



**EDMONTON
TRIBUNALS**

*Subdivision &
Development
Appeal Board*

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Date: February 15, 2018
Project Number: 244382817-002
File Number: SDAB-D-18-017

Notice of Decision

- [1] On January 31, 2018, the Subdivision and Development Appeal Board (the “Board”) heard an appeal that was filed on **January 8, 2018**. The appeal concerned the decision of the Development Authority, issued on December 14, 2018, to approve the following development:

Construct a Convenience Retail Store, Professional, Financial and Office Support Service, Restaurant (106 square metres of Public Space), and 2 Dwellings of Apartment Housing building

- [2] The subject property is on Plan RN37 Blk 1 Lot 9, located at 10158 - 90 Street NW, within the CNC Neighbourhood Convenience Commercial Zone. The Riverdale Area Redevelopment Plan (“ARP”) 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 attachments, proposed plans, and the approved Development Permit;
- The Development Officer’s written submissions;
- The Appellant’s written submissions; and
- Emails and letters submitted from neighbouring property owners.

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

- Exhibit A – Written Submission from Appellant, Mr. Cooper
- Exhibit B – Written Submission from Ms. Borkent
- Exhibit C – Written Submission from Ms. Constable
- Exhibit D – Article submitted by Ms. Constable
- Exhibit E – Photograph submitted by Ms. Constable
- Exhibit F – Written Submission from Ms. Wilkinson
- Exhibit G – Riverdale Livability Results submitted by Mr. Palmer
- Exhibit H – Old Store feedback form submitted by Mr. Palmer

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 (the “*Municipal Government Act*”).

Summary of Hearing

At the outset of the hearing, the Presiding Officer asked the Development Officer, Mr. Lee, to clarify the parking calculations.

- [8] Mr. Lee states the basement level will be retail, the main floor will be a restaurant, the second floor office space, and the third level apartment housing.
- [9] After the application for the proposed development had been made, the parking requirements for a restaurant had changed, reducing the amount of required parking by approximately two thirds. The correct parking calculation is reflected in the Development Permit decision.
- [10] The proposed development requires a total of 20.84 (rounded up to 21) parking spaces, as follows:
- i) The Convenience Retail Store requires 1.5 parking spaces.
 - ii) The Professional, Financial, and Office Support Services requires 6.51 parking spaces.
 - iii) The Apartment Housing requires 2 parking spaces.
 - iv) The Restaurant requires 10.83 parking spaces.

i) *Position of the Appellants*

Mr. Sutherland

- [11] Mr. Sutherland referred to Section 687(3)(d) of the *Municipal Government Act*. He stated that the proposed development will unduly interfere with the amenities of the neighbourhood, and the use, enjoyment, and value of his property.
- [12] He lives in the Riverdale area as he feels it is a safe and quiet neighbourhood for his family. He did not purchase a house in this area to live across from a large development.

- [13] The original building on the site was a small retail outlet. The proposed development will be a three storey development with an encroachment and variances.
- [14] While the Development Officer indicated 21 parking stalls are required for the proposed development, he believes that the proposed development will need more than that for customer parking.
- [15] In his opinion, neighbouring property owners will be negatively impacted by the amount of traffic coming to the area.
- [16] The Little Brick Café is experiencing parking issues (it opens early and closes at 6:00 p.m.). Given that he lives across from the proposed development, he believes that he will never be able to park in close proximity of his house which will impact his lifestyle.
- [17] He is not opposed to a development on this site, but a development that fits in with the residential neighbourhood. The Respondent wants to build beyond the requirements of the *Edmonton Zoning Bylaw*. He is concerned with the variances of the proposed development.
- [18] The Transportation advisement indicates that there are approximately 916 parking spaces all within a five minute walk for customers and property owners. This is not realistic and it is unfair that he walk such a distance given the taxes he pays.
- [19] A loading zone and handicap zone are proposed on-street across from his house. They should not be located on the street. Parking will be an ongoing issue if the proposed development is approved.
- [20] For another commercial development in the area (Little Brick Café), that developer posted signs on the street asking customers not to park on the street. The signs were moved and concerns from the residents were provided the City.
- [21] His property faces the proposed development. He is concerned that it will impact on-street parking and the safety of children in the neighbourhood.
- [22] There is a bus route on 101A Avenue and 89 Street.
- [23] Vehicles regularly use 90 Street as a short cut through the neighbourhood from Cameron Avenue and Rowland Road. If vehicles are parked on both sides of 90 Street, only one vehicle can pass safely on the street. It is not a collector road and increased on-street parking which will add to the congestion on the street.
- [24] There will not be any overlap of parking with the Little Brick Cafe and the proposed development.

- [25] He does not have any evidence indicating that the value of his property will be negatively impacted. However, a large development will not be a selling factor if he decides to sell his house.
- [26] Houses in the area have a significant amount of green space in the front yards and variances for the subject Site will negatively impact the green space in the neighbourhood.

Mr. Cooper

- [27] Mr. Cooper referenced his written submission (marked Exhibit A) and outlined his background knowledge in Planning.
- [28] He has been a resident in this area for 30 years. He is involved with the Community League's Planning Committee and was on the committee that worked on the development of the Riverdale Area Redevelopment Plan.
- [29] He has experience with the creative use of appeals and variances to make developments which are better for the community and for the public. He also has experience with proposed developments that try to build with variances that go beyond the regulations of the *Edmonton Zoning Bylaw*.
- [30] In his opinion, the variances should not be granted as the proposed development will negatively interfere with the amenities of the neighbourhood and materially interfere with the use and value of his property.
- [31] In his opinion, a development such as this should be built in a different location.
- [32] This is not a small lot given the location being in the middle of a residential community on a quiet street. However, it is a small lot compared to other CNC lots.
- [33] Given the lack of on-street parking in the area, the proposed development would be better suited on 109 Street or 156 Street rather than facing 90 Street which is a quiet road.
- [34] He spoke to the importance of community involvement, describing the origins of the Riverdale ARP as a community driven plan.
- [35] In his written submission, the Development Officer stated that the City has imposed a practical hardship for the development of this lot. In his opinion, this conclusion meant that the Development officer gave undue additional consideration to the Applicant's request for variances.
- [36] There is another nearby CNC site at the intersection at 101A Avenue and 89 Street. Commercial activities historically occurred on both CNC sites when the ARP was developed. There was a printing and publishing company on 89 Street and Rosie's previously operated on the subject Site.

