



**EDMONTON
TRIBUNALS**

*Subdivision &
Development
Appeal Board*

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Date: January 18, 2019
Project Number: 284529038-001
File Number: SDAB-D-19-003

Notice of Decision

September 14, 2018 Hearing:

Motion:

“That the appeal hearing be scheduled on January 3, 2019.”

Reasons for Decision:

- [1] The Respondent will be out of the Country on the original hearing date and would like the hearing scheduled after December 12, 2018.
- [2] The Appellant is in agreement to a postponement but would like the hearing scheduled in January 2019.
- [3] Scheduling the hearing in January 2019 will accommodate both the Respondent and the Appellant.

January 3, 2019 Hearing:

Motion:

“That SDAB-D-19-003 be raised from the table”.

- [4] On January 3, 2019, the Subdivision and Development Appeal Board (the “Board”) heard an appeal that was filed on September 9, 2018. The appeal concerned the decision of the Development Authority, issued on August 16, 2018, to approve the following development:

To change the Use from a Single Detached House to a Child Care Service (maximum 53 children) and to construct interior and exterior alterations (outdoor play space and rear concrete pad).

- [5] The subject property is on Plan 6151KS Blk 8 Lot 90, located at 16210 - 87 Avenue NW, within the RF1 Single Detached Residential Zone. The Mature Neighbourhood Overlay applies to the subject property.
- [6] 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 speaking notes;
 - The Respondent's written submission; and
 - Online responses.

Preliminary Matters

- [7] 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.
- [8] The Presiding Officer outlined how the hearing would be conducted, including the order of appearance of parties, and no opposition was noted.
- [9] 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

i) Position of the Appellant, Mr. D. McAuley:

- [10] The subject site is located on a corner lot on a service road adjacent to the intersection of 87 Avenue and 163 Street. The service road has been blocked off by the City with an island and barrier at the subject site to stop through traffic. There are one-way service roads on both sides of 87 Avenue and 163 Street. The Appellant resides south of the subject site across 87 Avenue on the south service road.
- [11] This neighbourhood has a historical problem with people living outside the area parking their vehicles on the street and then either using the transit system or walking to work at the nearby Misericordia Hospital or one of the other health care facilities in the area. There are two east bound bus stops, one on 87 Avenue and 163 Street and the other at 87 Avenue and 161 Street. The City has taken action by installing two-hour parking zones (161 Street at 87 Avenue and 87 Avenue west of 164 Street). This leaves the service road on the south side of 87 Avenue, in front of his house, having no restrictions.

- [12] His major concern is that people may drop their children off at the proposed child care service and then leave their vehicles there and use transit to get to work. This will displace resident parking which will make it necessary for residents to park elsewhere thus creating a domino effect.
- [13] Individuals currently drop off or pick up on the service road in front of his house because of the lights at the intersection. They park in front of his house either too close to the driveway or completely block the driveway.
- [14] He has witnessed, on a weekly basis, drivers who want to circumvent the traffic lineup at the traffic lights at 87 Avenue and 163 Street, speed down the service road in an attempt to get ahead of the vehicles stopped at the traffic light. This creates a dangerous situation for parents and children accessing the lights and pedestrian crossing at the intersection.
- [15] It was noted that the notification map does not illustrate that the service road in front of the proposed child care service is a dead-end east to west on 87 Avenue and north to south on 163 Street. To access the exit from the service road on 87 Avenue, drivers have to park east of the exit or if they park in front of the proposed site, they have to back up or make a u-turn to access the exit. The same type of situation exists on the service road along 163 Street.
- [16] There are two large high schools (Jasper Place and St. Francis Xavier) located in close proximity to the subject site (approximately 2 blocks north on 163 Street) which also increases the traffic and parking demands in this neighbourhood.
- [17] A new LRT line is being proposed along 87 Avenue which will result in the removal of the service roads on either side which will create more parking problems in the neighbourhood.
- [18] The site is not easily accessible and is not a suitable location for the proposed child care service.
- [19] Mr. McAuley provided the following information in response to questions from the Board:
- a) He has witnessed people picking up and dropping off their children who attend Jasper Place High School in front of his house because access into the area is so congested and restricted.
 - b) Commuters use the service road in front of his house in order to avoid the congestion at the traffic lights at 87 Avenue and 163 Street.
 - c) The owners of the subject site are currently operating a day home. He has witnessed vehicles coming and going from the day home. The only way for them to exit the service road in front of the house is by a three point turn or to back out. Some parents park further east on the service road and walk to the day home to make access easier.

- d) His major concern is that parents using the proposed child care service will park on the service road in front of his house and block his driveway while dropping off children at the Day Care.

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

Ms. R. Hall:

- [20] Ms. Hall reiterated that the notification map does not illustrate the concrete barrier that has been installed on the intersection of the service road along the north side of 87 Avenue and the east side of 163 Street in front of the subject site. The City installed the barrier to address traffic concerns raised by neighbourhood residents.
- [21] Parking is a problem in this neighbourhood because of the close proximity to the Misericordia Hospital and West Edmonton Mall. Parking is restricted on 163 Street and 87 Avenue.
- [22] It was her opinion that a maximum occupancy of 53 children is excessive. She is concerned about parking and traffic as well as the extra strain that having this many children in the house will have on garbage collection and the sanitary sewer system.
- [23] She also expressed concern about employees of the proposed Child Care Service parking on the street.
- [24] Ms. Hall provided the following information in response to questions from the Board:
- a) She has witnessed employees of the Misericordia Hospital, the Centre for Dementia and the Extended Care Centre parking on the service road in front of her house.
- b) She has never experienced any problems with the day home currently operating for this location and is not aware of any parents picking up or dropping off their children to the day home parking in front of her house.
- c) There is a bus stop on 163 Street in front of the subject site. Vehicles can only exit the service road by backing out or executing a three point turn.
- d) The extra traffic and congestion that will result from the proposed development is a concern and it was her opinion that the neighbourhood has reached its breaking point.

Mr. & Mrs. Moffatt:

- [25] They live next door to the subject site and originally provided a letter of support to the Applicant. However, they were not aware of the proposed number of children until they received notice of the approval and now have some concerns regarding the increased traffic and parking problems that will result.

- [26] The service road in front of their house will be removed when the LRT line is developed along 87 Avenue.
- [27] Parents dropping their children off at the existing day home park in front of their house and then have to back out of the service road because it is not possible to turn around.
- [28] The photograph contained in the Appellant's submission was referenced. They worked with the City to have the concrete barrier installed because vehicles were speeding down service road and jumping the curb. Some drivers still jump the curb and they have also witnessed City vehicles jumping the curb.
- [29] The additional vehicles that will be coming and going from the subject site will only exacerbate the existing problems. It is impossible to turn around on the service road because it is so narrow.
- [30] There is a bus stop located on a concrete island on 163 Street immediately west of the subject site but there is no sidewalk. The stop is also used by school buses which require the children to get off the bus onto the island and then cross the road to the sidewalk on the other side of the service road which creates a safety concern which will increase with the addition of more vehicles.
- [31] They have a good relationship with their neighbours and originally supported the proposed Child Care Service but they were not aware that the maximum occupancy was for 53 children. They did not anticipate that the proposed service would be increasing from a day home for 6 children to a Child Care Service for a maximum of 53 children.
- [32] They have discussed the situation with their neighbor and advised them of their concerns although they did not file an appeal.
- [33] Even though the Applicant may have good intentions, he cannot control the vehicles that will be coming and going from the site. It is common knowledge that motorists do not always obey traffic signs and regulations and drivers park wherever they want.
- [34] The proposed LRT line will create more problems with traffic and parking in the future.
- [35] They do not have any concerns about the current operation of the day home but they are concerned that the increase in the number of children for the Child Care Service will only increase the parking and traffic congestion that already exists.
- [36] They own four vehicles that are currently parked on the service road because they do not have any parking at the rear of their property.
- [37] Safety and parking are their major concerns but they are also concerned about excess noise that will be generated by having this many children at this location.

[38] Mr. and Mrs. Moffatt provided the following information in response to questions from the Board:

- a) The only way they can exit the service road is by backing up or executing a three point turn.
- b) The City pushes snow up against the concrete barrier when the service road is cleared.
- c) The Applicant currently lives in the house but they could not confirm how many children currently attend the day home. They reiterated that they are not concerned about the operation of the day home from this location.

iii) Position of the Development Officer, Ms. J. Kim:

[39] Ms. Kim did not attend the hearing but provided a written submission that was considered by the Board.

iv) Position of the Respondent, Mr. A. Siddiqui and Ms. S. Parveen:

[40] The proposed Child Care Service is located on a corner lot that can be accessed from 163 Street and 87 Avenue which makes access for parents easier. It was his opinion that the dead end is positive because only parents dropping off or picking up their children will use the service road which will reduce traffic.

[41] The subject site is approximately 111 feet along 163 Street and 65 feet along 87 Avenue with a total of 12 to 13 parking spaces, including 8 or 9 on street parking spaces and four onsite parking spaces. It will only take between 5 and 10 minutes for parents to drop off or pick up their children between 7:00 a.m. and 6:00 p.m.

[42] The proposed change in use complies with all of the parking requirements contained in the *Edmonton Zoning Bylaw* and is supported by Transportation Services.

[43] He disagreed that parents dropping off and picking up children from the proposed child care service will park in front of the Appellant's house on the south side of 87 Avenue because it would be dangerous, difficult and time consuming as it involves crossing two major arterial roadways, 87 Avenue and 163 Street. Parents will not park in front of the Appellant's house if they can easily find parking at the subject site.

