
CALGARY SUBDIVISION AND DEVELOPMENT APPEAL BOARD

Citation: 2018 CGYSDAB 170

Case Name: SDAB2018-0170 (Re)

File No: DP2018-0089

Appeal by: Dean Campbell

Appeal against: Development Authority of The City of Calgary

Hearing dates: November 29, 2018
February 5, 2019

Decision date: February 8, 2019

Board members: Bill Chomik, Chair and Presiding Officer
Funmi Abiiba
Collin Campbell
Andrew Orr

DECISION

Description of Application:

1 The appeal before the Subdivision and Development Appeal Board was brought by Dean Campbell.

2 On October 10, 2018, the Development Authority approved the application of McKinley Burkart for a new single detached dwelling at 2519 Erlton Street SW in the community of Erlton. The property is owned by Dr. Fereshteh Jalali and has a land use designation of Residential – Contextual One / Two Dwelling (R-C2). The proposed development is a discretionary development within the district.

Procedural History:

3 The hearing commenced on November 29, 2018 with consideration of procedural issues. The Board adjourned the hearing to February 5, 2019, and the hearing concluded on that date.

Decision:

4 The appeal is denied and the decision of the Development Authority is upheld. A development permit shall be issued as originally issued by the Development Authority.

Appearances:

5 The Board received submissions from:

- a) Craig Reilander for the Development Authority;
- b) Dean Campbell, the appellant;
- c) Dr. Nadeem Bhanji for the appellant;
- d) Ray Calabro, architect of the appellant's and Dr. Bhanji's house;
- e) Rick Grol, agent for the appellant;
- f) Bill Fischer for the Erlton Community Association, in favour of the appeal;
- g) Dr. Fereshteh Jalali, the owner of the subject property;
- h) Serena Lee for the applicant architecture firm; and
- i) Carol McClary, agent for the applicant and Dr. Jalali.

Background and Summary of Evidence:*Submissions of the Development Authority*

6 Mr. Reilander explained that the subject parcel is surrounded by single detached dwellings to the north, east, and south. These parcels slope slightly upward to the north, back onto the Elbow River to the west, and are vehicle-accessible from the front (east) via Erlton Street. On the opposite (west) side of the Elbow River is a public beach area. Due to the proximity of the river, the rear (west) portions of these parcels are covered by the floodway and are within the flood fringe. Therefore, all new dwellings must be raised to a minimum geodetic height of 1,051.0 metres.

7 The subject property is adjacent to 2515 Erlton Street SW to the north (also referred to as the “Butterfly House”) and 2605 Erlton Street SW to the south. The appellant and Dr. Bhanji reside in the Butterfly House. From south to north, the front setbacks of these dwellings are 6.5 metres, 8.0 metres, and 5.3 metres (incorrectly noted as 6.1 metres in the Board Report). The minimum front setback for the proposed development is 4.4 metres and the minimum rear setback is 6.0 metres.

8 From south to north, the depth of these dwellings is 29.2 metres, 27.2 metres, and 23.4 metres (incorrectly noted as 22.0 metres in the Board Report). There is no requirement in Land Use Bylaw 1P2007 (the “Bylaw”) regarding the depth of a non-contextual single detached dwelling in the R-C2 district. However, the Low Density Residential Housing Guidelines for Established Communities (the “Infill Guidelines”) recommend using the contextual depth as a guideline when approving new dwellings. The maximum contextual depth in this case is 30.9 metres. This excludes decks (Bylaw s 13(23)). The uncovered portion of a deck is also excluded from parcel coverage.

9 The Butterfly House “deck” is considered a balcony under the Bylaw because there is an entire floor below it. It is 1.4 metres higher than the deck on the proposed development, which itself is higher than the deck on the house at 2605 Erlton Street SW. There is no screening on the north side of the proposed deck. The Development Authority approved a relaxation of subsection 339(2) of the Bylaw, allowing the proposed deck to be 1.95 metres high instead of the maximum 1.50 metres. The extra height is justified by the elevated ground floor and floodway. It will not have a material impact on neighbours. Neighbours have no right to a view through their neighbour’s amenity space.

