

## Stakeholder Correspondence

Please consider this my letter of response to the proposed 'neighbourhood restaurant' use per council's directive.

I support the new use, with one particular exception, that being the proposed rule:

"Facades facing a residential district or abutting a lane separating the parcel from a residential district **must not** have any openings, **except** emergency exits, loading bay doors or non-opening windows" (emphasis mine)

My concern is that there is clearly a loophole within the rule that exempts one from the rule, which is counter-productive to the reason for the rule being necessary in the first place. In my view, the rule should be non-negotiable: NO OPENINGS OF ANY SORT on a facade that faces a residential district, period. Another concern related to this is that the new use makes no mention of the rear of the building's orientation relative the adjacent (residential or otherwise) properties, and thus, where is the 'rear door'? I.E. where is the interface between the two, and how might it affect adjacent neighbours?

Should you be interested in an example of why it is necessary to require this to be a non-relaxable rule, in order to protect current and/or future adjacent residents from current and/or future business operators, please see Prior to Release Condition 1.c of the attached decision by SDAB. I believe Mayor Nenshi was involved in this case, and was concerned about the problems associated with having a business' sideyard operations happening within 4 feet of a residential backyard.

Additionally, I think it bears mentioning that there is no mention of a fence, which would rightly be the responsibility of the business, and with a minimum height (2 metres?) and reference to it being constructed of appropriate material to shield neighbours. Again, you can reference SDAB2013-0137, PTR Condition 1.a.

Thank you for the opportunity to be a part of the stakeholder consultation process. Your team has done some excellent work in this regard. Let's hope that all parties' concerns are accounted for and heard by council on this matter.

Cheers,  
Lori Losowy

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FILE NO. DP2013-1526

APPEAL & DECISION NO. SDAB2013-0137

### CALGARY SUBDIVISION AND DEVELOPMENT APPEAL BOARD

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Hearing held at: Calgary, Alberta

Date of hearing: October 31, 2013 and November 14, 2013

Members present: Rick Grol, Chair  
Kerry Armstrong  
John Attrell  
Sally Haggis  
Jo Anne Atkins

Basis of appeal: This is an appeal from an approval by the Development Authority for a development permit made on the application of **Permit Masters** for a **change of use: restaurant food service only - small, new: outdoor café** at 1105 1 Avenue NE.

Appeal filed by: **Mike Losowy**

This appeal was originally heard on October 31, 2013, but was adjourned by the Board to November 14, 2013 as the Board required the applicant to provide the previously approved development permits and plans for the property.

#### Description of Application:

The appeal before the Subdivision and Development Appeal Board (Board) deals with an approval by the Development Authority for a development permit application for a change of use to a small restaurant food service only and a new outdoor café at 1105 1 Avenue NE. The property is located in the community of Bridgeland/Riverside and has a land use designation of Commercial - Neighbourhood 1 (C-N1) District.

Calgary Subdivision and Development Appeal Board  
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ISC: Unrestricted

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### Hearing:

The Board heard verbal submissions from:

Karen Shalanski, an affected neighbour, in favour of the appeal,  
Mike Losowy, the appellant, in favour of the appeal, and  
Peter Schryvers, the applicant, in opposition to the appeal.

### Summary of Evidence:

The Board report contains the Development Authority's decision respecting the development permit application and the materials submitted by the Development Authority that pertain to the application, and forms part of the evidence presented to the Board. The Board report contains notice(s) of appeal(s) and any documents, materials or written submissions submitted by the appellant(s), applicant and any other parties to the appeal.

Appendix A attached to this decision contains the summary of evidence from the parties submitted at the hearing and forms part of the Board's decision.

### Decision:

In determining this appeal, the Board:

- Complied with the provincial legislation and land use policies, applicable statutory plans and, subject to variation by the Board, The City of Calgary Land Use Bylaw 1P2007, as amended, and all other relevant City of Calgary Bylaws;
- Had regard to the subdivision and development regulations; and
- Considered all the relevant planning evidence presented at the hearing, the arguments made and the circumstances and merits of the application.

1. **The appeal is allowed in part and the decision of the Development Authority is varied.**
2. **The development permit shall be issued as approved by the Development Authority subject to the following amendments/additions to the conditions of approval.**

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### Conditions of approval

#### Prior to release conditions

- The following prior to release condition is added:

The following are the required prior to release conditions. All prior to release requirements shall be submitted and completed to the satisfaction of the Development Authority before the development permit will be released.

