

In the Court of Appeal of Alberta

Citation: Hawkesworth v Edmonton (City), 2026 ABCA 171

Date: 20260521

Docket: 2603-0018AC

Registry: Edmonton

Between:

Kathy Hawkesworth

Applicant

- and -

**The City of Edmonton, Edmonton Subdivision and Development Appeal Board, and
2036386 Alberta Ltd.**

Respondents

**Reasons for Decision of
The Honourable Justice Tamara Friesen**

Application for Permission to Appeal

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[1] The applicant seeks permission to appeal a decision of the Edmonton Subdivision and Development Appeal Board (the Board).

[2] The Development Authority, the City of Edmonton, approved a development permit submitted by the developer 2036386 Alberta Ltd. The scope of the approved permit was to “construct a Residential Use building in the form of a 4 Dwelling Row House with 4 Secondary Suites and unenclosed front porches (NOT to be used as a Lodging House).”

[3] The applicant, who owns property and lives near the proposed development, appealed the Development Authority’s decision to grant the development permit. The Board denied the appeal and upheld the development permit on the basis that the Development Authority had not relaxed, varied, or misinterpreted provisions of the relevant zoning bylaw.

[4] The applicant seeks permission to appeal the decision of the Board to this Court on six grounds. For the following reasons, permission to appeal is granted on three of the six grounds.

Background

[5] This application arises in the context of a change to Edmonton’s zoning bylaw. Under the previous zoning bylaw, City of Edmonton Zoning Bylaw 12800, many neighbourhoods were predominantly single-family residential neighbourhoods. On January 1, 2024, the City of Edmonton passed a new zoning bylaw: City of Edmonton Zoning Bylaw 20001 (the Zoning Bylaw). The Zoning Bylaw allows up to eight units on a single interior lot and up to 10 units on a corner lot in these formerly single-family neighbourhoods. This move towards greater urban densification has created opportunities for developers. At the same time, it has raised various concerns for people living on neighbouring properties, some of whom have appealed the granting of permits for such developments to the Board.

[6] In their written materials, the applicant identified 21 decisions of the Board from the last eight months dealing with issues akin the ones addressed in this application. The applicant argues this demonstrates both the broad importance of these issues as well as the need for appellate guidance to resolve some of these issues. The applicant says this is the first of these decisions to reach the Court of Appeal level.

[7] The City of Edmonton and the developer submit that any uptick in appeals to the Board on these issues simply reflects disagreement with urban densification policy choices made by City

Council. They argue this Court should only intervene with Board decisions in limited circumstances, which are not present here.

Legal Test

[8] Under the *Municipal Government Act*, RSA 2000, c M-26, s 688(3) (the *Act*), a judge may grant permission to appeal a decision of the Board where an applicant demonstrates the appeal involves a question of law of sufficient importance to merit a further appeal and has a reasonable chance of success: ***Biernacki v Alberta (Land and Property Rights Tribunal)***, 2022 ABCA 56 at para 10; ***Conley v Calgary (City)***, 2026 ABCA 105 at para 6 [***Conley***]. These three criteria are conjunctive and are applied to each proposed ground of appeal: ***Augustana Neighbourhood Association v Camrose (Subdivision and Development Appeal Board)***, 2021 ABCA 427 at paras 17-18 [***Augustana***].

Grounds of Appeal

[9] The applicant raises six grounds of appeal. Four involve potential misinterpretations of the Zoning Bylaw, one involves a potential breach of procedural fairness, and the final ground involves the sufficiency of the Board's reasons.

[10] The applicant proposes to argue:

- (1) The Board misinterpreted the definitions of “Use”, “Lodging House”, “Secondary Suite” and “Dwelling”, resulting in the development being mischaracterized as Row Housing rather than a Lodging House and allowing it to exceed the 8 Sleeping Unit maximum for a Lodging House;
- (2) The Board misinterpreted the meaning of the undefined terms “unenclosed front porch” and “building length”, resulting in the erroneous finding that the development did not require a site coverage or building length variance;
- (3) The Board misinterpreted subsections 5.60.2, 5.60.3, 5.60.4, 5.60.5, and 5.120.4 as not requiring waste collection screening for this development, resulting in the erroneous finding that the development did not require a waste collection screening variance;
- (4) The Board misinterpreted provisions of the Zoning Bylaw related to drainage, and as a result either declined to address drainage impacts or improperly delegated consideration of drainage requirements to the Development Authority;

(5) The Board breached the requirements of procedural fairness by determining the development complied with all drainage requirements without making the drainage plan available to the applicant; and

(6) The Board failed to provide reasons, or adequate reasons, for its decision.

