of the building penetration past the east side of Mrs. Predika's home. Plan 2 of 21 is scaled at a ratio of 1:200. This dimension is 5.65m which scales up to 1130mm or 11.3m. That converts to 37.1 feet. The rear deck adds 2.13m or approximately 7 feet. The total projection, including the deck is 44+ feet. The length of the extension was measured from the east side rear of her home, since the penetrating wall is on that side of her home and property, and most affects that portion of her patio and yard. I have a measuring stick and a calculator if one of the Board members would like to verify the calculations.

At point 14, the developer points out that “Contextual Single Detached Dwelling” and “Contextual Semi-detached Dwelling” are not listed as permitted uses in the District. Please note that multi-residential is also not a permitted use. As shown in LUB Section 578(1)(o) and (t), single detached and semi-detached dwellings are discretionary uses. Pages 135 through 140 of your report show 7 single detached, and 6 semi-detached dwellings as redevelopment on 31st Avenue SW.

At point 16, the developer notes that "Under Alberta Law, there is no absolute right to sunlight or protection of views." While that may be true, it is the reasonable expectation of any homeowner that they have access to both sunlight and privacy. Furthermore, the absence of a law granting a right to sunlight doesn't by default grant a developer the unfettered right to claim it. LUB Section 35(d) and especially 36(a) temper their grasp based on compatibility, impact, and undue material interference with or affect on the use, enjoyment or value of neighbouring properties.

At point 17, the developer mentions shadowing by the existing coniferous trees. The beauty of shadowing caused by a tree is that sunlight still penetrates and filters through the needles and leaves of trees, and casts its light and warmth on the yard. As mentioned in the appellant's filing, the photo on page 3 of your report was taken at approximately 8:30am on May 8th. Note the sunlight. I'll leave it up to this board to determine how much sunlight will penetrate the solid roof and walls of the proposed development and reach Mrs. Predika's patio and yard.

At point 18, the developer comments on their shadow studies. Study 17 of 21 depicts the shadow on Mrs. Predika's property at 7am, 9am, 11am and 1pm. Please note the shadow doesn't reach the joint

property line until after 1pm. And this occurs on June 21, the best day of the year with the most sunshine. Every other day of the year will be worse with more shadow and less sunshine. On March 21st (shadow study 20 of 21) the shadow doesn't reach the joint property line until some time shortly before 3pm.

At point 19, the developer mentions an overlooking deck and relates that to an appeal not made, thus attempting to invoke precedence. The exact statement from the Board's website, under Non-Relevant Planning Considerations is: Precedence (The Board considers each application on its own merits, regardless of whether or not a similar development or business already exists in the community.)

Also at point 19, the developer offers a taller fence. Plan 12 of 21 shows the entrance landing to unit 4 and the rear deck 1m above grade. A taller fence, at 2.3m, still allows anyone standing on the entrance landing or deck, a head and shoulders view above fence height, and the ability to easily snoop into the neighboring yard. (A person of average height, 1.75m or 5'9", and standing on the entrance landing to unit 4, will protrude 1.5 feet above the top of the fence.)

At point 20, the developer mentions new developments that are much taller and have more massing. While the context can include the broader community, in our opinion the most significant context is the immediate area of the development. Those taller and more massed developments are not on either block face of 31st Avenue. The developments shown on pages 176 to 180 of your report are, in fact, 4 or more blocks away, and on the north side of the block. Again, as the Board points out, precedence is a non-relevant planning consideration.

At point 21, the developer states that conservation as referenced in the ARP does not mean that new developments should mimic the architecture and size of relatively small bungalows. We agree, and that is why our community has embraced the many new and respectful, non-conflicting developments on 31st Avenue as shown on pages 135 through 140 of your report.

At point 22, the developer claims the lot is located within 600 metres of the Erlton LRT Station and is thus a Transit Oriented Development (“TOD”) site. Here's a Google map showing the walking distance from this development to Erlton Station to be 950m. It's nearly a straight line, and well beyond the 600m TOD radius.

At point 23, the developer states the garbage facility has been approved by the DA and thus complies with the LUB. I've examined the plans and can find no garbage container enclosure that meets the requirements of LUB Section 566(1)(b).

The facts show that this development, at this location, mid-block is non-compliant with the policies of the Municipal Development Plan and the Erlton Area Redevelopment Plan with respect to sensitivity to, compatibility with, and respect for the existing physical pattern, scale, built form, and character of the existing homes and the neighbourhood. It is equally non-compliant with the Land Use Bylaw, in that it is out of context with the original homes and redevelopment on both block faces on this avenue and will materially interfere with or affect the use and enjoyment of the two adjacent homes.

We ask that this development permit be denied. Thank you.