



**EDMONTON  
TRIBUNALS**

*Subdivision &  
Development  
Appeal Board*

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Date: March 9, 2017  
Project Number: 233033334-001;  
227016045-005; 233033334-003  
File Number: SDAB-D-17-035 / 036 / 037

**Notice of Decision**

- [1] On February 22, 2017, the Subdivision and Development Appeal Board heard three appeals filed on **January 29, 2017 together**. The appeals concerned the decision of the Development Authority, issued on January 10, 2017 to approve the following developments:

**Construct a Single Detached House with front veranda, fireplace and rear uncovered deck (3.05 metres by 5.18 metres) at 10746 – 126 Street NW;**

**Construct a Single Detached House with front veranda, fireplace and rear uncovered deck (3.05 metres by 5.18 metres) at 10744 – 126 – Street NW; and**

**Construct an Accessory Building (rear detached Garage, 7.01 metres by 5.79 metres) at 10746 – 126 Street NW.**

- [2] The first subject property is on Plan 1623420 Blk 48 Lot 22, located at 10746 – 126 Street NW. The second subject property is on Plan 1623420 Blk 48 Lot 21, located at 10744 – 126 Street NW. The Lots are within the DC1 (Direct Development Control) District for the Westmount Architectural Heritage Area. The West Ingle Area Redevelopment Plan applies to the subject properties.

- [3] The following documents were received prior to the hearing and form part of the record:

- A copy of the Development Permit applications with attachments, proposed plans, and the approved Development Permits;
- The Development Officer's written submission;
- The Appellant's written submission;
- One letter of opposition; and
- A copy of the West Ingle Area Redevelopment Plan.

[4] The following exhibit was presented during the hearing and forms part of the record:

- Exhibit A – An e-mail from the Principal Heritage Planner that summarizes his review of the two proposed houses.

### **Preliminary Matters**

[5] 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.

[6] The Presiding Officer outlined how the hearing would be conducted, including the order of appearance of parties, and no opposition was noted. The Presiding Officer asked if there was any opposition to combining the three appeals and there was no opposition.

[7] The appeals were filed on time, in accordance with section 686 of the *Municipal Government Act*, RSA 2000, c M-26.

[8] The Presiding Officer referenced section 641(4)(b) of the *Municipal Government Act*, RSA 2000, c M-26, which states that:

Despite section 685, if a decision with respect to a development permit application in respect of a direct control district is made by a development authority, the appeal is limited to whether the development authority followed the directions of council, and if the subdivision and development appeal board finds that the development authority did not follow the directions it may, in accordance with the directions, substitute its decision for the development authority's decision.

[9] The Presiding Officer asked the Appellant to explain how the Development Authority failed to follow the directions of Council by approving these development permit applications.

### **Summary of Hearing**

#### *i) Position of the Appellant, Ms. L. Ritter:*

[10] Ms. Ritter explained that she is not opposed to infill developments or increased density. However, she expressed a concern that the proposed setbacks for the cantilevers do not comply with the Alberta Building Code and could create fire and safety concerns.

[11] It was her opinion that the Development Authority did not follow the directions of Council by approving cantilevers on both the main and second storeys of the proposed houses.

- [12] The proposed houses will be built in close proximity to older houses that were built in the 1900s and it was her opinion that the setback requirements should be maintained between new houses built on skinny lots and old heritage houses.
- [13] She is a member of WAHA, a group of Westmount residents who have been developing new regulations for a DC1 District that will be proposed to Council later this year.
- [14] Ms. Ritter provided the following responses to questions:
- a) Her residence is located immediately south of the subject lots.
  - b) She has lived in Westmount for 20 years and just recently purchased her property.
  - c) She is disappointed with the proposed house plans because, in her opinion, they are not characteristic of the heritage area.
  - d) WAHA made attempts to connect with the developer to discuss the proposed developments without success.
  - e) Taller houses with more heritage character could have been developed if the developer would have considered the new DC1 regulations being proposed.
  - f) WAHA wants to work with developers and builders investing in the area.
  - g) Discussions have occurred with the Principal Heritage Planner who provided assistance in rewriting their proposed DC1 regulations.
  - h) It was her opinion that new houses should not break the street line or set a precedent for the development of houses that are uncharacteristic of this heritage neighbourhood.
  - i) She agreed that the sizes of the subject lots are not uncharacteristic of other lots in the surrounding neighbourhood.
  - j) A major concern is the depth of the proposed houses. She is concerned that the depth length will reduce the sunlight from the neighbour's yard and this will impact her enjoyment of the yard. It was her opinion that similar square footage could have been achieved by building taller houses, which provide a heritage appearance and preserve the characteristics of the area.
  - k) She agreed that design and style are subjective but generally Craftsman style houses are taller and shorter which also allows more sunlight into neighbouring properties.
  - l) She is concerned that the two proposed houses are too similar in design.

