

To Tammy Henry in response to request via Dan Godin of the Federation of Calgary Communities

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5 Unsuccessful Infills

Introduction

Five new houses on the 1600 block of Broadview Road NW illustrate the failure of "Contextual Dwellings" to protect a streetscape that is well maintained and not in decline. This block has 15 houses that are over 100 years old, out of the 17 that were there in 1912. Here is a montage of the houses west of the 5 new ones showing the general character of the street:



Below in Figures 1 and 2 the two houses on the right were "Contextual". They varied drastically from the existing streetscape but could not be appealed by the neighbours. The three "Proposed Dwellings" (under red arrows) show the original Discretionary Designs (Figure 1) which were rejected by the Subdivision Appeal Board on appeal by the neighbors, and the accepted Contextual Designs that were built (Figure 2).



Figure 1 - SDAB Overturned Discretionary DP Designs

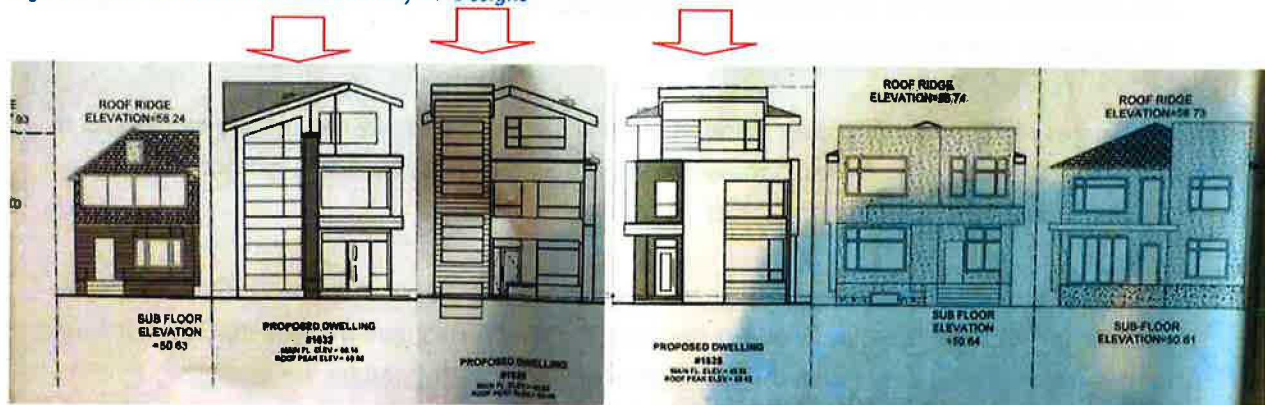


Figure 2 - Accepted Contextual DP Designs

We feel the SDAB must be considered impartial, objective and the ultimate authority with regards to planning decisions. It is very disappointing that, after a hearing, specific SDAB rulings can be completely ignored by developers via a Contextual DP. We would like to show how the Contextual DP option can completely fail the existing residents of a community by offering no real protection of the existing streetscape.

SDAB Rulings and Contextual DP Results

All three of the houses proposed in Figures 1 and 2 were to be built at the same time and all three were appealed by the neighbours. The Subdivision Appeal Board agreed that the appeal had merit and proceeded to hear all three at the same time. They ruled on all three separately, but the rulings were nearly identical for each. We have selected rulings below that highlight how strongly the SDAB agreed with the concerns of the community. Comments after the rulings summarize what resulted from the Contextual DP's

The Subdivision Appeal Board said in their decision SDAB2013-126 (see also 2013-127, 2013-128):

"22 It is of significance that there are no three storey developments on this block. The streetscape on the subject block consist predominately of traditional, two storey, homes with pitched style roofs and of some newer two storey developments that are very respectful of the existing homes on the block. Some of the existing homes on the street are "original" dwellings which have been well maintained and upgraded, including the appellant's home to the west of the proposed developments. These are factors to be considered."

