

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

Citation: 2024 CGYSDAB 0027

Case Name: SDAB2024-0027 (Re)

File No: DP2023-08098

Appeal by: Jennifer & Michael Doty, Dana & Patrick Pearn, and
Alejandra Ugarte Torres represented by Carol McClary

Appeal against: Development Authority of The City of Calgary

Hearing dates: May 30, 2024
July 11, 2024

Decision date: August 1, 2024

Board members: Timothy Bardsley, Board Chair
Carol Hampton
Robert Merchant
Shelly McIntosh
Sahar Salimi

DECISION

Description of Application:

1 The appeal before the Subdivision and Development Appeal Board was brought by Jennifer & Michael Doty, Dana & Patrick Pearn, and Alejandra Ugarte Torres represented by Carol McClary.

2 On April 11, 2024, the Development Authority approved the application of David Vera with Vera Architecture for a New: Multi-Residential Development (1 building) located at 526 & 530 19 Street NW in the community of West Hillhurst (the “subject parcel”).

3 The subject parcel is owned by Handa (John) Ni and Ching An Wang and is designated Multi-Residential - Contextual Ground Oriented (M-CG) under the City of Calgary Land Use Bylaw 1P2007 (“the Bylaw”). Multi-Residential Development (1 building) is a discretionary use in the district.

Procedural History:

4 The hearing commenced on May 30, 2024, with consideration of procedural and jurisdictional issues. The Board adjourned the hearing to July 11, 2024. The hearing concluded on that same date.

Decision:

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

Submissions:

6 In addition to the materials comprising the Board Report, the Board received oral submissions at the hearing from:

- a) Jennifer Doty, Co-Appellant;
- b) Dana Pearn, Co-Appellant;
- c) Patrick Pearn, Co-Appellant;
- d) Alejandra Ugarte Torres, Co-Appellant;
- e) Carol McClary, Agent for the Appellants;
- f) David Vera of Vera Architecture, Applicant;
- g) Handa (John) Ni, Owner;
- h) Rick Grol, Agent for the Applicant/Owner;
- i) Amrit Uppal of Bunt & Associates Engineering, in support of the Applicant;

- j) Jennifer Maximattis-White, Senior Planner, on behalf of the Development Authority;
- k) David Down, Chief Urban Designer, on behalf of the Development Authority;
- l) David Zhong, Mobility Engineer, on behalf of the Development Authority; and
- m) Benjamin Bailey, File Manager, on behalf of the Development Authority.

The Board acknowledged letters in support of the proposed development from David Song, Daniel Jansen, Adison Wiberg, Scott Schindel, Calvin Treacy, Adam Jiwani & Samir Lalani, and Nicholas Heathcott. The Board acknowledged letters in opposition to the proposed development from Awni Musa, Amy Atkin, Kholood Al Noubani, Beverley Smith, Robert Kloefer, and Helene Chiarella-Redfern.

Background and Summary of Evidence:

The Development Authority

7 Jennifer Maximattis-White, Senior Planner, appeared on behalf of the Development Authority and referred to the Response to Appeal and Reasons for Approval documents contained in the Board Report.

8 The application proposes a new Multi-Residential Development (1 building) in the form of a three-storey residential building with 10 units, 9 motor vehicle parking stalls provided in private garages along the east of the subject parcel, and 10 secured bicycle stalls located within the garage, plus one exterior stall. A bike lane is present adjacent to the subject parcel along 6 Avenue NW. Four units face 19 Street NW, one unit is located on the corner, 3 units face 6 Avenue NW, and two have entrances facing east.

9 Attached parking at the ground level is provided for Units 1, 2, 3, 6, 7, and 10. The remaining units have access to three attached garages located at the rear and south side of the building. One unit has no parking allotment. Seven parking stalls are required, and 9 are provided.

10 The subject parcel is bound by 19 Street NW to the west, 6 Avenue NW to the north and low-density residential development to the south and east. Street-oriented commercial and mixed-use development fronting onto 19 Street NW stretches from Kensington Road NW to 3 Avenue NW, with varying building heights ranging from one to five storeys. The West Hillhurst Community Association building is located across 6 Avenue NW.

11 The subject parcel contains two parcels located along the east side of 19 Street NW that have been amalgamated into one. The parcels have a cumulative area of

approximately 0.11 hectares (0.27 acres) with a frontage of approximately 28.0 metres and a depth of approximately 33.0 metres.

12 Vehicular access to the subject parcel is via a shared driveway from 19 Street NW as there is no rear lane. Surrounding land uses include Single and Semi-Detached Dwellings, Rowhouses, Townhouses and Multi-Residential buildings. Community space to the north of the subject site is designated Special Purpose - Recreation.

13 Private amenity space is provided for each unit at grade next to each entrance. Waste and recycling are located at the south of the subject parcel via a molok system and are collected by private pickup.

14 As it is not possible to plant trees along the eastern property line due to the existing utility right-of-way, shrubs have been planted throughout the site and trees are located along the south property line. Additional trees are proposed along the public boulevard.