*ii) Position of two Affected Property Owners in Support of the Appellant:*

*Ms. J. Bowe McCarthy:*

- [15] She currently resides immediately north of the subject lots and has resided in this community for approximately 20 years and supports the concerns of the Appellant.
- [16] Over the past five years she has seen developers erode the character of this neighbourhood by building houses that are not in keeping with the existing architectural character or by splitting lots and building skinny houses where one single family dwelling existed.
- [17] However, Ms. McCarthy commended this developer for complying with all of the development regulations.
- [18] She recognizes that some of the houses in this area are beyond renovation and she is not opposed to the construction of a new house if the architectural style and dimensions are in keeping with the houses on adjacent lots.
- [19] In this case the proposed houses are not in keeping with the architectural style because they are built too deep into the lot and will require the removal of most of the mature landscaping.
- [20] The original intention of the Westmount Architectural Heritage Area was to preserve the look and feel of this part of the City. The proposed development of two “skinny houses” on one large site does not achieve this goal.
- [21] Ms. Bowe McCarthy provided the following responses to questions:
- a) In her opinion, splitting lots in this area has set a precedent.
  - b) The trees that overlook her property from the abutting lot to the south may have to be removed to accommodate construction.
  - c) A large single family house could have been built on the lot before it was subdivided and the existing large trees could have been retained.
  - d) It was her hope that the DC1 designation will eventually have more power instead of voluntary compliance on the part of developers and builders.

*Ms. W. Calvert:*

- [22] She is a long time resident of this neighbourhood and there is little protection provided regarding the redevelopment of heritage properties.
- [23] She is disappointed that the existing bungalow on this site will be demolished to accommodate two new houses.
- [24] She is not opposed to infill but is opposed to the creation of 25 foot lots because they are not typical of this neighbourhood.
- [25] The proposed houses are cookie cutter houses and will require the removal of large mature trees.

The Presiding Officer notes that there was confusion over the Plot Plan for the proposed detached Garage. The original Plot Plan that was scanned and sent to the SDAB office showed a Rear Setback of 1.25 metres from the Garage to the Rear Lot Line. The revised stamped Plot Plan approved by the Development Officer shows a revised Rear Setback of 3.93 metres.

*iii) Position of the Development Officer, Ms. K. Bauer:*

- [26] Ms. Bauer referenced a copy of the Plot Plan that she stamped to confirm the Setback of the proposed rear detached Garage.
- [27] Ms. Bauer submitted an e-mail from the Principal Heritage Planner for the City, marked Exhibit "A". The Principal Heritage Planner noted that the developer was willing to work within all of the DC1 guidelines. Adjustments were made to building and window treatments to meet the styles characterized by the West Ingle area even though they were not compelled to make the changes under the existing zoning.
- [28] The voluntary architectural guidelines do not require the buildings to have a different appearance.
- [29] An aerial photograph was referenced to illustrate that the proposed location of the detached Garage is similar to the location of the Garage on the Appellant's property. She indicated that the 3.93 metre Setback from the lane would give vehicles plenty of space to easily access the Garage.
- [30] She referenced a photograph contained in her written submission to illustrate the existing mature landscaping on the subject lots.

[31] Ms. Bauer provided the following responses to questions:

- a) The direction of Council was followed by approving these development permit applications.
- b) The Applicant was willing to discuss and address all of the concerns that were identified.
- c) Most of the Appellant's concerns will be addressed during the building permit process.

