



**EDMONTON
TRIBUNALS**

*Subdivision &
Development
Appeal Board*

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Date: January 26, 2017
Project Number: 230719333-001
File Number: SDAB-D-16-292

Notice of Decision

- [1] On January 11, 2016, the Subdivision and Development Appeal Board heard an appeal that was filed on October 24, 2016. The appeal concerned the decision of the Development Authority, issued on October 14, 2016, to refuse the following development:

Change the Use of a General Retail Store to a Major Alcohol Sales

- [2] The subject property is on Plan 0220792 Blk 70 Lot 89, located at 14211 - 23 Avenue NW, within the CSC Shopping Centre Zone. The Terwillegar Towne Neighbourhood Area Structure Plan applies to the subject property.
- [3] The following documents were received prior to the hearing and form part of the record:
- Copy of the Development Permit application with proposed plans;
 - Refused Development Permit decision;
 - Canada Post receipt confirming delivery of the refusal decision on October 18, 2016;
 - Appellant's supporting materials, including a parking study from Bunt and Associates, and an opinion letter with attachments from Hodgson Schlif Evans Architects; and
 - Development Officer's written submissions, dated October 31, 2016 and January 3, 2017, with map of nearby Major and Minor Alcohol Sales Use.

Preliminary Matters

- [4] 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.
- [5] The Presiding Officer outlined how the hearing would be conducted, including the order of appearance of parties, and no opposition was noted.

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

Summary of Hearing

i) Position of the Appellant, Mr. V. Aggarwal

[7] Mr. Aggarwal was represented by legal counsel, Mr. J. Murphy.

[8] The proposed Major Alcohol Sales is located in Southwest Edmonton along 23 Avenue. It is located in a former pet supply store, within a shopping centre of 2.12 hectares. Directly north, across 23 Avenue, is a shopping centre of 2.80 hectares, which was formerly partially occupied by Sobeys, and will be replaced by a fitness centre and a Dollarama. To the east of the subject development is another shopping centre of 3.54 hectares, occupied by a number of businesses including Save-on-Foods and a Liquor Depot. Kitty-corner to the subject development toward the northeast is a shopping centre of 3.05 hectares, occupied by a number of businesses including a wine store.

[9] With respect to the parking deficiency, Mr. Murphy noted that the proposed development is located in a shopping centre with a mix of businesses. The expectation is that a customer would make use of one parking space while using multiple services located at the Site. He referred to the parking study completed by Bunt and Associates, which identified that there is an approximate 20% minimum hedge for parking on the Site. The parking deficiency is therefore well encompassed by both the 20% parking hedge and the aforementioned anticipated user behavior.

[10] The Development Officer also identified deficiencies with respect to Crime Prevention Through Environmental Design (“CPTED”) criteria under section 85(7), specifically in relation to the rear entryway on the south façade of the building. In this regard, Mr. Murphy referred to the opinion letter from Hodgson Schlif Evans Architects, which expressed the view that the light fixtures provide sufficient lighting that meet the intent of CPTED. Furthermore, the rear entry is not intended for customer use, and very few if any customers would access this door for normal entry/egress.

[11] Finally, the Development Officer’s third reason for refusal – that the proposed Major Alcohol Sales is located within 500 metres of another Major or Minor Alcohol Sales Use in contravention of section 85(3) – no longer applies to the proposed development, due to a bylaw amendment passed by City Council on December 12, 2016. As a result of this amendment, section 85(2) now reads as follows:

2. Notwithstanding subsection 85(1), a Major Alcohol Sales or Minor Alcohol Sales may be located less than 500 m from any other Major Alcohol Sales or Minor Alcohol Sales if all the following regulations are met:

- a. the Major Alcohol Sales or Minor Alcohol Sales are located on separate Sites;
- b. the Major Alcohol Sales or Minor Alcohol Sales are located outside the boundary shown in Appendix 1 to Section 85; and
- c. at least one of the Major Alcohol Sales or Minor Alcohol Sales is located on a Site greater than 2.5 ha in size that is zoned CSCa, UVCa, GVC, TCC, DC1, DC2, CSC, CB1, CB2, CHY, CO or CB3.

