Edmonton Subdivision and Development Appeal Board

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Date: November 19, 2015
Project Number: 171075618-001
File Number: SDAB-D-15-257

Notice of Decision

This appeal dated October 7, 2015, from the decision of the Development Authority for permission to:

> Construct 15 Dwellings of Apartment Housing with 2 Convenience Retail Stores Use units (1 building, 3 Storeys with penthouse, 176.5 sq. m. of Commercial on main floor at grade, underground parkade)

on Plan I23 Blk 140 Lot 33, located at 10911 - 80 Avenue NW and Plan I23 Blk 140 Lot 34, located at 10907 - 80 Avenue NW and Plan I23 Blk 140 Lot 35, located at 10903 - 80 Avenue NW, was heard by the Subdivision and Development Appeal Board on November 4, 2015.

Summary of Hearing:

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.

The appeal was filed on time, in accordance with Section 686 of the *Municipal Government Act*, R.S.A 2000, c. M-26.

The Board heard an appeal of the decision of the Development Authority to refuse an application to construct 15 Dwellings of Apartment Housing with 2 Convenience Retail Stores Use units (1 building, 3 Storeys with penthouse, 176.5 sq. m. of Commercial on main floor at grade, underground parkade) located at 10911 / 10907 / 10903 – 80 Avenue NW. The subject Site is zoned RA7 Low Rise Apartment Zone and is within the Medium Scale Residential Infill Overlay and the 109 Street Corridor Area Redevelopment Plan.

The development permit application was refused because of required variances in the maximum allowable Floor Area Ratio; the minimum required Side Setback; balconies are not recessed or partially recessed; and the common Amenity Area is indoors instead of outdoors.

Prior to the hearing the following information was provided to the Board:

- A copy of the Development Officer's written submission dated October 23, 2015
- Information from Drainage Services, Fire & Rescue Services, and Waste Management Services provided by the Development Officer
- A copy of the 109 Street Corridor Area Redevelopment Plan

- A copy of the Medium Scale Residential Infill Overlay – Appendix 2 – 109 Street Corridor
- A written submission from Mr. J. Murphy, legal counsel for the Appellant, received November 4, 2015

The Board heard from Mr. J. Murphy of Ogilvie LLP, legal counsel for the Appellant, DER & Associates Architecture Ltd. Mr. Murphy was accompanied by Mr. Der.

Mr. Der first showed a Real Property Report outlining the positioning of this building, which is two blocks south of Whyte Avenue on 109 Street. The Side Setback in question is on 109 Street, which is the Side Yard. The commercial area faces 109 Street. The front of the building, which is residential, faces 80 Avenue.

Mr. Murphy and Mr. Der provided the following submissions:

Exhibit A: SDAB-D-15-087
Exhibit B: Copy of Community Consultation presented to Development Officer

1. Based on the Development Officer's written submission there is no objection to the small variances. The proposed development meets the 109 Street Corridor Area Redevelopment Plan (ARP) goals.
2. The Side Yard of the proposed development is the commercial area development. The ARP suggests a 3.0-metre Setback; however, since this development is considered residential the underlying zoning regulations require a greater Setback.
3. Recessed balconies would create a shadowing effect. Protruding balconies break up the massing effect of this side of the building, are part of the architectural design, and allow the residents to enjoy the area and the mature trees along 80 Avenue. Both the Edmonton Design Committee and the Development Officer had no problems with the protruding balcony design.
4. Outdoor amenity space is provided by Tipton Park, which is located kitty corner to the northeast portion of the proposed development. Combined with their balconies, residents have more than the required outdoor amenity space.
5. In addition to the outdoor amenity space, the Architect is planning an indoor Amenity Area which could be used as a party area and would have no impact on neighbours. The indoor amenity space is an added feature, and the Development Officer had no problems with it.
6. Section 3.3.3.4 of the ARP was not cited by the Development Officer in the reasons for refusal, it simply appeared in the written submission. Through five years of working with officials and councilors the property was rezoned RA7, a Direct Control Zone was not required and the proposed development aligns with the ARP.
7. The Appellant does not know what the definition of "development capacity" is within the meaning of section 3.3.3.4 of the ARP, but believes whatever the definition, the proposed development does not exceed "development capacity".
8. In an RA7 zone you could approve a 20 storey apartment building with ten times the Density. He believes that if you stepped that far outside what the ARP envisions, then you would trigger Section 3.3.3.4 and you should go and get a DC2.

9. Section 3.3.3.4 does not say if you need **any** variances you must rezone to DC2, it could have said so.
10. Section 3.3.3.4 of the ARP does not apply to this development and an application for a Direct Control zone is not required. The development can meet all components of the RA7 Low Rise Apartment zone and the Medium Scale Overlay.
11. The Side Yard variance increased building area, but not intensity.
12. The FAR variance has no impact on intensity. The three-storey apartment building requires a slight increase in the FAR to accommodate a penthouse on top. The penthouse takes up half of the top floor and is set back so there will be no impact on the street or residential areas. The Edmonton Design Committee wanted the penthouse to protrude forward, but the architect's preference is to have it recessed to avoid sun shadowing or massing effects on neighbours.
13. This building is within the Height and Density requirements. It does not exceed capacity. It fits the ARP perfectly.
14. FAR is an old fashioned concept and an increase in FAR alone is not an intensification of use.
15. Section 3.3.3.4 is not triggered here because the FAR variance is minor and the development is within the building envelope and within the Density for the Site.
16. There is no planning reason to apply the policy when the building meets Height and Density and has only a minor increase in FAR. It is exactly what the ARP allows.
17. An apartment building was recently erected across the street from Knox United Church, which was built with an additional 19 units increasing the FAR from 1.4 to 1.96. Section 3.3.3.4 of the ARP was not raised as an issue in this case. Mr. Murphy submitted a copy of a previous SDAB Decision (SDAB-D-15-087) regarding this development. (Exhibit "A"). He queried why the City did not raise section 3.3.3.4 there with a significant Density increase.
18. Mr. Murphy argued that variances are minor and believes the Development Officer would agree.