- [37] His written submission includes fuller excerpts of the ARP that deal specifically with Commercial Developments. He participated in the development of this part of the ARP to identify the key principles for the redevelopment of two CNC lots.
- [38] The commercial use was intended to continue based on: the developments being pedestrian oriented towards the community, associated traffic from outside the community being limited, and redevelopment being sensitive to the residential nature and scale of neighbouring properties.
- [39] The Development Officer and the Respondent used the term “pedestrian friendly”. In his opinion, this is not the same as “pedestrian oriented”.
- [40] In his opinion, the provision to accommodate for parking should be met and the proposed development does not meet the objectives which the ARP was designed to achieve.
- [41] The permit application lists several types of businesses that could be part of the commercial development.
- [42] He was not aware that there would be a convenience retail business in the basement of the subject Site but was aware there could be a restaurant or cafeteria in the building.
- [43] The property owner used the Little Brick as a business model so it is important to note how the developer describes the breakdown of the customers. It sells a variety of articles but does not have a convenience store function. However it is not comparable as the Little Brick is small house located on a large lot, while the proposed development is a large building on a small lot.
- [44] It is important to have a development that is pedestrian and community oriented.
- [45] After several meetings, the developer estimated 30 percent of the customers would be drawn from within the Riverdale community and the rest will be coming to the community by car.
- [46] The information provided to the Development Officer is different than what was provided to the community. While there was consultation, the concerns of the neighbourhood have not been substantively addressed by the developer.
- [47] The variance to move the building toward 101A Avenue will negatively affect the sight lines at the abutting intersection south east of the site, particularly with the proposed loading space on 90 Street.
- [48] In addition to parking information, the developer should have provided additional information regarding the increase in traffic and the impact that it will have on the neighbourhood.

- [49] The proposed development will have exposure on 101A Avenue that is 50 percent wider and 20 percent higher than the house on the adjacent property. The building will have exposure on 90 Street approximately 60 percent wider and 36 percent higher than the house across the alley to the north.
- [50] The addition of the third storey will create sun shadowing on adjacent properties.
- [51] The parking study outlines the number of potential parking spaces in the community and is based on the incorrect premises that the only current on-street parking is done by visitors and that the demand for parking is evenly distributed within a 360 metre radius. If this were the case, there would not be parking issues in the area.
- [52] The report does not mention: the increase of downtown parking on adjacent streets, the need to accommodate DATS parking on the adjacent Group Home north of the subject Site on 90 Street; the proximity of the Brothers and Sisters development down the street; or, the future development of the second nearby CNC site.
- [53] On-street parking will be an issue during construction and after the development is complete.
- [54] The Development Officer suggested that the Respondent meet with the adjacent neighbours to discuss the proposed development but he could not confirm if a meeting took place. He is aware that the Respondent held three open houses and also attended a meeting hosted by the Community League. However, the concerns raised regarding traffic, parking, venting, garbage, and noise have not been addressed.
- [55] A patio is included at the corner of 101A Avenue and 90 Street. Now a second patio, the “future patio”, is proposed north of the building in an area that will negatively impact the adjacent properties.
- [56] He agreed that the patio on the south side of the building was reduced in size. His concern is that the owner of the restaurant will make an application for the north patio as it is shown as a future patio on the plans. This will be a concern regarding noise and activity levels in this area.
- [57] The property owner purchased the property a few years ago. Since then, there have been no changes to the ARP. The proposed development does not comply with the regulations of the *Edmonton Zoning Bylaw*. In his opinion, the proposed development does not fit in with the characteristics of the neighbourhood and does not fit the plan envisioned in the ARP.
- [58] It should not be the responsibility or burden of the neighbours or of the Board to fix business viability for the site through variances.

[59] He reiterated that he would like to see a smaller development on the subject Site. However, he also acknowledged that he would like the development to be successful and make the community a quality place to live so there would not be ongoing issues with a series of subsequent uses and operators.

[60] He provided the following responses to questions by the Board:

- i) There is a yield sign at the intersection at 90 Street and 101A Avenue.
- ii) The Big Brother and Big Sister building has been there since the ARP was done. Pedestrian Oriented developments serve pedestrian traffic generated from inside the community. Pedestrian Friendly commercial developments are located close to the street and at street level, creating places where you can access the businesses easily.
- iii) There is a school south of the subject Site which faces north on 101 Avenue. Several children in the neighbourhood walk to school. The drop-off location for the school is on 101 Avenue. Children are also picked-up and bused out of the area from this location. The school is further to the east on 101 Avenue and the large play field is closer to the subject Site.
- iv) He realizes the Height is compliant, but notes that nonetheless there will be a sun shadowing effect on the neighbouring properties with the height of the proposed building. The City should have asked for a community consultation even if it was not required in this zone.
- v) This was a multi-use lot when the ARP was developed. His concerns are not for the use of the development, but for the scale of the development.
- vi) The neighbouring property owners are concerned how the building will be used as it has not been confirmed what the uses will be in the building.
- vii) At the Community League meeting, the Planning Committee did not take a position on the proposed development, but provided written feedback to the developer. He is a member of the Planning Committee.
- viii) In his opinion, some properties should be re-zoned for certain types of developments so they comply with the requirements of the *Edmonton Zoning Bylaw*.

ii) *Position of Affected Property Owners in Support of the Appeal*

Ms. Borkent

[61] Ms. Borkent referenced her written submission (marked Exhibit B).

[62] She has lived at the property immediately west of the subject Site for almost 30 years.

- [63] She supports commercial development on the property; however, the proposed development exceeds the scale for the size of the lot.
- [64] Even if the building is situated differently on the lot, the proposed development is still too large.
- [65] She planted her garden based on the sunlight in her yard and the proposed development will block the sunlight on her property and the property to the west.
- [66] She will lose the privacy, use, and enjoyment of her property if the rear patio (the “future patio”) is built to the rear of the building. The development will have a negative impact on the value of her property.
- [67] She is concerned with the increase in vehicular and pedestrian traffic in the neighbourhood. The streets in the neighbourhood are already congested and the increase in traffic will be a safety concern for children walking to and from the school and playground.
- [68] In her opinion, the scope of the proposed development is too large for quiet residential neighbourhood.
- [69] In response to questions by the Board, she stated that there is a six foot chain link fence with a privacy screen along the shared side lot line. However, noise will still be heard from the proposed development and a fence will not screen the upper floors.

Ms. Constable

- [70] Ms. Constable referenced her written submission (marked Exhibit C).
- [71] She shares the same concerns raised by her neighbours.
- [72] In her opinion, if the proposed development is approved, the building should not be built so close to the property line.
- [73] There have been several accidents at the intersection at 90 Street and 101A Avenue. She provided the Board with a copy of a page from the Riverdalian Newsletter stating that the intersection is dangerous (marked Exhibit D).
- [74] There is not room for two cars to simultaneously pass on 90 Street when cars are parked on both sides. The streets were not intended to handle large number of cars.
- [75] The Development Officer stated that 101A Avenue is a collector road indicating that it is a larger road. However, the width of the street is just over 8 metres wide.
- [76] Access to the Community Hall and Cameron Avenue is from 101A Avenue.