*iv) Position of the Respondent, Mr. J. Lock, representing Urbanex Consulting Ltd. and Mr. C. Clendenning, property owner:*

[32] Mr. Lock explained that he is the builder of both of the proposed new houses.

[33] He has worked with the Development Officer to ensure that the Setback for the proposed Garages comply with the DC1 requirements.

[34] The 3.93-metre Garage Setback from the alley will allow two parking spaces within the garage for each new house to eliminate the need for additional street parking.

[35] It has always been his intent to ensure that the new houses would be designed to be respectful of the heritage area. The WAHA guidelines were used in the design process to ensure that the voluntary guidelines were embraced.

[36] The submitted drawings were reviewed by the Principal Heritage Planner who suggested a few minor changes, including adjustments to the windows, shingles on the upper portion of one house, and wood railings on the front porches. These changes were made and the plans were approved by the Principal Heritage Planner.

[37] The shapes and styles of the two houses were limited because of the WAHA Guidelines and the building requirements of the City. They noted that when two houses were built side-by-side on a split lot in this neighbourhood, they were often traditionally built identical.

[38] Specific changes, including different color palettes, different roof lines, unique columns, different front doors, window headers, detailing on the front porches, the use of shingles on one house and board and batten on the other, were made to change the appearance of each house.

[39] Many of the other features of these two houses are similar as dictated by the WAHA Guidelines and the City requirements. Window sizes must be similar, front porches with wood railings are required, as well as lap siding.

- [40] During the process of purchasing this property, every attempt was made to inform the community of the plans for the property. A letter containing a description of the proposed development and contact information was circulated to the neighbours. Meetings have been held with the Appellant and other members of the community to answer their questions.
- [41] Mr. Lock provided the following responses to questions:
- a) He has built other Single Detached Houses in this area and received complaints that the houses were too large.
  - b) Increasing density in this area is valuable because it is close to the downtown core.
  - c) They considered designing the houses with a third storey but were concerned that they would be too tall and the floor plans would have to be revised which would reduce the size of the livable area.
  - d) Fire safety will be addressed through the building permit review. Hardi board will be used as the exterior finish on both houses.
  - e) The color palettes for the finishing materials are not reflected in the black and white elevation drawings.
  - f) This is a very diverse neighbourhood with many different housing styles, including bungalows, two storey and two and a half storey houses.
  - g) It is their intent to preserve as many mature trees as possible.
  - h) Style is subjective but it has always been their intent to design houses that are characteristic of this neighbourhood.
- [42] Mr. Clendenning stated that he grew up in the Westmount neighbourhood and is familiar with the character of the neighbourhood.
- [43] Both houses were carefully designed based on the WAHA Guidelines and the City development regulations to ensure that variances would not be required. As many of the mature trees as possible will be retained.
- [44] Mr. Clendenning provided the following responses to questions:
- a) Information flyers were circulated to approximately 200 houses.
  - b) He met with the Appellant on several occasions but did not personally meet with the group of property owners working on the new DC1 guidelines.

c) Some contact was made with the Westmount Community League.

v) *Rebuttal of the Appellant*

[45] It was her hope that more work could have been done with the Westmount Architectural Heritage Area to ensure that the proposed developments were a better fit with the proposed DC1 guidelines that will be brought to Council.

[46] It is important to preserve the mature trees on 125 Street and 126 Street with designated heritage properties.

**Decision**

[47] The appeals are **DENIED** and the decisions of the Development Authority are **CONFIRMED**. The developments are **GRANTED** as approved by the Development Authority.

**Reasons for Decision**

[48] Section 641(4)(b) of the *Municipal Government Act*, RSA 2000, c M-26 states that:

Despite section 685, if a decision with respect to a development permit application in respect of a direct control district is made by a development authority, the appeal is limited to whether the development authority followed the directions of council, and if the subdivision and development appeal board finds that the development authority did not follow the directions it may, in accordance with the directions, substitute its decision for the development authority's decision.