Mr. Murphy and Mr. Der provided the following responses to questions:

1. FAR is a meaningless measure in neighbourhoods where council wants to densify an area. So long as the Height and total area are controlled, adding FAR does not add to the number of units so it does not add Density..
2. The proposed development is within the permitted Height. The Setback of the penthouse makes this looks like a three-storey apartment building.
3. The Appellant engaged in community consultation as required by the Medium Scale Overlay and canvassed the area within 61 metres of the proposed development. The Appellant received "overwhelming non-opposition" to the proposed development, and received no negative comments from those who were notified. The only comments the Appellant received were regarding the alley and bus stop, both of which the Appellants have already planned to upgrade. Mr. Murphy submitted a copy of the community consultation. (Exhibit "B").
4. The Appellant sent a copy of their plans for the proposed development to the Garneau Community League and assumed there was no opposition as they did not receive a response.

5. The indoor amenity space will likely be an exercise room. Given that the proposed development borders on 109 Street, a major arterial road, any outdoor amenity space would likely not be used as much as an exercise room. In addition, residents have access to Tipton Park, which is kitty corner from the proposed development.
6. There is no definition of what would constitute an excess in "development capacity" in section 3.3.3.4 of the ARP, however, Mr. Murphy argued that a significant variation would be required to bring this section into play (i.e. a very large increase in Density).
7. The Appellant has reviewed the list of conditions outlined in the Development Officer's report and are willing to meet all of them exactly as they are indicated in the report.
8. The Appellant has met all of the conditions of the Edmonton Design Committee with the exception of changing the penthouse and exterior cladding.
9. The Appellant will be using high quality materials and architectural design as directed by section 3.2.3.4 of the ARP.
10. There are pedestrian amenities along 109 Street. The Appellant is upgrading the bus stop and although it will have an impact on the sidewalk, there will be a considerable Setback of 3.6-metres. The usual required Setback required is 3.0-metres.
11. In designing the building, the Appellant considered the front yard Setbacks of neighbouring houses on 80 Avenue and set it back accordingly. The residential units face north and south and do not face commercial areas along 109 Street.
12. At 3.6-metres, the proposed development is set back further on 109 Street than the three units north of them. London Drugs is right at the property line and the other two properties are set back at 3.0-metres.
13. The Appellant was originally asked to set the proposed development back 4.5-metres, which would be technically required where the Side Yard abuts an arterial road. But here the commercial uses face 109 Street so this regulation does not make sense because commercial buildings can go to the property line along 109 Street. Ultimately, there was a compromise resulting in a 3.6-metre Setback.
14. There are no residential units on the ground floor facing 109 Street, and the entrances to all residential units face 80 Avenue.

The Board heard from Mr. M. Harrison, representing the City of Edmonton Sustainable Development Department, who provided the following submissions:

1. Mr. Harrison was satisfied with the public consultation submitted to the City.
2. The Edmonton Design Committee supported the development, with conditions, one of which is to return an information package to the Committee, which had not been returned at the time of the hearing. The changes the Board is seeing here at the hearing have not been reviewed by the Edmonton Design Committee.
3. All variances required for this proposed development are minimal; however the lack of clarity on the meaning of "development capacity" in section 3.3.3.4 of the ARP led him to err on side of caution and refuse the development permit application. Mr. Harrison noted he was seeking direction from the Board about the meaning of "development capacity" in the ARP.
4. Mr. Harrison discussed each of the four variances:

    a. <u>Floor Area Ratio</u>

i. Section 8.23.3.6 of the *Edmonton Zoning Bylaw* provides the Development Officer with variance authority. In his view, the variance required for the FAR was minimal and had little or no impact on neighbours; however, he is aware that section 3.3.3.4 of the ARP may apply. His decision was to err on side of caution.

ii. Mr. Harrison disagreed with counsel for the Appellant and stated that FAR has a purpose and a use, which is to limit the massing effect of a building on a Site. Notwithstanding these comments, he was not concerned with the FAR variance in this case.

iii. With respect to the meaning of "development capacity" in section 3.3.3.4 of the ARP, Mr. Harrison was not sure where to draw the line in determining that a proposed development exceeded that provision. One possible instance in which a development may exceed "development capacity" occurs where the proposed development interferes with neighbouring properties. In his view, in this case the proposed development does not interfere with neighbouring properties so on that measure section 3.3.3.4 does not apply in this case.

b. Indoor Amenity Space

i. Mr. Harrison was not concerned that the amenity space for the proposed development was an indoor space. Given the combination of the adjacent Tipton Park for outdoor amenity space and the indoor amenity space that could be used in the winter, he felt this variance was appropriate and would have no impact. He did not grant this variance because he preferred to err on the side of caution.

c. Side Setback Variance from 4.5 metres to 3.6 metres

i. Although commercial space is located on the ground floor of the proposed development, the zoning is in a residential zone (RA7 Low Rise Apartment Zone). The Development Officer agreed with the Appellant that the proposed variance to Side Setback is acceptable and meets the ARP's intention.

d. Recessed Balconies

i. Mr. Harrison adopted the position of the Edmonton Design Committee, which cited no concerns with protruding versus recessed balconies.

5. With respect to the decision mentioned by the counsel for the Appellant and submitted as Exhibit "B", the owner of that development was not required to apply for Direct Control zoning because section 3.3.3.4 of the ARP did not apply to the location of that property.
6. Even if Height and Density are met, FAR may be an issue because it addresses the massing of the building. The Height and Density are appropriate for this property and the FAR variance here did not affect any neighbours as the penthouse is recessed. The orientation of the penthouse will not overlook the west neighbour.
7. Mr. Harrison discussed the meaning of "development capacity" in section 3.3.3.4 of the ARP. Direct Control zones are required to give those particular zones "bonus features",

including family-oriented housing. Mr. Harrison suggested the Board consider interpreting "development capacity" as whether the development imposes true intensification or a minor tweak. He agreed that some of the conditions imposed on the proposed development could address potential community benefits or enhanced design features described in section 3.3.3.4, including the alley upgrade.

8. The ARP provides that if a development exceeds "development capacity" the owner must apply for Direct Control zoning. The Development Officer was unclear if exceeding the FAR or requiring the Side Setback variance would trigger that policy and asked for the Board's direction.

In rebuttal Mr. Murphy made the following submissions:

1. Mr. Murphy conceded that section 3.3.3.4 of the ARP did not apply to the SDAB decision he previously cited to the Board. However, he argued that the approval of the building in that case is still important because it demonstrates that the area can absorb increased Density.
2. FAR is intended to limit the effects of massing. However, Mr. Murphy argued that in the context of this neighbourhood, they have pulled back the Side and Front Setbacks in accordance with neighbours' developments, so they will not be affecting people in the area.
3. Whatever achieving development capacity above the underlying zone may mean, this is not a case which triggers that threshold..

