

SUBDIVISION & DEVELOPMENT APPEAL BOARD DECISION

CHAIR: Karen Howley
PANEL MEMBER: Tanya Handley
PANEL MEMBER: Michael Kartusch
PANEL MEMBER: Tyler Lacoste
PANEL MEMBER: Frank Yakimchuck

BETWEEN:

JACQUELINE KENT

Appellant

and

BLACK CREEK DEVELOPMENTS INC.
Represented by Ron Goss

Applicant

CITY OF RED DEER
Represented by Beth McLachlan, Development Officer

Development Officer

DECISION:

The application by Black Creek Developments Inc. (the "Applicant"), for a development permit for two, four-storey Multiple Family Buildings (64 units total) on the lands zoned R3, located at 17 Norquay Street, legally described as Lot 1, Block 5, Plan 772 0983, (the "Site") is approved with no amenity area and a landscaped area of 3969.13 m² (27% variance).

Approval is subject to the following conditions:

1. A Development Permit shall not be deemed completed based on this approval until all conditions, except those of a continuing nature, have been fulfilled to the satisfaction of the Development Officer.

2. All Development must conform to the conditions of this Development Permit and the Approved Plans, and any revisions thereto as required, pursuant to this Approval. Any further revisions to the Approved Plans must be approved by the Development Authority.
3. The Applicant shall repair or reinstate, or pay for the repair or reinstatement, to original condition, any public property, street furniture, curbing, boulevard landscaping and tree planting, or any other property owned by The City which is damaged, destroyed or otherwise harmed by development or construction on the site. Repairs shall be done to the satisfaction of The City of Red Deer. In the event that The City undertakes the repairs, the Applicant shall pay the costs incurred by The City within 30 days of being invoiced for such costs.
4. Prior to the commencement of any construction, demolition or other work associated with this approval, the Applicant shall provide the following documents, plans or drawings (the Additional Documents”) to the Development Officer, which must be consistent with the Approved Plans. The Additional Documents are:
 - a. Revised drawings conforming to the requirements specified in Section 16 of The City of Red Deer Design Guidelines. Access configuration must conform to drawing 5.75 of the City of Red Deer Engineering Design Guidelines.
 - b. The proposed water demands for the site (which includes both peak hour and fire flow requirements).
 - c. An application and payment for modifications to the sidewalk and curb to support the driveway access construction by emailing engcustservice@reddeer.ca.
 - d. A revised site plan which shows no parking signs at the pedestrian access points into the parking area between existing Building A and B.
 - e. A Construction Fire Safety Plan.
5. The Additional Documents shall, once provided to and accepted by the Development Officer, be deemed to form part of the Approved Plans.
6. Prior to the commencement of any site excavation, the Developer shall install a metal construction fence on the southern property boundary to prevent any ground

disturbance on the neighboring natural tree stand. The Developer shall contact The City to inspect and approve the fence type and placement prior to construction.

7. The Applicant shall consult with The City, after the perimeter construction fence has been installed, and prior to the pre-grading stage to determine if any existing tree branches will require removal to avoid any construction clearance issues.
8. The Applicant shall consult with The City during the pre-grading stage regarding removing (cutting) any exposed tree roots that are greater than 2 inches in diameter.
9. The Applicant shall ensure that if any tree or branching clearance issues occur along the south property boundary, consultation with The City prior to any approval.
10. The Applicant shall enter into a Development Permit Development Agreement (DPDA) to facilitate the construction of the new sidewalk along the north (Norquay) and east (Nordegg) sides of the site; the sidewalk width is to be 1.5 m.
11. The Applicant shall install no parking signs along the west side of the property, south of the new access, within the road right-of-way. The Applicant shall enter into a Cost Contribution Agreement for the sign installation.

JURISDICTION AND ROLE OF THE BOARD

1. The Subdivision and Development Appeal Board (the Board) is governed by the *Municipal Government Act*, RSA 2000, c M-26 (MGA) as amended, in particular s. 685(4) and 687.
2. The Board is established by The City of Red Deer, By-law No. 3619/2019, the *Appeal Boards Bylaw* (April 1, 2019). The duty and purpose of the Board is to hear and make decisions on appeals for which it is responsible under the MGA and The City of Red Deer, Bylaw No. 3357/2006, *Land Use Bylaw* (August 13, 2006) (the LUB).
3. None of the parties had any objection to the constitution of the Board. There were no conflicts identified by the Board Members.
4. There were no preliminary issues for the Board to decide.