[11] In oral argument, the applicant clarified that her proposed challenge to the adequacy of the Board's reasons relates to grounds two, three, and four; i.e., she asserts the Board's reasons were deficient in its treatment of the unenclosed front porch, waste collection screening, and drainage issues, but not the other issues considered by the Board.

Analysis

Grounds One through Four: Interpreting the Zoning Bylaw

[12] In the first four grounds, the applicant argues the Board misinterpreted the Zoning Bylaw in various ways. They say this resulted in the development permit being improperly approved without necessary variances.

[13] Interpretation of a land use bylaw is a question of law: ***Lor-al Springs Ltd v Ponoka County Subdivision and Development Appeal Board***, 2000 ABCA 299 at para 23 [***Lor-al Springs***]; ***Conley*** at paras 7, 18. As they require this Court to interpret the various provisions of the Zoning Bylaw, the first four grounds of appeal raise questions of law and therefore meet the first branch of the permission to appeal test.

[14] With respect to the second branch of the test, each of the first four proposed grounds of appeal are of sufficient importance to merit a further appeal. A decision from this Court setting out the correct interpretation of these provisions of the Zoning Bylaw will impact not only the parties to the present dispute, but also their neighbours, other neighbourhoods subject to the Zoning Bylaw, and other communities with similar bylaws: ***Edmonton (City) v Edmonton (Subdivision and Development Appeal Board)***, 2016 ABCA 129 at paras 46-50.

[15] Whether permission should be granted for any or all the first four grounds therefore turns on whether each ground has a reasonable chance of success. A “very low” threshold of “not frivolous” applies to this question: ***Osman Auction Inc v Edmonton (City)***, 2015 ABCA 135 at paras 33-34; ***Edmonton (City) v Edmonton (Subdivision and Development Appeal Board)***, 2014 ABCA 337 at para 6.

[16] The standard of review to be applied on appeal is highly relevant when considering whether the proposed appeal stands a reasonable chance of success: ***Lor-al Springs*** at para 6. Here, as the *Act* contains a statutory right of appeal from Board decisions on questions of law, the standard to

be applied is one of correctness: **Augustana** at paras 19-23. Appellants usually have a better chance of success on appeal where a finding or decision is reviewed for correctness as opposed to a more deferential standard: **Lor-al Springs** at para 8.

Ground One: Misinterpreting Definitions and Mischaracterizing the Development as Row Housing

[17] The applicant submits that when determining whether the development was Row Housing or a Lodging House, the Board erred by focusing solely on the developer's stated intention, rather than (a) evaluating the architectural plans objectively and (b) properly interpreting the definition of "Lodging House" in conjunction with the definitions of "Use", "Secondary Suite", and "Dwelling" as set out in Part 8 of the Zoning Bylaw.

[18] In its decision, the Board began by finding the development satisfied the definition of a Residential Use in the form of Row Housing. Based on its interpretation of the Zoning Bylaw, it held "the distinguishing factor between a Row Housing development ... and ... a Lodging House is the intention to rent each bedroom individually". The Board found that the developer's stated intention not to operate the development as a Lodging House was sufficient proof of intent. In interpreting the Zoning Bylaw on this point, the Board further stated that it "may also mean that a development appears to be one thing when it may in fact be another because the landowner says it is one in accordance with the definitions of the Bylaw."

[19] The developer submits that once the Board determined the development was in the form of Row Housing, it correctly relied on the stated intention of the developer in finding it was not a Lodging House. The developer emphasized this Court's admonition to the Board in **Kalinski v Cold Lake (City)**, 2017 ABCA 119 not to second-guess the intentions of developers.