Decision:

The appeal is ALLOWED and the decision of the Development Authority is REVOKED. The Development is GRANTED as applied for to the Development Authority, subject to the following CONDITIONS (as provided in the written submission of the Development Officer):

PRIOR TO THE RELEASE OF DRAWINGS FOR BUILDING PERMIT REVIEW,

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

    Any letter of credit shall allow for partial draws. If the landscaping is not completed in accordance with the approved Landscape Plan(s) within one growing season after completion of the development or if the landscaping is not well maintained and in a healthy condition two growing seasons after completion of the landscaping, the City may draw on the security for its use absolutely. Reference Section 55.6.

2. The applicant or property owner shall pay a Sanitary Sewer Trunk Fund fee of $15,315.00. All assessments are based upon information currently available to the City. The SSTF charges are quoted for the calendar year in which the development permit is granted. The final applicable rate is subject to change based on the year in which the payment is collected by the City of Edmonton.

Soil above underground parking facilities shall be of sufficient depth to accommodate required landscaping, including trees, shrubs, flower beds, grass, and ground cover.

All required parking and loading facilities shall only be used for the purpose of accommodating the vehicles of clients, customers, employees, members, residents or visitors in connection with the building or Use for which the parking and loading facilities are provided, and the parking and loading facilities shall not be used for driveways, access or egress, commercial repair work, display, sale or storage of goods of any kind.

Parking spaces for the disabled shall be provided in accordance with the Alberta Building Code in effect at the time of the Development Permit application, for which no discretion exists.

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

All ground Storey Apartment Dwellings adjacent to a public roadway other than a Lane shall have a private exterior entrance that fronts onto the roadway. Sliding patio doors shall not serve as this entrance.

The Alberta Electrical Protection Act, Electrical and Communication Utility Systems Regulation requires that all buildings, signs, structures and other objects be three meters or more from power lines. If you plan to build near a power line, please contact Edmonton Power, Customer Engineering Services.

All activities or operations of the proposed development shall comply to the standards prescribed by the Province of Alberta pursuant to the Environmental Protection and Enhancement Act and the regulations pertaining thereto.

Landscaping shall be in accordance to the approved landscape, Section 55 and to the satisfaction of the Development Officer.

Bicycle Parking shall be designed so that bicycles may be securely locked to the rack, railing or other such device without undue inconvenience and shall be reasonably safeguarded from intentional or accidental damage, in accordance with the following standards:

a. Bicycle Parking shall hold the bicycle securely by means of the frame. The frame shall be supported so that the bicycle cannot fall or be pushed over causing damage to the bicycle.
b. Bicycle parking shall accommodate:

i. Locking both the frame and the wheels to the rack, railing or other such device with a high security U-shaped shackle lock, if the cyclist removes the front wheel;
ii. Locking the frame and one wheel to the rack, railing or other such device with a high security U-shaped shackle lock, if the cyclist leaves both wheels on the bicycle;
iii. Locking the frame and wheels both to the rack, railing or other such device with a chain or cable not longer than 2.0 m without the removal of any wheels; and
iv. Bicycle parking racks, railings or other such devices shall be anchored securely to a hardsurface or fixed structure.

Transportation Conditions:

1. The owner must construct a 2 m concrete separate sidewalk, to be constructed on the west side of 109 Street from 80 Avenue to the south property line, including a landscaped boulevard.

2. The existing alley is currently constructed to a residential alley standard. With the increased traffic resulting from the proposed development, the alley must be reconstructed to a paved commercial alley standard once construction of the development is complete, from 109 Street to the west property line.

3. The owner is required to construct a bus stop and amenities pad.

4. The owner must enter into a Servicing Agreement with the City for the following improvements:
   a. construction of a 2 m concrete separate sidewalk on the west side of 109 Street from the 80 Avenue to the south property line, including a treed/landscaped boulevard;
   b. construction of a bus stop and amenities pad; and
   c. reconstruction of the existing alley to a paved commercial alley standard from 109 Street to the west property line.

   This Servicing Agreement is a requirement of this Development Application. The Servicing Agreement, which includes an Engineering Drawing review and approval process, must be signed PRIOR to the release of the drawings for Building Permit review. The applicant must contact Adil Virani (780-496-6037) of Current Planning to initiate the Agreement.

5. The additional proposed boulevard trees and landscaping shall be provided to the satisfaction of Sustainable Development and Transportation Services. Detailed landscaping plans, including all existing and proposed utilities within the road right-of-way must be submitted as part of the Servicing Agreement for review and approval by Sustainable Services and Transportation Services.

6. The underground driveway ramp must not exceed a slope of 6% for a minimum distance of 4.5 m inside the property line and the ramp must be at grade at the property line. The proposed ramp slope submitted by the applicant is acceptable to Transportation Services.

7. Any underground parking access card devices must be located on site, a minimum of 3 m inside the property line.

8. The proposed retaining walls bordering the underground driveway/parkade ramp must not exceed a height of 0.3 m for a distance of 3 m from the property line and no portion of the wall may encroach onto road right-of-way. Should the owner/applicant wish to increase this height, adequate sight line data must be provided to ensure vehicles can exit safely.

9. This development is proposed to be constructed up to the property line. The owner/applicant must enter into an Encroachment Agreement with the City for any pilings, shoring & tie-backs to remain within road right-of-way. The owner/applicant must contact Shital Shah (780-496-3961) or Hailley Honcharik (780-496-5372) of Sustainable Development Services for information on the agreement. The applicant is responsible to provide Sustainable Development with a plan identifying all existing utilities on road right-of-way within the affected area of the encroachment.

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

11. There are existing boulevard trees adjacent to the site that must be protected during construction. Prior to construction, the owner/applicant must contact Marshall Mithrush of Community Services (780-496-4953) to arrange for hoarding and/or root cutting. All costs shall be borne by the owner/applicant.

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

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

Notes:

A Building Permit is Required for any construction or change in use of a building. For a building permit, and prior to the Plans Examination review, you require construction drawings and the payment of fees. Please contact the 311 Call Centre for further information.