- [77] There is additional traffic that adds to the neighbourhood when visitors go to the Little Brick Cafe. There will also be an increase in the number of large delivery vehicles and garbage trucks to the community.
- [78] Developing a commercial building in a residential area will increase the number of people in the neighbourhood and the developers acknowledged this and stated that the clientele at the Little Brick is only 30 percent community based.
- [79] A variance for the proposed development will reduce the sight lines even more for the intersection at 90 Street and 101A Avenue. The developer informed them that the angled design was intended to address the visual impact.
- [80] In her opinion, the benefit to moving the building forward is to accommodate the future patio that was not in the original plans. The business will be busy and generate noise even without the future patio.
- [81] There is a Catholic Social Services Group Home next to their property and they have worked with them on a regular basis to control noise impacts on their property.
- [82] If the proposed development is approved, they will hear delivery trucks, garbage trucks, staff and customers accessing the building, people standing outside to smoke, and people using the future patio. She does not want the future outdoor patio to be approved.
- [83] In her opinion, this is not a small neighbourhood convenience store; it is a business that will increase traffic to the community in order to have a successful business.
- [84] The public would not access the neighbourhood to shop at Rosie's store while passing. This will not be the case for the proposed development.
- [85] She is concerned that a traffic impact assessment was not done.
- [86] She referred to the Riverdale book to show a picture of the previous business that was smaller in scale than the proposed development (marked Exhibit E).
- [87] In response to questions by the Board she stated:
- i)* The proposed development is larger in size in comparison to the size of the previous convenience store. The convenience store was used mostly by the residents of the neighbourhood and the majority of the people walked to the store.
 - ii)* The proposed restaurant will need a steady flow of customers to make it a viable business. The residents alone will be insufficient. Given that the business will be in the middle of the community, there will be an increase in traffic.

- iii)* She agreed that garbage trucks enter the neighbourhood and so did delivery trucks for the previous business. She feels that with the proposed commercial use development, garbage will need to be picked up more often as the scale of the proposed development is larger than what was previously on the subject Site.
- iv)* With regard to the intersection at 90 Street and 101A Avenue, she stated that in 2012 the Community League approached the City to install signage at the intersection but the City did not think there was a need for additional signage. If a variance is approved, the sight lines will be negatively impacted. Given the number of issues at this intersection, the impact in sight lines should be reduced as the proposed commercial development will increase the level of traffic which will add to an existing issue in the community.
- v)* She reiterated that the proposed development is too large for a residential lot and will have a negative impact on the neighbourhood.

Ms. Wilkinson

- [88] Ms. Wilkinson referenced her written submission (marked Exhibit F).
- [89] Her property is immediately north of the subject Site.
- [90] She shares the same concerns raised by her neighbours.
- [91] When she purchased the property in July 2000, Rosie's was not in operation and she was not aware that the site was zoned CNC. She acknowledges the concept of "buyer-beware".
- [92] In her opinion, a three storey commercial development will have a negative impact on the use and enjoyment of her property and value of her property. There will also be an increase in the safety concerns of the community.
- [93] She attended a public meeting with the developer who stated that the development would be a similar business model to the Little Brick Café with 30 percent of the customers being from the community and 70 percent being from outside the neighbourhood.
- [94] With 70 percent of the customers being from outside the neighbourhood, there will increased traffic, staff, residents, delivery trucks, and waste collection which will negatively impact the community.
- [95] With regard to the setback, she is concerned that visibility will be impacted for vehicles travelling in the area and children riding bikes on 101A Avenue.

- [96] With regard to the setback for parking and garbage dumpsters in the rear lane, she stated that this area is across from her dining room, kitchen windows, and deck and this is something she does not want to see or smell every day.
- [97] In her opinion, there is no way to control the litter and vandalism with the garbage dumpsters in the rear lane.
- [98] They will be facing a three storey wall, parking lot, and possibly a patio from her property.
- [99] They will be able to smell the odors from the restaurant if their kitchen window is open or while they are sitting on their deck.
- [100] In response to questions by the Board, she stated:
- i) There is a boulevard, sidewalk, and small front yard between her house and 90 Street. Her living space faces the rear lane and the garbage dumpsters will face her property.
 - ii) The deck on her house backs on to Ms. Borkent's house (across the rear lane) and is the length of the garage area. There is approximately a three feet side setback, a hedge, then the deck on her property. There is no fence along the side lot line.
 - iii) Garbage pick-up is at the rear lane. Trucks have to back in and out as there is no room to maneuver onto 90 Street. The rear lane is narrow and vehicles have been hit just backing out of their garage. In her opinion, there will be more garbage pick-ups with a commercial development than with current residential pick-up.
- iii) Position of the Development Officer, Mr. Lee*
- [101] The Development Officer did not have a formal presentation, but wanted to respond to some of the issues raised.
- [102] The area marked on the plans as "future patio" should be removed. The area could be covered with decorative hard surfacing. The south patio is approved.
- [103] The waste enclosure configuration was dictated by Waste Management. He relies on their assessment. There is little flexibility with regards to the placement. None of the garbage enclosures comply
- [104] The parking spaces, from west to east, are recessed from the rear lot line 2.11 metres, 4.34 metres and 0.91 metres, respectively.

- [105] Mr. Lee assumed it is a standard lane width. Transportation would not allow short stalls because of the requirement of a turning radius. They do not allow encroachment onto right-of-way. The parking stalls are the required length plus there is an extra 3 feet to ensure that they are completely on private property. A transformer is awkwardly located on the property, so there is no extra room. Servicing and location is done through Epcor. The City has no say.
- [106] Mr. Lee was asked to comment on Section 5.2.7(1) of the Riverdale Area Redevelopment Plan, which states: “Uses having a gross floor area of over 275 square metres should not be approved because of the proximity to a residential area and the desire to maintain a small town atmosphere in the community and in order to achieve the objectives of Section 2.4 of this Plan.” He interpreted that section to mean that each individual use cannot exceed 275 square metres. He acknowledged that the section could be interpreted as multiple uses together cannot exceed 275 square metres, but he used the City interpretation.
- [107] In response to questions regarding the Parking Study, Mr. Lee relied upon the engineer that put his professional stamp on it and Transportation’s review and acceptance of it. Transportation did not take issue with deficient parking spaces but indicated the proposed on-street loading and disabled zones would not be supported by Parking Services. However, by situating the loading and disabled spaces on site, the proposed development would require a larger parking variance. Building Code requirements regulate the disabled parking space. Mr. Lee does not view tandem parking as an issue.
- [108] Whether a development is pedestrian oriented or not is subjective. The proposed development is built close to property lines, there is ease of access, sightlines from the windows, and the proposed restaurant is at grade. Mr. Lee believed the parking study encompasses the worst case scenario. Tenants are to be neighbourhood oriented, but he acknowledged that this cannot be predicted. He assesses uses, he cannot govern users of the site. The proposed design was audited by the Edmonton Design Committee who look at scale. They believe the development is pedestrian oriented.
- [109] Waste management would not sign off on a development unless they could fully collect waste.
- [110] The cutout on the south east corner of the proposed building helps mitigate the variance.
- [111] The setback is measured from the edge of building to property line. Any encroachment onto city property requires a city permit.
- [112] Mr. Lee was asked to comment on whether he reviewed the development in aggregate and not separately as two Permitted Uses and two Discretionary Uses. In his view, typically FAR and Height restrictions limit the number of uses. This development complies with those two requirements, but not waste collection, setbacks and parking. This developer did take a more honest approach to parking by properly applying for known uses, rather than General Retail Uses which have the lowest parking requirements.