"25 The Board, based on the evidence, finds that the proposed development in combination with the other two proposed developments together appears to be an attempt to establish an architectural style, massing, and setback pattern on the street that is not in keeping with the existing street context. This effectively would redefine the streetscape and ignore the ARP and Infill Guidelines. The ARP policies in this case have been used selectively while at the same time ignoring other relevant applicable policies that serve the compatibility aspects as referenced in section 35(d) of Land Use Bylaw 1P2007. The ARP and Infill Guidelines are not a menu but a collection of policies and guidelines that is to be used together for proposed developments and to provide an overall concept for the context of the streetscape and immediate neighbourhood, and reference points for the compatibility of a proposed development with respect to adjacent development and the neighbourhood."

The minor changes required for approved Contextual DP's did not materially change the architectural style and actually allowed for increases in massing, and reduced front setbacks. It is fair to conclude that the resulting buildings redefined the streetscape.

"26 In the Board's opinion the massing of the proposed developments serves to dominate the streetscape with architecturally different styles, building forms, and designs that are not found on the street. By not respecting the established setbacks as defined by the existing developments, the development as proposed would effectively change the character of the streetscape. As a consequence of the proposed development, view lines from the existing

dwellings would be forced towards the streets and the existing open view lines from open front porches and verandas, which are characteristic for the street and area, would be severely diminished.”

The Contextual DP’s allowed developments that dominate the streetscape as the SDAB warned. Established setbacks were not respected. Open view lines were severely diminished.

“27 The applicant submitted that the articulation in the side elevation would reduce massing. The Board finds this argument not persuasive. Especially, since the proposed development is much deeper than the existing adjacent developments, the Board finds the side elevation articulation is not sufficient to mitigate the overall massing impact of the development, particularly given the three storey high sidewalls.”

Contextual DP’s do not need to address massing concerns and are free to maximize the allowable building envelope.

“28 The Board finds that the applicant has tried to maximize the building envelope, allowed under the Land Use Bylaw, as much as possible. Because the Land Use Bylaw allows a three storey development, in the Board’s view does not mean that, from a planning perspective, such development maximized to the allowable building envelope - including a third storey - would be appropriate on the subject property.”

All three Contextual DP’s were allowed third storeys and maximized envelopes. The areas of the third storeys in the Contextual DP’s were actually increased beyond those applied for in the Discretionary DP’s by 150 ft² to 358 ft² for each of the three.

“29 The Board notes the Development Authority is of the opinion that the proposed development meets the 15 percent rule as outlined in section 2.4.1.1 of the ARP. Respectfully the Board disagrees. The intent of this rule is to encourage front porches or verandas that are typical for homes in the neighbourhood. In the Board’s view this has not been sufficiently achieved in this case. The Board finds that despite the horizontal window placement the subject development is very vertically oriented, in particular at the southwest corner of the front façade which emphasizes the three storey height of the home and has a dominating appearance on the streetscape. In addition, this façade portion contributes to the massing of the development. In the Board’s opinion the development could have been designed in a manner that meets the 15 percent rule.”

The final Contextual DP’s did not have to conform to the 15 percent rule. Most of the features that were described as having “a dominating appearance on the streetscape” were maintained in the Contextual DP’s.

“30 In the Board’s view, a new development should complement and harmonize with the existing homes, which this development does not. From a planning perspective, the proposed development should in the Board’s opinion be more respectful of the adjacent homes and more aligned with the existing homes to the west and east on the block. It

should have been set back further on the parcel by approximately 1.5 metres to be more aligned with the existing front setbacks on the street as this would meet the ARP guideline of section 2.4.1.1, which recommends a greater front yard setback if the proposed building height exceeds that of adjacent homes."

The final Contextual DP designs of the two easternmost of the three houses actually reduced the front setbacks further by 0.4 m and 0.9 m to the minimum allowed for the Contextual DP!

"32 The Board ... finds that the proposed development is not compatible with the streetscape and does not respect the local context of the adjacent homes and the streetscape. The proposed development is not sensitive to and not respectful of the appellants' homes and the other homes on the block."