[49] The General Purpose of the DC1 (Direct Development Control) District for Westmount Architectural Heritage Area is:

To establish a Direct Control District for single detached residential development and associated uses, as found under the RF1 (Single Detached Residential) District, in the Westmount Architectural Heritage Area so as to continue the tradition of heritage and community as originally conceived in the subdivision and architecture of the Area. The District is based on the RF1 Regulations but with additional Development Criteria and accompanying voluntary Architectural Guidelines, as written and developed by residents of the Area, that are intended to preserve the Area's unique historical streetscape and architectural features, reflecting the character, location and proportions of existing structures from the early 1900s in the Area, including: Boulevards with mature trees; continuous sidewalks; rear lane access to on-site parking; verandahs; and other features as originally conceived in subdivision plans and architectural designs of the early 1900s.



- [50] This particular DC1 was primarily created to make attempts to preserve the heritage of the neighbourhood; although through voluntary actions. The Board allowed latitude in the presentations of the Appellant and those who spoke in favour of the Appeal so as to try and determine if the heritage aspect as set out in the DC1 were followed and thus whether the conclusions of the Development Authority were following the instructions of Council.
- [51] With respect to the heritage retention aspects of the DC1, the Board finds that the Development Authority did follow the directions of Council for the following reasons:
- a. The Development Officer circulated the prospective drawings to the Principal Heritage Planner for comment.
  - b. The Respondent made changes to accommodate the requests of the Principal Heritage Planner.
  - c. Although any requests made by the Principal Heritage Planner are not statutory in nature and are voluntary, the Respondent made changes to the Houses to be more in following with the spirit of the DC1.
  - d. The Principal Heritage Planner indicated that the proposed Houses feature different exterior cladding treatments and made adjustments to the building and window treatments addressed in the DC1, meeting the styles characterized by the West Ingle Area Redevelopment Plan.
  - e. The proposed developments are a listed Use in the DC1 (Direct Development Control) District for Westmount Architectural Heritage Area.
  - f. The proposed developments comply with all of the regulations contained in the DC1 (Direct Development Control) District for Westmount Architectural Heritage Area.
  - g. The Board is bound to review development permit applications based on the regulations in effect at the time of the appeal hearing and agrees with the Development Authority that the proposed development complies with all of the development regulations pursuant to the *Edmonton Zoning Bylaw*.
- [52] The Board notes that a group of residents are currently rewriting the development regulations to be brought to Council.
- [53] The Board notes the concerns of the Appellant and two other neighbouring property owners regarding possible building code infractions. However, these issues are outside the purview of the Board and will be addressed through the building permit process.

[54] Based on the evidence provided, the Board is satisfied that the Development Authority did follow the directions of Council in approving the proposed developments.

Mr. V. Laberge, Presiding Officer  
Subdivision and Development Appeal Board

**Important Information for the Applicant/Appellant**

1. This is not a Building Permit. A Building Permit must be obtained separately from the Sustainable Development Department, located on the 2nd Floor, Edmonton Tower, 10111 – 104 Avenue NW, Edmonton, AB, T5J 0J4.
2. Obtaining a Development Permit does not relieve you from 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.
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, 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*, RSA 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 2nd Floor, Edmonton Tower, 10111 – 104 Avenue NW, Edmonton, AB, T5J 0J4.

*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.*



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Date: March 9, 2017  
Project Number: 230186965-003  
File Number: SDAB-D-17-038

**Notice of Decision**

[1] On February 22, 2017, the Subdivision and Development Appeal Board heard an appeal that was filed on **January 31, 2017**. The appeal concerned the decision of the Development Authority, issued on January 26, 2017, to refuse the following development:

**Construct a three Dwelling Row House building with a rear detached Garage.**

[2] The subject property is on Plan 2460HW Blk 19 Lot 16, located at 6325 - 109 Street NW, within the (RF5) Row Housing Zone. The Mature Neighbourhood Overlay and the 109 Street Corridor Area Redevelopment Plans apply to the subject property.

[3] The following documents were received prior to the hearing and form part of the record:

- A copy of the Development Permit application with attachments, proposed site plan, elevation drawings and the refused Development Permit;
- A Transportation Services memorandum;
- The Development Officer's written submission and aerial photographs;
- The Appellant's written submissions and revised site plans; and
- A copy of the 109 Street Corridor Area Redevelopment Plan.

[4] The following exhibit was presented during the hearing and forms part of the record:

- Exhibit A – A copy of Floor plans submitted by the Appellant.

