EDMONTON
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Subdivision & Development Appeal Board

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Date: February 14, 2018
Project Number: 139257959-003
File Number: SDAB-D-18-015

Notice of Decision

[1] On January 31, 2018, the Subdivision and Development Appeal Board (the "Board") heard an appeal that was filed on January 3, 2018. The appeal concerned the decision of the Development Authority, issued on December 20, 2017, to refuse the following development:

> Construct an Accessory building (shed, 2.44m x 1.74m).

[2] The subject property is on Plan 2034KS Blk 32 Lot 60, located at 15922 - 94 Avenue NW, within the RF1 Single Detached Residential Zone. The Mature Neighbourhood Overlay applies to the subject property.

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

- Copies of the refused permit and permit application with attachments and plans;
- Development Officer's written submissions dated January 24, 2018;
- One photograph and petition from the Appellant; and
- One online response in support of the development.

Preliminary Matters

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

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

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

Summary of Hearing

i) Position of the Appellant, C. Garstin

[7] The shed was already in place for many years when the Appellant moved into the property on October 31, 2001; however, it was not shown on the Real Property Report which was completed in September 2001. She did not understand why the shed was omitted, and it was her belief that if the shed was a problem, either the lawyer who helped with the home purchase or the City would have raised the issue at the time of sale.

[8] This shed was never a concern until a complaint was made. She believes the complainant was a neighbor who has created many issues for the neighbourhood over the past ten or twelve years.

[9] Two neighbours within the 60 metre notification area conducted a petition on Ms. Garstin's behalf and nine immediately affected neighbours signed in support of the development. Ms. Garstin personally spoke to the most affected neighbor to the west who expressed no concerns regarding the shed. No opposition was received from any neighbours.

[10] The shed looks like it is part of the house as it has the same siding. It is a sound structure and does not look decrepit. It is built right up to the house but it is not attached to it. It is also built right up to the fence along the west property line. No flammable items are stored within the shed.

[11] Moving the shed would be difficult as there is an air conditioner in front of the shed and shrubbery blocking the way toward the front of the property.

[12] Ms. Garstin understands that the City has regulations and bylaws that must be adhered to but given the above facts she does not believe the shed is a problem or harming anyone.

ii) Position of the Development Officer, Jason Xie

[13] The Development Authority did not appear in person and the Board relied on Mr. Xie's written submission.

Decision

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

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

1. The minimum required setback from the front property line of 18.0 metres pursuant to Section 50.3(5)(a) is varied to allow a deficiency of 9.9 metres, thereby decreasing the minimum required to 8.1 metres.

2. The minimum required setback from the side property line of 0.9 metres pursuant to Section 50.3(5)(b) is varied to allow a deficiency of 0.9 metres, thereby decreasing the minimum required to 0.0 metres.

3. The minimum required setback from the House of 0.9 metres pursuant to Section 50.3(5)(d) is varied to allow a deficiency of 0.9 metres, thereby decreasing the minimum required to 0.0 metres.

Reasons for Decision

[16] The proposed development is for a shed, which is Accessory to a Permitted Use in the RF1 Single Detached Residential Zone.

[17] The shed has existed at its current location for at least 14 or 15 years.

[18] The exterior finish of the shed matches and blends in with the existing home.

[19] The Board heard evidence that the shed was missed or omitted from the Real Property Report dated September 2001; however, the Board considered this information to be irrelevant.

[20] Other than the one complaint the Board received, there was no other opposition to the development.

[21] The Board received written support for this appeal from many directly affected neighbours including the most affected neighbor to the west and the property across 94 Avenue to the South.

[22] The Board was presented with no planning reasons that indicated that this development would have a material impact on anyone and pursuant to section 687(3)(d) of the *Municipal Government Act*, finds that the proposed development would 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.

Vince Laberge, Presiding Officer
Subdivision and Development Appeal Board

Board Members in Attendance:
Mr. N. Somerville; Ms. S. LaPerle; Mr. A. Peterson; Ms. M. McCallum

Important Information for the Applicant/Appellant

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

2. Obtaining a Development Permit does not relieve you from complying with:

    a) the requirements of the *Edmonton Zoning Bylaw*, insofar as those requirements have not been relaxed or varied by a decision of the Subdivision and Development Appeal Board,
    b) the requirements of the *Alberta Safety Codes Act*,
    c) the *Alberta Regulation 204/207 – Safety Codes Act – Permit Regulation*,
    d) the requirements of any other appropriate federal, provincial or municipal legislation,
    e) the conditions of any caveat, covenant, easement or other instrument affecting a building or land.

3. When an application for a Development Permit has been approved by the Subdivision and Development Appeal Board, it shall not be valid unless and until any conditions of approval, save those of a continuing nature, have been fulfilled.

4. A Development Permit will expire in accordance to the provisions of Section 22 of the *Edmonton Zoning Bylaw, Bylaw 12800*, as amended.

5. This decision may be appealed to the Alberta Court of Appeal on a question of law or jurisdiction under Section 688 of the *Municipal Government Act*, RSA 2000, c M-26. If the Subdivision and Development Appeal Board is served with notice of an application for leave to appeal its decision, such notice shall operate to suspend the Development Permit.

6. When a decision on a Development Permit application has been rendered by the Subdivision and Development Appeal Board, the enforcement of that decision is carried out by the Sustainable Development Department, located on the 2nd Floor, Edmonton Tower, 10111 – 104 Avenue NW, Edmonton, AB T5J 0J4.

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

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Date: February 14, 2018
Project Number: 182128114-001
File Number: SDAB-D-18-016

Notice of Decision

[1] On January 31, 2018, the Subdivision and Development Appeal Board (the "Board") heard an appeal that was filed on July 5, 2016. The appeal concerned the decision of the Development Authority, issued on July 4, 2016, to refuse the following development:

> Construct a 3 Dwelling Apartment House and to demolish the existing Single Detached House

[2] The subject property is on Plan I23A Blk 161 Lot 31, located at 11007 - 85 Avenue NW, within the DC1 Direct Development Control Provision (Bylaw 6220). The Garneau Area Redevelopment Plan applies to the subject property.

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

- Appellant's supporting materials and Exhibit "A" from the 2016 Hearing;
- Appellant's additional supporting materials consisting of a consolidated lot illustration and SLIM Map View of the subject property and surrounding areas;
- Written correspondence and supporting materials from the Garneau Community League;
- Copies of the refused development permit, circulation response documents and written report from the 2016 Hearing; and
- Seven letters in opposition to the development.