"35 Having regard to the merits of the application, or lack thereof, and sound planning considerations, the Board, based on the evidence and aforementioned factors, finds that the proposed development is incompatible with the adjacent developments and the immediate neighbourhood. The Board finds that the proposed development from a planning perspective is not appropriate for the site."

Additional Comments

The final Contextual DP's did not have to respect the alignment of windows. The bedroom windows on the westernmost development line up directly with bedroom windows in the pre-existing house and this creates very obvious privacy issues. Discretionary DP designs should refer to the "Low Density Residential Housing Guidelines for Established Communities" which has specific guidelines about privacy and specifically about aligning windows with those of neighbouring properties. Contextual DP's do not need to address these guidelines.

Considered by itself none of the three houses could have been built to the heights they are. There were originally two bungalows located on the properties. By demolishing both bungalows and applying for all three houses at the same time the developer was able to use two storey houses on each side as the basis for the contextual setback and height calculations. Any of the three built on its own would have had to respect the height and setback of an adjacent bungalow.

The final roof lines on the easternmost of the three developments were modified at some point after the initial Contextual DP. They added additional roof pieces sloping away from the street, further increasing the apparent massing and the "dominating appearance". This is not seen in Figure 4 as the additional roof massing was later built on top of the roof shown in these photos.



Figure 3 - Contextual DP Design and Actual Construction

Conclusion

Our experience with these appeals was very disheartening. We hope this example and the SDAB rulings help to demonstrate how the Contextual DP bylaws can be abused to ignore the advice of planning experts and ultimately to ignore established neighborhoods and streetscapes. The SDAB's decision and rulings were very strong and agreed with the sentiments of the community. It was very disappointing how quickly the developer could turn around and ignore most of the findings of the SDAB. Had the Contextual DP bylaws prohibited a third storey or imposed other significant restrictions a Contextual DP would not have been an attractive option to the developer. Then perhaps the developer would have been willing to listen to the input from the community before or during the SDAB proceedings.