The applicant/owner is responsible for ensuring that the proposed development does not encroach on or impair the operation of any existing hydrants and/or valves that are located either in the boulevard, sidewalk, or the street. If a conflict exists then it will be responsibility of the applicant/owner to rectify the problem by:

a. redesign of the proposed development followed by a resubmission for approval to the City or,
b. relocation of the utility which is to be done by the City staff at the sole expense of the applicant/owner.

For further information, please contact the Drainage Branch of the Asset Management and Public Works Department at 780-496-5460.

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

An approved Development Permit means that the proposed development has been reviewed only against the provisions of the Edmonton Zoning Bylaw. It does not remove obligations to conform with other legislation, bylaws or land title instruments such as the Municipal Government Act, the ERCB Directive 079, the Edmonton Safety Codes Permit Bylaw or any caveats, covenants or easements that might be attached to the Site.

Signs require separate Development Applications.

In granting the development permit application the following variances to the *Edmonton Zoning Bylaw* are allowed:

Variances:

1. The maximum Floor Area Ratio required pursuant to section 210.4(5)is relaxed to allow an increase of 0.16 to 1.56.
2. The minimum eastern Side Setback of 4.5 metres required pursuant to section 823.3 (1)(d) is relaxed by 0.9 metres to 3.6 metres.

3. Section 823.3(2)(j) is relaxed to allow the balconies to be protruding rather than recessed or partially recessed.
4. Section 823.3(3)(c)(i) is relaxed to allow the common Amenity Area to be provided indoors instead of outdoors.

Reasons for Decision:

The Board finds the following:

1. The proposed development is a Mixed Use building with at-grade Convenience Retail Stores and at-grade and above grade Apartment Housing.
2. The Site is located in the RA7 Low Rise Apartment Zone and is subject to the 109 Street Corridor Area Redevelopment Plan (ARP). Apartment Housing is a Permitted Use and Convenience Retail Store is a discretionary Use in the RA7 zone. This type of mixed development with ground floor commercial and higher residential uses is contemplated and encouraged by the ARP.
3. The Board approves the four required variances because the Board accepts the Development Officer's conclusion that each of the required variances is minimal and will have no adverse impact individually or collectively on surrounding properties.
4. In addition:
    a. The Side Setback variance of 0.9 metres along 109 Street is granted because
        i. The Side Setback was determined based on the residential Use requirement for Side Yards with flanking arterial roads because the original lots faced 80 Avenue. However, the only developments with front entrances at-grade facing 109 Street are commercial. The proposed Setback of 3.6-metres along 109 Street is well in excess of the required 1.0-metre Setback for commercial Uses applicable to this part of the property. The variance is therefore a sensible compromise that takes account of the objectives of the two different applicable Setbacks.
        ii. Given that a 1.0 metre Setback is allowed for commercial Uses along 109 street, the proposed 3.6 metres Setback will have no negative impact on pedestrian friendliness across this portion of the Site.
        iii. While a 3.6 metres Setback is greater than some other commercial developments along this portion of 109 Street, it is not uncharacteristic of the area.
        iv. The development is located on a corner Site which will also mitigate any minor differences in Setbacks of the neighbouring properties.
    b. A variance permitting the indoor Common Amenity Area is granted because
        i. The proposed indoor amenity space will benefit the residents, particularly given the property is flanked by 109 Street, a busy traffic corridor.
        ii. Tipton Park, located kitty corner to the proposed development, provides ample outdoor amenity opportunities.
        iii. This variance has no impact for neighbouring residents.
    c. A variance permitting non-recessed balconies is granted because
        i. This type of design is not uncharacteristic of the area.

ii. This design has been approved by the Edmonton Design Committee and the building has been designed to break up the massing affects through other design features.

iii. This variance has no impact for neighbouring residents

d. The variance to allow a FAR of 1.56 is granted because

i. The Board accepts the submission of the Development Officer and the Appellant that the variance to the FAR is minimal and will have no impact on massing of the building or on sun-shadowing.

ii. The excess in FAR is mitigated as the 4th floor Penthouse Suite is recessed.

iii. The variance in the FAR will have no impact for pedestrians.

5. While section 3.3.3.4 of the ARP was not cited in the original reasons for refusal, the issue was raised by the Development Officer in his written submissions and the Board was asked to consider whether section 3.3.3.4 of the ARP was applicable.
6. Section 3.3.3.4 provides:

> *Where a development proposes to* ***achieve a development capacity above the limit of the low intensity CB1 commercial zone or medium density RF6 or RA7 zones****, the applicant must submit a Direct Control application. The application shall provide for community benefits and/or enhanced design features. Such features may include: assisted housing units; family oriented housing units; public realm enhancements; improved transition (increased setback and stepped massing) between the new development and existing low density residential development to optimize access to sunlight and increase privacy; and sustainable building practices. The façade will be stepped or sloped back to optimize access to sunlight and increase privacy. Development will be considered to a maximum residential density of 175 dwellings per hectare (70.8units per acre).* [Emphasis added]

Under this policy, if a development proposes to achieve a development capacity above the limit of the medium density RA7 Low Rise Apartment Zone, the applicant is required to submit a Direct Control re-zoning application.

7. In this case the Development Officer was unsure whether the proposed development could be characterized as a development aiming to achieve development capacity above the limit of the medium density RA7 zone thereby triggering the requirement for DC zoning. In his view FAR is a component of "development capacity" and a variance in FAR might trigger this section.
8. The Appellant argued two points. First, based on its wording, section 3.3.3.4 could not be triggered by just any variance- the variance at issue must be significant. Second, where the Height and Density regulations of the RA7 are met and the parties agree the variances are minimal, section 3.3.3.4 is not triggered.
9. The Board agrees with the parties that Section 3.3.3.4 is somewhat ambiguous.
10. The Board finds that the section is not necessarily triggered whenever any variance is required, but makes no universally applicable determination concerning when the section is triggered generally.

