

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

Citation: 2022 CGYSDAB 66

Case Name: SDAB2022-0066

File No: DP2021-1384

Appeal by: Gordon Laird, Natalie Poissant, Alan Marritt, Mona Hayes, Carol Hern, Maclean Sprung & Heesung Kim for Erlton Community Association, all represented by Gordon Laird.

Appeal against: Development Authority of The City of Calgary

Hearing dates: January 12, 2023
February 9, 2023

Decision date: 27 February 2023

Board members: Katherine Camarta, First Vice Chair & Presiding Officer
Kristi Beunder
David Frid
Gael MacLeod
Katherine Wagner

DECISION

Description of Application:

1 The appeal before the Subdivision and Development Appeal Board was brought by Gordon Laird, Natalie Poissant, Alan Marritt, Mona Hayes, Carol Hern, Maclean Sprung & Heesung Kim, the Planning Representative for Erlton Community Association. All were represented by Gordon Laird.

2 On November 18, 2022, the Development Authority approved the application of Rob Kieboom of Designhaus Studio for a New: Multi-Residential Development (1 building) at 55 and 57, 27 Avenue SW in the community of Erlton. The property is owned by Kamil Lalji & Ali Tejpar and has a land use designation of M-CG d72. The proposed use is a discretionary use within the district.

Procedural History:

3 The hearing commenced on January 12, 2023, with consideration of procedural and jurisdictional issues. The Board adjourned the matter to February 9, 2023. The hearing was held by video conference and concluded the same day.

Decision:

4 The appeal is allowed and the decision of the Development Authority is overturned. A development permit shall not be issued.

Submissions:

5 The Board received oral and/or written submissions from:

- a) Derek Pomreinke, for the Development Authority.
- b) Gordon Laird, representing the appellants & Heesung Kim of the Erlton Community Association; and
- c) Rob Kieboom, agent for the applicant.

6 The Board also acknowledged the written submissions included in the Board Report of Glynis R Hern, in favour of the appeal, and of Dr. S Monty Ghosh, Rakesh Dhad, Inderjit Wadhwa and Joel & Caely Campbell, all of whom were against the appeal.

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

7 Derek Pomreinke, on behalf of the Development Authority, referred to the written materials contained within the Board Report and made the following presentations.

8 The Development Permit (DP) approves one multi residential building comprising six dwelling units with direct grade access for each. The Development Authority saw fit to relax several rules of the Land Use Bylaw 1P2007 (the Bylaw).

9 The subject site is located at 55 and 57, 27 Avenue Southwest within the community of Erlton at the corner of Erlton Street.

10 The site is within the 600-meter radius of the Erlton Stampede LRT (Light Rail Transit) station, in which transit oriented and other higher density forms of development are encouraged due to the relatively short walk..

11 The site is currently developed with two single detached houses with rear detached garages accessed from the rear lane. A pathway connection to the Elbow River is west across the street and the site slopes up the hill to the south.

12 Section 35 of the Bylaw states the following must be considered when deciding on a Development Permit for a discretionary use:

- plans and policies affecting the parcel;
- purpose statements in the applicable land use district;
- the appropriateness of the parcel and location;
- the compatibility and impact of the proposed development with respect to adjacent development and neighbourhood;
- the merits of the proposed development;
- the servicing requirements;
- access parking and transportation requirements;
- vehicle and pedestrian circulation within the parcel;
- the impact of on the public transit system; and
- sound planning principles.

13 The immediate area around the site is single detached housing. However, the entire community to the south and east have been designated under the M-CG District which is a multi-residential contextual grade-oriented district for low density multi residential development.

14 The proposed structure would be approximately twice as tall as the single-story house currently on the site.

15 Photographs show how the site interfaces with its neighbours and developments to the north which show a variety of styles. Also shown are more massive R-C2 developments to the west and examples of the relative size of buildings constructed in the area as they ascend the slope.

16 The Municipal Development Plan (MDP) classifies the site as Urban Main Street. This is intended to support a variety of residential and commercial heights and densities near Calgary's largest urban roads (in this instance MacLeod Trail).

17 The proposed development should aim to create a defined street edge befitting a more pedestrian oriented environment. It is noted that the maximum densities expected in an urban main street are often not found in the community of Erlton.

18 The Erlton Area Redevelopment Plan (ARP) aims to promote conservation and consistency for new infill development. The Development Authority takes the view that the approved development tries to strike a balance between the compatibility goal of the ARP and the defined street edge and intensification goals of the MDP.