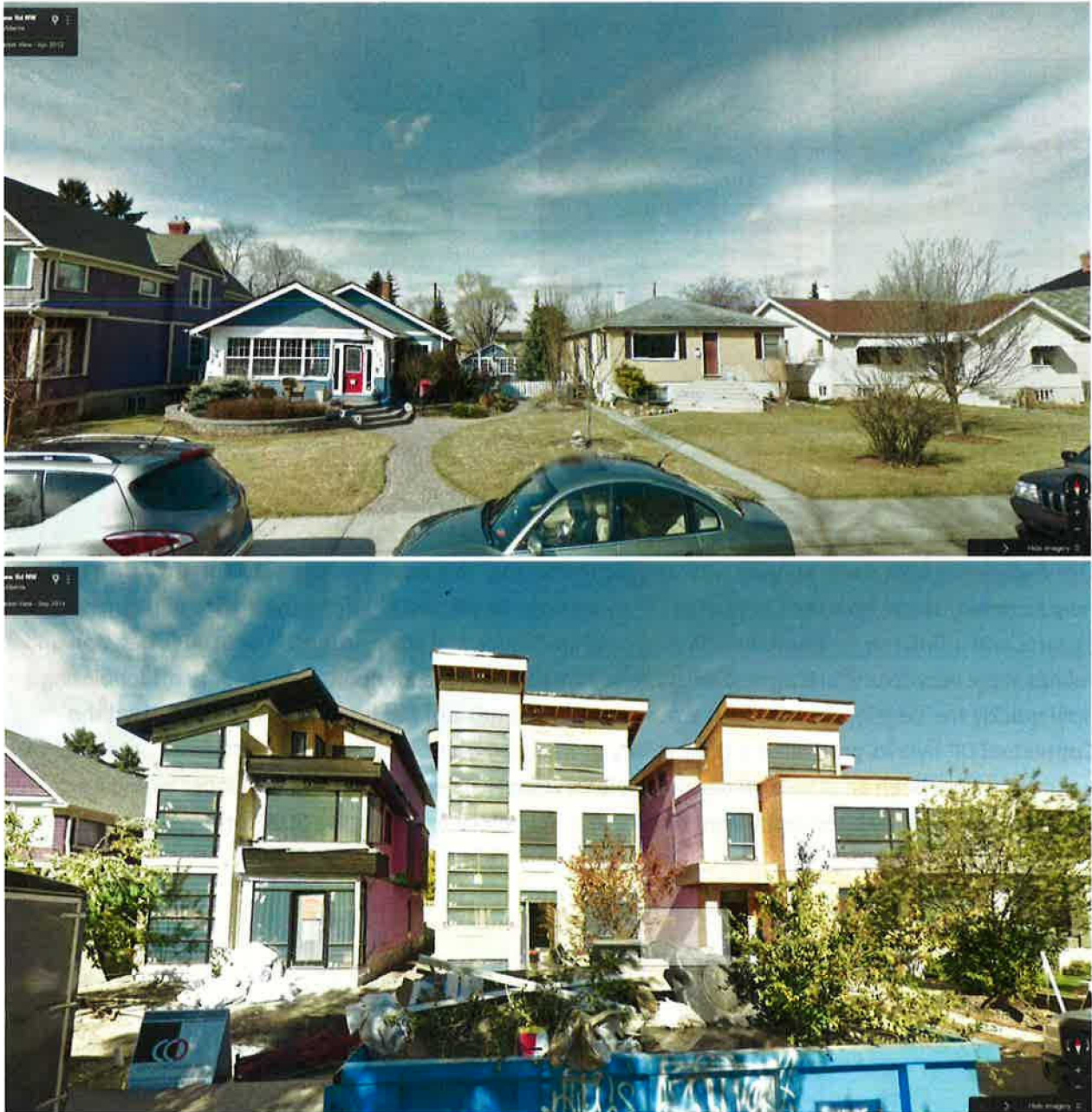


Figure 4 - Streetscape Before and During Construction

MICKY GULLESS

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February 12, 2014

Re: Bylaw 1P2007 needs change to protect established neighborhoods

Dear Councillor Druh Farrell:

Please help us save our street if you can. Can you help overturn a recent Development Permit for a Contextual Single Dwelling that has already been approved (January 24) and released (January 28)?

As I expect that is unlikely, please **champion a change in the Land Use Bylaw to protect our established neighborhoods.**

The Land Use Bylaw 1P2007 requires a small change to **plug a loophole that allows developers to disregard all the democratic mechanisms that are in place to guide the redevelopment of an area** - such as the statutory Area Redevelopment Plan, the Infill Guidelines, the opportunity to appeal a Permit, the judgement of the Development Authority, and the context of the street.

In the Bylaw, the word "Contextual" is just a word without a definition (in Contextual Single Dwelling or Contextual Semi-detached Dwelling). It is not supported by the rules required of a Contextual Dwelling. However, in *A Guide to Contextual Dwellings* (April 22, 2013), on Page 4 it says "New development that is sensitive to adjacent buildings." Unfortunately, the Bylaw does not support this statement.

Further, the Development Authority is required to approve a Development Permit for a Contextual Dwelling if it meets all those rules, regardless. Those rules do not include any reference to context or to the democratic mechanisms mentioned above. (This could be the reason why many people think that the Development Authority is unfairly on the side of the developers much of the time.)

This loophole has allowed developers to destroy the heritage character of our block - the 1600 block of Broadview Road NW. Four contiguous bungalows came up for sale and were bought by 2 developers. The first developer got a permit for 2 Contextual Dwellings that are massive and not sensitive to the context of the surrounding houses. At that time, we relied on the Hillhurst Sunnyside Community Association to guide us and they said there was nothing we could do to stop this development. Two bungalows on those properties were demolished, and two large new houses built.