[44] Full and part time staff will be hired. Three employee parking spaces will be provided to comply with the Bylaw regulations. Some employees will use public transit.

[45] The Alberta Child Care Agency is responsible for issuing licences, monitoring and regulating child care services and determines how many children can be accommodated.

According to their criteria, each child requires between 2.5 and 3.0 square metres of space. The maximum number of children permitted is determined based on those criteria.

- [46] Parents are responsible for the safety of their children when coming and going from the proposed Child Care Service.
- [47] The best available services and resources will be used to clean and maintain the property, including garbage and snow removal. The City of Edmonton and the Alberta Child Care Agency will be monitoring the facility.
- [48] The service road in front of the subject site is not blocked for pedestrians, only for vehicles. The service road is a dead end and blocks vehicles from using it as a short cut. However, this is a positive point for the proposed child care service as only parents dropping off and picking up their children will be using the service road which makes it safer for the children and their parents.
- [49] Emergency vehicles can access the service road from an access point directly in front of the subject site. Fire drills and emergency evacuation practices are a compulsory part of every child care program and are supervised by the Alberta Child Care Licensing authority.
- [50] Children currently attending the day home play outside during the summer months. It was his opinion that the existing fence deflects some of the noise and that the proposed change will not increase the amount of noise that is generated.
- [51] Feasibility study statistics were reviewed to illustrate the number of children who will arrive by vehicle and public transportation and during specific time periods based on a maximum of 40, 45 and 50 children.
- [52] Based on their experience, not all of the parents will be accessing the site at the same time and are only on site between 5 and 10 minutes.
- [53] The future LRT line does not include a stop in front of the subject site so there is no possibility of increased parking in the area by LRT users. There is one LRT stop planned at the Misericordia Hospital and another at Meadowlark Mall, which are both some distance from the subject site. All street parking approved by the City is located on 163 Street, not 87 Avenue which will not change the parking requirements even after the LRT is completed.
- [54] Transportation Services supports the Child Care Service with the proposed number of parking spaces along 163 Street.
- [55] Mr. A. Siddiqui and Ms. S. Parveen provided the following information in response to questions from the Board:
- a) Four onsite parking spaces will be provided for drop off and pick up.

- b) The garage is not currently used for parking but it could be in the future.
- c) The appearance of the existing Single Detached House will not change.
- d) They currently reside in the house with their three children and operate a day home for five children under the age of 13.
- e) They plan to move out of the house and use it exclusively for a child care service.
- f) If the Board determines that 53 children are too many, a reduction in the number of children to 40 or 45 would be acceptable to them.
- g) If they park their vehicle in front of their house, they either back up or execute a three point turn to exit the service road.
- h) Currently only one parent uses public transit to access the day home.
- i) At the present time, they are not planning on having a small bus or van picking up and dropping off children for their proposed before and after school services.
- j) The feasibility study numbers were established based on their experience operating a day home.
- k) They have never experienced problems with cars being parked in front of their house.
- l) The two parking spaces located inside the garage could be used for parent or staff parking.
- m) Before and after school care is proposed but not all of the details have been finalized at this point.
- n) There is an entrance to the service road from 163 Street located in front of their house and another one from 87 Avenue at 161 Street.
- o) Discussions have been held with the Alberta Child Care Agency but they were advised that a development permit had to be obtained from the City of Edmonton prior to submitting a licence application.
- p) The proposed child care service will operate between 7:00 a.m. and 6:00 p.m., Monday to Friday. Overnight care and weekend services will not be provided. Staff usually arrive ten minutes before and leave 10 minutes after the operating hours.

v) *Rebuttal of the Appellant*

- [56] It only takes between two and three minutes to cross the street from his house to the subject site but it will take between five and ten minutes to exit the service road if you park in front of the subject site.
- [57] Based on the space requirements provided by the Respondent, the house on the subject site is not large enough to accommodate 53 children.
- [58] After the LRT is complete, there will not be any parking available for drop offs and pickups from the proposed Child Care Service.
- [59] Children playing outside will generate noise that will stress the dogs owned by the immediate neighbour and result in complaints from other neighbours regarding barking dogs.
- [60] The Respondent did not provide any reference regarding the source of the feasibility statistics provided. In any event, this is a unique location on a dead end street with limited access.
- [61] Parents will be dropping off and picking up their children during rush hour when residents are either leaving or returning to the neighbourhood from work when traffic congestion is at its peak.
- [62] An aerial photograph was referenced to illustrate that access to the service road from 163 Street is basically a U-turn and that the road narrows at the bus stop. Traffic congestion is also increased because of the entrance to the rear lane at this location. The situation is much worse during the winter months because of the windrows created by snow removal.

Decision

- [63] The appeal is **ALLOWED** and the decision of the Development Authority is **REVOKED**. The development is **REFUSED**.

Reasons for Decision

- [64] Pursuant to Section 110.3(1) of the *Edmonton Zoning Bylaw*, a Child Care Service is a Discretionary Use in the RF1 Single Detached Residential Zone.
- [65] Currently, the Applicant resides at the subject property with his family and operates a day home for five children.
- [66] The house is located on a Corner Lot as required by section 80.4(b) of the *Edmonton Zoning Bylaw* for Child Care Services in RF1 zones. However, as the service road to the front and side of the property is blocked at the corner by a traffic barrier, the site does not

enjoy the continuous drive lane typical of a Corner Lot which is the advantage of a Corner Lot for dropping off and picking up children.

- [67] The Board acknowledges that a Child Care Service is an important use in a residential area based on the decision of City Council to include Child Care Services as a Discretionary Use in the RF1 Single Detached Residential Zone. However, the Board is required to review the details of the proposed development to ensure compatibility with the surrounding existing uses.
- [68] The Board finds the proposed Discretionary Use is not compatible for the following reasons:
- a) There are planning concerns with safety and traffic congestion associated with the proposed development, particularly given the intensity of impacts associated with the daily dropping off and picking up of 53 children.
 - b) The entrance to the service road to the front of the property parallel to 87th Avenue is located in front of the subject property. In order to re-enter 87th Avenue after dropping off or picking up a child, the vehicle must either make a three-point turn or back up because of the traffic barrier at the corner. It is the opinion of the Board that such egress from this service road presents significant safety concerns particularly if other parents are waiting on 87th Avenue to enter the service road during the morning rush hour.
 - c) Likewise, the Board views use of the service road to the side of the property as presenting significant traffic safety concerns. Entering the service road to the side of the site and parallel to 163rd Street requires that vehicles travelling north make a sharp U turn into the service road narrowed because of the bus stop. As the corner is blocked by the traffic barrier, the vehicle would have to back up and turn around at the entrance to the service road to re-enter northbound traffic on 163rd Street.
 - d) A number of residents from the neighbourhood attended the hearing to express concerns about increased parking and traffic that would result from the development. The neighbours in the abutting property who would be most directly affected by the development expressed concern about noise, traffic congestion, parking and safety. The Board accepts this neighbour's submissions on existing traffic congestion that will be exacerbated with the addition of the number of vehicles generated by this development as well as safety concerns arising from backing up in a tight space or from drivers who choose to jump the curb rather than back up and exit where they entered the service road from 87th Avenue.
 - e) The hospital west of the proposed development and the high school two blocks north of the property generate significant traffic in addition to heavy commuter traffic on 87th Avenue and 163rd Street. This means that drop off times for the proposed Child Care Service will coincide with the increased traffic volume. Permitting this

Discretionary Use at this location would create unacceptable increases to traffic volume on an already busy traffic corridor.

- f) The existing Single Detached House will be converted exclusively to Child Care Services for 53 children. As the subject property will have no residential component, it will be essentially a commercial operation which is incompatible with the residential nature of this neighbourhood.

[69] For the reasons above, the Board finds the proposed Child Care Service for 53 children is not reasonably compatible with the surrounding area and there are valid planning reasons to deny the application.



Ms. G. Harris, Presiding Officer
Subdivision and Development Appeal Board

Board members in attendance: Ms. K. Cherniawsky, Mr. J. Jones, Mr. C. Buyze, Mr. A. Nagy

Important Information for the Applicant/Appellant

1. 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.

2. 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: January 18, 2019
Project Number: 263121901-001
File Number: SDAB-D-19-004

Notice of Decision

- [1] On January 3, 2019, the Subdivision and Development Appeal Board (the “Board”) heard appeals that were filed on **December 10 and December 11, 2018**. The appeals concerned the decision of the Development Authority, issued November 13, 2018 to approve the following development:

To construct interior and exterior alterations to a Restaurant and Drive-in Food Service (facade improvement, reconfigure parking area and drive-in, improved Landscaping, and construct a covered patio; Public Area: 152 square metres) (McDonald’s)

- [2] The subject property is on Plan N4000R Blk 178 Lots 16-20, located at 8415 - 109 Street NW, within the CB1 Low Intensity Business Zone. The Main Streets Overlay and 109 Street Corridor Area Redevelopment Plan apply to the subject property.

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

- Copy of the Development Permit application with attachments, proposed plans, and the approved Development Permit;
- The Development Officer’s written submissions;
- The Appellant’s written submissions;
- Letter from the Garneau Community League in support of the appeal; and
- One additional email in support of the appeal.

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

- Exhibit A – An aerial photograph of McDonald’s located at 118 Avenue & 124 Street submitted by Mr. Kaszor.
- Exhibit B – An aerial photograph of the subject site submitted by the Appellant.
- Exhibit C – Crime statistics for the subject site submitted by EPS.
- Exhibit D – Written submission from Mr. B. Kropf.