11. In each case the Board must look at the totality of the criteria which contribute to the concept of "development capacity". In making that determination, the Board notes that policy itself refers to factors such as sunlight, privacy, and density, in particular. Floor Area Ratio is not mentioned in section 3.3.3.4 of the ARP, although it may be a contributing factor. Each case must be considered on its own merits.
12. The following factors are important in determining this case:
    a. The parties agree that the variances required are minor with little or no impact on neighbouring properties.
    b. Variances which might otherwise be considered overdevelopment have been mitigated:
        i. While the FAR is exceeds the requirement prescribed by the *Edmonton Zoning Bylaw*, this is attributable to a recessed penthouse, which has no impact on the pedestrian streetscape.
        ii. The Side Setback variance is a compromise between the underlying zone and the ARP, and is required because of the original orientation of developments on this corner Site.
        iii. The proposed development is within the required Height and Density development regulations applicable to RA7. In addition, the recessed penthouse lessens potential sun shadowing and privacy impacts.
        iv. The Density of the proposed development is not only within the limits of the RA7 zone, it is also well below the maximum residential density of 175 dwellings per hectare that the City indicates it would consider for development in this area per section 3.3.3.4 of the ARP.
13. Based on an overall consideration of these indicia of "development capacity", the Board finds the section 3.3.3.4 of the ARP is not triggered in this case.
14. Based on the Appellant's acknowledgement and full consent, the Board imposes the conditions suggested by the Development Officer as listed above.

Important Information for the Applicant/Appellant

1. This is not a Building Permit. A Building Permit must be obtained separately from the Sustainable Development Department, located on the 5th Floor, 10250 – 101 Street, Edmonton.

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

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

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

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

6. When a decision on a Development Permit application has been rendered by the Subdivision and Development Appeal Board, the enforcement of that decision is carried out by the Sustainable Development Department, located on the 5th Floor, 10250 – 101 Street, Edmonton.

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Kathy Cherniawsky
Subdivision and Development Appeal Board

Edmonton Subdivision and Development Appeal Board

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Date: November 19, 2015
Project Number: 177837033-002
File Number: SDAB-D-15-258

Notice of Decision

This appeal dated October 9, 2015, from the decision of the Development Authority for permission to:

> Construct exterior alterations to a Single Detached House (Driveway extension, 1.52m x 8.20m), existing without permits

on Plan 0624661 Blk 15 Lot 103, located at 4509 - 162 Avenue NW, was heard by the Subdivision and Development Appeal Board on November 4, 2015.

Summary of Hearing:

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.

The appeal was filed on time, in accordance with Section 686 of the *Municipal Government Act*, R.S.A 2000, c. M-26.

The Board heard an appeal of the decision of the Development Authority to refuse an application to construct exterior alterations to a Single Detached House (Driveway extension, 1.52m x 8.20m), existing without permits located at 4509 – 162 Avenue NW. The subject Site is located within the RSL Residential Small Lot Zone and is within the Brintnell Neighbourhood Structure Plan and the Pilot Sound Area Structure Plan.

The development permit application was refused because the concrete extension on the east side of the property does not lead to an overhead garage door or Parking Area. A Parking Area or parking spaces shall not be located within the Front Yard and the Front Yard shall be landscaped.

Prior to the hearing the following information was provided to the Board:

- A copy of a written submission from the Appellant received with the original appeal.
- A copy of the written submission from the Development Officer dated October 29, 2015
- Development permit application information received from the Development Officer

The Board heard from the Appellant, Ms. R. Marcelo. She was accompanied by her husband, Mr. H. Marcelo and her father, Mr. F. Fata. Together they provided the following submissions in support of the appeal.

1. They poured the walkway in June, 2010, a date verified by the receipt, contained in their supporting documents.
2. The walkway was used to access their rear yard and the side door of the garage.
3. They sold the subject property in the summer of 2015 and needed a Real Property Report.
4. The sum of $5000.00 was held back from the proceeds of sale for non-compliance because there is no permit for this concrete strip.
5. To get compliance and release of funds, the Appellant was advised to apply for a development permit.
6. Therefore the Appellant made this application, even though she did not believe that a permit was required in 2010 when the concrete strip was poured.
7. After the permit had been refused, the Development Officer advised them to appeal to the Board to get "what they wanted". To support this submission, the Appellants provided a copy of the e-mail from the Development Officer (marked Exhibit "B").
8. The concrete strip is 1.52 metres wide and is similar to concrete areas on surrounding homes in their neighbourhood.
9. The Appellant argued that three cars cannot fit across the Driveway and the extended concrete space.
10. She advised the Board that her family does not use the concrete strip for parking. The new owners use the concrete strip to access the rear yard of the house.
11. The Appellants presented a series of 26 photographs (marked Exhibit "A).
    a. The first photograph was an overhead view of the neighborhood taken from Google Maps.
    b. The second photograph was of the subject house taken prior to the completion of Landscaping. This photograph showed the original Driveway without the concrete strip.
    c. The remainder of the photographs depict neighbouring properties along the street including the adjacent properties. The concrete extensions in these photos are varied. Some have been added on both sides of their respective preexisting Driveways, others on one side only. Many are wider than the proposed development.
12. The photographs show that the Appellant's property is consistent with "culture of the neighbourhood" and specifically with existing Driveway extensions located on many other properties in the neighborhood.
13. The concrete addition was poured at the time of Landscaping. It leads up the side of the Driveway, through a gate, past the garage side door, to a back patio and steps. The original Driveway was poured two years earlier when the house was constructed.
14. There is also approximately 16 inches of rock as Landscaping alongside the added concrete strip. They showed the Board a copy of their Landscaping plan for the Front Yard and a photograph of the final Landscaping, which they argued, showed significant hardsurface Landscaping elements and trees and shrubs on the west side.
15. The house faces north and the lack of sun limits growth, and as a result, they had limited Landscaping options both in the main part of the Front Yard and along the east and west sides of their Driveway.

16. When they poured the concrete strip they were concerned about the footing for walking from the Driveway to the side door of their garage. They decided they would prefer concrete over rocks for the walking area.

The Appellants provided the following responses to questions:

1. The vehicle shown parked on the walkway extension in the Development Officer's photograph was a utility trailer they borrowed for the purpose of moving in August, 2015. They did not normally park in this area, but used it for a walkway.
2. The walkway does not run straight down the eastern property line, it curves to follow the line of the Driveway.
3. They highlighted the area the Appellant is seeking a permit for on the Site plan. When she applied for this area she was told to apply for a "Driveway extension." She did not consider whether it should be referred to as a "Driveway extension" or a "walkway", nor did she understand any significance about the distinction.
4. The Appellant has no concerns if a permit granted for the concrete strip includes a condition that would prohibit parking on the concrete strip.
5. They reviewed the overhead view of the immediate 35 houses and confirmed that approximately only six did not have Driveway extensions.

