



**EDMONTON
TRIBUNALS**

*Subdivision &
Development
Appeal Board*

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Date: February 1, 2019
Project Number: 287301625-002
File Number: SDAB-D-19-008

Notice of Decision

- [1] On January 17, 2019, the Subdivision and Development Appeal Board (the “Board”) heard an appeal that was filed on December 20, 2018. The appeal concerned the decision of the Development Authority, issued on December 14, 2018, to approve the following development:

Construct four buildings of Apartment Housing (total of 235 Dwellings)

- [2] The subject property is on Plan 0325055 Blk X Lot 1, located at 17420 - 110 Street NW, within the RA7 Low Rise Apartment Zone. The Castle Downs Extension Area Structure Plan and Chambery Neighbourhood Structure 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 the stamped approved plans, and the approved Development Permit;
- Correspondence from City of Edmonton Urban Form and Corporate Strategic Development, and Fire Rescue Services;
- The Development Officer’s written submissions;
- The Appellant’s written submissions with attached petition in support of the appeal;
- The Respondent’s written submissions;
- Nine online responses in opposition to the development; and
- One email correspondence in opposition to the development.

- [4] The following exhibits were presented during the hearing and form part of the record:

- Exhibit A – Copy of a Google Maps screenshot submitted by a neighbouring property owner.

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.
- [7] 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 Development Officer, Mr. K. Yeung:*

- [8] Mr. Yeung provided the following information in response to questions from the Board:
 - a) A variance was granted to allow the proposed Apartment House on the subject site which is 2.5 hectares in size instead of 1.4 hectares as required under to section 210.4(14) of the *Edmonton Zoning Bylaw* (the “Bylaw”), which states that the Development Officer may exercise discretion having regard for Site design, building massing and scale.
 - b) In this case, these design requirements have been achieved through the protrusion and recession of building façade walls, and articulation via projection features such as balconies. These architectural features also address the massing of the development.
 - c) The subject site is zoned RA7 Low Rise Apartment Zone (“RA7 Zone”), and pursuant to section 210.1 of the *Edmonton Zoning Bylaw*, the General Purpose of the RA7 Zone is “to provide a Zone for Low Rise Apartments.”
 - d) Subdivision Planning did not object to the proposed deficiency of 15 parking spaces because there is on-street parking available along 110 Street and transit services provided immediately south of the subject site on 112 Street, with more transit options available a short walk north on 176 Avenue.
 - e) A variance was granted to reduce the minimum required 6.0 metre Front Setback along 110 Street to 5.7 metres because of the irregular shape of the Site, specifically the curved property line to the east along 110 Street. It was his opinion that this creates an unnecessary hardship to meet the 6.0 metre requirement because only a portion of Building D (0.30 metres) is proposed within the required Setback. The aforementioned articulation features will also help to reduce the massing of the building along this side of the site.
 - f) There is no requirement to provide access to the subject site from 112 Street. In fact, Transportation Services did not recommend that access be provided from 112 Street

due to concerns that the additional access point could be used by motorists short-cutting through the site to access 110 Street.

- g) This site was created by subdivision in 2003 and has remained undeveloped.
- h) Maps contained in the Chambery Neighbourhood Structure Plan (the “NSP”) were referenced to illustrate that this site was originally zoned to accommodate higher density housing. When this site was rezoned RA7 Zone in 2001, it was identified for medium density development. Subsequent amendments to the NSP over the years resulted in the site being rezoned to support lower density housing, while maintaining the underlying RA7 Zoning.
- i) 112 Street is a two lane roadway and can be accessed from 176 Avenue.
- j) The proposed Density is less than the maximum allowable for this site. In fact, if the site was subdivided, more Dwelling units could be developed.
- k) The proposed parking complies with the setback requirements.
- l) It was clarified that the proposed development was approved as a Class B Discretionary Development and notice of the approval was sent to affected neighbours.