1. The applicant is required to submit five (5) sets of amended plans (file folded and collated), to the satisfaction of the Development Authority.

The plans shall be in accordance with directions of the Subdivision and Development Appeal Board as per decision SDAB2013-0137.

The amended plans must show the following:

- (a) The plans must indicate a fence (on the parcel) along the southerly property line. The fence shall have a height of 2.4 metres and shall be a solid, double layered, wood fence. This fence shall extend all the way from the westerly building façade to the east property line of the parcel;
- (b) The garbage facilities on the property must be fully enclosed on all sides including the top. The doors of the facility must be closed at all times except for facilitating garbage disposal or garbage pick-up by means of roll-in, roll-out of the garbage containers. The garbage containers shall be stored in the garbage enclosure;
- (c) The current side door at the south elevation of the building (near the rear) that provides access and egress from the kitchen must be relocated to the easterly (rear) façade of the building;
- (d) A gate must be placed between the easterly rear façade of the building and the required 2.4 metre high fence along the southerly property line; and
- (e) The roof top mechanical equipment must have added sound attenuation, to the satisfaction of the Development Authority. In addition, the roof mechanical screen, as show on the plans of the existing permit, must be a solid, double layered, painted wood screen with no gaps and raised to a height of 6 feet along the south

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side and returning an additional 8 feet in length on the east and west sides;

In order to expedite the review of the amended plans, please include the following in your submission:

- (1) Four (4) of the plan set(s) shall highlight all of the amendments with annotations accordingly;
- (2) Four (4) detailed written response(s) to the conditions of approval document that provides a point by point explanation as to how each of the prior to release conditions were addressed and/or resolved; and
- (3) In addition to the full sized plans requested above, please submit one (1) 11 x 17 complete set of plans for the purpose of the development completion permit (DCP) process.

### Permanent conditions

- Permanent condition number three (3) is deleted in its entirety and replaced with the following condition:
  3. A development completion permit shall be applied for, and approval obtained for the proposed development. A development completion permit is independent from the requirements of building permit occupancy. Call Development Inspection Services at 403-268-5311 to request a site inspection for the development completion permit.
- The following permanent conditions are added:
  6. This permit is valid for a period of three (3) years from the date of approval. On expiry of this period, the development shall be discontinued. A new development permit must be applied for prior to the expiry date of this temporary permit and approval must be obtained for the use to continue without interruption.
  7. Loading and unloading shall take place on the parcel only.
  8. The garbage facility must be fully enclosed on all sides including the top (roof). The doors of the facility must be closed at all times except for the disposal of garbage and/or garbage pick-up by means of roll-out/ roll-in of

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the garbage containers. The garbage containers shall be stored in the garbage enclosure.

9. There shall be no outside storage of materials.

### Reasons:

1 Having considered the written, verbal, and photographic evidence submitted, the Board notes that the appeal pertains an approval by the Development Authority for a development permit application for a change of use to a small restaurant food service only and a new outdoor café at 1105 1 Avenue NE. The property is located in the community of Bridgeland/Riverside and has a land use designation of Commercial - Neighbourhood 1 (C-N1) District pursuant to Land Use Bylaw 1P2007.

2 The appellant, who resides immediately adjacent to the subject development, expressed several concerns regarding the proposed development. The appellant referenced the history of the existing restaurant development on the property and how it impacts the use and enjoyment of his property. At the hearing the appellant elaborated on his concerns. The appellant submitted that they are not trying to stop the restaurant from operating. They just want their concerns about privacy, noise and garbage being addressed.

3 The Board has regard to the following sections of Land Use Bylaw 1P2007 including but not limited to:

Section 35 states:

#### Discretionary Use Development Permit Application

- 35 When making a decision on a *development permit* for a *discretionary use* the *Development Authority* must take into account:
- (a) any plans and policies affecting the *parcel*;
  - (b) the purpose statements in the applicable land use district;
  - (c) the appropriateness of the location and *parcel* for the proposed *development*;
  - (d) the compatibility and impact of the proposed *development* with respect to *adjacent development* and the neighbourhood;
  - (e) the merits of the proposed *development*;

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- (f) the servicing requirements;
- (g) access and transportation requirements;
- (h) vehicle and pedestrian circulation within the *parcel*;
- (i) the impact on the public transit system; and
- (j) sound planning principles.