15 The building includes a variety of materials such as brick, metal panels and wood siding. Front door access is provided to all units that face 19 Street NW. All units are three storeys and have direct access to grade. A variety of materials and colour schemes as well as variations in the roof line add visual interest and differentiate between units.

16 The west elevation faces 19 Street NW, and the north elevation faces 6 Avenue NW. The east and south elevations face neighbouring properties, with one unit (Unit 1) facing the south elevation. Windows have been minimized on the east elevation to reduce overlooking onto neighbouring properties. All third-storey windows on the east elevation have also been frosted. The private garages are one storey, reducing massing along the property line.

17 The Municipal Development Plan ("MDP"), a statutory plan, promotes housing diversity and choice through a variety of housing types and densities to meet the needs of Calgarians. The MDP defines the subject parcel as being within the Inner City Area. This area is defined as residential development in forms compatible with the character of the neighbourhood, which maximize front door access to the street.

18 The subject site was redesignated from R-C2 (Residential - Contextual One/Two) to M-CG in April 2024. A public hearing related to the land use change was held on November 1, 2022 (LOC2021-0080). At that time, City Council withheld second and third reading until a development permit was ready for approval, and the redesignation occurred on April 4, 2024, pursuant to Bylaw 159D2022. There is no existing Local Area Plan or Area Redevelopment Plan applicable to the parcel.

19 The development permit application was reviewed by a team of specialists, including those from Urban Design, Urban Forestry, Mobility Engineering, and Waste and Recycling. Consideration was given to street interface, as well as setback distances and impact on neighbouring properties.

20 Ms. Maximattis-White reviewed the relaxations required for the proposed development, all of which were supported by the Development Authority.

21 Section 588 of the Bylaw states:

(1) Where the contextual multi-residential building setback is less than 3.0 metres and greater than 0.0 metres, the minimum building setback from a property line shared with a street is equal to the contextual multi-residential building setback.

Plans indicate a north setback of 0.01 metres (-2.91 metres) where the required setback is 2.2 metres. The north property line tapers east to west with the widest dimension adjacent to the neighbouring property to the east, providing a generous and natural contextual response tapering the building away from its easterly neighbour. A setback of approximately 398.0 metres is provided in the northeast corner, transitioning to a 0.01-metre setback in the northwest corner furthest away from the neighbouring property. The 4.5-metre by 4.5-metre corner cut required for visibility remains clear of any obstructions.

22 Section 583 of the Bylaw further states:

(2) Where the contextual multi-residential building setback is 3.0 metres or greater, the minimum building setback from a property line shared with a street is the greater of: (a) the contextual multi-residential building setback less 1.5 metres; or 3.0 metres.

Plans indicate a west setback of 2.34 metres (-3.80 metres) where the required setback is 6.14 metres. Vehicle access to the site is from 19 Street NW along the south side of the property, providing an approximately 13.0-metre buffer between the proposed development and adjacent existing residential building. A relaxation to the front (west) setback area allows for a more generous 4.0-metre rear setback, providing relief to adjacent properties.

23 Section 549 of the Bylaw states:

(1) Unless otherwise referenced in subsections (2) through (7), a building [...] must not be located in any setback area.

Section 550 of the Bylaw states:

(7) All setback areas adjacent to a street or another parcel, except for those portions specifically required for motor vehicle access, must be a landscaped area.

Plans indicate portions of the building located in the west and north setback areas. Rationale for these relaxations mirrors the rationale for relaxations to sections 583(1) and (2) of the Bylaw.

24 Section 585 of the Bylaw states:

(4) The maximum area of horizontal cross section through a building at 10.5 metres above average grade must not be greater than 40.0 percent of the maximum area of a horizontal cross section through the building between average grade and 9.0 metres.

Plans indicate the horizontal cross section at 10.5 metres above grade is 40.47 percent (+0.47 percent) or 194.26 square metres (+2.27 square metres) of the greatest area between 9.0 metres and grade. The relaxation is minor, impacts only a small portion of the property, and will not interfere with the use, enjoyment or value of neighbouring properties.

25 Section 581 of the Bylaw states:

(1) Units in a Multi-Residential Development, not including attached private garages, must occupy a minimum of 50.0 percent of the area of the floor closest to grade.

Plans indicate that the residential area at grade, not including private garages, is 48.49 percent (-1.51 percent) or 232.77 square metres (-7.23 square metres) of the floor area closest to grade. The relaxation is minor (1.51 percent) and accommodates private garages on a parcel without a lane.

26 Section 581 of the Bylaw further states:

(2) A unit in a Multi-Residential Development, that is located on the floor closest to grade must have: (b) an entrance that is visible from the street that faces the units.

Plans indicate that Unit 9 does not have a front entrance visible from the street. Street frontage is sufficiently activated along 19 Street NW and 6 Avenue NW with individual front door entrances to units. The portion of Unit 9 that does face 6 Avenue NW is approximately 0.25 metres and will not affect the quality of the streetscape.

27 Section 553 of the Bylaw states:

The minimum landscaped area of 40.0 percent for Multi-Residential Development may be reduced by the three options as referenced in sections 554, 555 and 556 individually or in combination, to a total available reduction of 10.0 percent of the area of a parcel.