The Board heard from Ms. E. Lai and Mr. K. Bacon, representing the City of Edmonton Sustainable Development Department, who provided the following responses to questions:

1. The Development Officers confirmed there is no definition or standard dimensions for "sidewalk" in the relevant provisions of the *Edmonton Zoning Bylaw*.
2. The proposed development represents a Driveway 8.22 metres in width. This means there is space for three standard parking stalls (5.5 metres by 2.6 metres) available across the width of the front Driveway paved area.
3. Given the potential for three parking stalls, development is an overly wide Driveway, not a compliant Driveway and a walkway combination as suggested by the Appellants.
4. The Development Officers advised that Landscaping must comply with Section 55 on both sides of the Driveway of the Front Yard.
5. Here the existing Landscaping consisting of chips and rocks would be acceptable as required Landscaping on one side by the front door, but not on the other side closest to the cement extension.
6. They conceded that, contrary to the note in their earlier written submission, allowing the extension would have no adverse effect for on-street parking.
7. In 2010, a development permit would have been required for area highlighted by the Appellant as the cement extension shown on the Site plan.
8. In 2010, this extension would not have been approved and would have been considered a Driveway extension.
9. The Development Officers agree, contrary to the note in their earlier written submission, the Driveway on the subject property is typical rather than atypical of the area, based on evidence received from the Appellant.

In rebuttal Ms. Marcelo made the following submissions:

1. The extra 1.5 metres of width, practically speaking, is insufficient space to park a larger vehicle, such as an SUV. The Appellants advised the Board that if there were three vehicles parked in the Driveway they would be unable to get their children in and out of their vehicles.

Decision:

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

1. A 1.52 by 8.52-metre Driveway extension is allowed on the highlighted area identified on the approved Site plan.
2. Parking is not permitted on the Driveway extension on the highlighted area identified on the approved Site plan.

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

1. Section 54.2(2)(e) is relaxed by 1.52 metres to allow the Driveway to be a total width of 8.22 metres, which exceeds the maximum allowable width of 6.7 metres.

2. The Landscaping requirement pursuant to Section 55.4(1) is waived for that portion of the Front Yard located within the highlighted area on the approved Site plan.

Reasons for Decision:

The Board finds the following:

1. The proposed Driveway extension is an accessory to a permitted use in the RSL Residential Small Lot Zone.
2. Based on the evidence provided, the proposed development is a Driveway extension as it is contiguous with the pre-existing driveway, finished in an identical manner and more than wide enough to accommodate three parking stalls.
3. The Board accepts that the Driveway extension was poured in 2010. A Development Permit was required for Driveway extensions in 2010. No permit was obtained; therefore the development is not a legal non-conforming structure pursuant to Section 643 of the *Municipal Government Act*.
4. Photographic evidence submitted by the Appellant (Exhibit A) and photographs contained in the Development Officer's report show that a significant majority of properties located on the blockface and around the subject cul-de-sac contain Driveway extensions similar to, or wider than, the extended Driveway on the subject Site.

5. These neighbouring driveway extensions are located beyond the containment of their respective garages and appear to exceed the 6.2 metre maximum allowable width. Many lead to side and rear yards.
6. Given the number of existing driveway extensions, the Board rejects the Development Officer's argument that this development could be precedent setting in any way.
7. The Front Yard Landscaping located on the subject Site is similar to Landscaping on neighbouring lots and in compliance with the requirements for Landscaping in Section 55.4(1) other than for the highlighted portion of the Site plan.
8. Based on the evidence provided at the hearing, the Development Officer concurred that this type of driveway extension is not only characteristic, but extremely common, within the immediate area and that many of the examples of neighbouring properties provided by the Appellant are wider than the proposed development.
9. The Driveway extension has existed for five years with no known complaints. This appeal was triggered by the sale of the property and the requirement for a Compliance Certificate.
10. No letters of opposition were received and no one appeared in opposition to the proposed development at the hearing.
11. The Board finds that the proposed development of 1.52 metres by 8.30 metres (the highlighted portion of the approved Site plan) with the two conditions will not unduly interfere with the amenities of the neighbourhood, nor materially interfere with or affect the use, enjoyment or value of neighbouring parcels of land.

Important Information for the Applicant/Appellant

1. This is not a Building Permit. A Building Permit must be obtained separately from the Sustainable Development Department, located on the 5th Floor, 10250 – 101 Street, Edmonton.

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

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

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

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

6. When a decision on a Development Permit application has been rendered by the Subdivision and Development Appeal Board, the enforcement of that decision is carried out by the Sustainable Development Department, located on the 5th Floor, 10250 – 101 Street, Edmonton.

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Date: November 19, 2015
Project Number: 176376597-001
File Number: SDAB-D-15-259

Notice of Decision

This appeal dated October 8, 2015, from the decision of the Development Authority for permission to:

> Construct a Semi-detached House with front verandas, fireplaces, basement development (Not to be used as an additional Dwelling) and to demolish an existing building

on Plan RN22B Blk 45 Lots 12-13, located at 10710 - 125 Street NW, was heard by the Subdivision and Development Appeal Board on November 4, 2015.

Summary of Hearing:

At the outset of the appeal hearing, Ms. C. Chiasson, one of the Board Members, advised she had met Ms. Stinson, one of the interested parties, in past as she has worked with Ms. Stinson's husband. No objections were raised to Ms. Chiasson hearing the appeal. The Presiding Officer confirmed with the parties in attendance that there was no opposition to the composition of the panel.

The appeal was filed on time, in accordance with Section 686 of the *Municipal Government Act*, R.S.A 2000, c. M-26.

The Board heard an appeal of the decision of the Development Authority to refuse an application to construct a Semi-detached House with front verandas, fireplaces, basement development (Not to be used as an additional Dwelling) and to demolish an existing building at 10710 – 125 Street NW. The subject Site is zoned DC1 Direct Development Control and RA7 Low Rise Apartment Zone and is within the West Ingle Area Redevelopment Plan.

The development permit application was refused because the proposed Semi-detached House is not a listed Use within the DC1 Zone (Westmount Architectural Heritage Area).