[113] He cannot comment on the 900 spaces set out in the parking study. He assumed they employed proper measuring techniques. He gave the Board everything that was given to him when he approved the development.

iv) Position of the Respondent, Mr. Small, speaking on behalf of Redbrick Realestate Services Inc., who was accompanied by Ms. Martin-Drysdale

Mr. Small

[114] Based on further discussions, he advised that Transportation now supports on-street loading zone. The space will only be restricted from 9:00 a.m. to 4:00 p.m. and there will be signage to that effect. This will soften the parking restriction. After 4:00 p.m., the space will be available for use. By having the disabled space on street, it frees two on-site spaces

[115] The parking study referenced 900 spaces to demonstrate a vast array of parking in the area. They are not asking for that many spaces. The proposed development only requires the use of 15 on-street parking spaces to complement their 7 on-site parking spaces.

[116] The ARP supports zero setbacks. Originally, the building was to be pushed back 5 or 6 metres from the street, but they tried to better align with residential houses and alleviate concern at the intersection. By pushing building back, they created patio space to the south. The north patio not intended and any future tenant who wants to use the future patio will need to make a separate application.

[117] The setback on the east is less of a concern because the subject site is not immediately adjacent due to the lane and the building is not right on the property line. He confirmed there is a city boulevard, city sidewalk and city right of way. The setback is measured from the proposed development to the edge of the property line.

[118] The development complies with Height and Floor Area Ratio. The Applicants only asked for variances which are in his opinion supported by the City and the Area Redevelopment Plan.

[119] Under the Bylaw, the garbage enclosure can be right against the alley. They relegated it to the west property line, to allow more on-site parking. Residential garbage is already removed from the alley once a week. Their proposal is supported by Waste Management. Any restaurant tenant needs proper odour mechanisms.

[120] Two parking spaces encroach on setback, but they are not sitting in the rear setback, and they could be on the property line.

[121] The power pole in the north east corner is being removed and power will be taken from the south.

[122] The area marked on the plan as future patio will be a grass landscaped area. Since there is a transformer there, the space is not ideal.

Ms. Martin-Drysdale

[123] Ms. Martin-Drysdale is a resident of Riverdale and developer of the subject property.

[124] She was involved in a Sustainable Communities working group between 2010-2012. They were tasked with many issues including creating a sustainable community, school closure, and the new LRT in a holistic way. They held a number of discussions and had 80 surveys returned and focused on five key issues. One key topic was the lack of neighbourhood amenities.

[125] The Community League created a volunteer run café in Riverdale House which lasted for 2 years. They held pub nights for a couple of years at the Community League. Little Brick became a permanent fulltime solution, but limited electrical supply to the building prevents expansion.

[126] There is a demand for commercial amenity space.

[127] They cannot sign leases until the project is approved.

[128] They have done four consultations, one directly with adjacent neighbours. They received feedback on the patios on the west side, number of windows, landscaping, screening, and setbacks.

[129] The Tree Frog Press building is built right to property line but it is angled. They tried to create similar property using brick recognizing the history associated with the area.

[130] They met with the owner of a bicycle repair business, who currently operates in his garage in Riverdale. They would like him to operate in the basement of the proposed development. Most of his clients would ride to the site.

[131] They suggested a future patio area because there is not much they can do with the space given the location of the transformer. They have no issue with the patio being struck from the plans.

[132] They cannot provide expert advice on the effect of the proposed development on property value. They have found studies supporting the view that more amenities in the area increases a walkability score of a property, which is a key measure used to sell properties. The uses they propose are preferable to a 7-11. When Riverdale houses are listed on MLS, they include the distance to Little Brick.

- [133] About 30 to 40 people came to the open houses. About 12 people came to the adjacent neighbour night. The response they received was 80 percent positive. Those opposed brought up issues raised in the hearing today. They have tried to incorporate all ideas. She lives in the community and sits on the boards so she has the most incentive to make this project work.
- [134] With regards to the traffic safety issues, the City decided that no action was required. There is lots of parking around the development. Parking and traffic safety go hand and hand. She feels it is a safe development. She is unsure how one project creates problems in that intersection.
- [135] The feedback they received is that neighbours did not want loading through the alley.
- [136] Asked whether the aggregate impact of the variances is akin to rezoning the property, Ms. Martin-Drysdale explained that they have not varied FAR, Height or Site Coverage and all Uses are Permitted or Discretionary. She does not agree that the totality of uses cannot exceed a gross floor area of 275 square metres, because then there would be different FAR and Site Coverage restrictions.
- [137] Some individuals associated with the office use will walk to work and the remaining users will make use of the tandem spaces. Each residential user would have their own parking space. They tried to meet requirements for long time users of the site, and they concede that there are no spaces left for restaurant parking. However, there is opportunity for shared parking for the proposed uses.
- [138] Ms. Martin-Drysdale anticipates waste removal to be not more than once a week.
- [139] Ms. Martin-Drysdale lives on 94th Street, but walks down 90 Street. She will be occupying the office space.
- [140] There will be approximately 106 metres squared of public space in the front of the restaurant. There will be a lobby with a kitchen on one side on the back half and a bar type counter to serve customers. The cafe would be like a bistro in one portion and serve sandwiches, coffee, gelato, and small groceries from the other portion.
- [141] The bicycle repair shop will be in the basement.

v) *Position of Affected Property Owners in Support of the Respondent*

Mr. Palmer

- [142] Mr. Palmer is a 10 year resident of Riverdale. He lives at the west end of the blockface shared with the subject Site on 101 A Avenue. He is part of the Riverdale Community League, but is not speaking on their behalf. The Community League is not taking a position on the project. He runs a community-oriented development company, so is not a stranger to difficult development.

- [143] There are three commercial sites in Riverdale. One is the subject property. One is located at 10144 – 89 Street (which he assessed for redeveloping). The other is the property where Little Brick is located. Its developer is Rivervalley Co., a developer who is not as concerned about cap rates, has resources from other business and a passion to make meaningful spaces.
- [144] There are constraints on small scale commercial developments as they have high project costs.
- [145] 101 A Avenue used to be the community's mainstreet.
- [146] Every development has value and tradeoffs. If this project is denied, the community will not have any commercial developments. They are trying to move towards to a more walkability, mixed used community. Some changes affect certain neighbours more than others.
- [147] In 2011, the community went through an exercise that resulted in a document entitled the Riverdale Livability Results (marked Exhibit G). Mr. Palmer referred to Board to responses to question 6 of that document which show the area lacks amenities and that there is a desire for the types of Uses being proposed
- [148] Traffic problems are not the developer's problem.
- [149] Mr. Palmer also supplied a copy of the "Old Store" Development Community Consultation, December 11, 2017 Comments for Developer feedback form (marked Exhibit H).

vi) Rebuttal of the Appellants

Mr. Sutherland

- [150] Mr. Sutherland did not provide anything in rebuttal as he did not stay until the end of the hearing.

Mr. Cooper

- [151] Mr. Cooper agrees that the community desires amenities in the area. Little Brick does provide some amenities. They are looking for amenities at a reasonable scale.
- [152] They still do not have an idea of the volume of visits.
- [153] They understand it is not the Respondent's job to be traffic safety experts. However, they have a moral obligation to say how the proposed development will impact neighbours.