**Preliminary Matters**

[5] At the outset of the appeal hearing, the Chairman confirmed with the parties in attendance that there was no opposition to the composition of the panel.

[6] The Chairman outlined how the hearing would be conducted, including the order of appearance of parties, and no opposition was noted.

[7] The appeal was filed on time, in accordance with section 686 of the *Municipal Government Act*, RSA 2000, c M-26.

[8] The Chairman referenced section 814.4(1) of the *Edmonton Zoning Bylaw* which states:

The following regulations shall apply to row housing development abutting 109 Street between the north side of 62 Avenue and the south side of 69 Avenue:

- a. the minimum Setback abutting 109 Street shall be 3.0 m; and
- b. a pedestrian walkway system shall be provided along the adjacent portion of 109 Street with the following features:
  - i. a sidewalk with an unobstructed walking width of 2.0 m;
  - ii. a landscaped boulevard 2.0 m wide separating the sidewalk from 109 Street; and
  - iii. boulevard trees at a 6.0 m spacing.

The pedestrian walkway system should maintain continuity with the design that has been constructed for other new developments along 109 Street. Utility relocation, which may be required to construct the pedestrian walkway system shall be at the expense of the developer.

[9] The Chairman noted that this requirement was not referenced in the refusal of the Development Officer.

[10] However, the Respondent, Mr. Walter, indicated that this requirement was discussed with the Development Officer and they are prepared to comply.

### **Summary of Hearing**

i) *Position of the Appellants, Mr. J. Walter & Mr. D. Fett, representing North Pointe Homes:*

[11] Properties along the 109 Street Corridor were rezoned from RF3 to RF5 in July 2010 in order to accommodate denser urban forms.

[12] The RF5 Row Housing Zone is specific to Row Housing but the development restrictions do not align with the 109 Street Corridor Area Redevelopment Plan (“the ARP”). The RF3 Small Scale Infill Development Zoning regulations would be more conducive to realizing Medium Scale Development and increased Density compared to the RF5 regulations for Row Housing.

[13] The proposed development perfectly suits the City’s mandate to increase Density through infill.

- [14] Even though the RF5 Zone is specific to the development of Row Housing, it is almost impossible to develop Row Housing unless a developer purchases the adjacent lots, which is an unreasonable expectation.
- [15] The ARP encourages architecturally pleasing developments that face 109 Street and it was their opinion that the proposed development provides this type of development.
- [16] The maximum allowable Density for a Multi-unit Project Development is 42 Dwellings per hectare and the proposed Density is 51 Dwellings per hectare which allows 2.51 Dwelling Units. The RF3 regulations would allow the construction of up to four Dwellings without a restriction on Dwellings per hectare.
- [17] The Site Width regulations contained in the RF5 Zone creates larger restrictions for the lots bordering 109 Street and is counterproductive for the development of Row Housing.
- [18] Only the southernmost Dwelling can accommodate a Private Outdoor Amenity Area. The middle Dwelling proposes a Private Outdoor Amenity Area less than 30 square metres in size and the private Outdoor Amenity Area for the northernmost Dwelling is located in the Front Yard.
- [19] It is extremely difficult to provide Private Outdoor Amenity Space adjacent to an interior Dwelling. In this case a large Amenity Space with direct access from the rear door of the unit is proposed with a decorative fence or landscaping to separate the Private Outdoor Amenity spaces. The proposed landscaping plan meets all of the requirements of the RF3 Zone to allow Private Outdoor Amenity Space in a Front Yard.
- [20] The proposed rear detached Garage contains three separate Garages in order to provide sufficient parking for the proposed three Dwelling units.
- [21] None of the lots along 109 Street can comply with a minimum 7.5-metre Side Setback abutting the east property line unless a neighbouring lot was purchased and consolidated which is an unreasonable task of any developer.
- [22] A Semi-detached House of the exact same size as the proposed development would only require a 1.2-metre Side Setback from the east property line.
- [23] A copy of the floor plans, marked *Exhibit A* was referenced to illustrate the size of the proposed Dwelling units. Reducing the size of the units to accommodate the Side Setback would make the Dwelling units too small and unmarketable.
- [24] Only the middle Dwelling unit has grade access along the east property line which would be the same for a Single or Semi-detached Development on this Site.
- [25] Privacy issues have been addressed for all windows located on the east side of the structure.

