

In the Court of Appeal of Alberta

Citation: Kawun v Edmonton (City), 2026 ABCA 339

Date: 20261023
Docket: 2603-0149AC
Registry: Edmonton

Between:

**Lydia Kawun, Donald Bradshaw,
Lori Enns, David Bundle,
Alexis Baptista, Luis Baptista,
Patrick Kirwin, Jeananne Kirwin,
Tammy Moroz, Denise Assaly,
Rick Young, Matthew Haley,
Allyse Haley, Betty Anne Rostrup,
Zeher Chadi, Suhile Ismail,
Lisa Mullen, Chris Labossiere and
Donna Price**

Applicants

- and -

**The City of Edmonton, The City Of
Edmonton Subdivision and
Development Appeal Board and
Urban Custom Ltd.**

Respondents

**Reasons for Decision of
The Honourable Justice Bernette Ho**

Application for Permission to Appeal

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[1] The applicants seek permission to appeal a decision of the City of Edmonton Subdivision and Development Appeal Board dated May 19, 2026 relating to a proposed development site (the Site): *P Kirwin et al v Development Authority of the City of Edmonton*, 2026 ABESDAB 10078 [Decision]. In the Decision, the SDAB denied the applicants' appeal of a Development Permit issued by the Development Authority of the City of Edmonton in February of this year. The SDAB concluded the Development Authority (referred to as the Development Planner) did not relax, vary or misinterpret any provision of the City of Edmonton Zoning Bylaw 20001 (the Zoning Bylaw), and therefore, the SDAB had no jurisdiction to engage in further review given the requirements of section 685(3) of the *Municipal Government Act*, RSA 2000, c M-26 [MGA].

[2] The applicants submit the SDAB erred in law or jurisdiction by:

- (a) improperly relying on the developer's subjective intention rather than objectively evaluating the architectural plans in classifying the proposed development;
- (b) improperly upholding conditions related to Use, which are not authorized under section 7.150 of the Zoning Bylaw;
- (c) misinterpreting or failing to address the provisions of the Zoning Bylaw related to waste collection and disposal requirements;
- (d) misinterpreting or failing to address the provisions of the Zoning Bylaw related to lot drainage; and
- (e) failing to address relevant considerations including the prior Development Permit issued to the developer and issues respecting the size of pathways and soft landscaping requirements.

[3] The Zoning Bylaw has been the subject of several recent permission to appeal applications: *Hawkesworth v Edmonton (City)*, 2026 ABCA 171; *Harvey v Edmonton (City)*, 2026 ABCA 232; *Leyton-High v Edmonton (City)*, 2026 ABCA 273. Permission to appeal requires a question of law or jurisdiction of sufficient importance to merit a further appeal and that has a reasonable chance of success: *MGA*, s 688(3); *Leyton-High* at paras 8-12.

[4] For the reasons outlined below, I am not persuaded the test for permission to appeal has been met on any of the grounds advanced by the applicants and the application is dismissed.

The Site's basement and consideration of "Use"

[5] The Development Permit is for the construction of "a Residential Use building in the form of Row Housing (6 Dwellings) with Basement development (not to be used as an additional Dwelling) and a 2 Dwelling Backyard Housing": Decision at para 4. The SDAB described some conditions in the Development Permit related to the basement area of the Row Housing units as follows:

any use as a Dwelling requires a new development permit

the proposed wet bar area may only be used by residents using the principal kitchen on the main floor, and

there may be future inspections to ensure that the area is not used as an additional Dwelling.

Decision at para 134

[6] The applicants submit the SDAB erred by improperly relying on Urban Custom Ltd's subjective intention in labeling an area in the basement with a sink as a bar, when that space was previously identified as a kitchen in an earlier application for a Development Permit. Relatedly, the applicants submit the SDAB erred in improperly upholding conditions related to Use, which are not authorized under section 7.150 of the Zoning Bylaw.

[7] The record before the SDAB did not contain the previous Development Permit and plans they rely on in arguing the basement area was simply relabelled. The SDAB considered *Kalinski v Cold Lake (City)*, 2017 ABCA 119 and agreed that the authoritative documents for assessing Use were the architectural drawings and specifications: Decision at para 140-145. The SDAB considered those documents, noted that the plans for the basement did not provide for sizeable cabinetry, a fridge, or a stove, and concluded that the area was a wet bar and not a "kitchen". Therefore, the basement development was not a "Dwelling": Decision at paras 143-146, citing Zoning Bylaw, s 8.10 "Dwelling". The SDAB also found there was insufficient support on the record for the argument that the development constituted a Lodging House or a Hotel. The SDAB's findings on these points were based on its consideration of the record and circumstances before it. At best, these are findings of mixed fact and law, and the applicants have not identified an extricable question of law or jurisdiction in relation to them.