- [154] The Transportation Department has not been involved since 2012. They have been trying to find out if statistics for this intersection have been tracked.
- [155] The parking study assumes everyone has 2-car garage and that the on-street parking is only used by visitors. This is why they are raising a concern about the veracity of the estimate.
- [156] Mr. Cooper agrees the Riverdale Area Redevelopment Plan is dated. However, some of the values enshrined in that document do not need updating.
- [157] The Ritchie Market is prototypical. However, that project started as an individual going door to door, not the model that developed here. It is unfortunate that this has become an adversarial process.
- [158] Different garbage disposal methods should be employed.
- [159] The “future patio” should be struck of the plans and never be allowed.

Decision

- [160] The appeal is DENIED and the decision of the Development Authority is CONFIRMED. The development is GRANTED as approved by the Development Authority, subject to the following ADDITIONAL CONDITION:
- i)* The “Future Patio” area marked on the plans is deleted.

Reasons for Decision

- [161] This is an appeal of a decision approving an application for a mixed-use development with a building containing a Convenience Retail Store; Professional, Financial and Office Support Service; Restaurant (106 square metres of Public Space); and 2 Dwellings of Apartment Housing. The subject Site is located in a CNC Neighbourhood Convenience Commercial Zone. In this zone, the first two Uses are Permitted Uses and the last two are Discretionary Uses.
- [162] The proposed development requires four variances to the applicable development regulations involving Setbacks, the location of Parking Spaces and waste enclosures, the number of on-site Parking Spaces and Loading Spaces and Landscaping.

[163] The property is also subject to the Riverdale Area Redevelopment Plan (the “ARP”) which was developed approximately 25 years ago. In conjunction with the passage of this ARP, the subject Site was zoned CNC. Sections 2.4 and 5.2.7 of the ARP apply specifically to this site and provide:

Section 2.4 Commercial Development

Objective:

Continue the opportunity for small scale pedestrian oriented commercial uses to serve the community from central locations which have historically been used for such purposes.

Policy 2.4.1

The commercial properties on 101A Avenue at 89 Street and 90 Street will be redistricted to CNC*(Neighbourhood Convenience Commercial) District.

Policy 2.4.2

A Statutory Plan Overlay and Advice to the Development Officer for the CNC* District, as provided in Chapter 5, will be implemented to ensure commercial uses are of a small scale and pedestrian oriented

Discussion:

Two existing commercial sites are recommended for CNC* districting. These are the Tree Frog Press and the Riverdale Grocery. Both are centrally located and have a long history of commercial use. Both sites are currently districted for residential development. The CNC* districting would allow the long term continuance of commercial development at these two locations at a scale and intensity which would remain sensitive to surrounding residential development.

The Statutory Plan Overlay associated with the CNC* District reduces yard setback requirements to zero, where the yards are adjacent to public roadways (excepting laneways). This will accentuate the presence of commercial activity on the street, providing visible landmarks for the community. Currently, the two commercial developments have no building setbacks from the street.

Advice to the Development Officer is provided to promote pedestrian oriented businesses on a scale conducive to existing development. The advice states that discretionary uses should not exceed a floor area of 275 m². This will ensure that commercial activity is kept to a small scale. The Development Officer is encouraged to relax parking requirements where a use is oriented towards a community, as opposed to a city or regional market. It should also be shown that traffic from outside the community will be minimal and adequately handled by existing on-street parking or on-site parking which should be located to the rear or side of the property.

5.2.7 CNC Neighbourhood Convenience Commercial

Note: Section 5.2.7 was amended by Bylaw 12801 May 30, 2001

Area of Application

On the southwest corner of 101A Avenue and 89 Street and the northwest corner of 90 Street and 101A Avenue as shown on Map 8.

Rationale

To permit pedestrian-oriented neighbourhood convenience commercial uses in Riverdale in order to achieve the objectives of Section 2.4 of this Plan.

Advice to the Development Officer

1 Uses having a gross floor area of over 275 m² should not be approved because of the proximity to a residential area and the desire to maintain a small town atmosphere in the community and in order to achieve the objectives of Section 2.4 of this Plan.

2 Parking requirements may be relaxed, or eliminated, if it can be shown that the use is oriented towards a community, as opposed to a city or regional market, and if traffic from outside the community will be minimal and adequately handled by existing on-street or on-site parking.

[164] The Board considered mixed evidence it received about community support and opposition to the proposed development and has taken the following factors into account:

- i)* While community consultation was not required under the ARP or the Bylaw, the developer held three meetings with neighbours and an additional meeting with adjacent property owners. The developer estimated support to be approximately 80% with 20% citing the concerns raised by the Appellants and parties attending the hearing.
- ii)* Many of the participants appearing before the Board are active in their community and have roles with the Community League. The Community League also hosted a meeting concerning the development and gathered some feedback, a partial summary of which was submitted to the Board. This feedback was mixed with respect to the proposed development. However, all parties agreed that the Community League took no formal position for or against the development.
- iii)* The Board received emails in favour of and opposed to the proposed development.
- iv)* Three of the most affected neighbours (the abutting neighbour to the west, the adjacent neighbour across the lane to the north and one of the adjacent neighbours across 90 Street to the east) appeared to oppose the development.
- v)* Property owners of a lot located further to the north across 90 Street also appealed the decision.
- vi)* A neighbour who received notice of the appeal and owns and resides in a lot further to the west along the blockface of 101 A Avenue shared with the subject Site appeared to support the development.
- vii)* The Respondent Applicant is an active participant in neighbourhood initiatives. She owns property and lives in the community.

[165] The Board first considered that the two of the four proposed Uses (Apartment Housing and Restaurant) are Discretionary Uses. The Board finds these Discretionary Uses are reasonably compatible with the surrounding properties for the following reasons:

- i) The proposed two Dwelling Units of Apartment Housing are a residential Use which is compatible with all the immediately surrounding properties which are zoned residential. Further, these units will add to the availability of affordable and diverse housing choices in the immediate area.
- ii) The proposed Restaurant Use is contemplated in the ARP and it would have been a Permitted Use at the time the ARP was passed and the lot zoned CNC more than 20 years ago.
- iii) Given its limited size, the proposed Restaurant Use is consistent with the general object for this Site set out in section 2.4 of the ARP and the general purpose of the CNC zone in section 310.1 of the Bylaw. As all parties stated, it is difficult to predict the proportion of patrons who will come from the immediate area for the Restaurant. Both the ARP and the CNC zone use the maximum floor area of individual commercial Uses as an objective mechanism to achieve their purpose of drawing from within the community. At 106 metres squared of public space, the proposed Restaurant Use is well under the maximum for Permitted Uses (275 metres squared) and Discretionary Uses (1,000 metres squared) in the CNC zone and also less than half the size specified in the advice to the Development Officer that Discretionary Uses not exceed 275 metres squared in the ARP.
- iv) The community consultation of 2012 indicates that many residents of Riverdale believe there is a lack of amenities in the neighbourhood and that a Restaurant Use would address this shortcoming and contribute positively to the area.
- v) The Appellants' main objections are more linked to the aggregate size and scale of the building with four Uses, rather than the potential Use of the property for either a Restaurant or Apartment Housing.

