

Edmonton Subdivision and Development Appeal Board

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Date: May 15, 2015
Project Number: 165465217-001
File Number: SDAB-D-15-086

Notice of Decision

This appeal dated April 2, 2015, from the decision of the Development Authority for permission to:

construct 4 Dwellings of Row Housing with attached Garages, fireplaces and Basement development (not to be used as additional Dwellings) and to demolish an existing Single Detached House and detached Garage

on Plan 0022306 Blk 28 Lot 10A, located at 11148 - 132 Street NW, was heard by the Subdivision and Development Appeal Board at its hearing held on April 30, 2015. The decision of the Board was as follows:

Summary of Hearing:

At the outset of the appeal hearing, the Presiding Officer confirmed with the parties in attendance that there was no opposition to the composition of the panel.

The appeal was filed on time, in accordance with Section 686 of the Municipal Government Act, R.S.A 2000, c. M-26, (the "MGA").

The Board heard an appeal of the decision of the Development Authority to refuse an application to construct 4 Dwellings of Row Housing with attached Garages, fireplaces and Basement development (not to be used as additional Dwellings) and to demolish an existing Single Detached House and detached Garage, located at 11148 – 132 Street NW. The subject site is zoned RF3 Small Scale Development Infill Zone and is within the Mature Neighbourhood Overlay and within West Ingle Area Redevelopment Plan. The development permit application was refused because of a deficiency in the minimum required Rear Setback, that being 40 Percent of the Site Depth, vehicular access is not permitted from the front or flanking public roadway where a lane exist and less than 50 percent of the blockface has front or flanking vehicular access, and because the proposed development is not in keeping with the General Purpose of the Mature Neighbourhood Overlay.

The following information was provided to the Board prior to the hearing:

- An e-mail of opposition from a property owner within the 60 metre notification radius.
- A memorandum from the City of Edmonton Transportation Services Department dated January 8, 2015.

- A submission from the Development Officer dated April 24, 2015.
- A submission from the Appellant dated April 30, 2015.

The Board heard from Ms. C. Fortin, representing the Appellant, Brookstate Developments, who provided the following information:

1. She reviewed her submission and provided background and context of the neighbourhood as follows:
 - a. Row housing is a permitted use in the RF3 Small Scale Infill Development Zone.
 - b. The area contains a significant amount of new infill developments including many multi-family developments.
 - c. The area immediately east of the development is zoned US Urban Service Zone and includes five properties owned by Winnifred Stewart Association comprised of group homes and multiple dwelling units. The Winnifred Stewart Association has no concerns with the proposed development.
 - d. The area immediately west of the development is zoned RA7 Low Rise Apartment Zone and contains an apartment building. That owner has no concerns with the proposed development.
 - e. Four developments in the immediate vicinity have vehicular access to the flanking street and 64 percent of the developments along 112 Ave have attached garages that face the flanking public roadway.
 - f. 111 Avenue is a transit corridor and most of the development along it is higher density housing.
2. She showed photographs of four fourplexes, marked Exhibit "A." She stated two of the fourplexes are located on significantly smaller lots, which in her opinion, sets precedence in this area.
3. These developments create affordable housing.
4. The proposed development has been designed to fit the area and through consultation they have identified legitimate concerns of neighbours and have been addressed as follows:
 - a. To increase the privacy of the property owner immediately to the south 60 percent of the originally planned south facing windows have been removed with only three windows within the 40 percent required rear setback remain; and the rooftop balconies will be screened with frosted glass.
 - b. The roofline of the proposed development is the same height as the house located on the abutting lot to the south.
 - c. The proposed development, apart from the stairwells which only provide access to the roof top balconies, is two storeys. These stairwells do not include any habitable room.
 - d. There is not a significant sun-shadow effect as the immediately abutting property is located south of the proposed development.

- e. Parking congestion is an ongoing issue due to the proximity of the Norquest College as well as the group home uses east of the proposed development. Residents can enroll in the Residential Parking Program in which residents may obtain residential parking permits.
 - f. The proposed development includes attached garages and tandem parking spaces on the driveways for a total of eight on-site parking spaces.
 - g. Although the driveways will eliminate some on-street parking spaces, the existing development has a driveway so there is no overall impact.
 - h. The trees must be removed due to their condition and age no matter what is developed on the site. They are providing significant landscaping including a \$22,000 retainer.
5. An effort was made to comply with the community consultation requirement of the Mature Neighbourhood Overlay. Many of the residents are renters and the property owners could not be reached. Many liked the attached garages.
 6. The property will blend in well and will increase aesthetics and values in the area and there are established precedents which justify the requested variances.
 7. She showed a drawing with two renderings of a site marked Exhibit "B." The top rendering showed the footprint of the proposed development while the bottom rendering showed a hypothetical footprint of a single family dwelling and a garage suite. She stated that a single family dwelling with a garage suite could be permitted with no variances required and the sun shadowing and other impacts would be the same.

Ms. Fortin provided the following responses to questions:

1. The stairway access to rooftop balconies are merely architectural elements. The proposed development meets the height requirement as stipulated in the *Edmonton Zoning Bylaw*.
2. Community consultation involved speaking with 14 residents within the 60 metres notification zone. 10 supported the development or had no comment.

The Board heard from Mr. A. Sheahan, representing the City of Edmonton Sustainable Development Department, who provided the following information.

1. He did not dispute that the City of Edmonton policy is to encourage infill developments and he supports the densification of housing. However, he believes that maintaining a harmonious balance within the neighbourhood should be part of the review process.
2. He concedes that this development achieves one of the goals of infill development which is to increase density but the proposed development does not blend in with the surrounding properties.
3. He addressed the photographs presented by the Appellant and pointed out that none have all of the identical characteristics of the proposed development.
4. He presented aerial images, marked Exhibit "C," showing further context around some of the photographs provided by the Appellant and stated the following:

- a. The properties numbered one, four and seven all have different setbacks, step backs, massing, lane access, design and facades, and some of which meet the 40 percent rear setback.
 - b. The dwelling depicted as number seven is the closest built form to the proposed development as both required a similar and significant rear setback. He noted that the development depicted as number seven was initially refused by the Development Authority but subsequently approved by the Subdivision and Development Appeal Board.
 - c. In some of the photos presented, the properties abutting the development are owned by the developer. Therefore the most affected neighbour is essentially the developer.
5. He found one similar development located east of 124 Street with similar massing, less dwellings, a similar solid wall facade and rear setback variance. This reinforced his concerns regarding massing and the rear setback variance that would be required.
 6. He reviewed the elevations of the proposed development and confirmed to the Board that stairwells are exempt from height calculations. He determined that the single facade and other design elements provided a significant impact on the south abutting property which is most affected by the proposed development.
 7. The other developments located on a corner lot closest to the subject site were mostly single family homes with only one vehicular access to the public flanking roadway. The subject site has two wider vehicular accesses to the public flanking roadway.
 8. He is aware of the parking issues. The City of Edmonton Transportation Services Department did not provide direct comments as to whether or not removal of on-street parking or driveway access would impact the neighbourhood.