[12] Mr. Murphy referred to *698114 Alberta Ltd. v Banff (Town)*, 2000 ABCA 237, a decision of the Alberta Court of Appeal, wherein the Court quoted at paragraph 21, with approval, from Professor Laux's *Planning Law and Practice in Alberta* (2nd ed., 1998):

“...the filing of an application for a permit vests no rights in the applicant”, that is rights do not crystallize at the date the application is filed with the municipality. He continues:

Thus, if a use amendment rendering the proposed development non-complying is made to the land use bylaw between the date the application is filed and the date that the decision is made, the development authority should apply the amendment and reject the application. The general rule is that the law in force at the time the decision is made is the operative law.

[13] Mr. Murphy submitted that the amended regulations governing Major Alcohol Sales, including the exemption contemplated under section 85(2), should therefore apply.

[14] As noted above, the proposed development is located in a separate shopping centre than the Liquor Depot to the east and the wine store to the northeast. Mr. Murphy also reviewed the boundary referenced in Appendix 1 to Section 85, and identified that the proposed development is outside this boundary. Finally, all three Sites with alcohol sales – including the proposed Major Alcohol Sales Use – are located on Sites greater than 2.5 hectares in size, and all are zoned CSC Commercial Shopping Centre Zone.

[15] As the proposed development meets all three criteria set out in the amended section 85(2), and seeing as both the parking study and the letter from Hodgson Schlif and Evans Architects have addressed the Development Officer's concerns pertaining to parking and CPTED, it is apparent that the proposed development will not interfere with the amenities of the neighbourhood, nor materially interfere with or affect the use, enjoyment or value of neighbouring parcels of land. As such, the Board should allow the appeal and grant the development.

[16] Upon questioning by the Board, Mr. Murphy clarified that although the rear parking spaces are public parking, they are rarely used by the public. In addition, the rear doorway is locked, and prevents entry by anyone who is not an employee with a key. As shown in the pictures attached to the Architect's letter, the area is well-lit.

ii) Position of the Development Authority

[17] The Development Authority was represented by Mr. C. Chan.

[18] Mr. Chan stated that following the recent amendment to section 85, the Applicant would likely receive an approved permit if his application was filed today. Mr. Chan agreed with the Appellant that the amended section 85 applies, and that the proposed development fulfills all three criteria set out in subsections 85(23)(a) to (c).

[19] Regarding the parking deficiency, Mr. Chan explained that the parking study was circulated to the City's Transportation department. However, he received no feedback, which would typically indicate that the Transportation department had no concerns with respect to the parking deficiency.

[20] Finally, the concerns about CPTED noted in his reasons for refusal have been satisfied, based on the information provided in the Architect's opinion letter. That being said, should the Board approve the development, he would prefer that the permit be conditional upon the rear door not be used by customers, and that it be made available to customers only for emergency egress.

iii) Rebuttal of the Appellant

[21] Mr. Murphy confirmed that Bunt and Associates had circulated the parking study to the City's Transportation department and received no response.

[22] Regarding the Development Officer's suggested condition, Mr. Murphy stated that the rear entrance should still be made available for employee access. However, a condition restricting customer access would be acceptable, as liquor stores generally do not want customers to enter or exit their stores through the rear entrance.

Decision

[23] 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) 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)
- 2) The rear access door located on the south façade of the subject building shall not be used for customer entry or egress, except in the case of emergency.

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

- 1) Section 54.2 is relaxed to permit a deficiency of 33.8 (34) parking spaces for a total of 252 parking spaces for the Site, instead of the required 218 parking spaces.

Advisements:

- 1) This Development Permit is not a Business Licence. A separate application must be made for a Business Licence.
- 2) Signs require separate Development Applications.
- 3) 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.
- 4) 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.
- 5) 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

Reasons for Decision

[25] Major Alcohol Sales is a Permitted Use in the CSC Shopping Centre Zone.

[26] As the proposed development is a Permitted Use, the only issue before this Board is whether the proposed application complies with the applicable development regulations, and if not, whether a variance to any of those regulations should be granted.