[166] Pursuant to section 687(3)(d) of the *Municipal Government Act*, the Board next considered whether granting the four requested variances for the proposed development would unduly interfere with the amenities of the neighbourhood, or materially interfere with or affect the use, enjoyment or value of neighbouring parcels of land. After weighing the conflicting submissions and evidence, the Board grants the variances for the reasons which follow.

[167] Many of the objections raised in this appeal relate to the overall size and scale of the mixed use development which is to contain four Uses within a three storey building. As noted by the Development Officer, the building was assessed as required and approved by the Edmonton Design Committee which reviewed the development in part to ensure that it would be contextually appropriate to its surroundings in massing and scale.

- [168] The Board recognizes that multiple variances may be an indicator of overdevelopment, but also notes that the proposed development is fully compliant with the other regulations which deal with the aggregate measures of all four proposed Uses including FAR, Height and Site Coverage.
- [169] The Board agrees with the Development Officer that the potential profitability of the proposed development is not a planning issue relevant to the variance decision per se. The Board finds that the limited dimensions of this commercially zoned lot create practical challenges to the development of any functional commercial building and to provide associated on-site parking and loading spaces in full compliance with the relevant development regulations of the CNC zone.
- [170] The Board received mixed submissions about the impact of the proposed development and associated variances on the value of neighbouring properties. None of the parties provided evidence to support their differing opinions. In the absence of evidence one way or the other, the Board is unable to find that the proposed variances will have a material adverse impact on the value of neighbouring properties.
- [171] The parties in opposition cited sun shadowing as an adverse impact. The Board agrees the development will produce sun shadowing impacts for neighbouring properties, particularly for the abutting property to the west. However, given the building complies with the maximum Height and the building Set Backs are compliant on the west Side Lot Line and the rear Lot Line, the Board finds that proposed variances do not create a material adverse impact with respect to sun shadowing.
- [172] In addition to the general reasons set out above, the Board grants the variance to the required Setbacks for the building along public roadways to allow a Setback of 0.65 meters from the side Lot Line along 90 Street and 2.26 metres from the front Lot Line along 101 A Avenue pursuant to Section 310.4(5) because:
- i)* The Board noted the neighbours' concerns about the current safety of the intersection of 90 Street and 101 A Avenue which predate the development. However, the Board has not received evidence that the Setback variances in particular will exacerbate these issues. Further, the application was reviewed by Transportation which indicated they had no concerns with the building location in terms of traffic safety.
 - ii)* The Setback variances are consistent with the ARP which at the time of its enactment referenced earlier overlays that contemplated zero setbacks.
 - iii)* The developer adjusted the design of the building to create a cut out portion at the south east corner which improves sightlines for the intersection of 101 A Avenue and 90 Street ameliorating the impact of the variances.
 - iv)* Both Lot Lines along 90 Street and 101 A Avenue are separated from the roadway by a boulevard, a public sidewalk and additional greenspace in the public right of way which lessens the impact of the variances.

- v) As outlined above, the width of the commercially zoned single-lot Site creates significant practical challenges as a fully compliant building would be restricted to 8.5 metres in width. With this relaxation for the flanking setback, the interior Setback requirement of 3.0 metres is preserved for the abutting lot. In addition, with the front Setback variance the building is pushed south which lessens the overall impact on privacy for the abutting property to the west.

[173] The Board grants the variance to section 54.2- Schedule 1(A) and section 54.4 Schedule 3 to allow a reduction of the number of required on-site parking spaces from 21 to 7 (including two tandem spaces) and to remove the requirement for an on-site loading space based on the general reasons set out above and for the specific following reasons:

- i) The Board considered the neighbours' serious concerns about the current safety of the intersection at 90 Street and 101 A Avenue. The Board notes that these concerns exist regardless of proposed development and the Board has not received evidence that the reduction in on-site parking spaces will materially adversely impact these safety issues.
- ii) The Applicant has provided a parking study prepared by a registered Professional Engineer dated September 22, 2017 which concludes that on street parking within a realistic walking radius is plentiful at over 900 spaces, a number far in excess of the proposed 14 space variance.
- iii) The Appellants questioned some of the underlying assumptions in this report, but did not provide support to counter the conclusions. They agreed that on street parking is an issue in some parts of Riverdale, but it is not an issue in the immediate area.
- iv) The Board notes that Transportation reviewed the proposed variances and the parking study and had no objections to the reduction in on-site parking spaces even when at the time of their review 43 spaces were required per the now outdated parking regulations instead of the current 21 space requirement.
- v) The variance is not contrary to the ARP. Section 2.4 of the ARP encourages relaxation of parking requirements if a Use is oriented towards a community as opposed to a city or regional market. Here the applicants provided a parking study as requested by the Development Officer which supports the conclusion that this objective is met.
- vi) The Board accepts the Development Officer's submission that Use, not users, may be regulated by the Bylaw and an uncertain percentage of the visitors to the Site will come on foot or by bicycle. The Board again notes that the concrete measure employed to achieve the objectives of the ARP and the CNC Zone is the limited size of any individual Use. The proposed Uses are well under these size measures in both the ARP and the CNC zone.
- vii) The Board also notes while the ARP encourages variances in certain situations, neither the CNC Zone nor the ARP explicitly prohibit variances if these objectives are not proven to be met in advance.

- viii)* The three proposed commercial Uses will likely have different peak times and durations reducing demand at any given time for on-street parking and creating a limited potential for shared use of the five on-site parking spaces that are not designated for the Apartment Housing Use.
- ix)* The Applicant confirmed that Transportation has approved an on street loading zone with limited hours and a designated disabled parking space on 90 Street. This will reduce the potential hours during which loading and unloading may occur and lessen the impact of the loading space; avoid the impact of delivery trucks using the lane to for loading purposes; and, maximize the potential number of on-site parking spaces.

[174] The Board grants the variance to Section 310.4(7) to allow: the waste enclosures to be located within the Setback from the west Side Lot line; and, two parking stalls to be located within the Setback required from the east Side Lot Line along 90 Street based on the general reasons set out above and on the following more specific reasons:


- i)* The location for the waste enclosures has been selected and approved by Waste Services.
- ii)* It is the least visible location from both 101 A Avenue and 90 Street.
- iii)* The impact of this variance is ameliorated for the abutting lot to the west as the waste enclosures are screened by the rear detached garage located on that lot.
- iv)* While the adjacent neighbour to the north objected to this location, the Board notes that there is no required setback for the waste enclosures and the enclosures are separated from this property by the intervening lane. The variance to the required Side Setback does not create a material impact for the property across the lane to the north.
- v)* The location for the two on-site parking stalls furthest to the east is within the required Setback from 90 street but also 0.91 metres from the rear lot line which addresses potential issues with the turning isle.
- vi)* The property line is set back a distance from the entrance of the lane to 90 Street due to the city right of way, the public sidewalk and the width of the public boulevard.
- vii)* Transportation reviewed and approved the location of these two parking spaces within the required setback. As a condition of approval, a barrier for parking has been required to be located at the eastern edge of the parking space closest to 90 street to separate the parking space preventing further incursion into the required Side Setback and adding separation between parking spaces and passing pedestrians.
- viii)* The limited width of the Lot and the location of the EPCOR transformer along the east side of the lot practically limits available area for parking spaces.