Mr. Sheahan provided the following responses to questions:

1. The provision of screening in the form of landscaping along the south property line is not a requirement but may provide mitigation to privacy concerns.
2. He stated that the character of a neighbourhood is not defined by the era and ages of the development but may vary from block to block and area to area. Development rights between abutting properties must be respected. In this case, the development review process must assess the effect on the most affected property to the south.
3. A single family dwelling development on this site with a detached garage would most likely be in compliance.
4. He confirmed that if all the garages were to be located near the rear of the property there would be less of an impact than the proposed development. This is due to the height of an accessory structure is lower than the height of the proposed development. In addition, it would have less of a massing effect.
5. He is unable to provide detailed information on the two fourplexes on much smaller lots illustrated in Exhibit "A" without reviewing the plans or comment on required separation distances between a possible garage suite and a single family dwelling.
6. There are no other developments with roof top balconies in the area.

7. He reiterated that some of the built forms presented in the Appellant's submission have articulation, greater setbacks and separations which have limiting effects on massing and streetscape.

The Board heard from Nancy and Doug Ference, adjacent property owners immediately to the south, who spoke in opposition to the proposed development.

1. They are not opposed to new builds but after meeting with the Appellant they became concerned with the requested variances. They would like the proposed development to be scaled down.
2. The photographs provided by the Appellant showed properties that are at least five blocks away. There are many single homes in close proximity to the proposed development.
3. The properties on their side of the street are all semi-detached and single family dwellings. Their home and the next 10 homes to the south all include amenity spaces within the backyard. Some homes have single storey garages and others have no garages at all.
4. The proposed development does not meet the Mature Neighbourhood Overlay for several reasons:
 - a. It is not sensitive in scale to the existing development as it is very large and imposing. It is two times the length of their home and most of the buildings on their street.
 - b. It is not in keeping with the tradition and character of this area which has peaked roofs and amenity space at the ground level. There are no other developments with rooftop decks.
 - c. The development interferes with both privacy and light. Although direct sunlight is not blocked, natural light is blocked. This two storey development stretches across their property, past the rear of their home and past their parking area.
 - d. The proposed development includes two rooftop balconies which overlook their backyard with an additional two front balconies which overlook the properties across the street. This development has the appearance of a three storey building due to the rooftop decks and stairwells.
 - e. It interferes with pedestrian traffic as the proposed driveways will cross the only sidewalk located on 112 Avenue.
5. The proposed development will interfere with the use, value and enjoyment of their property and will reduce outdoor space, privacy and natural light.
6. They conducted their own neighbourhood consultation. Seven neighbours within the 60 metres radius and one neighbour located immediately outside the 60 metres radius signed their petition in opposition or provided opposition via e-mail, marked as Exhibit "D".
7. The proposed vehicular accesses to the flanking public roadway will make a difficult parking situation worse and will reduce currently on-street available parking spaces.

The Board heard from Kathy Mullen, an adjacent property owner, who spoke in opposition to the proposed development.

1. She is the owner of a property directly northeast of the subject site and is opposed to the proposed development as she will be facing a long, tall wall outside her living room window.
2. The only sidewalk on 112 Avenue is located on the south side of the street. The proposed driveways will interfere with pedestrians using that sidewalk.
3. She would have no problem with a smaller home with a garage suite as the back alley could be utilized for vehicular access.
4. She conceded that other allowable developments could be put on the subject site that could have similar impacts on parking and pedestrian traffic.

Ms. Fortin made the following points in rebuttal:

1. She had sought input from the opposed parties whom appeared at the hearing.
2. There are two other developments along the same block that include 2 driveways onto the flanking street.
3. They have met the required site coverage and side setbacks.
4. Their landscape plans include four large trees in the rear setback.

Decision:

The appeal is DENIED and the decision of the Development Authority is CONFIRMED. The development is REFUSED.

Reasons for Decision:

The Board finds the following:

1. The proposed Row Housing is a Permitted Use within the RF3 Small Scale Infill Development Zone.
2. The Board concurs with the submitted evidence of the Development Authority which deemed the proposed development as not in keeping with the General Purpose of the Mature Neighbourhood Overlay, Section 814.1 of the *Edmonton Zoning Bylaw* for the following reasons:
 - a. The proposed development is a two and a half Storey, four Dwelling units Row Housing with attached garages and roof-top balconies. The proposed development provides a Rear Setback of 5.21 metres, which is deficient by 11.89 metres. This makes it comparatively large and not sensitive in scale to existing developments in the area.
 - b. The proposed development does not ensure privacy on adjacent properties. The majority of Single Detached Housing or Semi-detached Housing in the immediate area is one or two Stories. The cumulative nature of the two roof-top balconies along with second Storey Habitable Room windows facing the interior Side Yard, and the encroachment of

the proposed building into the minimum required Rear Setback will create privacy concerns as the development overlooks the Rear Yards of the abutting property and neighbouring properties to the south.

3. The Board finds the proposed development is overbuilt for this location and is not in character with the neighbouring properties which have amenity space within the Rear Yard.
4. The Board received a petition in opposition to the development from seven neighbouring property owners within the 60 metres notification radius.
5. Based on the above, it is the opinion of the Board, that the proposed development will unduly interfere with the amenities of the neighbourhood and materially interfere with or affect the use, enjoyment and value of neighbouring parcels of land.