The second developer demolished 2 other bungalows, split the 2 lots into 3, then proposed 3 Discretionary Houses, and was granted a Development Permit. My neighbors appealed and we got the Development Permit revoked. That developer reapplied and received a permit for 3 Contextual Houses (released January 28, 2013-5259, -5260, -5262) that are in most aspects very similar to the earlier Discretionary ones. While there have been some minor changes (including to the roof lines), these houses are still massive and very much like the ones that were opposed by nearly our entire block (87%). **Our objections were not frivolous** as evidenced by the Subdivision Appeal Board's support of our appeal of the Discretionary houses and they revoked the Development Permit. (See quotes at the end.) These houses have not yet been started.

The Bylaw says:

51 (1) Nothing in this Bylaw diminishes or in any way affects the powers of a *Development Authority* to issue orders for compliance or in any way affects any person's rights to appeal a *Development Authority's* order.

However, we were deprived of our opportunity to appeal these developments because the Development Authority does not advertise Development Permits granted for "permitted uses with no relaxations." So we missed the window to appeal these permits which was required by about February 6. Also, as we are completely unfamiliar with the permitting process, it took some time to develop an argument to support an appeal, and by then it was too late.

We are now stuck with a solid wall of 5 massive and boxy houses, side by side, on a street that still has 15 Century homes in good condition. Only 2 of the original 17 homes built in 1912 or earlier are gone. All the houses on the street are in good condition. See <http://www.fuzzylogic.ca/broadview100/>. (Actually the four that were demolished were also in relatively good condition.)

The developers cannot argue that the market requires these massive boxy houses because old houses in this block have sold recently on the very first day they were listed, some with multiple offers. In fact, the two people who submitted the appeals are recent arrivals to the street and bought their houses on the first day they were listed largely because of the ambience of the streetscape.

This example clearly illustrates how this loophole has **allowed the developers to flaunt democracy, control the system**, and ignore the statutory Area Redevelopment Plans, the Infill Guidelines, the context of the street, the opinions of the people living there, and the support of those opinions by the Subdivision Appeal Board.

While I understand that people building new houses just want clear rules and fast approvals, I think that it is also important for all involved parties to take the time to consider what we are adding to our neighborhoods as these new houses will probably stand for a hundred years. I hope we can count on your support to protect our established neighbourhoods.

Following are some quotes from the **DP 2013-1829** SDAB decision revoking the Discretionary Permit.

Page 11

23. "... The proposed development dominates the streetscape and in terms of massing towers over the older existing development and newer development on the streetscape. Architecturally no consideration has been given to style and design elements ..."

25 "... an attempt to establish an architectural style, massing, and setback pattern on the street that is not in keeping with the existing street context. This effectively would redefine the streetscape and ignore the ARP and Infill Guidelines. The ARP policies in this case have been used selectively while at the same time ignoring other relevant applicable policies that serve the compatibility aspects as referenced in section 35(d) of Land Use Bylaw 1P2007. ..."

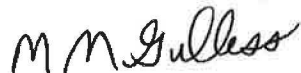
Page 12

32. "... the proposed development is not compatible with the streetscape and does not respect the local context of the adjacent homes and the streetscape. **The proposed development is not sensitive to and not respectful of the appellants' homes and the other homes on the block.**"

Page 13

35. "... the proposed development is incompatible with the adjacent developments and the immediate neighbourhood. **The Board finds that the proposed development from a planning perspective is not appropriate for the site.**"

Yours truly,



Micky Gulless and Garry Haggins
(owners of 1638 and 1644 Broadview Road NW)

cc: City of Calgary:

Senior Heritage Planner - Darryl Cariou
Development Authority - Anthony Pirri
Subdivision Appeal Board
Mayor Nenshi

Hillhurst Sunnyside Community Association, Community Planning - Lisa Chong, Ken Uyeda
Calgary Heritage Initiative - Cynthia Klaassen, President
Andrew and Liz Hoskin
Doug and Cate Daupinee