4 Section 702(2) lists "Restaurant: Food Service Only – Small" as a permitted use in existing approved buildings. Section 703(2) lists "Restaurant: Food Service Only – Small" as a discretionary use in an existing building that does not have at least one commercial use that has been approved after the parcel was designated as a commercial land use district. Section 703(3) list "Outdoor Café" as a discretionary use in the C-N1 District.

5 The Board also has regard to the Bridgeland-Riverside Area Redevelopment Plan (ARP).

6 The Board acknowledges the submissions of all parties, including but not limited to the appellant, applicant, Development Authority and interested/affected parties, either in favour or against the appeal.

7 The Board reviewed the context of the proposed development and the required relaxations having regard to sound planning considerations, the merits of the application, the circumstances of the case and the evidence presented.

8 According to the Development Authority development permit DP1991-2789 was approved for the parcel. This permit restricted the maximum number of seats of the restaurant in the building to 12 seats. Subsequently, the Development Authority approved development permit DP2004-2148 which was for exterior renovations to the building. This permit restricted the maximum number of seats for the outdoor café (outdoor patio) to 20.

9 The Board notes that the Development Authority considered the development as a discretionary use development (page 53, Board report). With respect to the subject application, the Board, based on the evidence, finds that section 703(2) of Land Use Bylaw 1P2007 applies as not at least one commercial use has been approved after re-designation of the parcel to a commercial district. The parcel had previously a land use designation of DC Direct Control District pursuant to a DC Bylaw. In 2012 Council re-designated the site to C-N1 District, which is a commercial district. The currently existing uses in the building were approved under the DC Bylaw. No commercial use in the building was approved after land use re-designation to a commercial district (i.e. the

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current C-N1 District). Therefore, in this case pursuant to the Land Use Bylaw the proposed restaurant use is a discretionary use.

10 The application requires the following relaxations of Land Use Bylaw 1P2007:

- (a) A parking relaxation of 22 parking stalls. Pursuant to the Bylaw, the proposed development on the parcel requires a total of 26 parking stalls. Four stalls are provided on site. Therefore the relaxation amounts to 550 percent;
- (b) A relaxation of 18.5 metres of section 247(g) of the Bylaw for the minimum required distance of 25 metres of the outdoor café from a residential district. The distance is 6.5 metres. This is a 74 percent relaxation; and
- (c) A relaxation of 29.6 square metres of section 247(f) of the Bylaw for the maximum area of the outdoor café (maximum 25.0 square metres). The outdoor café has an area of 54.6 square metres, resulting in a relaxation of 118 percent.

11 As stated above, the Board notes that the proposed development is a discretionary use development. Both the restaurant use and outdoor café use are discretionary uses under the Land Use Bylaw. Therefore the development permit application can either be granted or refused on the basis of sound planning considerations.

12 The Board takes into consideration that the existing restaurant and outdoor café are existing uses that were previously approved, and that the restaurant has operated for some time on the property. However, the subject application seeks to expand the restaurant use and outdoor café on a larger scale than the previous permit allows. The Board notes that the proposed development increases the size of the outdoor café (outdoor patio) to 20 seats. The subject application and permit would eliminate the seating restriction for the restaurant in effect under the existing development permit. The Board finds that proposed development results in an increase of the intensity of the uses on the site.

13 Pursuant to section 35(d) of Land Use Bylaw 1P2007 the compatibility and impact of the proposed development with respect to adjacent development (i.e. the appellant's home) and the neighbourhood need to be taken into account.

14 The Board notes there is a reason why the Land Use Bylaw in section 247(9) contains a minimum separation distance of 25 metres for restaurants from a low density residential district. The intent of this Bylaw provision is to limit the impact of a restaurant use on a neighbouring residential use.