[175] The Board grants the landscaping variance to sections 55.3(c)(i) and 55.3(c)(iii) to permit an excess of coniferous trees with heights that do not meet the minimum of 3.5 metres based on the following reasons:

- i) The Board accepts the reasons contained in the letter of the Registered Landscape Architect dated November 2, 2017. Specifically the Board accepts that the higher proportion of coniferous trees are not available at the required height, but the proposed trees will in time result in an improved screening for the adjacent residential property.
- ii) The Appellants and others opposed to the development did not take great issue with the variances to landscaping.

[176] For the reasons above, pursuant to section 687(3)(d), the Board finds 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.

[177] Finally the Board notes that the Appellants object to the approval of a second patio area as marked on the stamped approved plans as “future patio”. The Applicant and the Development Officer stated that the current application was not intended to include approval of “future patio” area located to the north of the building as marked on the stamped approved plans. Accordingly, consistent with the Applicant and the Development Officer’s intentions and for the sake of clarity, the Board has struck that notation from the stamped approved plans.



Ms. K. Cherniawsky, 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 Development & Zoning Services, Urban Form and Corporate Strategic Development, 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, Urban Form and Corporate Strategic Development, 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.



**EDMONTON
TRIBUNALS**

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Date: February 15, 2018
Project Number: 258470653-003
File Number: SDAB-D-17-232

Notice of Decision

November 23, 2017 Hearing

i) Position of Mr. Gibson, Legal Counsel for the Appellant, Mr. Yale, representing Condominium Corporation No. 062 6935 - Andrea Manor

[1] Mr. Gibson is seeking an adjournment of this matter until the end of January as he was recently retained by his client. This is no prejudice to any parties involved. No party present had any objections to the request.

ii) Position of the Development Officer, Mr. Angeles

[2] Mr. Angeles is not opposed to the adjournment request but cannot guarantee attendance at the next hearing date.

Decision

[3] SDAB-D-17-232 is tabled until January 31, 2018.

Reasons for Decision

[4] Legal Counsel was recently retained and he would like some additional time to prepare for the hearing and they believe that they will shortly have access to information that will be relevant to the appeal hearing.

[5] In the context of this case, no prejudice to any interested party has been alleged since the additional dwelling has been in existence for some time.

[6] This is the first adjournment request of the Appellant.

[7] There was no objection to a later date from anyone in attendance to the adjournment of the hearing.

January 31, 2018 Hearing

[8] On January 31, 2018, the Subdivision and Development Appeal Board (the “Board”) heard an appeal that was filed on **October 27, 2017**. The appeal concerned the decision of the Development Authority, issued on October 13, 2017, to refuse the following development:

Add (1) additional Dwelling to an existing (13) Dwelling Apartment House for a total of 14 Dwellings and to construct exterior alterations (additional window for egress)

[9] The subject property is on Condo Common Area (Plan 0626935), located at 10003 - 87 Avenue NW, within the RA7 Low Rise Apartment Zone. The Medium Scale Residential Infill Overlay and Strathcona Area Redevelopment Plan apply to the subject property.

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

- Copy of the Development Permit application with attachments, proposed plans, and the refused Development Permit;
- The Development Officer’s written submissions;
- The Appellant’s written submissions; and
- Submission from neighbouring property owner.

Preliminary Matters

[11] 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.

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

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

iii) Position of the Development Officer, Mr. Angeles

[14] The Development Authority provided written submissions and did not attend the hearing.

iv) Position of Mr. Gibson, Legal Counsel for the Appellant, Condominium Corporation No. 062 6935 - Andrea Manor and Ms. D. McDonald and Mr. B. Yale

- [15] Ms. McDonald wants the additional suite to remain as is because it is a useful addition to the building which has been in place for a long time. She was not aware there were any legal issues with the suite until recently when it came to the Development Officer's attention in connection with a different development in the building.
- [16] The additional suite provides roughly \$1,000.00 in rental income each month and covers 20 percent of the total amount required for operating costs which are otherwise funded by condominium fees. The loss of this income will negatively impact condominium owners.
- [17] The other condominium owners in the building support the development and they are willing to address any variances if needed.
- [18] In response to questions by the Board, she stated that the additional suite has been in existence since the 1980's, but the building was not condominiumized until 2006.
- [19] It is a bachelor suite that is approximately 14 feet by 15 feet, or approximately 250 square feet in size, with a kitchen and bathroom.
- [20] The building does not have any shared amenity areas.
- [21] A variance in parking will be required if the additional suite is approved. However, they believe that it is warranted as on-site parking has never been an issue. The site has 19 parking spaces and at times, ten of them are not used. Further, at one point, the parking lot was re-done and all the residents of the building easily found nearby on street parking, with no issues. The parking area has never been full.
- [22] Of the 19 parking spaces, 4 are double spaces and the rest are for the condominium units and visitor parking. The garbage dumpsters do not take up any of the parking spaces. All of the condominium units have assigned parking spaces and there is also one for the office.
- [23] In response to questions by the Board, they confirmed that currently there is no common amenity area for the condominium units. The back half of the top floor suite used to be an amenity area that had a bathroom, laundry facility, storage and deck. That area was amalgamated into Mr. Yale's suite when it was converted to condominiums in 2006. The third bedroom in his suite used to be the laundry and storage area.
- [24] There is a rooftop deck which is part of his suite and is not accessible to the other tenants.
- [25] There is a private balcony for each condominium unit suite. However, the additional suite does not have a private amenity area. A railing could be added to the additional suite on the main floor which would make it look like a patio, but this would interfere with the parking area.

v) *Position of Ms. Stenzel, affected Property Owners in Support of the Appellant*

- [26] She would like the additional suite to remain authorized as it was in the past. The building has already been condominiumized.
- [27] There are nine two-bedroom suites and the rest are one-bedroom suites. The building required an amenity area for the footprint of the building and parking spaces.
- [28] Four of the parking spaces identified by the Appellant are not legal as they encroach on the City boulevard.
- [29] The proposed development was supposed to be (and was) approved as a common amenity area for the building and was advertised as a guest suite. That is how it was to be put on the Condominium Plan - as common property, an amenity area.
- [30] In 2006, there was an application for the additional suite which resulted in a ruling from a panel of this Board. The panel in that decision referred back to a Development Permit issued in 1981.
- [31] The suite was used as an amenity area until it was rented out to tenants. She stated that the same scope of application was before the Board in 2006; however, she did not bring that decision with her.
- [32] The Board took a short recess to allow time for the Board Officer to search for the Board decision from 2006.
- [33] The Presiding Officer stated that the Board could not find a record of the 2006 permit but that does not mean it does not exist.
- [34] The Presiding Officer indicated that the application currently under appeal was for the additional Dwelling unit requiring a variance because, amongst other issues, it had no private amenity area as currently required by the Bylaw.
- [35] Ms. Stenzel referred to her written submissions which include letters from tenants that have rented the suite and real estate listings which demonstrate that amenity areas are common and are not dwellings.
- [36] Ms. Stenzel affirmed that she believes the development was previously approved as something else and also that if the Board determines it is a dwelling unit, she would like the permit that has been applied for to be approved.
- [37] In her opinion, the parking variance will not have a negative impact in the community.
- [38] There is public amenity space in the neighbourhood for people to use if they want to. Therefore, that variance is not impactful.