- [27] Section 85 of the *Edmonton Zoning Bylaw* was amended on December 12, 2016. As a result of that amendment, the application is compliant with the locational criteria set out in section 85(2). This was accepted by both the Applicant-Appellant and the Development Authority.
- [28] However, two issues remain: first, the proposed development remains non-compliant with respect to Crime Prevention Through Environmental Design (“CPTED”) criteria; and second, parking deficiencies remain.
- [29] Regarding CPTED, subsections 85(12)(d) and (e) were at issue before the Board.
- [30] The first of these criteria involved insufficient information before the Development Officer with respect to determining whether there was adequate illumination and exterior lighting for the development. This concern has been addressed by the Appellant through the submission of expert evidence from Hodgson Schlif Evans Architect Inc., which issued a report setting out the illumination plan for the development.
- [31] Although this report was unavailable to the Development Officer during his initial review, he was provided an opportunity to study this information prior to the appeal hearing. As a result, the Development Officer submitted revised submissions, expressing agreement with the expert report that there was indeed sufficient illumination for the proposed development.
- [32] The second of the CPTED criteria at issue before this Board dealt with the man door located on the south façade of the proposed development. CPTED requires customers to access the store from “a store front that is visible from the street, other than a Lane, shopping centre parking lot or a mall access...” To address this concern, the Board has placed a condition on this permit, requiring that the rear door on the south façade *not* be used as a customer entrance or exit, except in the case of emergency. By placing this condition on the permit, the development will comply with all CPTED criteria as set out under subsection 85(12).
- [33] The final issue is the parking deficiency presented by the proposed development, which increases the parking requirement from by five parking spaces, resulting in a total Site deficiency of 33.8 (34) parking spaces for the entire shopping centre. As a result, a variance to the parking regulations under section 54.2 is required. The Board has granted this variance for the following reasons:
- a) The Applicant obtained a parking study prepared by Bunt and Associates. The conclusion of the study, which the Board accepts, is that the increase in the parking variance from 29 to 34 spaces will not have a negative impact on the entire shopping centre Site, as the parking demands associated with the proposed liquor store can be accommodated on this Site during peak periods of parking demand.
 - b) The Development Officer confirmed that he had forwarded the parking study to the Transportation Department of the City of Edmonton, and that he received no reply or

opposition from the Department by the set deadline. As a result, the Development Officer did not have concerns with the requested parking variance.

- [34] For the above reasons, the Board concludes that granting the required variance to section 54.2, thereby increasing the parking deficiency by five spaces, resulting in a total Site deficiency of 34 parking spaces, 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. The appeal is allowed.

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

Board Members In Attendance:

B. Gibson; A. Bolstad; N. Hack; C. Weremczuk

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 5th Floor, 10250 – 101 Street, Edmonton.
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 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.



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Date: January 26, 2017
Project Number: 184079601-001
File Number: SDAB-D-17-004

Notice of Decision

- [1] On January 11, 2017, the Subdivision and Development Appeal Board heard an appeal that was filed on December 14, 2016. The appeal concerned the decision of the Development Authority, issued on December 6, 2016, to approve the following development:

Construct 5 Dwellings of Apartment Housing and to demolish the existing Single Detached House

- [2] The subject property is on Plan I23 Blk 139 Lot 5, located at 10916 - University Avenue NW, within the RA7 Low Rise Apartment Zone. The Medium Scale Residential Infill Overlay and 109 Street Corridor Area Redevelopment Plan apply to the subject property.
- [3] The following documents were received prior to the hearing and form part of the record:
- Copy of the Development Permit application with plans;
 - Approved Development Permit decision;
 - Correspondence from Sustainable Development Urban Transportation Planning, Drainage Planning and Engineering, Fire Rescue Services, and City Wide Planning Services;
 - Letter from the Edmonton Design Committee;
 - Development Officer's written submissions, dated January 4, 2017;
 - Respondent-Applicant's community consultation summary and written submissions regarding the requested variances;
 - Respondent-Applicant's supporting materials; and
 - One online response in opposition to the development.

Preliminary Matters

- [4] 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.

- [5] The Presiding Officer outlined how the hearing would be conducted, including the order of appearance of parties, and no opposition was noted.
- [6] The appeal was filed on time, in accordance with Section 686 of *the Municipal Government Act*, RSA 2000, c M-26.