10 In terms of design, the proposed development uses materials that are consistent with the streetscape. A combination of cantilevers, louvres, and fenestration break up the massing. Louvres over the windows on the north elevation provide privacy. There are no windows on the south elevation. The proposed development is contextually sensitive, respects the street pattern, and is in line with the depth of adjacent buildings: Municipal Development Plan s 4.4, Erlton Area Redevelopment Plan (“ARP”) ss 4.2, 4.3.1, and 4.4.2. The Development Authority believes that the proposed development meets the test of section 35 of the Bylaw.

Submissions of Dr. Nadeem Bhanji and Ray Calabro in favour of the appeal

11 Dr. Bhanji and Mr. Campbell live in the Butterfly House directly north of the subject property. Dr. Bhanji explained that, following the 2013 Calgary flood, they wanted to design a house that would not flood. That design, created by their architect Ray Calabro, became the Butterfly House.

12 Mr. Calabro designed the Butterfly House so that all major living space would be on a single, elevated floor, which rests on a ground-floor podium and uses cantilevers to extend the livable space beyond the area of the ground floor. The indoor layout is oriented to take advantage of views of the city to the north and the river to the south. The west façade is angled to provide views in both directions. The Butterfly House does not extend all the way back to the floodway setback, thereby preserving extra green space along the river.

13 Mr. Calabro submitted that the proposed development will limit the appellant's views to the south because it sits further back (west) on the parcel than the Butterfly House. He provided diagrams and view renderings to demonstrate how the appellant's views will be affected from different points in the Butterfly House. He proposed a "neighbourly compromise" to align the front setbacks of the Butterfly House, the proposed development, and the house at 2605 Erlton Street SW by moving the proposed development 2.89 metres to the east. The applicant would still have room to build a series of planters and steps leading up to their front entry. He stated that the proposed development's rectangular building form limits the proposed development's ability to attain good views without angling the building.

14 Mr. Calabro also commented on the lack of articulation on the south façade of the proposed development, which is out of character with other dwellings on Erlton Street SW.

Submissions of Dean Campbell, the appellant

15 Mr. Campbell submitted that the applicant's design seeks to maximize views from the proposed development without regard to adjacent properties. The proposed development should be moved further forward on the parcel so that the rear setback matches the rear setback of 2605 Erlton Street SW. (This would require moving the proposed development more than 3.0 metres east, in excess of the 2.89 metres proposed by Mr. Calabro and Mr. Grol.) Alternatively, mirroring the building form of 2605 Erlton Street SW would also be acceptable.

16 According to Mr. Campbell, the length of the proposed driveway compared to the driveway at 2605 Erlton Street SW proves the applicant has adequate room to accommodate the appellant's request. Furthermore, the Butterfly House incorporates a gradual transition from the street to the front entry despite a shallower front setback and greater difference in elevation. The appellant should not lose his views simply because the applicant failed to consider better design options. Mr. Campbell provided photographs of the houses on the opposite side of Erlton Street SW, whose front setbacks align. In his

opinion, it will be to Dr. Jalali's advantage to move the house east because social gatherings on the public beach can get unruly.

17 Mr. Campbell described the south façade of the proposed development as an unarticulated stucco wall in contrast to the Butterfly House which, he submitted, is architecturally interesting from all angles. The proposed deck, with a "railing" running east-west (which he likened to a solid wall) extends past the Butterfly House and presents a massive solid structure that would obstruct his views.

18 Mr. Campbell argued that the relaxation and the proposed development overall do not meet the test of section 36 of the Bylaw. In particular, the proposed development fails to respect the importance of neighbours' views, makes little attempt to be compatible with the streetscape, and is contextually inappropriate in that it only meets the minimum sideyard setbacks (see Infill Guidelines s 4.0). The proposed development should exceed these setbacks since generous spacing between houses would facilitate overland flow in the event of a flood.

Submissions of Rick Grol, agent for the appellant

19 Mr. Grol submitted that the Development Authority incorrectly assessed the impacts of the proposed development on the Butterfly House because the diagram of the Butterfly House in the applicant's development permit application is inaccurate. The differences between the applicant's diagram and the appellant's diagram are shown at Tab 4 of the appellant's additional submissions.

20 Mr. Grol explained that the contextual front setback is determined by averaging the front setbacks of the two adjacent dwellings and adding 1.5 metres. The contextual front setback must be at least 3.0 metres. Moving the proposed development east by 2.89 metres would be more in line with the contextual front setback calculation stipulated by the Bylaw, as well as Infill Guidelines section 4.3.1 which states that infill development setbacks "should respect the established street pattern". This would put the proposed development's rear setback midway between the rear setback of the two adjacent dwellings, representing a compromise.