Plans indicate a total landscaped area of 345.02 square metres (-36.19 square metres) or 30.77 percent (-3.23 percent). The relaxation is minor adequate landscaping is provided.

28 Section 555 of the Bylaw states:

For the Enhanced Landscaping Option, the required 40.0 percent landscaped area may be reduced by 3.0 percent of the area of the parcel where: (a) 1.0 trees and 2.0 shrubs are planted for every 25.0 square metre of landscaped area provided.

Plans indicate 8.0 (-6.0) trees. Ms. Maximattis-White noted that this relaxation is no longer applicable as six Sutherland caraganas will be planted, which count as trees and were inadvertently missed during the initial review. This relaxation is therefore no longer required. Moreover, 7.0 additional City-owned trees will be planted in the boulevard.

29 Section 556 of the Bylaw states:

For the Low Water Landscaping Option, the required 40.0 percent landscaped area may be reduced by 3.0 percent of the area of the parcel where: (e) a minimum of 30.0 percent of required trees are selected from the list in the Table (below): Low Water Trees.

Plans indicate 4.0 (-1.0) low water trees. The Applicant has indicated they are amenable to a revision to the plans to provide an additional low water tree, thereby eliminating this relaxation.

30 Section 557 of the Bylaw states:

(4) The required minimum amenity space is 50 square metres per unit.

Plans indicate a total amenity area of 47.31 square metres (-2.69 square metres) and there is open space nearby to the subject parcel.

31 Section 557 of the Bylaw further states:

(8) Private amenity space must: (b) have no minimum dimensions of less than 2.0 metres.

Plans indicate Unit 6 has a minimum dimension of 0.94 metres (-1.06 metres) and Unit 10 has a minimum dimension of 1.64 metres (-0.36 metres). The relaxation is minor and impacts two units. Unit 10 still meets the 5.0 square metres per unit amenity space rule.

32 Section 557 of the Bylaw further states:

(2) A patio may be located in a setback area between a street-oriented multi-residential building and a property line with a shared street.

Plans indicate patios located in setback areas. Because the proposed development is not considered to be street oriented as Units 9 and 10 do not face the street, a relaxation is required. In line with support for relaxation of section 581(2), street frontage is sufficiently activated along 6 Avenue NW and 19 Street NW with front door unit entrances.

33 In the opinion of the Development Authority, the proposed development complies with Council direction as set out in the MDP, the Bylaw, and the M-CG district. It would not unduly interfere with the amenities of the neighbourhood or the use, enjoyment, or value of neighbouring parcels of land, and was therefore approved.

34 In questioning, Ms. Maximattis-White confirmed that there are contextual setback requirements which required relaxations on the north and west sides of the proposed development.

35 In questioning, Ms. Maximattis-White confirmed that Sutherland caraganas have a single trunk, many branches, and grow quite high. As such, Sutherland caraganas are deemed by the Development Authority and Bylaw to be trees rather than shrubs.

36 In questioning, Ms. Maximattis-White confirmed that planting trees along the north side of the property is not possible, however seven trees will be placed in the public realm in this area.

37 In questioning, David Zhong, Mobility Engineer with the Development Authority, noted that vehicle turning movements within the driveway and parking areas were reviewed and determined to be functional.

38 In questioning, Ms. Maximattis-White addressed the number of relaxations required for the project, noting that the Development Authority places more weight on the impact of relaxations rather than the number. She noted that many of the relaxations are minor and interrelated and serve to address the laneless condition and unusual property lines of the subject parcel.

39 In questioning, Ms. Maximattis-White confirmed that three of the amenity spaces are undersized. All amenity spaces are located next to the primary entrances of the units.

In Favour of the Appeal

40 Co-Appellant Jennifer Doty noted that all Appellants reside to the east of the proposed development and share a property line with the subject property.

41 Ms. Doty submitted that the proposed development along the east side of 19 Street NW is on a unique stretch of land. There is no rear lane, and the lots are shallow at approximately 32.6 meters deep.

42 Ms. Doty referred to photographs in the Board Report showing the front and rear of the Appellants' homes and submitted that each of the homes are built in a similar style. She explained that due to the lack of a rear lane, the Appellants' garages are built under the front of the homes and the main floors are elevated. There are no structures on the Appellants' properties that would provide separation from the proposed development.

43 She explained that the Appellants' rear decks are elevated and built over the lower floor of the homes, and there is approximately 10.0 meters from the back of the homes to the rear fence property line.

44 Ms. Doty noted that during the Land Use change application, several neighbours identified concerns related to density and proximity to the nearby intersection.

45 She explained that increase vehicular traffic on the corner is an issue as it is already a busy intersection with blind spots, multiple bike lanes, and traffic related to the adjacent community centre. She submitted that proposed trees on the boulevard at the north side of the proposed development have the potential to further impair visibility turning west from 18A Street NW.

46 Ms. Doty noted that despite conducting community engagement, the Applicant has not been responsive to concerns raised by residents regarding shadowing, overlooking and privacy. Further, landscaping remains insufficient.

47 Ms. Doty stated that the Applicant's drawings appear to show a rear lane, when in fact no rear lane exists between the Appellants' properties and the subject parcel. She noted that the drawings show the Appellants' homes to be taller than the proposed development, which is not the case.