[20] However, as noted by the applicant, in paragraph 11 of **Kalinski**, this Court elaborated on that admonition as follows:

It will be apparent that grounds 3, 4 and 5 on their face may suggest to some that it is appropriate to take account of subjective intentions on the part of the developer. In our view, to the extent that such subjective intentions are reflected in the ascertainable architectural and construction details, it is appropriate for the SDAB to consider such details to discern intentions, but not otherwise. The statutory references to intention (in the sense that the development must be intended as a single permanent residence) necessitate a focus on whether the architectural plans and construction details accord with a developer's assertion (as occurred in the case at bar in affidavit form) that he did not intend to use the development "as anything other than a single detached dwelling."

[21] I am satisfied that the first ground of appeal raises a question of law of sufficient importance and that the appeal has a reasonable chance of success. Permission to appeal is granted on the first ground.

Ground Two: Misinterpreting Undefined Terms

[22] The applicant submits the Board further erred by misinterpreting certain terms that appear in the Zoning Bylaw but are not specifically defined. In its decision, the Board found the development's total site coverage was 45.1%. Typically, the maximum site coverage allowed is 45%, as set out in subsection 2.10.4.1.7 of the Zoning Bylaw. However, there is an exception set out in subsection 2.10.4.2.1, which increases the maximum site coverage allowed to 47% where the extra 2% is used to accommodate a "single storey unenclosed front porch".

[23] The Board found the development did not exceed maximum site coverage because the entrance stairwells were "single storey unenclosed front porches". The Board defined "an unenclosed front porch [as] one that serves the front entrance to a Dwelling and does not possess a permanent enclosure on all sides of the allocated area". The Board also noted "porches will often encompass a stairway". The applicant says the Board was incorrect in finding that a covered basement stairwell constitutes a single storey unenclosed front porch for the purposes of the Zoning Bylaw. The developer argues the Board's interpretation is consistent with both the ordinary meaning of the terms and the Zoning Bylaw as a whole.

[24] The Board found "building length" should be defined as the outside dimensions of the exterior walls of the building. The Board reasoned that this was consistent with other elements of the Zoning Bylaw and, "had City Council intended to include external structures, ... they could have used a different term such as 'development length'". The applicant argues that building length should include the foundation around the basement stairwell and that limitations on building length are designed to decrease the massing and impact on neighbouring properties. The developer argues that site coverage, rather than building length, addresses massing and emphasizes the Board's finding that the City could have used a different term.

[25] I am satisfied that the applicant's arguments with respect to the correct interpretation of these terms stands a reasonable chance of success. Permission to appeal is granted on the second ground.

Ground Three: Misinterpreting Waste Collection Screening Requirements Under the Zoning Bylaw

[26] The applicant's argument that waste collection screening is required for this Small Scale Residential development has no reasonable prospect of success on appeal. As explained by the

Board in its reasons, the Zoning Bylaw is clearly structured and worded to only require waste collection screening for non-Small Scale Residential development.

[27] Subsection 5.60 addresses landscaping requirements, including when screening is required for waste collection areas. Subsection 5.60.3 sets out Small Scale Residential landscaping requirements. Waste collection screening is not included. This contrasts with subsection 5.60.4, which requires waste collection screening for all *other* development, including Small Scale Flex Residential, Medium Scale Residential, and Large Scale Residential development. The Zoning Bylaw explicitly distinguishes between the types of Residential development that require waste collection screening and those that do not. The waste collection screening requirement flows from this explicit choice. Both row houses *and* lodging houses are Small Scale Residential development.

[28] The applicant has not provided any other arguable reading of the Zoning Bylaw to support their argument that waste collection screening should have been required. As a result, permission to appeal is denied on this ground of appeal.

Grounds Four and Five: Misinterpreting Provisions Related to Drainage and Procedural Unfairness

[29] The applicant's arguments with respect to grounds four and five are entwined. Neither stands a reasonable chance of success on appeal.

[30] The applicant argues that the Board did not adequately consider drainage impacts as required by subsection 7.140.1 of the Zoning Bylaw dealing with "Special Information Requirements." However, as the Board noted, subsection 7.140.1.1.1 says the Development Authority *may* require drainage information to be provided. If it does, then under subsection 7.140.1.4.1, it *must* consider that drainage information before making its decision. Under subsection 7.140.1.4.2, it *may* then impose conditions to mitigate impacts identified in the drainage information.