Prior to the hearing the following information was provided to the Board:

- A map Submitted by the Appellant showing the two different zones
- Four e-mails / letters in opposition to the proposed development
- A copy of the West Ingle Area Redevelopment Plan
- Development Permit application information from the Development Officer

- Canada Post confirmation of delivery
- Seven on-line responses from affected property owners in opposition to the development

The Board heard from the Appellant, Ms. R. Geddes, who provided the following submissions:

1. Ms. Geddes is the Property Owner and her intent in proposing this development was to comply with the nature of the neighbourhood and give effect to both zonings in light of the neighbouring apartment buildings.
2. Ms. Geddes submitted that the Development Officer had only applied the Direct Development Control zoning to this property and did not mention the second RA7 Low Rise Apartment Zone.
3. Ms. Geddes asked the Board to consider both zones and the transitional nature of this lot in its determination.
4. Since the site has two zones, DC1 and RA7, it is not appropriate to use just the DC1 regulations.
5. If only one set of zoning rules is to be applied, she prefers RA7. There are advantages to considering the RA7 Low Rise Apartment Zone on this property, which would allow more people to enjoy the beauty and convenience of this neighbourhood.
6. The Site is 33 feet wide. The DC1 Provision portion is 20 feet wide and cannot be developed. The RA7 portion is 13.7 feet wide and she can do nothing with it. Neither portion of the lot can be used in isolation from the other.
7. Ms. Geddes referred to photographs of the subject property and the streetscape. The subject property is directly adjacent to an apartment building with six balconies overlooking the yard. Ms. Geddes suggested this was not an appropriate lot for a single detached house because of the limited privacy caused by the balconies. A semi-detached structure would block some of the balconies, ensuring privacy for both buildings.
8. The lot is also across the street from another apartment building. The DC1 zoning reinforces RF1 zoning regulations and in RF1 zones Semi-detached Housing is encouraged next to Apartment Housing. The proposed development would be an appropriate transition from Apartment Housing to Single Detached Housing.
9. The neighbours feel that if the Board allows the proposed development, it would set a negative precedent for variances in the Direct Control zone. Ms. Geddes argued that these concerns are unfounded because of the unique circumstance of this lot containing two zones.
10. Ms. Geddes noted a number of benefits to the proposed development:
    a. Increased tax revenue to the City of Edmonton.
    b. Revitalization by attracting new families with a diversity of income levels.
    c. It is architecturally more pleasing than the existing house.
11. The proposed development meets the Architectural Guidelines of the Westmount Architectural Heritage Area Community Initiative within the Direct Development Control Provision. Ms. Geddes is willing to work on and amend the design if she has missed any of these requirements.
12. Only one unit of the proposed semi-detached residence would be visible from the street due to the front / back design.
13. The existing house on the lot is dilapidated and needs replacement. It is in the neighborhood's interest to replace it with a new semi-detached home.

Ms. Geddes provided the following responses to questions:

1. The Appellant acknowledges that close to 75 percent of the lot is zoned DC1, she is not requesting that the Board ignore this zone, rather she would like the Board to consider this as a transitional lot and look at the RA7 Low Rise Apartment Zone as well. Ms. Geddes would like the Board to apply the Architectural Guidelines set out in the Westmount Architectural Heritage Area Community Initiative within the Direct Development Control Provision, but to also allow Semi-detached Housing as authorized by the RA7 Low Rise Apartment Zone even though it is not a listed use in the DC1.
2. The intent of the Direct Development Control Provision was to enforce the RF1 Single Detached Residential Zone, which allows semi-detached properties as a Discretionary Use.
3. In her view Semi-Detached Housing is a perfect solution.
4. The concern from the immediate neighbour to the North regarding sunlight blockage would be the same for both a single detached residence and her proposed development.
5. Ms. Geddes acknowledged the limits of this Board in appeals involving properties zoned Direct Control. She was unable to point to any authority that would allow the Board to approve a semi-detached residence in this DC1 zone.
6. Ms. Geddes was unable to point to any authority that would allow the Board to substitute RF1 zoning regulations to a "transitional Site," specifically to any Site that straddles DC1 and RA7 zoning.
7. She emphasized that a semi-detached development would attract families of varying incomes and revitalize the neighbourhood.

The Board heard from Ms. K. Heimdahl, representing the City of Edmonton Sustainable Development Department, who provided the responses to questions:

1. This lot is unusual. In these types of circumstances lots are typically re-zoned before development is contemplated. This lot is likely divided between two zones because a portion of a separate lot was added to the original lot at some point in the past. Ms. Heimdahl has never encountered a situation like this before.
2. The Overlays apply only to the RA7 Zone portion of the lot, but the West Ingle Area Redevelopment Plan applies to both portions of the lot.
3. Because the majority of the lot is within the DC1 zone, Ms. Heimdahl applied the conditions of that zone, rather than the RA7 zone, as they were the most restrictive conditions.
4. Ms. Heimdahl followed the directions of Council DC1 zone and denied the application as Semi-detached Housing was not a listed Use.
5. Sections 210.3(14) and 210.3(15) of the *Edmonton Zoning Bylaw* list Semi-detached Housing and Single Detached Housing as Discretionary Uses within the RA7 Low Rise Apartment Zone.
6. The lot would not comply with the regulations governing requirements for Lot Width for Semi-Detached Housing in the RA7.
7. The only type of development that may fit in both zones would be Single-detached Housing, but that was not the type of development application she was asked to consider.

8. The Appellant's only other option is to apply for re-zoning.
9. Sections 210.3(14) and 210.3(15) of the *Edmonton Zoning Bylaw* lists Semi-detached Housing and Single Detached Housing as Discretionary Uses within the RA7 Low Rise Apartment Zone.

The Board heard from Ms. Carla Stolte, President of the Westmount Community League, who provided the following submissions:

1. Over the past two years the Community League has done significant consultation with residents with respect to the Westmount Architectural Heritage Area zoning and is in the process of working with the City to strengthen the zoning.
2. Approximately 95% of the people surveyed supported maintaining the zoning and the integrity of this heritage area.
3. The Community League cannot support the Appellant's appeal because the DC1 zone does not allow for Semi-detached Housing.
4. In the Westmount area, 50 percent of households are in properties other than single family homes, and thus their position is not motivated by the "not in my backyard" outlook, but by the architectural and historical significance of the heritage area.
5. Current efforts are underway to amend regulations under this DC1 zone to make the architectural requirements more stringent, and there are no current plans under discussion with the City for changes to allow for semi-detached homes.