BACKGROUND:

5. On May 1, 2019 the Municipal Planning Commission (MPC) approved a development permit for two, four-storey Multiple Family Buildings (64 units total) to be located at

17 Norquay Street (the "proposed development") , legally described as Lot 1, Block 5, Plan 772 0983, (the "site").

6. The MPC approval was based on the proposed development providing 3969.13m² of landscaping. The LUB requires 35% landscaping in an R3 zone which equates to 5469.3 m², a 27% variance from what is proposed.
7. The R3 zone requires 4.5m² per dwelling unit to be provided as an amenity area. The approval was based on no amenity area being provided.
8. The site has four existing Multiple Family Buildings with a total of 76 units.
9. The Appellant is an area landowner to the immediate north of the proposed development and filed an appeal with this Board on May 16, 2019 on the basis that the proposed development is a direct interference to her property.

SUMMARY OF EVIDENCE AND ARGUMENT:

The Appellant

10. The Appellant stated that she does not oppose development on the Site, she is objecting to the size and number of units of the Proposed Development.
11. The Appellant stated that her front yard looks directly onto the Proposed Development and that it will obstruct her view, create shading on her property, and impact her privacy (windows looking into windows). Thus, she believes that it will materially interfere and grossly effect the enjoyment and value of her property. In support, she provided the Board with a photograph of her existing view with lines to indicate the approximate shape, height and location of the Proposed Development (Exhibit C1 photograph A).
12. The Appellant acknowledged that the Proposed Development is setback 20 feet from the street, however she would like more than that. She believes that increasing the setback will not only reduce the impact, but also bring the Proposed Development more in line with the existing buildings which would be visually pleasing.
13. The Appellant argued that the Proposed Development is out of scale with the existing buildings. She stated that the first floor of the existing buildings are in the ground and therefore only two levels are above ground, while the Proposed Development is four storeys above ground.

14. With regard to the landscaping variance, the Appellant believes that the walkways should not be considered in the calculation and that hardscaping cannot replace landscaping. The Appellant also questioned the impact of the Proposed Development on an existing tree stand.
15. The Appellant stated that the Proposed Development should not only address compliance with the LUB, it should also address the fact that the homes in the area were built in the era of 1983. The Appellant argued that landowners in the area are there because it is not a new area in which new development of large apartments is expected.
16. Further, the Appellant believes that many homes in the area were purchased because of the lower density. The existing four buildings have a total of 76 units (19 per building) while the Proposed Development is nearly double, with 32 units in each building.
17. The Board heard from, or received written submissions from 7 area landowners (1 whose property is 200m from the Proposed Development). The submissions opposed the Proposed Development, and in several instances were similar in nature to those expressed by the Appellant. The submissions that presented an argument in a new way or offered a new argument are summarized in paragraphs 18-20.
18. One concern was regarding increased traffic and the safety of pedestrians, specifically kids. The written statement indicates that due to heavy on-street parking it is difficult to see when pedestrian come out from behind cars.
19. The statement also describes on street parking as creating traffic impediments (bottle necks), and questions the ability for emergency access if the Proposed Development is approved.
20. Further concerns that were identified and that are sometimes attributed to large numbers of people in one area included:
 - a. Rental Properties: The area already has a high number of rental properties, secondary suites and mobile homes. Rental properties tend to attract a certain demographic that are less invested in the neighbourhood.
 - b. Density: Areas that are congested can create more crime and vandalism or existing problems can be exacerbated (e.g. garbage, needles).
 - c. Pedestrian Traffic: The Proposed Development will increase pedestrian traffic to/from Gaetz Avenue which impacts the privacy of landowners. This is likely to occur late at night.
 - d. Noise: The increased pedestrian traffic and the mechanical requirements of the Proposed Development will create noise.