Important Information for Applicant/Appellant

1. This decision may be appealed to the Alberta Court of Appeal on a question of law or jurisdiction under Section 688 of the *Municipal Government Act*, R.S.A. 2000, c. M-26. If the Subdivision and Development Appeal Board is served with notice of an application for leave to appeal its decision, such notice shall operate to suspend the Development Permit.
2. When a decision on a Development Permit application has been rendered by the Subdivision and Development Appeal Board, the enforcement of that decision is carried out by the Sustainable Development Department, located on the 5th Floor, 10250 – 101 Street, Edmonton.

NOTE: The City of Edmonton does not conduct independent environmental checks of land within the City. If you are concerned about the stability of this property for any purpose, you should conduct your own tests and reviews. The City of Edmonton, when issuing a development permit, makes no representations and offers no warranties as to the suitability of the property for any purpose or as to the presence or absence of any environmental contaminants on the property.

Mr. B. Gibson, Presiding Officer
Subdivision and Development Appeal Board

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Date: May 15, 2015
Project Number: 164626249-001
File Number: SDAB-D-15-087

Notice of Decision

This appeal dated April 2, 2015, from the decision of the Development Authority for permission to:

Construct a 44 Dwelling Unit Apartment Housing development (4 Storeys with underground parkade)

On Plan N4000R Blk 170 Lot 18, located at 10845 - 83 Avenue NW and Plan N4000R Blk 170 Lot 19, located at 10841 - 83 Avenue NW and Plan N4000R Blk 170 Lot 20, located at 10837 - 83 Avenue NW and Plan N4000R Blk 170 Lot 21, located at 10833 - 83 Avenue NW and Plan N4000R Blk 170 Lot 22, located at 10829 - 83 Avenue NW, was heard by the Subdivision and Development Appeal Board at its hearing held on April 30, 2015. The decision of the Board was as follows:

Summary of Hearing:

At the outset of the appeal hearing, the Presiding Officer confirmed with the parties in attendance that there was no opposition to the composition of the panel.

The appeal was filed on time, in accordance with Section 686 of the *Municipal Government Act*, R.S.A 2000, c. M-26, (the "MGA").

The Board heard an appeal of the decision of the Development Authority to refuse an application to construct a 44 Dwelling Unit Apartment Housing development (4 Storeys with underground parkade), located at 10829/10833/10837/10841 and 10845 – 83 Avenue NW. The subject Site is zoned RA7 Low Rise Apartment Zone. A portion of the Site is within the 109 Street Corridor Area Redevelopment Plan. The Remainder of the Site is within the Garneau Area Redevelopment Plan and the Medium Scale Residential Infill Overlay. The development permit application was refused because of an excess in the maximum allowable Density and the maximum allowable Floor Area Ratio, a deficiency in the minimum required Front Setback, an excess in the maximum allowable projection of the front entrance, all of the balconies are not recessed, the parkade ramps project into the Side Setbacks and because of Landscaping deficiencies.

Prior to the hearing the Board was provided with the following information:

- Written submissions received from the Appellant through the on-line system as well as a bound document received on April 24, 2015.
- A written submission from the Development Officer dated April 13, 2015
- A fax from the Garneau Community League received on April 30, 2015

The Board heard from the Appellant, Mr. T. Frost, who provided drawings and floor plans of the proposed building along with pictures of surrounding apartment buildings, and summary of consultation marked as Exhibit “A” and gave the following information:

1. Modern design of the building, neighbourhood and community planning were considered during the design process.
2. He provided context on the design of the building and requested variances:
 - a. The proposed development will be built on five lots. A parking lot (which is comprised of two lots) west of the proposed development along with the most westerly two lots of the proposed development are part of the 109 Street Corridor Area Redevelopment Plan which are designated to be commercial. However, the Garneau Community League would like those lots to remain residential and the proposed development meets this wish.
 - b. A floor area ratio of 1.98 is proposed while 1.4 is permitted. However, the Garneau Area Structure Plan stated the overall plan objectives as “maintaining Garneau primarily a residential community; to maintain the existing character of the Garneau area; and to encourage and control higher density redevelopment in portions of the Plan area.” The proposed development supports the Garneau Area Structure Plan as the building is within the allowable building pocket, meeting both height and setback requirements.
 - c. He presented a letter of support from the Edmonton Design Committee stating that the floor area ratio and density should be varied based on the location and the surrounding commercial buildings.
 - d. His photographic submission shows the blockface Front Setbacks. To the west is a vacant lot, but it is zoned commercial and may have a smaller setback. To the east there are two vacant lots and three single family homes with significantly larger setbacks that skew the average. He does not think these three single family homes will exist much longer. If the proposed Front Setback is compared to the apartment building east of the proposed development, the subject site would require a smaller front setback and would fit in with the blockface. Their design has a recessed front entrance and if the Front Setback was taken from the point of front entry, it meets the Front Setback requirement of the RA7 Low Rise Apartment Zone.
 - e. The front entrance was designed to project from the building as requested by the Edmonton Design Committee. It is a great design feature as it is a delicate structure and does not visually project from the building.
 - f. His photographic submission shows the styles of balconies of other buildings in the neighbourhood which incorporate all recessed balconies, all protruding balconies and mixtures of both. In his opinion, recessed balconies do not add to the look of a building and contribute to energy loss for corner units.

- a. The design does not fit within the community. One of the committee members stated the type of architecture they would like to see in the area and gave Rutherford House and the University of Alberta Pharmacy Building as an example. In his opinion, this type of architecture would not work for the scope and size of the proposed development. The submitted photos of new apartment buildings in the area show a variety of style and trends.
- b. One of the existing homes which are to be demolished has historical significance. A photo of one of the home was presented. An interested party could move the home from the site and renovate it in a different location. The Developer of the proposed development would do a full photographic study prior to demolition. The Edmonton Design Committee had no concerns as none of the properties have a historical designation and the Garneau area has many homes, commercial and multi-family properties built in all different styles, eras and times.

The Board heard from Mr. V. Lillo, Developer, who provided the following information:

1. He is from the neighborhood and was the former owner of one of the properties to be demolished.
2. He wants to build a beautiful building the community will be proud of.
3. He canvassed and received support from all of the commercial properties in the nearby area.
4. Garneau is a pedestrian friendly area. Many residents work in the area and increased cars would not be a problem.
5. The subject site is surrounded by two parking lots for two separate banks making it a unique situation.