48 Co-Appellant Alejandra Ugarte Torres stated that she lives directly to the east of the proposed development. She endorsed Ms. Doty's concerns surrounding privacy, overlooking, and lack of sufficient landscaping.

49 Ms. Torres noted that 13 windows on the proposed building will face her property including her deck and main floor living area, and only the windows on the upper floor will be frosted.

50 She noted that with removal of trees and no landscaping provided on the east side of the proposed development, there will be no buffer for noise and privacy, creating a substantial impact on the use and enjoyment of her home and rear amenity space.

51 Ms. Torres submitted that Units 9 and 10 will face her home directly rather than facing the street, creating privacy concerns. She advised that a planned bench along the fence will increase foot traffic and generate noise and security issues as the location of the bench would leave her property vulnerable to trespassers.

52 Co-Appellant Dana Pearn stated that she lives immediately to the east of the proposed development. She echoed concerns related to massing and shadowing impact, and identified concerns related to parking in the area.

53 Ms. Pearn submitted that the proposed development resembles a monolithic wall measuring 12.0 metres high and 33.1 metres long, located between 14.0 and 15.5 metres from the rear of her home. Due to the size and massing of the proposed development, it would block light and create substantial shadowing onto her yard.

54 Ms. Pearn referred to a shadow study submitted by the Appellants illustrating the expected shadowing impact of the proposed development. She stated that for most of the year, the yards at 533 18A Street NW and 531 18A Street NW will be in complete shade during the afternoon hours.

55 Ms. Pearn endorsed Ms. Torres' submission related to the potential for trespassing, noting that the area behind the proposed garages is isolated and without any barrier.

56 Ms. Pearn noted that while parking requirements are met pursuant to the Bylaw, there is a frequent lack of street parking available in the area due to proximity to the nearby intersection and schools. She questioned whether residents of the proposed development might park on the street due to difficulty accessing their garages.

57 Co-Appellant Patrick Pearn expressed concerns related to density. He submitted that the proposed development is too intense a use for the parcel, and increased vehicular traffic would cause safety concerns at an already misaligned and challenging intersection. He held that vehicles entering and exiting the proposed development would create dangers for pedestrians and cyclists, particularly trucks conducting waste and recycling pickup as they must make wide turns.

58 Mr. Pearn submitted that the proposed development is incompatible with the existing residential character of the neighbourhood in terms of height, scale and massing and should not be approved.

59 In questioning, Ms. Pearn confirmed that the afternoon sun will be impacted most severely by the proposed development.

60 In questioning, Ms. Torres confirmed that her own fence measures approximately 1.4 metres high.

61 In questioning, Ms. Doty explained that existing trees on the Appellants' properties are not sufficient to mitigate privacy concerns.

62 In questioning, Ms. Doty expressed concern that the numerous relaxations granted by the Development Authority have allowed for more units than may otherwise have been granted, and resulted in a larger structure than is suitable for the parcel.

63 In questioning, Ms. Doty confirmed that street parking availability is impacted during drop-off and pick-up times at the nearby high school and elementary school.

64 Carol McClary spoke as agent for the Appellants and referred to her presentation contained in the Board Report. Ms. McClary endorsed the concerns of the Appellants and offered further analysis of the site and building plans for the proposed development.

65 Ms. McClary noted that the subject site is in the M-CG land use district and is a discretionary use. She identified limited access to the parcel, with the right hand turns

only for entrance and egress, as well as a restricted parking zone along both road frontages of the subject parcel.

66 Ms. McClary opined that while the Applicant benefitted from extra area by purchasing the former road closure section of the parcel and consolidating it, the design has failed to comply with rules associated with the land use district.

67 Ms. McClary noted that section 35 of the Bylaw requires that development approval decisions take into consideration any plans and policies affecting the parcel, the compatibility, and impact of the proposed development with respect to adjacent development in the neighbourhood, and sound planning principles.

68 Ms. McClary noted that a critical component to the land use district is the calculation of contextual setbacks, as they help the development fit in. She explained that while the Development Authority has measured the setback along 6 Avenue NW as 2.92 metres, as the property continues, each unit enters the 3.0-metre line that much more and pushes the building toward the front property line.

69 She noted that a purpose of creating a setback is to create a rhythm for buildings next to a street, making the setbacks contextual and. She noted that the house next door at 533 18A Street NW has a 2.92-metre setback facing 6 Avenue NW, while the proposed development has a 0.01 metre setback, making it out of context with neighbouring parcels.

70 Ms. McClary noted that the west setback on 19 Street NW should be 6.14 metres and is only 2.3 metres. The setback relaxation allows the building to protrude into the established streetscape and creates an overpowering effect on a corner parcel.

71 Ms. McClary questioned whether the building footings of Unit 5 project into the City boulevard as a result, noting that the plans are unclear regarding this unit.