[8] As to the argument that there were an impermissible conditions on "Use", the SDAB noted the requirements of section 7.150.1 of the Zoning Bylaw. The SDAB rejected the argument that the impugned conditions restricted Use or indicated that the proposed development did not comply

with the approved Use. Rather, the SDAB found that these conditions were simply intended to identify applicable requirements under the Zoning Bylaw. Further, the SDAB found that these conditions had not been appealed: Decision at paras 149-160. The applicants have not established a question of law or jurisdiction of sufficient importance to merit a further appeal regarding the impugned conditions.

The exercise of discretion

[9] The applicants submit the SDAB made an error when it concluded there was no relaxation, variation or misinterpretation of the Zoning Bylaw in relation to both lot drainage and waste disposal issues. Specifically, the applicants submit the Development Planner failed to exercise the discretion afforded to it under the Zoning Bylaw which constitutes an error of law. Further, in the case of waste disposal, the Development Planner abdicated its authority to the waste services department by relying on the waste services department's conclusion that they had "no concerns" in relation to the proposed development.

[10] The Development Permit issued February 25, 2026 provides that it is a "record of the decision for the undertaking described below, subject to the limitations and conditions of the permit, of the Zoning Bylaw as amended." Regarding lot drainage, the Development Permit indicates lot grading is required. The Development Permit also refers to the City of Edmonton Drainage Bylaw 18093 and indicates it requires "this site to obtain an approved lot grading plan prior to the construction of any buildings, additions to buildings, or alterations of surface drainage." In addition, a site plan stamped by a mechanical engineer showing water and sewer services, stormwater management calculations and the proposed lot grading design must be submitted to EPCOR Infill Water and Sewer Servicing for review, before being submitted to Development Services for final review and approval.

[11] Section 7.140.1.1 gives the Development Planner discretion to request drainage information and only if so requested, the Development Planner "must consider the drainage information before making a decision" on the application: Zoning Bylaw, s 7.140.1.4.1. Further, section 7.140.1.2 of the Zoning Bylaw requires requested drainage information to be prepared to the satisfaction of the Development Planner, in consultation with the appropriate City department. The Zoning Bylaw does not otherwise mandate the provision of this type of information as a pre-condition to approval of a Development Permit.

[12] The applicants' submissions opposing the Development Permit application identified flooding issues and drainage concerns, but the Development Planner did not require information regarding proposed drainage to be submitted by Urban Custom Ltd prior to issuing the Development Permit. The applicants acknowledged this in oral submissions. Thus, it seems the

Development Planner exercised its discretion not to request drainage information, and instead to address lot drainage issues through the process outlined in the Development Permit.

[13] A similar analysis applies in relation to the waste collection and disposal issues raised by the applicants before the Development Planner. The relevant provision of the Zoning Bylaw requires waste collection and disposal areas to provide adequate space to store and co-locate containers “to the satisfaction of the Development Planner, in consultation with the City department responsible for waste services”, among other requirements. The Development Permit states that waste services reviewed the proposed plan and had no concerns, and current standards and practices were followed.

[14] The SDAB reviewed the requirements of the Zoning Bylaw and observed it only requires the Development Planner to be satisfied with the design in consultation with the City department responsible for waste services. The SDAB reasoned this had been done, and that no relaxation, variation or misinterpretation of the Zoning Bylaw had been demonstrated: Decision at paras 236-247.

[15] Although the applicants submitted information raising concerns regarding waste disposal and collection issues in opposition to the Development Permit application, the Zoning Bylaw requires the Development Planner to be satisfied following consultation with the waste services department. It is clear from the Development Permit that such consultation occurred because there is express reference to the fact that no concerns were raised by the waste services department. As was the case in *Leyton-High*, it can be inferred that the Development Planner was thus satisfied and did not abdicate its authority: *Leyton-High* at paras 31-41.

[16] The alleged errors relating to lot drainage and waste disposal are a challenge to the exercise of discretion granted to the Development Planner. In the circumstances, nothing in the SDAB’s review of the exercise of that discretion gives rise to a question of law or jurisdiction, or raises a ground with a reasonable prospect of success.

Failing to address other relevant issues

[17] The applicants submit the SDAB failed to consider a Lot Grading Plan in finding pathway and soft landscaping requirements were satisfied. However, the SDAB did not fail to consider the Lot Grading Plan, but rather chose to rely on the Site Plan in making its findings instead.

[18] The applicants also submit the SDAB failed to consider information in a previous application and Development Permit issued for the Site. While some of the applicants referred to this information before the SDAB, the relevant documents were not put on the record before the SDAB.

[19] In the circumstances, the applicants have failed to identify a question of law or jurisdiction of sufficient importance to merit a further appeal regarding these issues.

[20] The application is denied.

Application heard on October 7, 2026

Reasons filed at Edmonton, Alberta
this 23rd day of October, 2026

Ho J.A.

Appearances:

J.A. Agrios, KC
for the Applicants

K. Haldane
for the Respondent the City of Edmonton

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

J.W. Murphy, KC
for the Respondent Urban Custom Ltd.