21 Mr. Grol added that, in his opinion, planting trees in the north sideyard setback, even if possible, would not sufficiently mitigate the impact of massing on the appellant.

Submissions of the Erlton Community Association in favour of the appeal

22 Mr. Fischer advised that the Erlton Community Association supports the appellant's position: moving the proposed development east would integrate it better with other houses on Erlton Street SW and maintain alignment of the streetscape. There would still be ample room in the front setback for a gradual pedestrian transition to the front entry as the current plans show some longer horizontal steps that could be shortened.

Submissions of Dr. Fereshteh Jalali, owner of the subject property

23 Dr. Jalali owns the subject property and opposes the appeal. She stated that she has already made compromises to accommodate the appellant. She cut down a large poplar tree on her property to provide the appellant with better views, moved the proposed development 3 metres east from the original plans, removed much of the terracing planned for the front setback, and decreased the rear deck width by nearly half a metre. She had intended to match the rear setback of 2605 Erlton Street SW, since both properties share similar floodway setbacks. By moving the proposed development east, she has lost privacy from her south neighbour due to a wraparound window on the northwest corner of the south house.

24 Moving the proposed development any further east would reduce the driveway size and therefore the usable parking space (both on-site and off-site) and limit her views of the river and ability to enjoy that amenity. Her views are already limited more than the appellant's panoramic views of the river and city. In short, her dream home will be materially different than she had envisioned. The applicant's design adheres to the Bylaw and respects the streetscape; it should be allowed without additional modification. However, she would be willing to plant trees in the north sideyard setback.

Submissions of Serena Lee for the applicant

25 Ms. Lee advised that the subject property slopes downward to the northwest corner. Accordingly, if the proposed development were to be moved any further east, the front steps and landing would have to be condensed, resulting in an imposing mass from the perspective of someone on the street.

26 Ms. Lee stated that the sideyard setbacks are 1.2 metres (the minimum allowed by the Bylaw). They are not intended to be circulation areas. Grass will be planted in the north setback, and trees in the south setback.

27 Regarding errors in the Development Authority's calculations and the surveyed plans, Ms. Lee submitted that the applicant contracted a third-party surveyor to conduct the surveys in June 2016. She is confident that the surveyed measurements are correct. She suggested that measurements may now be different if the Butterfly House had not been constructed when the surveys were conducted.

Submissions of Carol McClary, agent for the applicant

28 Ms. McClary argued that the proposed development should not be moved east. The Board should not consider the northernmost dwelling on this block of Erlton Street SW because its location at the front of the parcel was necessary due to the floodway, which extends further eastward as one moves north of the subject property. Furthermore, the cantilever of the Butterfly House exaggerates the difference in front setbacks between it and the proposed development when measured to the front façade of the ground floor. Moving the proposed development east would eliminate any visual break between it and the Butterfly House.

29 The Bylaw does not directly regulate or protect views. The appellant has no entitlement to, or reasonable expectation of, a particular view. Where the Infill Guidelines address views, they do so in terms of protecting privacy and preventing overlooking between parcels. In the past, the Board has struck appeals that were based solely on views. The current plans for the proposed development will still afford the appellant a view of the river, just not a panoramic one.

30 Ms. McClary also commented that the Butterfly House is very long (north to south) for an inner-city single detached dwelling. The proposed development will provide three on-site parking stalls (at least for small cars).

Rebuttal comments

31 Mr. Campbell stated that the poplar tree was cut down at The City's request, not his, because it was old and impeded efforts to remediate the riverbank following the 2013 flood. Similarly, The City, not the appellant, required the house to be moved 3 metres east because it was planned to project into the floodway. Ms. McClary disagreed that the proposed development was ever planned to project into the floodway. Finally, Mr. Campbell stated that the frame of the Butterfly House was constructed prior to June 2016, so Ms. Lee's explanation of the survey errors is unconvincing.

Reasons:

32 The Board reviewed all evidence and arguments, written and oral, submitted by the parties and will focus on key evidence and arguments in outlining its reasons.

33 The Board, in its evaluation of this discretionary use with the Bylaw relaxation, considered the context of the proposed development, applicable legislation, applicable plans and policies, applicable key Bylaw provisions, applicable guidelines, sound planning considerations and the merits of the application.