- Exhibit E – Excerpts from the 109 Street Corridor Area Redevelopment Plan submitted by Mr. Kaszor.

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

i) Position of the Development Officer, Mr. P. Adams:

- [8] The Presiding Officer asked Mr. Adams to review the required variances for the proposed development and to clarify the changes it represents from the existing approvals.
- [9] He confirmed that community consultation was undertaken in accordance with the requirements of the Main Streets Overlay. He received several responses that have been summarized in his written submission.
- [10] The changes are primarily interior alterations to an existing Restaurant and Drive-in Food Service. The required variances are related to the Main Streets Overlay, Section 819 of the *Edmonton Zoning Bylaw*. This Overlay has been adopted since the previous development permit was issued.
- [11] A 1.0 metre setback is required at the front of the site to provide pedestrian orientation. The canopy to be built over the patio located at the front of the building along 109 Street and is located within the 1.0 metre setback. It was his opinion that this complies with the requirement of the Main Streets Overlay in that it provides a pedestrian oriented development.
- [12] The requirement to provide a minimum 6.0 metre setback from the abutting residential zone to the east is a new development regulation, pursuant to section 819.3(4)(a) of the *Edmonton Zoning Bylaw* and did not apply to the previous development permit approval. There was previously a 3.0 metre setback requirement but this regulation supersedes that.

- [13] There is approximately a 10 centimetre change from the approved variance to the new variance due to a small relocation of the parking. SDAB-D-02-097 granted variances to allow a deficiency of two parking spaces and allow the drive through access to be located within a portion of the required 3.0 metre setback. The proposed setback is 1.7 metres and a setback of approximately 1.8 metres currently exists.
- [14] In response to a question, he clarified that this might be considered a legal non-conforming property because of the location of the building, but he assessed it as a new application. In his opinion, this is a new drive through development application and any conditions regarding hours of operation and speaker restrictions would have to be imposed by the Board. The existing development permit limits the hours of operation.
- [15] Section 72 of the *Edmonton Zoning Bylaw* does specifically reference separation distances, but not outdoor speakers for a drive through service. Outdoor speakers are not something that would typically be conditioned. The time frames of operation and noise are controlled by the Community Standards Bylaw. However, the Board is within its right to impose similar conditions. It was his opinion that this application should be reviewed as a new drive through service and that he did not have the authority to impose these types of conditions. He agreed conditions could be imposed on a Discretionary Use but it is not typical and it is not supported by the *Edmonton Zoning Bylaw*.
- [16] This change resulted because of the adoption of the Main Streets Overlay since the last approval. The variance was to the setback for trash collection as per the zone itself, the trash collection should not be within that setback. However, the variance he granted to the rear setback was to a regulation contained in the Main Streets Overlay and it was varied to allow the current situation to remain. This information was included in the community consultation. He felt the smaller setback was more appropriate to this specific situation.
- [17] He consulted with the rezoning group that dealt with the drafting of the Main Street Overlay and was advised that the intent of the 6.0 metre setback was primarily to address building separation as opposed to parking areas. City Council may be reviewing the wording of this regulation at some point in the future.
- [18] Mr. Adams provided the following information in response to questions from the Board:
- a) The 6.0 metre setback requirement applies to all parking and trash collection.
 - b) This development permit application was treated as a new application with variances to regularize the permit. He did not deal with any of the provisions dealing with variances required for a legal non-conforming building.

- c) A noise study could have been requested. In this case, the Applicant provided a report that addressed decibel levels. Neither section 72 nor the Main Streets Overlay contain specific criteria for noise levels. The information submitted by the Applicant was considered while reviewing the application and was used as part of his justification for approving the development.
- d) The 6.0 metre setback requirement was considered as a hardship because this is a currently existing situation and requiring them to dig up the asphalt and reconfigure the circulation would be difficult. He determined that the 6.0 metre setback would be difficult for the Applicant to meet without a full redevelopment of the building.
- e) He may have erred by not including the variance that specifically addressed the non-conformity. This is a complicated project because it is existing. There are some changes and redevelopment but not a true redevelopment of the site. It was his opinion that there is some non-conformity but it was his opinion that this was captured by the variance that was granted. The increase to the non-conformity is 10 centimetres.
- f) The most eastern portion of the site currently includes parking and garbage which will not change. The drive aisles will move slightly closer to the east property line because of the additional 10 centimetre variance.
- g) A loading space will be replaced by two entrances to the queuing aisle and the landscaped island. Two existing trees will be replaced by a landscaped island.
- h) The entrances from the avenue and the street will not change. It is a reconfiguration of the site to allow double ordering from a single window.
- i) Right now there is a single ordering window but no speaker system.
- j) The patio is located on 109 Street where there are the most eyes on the street, including vehicles and pedestrians which complies with the Crime Prevention Through Environmental Design (CPTED) recommendations. The fence located on the east property line also provides some barrier and protection for the residential properties to the east.
- k) The variance required along 109 Street allows the patio canopy to encroach to provide weather protection. The Edmonton Design Committee discussed the variance and felt that it was appropriate. The 10 centimetre reduction in the minimum required setback from the residential properties to the east will not impact safety and security.

*ii) Position of the Appellants:**Appellant No. 2: Mr. P. Kaszor on behalf of Mr. P. Gervais:*

- [19] Mr. Kaszor resides in a home adjacent to the south side of the McDonald's Restaurant and speaks on behalf of himself and his wife, Ms. Hartman; Mr. & Mrs. Gervais; Mr. & Mrs. Eng; and Mr. Minaker and Ms. Sargeant. They are all long-term residents who have resided in the area prior to the opening of McDonald's in 2002. Mr. Gervais filed the initial appeal and regrets not being in attendance today.
- [20] It is their opinion that a 5 metre setback from a residential zone is warranted rather than a setback of 1.7 metres because McDonald's is a 24 hour fast food restaurant that is located close to a unique residential zone.
- [21] They also oppose the proposed changes to the drive through service because it will increase what is already a negative situation for residents. The drive through is a Discretionary Use and the introduction of a speaker system and dual drive through lanes is not in keeping with the guidelines established in the 109 Street Corridor Area Redevelopment Plan, the Garneau Area Redevelopment Plan and the fact that this area is zoned CB1 Low Intensity Business Zone. These development guidelines are described in the letter of support for the appeal that was submitted by the Garneau Community League.
- [22] He attended the appeal hearing in 2002 and was puzzled to learn after speaking with the Development Officer that the conditions imposed on that approved development permit would no longer apply to this development - specifically that the drive through will cease operating at 11:00 p.m. Sunday through Thursday and midnight on Friday and Saturday evenings and that the drive through could not have a loud speaker system.
- [23] The proposed new loud speaker system is very similar to the sound system that was proposed and refused in 2009. These restrictions make good sense because noise still remains an issue for nearby residents.
- [24] The development proposes dual drive through lanes which will encourage more vehicles to enter the site. A site plan was referenced to illustrate the current location of the ordering window that does not include a speaker system. The proposed development brings the speakers away from the building and further south on the site which is closer to the residential properties located along the south property line.
- [25] This site is zoned CB1 and is a unique location for a 24 hour food service. There are approximately 45 other McDonald's drive-through restaurants located in the city but only one is located in a CB1 Zone, at 118 Avenue and 124 Street. An aerial photograph, marked Exhibit A, was referenced to illustrate that that site is much different than the subject site.

It is 60 percent larger, is surrounded by commercial development on three sides and the speaker system is located in the centre of the site and faces other commercial buildings. The only single family houses are located north of the subject site and are buffered by a mature stand of trees.

- [26] An aerial photograph of the subject site, marked Exhibit B, was referenced to illustrate the location of the four storey condominium immediately east of this CB1 site and the single family houses immediately to the south.
- [27] As well as being in a CB1 Zone, the site falls within the 109 Street Corridor Area Redevelopment Plan which requires developers to follow several guidelines, including “new auto oriented uses are discouraged”; “development shall be sensitive and in scale with existing development along the commercial street; “commercial uses are to be small scale and low intensity”.
- [28] No other drive through service restaurants are located along this portion of 109 Street and no other business that is open 24 hours a day. It was their opinion that a 24 hour fast food restaurant with a drive through service seems somewhat intense and that the proposed dual drive through lane intensifies the use by bringing more vehicles onto the site.
- [29] Access and egress to the site from either 109 Street or 85 Avenue is difficult because the intersection is very congested and the proposed dual drive through lanes will not allow vehicles to exit the site any faster.
- [30] The article from HME was referenced. The proposed sound system is similar to the system proposed in 2009. If you are sitting in a noisy truck the sound system adjusts. However, when the McDonald’s representative was asked in 2009, he admitted that there is no reliable way to gauge how loud the speakers will be. This is a variable system that will amplify sound as needed.
- [31] Articles dealing with sound and vegetation were researched and it was found that “it is a mistake to believe that vegetation and simple barriers are effective in reducing noise in a significant way”. In an article dealing with sound and McDonald’s Restaurants, they addressed noise and it suggested that vegetation could be 15 feet high 100 feet wide and dense enough that you can’t see through it and the sound would only be reduced by five decibels. The most effective way to reduce sound is with the installation of a tall cement wall.
- [32] Noise in the city is sound that is reasonably likely to disturb the peace of others. Noise is the responsibility of the owner of the property. So far the McDonald’s restaurant has managed the problem of parking lot noise by erecting two signs on the fence wall asking their customers to respect the neighbours.