The Board heard from Mr. Robert Scott, owner of the immediately adjacent property, who read his prior written submission:

1. Mr. Scott, an architect, has been the owner of the home adjacent to the proposed development since 1980.
2. The home currently in the location of the proposed development is in dire need of replacement.
3. Mr. Scott has known the Appellant for many years and believes she is a person of integrity and noble intentions, but believes she is unaware of the negative consequences that will result from the improvements to the proposed development.
4. Mr. Scott noted that the mature neighbourhood is much beloved and valued by its residents and submitted that it would be a great tragedy for it to be defiled with a precedent setting, non-conforming development such as the one proposed.
5. Mr. Scott noted that the property straddles two zones, RA7 and DC1. Mr. Scott argued that the Notice to Property Owners informed them that the RA7 zone may be considered as the bylaw that governs the development. Mr. Scott argued this is a problem for the following reasons:
    a. RA7 zoning requires a minimum site area of 800 square metres and the property that currently sits on the proposed development site is 488 square metres.
    b. The minimum required Site Width is 20 metres, and the current property has a Site Width of only 10.6 metres.
    c. The Side Setback requirement is 1.0-metre per story or partial story, and the proposed structure is 2.5-storeys, therefore requiring a Side Setback of three

metres on each side. The current structure on the proposed property provides only for a 1.2-metre Setback on each side of the property.

6. The proposed development is a detriment to him personally because it will block natural light on his house and backyard. The proposed structure will be over 33 feet in height at the ridge, and 23' high at the lowest eave, which will block sunlight that enters from the south façade of his home.

The Board heard from Mr. P. Ordynec, who believes he is an affected party because he lives just over a block from the proposed development and passes by it frequently.

1. Mr. Ordynec lives in the historic area, but not within the 60 metre notification area.
2. Development in one part of the area affects the entire historical area.
3. Mr. Ordynec sent in an e-mail indicating his objections:
    a. Any development must stay within the rules.
    b. He wants to keep the architecturally restricted area as it is.
    c. He does not want his area destroyed bit by bit.
4. Mr. Ordynec had some rebuttals to the Appellant's presentation:
    a. He hoped increasing taxes would not be a consideration for the Board in allowing this development.
    b. Revitalization of this area is not needed. Individuals living in this historical area take pride in preserving the area.
    c. The new building would not be more architecturally pleasing because it did not comply with the Architectural Guidelines.
5. One of the reasons residents want to make amendments to the current zoning within the area is to change the Architectural Guidelines into regulations.
6. The Direct Development Control requirements are stronger than RA7 requirements. This lot is overwhelmingly within the Direct Development Control Provision, therefore, the historical precedent should be maintained and the stronger criteria applied.
7. When Ms. Geddes bought the property she was likely aware of the potential difficulties caused by the apartment balconies overlooking the yard.

In rebuttal Mr. Geddes made the following points:

1. She reiterated her original submissions.

Decision:

The appeal is DENIED and the decision of the Development Authority is CONFIRMED. The development is REFUSED.

Reasons for Decision:

The Board finds the following:

1. The proposed development, Semi-detached Housing, is situated in a unique location that raises very specific legal issues.

2. The subject Site is comprised of two unequal portions of land taken from the two abutting separate legal lots (Lot 13, Block 45, Plan RN22B and Lot 12, Block 45, Plan RN22B).
3. The applicable zoning boundaries follow the lot lines for the two abutting separate legal lots.
4. Therefore, the subject Site and the proposed Semi-detached Housing Use straddles two distinct zones.
5. Approximately 71 percent of the subject Site is part of lot 13, block 45 and zoned DC1, Direct Development Control District and located within the Westmount Architectural Heritage Area.
6. The remaining 29 percent of the subject Site is part of lot 12, block 45 and zoned RA7 Low Rise Apartment Zone.
7. Per section 710.3(1) of the *Edmonton Zoning Bylaw*, the listed Uses for the DC1 area are determined by section 3 of the *DC1 (Direct Development Control) District for the Westmount Architectural Heritage Area, Part 3, Proposed Land Uses, West Ingle Area Redevelopment Plan, Bylaw 7469.*
8. Semi-detached Housing is not a listed Use for the portion of the subject Site zoned DC1 in Bylaw 7469.
9. Semi-detached Housing is a discretionary Use for the portion of the subject Site zoned RA7 per section 210.3(15) of the *Edmonton Zoning Bylaw*.
10. The Subdivision and Development Appeal Board operates within the legal limits of the *Municipal Government Act* and the *Edmonton Zoning Bylaw*.
11. The authority of the Board differs for appeals involving DC1 and RA7 zoning.
12. In the RA7 zone, the Board's authority on appeal is set by sections 685 and 687 of the *Municipal Government Act.*
13. In the DC1 zone, the Board's authority on appeal is more limited per section 641(4)(b) of the *Municipal Government Act* which directs that:

> (4) Despite section 685, if a decision with respect to a development permit application in respect of a direct control district
>
> …
>
> (b) is made by a development authority, the appeal is limited to whether the development authority followed the directions of council, and if the subdivision and development appeal board finds that the development authority did not follow the directions it may, in accordance with the directions, substitute its decision for the development authority's decision.

14. The Board denies this appeal for the following reasons
    a. A significant portion of the subject Site lies within the DC1 Direct Control District where Semi-detached Housing is not a listed Use and therefore, the Board is not satisfied that the Development Officer failed to follow the Direction of Council in refusing this application.
    b. The Board has no authority to grant a variance with respect to listed Uses for any zone, including any DC1 or RA7 zones.

c. The Board has no authority, nor any planning reason in this case, to disregard the applicable zoning or to substitute provisions of the RF1 Single Detached Residential Zone to the subject Site which is partially within a DC1 Direct Control District and partially within an RA7 zone.
d. Neither party could cite any authority to permit the Board to prefer provisions of one set of zone regulations over the other, or to apply the provisions from one zone to the exclusion of the provisions of the other zone.
e. In any event, inadequate information was before the Board to evaluate the proposed development under the development regulations of the RA7 zone.

15. Finally, the Board notes that Single-detached Housing is both a listed Use in the DC1 zone and a discretionary Use in the RA7 zone per Section 210.3(15) and could potentially comply with all applicable zoning regulations.

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.

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