19 As Erlton has redeveloped over the past several decades, its character has evolved with lower density buildings exhibiting flat roof lines, more box like designs, and minimalist aesthetics.

20 The land use district in place on the site is M-CG d72. This refers to the multi residential contextual grade-oriented district which is intended to allow for townhouses and multiplex development immediately adjacent to low density development.

21 The density modifier of 72 units per hectare allows for up to 6 units on the subject site, which is the specification of the proposed development. The approved site plan consists of 6 units with direct access to grade for each. Each unit also has at least one motor vehicle parking stall.

22 The Development Authority provided the following Bylaw relaxations:

- *583 (2) (5) Building Setbacks*. Patio space projecting into north and west setbacks provides amenity space close to grade (close due to sloping of site); also, full height screening provided to mitigate privacy concerns.
- *549 (1) (5) Projections into Setback Area*. The projecting eaves are canopies over the entrances into to the units and are used to provide clear markers for individual unit access; also, this applies to the projection of eaves to a maximum of 0.6m.
- *585 (2) (4) Building Height and Cross-section*. Very small chamfer portion of the building within the maximum building height, this is primarily cosmetic; also, a slope adaptive design is used to the best of its ability on site.
- *581 (2) At Grade Orientation of Units*. Four of the units are visible from the street, two other units are well marked with eaves/signage.
- *551 (2) Specific Rules for Landscaped Areas*. The intent of the front north patios and the west patio is to provide a street-oriented atmosphere which aims to meet the objective of the street-oriented multi-residential building. This would come with a landscaping reduction of 4.0% which would result in an additional 0.43% relaxation requirement.
- *552 (6) Planting Requirements*. The required number of shrubs are provided and the cotoneaster shrubs are to be more than 0.6m in height.
- *Residential Bicycle Parking (Class 1)*. Wall/ceiling mounted bike storage systems were to be installed in the garages to meet this requirement, although not indicated on plans.

23 In the opinion of the Development Authority, the proposed development complies with Council's direction as set out in the ARP, and complies as well as the Bylaw, with ten relaxations.

24 The proposed development with the relaxations noted would not unduly interfere with the amenities of the neighbourhood, or materially interfere with or affect the use, enjoyment or value of neighbouring parcels of land.

Submission of the appellant

25 The appellant Gordon Laird, representing the named co-appellants, and the Erlton Community Association, submitted that the approved Development Plan does not comply with the ARP nor with the applicable requirements and rules of Section 35 of the Bylaw. Specifically, he referenced the maximum building height, cross section, setbacks, and the requirement for entrances visible from the street.

26 Mr. Laird explained that the community is generally pro-development and accepts that the land use designation of a six-plex is consistent with Calgary's long-term goals for densification. He agreed that smart densification and quality developments are important for Erlton's future.

27 He submitted that the relaxations granted do not reflect street and neighbourhood context and seem consistent with efforts to extract maximum value from the proposed development. He stated that the two large roof forms make it look like an apartment building and questioned why the development's location was named as 'Upper Mission' when no such community existed in Calgary.

28 Mr. Laird submitted that the approved plans do not align with the Bylaw and the existing ARP, which excludes apartments. He highlighted how the proposed development did not respect the existing character of the Erlton community, primarily a low-density residential area.

29 He referenced a DTR (Detailed Team Review) of the Development Permit dated April 2021 that stated, "*in order to better meet land use bylaw regulations around landscaping, building, massing, setbacks some redesign may be required.*"

30 The DTR also stated. "*The development ... could be more sensitively designed in its form, massing, scale, and level of articulation with its directly adjacent context to the east. The outdoor functional spaces and visibility to the property to the east needs to be more sensitive.*"

31 He submitted that the relaxations granted would materially affect the use, enjoyment or value of neighbouring properties as:

- neighbours will be impacted by the encroaching structure, affecting privacy, and creating shadowing.
- the proposed development's height, at 2.26 metres is exceeding the height requirement:

- the entrances as well as multiple east-facing porches encroach on privacy.
- there would be an increase in congestion and street parking. Erlton parking is already limited, especially during Calgary Stampede & major events.
- the proposed massing exceeds the maximum building envelope precisely at the location where it has the greatest negative impact on neighbours.

32 Mr. Laird explained that the main issue is not density but design. Development plans are largely unchanged from their original submission despite significant community concern and input.