Preliminary Matters

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

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

[6] Referencing *Garneau Community League v Edmonton (City),* 2017 ABCA 374 [*Garneau*], the Presiding Officer noted that this hearing was unique in that the matter had been returned to the SDAB for further consideration by the Alberta Court of Appeal with specific instructions to the Board.

1. The SDAB is required by Section 641(4)(b) of the *Municipal Government Act* to make its decision in accordance with the directions of Council. It appeared that both the previous panel and the Court of Appeal agreed that the Development Authority did not follow Council's direction, therefore no further presentations would be required on this point from the parties in attendance.

2. The Court of Appeal also directs that Variances from minimum setback or other requirements specified in RF3 may only be granted pursuant to individual applications, where such "relaxations would assist in the achievement of the development criteria in Clauses 3, 4 & 5".

3. In addition the Court has reinforced the limitation on the Development Authority and the SDAB to grant variances as set out in Section 11.6(3) of the Land Use Bylaw.

[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 Appellant, San Properties Limited

[8] The Appellant was represented by legal counsel, Mr. Haldane of Ogilvie Law.

[9] An appeal of the refused permit was filed in July 2016 and was first heard in late August of that year. The SDAB reversed the decision of the Development Authority and granted the development. The SDAB's decision was subsequently appealed to the Court of Appeal.

a) <u>Development Background</u>

[10] The Appellant provided a brief background summary of the subject development, making reference from the supporting materials submitted for the 2016 hearing.

1. The plot plan illustrated that the existing Dwelling has smaller side yards than the proposed development. (Tab 7)

2. The front elevation drawings and an artist's rendering of the proposed development in relation to the adjacent properties provide a feel for the built form. (Tabs 8 and 9).

3. He referenced Exhibit "A" from the previous hearing, consisting of a collage of photographs that illustrate the entire streetscape along 85 Avenue between 110 and

111 Streets. The exhibit provided block face context and demonstrated how it is characteristic of homes in the area to have very small side yards.

4. Variances are being sought to the minimum required site width, site area and side yards.

b) The Alberta Court of Appeal *Garneau* Decision

[11] Paragraph 41 of *Garneau* refers the matter back to the SDAB and directs the Board to make its decision "in accordance with the directions" of Council per section 641(4)(b) of the *Municipal Government Act*. The normal variance powers under section 687(3)(d) are not available in this case, and the Board is restricted to the same discretionary powers as the Development Authority. In this case, the SDAB may only grant variances to the regulations specified in the RF3 regulations under Land Use Bylaw 5996 if such relaxations would assist in the achievement of the development criteria set out under Clauses 3, 4 and 5 of the DC1 Garneau Direct Development Control District.

[12] Paragraph 38 of *Garneau* sets out the Board's error in its 2016 decision. The Court noted that the Board's consideration of several large houses in the neighbourhood is not the same as considering the adjacent buildings along the same street frontage. In other words, rather than looking at developments across the street or across the rear lane, the Board's consideration should be focused on the block face.

[13] The Court has made it very clear that the SDAB has the authority to hear the matter but that it must exercise caution regarding the scope of its variance powers. In this case, the Board is limited to the aforementioned Clauses 3, 4 and 5, namely the scale, siting and massing of the subject development in relation to the adjacent properties on the block. Paragraph 36 of *Garneau* indicates that it was unclear to the Court as to whether the Board had correctly considered the limited purposes for which a relaxation may be granted. There was a deficiency in the record and more explanation was required to support the Board's decision.

[14] Finally, paragraph 34 of *Garneau* states: "There is nothing on the record to support the SDAB's speculation that Council did not intend that lots would not be consolidated to allow for apartment construction." In other words, the Court has not concluded that Apartment Housing is available only for consolidated larger lots. Yet the letters of opposition to the subject development, as well as the materials submitted by the Community League, appear to suggest that the Court has already ruled on this matter, which is incorrect. Were that the case, the Court could have simply used its authority under section 689(1)(b) of the *Municipal Government Act* and reversed the Board's decision. Instead, the Court sent the matter back to the SDAB because the Board's 2016 decision was unclear on this point.

c) The Statutory Plan: Garneau Area Redevelopment Plan (the "GARP")

[15] The GARP contemplates that existing housing will deteriorate and be replaced. Mr. Haldane referenced excerpts from the Introduction pages of the GARP to show how specific policies of the General Municipal Plan apply to the plan area:

1. To accommodate growth, there is a priority on increasing the compactness of existing residential development to better utilize existing services and infrastructure, while improving services where necessary.

2. Housing in the inner city is to be increased with emphasis on the provision of family accommodation.

3. There is a need to provide a variety of housing types to accommodate various groups who wish to live in Garneau including single persons, families and students.

4. Garneau will accommodate a portion of city growth in the form of redevelopment. This supports the Growth Strategy outlined in the General Municipal Plan. Redevelopment in Garneau will, however, be managed to ensure that it is compatible with the existing residential character by directing the location and regulating its form, thus preserving as much as possible the assets which make Garneau a desirable place to live.

[16] Architectural and urban design characteristics are the focus in this four block area, not single family dwellings. Housing forms are to meet the needs of different types of households including single persons and students. Single family dwellings in this area of Garneau are not accessible or practical for students or single persons. Apartment Housing, containing not more than four Dwellings is a listed use in this direct control district.

[17] Item 2 of the Development Criteria provides the authority for the Development Officer to relax the development regulations of the RF3 Zone of the Land Use Bylaw 5996 if these relaxations would assist in the achievement of the development criteria under Clauses 3, 4 and 5.

[18] Clause 3 is the only provision that applies to the proposed development. It states: “New developments or additions to existing buildings shall be compatible with the scale, massing and siting of adjacent buildings along the same street frontage”.

[19] Exhibit “A” demonstrates that small Side Yards are typical of the street frontage. Relaxation of the Side Yard regulations would actually make the proposed development look more like the existing housing stock. The proposed development is also typical of the scale and massing along the block face.

[20] Paragraph 37 of *Garneau* stresses that the GARP permits relaxations that “would assist in the achievement of the development criteria in Clause 3”. In other words, there is no express prohibition against non-compliant developments that would otherwise be “compatible with the scale, massing and siting of adjacent buildings along the same frontage”. Indeed, paragraph 37 provides two comparative examples: one of a compliant building with a flat roof that would be incompatible with adjacent buildings, contrasted with an example of a compatible building with a peaked roof, but which would require a Height variance.