72 Addressing the height of the proposed development, Ms. McClary noted the intent for the land use district is to step in the building and reduce the size of upper floors. The Bylaw check notes that the area of the building is marginally over the area of 40.0 percent by a percentage of 0.47 or 2.27 square metres, however the calculation does not reflect the design. The floor area for all the units is the same in exterior appearance, while the rule should force a smaller floor plate. By avoiding the intent of the rule, the building mass extends up the walls to the maximum building height of 12.0 metres. Without the anticipated reduction, the building mass is excessive and towers over neighbouring development.

73 Ms. McClary submitted that section 581 of the Bylaw requires the floor area of all units to be residential. She noted that the main floors of these units are dedicated to parking, resulting in insufficient floor area on the main floor.

74 She noted that Unit 9 is not visible from the street, and Unit 10 should not be considered as being visible from the sidewalk due to its entrance being located

approximately 22.0 metres from the sidewalk at the northeast corner of the parcel, contrary to Bylaw requirements.

75 Ms. McClary noted that since the building is located within the setback areas, it is impossible to comply with landscaping requirements, resulting in a relaxation to the requirement for 40.0 percent of the parcel to be landscaped. She submitted that this indicates the parcel is overdeveloped or the building is too large, thereby impacting the usable outdoor amenity spaces and quality of life for residents.

76 Ms. McClary noted that 5.0 square metres of amenity space per unit is required, and 47.31 square metres is provided. Further, Unit 6 does not meet the minimum required dimensions and the amenity space of several units projects into the setback and will not receive direct sunlight. She submitted that deficient amenity space underscores the fact that the building size is too large for the parcel.

77 Ms. McClary stated that it will be difficult for vehicles to access the internal parking area, creating entrance/egress conflict. Further, there is no on-street parking adjacent to the subject site. Traffic is generated from a nearby school, and there is no frequent bus route serving the area.

78 Ms. McClary submitted that the design of the rear elevation of the proposed development creates a monolithic wall facing the Appellants that is lacking in articulation. She submitted that the Development Authority exceeded its jurisdiction in granting multiple relaxations, resulting in a project which is insensitive, incompatible and abandons the applicable development rules and standards applied to all projects.

79 In summation, Ms. McClary noted that the required Bylaw relaxations do not meet the test of section 36 of the Land Use Bylaw and of section 687(3)(d) of the Municipal Government Act. She submitted that the proposed development materially interferes with and negatively affects the use and enjoyment of the neighbouring parcels of land, and asked that the appeal be allowed.

80 In questioning, Ms. McClary clarified that original housing stock in the area including the homes which have been removed from the subject parcel is victory homes with a rectangular design and steep 12:12 slopes.

Against the Appeal

81 Applicant and architect David Vera of Vera Architecture referred to his written submissions in the Board Report and made the following oral submissions.

82 Mr. Vera noted the accessibility of the area, pointing out many bus routes, bike paths and the nearby LRT station, along with public amenity spaces such as parks, playing fields, schools, shopping and eateries, and a community centre.

83 Mr. Vera noted that the subject site is an especially challenging parcel with many design constraints including a curving of 6 Avenue NW which would not allow for driveway

access on that side of the parcel. In addition, a utility right of way impacted landscaping options, necessitating the planting of shrubs rather than trees.

84 Mr. Vera noted that shadow studies were conducted early in the design process, however once the Appellants' trees were considered, it was found that the trees shaded the Appellants' yards, which is why a formal shadow study was not conducted. Further, the design is within the bounds of the required 45-degree angle chamfer setback, therefore a shadow study was not required.

85 Mr. Vera explained that in his drawings, the Appellants' homes are not intended to be height-representative, but rather are simply the downloaded 3D images from a City of Calgary website showing nearby buildings and structures. He noted that the heights of each of the Appellants' homes were known and considered during the design process.

86 Mr. Vera submitted that he met with the Appellants earlier in the design process, and as a result many modifications to the design were made. He referred to a photograph in the Board Report showing the initial design with 7 parking stalls, noting that this was increased to 9 after parking concerns were raised. He noted that the units facing east will have stucco to reflect the sunlight away, as preferred by the Appellants.

87 Addressing height concerns, Mr. Vera noted that all roof peaks are well below the maximum height of 12.0 metres, measuring anywhere from 1.4 to 1.2 metres lower. He referred to 3D modeling drawings included in the Board Report and noted that since the tallest peak is sloped away, it appears close to the same height of the other lower peaks.

88 Mr. Vera noted that the design took inspiration from post-World War Two housing styles, incorporating simple color palettes and similar footprints, and tall roof peaks. He explained that the aim of the project was not only to mimic the forms of the existing post-war homes, but also their purpose, of providing housing in a central neighbourhood close to amenities. He noted that adjacent post-war homes in the area were used as design inspiration for the project.

89 Mr. Vera noted that a design intention was that each home on the parcel is its own unit, with no one living above or below one another.

90 Mr. Vera explained that the planned bench was positioned to look away from Ms. Torres' home, however it could be moved across the pathway if this were preferable. The Applicant would also be willing to have the Appellants' fences replaced with 2.0-metre-tall fencing if they wished to replace their current fences with a higher fence.

91 Mr. Vera noted that visibility for the street corner was considered. He explained that one can see clearly into 6 Avenue NW from a fair distance away from the intersection, and there will be no tall vegetation to impede visibility.