ii) *Position of the Appellants, Ms. K. Yakimovich and Mr. R. Yakimovich:*

- [9] Ms. Yakimovich questioned the details regarding the completion of the Traffic Impact Assessment, specifically on what days of the week and at what times the assessment was conducted.
- [10] St. Charles Church is located north of the subject site at 175 Avenue and 112 Street. It is very difficult for residents to leave the neighbourhood when church is in service. The overflow parking for church attendees runs along 110 Street along 176 Avenue, which reduces it to one lane instead of two, and congests the intersection at 110 Street and 176 Avenue. The proposed development will further extend the overflow parking down 110 Street as well as 174A Avenue. Services. Activities are held at the Church all week, not just on Sundays.
- [11] Traffic congestion also results from the recent addition of four way stops at 112 Street and 171 Avenue and 167 Avenue and 112 Street. A bus route runs on 112 Street, which is also a single lane each way. Residents of the proposed development will have to access this road which will add more congestion and poor traffic flow.
- [12] Safety is already a concern in this neighbourhood. Signage has been erected to remind drivers to slow down because of the large number of children. The proposed development will increase the existing safety issues.

- [13] The proposed parking lot will be located on the south side of the site. Property owners along the south property line raised concerns about excessive noise caused by vehicles, people in the parking lot, and increased incidents of car alarms as well as mufflers.
- [14] There is also a concern that the parking lot lights will shine through windows and on yards of the adjacent residential homes, making it possible for people to see more of the neighbouring properties and increasing security risks.
- [15] The height of the proposed buildings will reduce natural light and impact the privacy of neighbouring property owners because residents of the new buildings will be able to see into their rear yards.
- [16] Mr. and Mrs. Yakimovich provided the following information in response to questions from the Board:
- a) It was their opinion that providing access from 112 Street instead of 110 Street is a better option.
 - b) The subject site is currently vacant. They probably would not have purchased their house if they were aware that Apartment Housing could be developed on the subject site. It was their opinion that the development of Apartment Housing on this site will negatively impact the value of their property.
 - c) Parking is not permitted along 112 Street. On street parking is available on one side of 110 Street. Overflow church parking occurs on 176 Avenue, but they could not confirm whether the overflow parking is permitted.
 - d) They were informed that a percentage of the proposed Apartment Housing has to be available for low income housing. They are concerned about the possible occupants of these Dwellings and the impact they will have on crime and safety in the neighbourhood. It was their opinion that an increase in population correlates to an increase in crime.
 - e) The church is located immediately north of the subject site. Their visitors have often not been able to park in front of their house.

iii) Position of Affected Property Owners in Support of the Appellant:

Mr. M. Kana:

- [17] Mr. Kana expressed frustration because the development proposals for the site keep changing. The initial development included buildings sited in a U-shape. The second proposal was for two buildings. This development proposes more buildings, with one building sited perpendicularly which will have a much greater impact on the neighbours.

- [18] It was his opinion that the developer is attempting to maximize the use of the site without any regard for neighbouring property owners.
- [19] Even though access from 112 Street makes more sense and is more acceptable to the neighbours, it was not proposed because it would result in increased costs for the developer and a loss of on-site parking spaces.
- [20] The proposed development is located in a “high end” neighbourhood with million dollar homes located one block away from the subject site. In his opinion, the proposed development will destroy the neighbourhood.
- [21] St. Charles Church existed before this neighbourhood was developed. The four way stops installed south of 112 Street over the past year were an attempt to address the traffic problems associated with St. Charles Church.
- [22] Providing only one access to the proposed development is not workable and will divert more traffic into the centre of the neighbourhood along 110 Street. School buses that service many different schools in the area pick up children along 110 Street, contributing to traffic flow problems. Parking along 110 Street is even more difficult during the winter months when snow is piled up along the road.
- [23] Mr. Kana questioned the type of landscaping that will be provided to screen the proposed development from his residence and the other residential properties located along the south property line.
- [24] At this point the Presiding Officer clarified that Apartment Housing is a Permitted Use on the subject site. The Board’s task is to consider the impacts of the three required variances, including the size of the Site, the proposed number of onsite parking spaces and the reduced front Setback along 110 Street based on the information provided by the Appellants and other parties. Section 687(3)(d) of the *Municipal Government Act* provides direction to the Board as to its authority and the limits of its variance power.
- [25] The Presiding Officer called a 15 minute recess to allow some time for the Appellant and the neighbours in attendance to review the proposed plans in order to obtain some answers to their questions and information about the required variances. The 15 minute recess was extended a further 15 minutes to provide additional time for the parties.
- [26] When the hearing reconvened, Mr. Kana continued with his submission and expressed some concern that the Apartment Houses will be rental properties.
- [27] He referenced the notification map to illustrate that there is a walkway located at the end of the cul de sac in front of his house. He expressed concern that residents of the proposed Apartment Houses will park on the street in front of his house where parking is already under pressure and use the walkway to access the site.