[21] The Appellant noted that the Community League's interpretation would effectively mean that 75 percent of the lots within this direct control district cannot be redeveloped, as these lots are too narrow for any type of development, including Single Detached Housing which requires a minimum lot width of 39.4 feet. Only 27 of the 105 lots would be large enough for redevelopment without requiring variances, and only two lots would be wide enough for Apartment Housing.

[22] Referencing the consolidated lot illustration submitted prior to the hearing, Mr. Haldane demonstrated that if two 33 foot lots were consolidated into a larger lot, Apartment Housing without any variances could be built, yet a much larger footprint would result, leading to greater impact on the surrounding neighbourhood. By contrast, although the proposed development requires variances, the illustration shows that it would be less impactful.

[23] His client is asking for the RF3 regulations under the Land Use Bylaw 5996 to be relaxed to allow him to build an apartment on a 33 foot wide lot. These relaxations would "assist" in making the proposed development compatible with the streetscape with respect to scale, massing and siting.

[24] Mr. Haldane submitted that while Apartment Housing is an available Use in this area, such developments should be compact and should look like the existing stock on the block face. In his view, the form, massing and scale of the proposed development respect the existing streetscape.

[25] He further submitted that the Court did not instruct that Apartment Housing must be on a larger lot. Had that been the case, the Court would have reversed the panel's decision and cancelled the permit rather than sending the matter back to the Board for a further hearing. By extension, the Court did not hold that it is impossible to have small apartments be developed on small lots. Had that been the case, the inclusion of Apartment Housing as a Listed Use in this direct control provision would be meaningless, which could not have been the intention of Council.

[26] The only variances before the Board pertain to site width, depth and area. The underlying objections of the neighbours come down to density – people do not want Apartment Housing next to their properties.

[27] Upon questioning by the Board, Mr. Haldane submitted that the correct reading of the word "adjacent" in the context of this direct control provision is that it means "nearby". By contrast, the word "abutting" is defined in the Zoning Bylaw as meaning physically contiguous. This latter wording could have been adopted in the direct control provision, but it was not. In the absence of this express wording, he submitted that the direct control provision directs the Board to consider the whole block face in determining whether the proposed development is compatible with nearby properties, not only to the two lots directly abutting the subject property.

[28] The other word that needs to be examined is "compatible". He referred back to consolidated lot illustration, pointing out that representation of the compliant development on the larger consolidated lot is an example of an incompatible development that would not satisfy the requirements of the GARP.

[29] Upon questioning by the Board with respect to the Development Officer's normal variance powers under sections 11.5 and 11.6 of the Land Use Bylaw 5996, Mr. Haldane submitted that those variance powers do not apply in this case. It is clear from the Court's decision that the relevant considerations when determining whether to relax regulations of the RF3 Zone are contained within Clauses 3, 4 and 5 of the Garneau Direct Development Control District.

[30] The Board noted that the 2016 SDAB decision identified that a parking variance was required. In response, Mr. Haldane submitted that adequate parking has been provided per Schedule 66A of the Land Use Bylaw 5996. As well, the issue was not taken up at the Court of Appeal. However, should the Board's decision hinge on a parking variance, the Appellant would be prepared to accept a condition stating that visitor parking shall not be in tandem.

[31] Section 66.1(2) of the Land Use Bylaw 5996 also addresses the authority to reduce parking requirements. If this Board were to find that the parking provided is not compliant, it would be appropriate to provide the Appellant with the opportunity to request a parking demand study to demonstrate that Schedule 66 requirements should not apply to this site and that five parking stalls are sufficient.

ii) Position of the Development Authority

[32] No one appeared on behalf of the Development Authority and the Board relied on the 2016 written submissions of the Development Authority.

iii) Position of the Affected Parties, Garneau Community League and Ms. L. Stanley-Maddocks

[33] The Garneau Community League and Ms. Stanley-Maddocks were represented by legal counsel, Ms. Simmonds of Shores Jardine LLP.

[34] The Court of Appeal did not quash the Board's previous decision as it is not the Court's job to make the SDAB's decision for them. Rather, the Court provides guidance to ensure that Boards apply the law correctly. The Court has sent the appeal back to the SDAB to give the Appellant another opportunity to make their case in accordance with the Court's directions.

[35] The key point the Board must consider is set out in paragraph 37 of *Garneau*. The Board must demonstrate that granting the requested variances would assist in achieving

compatibility with Clauses 3, 4, and 5 of the Garneau Direct Development Control District.

[36] Ms. Simmonds concurred with most of the Appellant's submission regarding the law, and agreed that the old Land Use Bylaw 5996 applies in this matter.

[37] She emphasized that the Board's variance powers have been restricted in this case, and that its usual test under section 687 of the *Municipal Government Act* does not apply.

[38] The direct control district designates this small four block area of Garneau as a special character residential area. This designation amounts to a promise from Council to past, present and future residents that this area will be maintained and that the special character will not be eroded.

[39] The Board may only vary the RF3 development criteria in this direct control district if such a relaxation would assist in achieving the development criteria set out in Clauses 3, 4, and 5. She agreed with the Appellant that the focus is on Clause 3, and Clause 4 does not apply. However, there are some aspects of Clause 5 that are relevant.

[40] She submitted that the Appellant had not demonstrated how the proposed variances would assist with achieving these clauses. The Appellant's position effectively means that so long as the exterior of a development is an architectural fit, then one can develop the inside in any manner. That is incorrect as the number of Dwelling units increases the number of people and impacts upon parking stresses.

[41] She agreed that the majority of the 33 foot lots in this area would not meet the minimum required site width of 39.4 feet for Single Detached Houses. However, section 51.2(1) of Land Use Bylaw 5996 makes exceptions for Single Detached Houses and Duplexes, directing that a development officer shall not refuse to grant a permit for a lot that is at least 32.8 feet wide. This section recognizes that these 33 foot lots in Garneau are compliant for Single Family Dwellings because they were in place prior to the new regulations coming into effect. It allows the Development Officer to grant a permit for a new house that requires only small variances.

[42] Apartment Housing is entirely different and the proposed development requires a huge variance. It is approximately 50 percent too large for the lot size. Exceptions under section 51.2(1) only apply to Single Family Houses and Duplexes – not Apartment Housing.

[43] A parking variance would be required for approval of this development; however, the RF3 regulations do not provide the Board any authority to grant a parking variance. There are no variance powers with respect to parking requirements in the General Regulations.