Summary of Hearing

i) Position of the Appellant, Mr. R. Nelson

- [7] Mr. Nelson stated that given the subject lot size, the required variances are not justifiable. With only three parking spaces allocated between the five proposed Dwellings, and considering the potential for each Dwelling to be occupied by two people with two cars, the parking deficiency could result in up to seven additional vehicles parked on an already-crowded street.
- [8] Upon questioning by the Board, Mr. Nelson clarified that his main concern is with the impact upon on-street parking. He noted that although the Applicant has suggested that tenants will likely use alternative transportation such as bicycles, there is no requirement for tenants to do so.
- [9] Mr. Nelson explained that he purchased his property in 2003 and that he lives about two doors west of the subject development. University Avenue is a narrow street, and cannot support parking on both sides. As a result, parking on the north side of the Avenue is prohibited. He owns three cars, and although he has a three car garage, there have been times where he has had to park one of his vehicles on the street so that he can work in his garage. In those instances, he has sometimes had to find parking on another street further away.
- [10] He also spoke with some neighbours in the community who opposed the development. However, he did not speak with the Community League.

ii) Position of the Development Authority

- [11] The Development Authority was represented by Mr. A. McLellan.
- [12] Mr. McLellan explained that the proposed development and the parking deficiency had been circulated to the Transportation Department, who advised that due to the proximity to 109 Street and transit routes, and with the general location being very walkable with easy cycling, there are options for transportation.
- [13] He acknowledged the concerns of the Appellant, but clarified that the focus is on the off-street parking requirements, as on-street parking cannot be used to satisfy the parking requirements under the bylaw. In his review, he considered that the proposed

development is located within 100 metres of a Transit Avenue (109 Street), it can be characterized as a Transit Oriented Development (“TOD”). As such, only one visitor parking is required per seven Dwellings. The total required off-street parking is therefore five parking spaces, and the development proposes three parking spaces. In his view, given the proximity to a Transit Avenue and the advice of the Transportation Department with respect to available alternative transportation options – including the walkability and available bicycle routes – the parking variance was appropriate.

- [14] Furthermore, due to the community consultation process, the Applicant was able to provide more information regarding plans for transportation. It was his understanding that the Applicant intends to market the development to University students and professionals working in the area, who would likely walk, bike, or bus to work or school. These plans were in line with the advice from the Transportation Department. Upon questioning by the Board, Mr. McLellan confirmed that the community consultation results were mixed, with the majority expressing some concerns with one or more of the potential variances. He would estimate that around 60% to 70% of respondents expressed concerns about the development. The Community League did not provide feedback.
- [15] Mr. McLellan also explained that it is not uncommon to find areas of the City where less than one parking space is required for an individual Dwelling. Though the subject property is not located in one of these communities, factors such as the aforementioned 109 Street and the walkability of the community would make it appropriate to grant the parking variance.
- [16] Mr. McLellan acknowledged that the subject Site is smaller than what is required for Apartment Housing by the RA7 Zone. However, the entire purpose of the RA7 Zone is to provide for low rise apartment housing, yet due to the unique lot size, variances would be required for any apartment housing developed on that Site. Notwithstanding the unique lot size and required variances, the development meets the stated purpose of the RA7 Zone, meets the density regulations for the Zone, and the design elements mitigate the potential impacts upon neighbouring properties.
- [17] Upon questioning by the Board, Mr. McLellan explained that it was his understanding that the original proposal for 12 units was initially part of a rezoning application for both the subject property and the immediately adjacent property to the west. However, due to pre-development application consultation, the Applicant decided not to proceed with the rezoning.
- [18] During the review stage, Mr. McLellan did consider whether a development for three units would have been more appropriate. However, from his experience, a reduction in the number of units would likely increase the number of bedrooms per unit, resulting in a similar impact upon the parking requirements.