Mr. Frost and Mr. Lillo, the Applicants, provided the following responses to questions:

1. There is a direct correlation between Density and Floor Area Ratio. A decrease in density will result in a decrease in floor area ratio. They gave additional reasons as to why these regulations should be varied:
 - a. The goal of the City of Edmonton is to increase density in mature neighborhoods.
 - b. The Garneau Area Redevelopment Plan's mission is to increase density.
 - c. The proposed development is next to two transit corridors and within walking distance of a shopping district and the University of Alberta.
 - d. The building fits within the allowed pocket and the allowed size. Having more units available requires a variance for density, but this is a positive thing.
 - e. The subject site is zoned RA7 Low Rise Apartment Zone. If it were located further into the neighbourhood it would be zoned RF3 or RF6 which would not be suitable for this increased density.
 - f. The building would still look the same if an open area were to be cut in the middle to reduce the number of units to meet the allowable floor area ratio and density.

- g. The proposed development is on the edge of the neighbourhood and will not increase traffic in the neighbourhood.
2. They did not canvas residential neighbours but received phone calls from residential property owners who had received a letter from the City of Edmonton. These calls provided positive feedback.
3. Mr. Lillo had arranged the meeting with Knox-Metropolitan Church to discuss their concerns.
4. They were aware of the community's wishes to have the first four lots immediately east of 109 Street redeveloped together. Mr. Lillo contacted the owner of the parking lot to purchase the two lots adjacent to 109 Street, but the owner was not interested in selling it.

The Board heard from Mr. M. Harrison, representing the City of Edmonton Sustainable Development Department who provided the following information:

1. If the Board considers granting the appeal he requests the scope be changed to include the demolition of the five single detached homes.
2. He submitted a letter marked Exhibit "B" from a citizen opposed to the size of the building, the number of units and the impact on traffic in area.

Mr. Harrison provided the following responses to questions:

1. The proposed development meets the parking requirements of the *Edmonton Zoning Bylaw*.
2. He does not have the power to vary floor area ratio or density. If he could he would refer to the residential infill guidelines, the Garneau Area Redevelopment Plan and the *Edmonton Zoning Bylaw* to make his decision.
3. In his opinion, this is the ideal location for a density variance.
4. The Garneau Area Redevelopment Plan has mixed objectives but could be consistent with the proposed development. It supports higher density and residential development, especially four storey buildings and contemplates larger buildings on the outskirts of the neighbourhood.
5. The CB2 General Business Zone to the rear and west side of the proposed development mitigate the impact of the site and the required variances.
6. The front setback requirement and blockface calculation comes from the Overlay, not the underlying RA7 Low Rise Apartment Zone.
7. The letter from the Edmonton Design Committee is the only supporting document that came from the meetings.

The Board heard from Mr. D. Brodie, representing Knox-Metropolitan Church, who provided the following information:

1. The proposed development is an Art Deco 1940s building and he is concerned about densification of the site and its effect on traffic congestion and street parking.

2. The provisions of the 109 Street Corridor Area Redevelopment Plan does not appear to have been considered.
3. He is concerned that 44 cars using the lane to access parking will cause problems.
4. He is not against the project but a 44 units building is an over development.

The Board heard from Ms. Wynn, representing Knox-Metropolitan Church. She is also a local resident.

1. 83 Avenue is a proposed bike route which will eliminate all street parking and will result in a one-way traffic flow (east to west).
2. The rear lane is used by commercial properties for parking and loading. It is very congested and the proposed development will add to that congestion.
3. She is concerned about the pocket parks as they appear to be the size of a closet. Their proximity to the private amenity areas of the main floor units could be a safety concern.
4. Commercial businesses would support the density variance as they want more potential customers in the area.
5. The proposed number of units is excessive.

Mr. Brodie and Ms. Wynn provided the following responses to questions:

1. The addition of 19 suites over the allowed 25 suites would negatively impact the area.
2. This is a very pedestrian heavy zone and there are also many bikes and cars travelling through the area to get downtown or to the University of Alberta.

The Board heard from Mr. L. Hauer, an adjacent property owner, who spoke in opposition:

1. He submitted Exhibit "C", a photo from a recent Edmonton Journal article about the cost of infill. The photo showed an existing older home next to a very large new condo development.
2. He was concerned about the increase in traffic as he rents out a property in the area and every tenant has a car.
3. This is an adult oriented neighbourhood. There is only one family on the street and he does not believe this will be a family oriented development.
4. The number of vehicles travelling on the lane is an accident waiting to happen.
5. He is not concerned with the design of the development, but with the density and parking. All the other apartments in the area have resulted in decreased street parking availability.
6. All new developments should have to follow the City of Edmonton guidelines and bylaws.

Mr. Frost made the following points in rebuttal:

1. He is unsure as to why the pocket parks are of such concern but would be willing to replace them with landscaping.
2. The building design is within the allowed building pocket and height so the issue of density should be of greater concern than the floor area ratio.
3. There are plenty of public transportation options nearby.
4. He did not do a written analysis of compliance with residential infill requirements but he did not see any issues.
5. While he could have proceeded with requesting a direct control district to facilitate the proposed development, he proceeded with the application and the required variances because of all the positive feedback received from the Edmonton Design Committee and residents.

Decision:

The appeal is ALLOWED and decision of Development Authority is REVOKED. The development is GRANTED as applied for to the Development Authority, subject to the following CONDITIONS:

Landscaping that extends onto or over City-owned lands shall be developed in accordance with the Traffic Bylaw 5590 and the City Design & Construction Standards.

All planting shall be installed to the finished Grade. Where this is not practical in the opinion of the Development Officer, planters may be used. Such planters shall be of adequate design, having sufficient soil capacity and insulation to promote healthy growth.

Soil above underground parking facilities shall be of sufficient depth to accommodate required landscaping, including trees, shrubs, flower beds, grass, and ground cover.

The Development Officer may require, as a condition of Development Permit approval, a guaranteed security, from the property owner, to ensure that Landscaping is provided and maintained for two growing seasons. Only the following forms of security are acceptable:

- a. cash to a value equal to 100% of the Landscaping cost; or
- b. an irrevocable Letter of Credit in the amount of 100% of the Landscaping cost.