92 Mr. Vera referred to a diagram in the Board Report showing the proposed setbacks, noting that smaller setbacks were necessary to include additional parking stalls. He confirmed there is a 2.3-metre setback facing 19 Street NW, a 0.0-metre

setback facing 6 Avenue NW, a 4.0-metre set back to the east, and as the building steps back it goes from 4.0 metres to approximately 5.5 metres at Unit 8.

93 Mr. Vera noted that several pine trees were planted near the molok waste and recycling system to provide screening. He noted that the Applicant would be willing to replace some of the trees with low-water trees if permitted.

94 Mr. Vera noted that the pick-up system for the waste and recycling has been studied, and vehicles conducting pickup will not encounter issues maneuvering in the space.

95 Mr. Vera noted that the required Bylaw relaxations are the result of configuration and geometry of the parcel, the utility right-of-way along the easterly property line which does not allow for tree plantings, and driveway access to the development only being possible from 19 Street NW.

96 In summation, Mr. Vera stated that the proposed development is compatible with adjacent developments, has no undue impact on the neighbouring properties, is appropriate and suitable for the parcel, has planning merit, and followed sound planning principles. He submitted that the Development Authority correctly applied sections 35 and 36 of the Bylaw in reviewing the application.

97 Amrit Uppal, Transportation Engineer with Bunt & Associates Engineering, explained the proposed development from a transportation perspective. He noted that a Transportation Impact Assessment (TIA) was not required as the proposed development will generate only 4 trips per hour, which is not significant enough to result in operational impacts.

98 He noted that the nearby intersection is not identified as a high-collision intersection. In response to concerns regarding sight lines at 18A Street NW and 6 Avenue NW being worsened, he noted that the sight lines are already impacted by an existing fence at 533 18A Street NW that goes right to the property line. Any planting at this proposed development would therefore not worsen those sight lines.

99 Mr. Uppal explained that the suggested minimum corner clearances to accesses from major intersections (measured from edge of curb to driveway) is 55.0 metres for left turns and 25.0 metres for right turns from 19 Street NW and 6 Avenue NW. The proposed driveway meets the spacing guideline for right turns but not for left turns. He noted that the City has mitigated the impact of left turn movements by requiring road markings and signage.

100 Mr. Uppal noted that the minimum driveway distance required to accommodate two-way movements (6.0 metres) is met by the proposed development.

101 Mr. Uppal noted that the proposed development exceeds vehicle parking requirements and meets bicycle parking requirements. Parking restrictions are in place by way of a permit parking zone, and along site frontages due to the proximity of the site

to the traffic signal. On-street parking is provided immediately to the south and to the west of the parcel.

102 In conclusion, Mr. Uppal noted that the proposed development can be accommodated by the existing transportation network, and the provided parking supply and site access is appropriate for the proposed development.

103 Owner John Ni noted that he resides in the neighbourhood and wishes to build an appealing development on the site. He noted that he addressed Appellants' concerns by moving the development as close to 6 Avenue NW as possible, which required a relaxation.

104 Rick Grol, Agent for the Applicant/Owner, referred to his presentation contained in the Board Report.

105 Mr. Grol explained that the MDP is the statutory plan applicable to the parcel in the absence of a Local Area Plan or Area Redevelopment Plan for the neighbourhood. He noted that the building height is appropriate for the parcel and is also compatible with the objectives of the MDP, a high-level plan with numerous broad policies, which calls for densification in inner city areas.

106 Mr. Grol noted that the purpose statement of the M-CG District is met by the proposed development, as it is of low height and density. He noted that section 35 of the Bylaw requires the Development Authority to consider compatibility and impact of each development, which he submitted has been done correctly in the case of the proposed development.

107 Mr. Grol noted that parking concerns appear to be embellished and endorsed Mr. Uppal's presentation showing that traffic and parking concerns have been adequately addressed. He noted that a surplus of two more than the required number of parking stalls is sufficient to alleviate concerns surrounding potential street parking.

108 Mr. Grol noted that the majority of the windows of the proposed development facing the Appellants are vertical are not windows attached to living spaces.

109 Mr. Grol underlined the landscaping limitations due to the utility right of way, noting that plantings on the easterly property line are not possible. He explained that the planned Sutherland caraganas can grow to a up to a height of 16 feet or 5.0 metres tall, similar to a tree.

110 Regarding privacy and overlooking, Mr. Grol submitted that a degree of overlooking is expected in an inner-city environment. In the case of the proposed development, he highlighted the significant interface distance between the proposed development and the rear facade of the Appellants' homes, noting that the setback from the easterly property line varies from 4.0 metres to almost 5.5 metres, and the distance from the rear of the Appellants' homes to the rear property line is 13.34 metres or 43.77

feet. He further noted that trees on the Appellants' lots provide some natural buffer between the properties.

111 Mr. Grol reviewed the previously-detailed required relaxations and noted that the relaxations are all largely intertwined. He submitted that the issue before the Board is not the size, number, or the magnitude of relaxations, but rather if the test for relaxation is met: whether a proposed development unduly interferes with the amenities of the neighbourhood or materially interferes with the use, enjoyment or value of neighbouring properties. In this case, he submitted that the proposed development meets the test for relaxation.