- [28] 110 Street is very busy because of the bus stop and the numerous school buses that use this street. Church events are also held during the week.
- [29] In his opinion the buildings should be moved further north on the site to reduce the impact on residential properties to the south. The developer should work with the neighbours in an attempt to improve the design which would address some of the concerns.
- [30] The proposed development will increase the existing traffic and parking problems in this neighbourhood.

Mr. S. Frechette

- [31] Mr. Frechette reiterated his neighbours' concerns. He resides on 110 Street immediately east of the subject site and will be impacted by the variance granted to the minimum required Front Setback along 110 Street. It will impact the view from his front window and create a privacy concern.
- [32] Parking is a major concern along 110 Street. Motorists speed along 110 Street and the proposed access to the subject site at 175 Avenue and 110 Street will create a safety issue. It was his opinion that access to the subject site should be relocated to 112 Street.
- [33] The developer should reduce the size of the development in order to comply with the bylaw requirements.
- [34] The proposed development will negatively impact property values.
- [35] A Google Maps screenshot, marked Exhibit "A", was submitted to illustrate the access points to the subdivision from 176 Avenue and 112 Street, and how traffic flow was negatively impacted during a major motor vehicle collision.
- [36] Mr. Frechette provided the following information in response to questions from the Board:
- a) There is a square curb on the west side of 110 Street and a rolled curb on the east side.
 - b) Parking on the east side of 110 Street is limited because of the size of the lots and the existing front driveways.

Ms. N. Comeau:

- [37] Ms. Comeau reiterated the concerns of her neighbours.

- [38] She resides in the cul de sac on 174A Avenue and has witnessed vehicles using 174A Avenue in an attempt to access 112 Street even though there is no access and “No Exit” signs have been posted at the entrance. She is concerned that the proposed development will result in more vehicles using 174A Avenue in an attempt to access 112 Street.
- [39] Property values will be negatively impacted because of the proposed four storey buildings with balconies that will overlook the rear yards of the neighbouring residences.
- [40] She suggested developing town houses on the site to reduce the number of Dwelling units or moving the proposed buildings further north on the site to reduce the impact on residential properties to the south. The developer should reconsider the proposed development and make some of the changes suggested by the neighbours.
- [41] The proposed smaller low income dwelling units will devalue her property and crime will increase because the number of residents in this area will increase significantly.

Ms. Barkley:

- [42] Ms. Barkley was concerned that the proposed dwellings will be used as rental properties. In her view, the subject site is located in a “nice neighbourhood” with upscale houses that will be negatively affected by the rental units.
- [43] She intends to knock her neighbours’ doors to advise them about what is happening on the subject site.
- [44] She questioned whether her taxes will decrease, since in her view, the proposed development will negatively impact the value of her home.
- [45] She expressed disappointment with the City for approving these low rental units in a nice area, along with the increased traffic and parking issues that will result.

iv) Position of the Respondent, Broadstreet Properties, represented by Mr. M. Fitzgerald and Mr. K. Mailman:

- [46] The Respondent emphasized that under the Bylaw, community consultation was not required for this development.
- [47] Access from 112 Street was contemplated, but it was discouraged by the city because of the potential to short cut through the site to access 110 Street. The proposed access was required as a part of the development permit approval.
- [48] A solid wood fence is proposed along the south property line as well as landscaping to comply with the requirements of the Bylaw. The building is setback almost 20 metres from the south property line, which exceeds the minimum requirement.