- [26] The minimum required Front Setback is unreasonable and should be similar to the requirements of the RF3 Zone. It is more desirable to have a larger Rear Yard than Front Yard to provide Amenity Space in the Rear Yard.
- [27] Community consultation was completed regarding this variance and no negative feedback was received from property owners within the 60-metre notification radius.
- [28] If the City wants to stay true to their mandate for increased Density and more affordability within infill development, this project fits those criteria.
- [29] Mr. Fett and Mr. Walter provided the following responses to questions:
- a) The Development Officer provided a list of addresses within the 60-metre notification radius. They personally visited each residence with renderings of the proposed development, a summary of the required variances and a business card. No one that they contacted had any concerns regarding the proposed development.
  - b) The Community League was contacted but did not provide any feedback.
  - c) This site was zoned RF5 when they purchased the lot. The application process was started in November 2014.
  - d) The site was purchased because it was specifically zoned for Row Housing.
  - e) It would be possible to have the site rezoned to RF3 but it is a long costly process.
  - f) Complying with the requirement to construct a sidewalk and boulevard is expensive, but they are willing to do it.
  - g) The proposed driveway is long enough to provide additional vehicle parking, which is attractive for potential buyers.
  - h) The Development Officer was supportive of the proposed development and understood the restrictions of the RF5 Zone. He worked with them to address the design and required variances.
  - i) The RF3 regulations were referenced because they are for Small Scale Infill Developments while the RF5 regulations are for Row Housing, which is Medium Scale Infill Development.
  - j) One of the two adjacent lots located east of the subject site has recently been renovated.
  - k) Their goal is to provide affordable housing units in close proximity to the University.

*ii) Position of the Development Officer, Mr. C. Lee on behalf of Mr. K. Bacon:*

- [30] The primary reason for refusal was Density. Section 11.3(1)(b) of the *Edmonton Zoning Bylaw* does not provide discretion for the Development Officer to vary Density regulations.
- [31] It was appropriate for the Respondent to use the RF3 development regulations as a comparison. The blanket rezoning of properties along 109 Street when the ARP was implemented may not have addressed all of the complexities.
- [32] According to the RF5 regulations, the subject Site is not wide enough to accommodate three Dwellings. However, using the RF3 Zone as a comparison, a three Dwelling Row House on a Corner Lot only has to be 14.8 metres in Site Width.
- [33] The Development Officer has no objection to any of the required variances with the exception of increased Density.
- [34] The RF5 Zone does not contemplate the additional regulations in a Mature Neighbourhood with much smaller lots.
- [35] 109 Street is a Transit Oriented Development Corridor.
- [36] There are no transitional guidelines to address the current realities and the long term plan of the ARP. Area Redevelopment Plans are policies that can be used to justify a variance or a refusal but not as a tool that dictates development regulation.
- [37] It was his assumption that the rezoning was done in an attempt to consolidate lots along 109 Street with the goal of providing higher Density development along 109 Street.

*iii) Rebuttal of the Appellant*

- [38] Consolidating three lots is not feasible because the lot would have to be purchased at market value which is not economically viable.
- [39] Although it is acknowledged that the sidewalk and boulevard construction are the responsibility of the developer, it was his opinion that the City should share the cost.