112 Mr. Grol underlined Mr. Vera's submission regarding the building's positioning on the property, noting that by moving the development as close to the to the corner of the intersection as possible and staggering the units away from the Appellants' homes, a better urban design and a larger interface is created. He noted that the Applicant elected to forego balconies as part of the design in order to be sensitive to adjacent properties.

113 Mr. Grol noted that the City does not appear to have any intention to widen the adjacent roadway at 6 Avenue NW. He referred to a road widening table included in the Bylaw and noted that the intersection is not listed as a planned project.

114 Mr. Grol noted that waste and recycling arrangements must be satisfactory to the approval of the Development Authority for Multi-Residential developments. He noted that the Bylaw does not specify that a molok system cannot be in a side yard setback.

115 Mr. Grol addressed the grade-oriented design and the relaxation for the two units not visible from the street. He noted that in the immediate area, there are other Single and Semi-Detached Dwellings which similarly have front entrances not visible from the street.

116 Mr. Grol noted that while the main floors of most of the units are taken up by parking, there is nothing in the Bylaw suggesting that this type of grade-oriented orientation of a Dwelling Unit is unacceptable. He pointed out that the main living space of the Appellants' homes is also raised.

117 In summation, Mr. Grol submitted that the proposed development complies with the applicable plans and policies, is compatible with the adjacent developments and, from a planning perspective, is suitable and appropriate for the parcel, and asked that the appeal be dismissed.

118 In questioning, Mr. Vera explained that underground parking was not seriously considered during the design process as the cost is prohibitive, and the logistics for accommodation of waste and recycling collection as well as residential parking would not have been functional.

119 In questioning, Mr. Ni explained that 10 units was chosen as the appropriate number from a financial and contextual perspective. He noted that 12 units would have

been allowed on the parcel, however he determined that would be too many units and not a good contextual fit for the parcel.

120 In questioning, Mr. Vera explained that the site plan shows that the lower fences along the east property line shared with the Appellants are to remain. He noted that the fences in his renderings appear 2.0 metres high as he had assumed that the fences would be replaced during the construction process. Mr. Grol noted that the Applicant is willing to install a 2.0-metre fence all along the shared property line.

121 In questioning, Mr. Vera noted that the planned bench is on City-owned land just past the property line. The aim of the bench is to create an amenity for residents on the pathway area. He noted that the Applicant would be amenable to moving the bench to the other side of the pathway based on Appellants' concerns.

122 In questioning, Mr. Vera confirmed that snow removal would be conducted via private pickup.

Rebuttal:

The Development Authority

123 Ms. Maximattis-White noted that when the remnant parcel on the corner was sold to the Owner as part of the sale, the City kept a small sliver of land adjacent to the property for additional boulevard space. She noted that Mobility Engineering has reviewed the issue and are not aware of any plans to change or widen that intersection or road in that location in the future.

124 Ms. Maximattis-White noted that moloks can be in the setback area without the need for a relaxation pursuant to section 566(3) Bylaw because the waste in the moloks is constructed of maintenance free materials.

125 David Down, Chief Urban Designer supporting the Development Authority review team, addressed visibility concerns related to the subject parcel. He noted that as the site is a terminating element of the block, there was more flexibility for setbacks. He noted that it was advantageous to increase the dimension between the neighbors to the south and to the east, therefore the project was pushed forward on the lot. He noted that an important design consideration is the parcel's location at the end of a block, as it has less impact overall to the general character of the neighbourhood.

126 Mr. Down noted the design intent was to create an animated streetscape around the primary facades of this development, and the design configuration accomplished this even if living spaces are not at grade.

127 Planner and File Manager Benjamin Bailey noted that Appellants were consulted regarding a more generous eastern setback, bringing the building closer to 19 Street NW.

He noted that the Development Authority requested frosting for third floor windows in order to address privacy concerns, requiring a relaxation.

128 Mr. Bailey noted that consolidating the driveway access was the safest option, and the Development Authority required a consolidated access coming far south along the property line to limit curb cuts along the section of the block.

129 Mr. Bailey noted that the proposed development is well below the density maximum pursuant to the Bylaw.

130 Mr. Bailey noted that a shadow study was not required as it is not City practice to request shadow studies for small incremental changes such as those of the proposed development.

The Applicant

131 Mr. Grol noted that, if necessary, the Applicant would be amenable to changing the colour of some of the darker units to a lighter colour.

The Appellants

132 Ms. McClary noted that it is important to meet the land use district requirement that development be sensitive to low density residential development, and the proposed development has not achieved this.

133 Ms. McClary held that while the Development Authority may be able to approve a molok system in a setback area, section 552(7) of the Bylaw requires that all setbacks must be landscaped, which is not the case for the proposed development.

134 Ms. McClary noted that from a security perspective, the proposed development's design crates safety risks. She noted that the bench in particular poses a significant security risk being located adjacent to Ms. Torres' property and asked that it be eliminated from the design.

Reasons:

135 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.