[44] The problem with this development is it is too big for the lot and the parking problem confirms this. The total width of the required parking spots is greater than the width of the lot. That is why there is a minimum required site width for Apartment Housing.

[45] Paragraph 37 of *Garneau* gives the Board parameters for granting variances and allows the Board to make a "tweak" in order to help achieve the development criteria. The Appellant provided an example of varying the Height of a Single Detached House to allow a peaked roof rather than a flat roof in order to help the development achieve the aim of Clauses 3, 4 and 5. However, relaxing the regulations for a three Dwelling Apartment House is much greater than a "tweak".

[46] The purpose of the Garneau Direct Development Control District was to ensure that Council's vision is maintained for this very small part of Edmonton which Council has determined is worthy of protection. The Board cannot do anything outside of Council's direction and this direct control limits developments to Single Family Houses and Duplexes, except where lots are big enough to incorporate multi-unit dwellings. If the lot was 750 square metres, then it may be possible to vary regulations as the size of the variances would not be very large.

[47] The Appellant has purchased a lot that is too small for the proposed development. His arguments for allowing the development are backwards. The development must first generally comply with the regulations and if it generally complies, minor variances can then be granted to make the development look compatible with surrounding properties. Only a single family dwelling or a duplex can be put on this lot as the variances required would be much smaller.

[48] The size of side yards on existing properties is irrelevant as those yards have been approved. When Council amended Land Use Bylaw 5966, it changed the required size of side yards to two metres. New developments need to comply with the amended regulations.

[49] In her view, the inclusion of Apartment Houses up to four units as a listed use in this direct control anticipate that lots would be consolidated. Council's direction was very clear. Apartment Housing is to be built on 800 square metre lots.

[50] In her conclusory remarks, Ms. Simmonds stressed that Council has promised residents of Garneau that it will protect this area. People purchase homes in this area on the basis of this promise. While there are changing values around housing and the way people live, this direct control district is exempt from such changes, as Council intended to protect the old world way of life in this small neighbourhood.

Ms. A. de Villars

[51] Ms. de Villars is the Chair of the Garneau Community League Planning Committee. She was on the committee that developed the GARP and heard the directions of Council. What Council wanted to do was preserve this small piece of historic Edmonton.

[52] The first focus of the GARP is on preservation. There is the recognition that not every single house is necessarily going to be renovated. There could be redevelopment but the emphasis is on preservation.

[53] Mr. Haldane spoke of the need to increase compactness. It is important to recognize that the GARP covers a large area and this special Direct Development Control area is only a very small part of it. Garneau is the most dense neighbourhood in the City, after Oliver, and has many areas that are zoned RF3, RA8 and RA9.

[54] Certain aspects of Clause 5 apply to this proposal: "The design and appearances of new development shall incorporate building details and finishing materials which are common to the domestic architecture of the turn of the century and early 1920's detached housing in the area".

[55] Of the 105 lots in this direct control district, 104 were originally developed as single family homes. Only one is an apartment building which is located on the corner of 84 Avenue and 110 Street.

[56] She referred to the letter submitted from Mr. M. Kennedy, a member of the Garneau Planning Committee who has held positions with the Edmonton Historical Board and the Edmonton Heritage Council. It was his view that an apartment is inconsistent with this special character area and listed the various architectural styles that were common in Garneau in the early part of the 20th century. He has assessed the proposed development against existing developments to illustrate how it does not fit.

[57] While Clause 3 directs that developments must be compatible along the street, it was her view that they must also be compatible along the lane. The existing homes have gardens, patios and garages. Residents live in their yards during the summer. The proposed development provides parking only toward the lane, and is not compatible with the historic sense of the Garneau area.

[58] The relaxations requested are not what is contemplated by a variance. A variance is a "tweak". The Appellant is not proposing a variance; what is proposed amounts to ignoring wholesale the requirements of the RF3 Zone, which is not what Council has directed.

[59] Upon questioning by the Board, she could not explain why Council included Apartment Housing up to four Dwellings as a listed use in this direct control. She speculated that it was perhaps in consideration of the existing apartment on 110 Street and 84 Avenue, which is a brick three Storey building from 1932. The idea of building Apartment Housing on a 33 foot lot was not in anyone's contemplation.

M. L. Stanley-Maddocks

[60] Ms. Stanley-Maddocks has lived in Old Strathcona since 2004 and purchased her current home in Garneau in 2012. She chose Garneau because she wanted to have a historic,

character home, in an historic neighbourhood. She specifically chose this location because of the GARP and the protection that the GARP affords properties in this area.

[61] The GARP needs to be read as a whole and Policy 1.1 specifically enumerates the rehabilitation and saving of these historic homes. There is no mention made of multifamily Dwellings. This small area has always been comprised of single family homes. All other areas within the GARP have multifamily designations within their policy.

[62] She referenced the Development Concept for this area from page 43 of the GARP:

> The land use designations developed for Sub-area 1 are intended to guide and regulate redevelopment to ensure that it occurs in the most appropriate location and in a form that is most compatible with existing development. The central portion of the Sub-area is under Direct Control to ensure the preservation of homes and sensitive architectural treatment of new development in this area. The residential area north of 87 Avenue and south of 82 Avenue will remain as low density housing with an emphasis on family accommodation.

[63] She acknowledged that Apartment Housing and other uses such as group homes, boarding houses and lodging houses are listed in the direct control district, but in her view, these are discretionary and there is no requirement to grant a permit.

[64] Most discussion has centered on how the general composition of the building looks in relation to the street front. Clause 5 requires a lot more than such a consideration: referencing Mr. Kennedy's letter, she noted that the only design detail of the proposed development that meets the requirements of Clause 5 is the use of round windows which was copied from the neighbour's house. None of the building materials are appropriate.

[65] At a community development meeting, the builder indicated he did not look at any other lots and simply wanted to redevelop. There was no attempt made to rehabilitate, which is stressed in the GARP.

iv) Position of Affected Property Owner, Mr. B. Kropf

[66] Mr. Kropf confirmed that he does not live within the 60 metre notification area but is within the DC zone. The interpretation of the direct control district is important to him for his own property. He is a retired professional urban planner and worked for the City of Edmonton from 1980 to 2006.

[67] He disagreed with the Appellant that single family homes are not assessable to students, as applying for lodging house status allows students to find housing. There are also already two fraternities in the area.

[68] At the time the GARP was enacted, there were four sites that had site areas of 800 square metres. Council was aware of these sites and contemplated apartments being built on them; however only one was ever built. More apartments could have been possible as consolidation was already a known practice in 1982.