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15 The Board accepts the evidence of the appellant that the restaurant has a substantial impact on the use and enjoyment of his property and on the appellant's privacy. In the Board's opinion, the appellant was credible and provided compelling evidence of the impact of the restaurant use on his property. The restaurant and outdoor café is in close proximity to the appellant's residential home. The Board, based on the evidence, finds that the increase of intensity of the restaurant and outdoor café use exacerbates the impact of the restaurant on the appellant's property. It creates nuisances on the adjacent residential property. The Board also accepts the appellant's evidence regarding restaurant staff congregating along the side property line and smoking. In the Board's view this is a nuisance which is directly associated with the restaurant use and has a negative impact on the use and enjoyment of the appellant's property. There is a door near the rear of the building that provides direct access to side yard which in the Board's view attributes to this nuisance.

16 The Board finds that the required Bylaw relaxations in this case are substantial. Based on all the evidence and aforementioned factors, the Board finds that the development as proposed has an undue impact on the use and enjoyment of the appellant's neighbouring property.

17 The Board, having regard to all the evidence, finds that the proposed height increase to 6.5 feet of the fence, which is located along the property line between the appellant's property and the restaurant, is insufficient to mitigate the privacy and other concerns of the appellant. The Board further takes into account that the applicant stated that his client would be amendable to extend the length of the fence to the entire length of the south property line.

18 The Board is less concerned about the parking relaxation. While the parking relaxation is significant in terms of magnitude, the Board notes that the site has functioned as such for many years. In the opinion of the Board there is a certain amount of walk-in traffic from the neighbourhood and there is public parking available along 1 Avenue NE. It is an inner-city location that typically has less parking demand than suburban commercial locations. In addition, any commercial use on the site would be deficient in parking. These are factors to be considered.

19 On the balance of the evidence, the Board finds that the proposed development from a planning perspective would be appropriate for the site, albeit subject to some specific conditions of approval that would ensure that the proposed development is more compatible with the adjacent residential development.

20 In the Board's view, from a planning perspective, it is necessary to impose additional conditions of approval on the subject permit that would mitigate the negative impacts of the restaurant use on the appellant's neighbouring property.

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21 Having regard to sound planning considerations, the Board imposes the following additional conditions of approval. A permanent condition is imposed that the approval of the permit is for a term of three (3) years. This would allow the Development Authority to reassess the appropriateness of the proposed development after a period of three years.

22 Further a prior to release condition is added that amended plans must be submitted that indicate the following: (a) The plans must indicate a fence (on the parcel) along the southerly property line. The fence shall have a height of 2.4 metres and shall be a solid, double layered, wood fence. The fence shall extend all the way from the westerly building façade to the easterly property line of the parcel; (b) The garbage facilities on the property must be fully enclosed on all sides (including the top). The doors of the facility must be closed at all times except for facilitating garbage pick-up by means of roll-in/ roll-out of the garbage containers; (c) The current side door at the south elevation of the building (near the rear façade) that provides access and egress from the kitchen must be relocated to the easterly (rear) façade of the building; (d) A gate must be placed between the easterly rear façade of the building and the required 2.4 metre high fence along the southerly property line (in order to limit direct access to the southerly side yard); (e) The roof top mechanical equipment must have added sound attenuation in the form of a solid, double layered, painted wood screen with no gaps. In addition, the roof mechanical screen must be raised to a height of 6 feet along the south side and returning an additional 8 feet in length on the east and west sides; and (f) All loading and unloading for the restaurant must take place on site only and there shall be no outside storage. Accordingly, the Board imposes additional permanent conditions to the same effect and varies some of the permanent conditions.

23 The Board finds that the proposed development and relaxations, with the imposition of the additional aforementioned conditions, would meet the criteria of section 687(3)(d) of the *Municipal Government Act*.

24 Accordingly, pursuant to section 687(3)(d) of the *Municipal Government Act*, the Board finds that the proposed development and required relaxation, with the imposition of the additional aforementioned conditions, would not unduly interfere with the amenities the neighbourhood, or materially interfere with or affect the use or enjoyment of neighbouring parcels of land.

25 The Board, however, wants to make it abundantly clear that the Board would not have approved the proposed development without the aforementioned specific conditions.

26 For the above reasons the Board allows the appeal in part and varies the decision of the Development Authority.

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27 A development permit shall be issued as approved by the Development Authority subject to the above listed amended/additional conditions of approval.

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Rick Grol, Chair  
Subdivision and Development Appeal Board

Issued on this 30<sup>th</sup> day of December, 2013

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