136 The Board recognized from the evidence provided that this site is unique with several restrictions on development beyond the normal rules for the M-CG land use district. Noted by the Board are traffic restrictions limiting site access to only one possible area on the south edge of the site, an ENMAX powerline along the east edge restricting development along that side, no parking permitted on both street and avenue sides due to the angles of the intersection, and the unusually angled street intersection creating potential traffic sight line issues.

137 The Board also notes that there is no larger Area Redevelopment Plan nor Local Area Plan in place, so the rules of the Land Use Bylaw and the larger overview of the Municipal Development Plan apply.

138 The Development Authority used extensive discretion in allowing several relaxations of the M-CG district rules. These include relaxations of minimum setbacks, contextual setbacks, entry orientation, landscaping requirements, tree plantings, height limits, garbage bin locations, required percentage of unit area on the grade floor, third floor setbacks and under sized amenity areas. The net result for the developer by the Development Authority's allowance of relaxations was to allow more units to be placed on the site.

139 The Board understands the permitted density under M-CG is 12 units and 10 are proposed, and while parking required for 10 units would be 7 stalls, 9 (two extra) are provided as well as bicycle stalls in each garage. While this meets the Bylaw requirements for units and exceeds the requirements for parking, the unique difficulty of the site restricts the full density development potential of the site.

140 The Board finds that the Appellants' appeal is based on the increase in density permitted by the various relaxations, the lack of available street parking on the immediate streets adjacent to the project and the mass of the project being directly adjacent to their rear yard amenity spaces.

141 The Board found from the traffic engineer information that there is nearby parking available on adjacent streets most of the time, so the Board accepted that this was not an issue and would not affect the Appellants' use and enjoyment of their property.

142 The Board recognized that while there was no intervening lane between the Appellants' property and the proposed project, the developer has created a larger side setback on the east side (partially due to the clearance for the ENMAX power line), and with the existing landscaping on the Appellants' property, the minimal windows facing the Appellants, their privacy in their rear yards would be minimally affected. The Board agreed with the Appellants, however, that the location of entries along the rear property and accessing sidewalks to the units and to the parking garages would negatively affect the use and enjoyment of their rear yard amenity space.

143 The Board also noted the Appellants' concerns about loss of sunlight due to the project's massing on their west side. The relaxation of the third-floor setbacks (section 585(4)) does create more shadowing in the late afternoon on the Appellants' rear yard amenity area but the Board did not feel this would be substantial, finding that the Appellant's existing trees create much of the shadow effects, and the lower garage portion of the project minimized shadowing impact.

144 The Board finds the relaxation of the contextual setback on both street and avenue (section 583(1)(2)(3)) to be out of context with the immediate neighbours. The Board also notes that section 334 requires that the building must not be located in any required setbacks, and that the building is located in the 6 Avenue NW setback.

145 The Board finds that the loss of setbacks on the streets, the access to the units and the walkways required, the need to pave all of the inner courtyard for vehicle access, the height limitations imposed by the ENMAX power line, and the location of the garbage system unduly restricts the ability to provide landscaping to the standard expected for this district.

146 The Board notes that Section 341(1)(b) requires turn around space to be provided to allow vehicles to enter and exit the site in a forward direction. The Board noted that the vehicles will have difficulties doing this in the space provided, especially the proposed large molok vehicle and therefore not meeting the requirements of that section.

147 The Board found that the Development Authority accepting a plant material normally considered a shrub in the Calgary climate to be a tree form to be unusual and not a plant that most would consider for the purpose of maintaining a tree character in a neighbourhood. However, the Board accepted the Development Authority in the permitting this definition of the plant characteristics, i.e. having a trunk form.

148 The Board had no concerns about the architectural expression of the building, the materials proposed or the colours used.

149 The Board also had no concerns about the proposed bench being in the public area as it is actually off the property and the Board has no jurisdiction on the use of the public lands outside the development.

150 The Board notes that the Purpose Statement for this district in section 576 includes (f) setbacks to reflect local context and (i) provides landscaping as a buffer to nearby parcels. The Board finds that with the relaxations sought by the Applicant, the project as approved does not meet these purposes.

151 The Board acknowledges the direction of the Municipal Development Plan to allow increased density in the city and that the District M-CG zoning applied to this site allows this site to be redeveloped in a more dense format. However the Board determines, through the information provided, that this site cannot be developed to the density approved as are many unique elements to the site that can and do restrict site density development. The Board understands that this land use district has a series of rules applied for the district that primarily require a project to conform to the character and details of the area in which it is located. Because of the district rules, and the site's physical limitations, the Board determines that this project exceeds the functional density of the site, does not conform to the community context, creates relaxations beyond what is reasonable in the context, and therefore negatively, substantially, and materially impacts the immediate neighbours unduly in their use and enjoyment of their property.

152 The Board therefore finds that the test of Land Use Bylaw section 31 is not met. Section 35(d) compatibility to adjacent developments, (g) vehicle circulation, and (j) sound planning principles are also not met.

Conclusion:

153 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.



Robert Merchant, Board Member and Decision Writer
Subdivision and Development Appeal Board



Timothy Bardsley, Board Chair and Presiding Officer
Subdivision and Development Appeal Board

Issued on this 1st day of August, 2024.