**Decision**

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



1. Unless otherwise stated, all references to "section numbers" refer to the authority under the Edmonton Zoning Bylaw #12800, as amended.
2. WITHIN 14 DAYS OF THE DEVELOPMENT PERMIT BECOMING VALID and prior to any demolition or construction activity, the applicant must post on-site a development permit notification sign (Reference Section 20.5.2).
3. Eave projections on the rear detached garage shall not exceed 0.46m into required Side Setbacks. (Reference Section 44.1.b).
4. All access locations and curb crossings shall have the approval of Transportation Engineering and Planning prior to the start of construction. Reference Section 53(1).
  - 1) The existing residential access to 109 Street must be removed and boulevard restored.
  - 2) The alley crossing to 109 Street, the curb ramp located at the southeast corner of 109 Street & 64 Avenue, and the monolithic sidewalk located along 109 Street between the alley crossing and curb ramp must be removed.
  - 3) An alley crossing to 109 Street, a curb ramp located at the southeast corner of 109 Street and 64 Avenue, and a 2.0m concrete separate sidewalk along 109 Street located between the new alley crossing and new curb ramp must be constructed.
  - 4) New curb & gutter along 109 Street located between the new alley crossing and new curb ramp must be constructed.
  - 5) A 2.0m wide landscaped boulevard separating the new sidewalk from 109 Street located between the new alley crossing and the new curb ramp must be constructed.
  - 6) Boulevard trees must be planted along 109 Street at a 6.0m spacing between the new alley crossing and the new curb ramp.
  - 7) The owner must enter into a Servicing Agreement with the City for the following improvements:
    - a) removal of the access to 109 Street and restore the boulevard;
    - b) removal of the alley crossing to 109 Street, the curb ramp located at the southeast corner of 109 Street & 64 Avenue, and the monolithic sidewalk located along 109 Street between the alley crossing and curb ramp;

- c) construct an alley crossing to 109 Street, a curb ramp located at the southeast corner of 109 Street and 64 Avenue, and a 2.0m concrete separate sidewalk along 109 Street located between the new alley crossing and new curb ramp;
  - d) construct curb & gutter along 109 Street located between the new alley crossing and new curb ramp;
  - e) construct a 2.0m wide landscaped boulevard separating the sidewalk from 109 Street located between the new alley crossing and the new curb ramp;
- and
- f) plant boulevard trees along 109 Street at a 6.0m spacing between the new alley crossing and the new curb ramp.

This Servicing Agreement is a requirement with this Development Application. The Servicing Agreement, which includes an Engineering Drawing review and approval process, must be signed PRIOR to the release of the drawings for Building Permit review. The applicant must contact Adil Virani (780-496-6037) of Current Planning to initiate the Agreement.

- 8) There is an existing boulevard tree adjacent to the site on 64 Avenue that must be protected during construction. Prior to construction, the owner/applicant must contact to arrange for hoarding and/or root cutting. All costs shall be borne by the owner/applicant. Please contact Bonnie Fermanuik at City Operations, Parks and Roadways (780-496-4960).
- 9) Any alley, sidewalk, or boulevard damage occurring as a result of construction traffic must be restored to the satisfaction of Transportation Planning and Engineering, as per Section 15.5(f) of the Zoning Bylaw. The alley, sidewalks and boulevard will be inspected by Transportation Planning and Engineering prior to construction, and again once construction is complete. All expenses incurred for repair are to be borne by the owner.

Transportation Planning and Engineering Advisements:

- 1) 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](http://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.

2) Any hoarding or construction taking place on road right-of-way requires an OSCAM (On-Street Construction and Maintenance) permit. OSCAM permit applications require Transportation Management Plan (TMP) information. The TMP must include:

- the start/finish date of project;
- accommodation of pedestrians and vehicles during construction;
- confirmation of lay down area within legal road right of way if required;
- and to confirm if crossing the sidewalk and/or boulevard is required to temporarily access the site.

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/transportation/on\\_your\\_streets/on-street-construction-maintenance-permit.aspx](http://www.edmonton.ca/transportation/on_your_streets/on-street-construction-maintenance-permit.aspx)

5. Landscaping shall be in accordance to the approved landscape plan, Section 55 and to the satisfaction of the Development Officer.

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).

- 6. A 1.8m high solid screen fence shall be constructed along the east property line where this Site abuts the RF5 Zone to the east, except along common flanking Front Yard boundaries.
- 7. 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.

8. The off-street parking, loading and unloading (including aisles or driveways) shall be hardsurfaced, curbed, drained and maintained in accordance to Section 54(6).
9. All outdoor trash collection areas shall be located and screened to the satisfaction of the Development Officer in accordance with Sections 55(4) & (5).

NOTES:

- 1) Signs require separate Development Applications.
- 2) 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.
- 3) This approval 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.