33 He referred to the 2021 and 2022 community submissions to the Development Permit which also highlighted concerns such as height, massing, density, privacy, views and sunlight.

34 Mr. Laird submitted that the process had been a missed opportunity and contrasted with a four-unit development to the south, which was redesigned to address community concerns and not appealed. He stated this proposal had minimal redesign from the initial submission.

Submissions of the applicant

35 Rob Kieboom, agent on behalf of the applicant, submitted that the subject parcel has a significant natural down slope from south to the north and a cross slope from southwest to northeast of the site.

36 Mr. Kieboom advised that the site is the amalgamation of two 37.5-foot-wide lots facilitating the modest increase in density, from the typical four-unit rowhouse development permissible on a 50-foot-wide lot.

37 He stated that it is challenging to redevelop the site due to the topography of the lot. The City Road's Department only allows vehicle access to the site from the lane. No vehicle access is allowed from Erlton Street due to the slope at this portion of the street.

38 Mr. Kieboom advised that the architectural design had undergone numerous revisions to meet the Bylaw and all plans affected by the revisions have been amended accordingly. Furthermore, extra design considerations were made in addition to what is required to be sensitive to the neighbours and mitigate any concerns such as privacy and massing.

39 He explained that following community feedback, reductions and concessions were made to the plans to address requests from residents while also maintaining the intent and integrity of the build.

40 Referencing section 576 of the Bylaw, he noted Council zoned the area for multi-residential development.

41 He submitted that the proposed development contributes to diversity of housing stock as envisioned and is a transit-oriented development.

42 The MDP contains policies that encourage densification and gives direction for greater residential density in the inner-city areas such as Erlton.

43 Referencing the ARP, he stated that its purpose is to provides guidelines, not rigid rules. It also does not mean new developments should mimic the architecture or size of adjacent developments.

44 He noted the ARP envisions redevelopment in the community in the form of multi-residential developments.

45 Mr. Kieboom submitted that, in his opinion, the ARP is to some extent outdated. It was last updated in 1983 and since approved by Council, it has not undergone a full review.

46 He stated that the community is in transition and its character is changing due to redevelopment. Further, most of the parcels in Erlton are designated M-CG District which is intended to allow for multi-residential development.

47 He referenced various developments nearby and in the community that were not appealed, highlighting similar characteristics and design. Further, he emphasized that the proposed development was a good size and fit for the parcel. Also, he noted a variety of housing forms with similar aesthetics.

48 Addressing the massing concerns, Mr. Kieboom submitted that from the initial Development Permit application, the proposed development was modified, and several Bylaw relaxations were eliminated. The development was further modified in terms of setbacks, massing, window arrangement, landscaping, glass privacy screens. Also, reduced were the areas of the upper balcony, particularly on the east side.

49 Further, the height of the proposed development is below the maximum allowable building height of 12 metres under the Bylaw, except for a clip on the rear most portion of the development in the upper floor of unit number six. Aside from this, the development is within the permitted building envelope.

50 Mr. Kieboom submitted that the proposed development has been sensitively designed, it is slope adaptive, and follows the contours of the topography of the site by staggering the units as they progress down the length of the property in a north/south direction.

51 Further, the townhouse units step down towards the lower portion of the site (towards the front property line of the parcel). Also, the dwelling units of the proposed development are modest in size.

52 He noted that the development has a greater side setback from one of the appellant's properties than is required by the Bylaw. This was done to be sensitive to one of the appellants' homes.

53 Mr. Kieboom noted the confusion relating to the number of relaxations granted by the Development Authority. However, referencing the side yard relaxation, he submitted that the building conforms to the required building setbacks as the eaves are permitted to project 0.60 metres into a setback.

54 The lone relaxation into the side yard is an entry canopy that is visually "supported" on chains but serves only to act as coverage to the entry of unit six, providing illumination, shelter from the elements and defines the entrance to the unit with the address number affixed to the canopy for clarity.

55 Referencing the building envelope penetration, he advised that the infraction is to the southeast corner of the development and is not visible from either roadway. This is a result of the change in slope along the communal property line with the neighbour and in line with the neighbouring garages. This also serves an internal stairwell and therefore it cannot be amended.

56 Mr. Kieboom agreed with the Development Authority's approval. The proposed development complies with the MDP and ARP and is compatible with the adjacent developments and, from a planning perspective is appropriate for the site.

