

ALBERTA BEACH
SUBDIVISION AND DEVELOPMENT APPEAL BOARD

SUBDIVISION & DEVELOPMENT APPEAL BOARD HEARING DECISION
Hearing: Friday, May 28, 2021
Development Permit Application No. 21DP15-01

File No. 21SDAB15-01

Background:

The Subdivision and Development Appeal Board (the "Board") heard an appeal by Stirling Inc. represented by Kevin Haldane of Dentons Canada LLP of a condition of Development Permit No. 21DP15-01 issued by the Development Authority for Alberta Beach with respect to the construction of a dwelling on lands described as Plan 0423757, Block 2, Lot 18 – 4207-43rd Avenue within Alberta Beach, Alberta (the "Lands").

The Board heard from the Appellant's Legal Counsel, Mr. Kevin Haldane and Ms. Kim Kozak, Development Officer for Alberta Beach. Documents were provided to the Board, as follows:

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| Exhibit 1 | Letter of Appeal – Musuch Law – Received May 3, 2021. |
| Exhibit 2 | Development Officer's Report – Submitted by Kim Kozak |
| Exhibit 3 | <i>Newcastle Centre GP Ltd. v. Edmonton (City)</i> , 2014 ABCA 295 Alberta Court of Appeal – Submitted by Kevin Haldane |
| Exhibit 4 | Letter Opposing Development – Submitted by R. Curtis |
| Exhibit 5 | Letter Opposing Development – Property Owners of Grasmere Subdivision |

Decision:

The Board determined that the appeal by the Appellant, Stirling Inc., shall be upheld for the following reasons and the Development Permit No. 21DP15-01, Applicant: Stirling Inc., for the construction of a dwelling on lands described as Plan 0423757, Block 2, Lot 18 – 4207-43rd Avenue within Alberta Beach, Alberta (the "Lands") be approved with the following variance to Condition No. 4:

4. The exterior of the dwelling shall be constructed, with no portion of the shipping container exposed or visible and as shown in the exterior elevation plans submitted to the Development Authority on April 29, 2021 as follows:



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Reasons:

- (1) The proposed development complies with Section 2.4 Objective for Sustainability of the Municipal Development Plan No. 251-17 for Alberta Beach which states:

Modern design standards are encouraged for the development of new neighbourhoods and the revitalization of exiting areas of the community.

The Board considered that the Development Authority noted in the Development Officer Report of April 12, 2021, and agreed that the proposed development complies with Section 2.4 Objective for Sustainability of the Municipal Development Plan No. 251-17.

- (2) The Board considered the Development Officers Report of April 12, 2021, and noted that, as stated within the report, the proposed development was approved by the Development Authority.
- (3) The Board recognized that the proposed development may not comply with Section 4.6(b) of the Land Use Bylaw No. 252-17 which states:

4.6 BUILDING ORIENTATION AND DESIGN

The design, character and appearance of any building, or series of buildings, structure or sign proposed to be erected or located in any district must be acceptable to the Development Authority having due regard to:

- a) amenities such as daylight, sunlight and privacy,
- b) the character of existing development in the district, and
- c) its effect on adjacent parcels.

However, the Board considered *Newcastle Centre GP Ltd. v. Edmonton (City)*, 2014 ABCA 295 Alberta Court of Appeal to determine that Section 687(3)(d) of the *Municipal Government Act* would apply which states:

687(3) In determining an appeal, the subdivision and development appeal board

- (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

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- a) amenities such as daylight, sunlight and privacy,
- b) the character of existing development in the district, and
- c) its effect on adjacent parcels.

However, the Board concluded that based upon the *Newcastle Centre GP Ltd. v. Edmonton (City)*, 2014 ABCA 295 Alberta Court of Appeal decision the Board, under Section 687(3)(d) of the *Municipal Government Act*, has the authority to vary Condition No. 4 of Development Permit No. 21DP15-01. The Board determined that although the proposed development may not be in character with the existing development, the exterior finishing based upon the exterior elevation plans submitted on April 29, 2021, would not unduly interfere with the amenities of the neighbourhood nor would it materially interfere with or affect the use, enjoyment or value of neighbouring parcels of land. The Board also noted that, as presented by Mr. Kevin Haldane, no architectural guidelines regulating exterior finishes have been registered on title of the subject lands.

- (3) The Board considered the submissions by residents, however, the Board determined that the submission that the Development Permit be cancelled is not relevant as a modular home is a permitted use under the R1 Area of the Land Use Bylaw No. 252-17. Further, the Board has varied Condition No. 4 of Development Permit No. 21DP15-01 to define the exterior finishing requirements for the proposed development.

A decision of the Subdivision and Development Appeal Board is final and binding on all parties and persons. Subject only to an appeal on a question of law or jurisdiction, an appeal lies to the Alberta Court of Appeal from a decision of the Subdivision and Development Appeal Board, pursuant to Section 668 of the *Municipal Government Act*, Revised Statutes of Alberta 2000 Chapter M-26. An application for leave to appeal shall be made:

- (a) to a judge for the Court of Appeal; and
- (b) within thirty (30) days after the issue of the decision sought to be appealed.



Denis Meier, Chairperson
Subdivision and Development Appeal Board



Emily House, Clerk
Subdivision and Development Appeal Board



Date of Decision