- [33] At the appeal hearing in 2002, a McDonald's representative stated that "noise is a result of younger clients with noisy vehicles and stereos and McDonald's has no control over it". What do the neighbours do at 3:00 a.m. when people are dancing on their cars and playing loud music while eating their food in the McDonald's parking lot. McDonald's does not take any responsibility for noise and cannot be asked for help and the Noise Bylaw complaint line is only open during day time business hours. If there is a fight they often call EPS.
- [34] They accept that they live in a noisy area but night time noise is often brief, abrupt, unexpected and out of their control. The best way to eliminate night time noise is to prevent it from happening. A restaurant that wants to add traffic and people at all times of day and night is not helpful when trying to prevent noise.
- [35] The proposed Earthbins are an improvement because they will be covered but they will be located in a narrow space that borders the condominium building on the east property line. This may be a good reason to maintain the 6.0 metre setback from the east property line.
- [36] He questioned when and how frequently the bins will be removed. They are not opposed to having a garbage truck on the site during the day but despite ongoing complaints the garbage trucks still continue to come to the site late at night and generate a lot of noise.
- [37] He and his neighbours find the restaurant to be unsafe because it is open 24 hours a day. He has seen customers handcuffed by police in the parking lot both during the day and at night. He has discussed his concerns regarding the proposed patio along 109 Street with McDonald's and the Development Officer. It was his opinion that their concerns could be addressed if the patio was taken down every night if the restaurant continues to be open 24 hours a day. He was recently advised that the Tim Hortons near the University Hospital recently removed their patio because it became a troublesome location.
- [38] McDonald's relies on EPS to remove customers who sleep in the restaurant or cause disturbances but these individuals migrate to the alley, hide behind the dumpster and often find their way into the rear yards of neighbours.
- [39] This is a unique CB1 site that already has restrictions in place regarding the drive through use, specifically the time of operation and the method of ordering. He and his neighbours are seeking assurances that, at the very least, the current restrictions will be respected.
- [40] He and his neighbours feel strongly about the negative aspects of the drive through service and question whether or not the use should be allowed to continue. Based on the evidence provided by the Development Officer, this application is being reviewed as a new development. Therefore, it was his opinion that the proposed drive through is a Discretionary Use and should not be approved.

They do not believe that a new speaker system will provide a quieter option for the neighbours and the proposed dual drive through lanes will allow 25 percent more cars to access the site. This is a step back from keeping this commercial site small scale and low intensity.

- [41] When McDonald's opened in 2002 it was not open 24 hours as it is now. The minimum required 6 metre setback will provide additional buffer space for the neighbours from a busy 24 hour restaurant.
- [42] Mr. Kaszor provided the following information in response to questions from the Board:
- a) He can see directly into the site during the winter months but has deliberately planted large trees at the rear of his property to provide some screening.
 - b) His house is the fifth lot east of 109 Street. There is an apartment on the corner lot and the house west of them is a rental unit. His house is separated from the subject site by a rear lane.
 - c) The site should be walkable but the neighbours are opposed to the patio because of the crime that is associated with it.

Appellant No. 1: The Andross: The Owners: Condominium Plan No. 9420916, represented by Ms. J. Heilesen and Ms. S. Sadilands:

- [43] An aerial photograph, marked Exhibit B, was submitted to illustrate the location of the condominium building which is immediately east of the subject site.
- [44] The Development Officer cited a hardship to require McDonald's to remove the parking spaces and re-establish the 6.0 metre setback along the east property line. However, she was advised by a representative of McDonald's that the garbage bins will be moved from the current location in the middle of the site to the southeast corner in response to complaints from the condominium owners. She was also advised that the parking lot will be regraded to address some flooding issues on the site. Therefore, she questioned why the parking lot could not be changed to re-establish the 6.0 metre setback along the east property line bordering the condominium.
- [45] Problems have been ongoing because garbage continuously flies over the fence and the bins are always left open. The proposed new garbage system sounds interesting because the bins are set in the ground but who is going to ensure that the bins are kept closed.
- [46] They are concerned about the speaker system from a noise point of view, specifically, noise that comes from vehicles, noise from people in the vehicles as well as loud music. Residents have often been woken up by screaming in the night which raises the concern. There is also the issue of screaming in the night and the initial concern is whether or not someone being assaulted and in trouble.

- [47] It was noted that the development permit application that was approved in 2002 included conditions to restrict the hours of operation. However, she did not see where those restrictions had been changed. When the neighbours made an inquiry after they noticed that the restaurant was open 24 hours, they were simply advised by the City that they could operate 24 hours. Why should the residents have to put up with the noise and disruption. There are fights and arguments at all times of the day and night and the residents have to call the EPS to handle the situation.
- [48] It was her opinion that if this application is being reviewed as a new development, the restrictions that were imposed in 2002 should be upheld.
- [49] This is the only place that is open for homeless individuals during the night but they bring crime into the area. The condominium building has been broken into three times over the past year. The fire box key was taken from the front of the building to gain access and computers were stolen. Door handles have been sawed off and bicycles were stolen, vehicles parked in the parkade have been vandalized. When the video surveillance was reviewed, it was clear that these individuals were coming from McDonald's during the night. It was her opinion that the restaurant should be closed at night.
- [50] The patio is a terrible idea given the current problem with homeless individuals. She does not support the restaurant anymore because she is afraid. She has even witnessed individuals sleeping at the tables during the day.
- [51] Ms. Sandlilands reiterated the concerns raised by her neighbours. She resides on the second floor of the condominium overlooking the McDonald's site. Noise is always a problem and the proposed changes will only exacerbate the situation. She acknowledged that the noise made by the patrons is not the fault of McDonald's but it is made possible because the restaurant is open 24 hours.
- [52] It is easy to access the rear yard and hide behind the dumpster because the fence line that runs along the property line is not level and is much shorter at the rear. They do not use their deck because you get yelled at by individuals in the yard or on the other side of the fence. If she is able to get three nights out of the week when she is not woken up that is a very good week.
- [53] The proposed changes will increase the flow of traffic to the site. The patio will become a gathering point during the overnight hours so she was happy that removable furniture is being proposed.
- [54] Semi-trailers unloading supplies at the restaurant idle for long periods of time and the prevailing winds are from the west which blows the exhaust into their windows.
- [55] The majority of the building is above the fence line which does not buffer the noise emanating from the restaurant.

- [56] This is a unique location because of the close proximity to a residential area. She acknowledged that it is easier for McDonald's to use a template for all of their restaurants but it does not work at this unique location.
- [57] Garbage and odours generated are an ongoing concern for neighbouring residents.
- [58] Ms. Heilesen and Ms. Sadilands provided the following information in response to questions from the Board:
- a) First thing in the morning the drive through is closed. It was her assumption that they did not have enough staff to operate the ordering window.
 - b) The speakers will be moved further south and the cash window will remain at the same location.
 - c) The interior restaurant is open 24 hours.
 - d) The major issue is customers coming and going from the restaurant on a 24 hour basis. The hours of operation create the problems.
 - e) They experience street noise during the day but although 109 Street is a commuter route, it is surprisingly very quiet during the night.
 - f) The 5.0 metre variance will bring all of the problems closer to them and the proposed change will intensify the use.

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

Mr. S. Bailey, EPS

- [59] Constable Bailey submitted crime statistics for the subject site, marked Exhibit C.
- [60] He is a Constable with the southwest division and primarily works in the Garneau area. Over the past four years he has become familiar with the owner of the McDonald's restaurant as well as neighbourhood residents.
- [61] From January 1, 2018 to December 19, 2018, 204 calls for service have been received that relate to police files at the McDonald's restaurant. Transients are a significant problem in this area.
- [62] EPS has been working with the ownership of the McDonald's restaurant which has changed since the appeal hearing in 2009 in attempt to address the problems through environmental design changes, including the removal of exterior plugs and restricting WIFI at night to discourage transient persons from coming to the site.

- [63] The drive through service is currently closed between 11:00 p.m. and 7:00 a.m., Sunday to Thursday and between midnight and 7:00 a.m., Saturday and Sunday. However, the restaurant remains open 24 hours which creates a place for homeless individuals to congregate.
- [64] At the suggestion of EPS, the McDonald's restaurant in Callingwood is now closed at night and the drive through remains open which has limited the issue of homeless individuals congregating inside and the crime patterns leaving that location have also been reduced. EPS has suggested this option to the owners of this location.
- [65] The patio on 109 Street is not a good idea. A similar patio located at an A&W restaurant in this area is a magnet for homeless persons to loiter. It is the recommendation of EPS that there be no patio, the restaurant should be closed overnight and only the drive-through service should operate 24 hours.
- [66] 109 Street is quiet at night and the open restaurant therefore tends to attract homeless or transient individuals. The majority of the calls for service to this location are received between 4:00 a.m. and 5:00 a.m. to deal with intoxicated individuals, trespassing and mischief. These types of calls are typical in Garneau and the Whyte Avenue area. EPS would like to move these individuals out of this area into the downtown core where they can be serviced by Hope Mission or other agencies located downtown.
- [67] He acknowledged that noise is a problem with customers coming and going from this location at night. However, this is a commercial site and noise cannot be completely eliminated. However the crime aspect could be addressed by implementing some of the other suggestions.
- [68] Constable Bailey provided the following information in response to questions from the Board:
- a) The EPS suggestions have been discussed with the owner of the McDonald's and the Condominium Association. They are also working with the Condo Association to develop a CPTED plan for both the exterior and interior of their building. The CPTED report was not part of this development permit application.
 - b) It is the goal of EPS to provide access to facilities and trained personnel for the offender element either at the Hope Mission or the George Spady Centre. It was acknowledged that these facilities are located on the north side of the river but it was his opinion that this would help the Garneau area.