57 He submitted that the Development Authority correctly applied section 35 of the Bylaw.

Rebuttal

The Development Authority

58 Derek Pomreinke noted the confusion in relation to the number of relaxations granted. He stated that after the appeal was filed, a further Bylaw check had taken place. He confirmed that the Development Authority had granted ten relaxations and that the Board should refer to page 380 of the Board Report for clarity.

The appellant

59 Gordon Laird submitted that the number of relaxations granted emphasized the lack of initial changes made to the proposed development.

The applicant

60 Rob Kieboom expressed his frustration that he had not been aware of the recent Bylaw check. He noted that there were some relaxations he had no knowledge of such as the Residential Bicycle Parking.

Reasons:

61 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.

62 The Board considered the Bylaw, ARP, MDP and all other relevant statutory and guideline policies in making its decision.

63 The Board finds that the cumulative impact of the ten (10) Bylaw relaxations, as outlined on page 380 of the Board Report, creates a negative outcome to the appellants and the Board finds that such relaxations cumulatively affect the use, value and enjoyment of neighbouring properties and cannot be supported.

The Board was faced with multiple discrepancies about the number of relaxations required. The Development Authority introduced a list of ten (10) discrepancies at the appeal hearing in its presentation and submission on page 380. The applicant was under the impression there were only four (4) relaxations granted, and these were outlined on page 14 and 15 of the Board Report. The lists provided on page 380 was new information to the applicant. As a result of this inconsistency, the Board was concerned that the set of approved plans before the Board was not current or may not reflect the new list of relaxations as outlined on page 380. As a result, the Board finds that there was not enough information made available to the Board to enable it to properly assess the impact of each relaxation on its own and separate merits. However, the Board finds that the cumulative impact of the various relaxations that are required to allow for the resultant built form, negatively affect the use, value and enjoyment of the neighbouring properties as a result of encroachment and crowding into the public realm, privacy loss, overlooking, and increased shadowing.

64 The Board was particularly concerned with the relaxation of Section 581 of the Bylaw, being the requirement for at grade orientation for Multi-Residential Development which requires entrances located on the floor closest to grade to have an entrance visible from the street. There are two units, 3 and 5, facing the east sideyard directly, and those entrances are elevated by exterior stairs resulting in the front door being well above grade with direct overlooking to the east.

This specific relaxation results in the built form not reflecting a contextually appropriate multi-residential massing. The elevated east accesses, coupled with the south elevation, which reflects an apartment block appearance, results in the building not reflecting similar qualities as its contextual neighbours.

Similar structures in Erlton reflect individual residential entrances for units within a multi-unit space much more clearly and definitely. The building does not appear to reflect the character of existing multi-residential buildings as provided in the evidence from both the Development Authority and the appellants. The examples provided identified multi-residential structures that clearly reflected easily identifiable individual residential dwelling units accessed from the street. The proposed structure does not reflect the same qualities. The east elevation does not reflect a similar quality and character of the

surrounding context and does not convey articulation, recess, canopy or similar quality materials as the units that are oriented to the street. As a result, the proposed structure does not appear as distinct residential units with grade orientation. This makes it significantly dissimilar to approved structures in Erlton. The east units require added wayfinding signage from the street to orientate them, resulting in an apartment-like appearance.

65 In reviewing the proposed development against the required criteria of section 35 of the Bylaw, the Board finds that the application fails to follow sound planning principles insofar as it fails to properly address the compatibility and impact of the proposed development with respect to adjacent development and neighbourhood. In particular, the built form does not reflect compatibility with existing multi-residential projects in the area. Accordingly, the Board finds the proposed development to be inappropriate for the site and location.

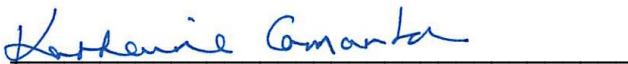
66 In further assessing the requested relaxations, as noted above, the Board finds that the cumulative impact of multiple relaxations results in negative impact on adjacent developments and the neighborhood. The Board finds, in accordance with the section 687(3)(d) of the Municipal Government Act, that the use, enjoyment and value of the neighbouring property, is affected negatively and, as a result, the development is not supported.

Conclusion:

67 For the reasons set out above, the appeal is allowed, and the decision of the Development Authority is overturned. A development permit shall not be issued.



Kristi Beunder, Decision Writer
Subdivision and Development Appeal Board



Katherine Camarta, First Vice Chair & Presiding Officer
Subdivision and Development Appeal Board

Issued on this day of 27 February 2023.