- [49] A condition regarding outdoor lighting has been imposed on the approved development permit. The condition states that “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 device”. The light standards are constructed so that light is directed downward. The lighting plan was developed by an electrical engineer to ensure that adequate coverage is provided to ensure safety, while minimizing intrusion on neighbouring residences.
- [50] The proposed density is less than the maximum permitted on this Site. A maximum of 312 dwelling units could be developed but only 235 units are proposed.
- [51] The apartments will provide for rental housing. The two bedroom, two bathroom units are approximately 950 square feet in size, and the three bedroom units are approximately 1086 square feet in size. The rental rates will be based on what the market will allow. It is anticipated that the units will be attractive to singles, single parents, young families, and people looking to start over.
- [52] Broadstreet Properties owns and operates numerous other rental apartments in Edmonton. Based on their experience at other properties, it is rare to have all of the apartments rented out at one time and only 75 percent of the available parking is utilized. Therefore, it was the Respondent’s opinion that the parking deficiency will not be an issue.
- [53] The deficiency in the Front Setback along 110 Street for Building D is only required for a small portion of the building and results from the location of the mechanical room enclosures for each unit which are located on their balcony areas. If the mechanical rooms were not situated in this manner, the building would comply with the front setback requirement.
- [54] The Board recalled the Development Officer, Mr. Yeung, who provided the following information in response to additional questions from the Board:
- a) Providing an additional access from 112 Street was considered but it would result in a further reduction in the number of proposed parking spaces. Parking would not be reduced if access was relocated from 110 Street to 112 Street.
 - b) A Traffic Impact Assessment was completed as part of the rezoning process. The Religious Assembly located north of the subject Site was built in 1994 and the traffic impacts would have been considered at that time.
 - c) There is only one access proposed for this Site from 110 Street. A second access from 112 Street was considered, but was not supported by the City’s Transportation Department because it could potentially lead to traffic cutting through the property.
 - d) If 10 of the two bedroom units were to be reclassified as one bedroom plus den, the number of required parking spaces would have been reduced and a parking variance would not be required.

vi) Rebuttal of the Appellant

[55] The biggest concern is that access should be provided from 112 Street instead of 110 Street to address the pre-existing traffic and parking problems on 110 Street. The development should be revised in order to eliminate the need for a parking variance.

Decision

[56] The appeal is **DENIED** and the decision of the Development Authority is **CONFIRMED**. The development is **GRANTED** as approved by the Development Authority.

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

1. Section 210.4(14) is varied to allow Apartment Housing on a Site of 2.5 hectares instead of 1.4 hectares or less.
2. The minimum required Front Setback of 6.0 metres per section 201.4(7) is varied to allow a deficiency of 0.30 metres, thereby decreasing the minimum required Front Setback to 5.7 metres.
3. The minimum required number of parking spaces under Schedule 1(A)(1) of section 54.2 is varied to allow a deficiency of 15 parking spaces, thereby reducing the required minimum number of parking spaces to 356.

Reasons for Decision

[58] On December 14, 2018, the Development Officer issued a Development Permit for Project Number 287301625-002 approving the construction of four buildings of Apartment Housing (total of 235 Dwellings). The owner of one of the eighteen Single Detached Houses located on abutting lots to the south of the subject Site appealed the approval.

[59] The Appellant submitted a petition with 48 signatures obtained from neighbouring property owners opposing the proposed development. The Board received nine online responses and one email submission in opposition to the proposed development from property owners residing within 60 metres of the subject Site. The Board also heard oral submissions from four neighbours who attended the hearing to oppose the proposed development.