[69] Council deliberately chose the RF3 regulations because of the "low density" designation. If apartments had been contemplated, Council had other choices available such as RF5, RF6 or RA7.

[70] At the time, the RF3 Zone was contemplated 42 units per residential hectare which fell under low density. The proposed density of 75 units per residential hectare would have fallen under medium density and the RF5, RF6, or RA7 zones would have been more appropriate.

[71] Siting is important and covers not only Side Yards, but also rear yards, gardens, parking and architectural or urban design features. He also has not heard discussion about any specific measurements for the existing Side Yards.

[72] The comments of the Heritage Management Unit contained in the Development Officer's report are confusing. The comments state: "The scale and massing of the proposed development is greater than that of adjacent buildings along the street frontage, but it is not out of scale, particularly where the proposed development faces on to 85th Avenue." The comments suggest that although the development is out of scale, it remains acceptable.

[73] The Development Officer's variance powers are limited by Clause 11.6 of the old Land Use Bylaw 5996. Clause 11.6(1) directs that "a variance shall be considered only in cases of unnecessary hardship or practical difficulties peculiar to the use, character, or situation of land or a building, which are not generally common to other land in the same District". In his view, there are no hardships or practical difficulties related to this site. If there were, then every site on the entire block face is suitable for demolition and replacement with a three Dwelling apartment. He does not believe that was Council's intention.

v) Rebuttal of the Appellant

[74] Mr. Haldane disagreed with Mr. Kropf's interpretation of low density and what it meant in 1982. He pointed out that this direct control district incorporates only the regulations in the RF3 Zone, not the general purpose. The Direct Control has its purpose or rationale statement.

[75] He reiterated that Exhibit "A" illustrates that small Side Yards are the norm in this area. He also referred the Board to a comment made by Ms. de Villars at a 2012 hearing, reference SDAB-D-12-032, where she stated that she was not opposed to the Side Yard variances as these variances are common in the Garneau Area. (page 4, paragraph 7)

[76] The Community League takes the position that Council's directions are very clear, that all apartments must be on 800 square foot sites because the direct control provision states that the development regulations of the RF3 Zone shall apply. However, that cannot be the case, as the Court has held that the Development Officer may relax these regulations for individual applications, where such relaxations would assist in the achievement of the development criteria in Clauses 3, 4 and 5. In this case, as demonstrated in the comparative illustration that was submitted, it is very clear that the regulations should be relaxed; to do otherwise – to require that Apartment Housing be allowed only on large, consolidated lots – would result in a development that is completely out of scale with what is on the block face.

[77] The Appellant also disagreed that a smaller relaxation would be more appropriate than a large one. A small relaxation of the RF3 requirements could allow a large, completely out of scale development to be built on a consolidated lot. A small relaxation could actually result in an incompatible building. By contrast, the proposed development asks for larger relaxations that result in a compatible development.

[78] Section 617 of the *Municipal Government Act* sets out the general purpose for Part 17 Planning and Development:

> The purpose of this Part and the regulations and bylaws under this Part is to provide means whereby plans and related matters may be prepared and adopted
>
> (a) to achieve the orderly, economical and beneficial development, use of land and patterns of human settlement, and
>
> (b) to maintain and improve the quality of the physical environment within which patterns of human settlement are situated in Alberta,
>
> without infringing on the rights of individuals for any public interest except to the extent that is necessary for the overall greater public interest..

[79] The special character residential area and the promise made to the residents by Council have been raised by the opposing parties, yet in his view, they are seeking a bigger promise than was made. The direct control district does not limit development to single family homes and it grants a specific relaxation power in respect to the referenced RF3 regulations that would allow Apartment Housing of less than four units, provided that they are compatible with the scale, mass and siting of other developments on the street.

[80] The opponents are further suggesting that the development should architecturally fit a certain style. This suggestion is not contained in the direct control provision. All that is promised is that the design and appearance of new development shall incorporate building details and finishing materials which are common to the domestic architecture of the turn of the century in the 1920's detached housing form in the area. The Heritage Planning Unit was satisfied that this requirement has been met.

[81] Ms. de Villars speculated that the Apartment Housing Use may have been included as a Listed Use for this direct control district to address the existing Whitmore Apartments. However, the Whitmore Apartments is a six unit apartment existing as a non-conforming use and this site could not be re-developed as another six unit apartment.

[82] In *Garneau,* the Court was unable to determine, based on the Board's 2016 reasons, how it came to the conclusion that Council did not intend that Apartment Housing only be contemplated for consolidated lots. As demonstrated in the comparative illustration that he submitted, consolidating lots for the purposes of developing fully compliant Apartment Housing could result in a development that is contrary to the intention of the GARP to maintain the built form.

[83] The general regulations of the Land Use Bylaw 5996 apply to the Garneau Direct Development Control Provision and the parking regulations are contained in Section 66. Section 66(2) provides the authority for the Development Officer to move away from the requirements of Schedule 66A. If a parking variance is required, the Appellant requests the opportunity to provide a parking demand study showing that five parking stalls will be sufficient.

Decision

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

i. PRIOR TO THE RELEASE OF DRAWINGS FOR BUILDING PERMIT REVIEW, the applicant or property owner shall pay a Sanitary Sewer Trunk Fund fee of $ 2,198.00. All assessments are based upon information currently available to the City. The SSTF charges are quoted for the calendar year in which the development permit is granted. The final applicable rate is subject to change based on the year in which the payment is collected by the City of Edmonton.

ii. PRIOR TO THE RELEASE OF DRAWINGS FOR BUILDING PERMIT REVIEW, the applicant or property owner shall provide a guaranteed security to ensure that landscaping is provided and maintained for two growing seasons. The Landscape Security may be held for two full years after the landscaping has been completed. This security may take the following forms:
    a. cash to a value equal to 100% of the established landscaping costs; or
    b. an irrevocable letter of credit having a value equivalent to 100% of the established landscaping costs.

iii. Any letter of credit shall allow for partial draws. If the landscaping is not completed in accordance with the approved Landscape Plan(s) within one growing season after completion of the development or if the landscaping is

not well maintained and in a healthy condition two growing seasons after completion of the landscaping, the City may draw on the security for its use absolutely. Reference Section 55.6

iv. Parking spaces for the disabled shall be provided in accordance with the Alberta Building Code in effect at the time of the Development Permit application. Because the Alberta Building Code is within the legislative jurisdiction of the Province, the Development Officer shall have no discretion to vary, relax or increase these standards.