[41] In granting the development, the following variances to the *Edmonton Zoning Bylaw* are allowed:

1. The maximum Density for a Multi-unit Project Development of 42 Dwellings per hectare allowed per section 160.4(1) is varied to permit an excess of 51 Dwellings per hectare.
2. The minimum Site Width of 17.4 metres required per section 160.4(2)(a)(b) is varied to allow a deficiency of 2.31 metres, thereby decreasing the minimum Site Width to 15.09 metres.
3. The Private Outdoor Amenity Area requirements of section 160.4(9)(a) and section 47 are waived.
4. The Garage Width requirement of section 160.4(13)(b) is waived.
5. The minimum (east) Side Setback of 7.5 metres required per section 160.4(14)(a) is varied to allow a deficiency 6.15 metres, thereby decreasing the minimum Side Setback to 1.35 metres.
6. The requirement that no outdoor parking, garbage collection or outdoor amenity area shall be located within the (east) Side Setback of section 160.4(14)(b) is waived.

7. The minimum (north) Front Setback of 9.2 metres required per section 814.3(1) is waived to allow a deficiency of 1.5 metres, thereby decreasing the minimum Front Setback to 7.7 metres.

### **Reasons for Decision**

- [42] Row Housing is a Permitted Use in the RF5 Row Housing Zone.
- [43] The above noted variances required for Density, Site Width, Private Outdoor Amenity Area, and Garage Width have been granted because of the development difficulties created by the size of the subject Lot which is 15.4 metres wide.
- [44] The Board has granted the variances for the following reasons:
- a) Section 160.1 of the *Edmonton Zoning Bylaw* states that the General Purpose of the RF5 Row Housing Zone is “to provide for relatively low to medium density housing, generally referred to as Row Housing”.
  - b) Section 7.2(6) of the *Edmonton Zoning Bylaw* defines Row Housing as:

development consisting of a building containing a row of three or more Dwellings joined in whole or in part at the side only with no Dwelling being placed over another in whole or in part. Individual Dwellings are separated from one another by a Party Wall. Each Dwelling has separate, individual, and direct access to Grade. This Use does not include Stacked Row Housing or Blatchford Townhousing.
  - c) The purpose of the RF5 Zone is to provide for developments of three or more Dwelling Units. The variances that have been granted are necessary to allow the proposed development to comply with the General Purpose of the RF5 Row Housing Zone.
  - d) Granting the variances is in keeping with the policies and goals of the 109 Street Corridor Area Redevelopment Plan to encourage increased Density of residential developments along 109 Street with multi-family developments fronting onto 109 Street.
  - e) Section 54.2, Appendix I of the *Edmonton Zoning Bylaw* designates 109 Street as a Transit Oriented Development Corridor.
  - f) The proposed development with the required variances supports Policy 3.3.1.1 of the *Municipal Development Plan* (“The Way We Grow”), to promote medium and higher density residential developments in conjunction with Transit Oriented Developments.

- g) The Development Authority was not opposed to the required variances but had to refuse the Development Permit application because of an excess in the maximum allowable Density pursuant to Section 11.3(1)(b) of the *Edmonton Zoning Bylaw* which does not provide Development Officers with discretion to vary Density regulations.
  - h) The proposed Landscaping plan will provide vegetative screening between the primary building on the subject Site and neighbouring houses, which will help mitigate the impact of the variances granted in the minimum required Setbacks and the provision of Private Outdoor Amenity Space.
  - i) The Board is satisfied that the Appellant completed Community consultation with respect to the required variances and notes that no opposition to the proposed development was received. Therefore, it is the opinion of the Board that the proposed development with the required variances will not negatively impact the use, enjoyment or value of neighbouring parcels of land.
- [45] For all of the above reasons, the Board finds that the proposed development with the variances granted will not unduly interfere with the amenities of the neighbourhood nor materially interfere with or affect the use, enjoyment or value of neighbouring parcels of land.

Mr. I. Wachowicz, Chairman  
Subdivision and Development Appeal Board

**Important Information for the Applicant/Appellant**

1. This is not a Building Permit. A Building Permit must be obtained separately from the Sustainable Development Department, located on the 2nd Floor, Edmonton Tower, 10111 – 104 Avenue NW, Edmonton, AB, T5J 0J4.
2. Obtaining a Development Permit does not relieve you from 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.
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, 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*, RSA 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 2nd Floor, Edmonton Tower, 10111 – 104 Avenue NW, Edmonton, AB, T5J 0J4.

*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.*