[60] In their submissions, the Appellant and the neighbouring property owners suggested optional development choices, changes and improvements to the proposed development, including:

- a) reducing the Height of the buildings;
- b) reducing the number of Dwellings until no variances would be required for setbacks or parking;
- c) changing the development from an Apartment Housing Use to other Permitted Uses such as two-Storey Row-housing or Duplex Housing;
- d) moving the buildings further to the north (away from the eighteen abutting lots with Single Detached Houses to the south); and
- e) adding a vehicular access from the subject Site to 112 street in addition to, or instead of, the current vehicular access on 110 street identified in the stamped plans.

[61] The Board's authority comes from section 687(3) of the *Municipal Government Act*, RSA 2000, c M-26 (the "Act"), which states:

687(3) In determining an appeal, the subdivision and development appeal board

- (a) must act in accordance with any applicable ALSA regional plan;
 - (a.1) must comply with the land use policies;
 - (a.2) subject to section 638, must comply with any applicable statutory plans;
 - (a.3) subject to clause (a.4) and (d), must comply with any land use bylaw in effect;
 - (a.4) must comply with the applicable requirements of the regulations under the *Gaming, Liquor and Cannabis Act* respecting the location of premises described in a cannabis licence and distances between those premises and other premises;
- (b) must have regard to but is not bound by the subdivision and development regulations;
- (c) may confirm, revoke or vary the order, decision or development permit or any condition attached to any of them or make or substitute an order, decision or permit of its own;
- (d) may make an order or decision or issue or confirm the issue of a development permit even though the proposed development does not comply with the land use bylaw if, in its opinion,

- (i) the proposed development would not
 - (A) unduly interfere with the amenities of the neighbourhood, or
 - (B) materially interfere with or affect the use, enjoyment or value of neighbouring parcels of land,
- and
- (ii) the proposed development conforms with the use prescribed for that land or building in the land use bylaw.

- [62] The Board notes that the subject matter under appeal is the development proposed by the Respondent in the Development Permit application that was circulated to relevant City departments such as Transportation Services and Fire Rescue Services. This application was reviewed and approved by the Development Authority in accordance with the normal process. The Board makes no comment regarding the alternate proposals and suggestions as they were not part of the Development Permit application under appeal and they are beyond the Board's scope of authority.
- [63] The subject Site is located within the Castle Downs Extension Area Structure Plan and Chambery Neighbourhood Structure Plan. The Board reviewed these two plans and finds that the proposed Use, Apartment Housing, is a clearly contemplated Use for this Site and fully complies with the statutory plans. The Board notes that the statutory plans originally contemplated higher residential density than is currently proposed. The overall density of the plan has been reduced through several amendments, and in particular this site and the surrounding properties have had the density reduced from what was originally planned for this land.
- [64] In accordance with the statutory plans, the subject Site was zoned RA7 Low Rise Apartment Zone in 2001. Section 210.1 of Bylaw states that the General Purpose of the RA7 Zone is "to provide a Zone for Low Rise Apartments." Apartment Housing is a Permitted Use in the RA7 Zone per section 210.2(1).
- [65] Accordingly, under this zoning, if the proposed Apartment Housing Use had met all the development regulation in the Bylaw, the Development Officer would have been required to issue the Development Permit per section 6.1 of the Bylaw. Further, no appeal could have been made to this Board unless the provisions of the Bylaw had been relaxed, varied or misinterpreted per section 685(3) of the Act.
- [66] However, as the proposed Apartment Housing requires three variances to the applicable development regulations, the Board may grant or deny the Development Permit in accordance with section 687(3)(d) of the Act. This section provides in part that in determining this appeal, the Board may make an order or decision or issue or confirm the issue of a Development Permit even though the proposed development does not comply with the land use bylaw if, in its opinion, the proposed development would not unduly interfere with the amenities of the neighbourhood, or materially interfere with or affect the use, enjoyment or value of neighbouring parcels of land.