Mr. Minaker:

- [69] Mr. Minaker resides south of the subject site, east of 109 Street.

- [70] There is another fast food restaurant located north of the subject site that operates between 10:00 a.m. and 10:00 p.m. and from his observations, does not create the same problems as the McDonald's.
- [71] He has a video surveillance camera installed on his garage and it was his estimation that 90 percent of the crimes occurring in the area are related to individuals either pre or post McDonald's.
- [72] The proposed dual drive through lanes will create a bottleneck because egress from the site is not adequate.
- [73] He would rather have the drive through service operating 24 hours than the restaurant because the restaurant is a catalyst for crime in the area. Over the past two years, the McDonald's has drawn a certain type of cliental. He does not blame McDonald's but he wishes that they would be more involved. At the two previous appeal hearings, McDonald's made numerous promises to the residents that have not been kept.
- [74] He questioned why an additional drive through lane that will move the speaker system closer to the residential properties is required when there are so many mobile food service applications available to McDonald's.
- [75] Mr. Minaker provided the following responses to questions from the Board:
- a) He is opposed to the proposed patio because of the increased crime that it will bring but he did not have an opinion regarding the required variances.

Mr. B. Kropf:

- [76] He provided a copy of his written submission, marked Exhibit D.
- [77] He is an urban planner with 46 years of experience and has worked for the City of Edmonton during which time he helped to co-author the *Edmonton Zoning Bylaw 12800*.
- [78] He has a stake in how his neighbourhood changes and in particular how those changes conform to the views and intentions of City Council for this area. As a resident planner volunteer, he has been involved in the preparation and completion of the 109 Street Corridor Area Redevelopment Plan as well as the drafting of various Overlays that are intended to implement the intentions of City Council.
- [79] Between 2006 and 2013, city planners and several communities, including Garneau, attempted to achieve three goals for the 109 Street corridor. Firstly, to increase development intensity along 109 Street, secondly to protect the existing residential areas form the negative impacts of that intensification and thirdly to transform 109 Street from a commuter oriented commercial strip to something that was less car oriented and more pedestrian and local consumer oriented.

- [80] This application involves a number of changes, specifically, increasing the restaurant capacity from 95 to 126 occupants, reducing the rear setback from 6.0 metres to 1.7 metres and allowing parking and waste collection to be located within that setback. The third change is to increase the drive through function by increasing the queuing capacity from 6 to 8, to remove the hours of operation limitation and the ban on electronic order boards that were put in place to help ensure compatibility with the adjacent neighbourhood.
- [81] Excerpts from the 109 Street Corridor Area Redevelopment Plan were referenced, specifically Policy 3.2.3.1 which states that new auto-oriented uses are discouraged. As a former planner for the City of Edmonton, he viewed his duty as including an obligation where opportunities arise to ensure that whatever development occurs come closer to Council policy and zoning regulations. In this case, the development not only fails but it enhances the automobile orientation use because it increases the queuing capacity, the capacity of the restaurant and it adds electronic boards which increases the number of vehicles that can access the site and it removes the limitations on the hours of operation. All of these changes work to increase the auto orientation which is directly contrary to the vision of City Council along this commercial strip.
- [82] This is an opportunity to make the site closer to what was intended by City Council and the requirements of the *Edmonton Zoning Bylaw*. Instead the approval reinforces the existing problem, which in effect is a 70 percent deviance from the requirements of the *Edmonton Zoning Bylaw* and is not necessary.
- [83] The parking provided on this site grossly exceeds what is required. According to the *Edmonton Zoning Bylaw*, this development requires six parking spaces and 33 are proposed. McDonald's could lose the entire east row of parking and the waste bins and still exceed the onsite parking requirement. In doing so, the parking requirements for a transit avenue development and the required separation between a commercial site and a residential site would be met. That would also make it possible to relocate the waste bins to the south property line, adjacent to a lane and adjacent across the lane to commercial sites, not residential sites. The opportunity is great to make this development conform to what City Council and the community originally envisioned for 109 Street.
- [84] He was personally involved in drafting the Overlay and clarified that the 6.0 metres setback was deliberately established as was the exclusion of parking spaces and waste bins in the setback.
- [85] The waste bins for the Mucho Burrito restaurant, located north of the subject site, are located on the east property line but are separated from the residential sites by a 6.0 metre lane. The minimum required 6.0 metre setback was designed to replicate a 6.0 metre separation created when there is a lane. It was not random, it was deliberately imposed.

- [86] It was his opinion that the best response to the proposed development is to ensure that it complies in all respects with the requirements of the *Edmonton Zoning Bylaw*, the Overlay and the Area Redevelopment Plan. The second best response would be to refuse the application and allow McDonald's to operate as it has for the past 16 years.
- [87] In response to a question, Mr. Kropf clarified that his submission contained excerpts from the 109 Street Corridor Area Redevelopment Plan and that the subject site does not fall within the Garneau Area Redevelopment Plan.
- iv) *Position of the Respondent, Ms. C. Chopko, representing, IBI Group Geomatics (Canada) Inc. and Mr. J. Hrsak, representing McDonald's Restaurant:*
- [88] Mr. Hrsak runs the McDonald's restaurant for the owner/operator, Mr. Sharma, who was unable to attend the hearing. He has more than 30 years of experience working with McDonald's, 27 years on the corporate side and three years on the owner/operator side since Edmonton has sold off all of its corporate restaurants. He will also be the hands on project manager for the remodeling of the Garneau location.
- [89] Since purchasing this restaurant from McDonald's they have been excited for the refurbishment of this old and tired restaurant. The new look will be modern, clean, convenient and safe with high quality design and will deliver on the McDonald's guest experience. It will include state of the art technology and deliver on the guest experience.
- [90] The Garneau McDonald's is an important and vital fixture on 109 Street and it is one of the first catalyst projects to showcase a high standard of design and kick start the creation of a vibrant street life for the 109 Street area.
- [91] McDonald's has worked with the city on how to implement the principles of the 109 Street Corridor Area Redevelopment Plan. The primary objective of the Plan is to improve the quality and appearance of development and the streetscape to achieve a better pedestrian environment. To help achieve this, the city was looking for a better visual and pedestrian connection to the street through the development of an outdoor patio. Enhanced landscaping is proposed to further strengthen the streetscape and the overall site.
- [92] Better garbage storage and handling will be accomplished through the implementation of the Earth bins system which will require less garbage pickup from the site. The bins are easier to empty and are buried several feet below the ground which makes them aesthetically more pleasing than the bins that are currently located on the site. Lighting and signage will be improved to improve safety.
- [93] The McDonald's Smart Restaurant Design Strategy aligns with one of the key guiding principles of the plan to encourage sustainable development practices.

- [94] Based on the feedback received at an open house that was held on December 6, 2018, several options have been reviewed in the hope of benefiting all parties involved. The EPS completed an environmental analysis of the entire site in mid-December. They are still waiting for the final details but have taken action on several of the recommendations and have gone back to corporate McDonald's with recommendations to help reduce this as an area of congregation at night, including the removal of all outside plugs, removal of the WIFI and have requested that the patio furniture be brought inside in the evening in order to keep foot traffic moving.
- [95] Major improvements to the drive through configuration are being proposed. A dual lane drive through service allows for a faster flow for vehicles and less idling which reduces noise significantly by allowing guests to choose a second lane for ordering. Technology has changed significantly since 2009 and the audio systems are completely different.
- [96] Decibel testing completed by HME, the manufacturer of the Automatic Volume Control system found that the proposed system is exactly the same if not quieter than the current face to face ordering system that exists. At 16 feet, which is the distance from the speakers to the fence is 36 decibels and a 35 to 45 decibel range is equivalent to a whisper. Most household appliances are louder than the proposed audio system.
- [97] The proposed dual lane system in this sales volume will result in an increase of between 15 to 20 cars per day, less than one car per hour.
- [98] Complete peace and quiet at this location, with or without the McDonald's Restaurant, is an unrealistic expectation for this part of the city which is a major centre for night life and the arts scene.
- [99] They have considered erecting a sound barrier fence in an attempt to reduce vehicle noise.
- [100] Since the advent of Rogers Place, homeless and crime has increased in this area and they have been working with EPS and the business community in an attempt to make changes to address the problem. McDonald's is sympathetic to the concerns of the condominium owners as they relate to crime. They have not been exempt from crime and have spent thousands of dollars on the maintenance and repair of their site. McDonald's did not create the issue but are willing to address the problem with all parties involved.
- [101] The proposed changes will help to reduce vagrant activity in the area. The City, by Bylaw, has mandated that the restaurant lobby be open 24 hours while closing the drive through service overnight which is the root of the problem.
- [102] McDonald's strongly supports the closure of the restaurant lobby during overnight hours in order to address community concerns regarding vagrancy. This will reduce noise, and reduce but not eliminate the number of people congregating in the parking lot.

Allowing the drive through service to remain open overnight will be quieter and safer because traffic will be able to enter and leave the site more quickly. This will keep vagrants away from a warm space and a place to sleep at night. Complete closure of the restaurant at night is something that should not be entertained because one of the franchising standards for a McDonald's restaurant is that 24 hour service is provided and approximately 14 percent of the sales at this location occur at night because of the busy night life in this area.