iii) Position of the Respondent, BM Homes

- [19] The Respondent was represented by legal counsel, Mr. K. Haldane.
- [20] Mr. Haldane explained that although there appear to be a number of deficiencies, they are essentially due to size variances which arise from the unique size of the Site. Referring to Tab 12 of the Respondent's Supporting Materials, Mr. Haldane noted that the subject development is the last lot in the RA7 Zone along University Avenue before the area transitions into the RF3 Small Scale Infill Development Zone to the west. The subject development is further isolated from the rest of the RA7 Zone by the semi-detached development located on the immediately adjacent lot to the east.
- [21] The result is that the Applicant is left with a small lot approximately half the size of what the underlying zone requires, in a zone that is explicitly intended for Low Rise Apartments, and in which Low Rise Apartments are a Permitted Use. As a result, size variances will be required for any development occurring on the Site, regardless of what type of development is proposed. Mr. Haldane clarified that the Applicant does not own the semi-detached development to the east.
- [22] Outside of the size-related variances, the remaining deficiencies relate to parking and design.
- [23] Regarding the parking variances, the Municipal Development Plan ("MDP") encourages development in mature neighbourhoods where there is established infrastructure, reducing the reliance upon private vehicles. Referring to Tab 11 of the Respondent's Supporting Materials, Mr. Haldane noted that according to the City of Edmonton SLIM Maps, there are a number of bike routes and bus routes in the area. The proposed development is intended to be rented to students, who will be busing or biking to school. As such, it would be appropriate to grant the parking variances.
- [24] The Respondent acknowledged the concerns of the Appellant regarding on-street parking. However, the ultimate test for the Board is whether the parking variance will impact the use, enjoyment and value of neighbouring properties, and whether there would be a material impact upon the amenities of the neighbourhood. Mr. Haldane submitted that there would be no such impact, as on-street parking is not an amenity that is enjoyed by this neighbourhood: potential buyers know that on-street parking is in demand, and therefore, have no expectation that on-street parking will be available should they choose to purchase a property in the area. Further, each unit is approximately 500 square feet, intended to be occupied by one person, which should mitigate the Appellant's concerns about each unit requiring two parking spaces.
- [25] In effect, prospective tenants who own vehicles will be deterred from renting the units for two reasons: first, as already mentioned, the existing on-street parking stresses will discourage individuals who own cars from renting the subject property; second, even if such individuals were interested, they would recognize that they will be part of the neighbourhood competition for on-street parking. The reality is that in this neighbourhood, demand for on-street parking exceeds supply, and tenants who own vehicles will simply have to try their luck.

- [26] Upon questioning by the Board, Mr. Haldane stated that the off-street parking space allocation will likely operate on a “first come, first served” basis. One stall will be designated for visitor parking, and the remaining two stalls for tenant use.
- [27] Regarding the design-related variances, the 109 Street Corridor Area Redevelopment Plan (the “ARP”) applies to the subject development. All developments within the ARP are subject to oversight from the Edmonton Design Committee. The concerns identified by said Committee have been addressed by the Applicant, such that the development now has the support of the Committee.
- [28] Referring to Tab 10, Mr. Haldane also provided a summary of the community consultation conducted by the Applicant. Within the 60 metre notification area, the Applicant was able to get in touch with nine property owners: four expressed concerns, and five were in support of the development.
- [29] Upon questioning by the Board regarding alternative development options for the subject Site, Mr. Haldane explained that noted that the subject development is a for a Permitted Use, whereas other developments such as Single Detached Housing or Semi-Detached Housing are Discretionary Uses in this Zone. Although the Applicant could theoretically obtain a Discretionary Use permit for a Single Detached House or a Semi-Detached House, such developments would not meet the purpose of the RA7 Zone, nor the MDP goals.
- [30] Practically speaking, variances would be required for any development on this Site, regardless of the type of development. In this case, the reality is that if the Applicant is required to reduce the number of Dwellings, then some form of multi-occupant unit will result.
- [31] Upon further questioning by the Board, Mr. Haldane submitted Exhibit “A”, a digital rendering of the proposed development. He identified signage which would be moved to the south face of the building, though the rendering shows the sign located on the west façade. It was his understanding that the Edmonton Design Committee would have given consideration to the location of the windows during its review, as the Committee’s mandate is to canvas the entirety of a proposed design.

iv) Rebuttal of the Appellant

- [32] Mr. Nelson referred the Board to Tab 11 of the Respondent’s Supporting Materials, and noted that notwithstanding the map which shows a number of bike routes in the area, there are no actual reserved bike lanes.