[67] The Appellant and the neighbouring property owners raised the following concerns with respect to the proposed development:

- a) The height of the proposed development will impact the view and sightlines of neighbouring properties. Given the height, the proposed development will overlook the surrounding properties, resulting in a loss of privacy.
- b) The proposed parking area on the southern portion of the subject Site will result in excessive noise and intrusive lighting.
- c) The proposed development will attract more transient residents, resulting in negative impacts such as increased crime and loss of property value because the proposed Apartment Housing consists of rental apartment units (some of which will be of a more modest size and others for low income).
- d) There are existing traffic and parking problems associated with residents and users of St. Charles Church located immediately north of the subject Site and with the surrounding RSL Residential Small Lot Zone, which allows Single Detached Houses with front attached Driveways to be built on smaller lots, thereby limiting the available street frontage for on-street parking. In addition, numerous school buses travel along 110 Street to pick up children, and snow removal during the winter months also contribute to traffic and parking problems. The sole vehicular access to the subject site and the parking deficiency will exacerbate these nearby parking issues and traffic problems, particularly along 110 Street, a residential road frequented by children.
- e) These negative impacts will reduce the property value of neighbouring properties.

[68] The Board notes that some of the raised concerns did not relate to the three required variances:

- a) No variance is required with respect to Height. The development is lower than the maximum allowable Height for Apartment Housing in the RA7 Zone. The low-rise Apartment Buildings also meet or exceed the required setbacks and are separated from the abutting lots to the south by landscaping and a parking area.
- b) No variance is required for the proposed location of the garbage bins or the parking areas and the development is well under the maximum allowed density. In any event, the Board assesses compliance with Bylaw, impacts of non-compliance with the Bylaw, and related planning matters. Noise complaints fall under the City's *Community Standards Bylaw*, and criminal law matters fall outside the jurisdiction of the Subdivision and Development Appeal Board.
- c) No variance is required for the proposed lighting to illuminate the parking areas. The Board notes that the proposed development must comply with the generally applicable outdoor lighting regulations contained in section 51 of the Bylaw and this pre-existing obligation has been affirmed as a condition of issuance of the Development Permit.

- d) No variance is required for the one proposed vehicular access to the subject Site from 110 Street. No development regulation was cited to the Board requiring a vehicular access from 112 Street. To the contrary, the Development Officer indicated that Transportation Services reviewed the proposed access off 110 Street and had no objections. They did have concerns that the addition of a second access off 112 Street could enable a shortcut through the parking area between 110 Street and 112 Street to bypass 176 Avenue. The Board notes that the validity of this concern was supported by one of the opposing neighbours, who had witnessed motorists using 174A Avenue, a dead end cul de sac in an attempt to access 112 Street from 110 Street to bypass 176 Avenue. Based on the proposed plans, the Board also notes that the addition of a second point of access on 112 Street would add to the parking deficiency.
- e) The affordability of the proposed Dwelling units and whether or not they will be owner occupied are issues unrelated to the three variances and are not valid planning reasons to deny the proposed development.
- f) While several parties opined that the proposed development would reduce property values, no evidence was submitted to support this proposition or to link it to the three variances as opposed to the compliant aspects of the proposed permitted Use contemplated in the statutory plans.