[39] The suite has been inspected and is not hazardous to any of the tenants.

vi) Rebuttal of the Appellant

[40] Mr. Gibson reaffirmed that:

- (i) The building is a 13 unit Condominium with an extra unit that was legally considered common property.
- (ii) The building was condominiumized in 2006.
- (iii) Variances are required for density; the lack of a private amenity area for the additional suite; and a reduction in the required number of on-site parking spaces.
- (iv) The additional suite has been in existence and rented out by the corporation to various tenants for several years with no known complaints.
- (v) The site has 18 parking spaces. Each of the owners has their own parking space. There are also assigned on-site visitor parking spaces and on-street parking is plentiful. There is sufficient parking at the subject site and the additional suite does not create an excess demand for parking.
- (vi) The residents of the condominium support the additional suite.

[41] In his opinion, the City is encouraging developments with higher density.

[42] The addition suite is considered a bachelor suite which is affordable for students.

[43] The rental income for the suite represents approximately 20 percent of the corporation budget which is used mainly for maintenance.

[44] If the suite is not approved, the current tenant will need to move which will impact the income of the Condominium. If the suite is not approved, it will need to be renovated as another use which will adversely impact the remaining tenants.

[45] The Appellants are agreeable to the conditions suggested by the Development Officer.

Decision

[46] The appeal is **ALLOWED** and the decision of the Development Authority is **REVOKED**. The development is **GRANTED** as applied for to the Development Authority.

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

1. The excess in the maximum number of allowable Dwellings of 13.32 Dwellings as per Section 210.4(2) is varied to allow an excess of 0.68 Dwellings, thereby increasing the maximum allowed number of Dwellings to 14.0 Dwellings.
2. The minimum required private Amenity Area for the additional Dwelling unit, as per Section 823.4(3) is waived.
3. The minimum required Parking Spaces of 20, as per Section 54.2, Schedule 1(A), is varied to allow a deficiency of 2 parking spaces, thereby decreasing the minimum required to 18 parking spaces.

Reasons for Decision

- [48] This is an appeal of a decision by the Development Officer refusing an application submitted by the Condominium Corporation to “Add (1) additional Dwelling Unit to an existing (13) Dwelling Apartment for a total of 14 Dwellings and to construct exterior alterations (additional window for egress).”
- [49] Apartment Housing is a Permitted Use in the RA7 Low Rise Apartment Zone.
- [50] The Board first considered whether the proposed development was an Amenity Area or a Dwelling. Both terms are defined in the Bylaw:

6.1(5) Amenity Area means:

- a. with respect to Residential Uses, space provided for the active or passive recreation and enjoyment of the occupants of a residential development, which may be for private or communal use and owned individually or in common, subject to the regulations of this Bylaw; and
- b. with respect to non-Residential Uses, space provided for the active or passive recreation and enjoyment of the public, during the hours which the development is open to the public, which shall be owned and maintained by the owners of the development, subject to the regulations of this Bylaw;

6.1(31) Dwelling means a self contained unit comprised of one or more rooms accommodating sitting, sleeping, sanitary facilities, and a principal kitchen for food preparation, cooking, and serving. A Dwelling is used permanently or semi-permanently as a residence for a single Household.

- [51] During the hearing, Ms. Stenzel argued that no Development Permit was required because the rental suite was in fact an Amenity Area for the building. She explained the suite been previously approved by another panel of this Board as a common Amenity Area in conformance with the Condominium Plan. However, in the event that the Board disagreed, she supported the appeal and the issuance of the Development Permit. The Board notes that no such decision was provided, nor could the Board Officer locate any record of it.

- [52] The Appellants identified the proposed development in the submitted plans (stamped refused on October 3, 2017) as a self-contained area labeled “existing alteration Rental Suite.” These plans show that the same area was previously marked “Sauna”, “Storage” and “Bath.”
- [53] All parties in attendance agreed:
- i) The space was renovated at some point many years ago.
 - ii) It is accessed by a separate locked door and currently contains a living area, kitchen facilities and a private bathroom.
 - iii) The suite has been used as a Dwelling unit and rented out to tenants for many years to defray the condominium fees for all the unit owners.
 - iv) They would like to continue to rent the suite as they have in the past.
- [54] Based on the agreed information supplied by all the parties, the Board finds that the “Rental Suite” has all the attributes of a Dwelling as defined in Section 6.1(31) of the *Edmonton Zoning Bylaw*. It is therefore a development which requires a Development Permit.
- [55] Next the Board considered whether the required variances should be granted.
- [56] For the following reasons, it is the opinion of the Board that the Development Permit should be approved as 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:
1. The building has been in existence for over 30 years. Other than enlarging a window, the proposed development will make no change to the existing apartment building.
 2. The proposed development has been used as an additional Dwelling Unit for over 10 years without any known complaints. It was brought to the attention of the City due to the investigation of an unrelated matter in a different portion of the building.
 3. No letters of opposition were received and no one appeared in opposition at the hearing.
 4. The Board accepts that the relatively small studio suite (approximately 250 square feet) will provide additional affordable accommodations in this area.
 5. Based on the evidence presented at the hearing, the Board finds that there are no concerns with regard to on-site or on-street parking in the immediate area. The subject Site is located in a walkable neighbourhood and is in close proximity to public transportation. The Board notes that historically many tenants of the suite have not required on-site parking. Therefore, the variance of two parking spaces will not create an adverse impact on the neighbourhood.

6. There are several public amenity spaces available within walking distance in the neighbourhood. Further, waiving the requirement for a private Amenity Area for the suite will principally impact the residents of the suite and the residents of other unit holders rather than the neighbouring property owners. The other unit holders support the development.
7. According to the refused permit and his written report, the Development Permit Application was refused by the Development Officer as under Section 11.3(1)(b) of the *Edmonton Zoning Bylaw* he lacks the authority to vary Density regulations. He gave no specific objection to this increase in Density. He did not cite any concerns regarding the variances to either on-site parking spaces or the lack of private Amenity Area for this suite.

A handwritten signature in blue ink, appearing to read "K. Cherniawsky". The signature is fluid and cursive, with the first letter of each name being capitalized and prominent.

Ms. K. Cherniawsky, 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 Development & Zoning Services, Urban Form and Corporate Strategic Development, 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, Urban Form and Corporate Strategic Development, 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.