The projected cost of the Landscaping shall be calculated by the owner or the owner's representative and shall be based on the information provided on the Landscape Plan. If, in the opinion of the Development Officer, these projected costs are inadequate, the Development Officer may establish a higher Landscaping cost figure for the purposes of determining the value of the Landscaping security.

If cash is offered as the Landscaping security, it shall be held, by the City, without interest payable, until, by confirmation through inspection by the Development Officer, the Landscaping has been installed and successfully maintained for two growing seasons. Partial refund after installation of the Landscaping or after one growing season shall be considered upon request of the owner, at the sole discretion of the Development Officer.

If a Letter of Credit is offered as the Landscaping security, it shall be in a form satisfactory to the Development Officer. The initial term of the Letter of Credit shall be one year. The Letter of Credit shall be renewed by the owner 30 days prior to expiry and delivered to the Development Officer until such time as the Landscaping has been installed and maintained for two growing seasons.

Upon application by the owner or the owner's representative, a Letter of Credit may be amended to a reduced amount, for attachment to the original Letter of Credit, at the discretion of the Development Officer, when any of the following events occur:

- a. the required Landscaping has been properly installed; and
- b. the required Landscaping has been well maintained and is in a healthy condition after one growing season.

Upon application by the owner or the owner's representative, a Letter of Credit shall be fully released if the required Landscaping has been well maintained and is in a healthy condition after two growing seasons.

Any Letter of Credit shall allow for partial draws by the City if the Landscaping is not completed in accordance with the approved Landscape Plan(s) within one growing season after completion of the development; or the Landscaping is not well maintained and in a healthy condition two growing seasons after completion of the Landscaping. The City may draw on a cash security or a Letter of Credit and the amount thereof shall be paid to the City for its use absolutely. All expenses incurred by the City, to renew or draw upon any Letter of Credit, shall be reimbursed by the owner to the City by payment of invoice or from the proceeds of the Letter of Credit.

In the event the owner does not complete the required Landscaping, or fails to maintain the Landscaping in a healthy condition for the specified periods of time, and the cash or the proceeds from the Letter of Credit are insufficient for the City to complete the required work, should it elect to do so, then the owner shall pay such deficiency to the City immediately upon being invoiced. The City shall provide an accounting to the owner indicating how the proceeds of the Letter of Credit were applied, within 60 days of completing or maintaining the landscaping.

Upon receipt of a written request from the parties involved in the development, including but not limited to the property owner, condominium association or the issuer of the Letter of Credit, an inspection of the finished Landscaping shall be completed by the Development Officer. Inspections shall be made during the normal growing season, between May 01 and September 30. All reasonable effort shall be made by the Development Officer to perform the inspection within 20 working days of receipt of the inspection request.

PRIOR TO THE RELEASE OF DRAWINGS FOR BUILDING PERMIT REVIEW, the applicant or property owner shall provide a guaranteed security to ensure that landscaping is provided and maintained for two growing seasons. The Landscape Security may be held for two full years after the landscaping has been completed. This security may take the following forms:

- a) cash to a value equal to 100% of the established landscaping costs;
- or
- b) an irrevocable letter of credit having a value equivalent to 100% of the established landscaping costs.

Any letter of credit shall allow for partial draws. If the landscaping is not completed in accordance with the approved Landscape Plan(s) within one growing season after completion of the development or if the landscaping is not well maintained and in a healthy condition two growing seasons after completion of the landscaping, the City may draw on the security for its use absolutely. Reference Section 55.6

All required parking and loading facilities shall only be used for the purpose of accommodating the vehicles of clients, customers, employees, members, residents or visitors in connection with the building or Use for which the parking and loading facilities are provided, and the parking and loading facilities shall not be used for driveways, access or egress, commercial repair work, display, sale or storage of goods of any kind.

Parking spaces for the disabled shall be provided in accordance with the Alberta Building Code in effect at the time of the Development Permit application, for which no discretion exists.

Parking spaces for the disabled shall be identified as parking spaces for the disabled through the use of appropriate signage, in accordance with Provincial standards.

Bicycle Parking shall be designed so that bicycles may be securely locked to the rack, railing or other such device without undue inconvenience and shall be reasonably safeguarded from intentional or accidental damage, in accordance with the following standards:

Bicycle Parking shall hold the bicycle securely by means of the frame. The frame shall be supported so that the bicycle cannot fall or be pushed over causing damage to the bicycle.

Bicycle parking shall accommodate locking both the frame and the wheels to the rack, railing or other such device with a high security U-shaped shackle lock, if the cyclist removes the front wheel.

Bicycle parking shall accommodate locking the frame and one wheel to the rack, railing or other such device with a high security U-shaped shackle lock, if the cyclist leaves both wheels on the bicycle.

Bicycle parking shall accommodate locking the frame and wheels both to the rack, railing or other such device with a chain or cable not longer than 2.0 m without the removal of any wheels.

Bicycle parking racks, railings or other such devices shall be anchored securely to a hardsurface or fixed structure.

Bicycle parking shall be separated from vehicular parking by a physical barrier or a minimum 1.5 m of open space.

Where the street or Lane from which access is available to any loading or required parking space is Hardsurfaced after the time at which the parking space is provided or required, the person responsible for the construction or maintenance of such parking or loading space shall forthwith be Hardsurfaced such spaces and the access thereto, and the whole area contained within the City-owned land to which a curb crossing permit applies;

Notwithstanding anything contained in the above clause, where a Hardsurfaced Parking Area has been provided on a Site to the minimum required, then the type of surface permitted on the balance of the Site shall be of such material as Transportation Services approves;

In parking areas and similarly congested locations, curbs and other protective measures shall be used to protect adjacent fences, walls, boulevards, landscaped areas or buildings on the Site or an adjacent Site;

Continuous raised or pre-cast curbing of not less than 100 mm in height shall be provided adjacent to streets and required landscaped areas, 600 mm from the front of the parking stall. Concrete curb stops shall be placed to ensure that vehicles do not overhang boulevards, sidewalks, or required landscaped areas. Curbing shall also be required to clearly demarcate the required portion of driveway leading to an internal roadway, aisle, ramp, parking space or loading space;

Where continuing curbs are used as wheel stops, the measured size of parking spaces shall be reduced 1.0 m in length than otherwise required. In such instances, the parking layout should allow for the vehicle to overhang the curb by 1.0 m and such overhang areas must be clear of all obstructions (Signs, shrubs, trees, etc.) and shall not be regarded as a required landscaped area; and

In situations where lighting of off-street parking and loading facilities is to be provided, the lighting shall be arranged, installed and maintained to deflect, shade and focus light away from any adjacent land Uses.