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

vi. Every off-street parking, loading, and unloading space, and access provided or required in any Residential District, including the area contained within City-owned land to which a curb crossing permit applies, shall be hardsurfaced if access is from a public roadway which is hardsurfaced or gravelled. If there are two or less parking or loading spaces, this is not required.

vii. Where hardsurfacing is provided or required, such shall mean the provision of a durable, dustfree, hardsurfaced, constructed of concrete, asphalt or similar pavement, and the same shall be drained with a sufficient number of catch basins, all developed and maintained to the satisfaction of the Development Officer and City Engineer.

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

ix. Landscaping which extends onto or over City-owned lands shall be developed in accordance with the Boulevard

x. The Development Officer may require, as a condition of Development Permit approval, that the owner provide a guaranteed security to ensure that landscaping is provided and maintained for two growing seasons. This security may take the following forms:
    a. cash to a value equal to 100% of the established landscaping costs; or
    b. an irrevocable letter of credit having a value equivalent to 100% of the established landscaping costs. These two options are the only acceptable forms of security. Performance bonds shall not be accepted by the City.

xi. The established landscaping costs shall be calculated by the owner or the owner's representative, based on the information provided on the Landscape Plan. If the Development Officer does not accept the costs identified by the owner or the owner's representative, the Development Officer may establish a higher landscaping cost figure for the purposes of determining the value of the landscaping security.

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

xiii. If a letter of credit is offered as the landscaping security, it shall be in a form satisfactory to the Office of the City Solicitor. The initial term of the letter of credit shall be one year. The letter of credit shall be renewed for a further one year term by the owner thirty (30) days prior to expiry and delivered to the Financial Services Supervisor in the Planning and Development Department of the City, or the Financial Services Supervisor's designate. This process shall be repeated as many times as is necessary so that the letter of credit is maintained until the installation of landscaping has occurred and maintenance of the landscaping has been carried out for two growing seasons, as determined by and to the satisfaction of the Development Officer.

xiv. The Financial Services Supervisor shall notify the Building Inspection Branch sixty (60) days prior to the expiry date of the letter of credit, in order to provide sufficient time for the Development Officer to inspect the site and to determine if the landscaping is well maintained and developed in accordance with the regulations of this Bylaw. If landscaping conditions are satisfactory to the Development Officer, the letter of credit may be released by the Financial Services Supervisor upon notification by the Development Officer. If inspection cannot be made within this sixty (60) day time period due to weather conditions or other extenuating circumstances, the Development Officer may require renewal of the letter of credit until a satisfactory inspection can be made. The expiry date for a letter of credit shall fall on a weekday which is not a statutory holiday.

xv. Upon application by the owner or the owner's representative, a letter of credit may be amended to a reduced amount, for attachment to the original letter of credit, at the discretion of the Development Officer, when any of the following events occur and are to the satisfaction of the Development Officer:

a. the required landscaping has been properly installed;

b. the required landscaping has been well maintained and is in a healthy condition after one growing season; and
c. the required landscaping has been well maintained and is in a healthy condition after two growing seasons. In this last case, the letter of credit shall be fully released.

xvi. In order to facilitate an amendment to, or a release of, a letter of credit, the Development Officer shall notify the Financial Services Supervisor, who shall then implement the amendment or release, as appropriate.

xvii. Any letter of credit shall allow for partial draws. If the landscaping is not completed in accordance with the approved Landscape Plan(s) within one growing season after completion of the development or if the landscaping is not well maintained and in a healthy condition two growing seasons after completion of the landscaping, the City may draw on a cash security or a letter of credit and the amount thereof shall be paid to the City for its use absolutely. All expenses incurred by the City to renew or draw upon a letter of credit shall be reimbursed by the owner to the City by payment of invoice or from the proceeds of the letter of credit, at the discretion of the Financial Services Director of the Planning and Development Department.

xviii. In the event the owner does not complete the required landscaping, or if the owner fails to maintain the landscaping in a healthy condition to the satisfaction of the Development Officer for the specified periods of time and the cash or the proceeds from the letter of credit are insufficient for the City to complete the required work, should it elect to do so, then the owner shall pay such deficiency to the City immediately upon being invoiced therefor. The City shall provide an accounting to the owner indicating how the proceeds of the letters of credit were applied, within sixty (60) days of completing or maintaining the landscaping.

xix. A Fence, equal to 1.85 metres in Height, measured from the general ground level 0.5 metres back of the property line of the Site on which the fence is to be constructed, is to be constructed along the east and west property lines. This Fence shall not extend beyond the foremost portion of the principal building.

xx. Access from the site to the alley exists. Any modification to the existing access requires the review and approval of Urban Transportation.

xxi. The proposed connector sidewalk from the south property line of the subject site to tie into the City sidewalk on the south side of 85 Avenue, as shown on the Enclosure, is acceptable to Urban Transportation.

xxii. Urban Transportation does not permit a graveled access to a paved roadway. The drive aisle must be hard surfaced from the curb face into the site for a minimum distance of 10 metres. A portion of the hard-surfacing will occur on road right-of-way and the remaining portion on private property, as shown on the Enclosure. The pavement will limit loose gravel carried onto the paved surface of the adjacent roadway, from the graveled yard.

xxiii. The proposed fence must not exceed a height of 0.3 metres for a distance of 3 metres from the alley, as shown on the Enclosure, to ensure adequate sight lines can be met.

xxiv. There are existing boulevard trees adjacent to the site that must be protected during construction. Prior to construction, the owner/applicant must contact to arrange for hoarding and/or root cutting. All costs shall be borne by the owner/applicant. Please contact Bonnie Fermanuik at Urban Forestry (780-496-4960).

xxv. Garbage enclosures must be located entirely within private property and gates and/or doors of the garbage enclosure must not open or encroach into road right-of-way, as shown on the Enclosure.

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

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

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

ADVISEMENTS

i. Vehicular and bicycle parking should meet the requirements of the Zoning Bylaw.

ii. Urban Transportation advises that the proposed tandem parking stalls should be designated for the two/three bedroom suites.

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

1. The minimum Site Area of 800 square metres pursuant to Section 140.4(1)(f) of the *Land Use Bylaw* to is varied to allow a deficiency of 394.76 square metres, thereby allowing a Site Area of 405.24 square metres.

2. The minimum Site Width of 20 metres pursuant to Section 140.4(2)(e) of the *Land Use Bylaw* is varied to allow a deficiency of 9.94 metres, thereby allowing a Site Width of 10.06 metres.