Decision

- [33] The appeal is DENIED and the decision of the Development Authority is CONFIRMED. The development is GRANTED as applied for to the Development Authority, subject to the CONDITIONS as set out in Permit Number 184079601-001, issued by the Development Authority on December 6, 2016.
- [34] In granting this development, the following VARIANCES to the *Edmonton Zoning Bylaw* are allowed:
- 1) Section 210.4(2) is relaxed to permit a Site Area of 458 square metres instead of the required 800 square metres.
 - 2) Section 210.4(3) is relaxed to permit a Site Width of 10.06 metres instead of the required 20.0 metres.
 - 3) Section 823.3(1)(d) is relaxed to permit a Reduced Side Setback of 2.0 metres instead of the required 3.0 metres to the property line shared with **10920 University Avenue NW** and **10912 University Avenue NW**.
 - 4) Section 48.2(1) is relaxed to permit the distance from the Principal Living Room Window to the property line shared with 10920 University Avenue NW to be 2.0 metres instead of the required 7.5 metres.
 - 5) Section 823.3(1)(d) is relaxed to permit the distance from the Habitable Room windows to the property line shared with 10912 University Avenue NW to be 2.0 metres instead of 3.0 metres.
 - 6) Section 823.3(3)(a) is waived to allow a communal outdoor Amenity Area of approximately 30 square metres in place of the required Private Outdoor Amenity Area.
 - 7) Section 823.3(2)(c) is waived to permit the main entrance to be located on the side façade of the building rather than the front.
 - 8) Section 823.3(2)(a) is waived such that none of the ground Storey Apartment Dwellings adjacent to the public roadway will require private exterior entrances that front onto the roadway. The development is permitted to have only one shared entrance for the building.
 - 9) Section 54.2 Schedule 1(A)(1) is relaxed to permit a total of three on-Site parking spaces instead of the required five parking spaces.

Reasons for Decision

- [35] Apartment Housing is a Permitted Use in the RA7 Low Rise Apartment Zone. Under section 210.1, the purpose of the RA7 Zone is “To provide a Zone for Low Rise Apartments.” There is no other purpose listed in the General Purpose statement for this zone.
- [36] As the proposed development is a Permitted Use, the issues before the Board were confined to the requested variances from the Development Regulations.
- [37] The requested variances fall into three categories.
- [38] The first category of variances stems from the size of the subject lot, resulting in deficiencies in Lot Size, Lot Width and the Side Yard. The Board has granted these variances for the following reasons:
- a) The subject lot is an isolated lot. It is on the very edge of the RA7 Zone. The land immediately to the west is zoned RF3 Small Scale Infill Development Zone. The land immediately to the east is within the RA7 Zone, but has been newly developed as a Semi-Detached House. Given that the subject lot is zoned for Low Rise Apartments, and that the purpose of this zone is to provide for Low Rise Apartments, it is a hardship for an owner of this lot to develop it in accordance with the General Purpose of the RA7 Zone without requiring variances to Lot Size, Lot Width and Side Yard Setbacks.
 - b) When considering the streetscape, this development is in scale with the new development immediately to the east, and in accordance with the proposed development in the neighbouring RF3 Zone, which is a significant Semi-detached structure. While the subject development is for an apartment encompassing five units, the units are relatively small, confined to approximately 500 square feet per unit. The entire building footprint is 1,283 square feet, and the entire building area is 2,566 square feet. Accordingly, while the proposed development is for an apartment, the building footprint is in keeping with the neighbouring Semi-detached House. It is therefore in scale with neighbouring developments, and reduces the Board’s concerns regarding the Lot Size and Lot Width variances.
 - c) With respect to the variance in the Side Yard Setbacks, the Boards notes that the owner of the lot to the west of the subject development – which is the same Applicant in this case – approves of the development. The owner immediately to the east provided no response. Both of these lots are the most affected by the Side Yard Setback variances. The Board also notes that although the proposed Side Yard Setbacks of 2.0 metres require variances, these setbacks are larger than the setback requirements for a Single Detached House being developed in the RF1 Single Detached Residential Zone.
- [39] The second set of variances deal with the orientation and nature of the front entrance, the Private Outdoor Amenity Area, the private exterior entrance, the separation space from the habitable room windows, and the separation space from the principal living room window (collectively referred to as the “Design Variances”). The Board has granted these Design Variances for the following reasons:

- a) The subject lot is located in the 109 Street Corridor Area Redevelopment Plan (the “ARP”). Section 4.0 of the ARP develops a comprehensive streetscape improvement plan for the implementation of the ARP’s Development Concept directives, which pursuant to section 4.2 is to be overseen by the Edmonton Design Committee (“EDC”). The design for the subject development was submitted to the EDC, and after completing certain recommended alterations, was approved by the EDC. As the EDC has approved this design, it is evidence for the Board that this design is being made in accordance with the architectural plans for buildings within the ARP.
- b) The Design Variances are also required in order to be able to construct a structure on a lot of this size that will have five separate units. Allowing such a development is in accordance with Policy 4.4.1 of the Municipal Development Plan, which states: “Ensure neighbourhoods have a range of housing choice to meet the needs of all demographic and income groups and create more socially sustainable communities.” In particular, policy 4.4.1.1 states: “Provide a broad and varied housing choice, incorporating housing for various demographic and income groups in all neighbourhoods.”
- c) Policy 4.4.1.4 further states: “Develop higher density housing and a mix of uses in proximity to LRT stations and transit centres”. While the proposed development is not in proximity to a LRT station or transit centre, it is in proximity to a major transit corridor, which identifies this development as a Transit Oriented Development (“TOD”).
- d) Within the ARP itself, Policy 3.3.3.3 encourages “Future medium-scale residential development in the form of apartment or multiple-family stacked row housing”, where such developments are limited to four floors, a property depth of 40 metres, and has high-quality architecture and urban design. Policy 3.3.3.10 further states that “All medium-scale residential... development within the plan’s boundaries will feature improved architecture and urban design that allows for an appropriate transition to adjacent low-scale housing as well as an upgraded public realm”. As noted previously, the ARP mandates that the EDC oversees developments within the ARP to ensure that design initiatives are met. The subject development has been reviewed by the EDC and has received the Committee’s approval.
- e) For the above stated reasons, the Board finds that granting the Design Variances is in accordance with the applicable statutory plans. Further, the Board finds that the Design Variances are in no way impactful in a negative manner upon either the neighbourhood or the neighbouring properties, particularly given that the design of the building does not create a massive structure as viewed from the streetscape. Further, the concerns expressed by those neighbours who opposed the development focused largely on the parking issues, and not with the requested Design Variances.

[40] The final variance relates to parking. The Development Authority granted a variance in the required off-street parking from five stalls to three stalls. This variance was opposed by the Appellant on the grounds that street parking is limited in the area. The limited parking is not only due to the increase in density of developments in the area, but also due to the fact that University Avenue only has street parking on the south side of the

street. There is no street parking on the north side of University Avenue. The Board finds and agrees with the Appellant that street parking is limited on University Avenue.

[41] However, the Board has decided to grant the parking variance for the following reasons:

- a) This development is a Transit Oriented Development, which anticipates higher density housing in close proximity to a Transit Avenue. Since the subject development is located within 100 metres of a transit corridor, the need for vehicular parking for the proposed development is reduced.
- b) While the Board notes that there was opposition to the development by neighbouring property owners with respect to the parking variance, the Board also notes that several neighbours within the 60 metre notification area on the south side of University Avenue were in support of the development. The neighbours in support included the owners who would be most impacted by the parking variance.
- c) The units are one bedroom units of approximately 500 square feet. As such, these units will attract fewer number of residents per unit, and due to their size and proximity to the University of Alberta, the University Hospital, and the 109 Street transit corridor, will be more likely than other developments to attract those whose preferred mode of transportation may not include a personal vehicle.
- d) As a result, the Board finds that the reduction in parking from five off-street parking spaces to three will not have as material an impact upon on-street parking as would normally be the case. The Board further notes that the Development Authority approved the parking variance after discussions with the City's Transportation Department, which did not express concerns with respect to the parking variance.

[42] For all the above reasons, the Board finds that granting the required variances 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. The appeal is denied.

Ian Wachowicz, Chair
Subdivision and Development Appeal Board

Board Members In Attendance:

B. Gibson; A. Bolstad; N. Hack; C. Weremczuk

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 5th Floor, 10250 – 101 Street, Edmonton.
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 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.