- [103] The same garbage trucks that currently visit the site will pick up the proposed Earth bin system. The Earth bins will be locked while the existing bins are not.
- [104] The noise of a car today, with or without a speaker system, will be the same but the dual drive through lane will move people in and out of the parking lot quicker which will reduce vehicle noise and the noise generated by individuals playing loud music and slamming car doors.
- [105] It was acknowledged that several of the promises made by corporate McDonald's to the residents in this area have not been kept. However, this owner/operator is hands on and is invested in the community. He is approachable and is willing to work with the residents and the community as a whole to address all of the concerns.
- [106] Ms. Chopko indicated that a 6.0 metre buffer along the east property line would require additional landscaping which can create some safety concerns because it would provide a place for individuals to hide. It was her opinion that it is a trade off at this location.
- [107] Mr. Hrask clarified that Mr. Sharma also owns the Callingwood McDonald's and that crime at this location has been significantly reduced by closing the restaurant lobby at night. The lobby is closed at 1:00 a.m. Monday to Friday while the drive through remains open 24 hours. This has significantly reduced the number of incidents and the calls to EPS.
- [108] Mr. Hrask and Ms. Chopko provided the following information in response to questions from the Board:
- a) It would be his preference to close the restaurant at night in order to eliminate a warm place for homeless individuals to shelter. The Callingwood McDonald's restaurant is closed at 11:00 p.m. and reopens at 5:00 a.m. on weekdays and is closed between 1:00 a.m. and 5:00 a.m. on Saturdays and Sundays while the drive through service is open 24 hours.
 - b) The proposed dual drive through lanes will allow approximately 10 to 20 more vehicles to access the site on a daily basis.

- c) They would like to have removable furniture on the patio that can be stored inside the restaurant lobby if it is closed at night while the drive through service is allowed to operate or not have a patio at all.
- d) The patio at the Callingwood location has cement benches that cannot be moved.
- e) They are prepared to look at options to address the neighborhood concerns, including re-establishing the buffer along the eastern property line or erecting a noise attenuation wall along the south property line.
- f) Customers at this location park close to the building and not along the eastern edge of the site which in itself creates a different type of buffer.
- g) The parking lot will be completely redeveloped and will have a bright and clean appearance that will serve as buffering in a different way. Unoccupied parking spaces provide a type of buffer because it allows surveillance.
- h) They are prepared to work with neighbourhood residents to address their concerns.

[109] At this point, the Presiding Officer advised that the Board is required to make a decision on the development permit application and plans that have been reviewed and approved by the Development Officer and expressed some concern regarding the many conflicting opinions and suggestions involving substantive changes to the stamped approved plans that were provided by all of the parties that appeared at the hearing, including the Applicants. Therefore, Mr. Hrask was asked to confirm whether or not a postponement was being requested in order to submit a revised development permit application or alternate plans.

[110] Mr. Hrask asked the Board to proceed and make a decision on the development permit application that was submitted and approved by the Development Officer.

[111] He confirmed that it would be his preference to have the drive through service open 24 hours per day, 7 days per week and the hours of operation for the restaurant set at Sunday through Thursday, 6:00 a.m. to 11:00 p.m. and Friday and Saturday, 6:00 a.m. to midnight.

[112] Currently the reverse exists, except the drive through service opens at 7:00 a.m. and the restaurant lobby is open 24 hours.

[113] If the drive through service is allowed to operate on a 24 hour basis, he would not oppose a condition that requires the patio furniture to be brought inside at 10:00 p.m. every day. It is not a smart idea to leave removable patio furniture on 109 Street overnight. The furniture currently shown on the plans cannot be removed.

v) *The Development Authority, Mr. P. Adams in response to questions from the Board:*

- [114] He confirmed that the Garneau Area Redevelopment Plan does not apply to the subject site.
- [115] The legal non-conformity was captured by granting the variance along 109 Street because the footprint of the building is not changing.
- [116] Section 11.3(2)(a) of the *Edmonton Zoning Bylaw* provides variance power for a non-conforming development.
- [117] The minimum required 6.0 metre setback was varied to allow for parking and trash collection.
- [118] He considered the proposed development as a new application and he would allow both variances regardless of the legal non-conforming status for the reasons in his report.

vi) *Rebuttal of the Appellants*

Appellant No. 1: The Andross: The Owners: Condominium Plan No. 9420916:

- [119] Customers park away from the building on this site and park along the fence located on the east property line that borders their building.
- [120] It was their opinion that unoccupied parking spaces do not provide an adequate buffer zone.
- [121] The proposed dual drive through lanes will increase traffic and noise.
- [122] It was their opinion that both the restaurant and the drive through service should be closed at night because it will reduce crime and decrease noise.

Appellant No. 2 - Mr. Kaszor:

- [123] He clarified that the excerpts he referred to were Policy directives taken from the 109 Street Corridor Area Redevelopment Plan and were all contained in the document marked Exhibit E.
- [124] The approval of the SDAB in the 2009 restricted the drive through service and the speaker system. However, the neighbours were under the assumption that these restrictions also applied to the restaurant.

When he contacted to get some clarification, he was advised that the restrictions only applied to the drive through service which is a Discretionary Use. The neighbours were disappointed because they assumed that the decision addressed the entire operation.

- [125] They were advised by a McDonald's representative that the scientific data regarding decibel levels does not always match what happens in reality, especially at night.
- [126] "Sophie's Choice" is what they have. It is logical to close the restaurant because it is a real problem at night. It is also logical to keep the drive through service closed as well. These suggestions were made to past management who did not respond.
- [127] The proposed drive through will bring more vehicles onto the site, which will increase not decrease traffic along 109 Street. It was his opinion that closing the restaurant at night and allowing the drive through to remain open will not be quieter.
- [128] This McDonald's is located on a unique site and has expanded from a restaurant that was not approved as a 24 hour operation in 2002 to the proposed dual drive through service with an outdoor speaker system.

Decision

- [129] The appeals are DENIED and the decision of the Development Authority is CONFIRMED. The development is GRANTED subject to the conditions and variances imposed by the Development Authority. **The Board imposes the following ADDITIONAL condition:**
- a) As a condition of approval of the Drive-in Food Service for unlimited hours of operation, the hours of operation for the Restaurant shall be subject to the restriction that it may only be open to **patrons** during the following hours: from **Sunday through Thursday, 6:00 a.m. to 11:00 p.m. and Friday and Saturday, 6:00 a.m. to midnight.**

Reasons for Decision

- [130] This is an appeal of an application for a development permit to construct interior and exterior alterations to a Restaurant and Drive-in Food Service (façade improvement, reconfigure parking area and drive-in, improved Landscaping and construct a covered patio; Public Area: 152 square metres) (McDonalds).
- [131] Based on the provided evidence, a Restaurant Use and a Drive-in Food Service Use have operated together with approval on the property for over 20 years:
- a) Development Permit # 000114821-001 for a Drive-in Food Service was approved June 20, 1994.

- b) Development Permit # 001072348-001 was approved by the Board on April 12, 2002 for a Restaurant (McDonalds – 95 occupants) and drive through with conditions, including a limit on hours of operation for drive in (11 pm Sunday to Thursday, 12 pm Friday to Saturday, no morning time is specified) and the specification that no loud speakers are to be located on the drive through (SDAB-D-02-097).
- c) Development Permit # 263121901-001 to construct exterior alterations to a Restaurant with a Drive-through food Service (McDonald's install new customer order display and close order booth) was approved by the Development Authority and then appealed by neighbouring property owners and refused by the Board on August 29, 2009 in SDAB D-09-175.

[132] The subject site is zoned CB1 (Low Intensity Business Zone) under the *Edmonton Zoning Bylaw*, (the Bylaw). In the CB1 Zone, Restaurants, for less than 200 occupants and 240 square metres of Public Space, is a Permitted Use and Drive-in Food Services is a Discretionary Use. The subject site falls within the Main Streets Overlay in section 819 of the Bylaw and the 109 Street Corridor Area Redevelopment Plan (the 109 Street ARP).

[133] Section 687(3)(a.1) of the *Municipal Government Act*, (the Act) provides that in determining this appeal, the Board must comply with applicable statutory plans and, subject to its variance authority in 687(3)(d), with the provisions of the Bylaw. The Board notes that the general purposes and policies in the applicable instruments stress the need to balance competing interests, the importance of scale and compatibility with other commercial developments and also with surrounding residential developments, high quality developments and pedestrian orientation:

The general purpose of the CB1 zone in section 330.1 of the Bylaw is “to provide for low intensity commercial, office and service uses located along arterial roadways that border residential areas. Development shall be sensitive and in scale with existing development along the commercial street and any surrounding residential neighbourhood.”

The purpose of the Main Streets Overlay in section 819.1 of the Bylaw is “to encourage and strengthen the pedestrian-oriented character of Edmonton’s main street commercial areas that are located in proximity to residential and transit-oriented areas, by providing visual interest, transparent storefront displays, and amenities for pedestrians.”

Policy 1.1 of the 109 Street ARP states the primary objective of the Plan is “To improve the quality and appearance of development and the streetscape on 109 Street to achieve a better environment for pedestrians and a better balance between all users of this important transportation corridor.”

Section 3.2.2 of the 109 Street ARP states that the general intent of district is “To transform the District’s commercial strip to a commercial mixed-use function, characterized by a diversity of low impact businesses serving the needs of local residents and the broader market, and to encourage a strong sidewalk relationship between pedestrians and buildings, and high quality design, all of which is compatible with adjacent residential areas.”