The Development Officer

21. With regards to parking, the Development Officer stated that the Proposed Development provides for 230 parking stalls. This provides the required stalls for the Proposed Development, additional parking for the existing buildings, bringing them to current standards, plus 4 more stalls than required.
22. The Development Officer advised that as part of the process for a development permit, applications with a large number of dwelling units are forwarded to Engineering Services who review the application for safe and effective transportation, and may require the Applicant to conduct a traffic count or study. She advised that Engineering Services have no concerns with the Proposed Development.
23. The Development Officer acknowledged the concerns of landowners in the area with regard to the existing greenspace, but stated that the greenspace on the Site is part of private lands and the owner has a right to use it as desired.
24. Further, with regard to the variance needed for landscaping, the Development Officer provided the following information:

LUB Regulation	Requirement	Proposed
One tree per 60 m ² Landscaped Area	92 trees	98 trees
One shrub per 30 m ² Landscaped Area	183 shrubs	205 shrubs

25. The Development Officer is of the opinion that the proposed landscaping is satisfactory due to the excess plant material that would be provided, and the existing 0.64 ha tree stand found on the south side of the Site.
26. With regard to the lack of amenity area, it is the Development Officer's opinion that an existing 3.5 ha parks and recreation area directly west, and within 60 metres of the Site gives the occupants of the existing buildings and proposed buildings easy access to an outdoor recreation space.
27. The Development Officer spoke to the height of the Proposed Development, advising that it complies with both the R3 zoning in the LUB which provides for a maximum of 4 storeys, and the Mature Neighbourhood Overlay District which stipulates that redevelopment shall be within one (1) to two (2) storeys of existing buildings within the Immediate Street Context.

28. In response to concerns of the area landowners that the windows of the Proposed Development will result in windows looking into windows, the Development Officer confirmed that the proposed development considers window placement in conjunction with existing buildings on the site.
29. The Development Authority referred to The City of Red Deer, By-law No. 3404/2008, the *Municipal Development Plan* (May 5, 2008) (the "MDP") with regard to area density. The MDP compels new neighbourhoods to have a minimum 17.0 dwelling units per net developable area and the Normandeu neighbourhood has 12.02 dwelling units per net developable area.

The Applicant

30. The Applicant concurred with the statements of the Development Authority regarding the Proposed Development.
31. The Applicant also argued that the Proposed Development does not abuse the LUB, that it meets the spirit and intent of the LUB. The Applicant acknowledged that redevelopment is not always universally welcomed or wanted, and he believes it is for this reason that the City of Red Deer has the LUB.
32. The Applicant stated that the units of the Proposed Development are not designed to be large family units, they will be higher-end and targeted toward smaller families and young professionals. The Applicant is of the opinion that the Proposed Development will add to the revitalization of the Normandeu neighbourhood and that it may encourage others to update their own properties.
33. With regard to traffic volume, the Applicant stated that the Proposed Development will have two additional access points – one on Norton Avenue and one on Nordegg Crescent which will help disperse and control traffic.
34. The Applicant stated that the Proposed Development contains an extensive walkway system which complies with the requirements found in the Mature Neighbourhood Overlay District. The walkways provide pedestrian connections throughout the Site and to the street. The Appellant argued that because the walkways are required by the Mature Neighbourhood Overlay District, they should be counted as landscaping.
35. The Applicant reiterated that the Proposed Development complies with both the LUB and the Mature Neighbourhood Overlay District. He stated that the height of the building

allows for the number of units which makes the Proposed Development economically feasible.

FINDINGS AND REASONS

36. There were no arguments before the Board relative to the use of the Site (discretionary Multi Family Building). Notwithstanding this, to ensure that area landowner comments specific to building height have been taken into full consideration, the Board chose to consider the Proposed Development in its entirety first, as opposed to looking at the two variances in isolation of the other components of the Proposed Development.
37. When a discretionary use is before the Board, it may reconsider the discretionary powers of the Development Authority.
38. The Board heard from area landowners that they did not object to development on the site, only the size and height of it. Further, the area contains a range of existing development from detached dwellings to three-storey Multiple Family Buildings. Therefore the Board finds the discretionary use of Multi Family Buildings on the Site is appropriate.
39. Generally, every development must conform to the LUB. The LUB and the MGA allow for variances because not all situations are exactly the same. Therefore, the Board found it useful to identify the unique features of the Proposed Development.
40. The Board finds the Proposed Development's 60 metre proximity to an existing large neighbourhood park with a playground and sports field (the "Park") to be unique to this application.
41. The Board is convinced by the argument that the Park can be considered an amenity area in this application because s. 4.7(1)(f) of the LUB describes an amenity area as being located either indoors or outdoors, and that it may include sitting areas, playgrounds, pools, patios and exercise rooms.
42. In this case, the amenity area is outdoors and is a Park which, according to area landowners includes a playground and is already used by children in the area. The short distance of only 60 metres makes the Park reasonably accessible and the installation of the walkways planned in the Proposed Development will help ensure its walkability.