3. The minimum east Side Yard of 2.0 metres pursuant to Section 140.4(8)(a) of the *Land Use Bylaw* is varied to allow a deficiency of 0.47 metres, thereby allowing a Side Yard of 1.53 metres.

4. The minimum west Side Yard of 2.0 metres pursuant to Section 140.4(8)(a) of the *Land Use Bylaw* is varied to allow a deficiency of 0.78 metres, thereby allowing a Side Yard of 1.22 metres.

5. The requirement that no guest parking spaces be in tandem pursuant to Schedule 66A(2) of the *Land Use Bylaw 5996* is waived to allow one guest parking space in tandem.

Reasons for Decision

[86] The proposed development is for a three Dwelling Apartment House in the DC1 Garneau Direct Development Control District. Within this direct control district, Apartment Housing containing not more than four Dwellings is a Listed Use.

[87] The Board and the parties present today were of the same mind that the Development Officer did not follow the directions of Council. The Court in *Garneau* came to the same finding.

[88] The Court also held that the Board in its 2016 decision erred when it applied its normal variance powers under section 687(3)(d) of the *Municipal Government Act.* For developments in a direct control district, should the Board find that the Development Authority did not follow the directions of Council, it may only substitute its decision for that of the Development Authority's by using the same variance powers as those available to the Development Authority. The normal variance powers under section 687(3)(d) do not apply.

[89] Those variance powers are set out in Clause 2, which makes reference to Clauses 3, 4 and 5 of the Garneau Direct Development Control Provision. The Clauses state:

> 2. The development regulations of the RF3 (Low Density Redevelopment) District, provided that the Development Officer may relax these regulations for individual applications, where such relaxations would assist in the achievement of the development criteria in Clauses 3, 4 and 5 below.
>
> 3. New developments or additions to existing buildings shall be compatible with the scale, massing and siting of adjacent buildings along the same street frontage.
>
> 4. The rehabilitation and renovation of existing buildings shall retain the original details of rooflines, doors and windows, trim, exterior finishing materials and similar architectural features to the greatest extent practical.
>
> 5. The design and appearance of new developments shall incorporate building details and finishing materials which are common to the domestic architecture of the turn of the century and early 1920's detached housing in the area.

[90] The Board is bound by the decision of the Court, which cancelled the 2016 decision and returned the matter back to the Board for reconsideration. This panel must now hear the merits of the appeal, with a mind toward whether the required variances would assist in the achievement of the development criteria set up in the above clauses.

[91] The Board notes that both the Appellant and the Respondent agreed that Clause 4 – which deals with the rehabilitation and renovation of existing buildings – does not apply to the proposed development, which is a for a completely new build. For this reason, the Board limits its findings and reasons to Clauses 3 and 5.

Site Area Variance

[92] Based upon the submissions of the parties, the Board finds that granting this relaxation would assist in the achievement of the development criteria with respect to Clause 3 of the direct control district for the following reasons:

a) The Board was persuaded by the consolidated lot illustration submitted by the Appellant, which compared the proposed subject development on its smaller lot to the type of development that could be constructed on a larger consolidated lot. To achieve the site area requirement of 800 square metres would require the consolidation of two to three lots which, as demonstrated by the consolidated lot illustration, would provide for a building that would be incompatible with the scale and massing of adjacent buildings along the same street frontage. Accordingly, the Board finds that granting the site area variance is essential to the achievement of the development criteria set out in Clauses 3 and 5.

b) Amongst the materials submitted was a plot plan with the proposed development overlaid on top of the existing development, which demonstrated that the proposed development will have a smaller footprint than what currently exists and further illustrated that despite the site area variance, the proposed development is not out of scale with adjoining developments on the street front.

c) Digital renderings were also provided that showed the proposed development side-by-side with abutting properties. These renderings showed that once completed, the subject development will be similar in both scale and massing to the properties along this streetscape. To the objective eye, there would appear to be little to distinguish the scale and massing of the subject development from its neighbours.

d) The Board also scrutinized the photographs of the streetscape that had been previously submitted as Exhibit "A" in the 2016 hearing. Upon consideration of the aforementioned plot plan and renderings within the context of this streetscape, the Board is persuaded that the proposed development is consistent with the scale, siting and massing of adjacent buildings along the street frontage. The Board further notes that no variances were required for other regulations that would typically indicate an over-development of a Site, such as Site Coverage or Height.

Side Setback Variance

[93] In granting the variance to the side setbacks, and in addition to the reasons above justifying the variance in site area which would also apply to side setback variances, the Board adds the following reasons:

a) Upon review of the photographs provided of the existing streetscape in the aforementioned 2016 Exhibit "A", the Board finds that smaller side yards are compatible with this particular street frontage.

b) The existing Dwelling has a footprint that is wider than the proposed development, and would also require a variance to the side setbacks.

c) The Board accepts the submissions of the Appellant with respect to the small lot sizes within this direct control district. The SLIM Maps view is demonstrative of the reality that nearly 75% of the lots in this district would require a variance to the Side Setback should any development be contemplated on those sites.

[94] The Board recognizes that any new development must adhere to the regulations set out within the direct control district, but the evidence supports the finding that smaller side yards are prevalent within this street frontage. It is the Board's opinion that Clauses 3 and 5 cannot be achieved without granting the requested side setback variance, both for the subject development and likely for any future developments on the majority of the lots within this direct control district.

Site Width Variance

[95] With respect to the site width, the Board heard through presentations that any future proposed development, including single family homes, would require a variance to the site width prescribed in the RF3 Zone of the Land Use Bylaw 5996.

[96] In addition to the reasons already cited above for the Site Area and Side Setback variances, the Board grants the Site Width variance for the following reasons:

a) Of the 107 lots within this direct control district, approximately 75% are 33 foot lots. The Board accepted the calculation that only four of these 107 lots at the time of implementation of the direct control district would meet the Site Width criteria for Apartment Housing.

b) The Board was not persuaded by the Community League's argument that core regulatory requirements must be met before any minor variances can be contemplated. Were this the case, 75% of the aforementioned lots would not be able to undergo redevelopment, as they would all require Site Width variances. Such an interpretation could effectively sterilize these lots from any of the Listed Uses within this direct control district.

c) The sterilizing of these lots could not have been intended when one considers that the rationale for this direct control district includes "the retention and rehabilitation of existing structures *while allowing for* ***infill redevelopment****"* (emphasis added). Redevelopment was expressly contemplated, and based on the Site Widths of the majority of these lots, it follows that allowances for Site Width variances, by implication, are necessarily also contemplated.