34 The Board finds that the proposed development aligns with the vision of the Erlton Area Redevelopment Plan (ARP) in that the proposed development is compatible with the scale of surrounding development and the local streetscape, and is sensitive and complementary to the natural features associated with the riverbank. The Board further finds that the proposed development is in keeping with section 4.2 of the Low Density Residential Housing Guidelines for Established Communities (Infill Guidelines) in that the proposed development is designed in a manner which is responsive to the local context. The proposed development is similar in height, form, massing, orientation, materiality and setback dimensions to the neighbouring residences. It is sensitive to the constraints placed on the parcel by the Elbow River.

35 Regarding the proposed development's placement on the parcel, including the setback requirements, the Board finds that this modestly-sized residence is situated appropriately given its context. The Board recognizes that the Butterfly House to the north of the proposed development and the existing residence to the south of the proposed

development are significantly misaligned when measured in parallel to Erlton Street on the riverside edge of the respective properties. The proposed development mediates between the two by sitting far enough eastward to minimize intrusion into the oblique viewlines (in a southwest orientation) from within the Butterfly House, yet far enough westward to permit some oblique viewing (in a southwest orientation) from within the proposed development past the protruding existing residence to the south. Evidence shows that the three residences are generally in alignment when a line is struck between the western-most corner at the north corner of the neighbouring Butterfly House and western-most corner at the north of the neighbouring residence to the south of the proposed development. In summary, the Board considers that the location of the proposed development is appropriate and disagrees (with the various parties in favour of the appeal) that the proposed development should be moved eastward.

36 The Board finds the various positions taken by parties regarding setback provisions (where there appears to be conflicting information and varying opinions on the matter) to be immaterial vis-à-vis the overarching issue of the final placement of the proposed development on the parcel. The Board agrees with the Development Authority that the proposed development is 8.0 metres from the east property line and appropriate with respect to the contextual setback requirements. Further, the Board agrees with the Development Authority that the building depth of the proposed development is 27.2 metres, well within the maximum contextual building depth referenced in the Infill Guidelines.

37 The Board finds that the south elevation of the proposed development does not lack articulation. The Board agrees that the south elevation lacks fenestration (although fenestration is indicated in the setback points facing east and west), but finds that the massing is appropriately broken up by the inclusion of a major step-back in the façade.

38 The Board agrees with architect Lee's position that if the proposed residence were to be moved closer to Erlton Street, the front steps and landing would have to be condensed and would result in a mass more imposing to a pedestrian on the street than the proposed solution. The Board agrees that the slight setback from the neighbouring properties to the north and to the south allows for a gentle transition from the street to the main floor of the proposed development which is mandated by the Flood Bylaw to be at a minimum geodetic height of 1,051.0 metres, 1.8 metres above the sidewalk level.

39 The Board agrees with Ms. McClary's position that the Bylaw does not directly regulate or protect views, and that the appellant has no entitlement to, or reasonable expectation of, a particular view. The Board finds that a requirement to protect neighbouring views across the applicant's property would place an unfair burden on the applicant. The Board agrees with Ms. McClary that where the Infill Guidelines address views, they do so in terms of protecting privacy and preventing overlooking between parcels.

40 The Board allows the Bylaw relaxation to the deck height from the standard of 1.5 metres above grade to the proposed at 1.95 metres. The Board finds that this height is necessary to allow the interior and exterior levels of the proposed development's main

floor living area to remain connected at an elevation mandated by the Flood Bylaw. Evidence provided in the Board Report and at the hearing indicates that the interior to exterior flow of the Butterfly House's main dining/living area is identical to the flow indicated in the proposed development, with the resulting balcony of the Butterfly House at an elevation approximately 1.4 metres higher than that of the proposed development. The drawings indicate that an opaque screen will be provided on the south elevation of the deck of the proposed development to effect privacy to the south neighbor.

41 The Board finds that the proposed development (with the Bylaw relaxation for deck height) meets subsections 687(3)(d)(i)(A) and (B) of the *Municipal Government Act*. The proposed development neither unduly interferes with the amenities of the neighbourhood, nor materially interferes with or affects the use, enjoyment or value of neighbouring parcels of land.

Conclusion:

42 For the reasons set out above, the appeal is denied and the decision of the Development Authority is upheld. A development permit shall be issued as originally issued by the Development Authority.



Bill Chomik, Chair and Presiding Officer
Subdivision and Development Appeal Board

Issued on this 8th day of February 2019