[31] First, the Board found that the Development Authority was not obligated to require drainage information from the developer in making its decision. Second, the Board found that the Development Authority did require a lot grading plan in this case, and then considered it before making its decision, as it was required to do. On that basis, the Board determined that the Zoning Bylaw's drainage requirements were complied with. The Board further noted that drainage impacts were an ongoing issue that would be dealt with in subsequent stages of the development pursuant to other applicable City bylaws.

[32] The language used in the drainage information section is clear. The applicant has not provided any reasonably arguable reading of the Special Information Requirements provisions in

7.140.1 to support their position that the Board itself was required to seek or consider drainage information in this case. As such, this ground stands no reasonable prospect of success on appeal.

[33] The applicant goes on to argue that the Board breached procedural fairness by failing to make the lot grading plan available to the applicant and other affected parties. Whether there was a breach of procedural fairness in an administrative proceeding is a question of law: **Money v Bonnyville (Municipal District No. 87)**, 2015 ABCA 254 at para 10.

[34] Pursuant to its role under s 685(3) of the *Act* the Board was required to determine whether provisions of the Zoning Bylaw were relaxed, varied or misinterpreted by the Development Authority when issuing the permit – not to determine the merits of the lot grading plan. Therefore in making its determination the Board itself was not required to have—and, in fact, did not have—a copy of the lot grading plan. The lot grading plan was not relied on and was not relevant to the Board’s decision or to the case the applicant had to meet on appeal. As such, the applicant cannot reasonably argue that it was procedurally unfair that they did not have a copy of it for use in the Board appeal.

[35] The fifth ground of appeal does not raise a question of law of sufficient importance to warrant an appeal to this court and stands no reasonable chance of success on appeal.

[36] Permission to appeal is denied with respect to both grounds four and five.

Ground Six: Sufficiency of the Board’s Reasons in Relation to Grounds Two, Three, and Four

[37] Adequacy of reasons is a question of law: **Springfield Capital Inc v Grande Prairie (City)**, 2017 ABCA 12 at para 30. While a stand-alone challenge to adequacy of reasons will rarely be considered a question of law of sufficient importance to warrant appellate review, it may sometimes proceed as a question before the panel where it is intertwined with interpretive issues on which permission to appeal has already been granted: **Zhuromsky v Calgary (City)**, 2025 ABCA 106 at para 11; and **Conley** at para 20.

[38] Reasons do not need to be perfect, but they do need to provide a clear explanation for why a decision maker resolved the issue as it did: **Lor-Al, supra** at paras 11-17. As explained above, I have refused permission in respect of grounds three and four. There is no reasonable prospect of success in the applicant’s proposed challenge to the Board’s interpretation of the drainage and screening requirements and further, no reasonable prospect of establishing the Board’s reasons on these points were inadequate. However, without weighing in on the ultimate merits, I find that the applicant’s argument that the Board’s reasons with respect to ground two are “conclusory at best” stands a reasonable chance of success on appeal: see **Zhuromsky v Calgary (City)**, 2025 ABCA 352 at paras 22-24. Permission to appeal the adequacy of the Board’s reasons with respect to ground two is therefore granted.

Decision

[39] Permission to appeal is granted on the following three questions:

- (1) Did the Board misinterpret the definitions of “Use”, “Lodging House”, “Secondary Suite” and “Dwelling”, resulting in the development being mischaracterized as Row Housing rather than a Lodging House and allowing it to exceed the 8 Sleeping Unit maximum for a Lodging House?
- (2) Did the Board misinterpret the meaning of the undefined terms “single storey unenclosed front porch” and “building length”, resulting in the erroneous finding that the development did not require a site coverage or building length variance?
- (3) Did the Board fail to provide reasons, or adequate reasons, for its decision on the interpretive issues raised in question two above?

[40] The costs of this application are left to be determined by the appeal panel.

Application heard on April 23, 2026

Reasons filed at Edmonton, Alberta
this 21st day of May, 2026

Friesen J.A.

Appearances:

J.A. Agrios, KC
for the Applicant

K. Haldane
for the Respondent, The City of Edmonton

K.L. Hurlburt, KC (no appearance)
for the Respondent, Edmonton Subdivision and Development Board

J. Minhas
for the Respondent, 2036386 Alberta Ltd.