The proposed 4 m and 4.4 m wide one-way directional accesses must be properly signed indicating the operation of the accesses as shown on Enclosure I. All signage must be provided on private property.

The proposed connector sidewalks (6 total) between the north property line of the subject site and the City sidewalk on the south side of 83 Avenue are acceptable to Transportation Services, as shown on Enclosure I.

The proposed hard-surface connections between the furnished/art amenity pads on private property and the City sidewalk on the south side of 83 Avenue are acceptable to Transportation Services, as shown on Enclosure I. All street furnishings, art, and waste receptacles must remain within private property.

The underground driveway ramp must not exceed a slope of 6% for a minimum distance of 4.5 m inside the property line and the ramp must be at grade at the property line. The proposed ramp slope submitted by the applicant is acceptable to Transportation Services as shown on Enclosure II.

Any underground parking access card devices must be located on site, a minimum of 3 m inside the property line.

The proposed retaining walls bordering the underground driveway/parkade ramp, must not exceed a height of 0.3 m for a distance of 3 m from the property line and no portion of the wall may encroach onto road right-of-way. Should the owner/applicant wish to increase this height, adequate sight line data must be provided to ensure vehicles can exit safely.

There are existing boulevard trees adjacent to the site that must be protected during construction. Prior to construction, the owner/applicant must contact Marshall Mithrush of Community Services (780-496-4953) to arrange for hoarding and/or root cutting. All costs shall be borne by the owner/applicant.

Any hoarding or construction taking place on road right-of-way requires an OSCAM (On-Street Construction and Maintenance) permit. It should be noted that the hoarding must not damage boulevard trees. The owner or Prime Contractor must apply for an OSCAM online at: http://www.edmonton.ca/bylaws_licences/licences_permits/oscam-permit-request.aspx

Any alley, sidewalk, or boulevard damage occurring as a result of construction traffic must be restored to the satisfaction of Transportation Services, as per Section 15.5(f) of the Zoning Bylaw. The alley, sidewalks and boulevard will be inspected by Transportation Services prior to construction, and again once construction is complete. All expenses incurred for repair are to be borne by the owner.

There may be utilities within road right-of-way not specified that must be considered during construction. The owner/applicant is responsible for the location of all underground and above ground utilities and maintaining required clearances as specified by the utility companies. Alberta One-Call (1-800-242-3447) and Shaw Cable (1-866-344-7429; www.digshaw.ca) should be contacted at least two weeks prior to the work beginning to have utilities located. Any costs associated with relocations and/or removals shall be at the expense of the owner/applicant.

The applicant shall comply with the requirements of Traffic Bylaw No. 5590 Part II (59) regarding boulevard landscaping. For information call the Parks Branch at 780-496-TREE.

Note: A Building Permit is Required for any construction or change in use of a building. For a building permit, and prior to the Plans Examination review, you require construction drawings and the payment of fees. Please contact the 311 Call Centre for further information.

NOTE: The City of Edmonton does not conduct independent environmental checks of land within the City. If you are concerned about the suitability of this property for any purpose, you should conduct your own tests and reviews. The City of Edmonton, in issuing this Development Permit, makes no representations and offers no warranties as to the suitability of the property for any purpose or as to the presence or absence of any environmental contaminants on the property.

The Alberta Electrical Protection Act, Electrical and Communication Utility Systems Regulation require that all buildings, signs, structures and other objects be three meters or more from power lines. If you plan to build near a power line, please contact Edmonton Power, Customer Engineering Services.

All activities or operations of the proposed development shall comply to the standards prescribed by the Province of Alberta pursuant to the Environmental Protection and Enhancement Act and the regulations pertaining thereto.

Exterior lighting shall be developed to provide a safe lit environment in accordance with Sections 51 and 58 and to the satisfaction of the Development Officer.

PRIOR TO THE RELEASE OF DRAWINGS FOR BUILDING PERMIT REVIEW, the applicant or property owner shall pay a Lot Grading Fee of \$ 825.00.

Any outdoor lighting for any development shall be located and arranged so that no direct rays of light are directed at any adjoining properties, or interfere with the effectiveness of any traffic control devices. (Reference Section 51 of the Edmonton Zoning Bylaw 12800)

An approved Development Permit means that the proposed development has been reviewed only against the provisions of the Edmonton Zoning Bylaw. It does not remove obligations to conform with other legislation, bylaws or land title instruments such as the Municipal Government Act, the ERCB Directive 079, the Edmonton Safety Codes Permit Bylaw or any caveats, covenants or easements that might be attached to the Site.

All outdoor trash collection areas shall be located and screened to the satisfaction of the Development Officer in accordance with Sections 55(4) & (5).

PRIOR TO THE RELEASE OF DRAWINGS FOR BUILDING PERMIT REVIEW, the applicant or property owner shall pay a Sanitary Sewer Trunk Fund fee of \$44,924.00. All assessments are based upon information currently available to the City. The SSTF charges are quoted for the calendar year in which the development permit is granted. The final applicable rate is subject to change based on the year in which the payment is collected by the City of Edmonton.

ADVISEMENTS

Identify the Sprinkler Fire Department Connection for the building. Confirm that the building's FDC is located in accordance with ABC 3.2.5.16.

ABC 3.2.5.16. Fire Department Connections

3) The fire department connection referred to in Sentences (1) and (2) shall be located no closer than 3 m and no further than 15 m from the principal entrance to the building.

Identify Emergency Access Route

Ensure: ABC 3.2.5.5. Location of Access Routes

1) Access routes required by the Article 3.2.5.4 shall be located so that the principal entrance and every access opening required by Article 3.2.5.1 and 3.2.5.2 are located not less than 3m and not more than 15m from the closest portion of the access route required for the fire department use, measured horizontally from the face of the building.