43. The Board was not persuaded by the argument of the Applicant that the landscaping calculation should include walkways. They are separate regulations under the LUB and will be treated as such. The requested variance is 27%.
44. The variance is not insignificant, and the Applicant is proposing to provide 6 trees and 22 shrubs in addition to what is required in the LUB. While the additional trees and shrubs do not in and of themselves result in the overall landscaping being 'compliant' with the LUB, the Board was persuaded that these were a welcome addition to the site and, when matured, will provide a greater density of vegetation which will increase visual appeal and provide screening for privacy, thus reducing any perceived negative visual impact resulting from the approval of a 27% variance in this instance.
45. The Board shares the concerns of the Appellant with regard to the Proposed Development changing her view and decreasing the amount of sun on her property. However, the Board's ability to vary the regulations in the LUB is set out in s. 687(d)(i) of the MGA:

- (3) In determining an appeal, the subdivision and development appeal board
- (a) must act in accordance with any applicable ALSA regional plan;
 - (a.1) must comply with any applicable land use policies;
 - (a.2) subject to section 638, must comply with any applicable statutory plans;
 - (a.3) subject to clauses (a.4) and (d), must comply with any land use bylaw in effect;
 - (a.4) must comply with the applicable requirements of the regulations under the *Gaming, Liquor and Cannabis Act* respecting the location of premises described in a cannabis licence and distances between those premises and other premises;
 - (b) must have regard to but is not bound by the subdivision and development regulations;
 - (c) may confirm, revoke or vary the order, decision or development permit or any condition attached to any of them or make or substitute an order, decision or permit of its own;
 - (d) may make an order or decision or issue or confirm the issue of a development permit even though the proposed development does not comply with the land use bylaw if, in its opinion,
 - (i) the proposed development would not

- (A) unduly interfere with the amenities of the neighbourhood, or
- (B) materially interfere with or affect the use, enjoyment or value of neighbouring parcels of land,
- and
- (ii) the proposed development conforms with the use prescribed for that land or building in the land use bylaw.

46. The Board was persuaded by the argument of the Appellant, that the Proposed Development is likely to affect the enjoyment of her property to some extent – the ‘enjoyment’ being the view. However, the Board was not persuaded that it would materially interfere with the use or value of it.
47. The Board also considered the request of the Appellant, to consider the Proposed Development as if the buildings were the same size as the existing buildings in terms of number of units and height. While it may be under the Board’s purview to do so, fulfilling the request of the Appellant would fundamentally change the Proposed Development. Such an application would need to be reconsidered by the Development Officer and other City officials who have knowledge beyond the expertise of this Board.
48. Neither the LUB or the MGA regulate rental properties, that issue is outside the authority of this Board.
49. The re-design of the parking lot (adding two access points) and providing additional parking for the existing buildings should mitigate many of the existing traffic related concerns.
50. Additional pedestrian traffic was presented as a potential negative side effect of the Proposed Development. The Board believes that additional pedestrian traffic could also have a positive effect, deterring criminal activity.
51. The remaining concerns of the neighbourhood tie back to density. There are several references to density in the MDP but the Board is convinced by the ‘Objectives’ section 5.0(f) states the following: “Seek opportunities to increase the overall density of the city;”.
52. The Board believes the Proposed Development will increase density and also enhance the neighbourhood with the additional parking and plant material.

CLOSING:

53. For the reasons detailed above, the Permit is approved with conditions as stated earlier.

This decision can be appealed to the Court of Appeal on a question of law or jurisdiction. If you wish to appeal this decision you must follow the procedure found in section 688 of the Municipal Government Act which requires an application for leave to appeal to be filed and served **within 30 days** of this decision.

Dated at the City of Red Deer, in the Province of Alberta this *18* day of June, 2019 and signed by the Chair on behalf of all five panel members who agree that the content of this document adequately reflects the hearing, deliberations and decision of the Board.

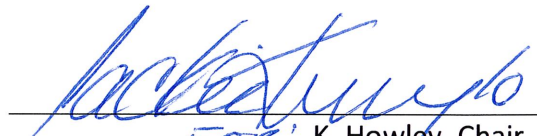

FOR: K. Howley, Chair
Subdivision & Development
Appeal Board

EXHIBIT LIST

EXHIBIT A1: Hearing Materials

EXHIBIT B1: Respondent Report

EXHIBIT C1: Appellant Report

EXHIBIT D1: Applicant Letter