[69] The Board grants a variance to 210.4(14) of the Bylaw which requires that Apartment Housing be located on Sites of 1.4 hectares or less for the following reasons:

- a) The maximum allowable density in the RA7 Zone is 125 units per hectare. Only 235 Dwelling units are proposed which is approximately 75% of the maximum allowable density for the amount of land taken up by the proposed development.
- b) According to the development regulations, a total of 312 Dwelling units could be developed as of right on the same land if it was divided into two abutting Sites. The proposed development is located on a single Site, but it is of a smaller scale with significantly fewer Dwelling units. In this situation, the Board finds no appreciable impact attributable to this variance.
- c) Further, section 210.4(14) grants discretion to the Development Officer to vary this regulation for Sites greater than 1.4 hectares, having regard for Site design, building massing and scale.
- d) The Development Officer confirmed in his written report and oral submissions that he exercised this discretion after considering the building massing and scale and noting that the design requirements were achieved through the protrusion and recession of the building façade walls and articulation via projection feature (balconies). The Board has reviewed the proposed plans, and agrees that the proposed buildings incorporate articulation, façade variations and balcony protrusions which will reduce the massing and scale of the proposed development.
- e) In addition, the setback of the buildings from the south property line, which abuts the neighbouring residential homes to the south, also exceeds the minimum required setback requirement and is further separated by a parking area. This additional

setback buffer will help to mitigate any massing impacts on the residential uses to the south.

[70] The Board grants the 0.30 metre variance to the 6.0 metre Front Setback along 110 Street required per section 210.4(7) for the following reasons:

- a) Based on a review of the proposed plans and the evidence provided, the variance in the Front Setback is only required for a small portion of Building D, along 110 Street. The remainder of Building D meets or exceeds the minimum required setback from 110 Street which lessens any impact.
- b) The variance is required for two reasons. First, the Site has an irregular shape as the front lot line curves in conformity with the curve along 110 Street while Building D is rectangular. Second, the mechanical rooms that contain heating units for the Dwelling units are located in the balcony areas and therefore they were taken into account in the calculation of the Setback. If the mechanical rooms were not located in the balcony areas, no variance would be required.
- c) The owner of an adjacent property to the east across 110 Street indicated the variance would pose privacy concerns due to oversight and proximity to his property. The Board disagrees that the variance will have a material impact on privacy, given the evidence submitted that the only portion of Building D that encroaches 0.30 metres into this Setback is the portion that houses mechanical equipment for a few units. Building D, including its balconies, is otherwise fully compliant with the development regulations pertaining to setbacks.
- d) The Board agrees with the Development Officer that design elements of Building D that include the protrusion and recession of building façade walls, and articulation via projection features such as balconies also reduce the impact of the required variance along 110 Street.

[71] The proposed development requires 371 on-site parking spaces and 356 are proposed. The Board grants a variance to Schedule 1(A)(1) of section 54.2 of the Bylaw to permit a deficiency of 15 parking spaces for the following reasons:

- a) The Board finds that the deficiency of 15 on-site parking spaces is unlikely to materially exacerbate the current on-street parking or traffic flow problems stemming from proximity to the church and the ongoing development as this neighbourhood, including its roadways continue to develop.
- b) The proposed development was circulated to Subdivision Planning who did not object to the required variance because on-street parking is available on 110 Street and because transit services are also available.
- c) The subject Site is within walking distance from public transit. There is a bus stop along 112 Avenue at the southwest corner of the Site and additional transit services are available a short walk north on 176 Avenue.

- d) The Board also considered that the Development Officer calculated the required number of parking spaces based on the most onerous interpretation of the Bylaw. The development includes 160 two-bedroom Dwelling units. It was open to the Development Officer to classify these Dwelling units as one bedroom plus den units. If a relatively small number of these units had been classified in this manner, the proposed development would comply with the minimum required number of on-site parking spaces and a variance would not have been required.

[72] For the above reasons, the Board finds that based on the information before it, the proposed development is a Permitted Use specifically contemplated under the applicable statutory plans and that the three 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 of land. The proposed development is therefore granted, and the appeal is denied.



Ms. K. Cherniawsky, Presiding Officer
Subdivision and Development Appeal Board

Board Members in Attendance: Ms. S. LaPerle; Ms. S. McCartney; Ms. K. Thind; Mr. J. Wall

Important Information for the Applicant/Appellant

1. This is not a Building Permit. A Building Permit must be obtained separately from Development & Zoning Services, 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 Development & Zoning Services, 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.