In granting the development the following variances to the Zoning Bylaw are allowed:

1. A variance of 0.66 metres from the required Front Setback of 6.46 metres and to permit a Front Setback of 5.80 metres.
2. A variance of 0.76 metres in the 2.0 metres allowed projection into the Front Yard to permit a projection of 2.76 metres into the Front Yard for the front entrance.
3. A variance of section 823.3(2)(j) waiving the requirement Balconies shall be recessed or partially recessed.
4. A variance of section 44(1)(a) to permit the parkade ramp to be located within the required Side Setbacks.
5. A waiver of section 55.8(3)(a) requiring the proportion of deciduous to coniferous trees and shrubs shall be approximately 50:50.
6. A variance of 0.58 to the 1.4 maximum Floor Area Ratio to permit a Floor Area Ratio of 1.98.
7. A variance to the maximum Density of 125 Dwellings per hectare per section 210.4(1). The maximum Density of 25 Dwellings to be varied by 19 Dwellings to permit a total of 44 Dwellings.

Reasons for Decision:

1. The proposed development, a four Storey Apartment House, is to be situated on five separate lots along 84 Avenue and is adjacent to two lots which abut 109 Street, a six lane major arterial road.
2. All five lots are zoned RA7 Low Rise Apartment Zone. Apartment Housing is a Permitted Use in the RA7 Zone, Section 210.2(1) of the *Edmonton Zoning Bylaw*.
3. All five lots are subject to the Medium Scale Residential Infill Overlay of the *Edmonton Zoning Bylaw*.
4. The Site straddles two Area Redevelopment Plans. The 3 eastern lots are subject to the Garneau Area Redevelopment Plan (*Garneau ARP*). As stated in Section 4.6 of the 109 Street Corridor Area Redevelopment Plan (*109 Street Corridor ARP*), the 2 western lots were formerly subject to the *Garneau ARP*, but have been deliberately removed from it and are now subject to the *109 Street Corridor ARP*.
5. The overall objectives of the *Garneau ARP* include: maintaining the existing character of the Garneau Area; encouraging and controlling higher density redevelopment in portions of the Plan area and encouraging a variety of residential built forms to meet the accommodation needs of various groups. The 3 eastern lots are within the RA7 Low Rise Apartment portion of Sub Area 2 of the *Garneau ARP* which describes the area as predominated by walk up apartment buildings with pockets of single family dwellings interspersed among them. In this area apartment housing is contemplated and two policies apply:
 - i. Future residential development in Garneau will, where possible, provide for a mix of unit types as defined by size, amenity space, and access and family oriented housing will be especially encouraged (policy g.1 of the *Garneau ARP*)
 - ii. Future residential in sub-area 2 will involve a mix of housing types including:
 - i. Walk-up apartments, limited to four storeys, except that the height may be increased to five storeys on sites adjacent to an existing building of five or more storeys, when a direct control district is used to minimize the perception of height and mass, and promote innovative design; and
 - ii. Stacked row housing. (Policy 2.1 of the *Garneau ARP*)
6. The two western lots are located in the Mixed Use Commercial District of the *109 Street Corridor ARP*. Within Section 3.2 of the *109 Street Corridor ARP*, the overview, general intent and policy directives for the Mixed Use Commercial District contemplate developments which are commercial and mixed use with commercial developments at grade and the potential for residential uses above and which are oriented towards 109 Street, not the avenues. Consolidation of lots is encouraged to meet these objectives.
7. As per Section 687(3)(a.1) of the *Municipal Government Act*, the Board must comply with statutory plans including the *Garneau ARP* and the *109 Street Corridor ARP* and also with the *Edmonton Zoning Bylaw* (subject to the variance power in 687(3)(d)). However, to the extent that the goals, policy and vision of *109 Street Corridor ARP* would preclude pure Apartment Housing on two western lots, the aspirational plan is conflict with the *Edmonton Zoning Bylaw* and the *Edmonton Zoning Bylaw* which lists Apartment Housing as a Permitted Use in the RA7 Zone prevails (*McCauley Community League v. Edmonton (City)*, 2012 ABCA 224 (CanLII)).

8. The proposed development requires seven variances to the development regulations of the *Edmonton Zoning Bylaw*, the appropriateness of these variances is determined with consideration to all two applicable statutory plans, zoning bylaw and planning principles.
9. The Board acknowledges concerns in the letters of opposition from a neighbourhood resident and the Garneau Community League Planning Committee and also the concerns expressed at the hearing by representative of the Knox United Church, the adjacent neighbour to the north, and a neighbourhood resident.
10. The Board also notes support for the proposed development was received by the Appellant from neighbouring commercial property owners and residential owners as well as through an endorsement of the project by the Edmonton Development Committee.
11. A variance to Section 823.3(1)(c) to permit a Front Setback of 5.8 metres is warranted due to a unique situation on this blockface. The proposed development is east of two vacant lots currently used for surface parking. These lots are zoned CB2 General Business Zone. Future development on these sites would be subject to less stringent Setback requirements along 83 Avenue. The proposed development is west of two vacant lots also currently used for surface parking. Therefore, the blockface average was calculated based on properties to the east beyond the adjacent parking lots. The closest existing development on the blockface has a Front Setback of 5.40 metres which is within 0.40 metres of the proposed Front Setback. The proposed Front Setback of 5.8 metres exceeds the minimum required 3.0 metres Front Setback prescribed under section 823.3(1)(c). Any impact of the proposed Front Setback is also mitigated by proposed on-site Landscaping, at Grade patios and pocket parks. For these reasons, the impact of a 0.66 metres variance from the blockface average is minimal and has no material adverse impact.
12. A variance to allow the front entrance feature to project 2.76 metres into the required Front Yard is granted because any impact of the projection is mitigated by its airy and open design and also by on-site Landscaping. The Board notes that the allowed maximum 2.0 metres projection is conditional on a minimum Front Setback of 3.0 metres. The proposed Front Setback is 5.8 metres which also mitigates the impact of the additional 0.76 metres projection. The Board accepts the submission of the Appellant that the projection was designed at the request of the Edmonton Design Committee to identify the main front entrance and distinguish it from the other ground level entrances to individual dwellings.
13. The Board waives the requirement for recessed and partially recessed Balconies as per section 823.3(2)(j) based on the pictorial evidence that buildings in the immediate area that incorporate a wide variety of Balcony designs, including several examples of non-recessed Balconies. Non-recessed Balconies are not uncharacteristic of the area. In the proposed development, non-recessed Balconies are an integral to the building design and in conjunction with the glass and exterior finishes; they break up the massing and provide streetscape friendly elements.
14. The Board varies section 44(1)(a) to permit the parkade ramps for underground on-site parking to be located within the required Side Setbacks because these ramps were relocated and situated within the Side Setback to facilitate the provision of directly accessible ground floor patio areas for ground floor dwelling units. Relocating the parkade ramps as proposed to the rear and side of the Site will also help minimize potential negative impacts along 83 Avenue associated with vehicular access. The Board further notes that Transportation

Services has no issues with the proposed locations which were based on specific recommendations of the Edmonton Design Committee.