Policy 1.1 of the GARP (Page 44)

[97] Reference was made by the parties to the intent of the GARP, and more specifically to Policy 1.1 with respect to a portion of sub-area 1 in which the subject property is located. Based on the Board's findings above, it is the Board's view that the proposed development meets many of these objectives, such as:

a) Policy 1.1(ii) "Encourage redevelopment which retains the existing height, mass and texture commonly found in existing developments." The Board has reviewed the submitted plans, as well as digital renderings of the proposed development and photographs of the existing streetscape. The Board is satisfied that to the objective eye, the proposed development does retain the existing height, mass and texture of the existing developments along the streetscape.

b) Policy 1.1(iii) "Encourage the retention of existing streetscape environments through control of landscaping, building lines, location of parking and retention of existing vegetation." The Board finds that the existing streetscape environment will be retained. Access to parking remains off the rear laneway; digital renderings suggest that existing mature vegetation will remain on the front yard; peaked roofs and

> accented windows are consistent with the architectural features of the immediately abutting properties; and the Appellant has adopted a front porch aesthetic similar to the abutting neighbour to the east.

[98] In addition, the proposed Apartment Housing contributes to the provision of "a variety of housing forms to meet the needs of different types of households, including single persons and students." The Explanation provided for Policy 1.1 also states in part that "redevelopment in this district utilize compatible architectural design which emphasizes the architectural form, scale, materials, colors, and textures which presently exist in the area." Per the Board's findings above, the proposed development maintains this compatibility.

[99] The Board also notes that the submissions of the Development Authority include reference to comments from the Heritage Management Unit, which note that the proposed development:

> does include building details and finishing materials which are common to the domestic architecture of the turn of the century and early 1920's detached housing in the area, including: wood style clapboard siding transitioning to shakes on the upper storeys (assuming they are wood or hardy plank a reasonable quality facsimile - the drawings don't indicate the material type), vertically oriented windows, an open but covered verandah, a sloped roof articulated with dormers and a gable, and facades articulated with barge boards, corner boards and trim work.

[100] The Board has reviewed the proposed plans and digital rendering of the subject development, and compared these illustrations with the photographs of the existing streetscape. The Board concurs with the comments of the Heritage Management Unit, and finds that the variances granted will allow for a development that will "incorporate building details and finishing materials common to the domestic architecture of the turn of the century and early 1920's detached housing in the area", per Clause 5.

Parking Variance

[101] There was no explicit discussion of the parking regulations within the Court of Appeal decision.

[102] However, the Court of Appeal's decision did direct that any relaxation of the regulations in the RF3 Zone would require that the Board conclude that such variances would assist in the achievement of the development criteria laid out in Clauses 3, 4 and 5. The parking regulations fall under section 66 of the Land Use Bylaw 5996, separate from the regulations of the RF3 Zone. Granting a parking variance therefore does not trigger the same variance restrictions under Clauses 3, 4 and 5. Indeed, Clause 1 of the development criteria in this direct control district states: "The General Regulations and Special Land Use Provisions of the Land Use Bylaw" also apply to developments within this district.

[103] The Board therefore does not disturb the reasons for the decision as laid out in Paragraph 134 of the previous Board's decision (SDAB-D-16-187) and this Board supports the same conclusions. The Board allows the variance to tandem parking for the same reasons. For ease of reference, paragraph 134 from the Board's 2016 decision provides as follows:

> [134] The fact that street parking in the neighbourhood is scarce was something that concerned a number of neighbours. The Board notes that the proposed development has the required number of parking spaces. The only shortfall with respect to parking is that a guest parking space is located in tandem with one other off street parking space. The City Transportation department did not have any concerns about this. The Board is of the view that allowing the guest parking space to be in tandem will not have a significant impact on the availability of street parking in the neighbourhood.

[104] The parties in opposition to this appeal submitted that the proposed development presents density concerns; the increased density, in turn, will contribute to parking stresses. However, the Board notes that the RF3 Zone has no prescribed density limits. Furthermore, the direct control district limits the number of Dwellings allowed in an Apartment Housing Use to a maximum of four Dwellings, serving as a form of density control. Finally, the Court's direction was that the Board turn its mind to whether relaxation of the relevant regulations would assist in the achievement of the development criteria in Clauses 3, 4 and 5. These Clauses make no mention of density or parking controls.

[105] For the above reasons, the Board finds that the variances granted are compatible with the scale, massing and siting of adjacent buildings along the same street frontage, and that the development itself is consistent with the design and appearance that is common to the domestic architecture in the area. By granting this development, both the objectives of the GARP Policy 1.1 and the rationale of the direct control itself have been met. The appeal is allowed.

Vincent Laberge, Presiding Officer
Subdivision and Development Appeal Board

Board Members in Attendance:
Mr. N. Somerville; Ms. S. Laperle; Mr. A. Peterson; Ms. M. McCallum

Important Information for the Applicant/Appellant

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

2. Obtaining a Development Permit does not relieve you from complying with:

    a) the requirements of the *Edmonton Zoning Bylaw*, insofar as those requirements have not been relaxed or varied by a decision of the Subdivision and Development Appeal Board,
    b) the requirements of the *Alberta Safety Codes Act*,
    c) the *Alberta Regulation 204/207 – Safety Codes Act – Permit Regulation*,
    d) the requirements of any other appropriate federal, provincial or municipal legislation,
    e) the conditions of any caveat, covenant, easement or other instrument affecting a building or land.

3. When an application for a Development Permit has been approved by the Subdivision and Development Appeal Board, it shall not be valid unless and until any conditions of approval, save those of a continuing nature, have been fulfilled.

4. A Development Permit will expire in accordance to the provisions of Section 22 of the *Edmonton Zoning Bylaw, Bylaw 12800*, as amended.

5. This decision may be appealed to the Alberta Court of Appeal on a question of law or jurisdiction under Section 688 of the *Municipal Government Act*, RSA 2000, c M-26. If the Subdivision and Development Appeal Board is served with notice of an application for leave to appeal its decision, such notice shall operate to suspend the Development Permit.

6. When a decision on a Development Permit application has been rendered by the Subdivision and Development Appeal Board, the enforcement of that decision is carried out by the Sustainable Development Department, located on the 2nd Floor, Edmonton Tower, 10111 – 104 Avenue NW, Edmonton, AB T5J 0J4.

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