[134] The application under appeal will improve the current development significantly by upgrading and repairing the principal building especially along the greenhouse type structure at the front and by making other changes including:

- a) Adding an outdoor patio area at the west elevation along 109 street at the front of the building with supports to the cover it located closer toward 109 Street within the required front setback;
- b) Reconfiguring the drive through access and queuing spaces for the Drive-in Food Service and consequently moving eight existing on-site parking spaces within the 6.0 metres setback along the east lot line 0.1 metres closer to the neighbouring residences than their current location;
- c) Adding a two-panel digital menu board with a speaker system, two landscaped islands and a sound attenuation fence between the principal building and the east lot line;
- d) Changing the garbage bins to locked Earth Bins and moving them toward the south east corner of the site 6.2 metres from the south lot line along the rear lane and at the same distance from the east lot line which is within the 6.0 metres required setback from the residential condominium building to the east;
- e) Removing existing asphalt areas and substantially improving and adding to the landscaping on several portions of the site including along the east lot line (particularly around the Earth Bins), portions of the north lot line along 85 Avenue, the south and north corners along the front lot line facing 109 Street and the two landscape islands located east of the queuing spaces for the Drive-in Food Service.

[135] The Development Officer determined that these changes involved two variances to the Main Street Overlay which had been enacted after the 2002 approval:

- a) The required 1.0 metre setback per section 819.3.2 from the front lot line along 109 Street is 0.84 metres (deficient by 0.16 metres).
- b) The required 6.0 metres setback from a residential zone required by section 819.3.4.a is 1.7 metres for off street parking spaces and the two garbage bins along the east lot line (deficient by 4.3 metres).

[136] The Board finds that the Development Officer conducted community consultation as required per section 819.3.28 of the Main Streets Overlay and received 14 submissions expressing the following concerns:

- a) Existing and increased noise (loud patrons, fights in the parking lot, idling vehicles, car stereos and horns, outdoor speakers, snow removal and leaf blowers, trash removal)
- b) Existing and new location of trash collection (garbage blowing in the area, garbage thrown over fences, space between dumpsters being used for carts and storage, concern about new location so close to Apartment House)
- c) Increased crime (concern about the patrons of the McDonalds causing issues on surrounding properties)
- d) Existing parking concerns (patrons parking along 85 Avenue reducing available parking)
- e) Physical layout (concerns over the existing parking lot being so close to their property lines).

[137] After considering this feedback, the Development Officer determined that overall, the proposed development of upgrading and repairing was reasonable and desirable for a Discretionary Use. He approved the development permit with the two variances and subject to several conditions, but without the two conditions specified by the Board in 2002 prohibiting outdoor speakers and restricting the hours of operation for the Drive-in Food Service.

[138] The owners of two neighbouring residential properties appealed the approval. These appeals are supported by other residential neighbours and by the Garneau Community League. The Board received additional written and oral submissions in support of the appeal from other nearby residents.

[139] The proposed development involves a Permitted Use and a Discretionary Use with two variances to accommodate on-site parking spaces and garbage bins which are for the entire development. The Board first considered several factors to determine whether or not the proposed Discretionary Use, Drive-in Food Service, was reasonably compatible with surrounding uses and consistent with the 109 Street ARP.

[140] The Board received evidence that the subject property is in poor repair, with little landscaping and finds, based on the submitted photographs, the proposed development will substantially improve the current quality and aesthetics of the property.

- [141] The Board considered the surrounding context. The proposed commercial development is located in a dense, busy, mixed use neighbourhood facing 109 Street, a six lane major commuter route. The properties to the west and north are all zoned CB1 and within the 109 Street ARP. There are commercial uses west across 109 Street and north across 85 Avenue. The properties to the south are mixed use and residential use. The first four lots to the south along 84 Avenue are also zoned CB1 and fall within the 109 Street ARP. According to the Plan, they are intended to be amalgamated, and preferably redeveloped as much taller and denser mixed use buildings with commercial uses on the lower floors oriented toward 109 Street. The Board finds no compatibility issues with the commercial and mixed use properties within the CB1 zone. The fifth lot to the east of 109 Street along 84 Avenue is residential and zoned RA7. It is separated from the southeast portion of the subject site by a lane. It is farther from the Drive-in Food Service than the residential condominium building on the abutting lot to the east which faces 85 Avenue, is zoned RA7 and is not within the 109 Street ARP. Reasonable compatibility with these residential developments requires more analysis.
- [142] All parties recognized that it is reasonable to expect some adverse impacts at this location, but provided conflicting information and opinions about the impact and compatibility of the proposed Drive-in Food Service.
- [143] The Appellants and others opposed to the development echoed the earlier concerns contained in the feedback and stressed that currently the two approved uses create significant negative impacts, including: garbage and litter which escapes the site, noise from vehicles and garbage removal for the Restaurant and the Drive in Food Service, crime and nuisance caused by customers and others loitering and congregating at the site, especially late at night. The Appellants agreed that certain aspects of the proposed development may improve the current situation, but nonetheless they opposed the proposed Drive-In Food Service as they believe it will also increase some of the negative impacts which they currently experience.
- [144] They argued that the proposed Drive-In Food Service is contrary to the 109 Street ARP and were skeptical about the Applicant's evidence concerning the noise created by the proposed dual queuing and speaker systems. The Appellants prefer no Drive-in Food Service and argued that the Board should at least continue the 2002 conditions and restrictions on the hours of operation for the Drive-in Food Service Use and also extend them to the permitted Restaurant Use.
- [145] On the other hand, the Applicants argued that the proposed development will significantly improve the current situation. Although the Drive-in Food Service will be open 24 hours a day and more vehicles will come to the site, with the proposed improvements, the site will be quieter and safer and because traffic will be able to enter and be directed away from the site toward 109 Street more quickly. The noise and impacts from the drive through will be reduced by technology and landscaping which exceeds the minimum requirements for the site.

They believe that the proposed changes will not eliminate all the noise and impacts from the Drive-in Food Service, but these impacts are reasonably compatible given the subject site is commercial and located in a lively area of the city and next to a major arterial roadway.

- [146] During their oral submissions, the Applicants stated that if the proposed Drive-In Food Service is approved as applied for, they would agree to an additional condition not previously considered or imposed by the Development Officer to reduce the neighbours' concerns and increase compatibility - a restriction on the hours of operation for the lobby of the Restaurant to ensure food service is available only to drive-through customers arriving by vehicle. They believe this condition will reduce loitering and address the main causes of noise, disturbance and crime, particularly overnight.
- [147] The Board considered section 3.2 of the 109 Street ARP which applies to properties along 109 Street between 88 Avenue and the alley south of 82 Avenue and contains policies specific to the auto-oriented uses including the proposed Discretionary Use. The overview of this district in section 3.2.1 recognizes there are existing auto-oriented uses in this district. It states that the current development pattern contains several businesses with drive-through lanes and front parking lots fronting on 109 Street. Policy 3.2.3.1 states "Low-impact commercial uses are permitted, with a preference for commercial-residential mixed-use interspersed with recreational and institutional uses. New auto-oriented uses are discouraged."
- [148] The Board finds the proposed development is not inconsistent with Policy 3.2.3.1. The policy is not an outright prohibition of all Drive-in Food Service Uses – it applies only to "new auto-oriented uses" and states only that they "are to be discouraged." By contrast, Policy 3.2.3.5 contains an unqualified prohibition of other CB1 Discretionary Uses. It states: "Billboards, roof-top digital and off-premises signage of any type will not be permitted."
- [149] This Drive-in Food Service Use is not a "new use" - it has been approved and operating in conjunction with the Restaurant Use at this location since 1994 and according to the evidence, it is the only remaining auto-oriented use currently operating in this district of the plan.
- [150] The Board considered the Development Officer's rationale for approving the Discretionary Use. He observed that the Special Land Use Provisions applicable to Drive-in Food Services in section 72 of the *Bylaw* do not include regulations specific to speakers, but do include locational criteria for Drive-in Food Service Uses which the Applicants have met or exceeded.

- [151] The Board accepts the Development Officer's determination that the proposed Drive-In Food Service access and queuing spaces meet these minimum locational development regulations. Based on the evidence, the distance from the east lot line to the landscaped island which will screen the queuing spaces is 14.1 metres (6.66 metres more than the 7.5 metres minimum required per section 72.2.5.c.)
- [152] Further, as the Development Officer noted, a Drive-in Food Service Use must be 15.0 metres from the property line per section 72.2.8.a. Here, he noted that the edge of the existing building will remain at 24.5 metres from the east lot line and at its closest, the outdoor speaker infrastructure will be over 17 metres from the east lot line. The Board also notes the Bylaw specifically provides that the 15.0 metre Setback distance may be reduced at the discretion of the Development Officer if the Development Officer is satisfied that impacts on the Residential or Residential-Related Uses shall be minimal due to structural and design measures incorporated into the proposed development.
- [153] The Board notes that the proposed development preserves the existing fence along the east and south lot lines. Additional screening and noise attenuation for the proposed development also includes: landscaping along sensitive portions of the east lot line; a 1.8 metre double board wood fence; and landscaping on two landscape islands. In total, the Board heard that 15 trees and 64 shrubs are to be added to the property, which exceeds the minimum required by one tree and 42 shrubs. The Board considered that these additions meet and exceed the fencing and landscaping requirements in section 72.2.8.c of the Bylaw. They also constitute an improvement on the existing situation, consistent with Policy 3.2.2.13 of the 109 Street ARP which states "Development built adjacent to residential areas will provide for carefully designed transitions through the use of features such as stepped massing, landscaping and low-impact screening."
- [154] To determine reasonable compatibility, the Board also considered evidence concerning increased noise attributable to the introduction of speakers for the Drive-in Food Service.
- [155] According to the Applicant:
- a) The proposed speakers do not carry and are hard to hear on the opposite side of the lane when a vehicle is present.
 - b) The proposed speaker system adjusts for ambient noise and will be softer during quieter periods overnight.
 - c) At 8-16 feet from the speaker, without a vehicle in the drive-through lane, the sound pressure level ranges from 36-45 decibels. Whispering is in the same range of 35-45 decibels.
 - d) The noise will be lower for adjacent properties as the speakers at 17 metres from the east lot line will be significantly further than 16 feet from the residential uses.