15. The Board accepts the submission of the Appellant that section 55.8(3)(a) which requires that the proportion of deciduous to coniferous shrubs shall be approximately 50:50 has been met for the minimum required number of trees and shrubs. Given that it is the addition of trees and shrubs over and above the required minimum which moves this ratio from approximately 50:50 to 78:22, the Board waives this development regulation.
16. The Board varies the maximum Floor Area Ratio of 1.4 under Section 210.4(5) of the *Edmonton Zoning Bylaw* by 0.56 to 1.96. The proposed four Storey Apartment Building meets all applicable development regulations concerning maximum Site Coverage and Height requirements.
17. The Board accepts the submission of the Appellants that the proposed footprint and elevations could be the same as what is proposed if the building were redesigned to meet a Floor Area Ratio of 1.4. The Board holds that granting the variance in this situation would have no material adverse impact.
18. The maximum Density of 25 Dwellings per section 210.4(1) is varied by 19 Dwellings to permit a total of 44 Dwellings for the following reasons:
 - i. The location of the proposed development is one lot away from 109 Street and from Whyte Avenue (82 Avenue) along the perimeter of the residential core;
 - ii. The proposed development is in walking distance to commercial uses including retail shopping, groceries stores, restaurants, bars, clubs and banking facilities, and religious, community, recreational and educational developments including the University of Alberta and the University hospital;
 - iii. The proposed development is situated near the end of a residential block minimizing the potential for adverse traffic impacts for residents in the interior of the areas of the Garneau neighbourhood;
 - iv. A variance in Density at this location is consistent with the overall objectives to increase density of the inner city near transportation avenues, provide a variety of dwelling units including smaller and more affordable units, and promote the efficient use of existing resources contained in the City of Edmonton's Municipal Development Plan, *The Way We Grow*. The *109 Street Corridor ARP* and the *Garneau ARP* also support increased density and taller buildings at the perimeter of residential areas close to 109 Street and Whyte Avenue.
 - v. The increase in Density is mitigated by the commercial and institutional nature of adjacent developments. Adjacent sites to the west and south are commercial sites zoned CB2 General Business Zone. The owners of those commercial properties, who will share vehicular access with the proposed development and are therefore impacted by the increased Density, have indicated support for the proposed development.
 - vi. While the Development Officer recognized he has no authority to vary Density per Section 11.4(2); he indicated that the proposed development is at an ideal location for a variance to increase Density.
 - vii. The Edmonton Design Committee which is charged in Section 4.2 of the *109 St Corridor ARP* with the responsibility to review and provide recommendations on development applications within the corridor the provided a letter with a

- recommendation of support for the proposed project which provides in part: “The Edmonton Design Committee supports the increased density and FAR that this project represents based on the location and urban design response.”
19. Some objections to the development relate to the suitability of the architectural design and overall size. The Board notes that Apartment Housing is a Permitted Use and the requested variances do not relate to Height or Site Coverage. Sub Area 2 of the *Garneau ARP* describes the area as predominated by walk up apartment buildings with pockets of single family dwellings interspersed among them. Pictorial evidence before the Board shows a variety of architectural designs for those walk up apartment buildings.
 20. For the reasons above, the Board finds that overall, the proposed Apartment Housing is consistent with the *Garneau ARP*, including Policies G.1 and 2.1, and with the *109 Street Corridor ARP*, and the Municipal Development Plan, *The Way We Grow* and that the granted variances will not unduly interfere with the amenities of the neighbourhood or materially interfere with or affect the use, enjoyment or value of neighbouring parcels.

Important Information for Applicant/Appellant

1. **THIS IS NOT A BUILDING PERMIT.** A Building Permit must be obtained separately from the Sustainable Development Department, located on the 5th Floor, 10250 – 101 Street, Edmonton.
2. Obtaining a Development Permit does not relieve you from responsibility for complying with:
 - a) the requirements of the Edmonton Zoning Bylaw, insofar as those requirements have not been relaxed or varied by a decision of the Subdivision and Development Appeal Board;
 - b) the requirements of the Alberta Safety Codes Act,
 - c) the Alberta Regulation 204/207 – Safety Codes Act – Permit Regulation,
 - d) the requirements of any other appropriate federal, provincial or municipal legislation,
 - e) the conditions of any caveat, covenant, easement or other instrument affecting a building or land.
(Refer to Section 5 of the Edmonton Zoning Bylaw, Bylaw No. 12800 as amended.)
3. When an application for a Development Permit has been approved by the Subdivision and Development Appeal Board, it shall not be valid unless and until any conditions of approval, save those of a continuing nature, have been fulfilled.
4. A Development Permit will expire in accordance to the provisions of Section 22 of the Edmonton Zoning Bylaw 12800 as amended.

5. This decision may be appealed to the Alberta Court of Appeal on a question of law or jurisdiction under Section 688 of the *Municipal Government Act*, R.S.A. 2000, c. M-26. If the Subdivision and Development Appeal Board is served with notice of an application for leave to appeal its decision, such notice shall operate to suspend the Development Permit.
6. When a decision on a Development Permit application has been rendered by the Subdivision and Development Appeal Board, the enforcement of that decision is carried out by the Sustainable Development Department, located on the 5th Floor, 10250 – 101 Street, Edmonton.

NOTE: The City of Edmonton does not conduct independent environmental checks of land within the City. If you are concerned about the stability of this property for any purpose, you should conduct your own tests and reviews. The City of Edmonton, when issuing a development permit, makes no representations and offers no warranties as to the suitability of the property for any purpose or as to the presence or absence of any environmental contaminants on the property.

Mr. B. Gibson, Presiding Officer
Subdivision and Development Appeal Board