- e) To further reduce the noise from the speakers for the Drive-in Food Service, the Applicants propose to lower the speakers to a height of 36 inches so the customers' vehicles will provide additional screening and to add a significant amount of new landscaping and a new noise attenuation fence on the new landscaping island to the rear of the building.

[156] The Board considered the Appellants' submissions that they doubt the Applicant's claims and the internal memo they provided dated from 2010 from the speaker supplier, emphasizing sound can be hard to predict and the speakers will be louder than the cited numbers when vehicles approach and the occupants' place orders.

[157] The Board noted that based on the factors enunciated in his report, the Development Officer concluded that impact from the speakers would be minimal. Based on the evidence before it, the Board agrees with the Development Officer and finds that the sound levels in the proposed system will be very similar to (or less impactful than) the currently approved system which prohibits speakers. The Board finds that the noise from the speakers is unlikely to increase the noise associated with the Drive-in Food Service appreciably to a level beyond what could be considered reasonably compatible with the surrounding residential uses at this location.

[158] The Board also considered the Appellants' concerns that the intensity of the Drive in Food Service will increase and that the increase in business and noise will not be evenly spread over the hours of operation. If the hours of operation are unrestricted, they believe more visits will occur during the hours after 11 p.m. when 109 street is quieter and the ambient noise should be lower.

[159] The Applicants provided submissions and evidence about the expected change in intensity and impact likely to be associated the proposed changes to Drive-In Food Service:

- a) Given the volume of sales and data from across Canada, the proposed changes to the drive through configuration are expected to increase the number of vehicles visiting the site by from 10-20 a day.
- b) The reconfiguration and renovation will reduce the overall wait time and idling time per vehicle and therefore the changes will also reduce the overall noise attributable to the discretionary Use.
- c) The noise generated by the speaker system falls in step with the ambient levels and will be similar to, or less than, the current level and will be further reduced by the landscaping, noise attenuating fence and placement at a height of 36 inches.

- d) The exit of the Drive-in Food Service directs vehicles to the northwest corner of the site toward 109 Street and away from the subject site and from parking spaces along the east of the subject site and the residences to the east and south making drive through customers less likely to congregate than customers who park, exit their vehicles and enter the lobby to order food and then return to their vehicles.

[160] Given that many of the neighbours' concerns about safety and noise were attributed to the continuous overnight operation of the permitted Restaurant Use and that they sought to limit its hours of operation, the Board also considered the Applicants' novel proposed condition to restrict the hours of operation for the lobby of the Restaurant if the discretionary Drive-in Food Service were allowed to operate overnight:

- a) The Board noted that all parties agreed that the existing situation is less than ideal.
- b) Currently customers may access the site on foot or by vehicle 24 hours a day. When the Drive-In Food Service is closed, customers must park and exit their vehicles to enter the restaurant to order food. Then they are free to consume their meals inside, or outside in the parking lot or elsewhere.
- c) Based on the evidence, the overnight availability of walk in service and a warm space creates significant problems with loitering, crime and noise. Constable Bailey, of the Edmonton Police Service, is personally familiar with the situation on the site and surrounding properties. He confirmed that there were 204 calls for service and police-generated occurrences attributed to the site between January 1, 2018 and December 19, 2018. Of the 2014 calls, 111 were for "Trouble with Person" Trouble with Aggressive Panhandler", and "Trouble with Intoxicated Person" and that many occurred late at night. In Constable Bailey's opinion, imposing this novel condition would significantly reduce negative impacts, particularly crime and noise during the late night hours.

[161] After considering all of the presentations, the Board concurs with Development Officer's reasons and with his conclusion that the Drive-in Food Service as proposed with dual queuing lanes, speakers and no restrictions on hours of operation is reasonably compatible with surrounding developments because: it has been existing on the site (for over 20 years), complies with Section 72 of Bylaw and the Applicants undertook sufficient additional measures (the sound attenuation fence, the existing fence, and the landscaping island) to help mitigate the impacts of the use. Accordingly, the Board also finds the proposed Drive-in Food Service is not contrary to 109 Street ARP or the purpose of the CB1 district both of which emphasize balancing commercial uses and surrounding residential uses.

- [162] Based on the evidence of all parties and Constable Bailey, the Board also finds that approving the Discretionary Drive-in Food Service subject to the additional condition proposed by the Applicants which restricts the hours of operation for the lobby of the Restaurant and limits food service to drive through customers over night will likely reduce the intensity of the Restaurant Use and some of the current negative impacts thereby increasing the compatibility of the entire proposed development with the surrounding residential uses given the unusual circumstances at this particular location.
- [163] The Board grants a 0.16 metre variance to the setback required along the Front Lot Line for the following reasons:
- a) The physical footprint for the primary building is to remain substantially the same.
 - b) The variance is required for approximately one half of the distance of the west facing front façade of the existing building to accommodate supports for a canopy to shelter the new outdoor seating area.
 - c) Adding an outdoor seating area with a canopy and new landscaping will add an amenity and improve the pedestrian-oriented nature of the proposed development by providing a wider walkway as well as a transparent storefront along 109 Street consistent with the general intent for this district in the Policy 3.2.2 of the 109 Street ARP and with the general purpose of the Main Streets Overlay in section 819.1.
 - d) The Board agrees with the Development Officer that the proposed development is also consistent with the substantive intent of the setback required per section 819.3.2 of the Main Streets Overlay as section 819.3.3 provides that, buildings may be built directly to the property line notwithstanding the required setback where 4.7 metres of public walkway is provided. As the Applicants propose to convert the existing grassed boulevard which is in ill repair to a walkway, the public and private walkway space provided in front of the outdoor seating area will be almost 4.8 metres in width which is more than the minimum 4.7 metres walkway contemplated in the Main Streets Overlay as a precondition for relaxation of the front setback.
- [164] The Board also notes that the parties agreed that the leaving outdoor furniture permanently in place on the patio could encourage unwanted congregation and contribute to current late night vagrancy, crime and noise problems experienced by the Applicants and the Appellants. The Applicants indicated they are willing to use furnishings which will be removed and brought inside if the dine in portion of the proposed development closes.
- [165] Given the site conditions, the Board finds the 0.84 variance with the renovations and wider walkway will add to the amenities of the area and will not have an adverse impact for use value or enjoyment of neighbouring properties, particularly if the outdoor seating area is available in conjunction with the hours of operation of the dine in portion of the proposed development.

The Board allows the variance, but leaves decisions concerning the portability of furnishings to the Applicants.

[166] The Board grants a 4.3 metres variance to the required 6.0 metres setback from the east lot line along a Residential Zone for portions of eight off street parking spaces and two garbage bins for the following reasons:

- a) For over twenty years, the parking spaces and garbage bins have been authorized to be located within the required setback at approximately the same distance as proposed from the east lot line shared with the adjacent condominium development.
- b) With the proposed development, eight parking spaces will be moving 0.10 metres closer to the residential development to the east. The Board finds this is not a material change.
- c) The perimeter fence along the east lot line will remain and the proposed development includes new landscaping significantly over and above the required Landscaping in the *Bylaw* which further buffers the neighbouring residential uses and is consistent with Policy 3.2.3.13 of the 109 Street ARP.
- d) While the garbage bins will remain within the required setback from the residential properties to the east, the overall situation with respect to garbage will be improved both in function and aesthetics because
 - i. The Applicants propose in-ground 'Earth Bins' at the new location.
 - ii. The Earth Bins are to be locked and sealed which will keep refuse and smell inside limiting the impact on surround residential uses.
 - iii. The Earth Bins are to be heavily screened by substantial new landscaped spaces: there will be a landscaped buffer in the most sensitive areas: one approximately 4.8 metres by 6.2 meters to the south, and one 5.0 by 3.0 metres to the north consistent with policy 3.2.3.18 of the 109 Street ARP.
 - iv. The Earth Bins will be located at substantially the same distance from the east lot line, but they will now be located to the rear of the residential condominium building and in closer proximity to the off street parking spaces and approximately 6.2 metres from the rear lane.
 - v. The new location is further away from 85 Avenue and with the landscaping it is less visible from that street. This is also consistent with policy 3.2.3.18 of the 109 Street ARP.

- e) Further, the Board heard evidence that security and visibility are also serious concerns. The Board heard evidence from the Appellants who reside in the condominium building on the abutting lot that individuals currently hide behind the garbage enclosure by the east perimeter fence. At this particular site, a continuous, heavily landscaped buffer 6.0 metres in width along the entire east lot line may create some safety concerns contrary to CPTED principles because it would provide a place for individuals to hide.

[167] For the reasons above, the Board finds that the proposed development with the imposed conditions is reasonably compatible with its surroundings and the two variances will not unduly interfere with the amenities of the neighbourhood nor materially interfere with or affect the use, enjoyment and value of neighbouring parcels of land.

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

Important Information for the Applicant/Appellant

3. 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.
4. 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.
5. 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.
6. A Development Permit will expire in accordance to the provisions of Section 22 of the *Edmonton Zoning Bylaw, Bylaw 12800*, as amended.
7. 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.
8. 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.