

# **Edmonton Subdivision and Development Appeal Board**

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Date: October 22, 2015  
Project Number: 168506849-001  
File Number: SDAB-D-15-229

## **Notice of Decision**

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

Change the Use from a Commercial School to a Restaurant (68.75 sq.m. of Public Space with 40 seats, expansion of an existing Restaurant - CHUTNEY RESTAURANT).

on Plan 7722037 Blk 12 Lot 46, located at 6104 - 172 Street NW, was heard by the Subdivision and Development Appeal Board on October 7, 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 Presiding Officer first addressed the issue of jurisdiction and whether the appeal was filed within the allowable 14-day appeal period, pursuant to section 686 of the *Municipal Government Act*, R.S.A. 2000, c. M-26 (the "MGA").

The Board heard from Mr. Khan and Mr. Afsar, representing the Appellant, Chutney Restaurant, who provided the following information with regard to the timing of filing the appeal:

1. He confirmed that he picked up his refused development permit from Canada Post on September 1, 2015.

### **MOTION:**

That the Board assumes jurisdiction pursuant to Section 686(1)(a)(i) of the *Municipal Government Act*.

## REASONS FOR DECISION:

The Board finds the following:

1. The Development Authority's decision was made on August 13, 2015. The appeal was filed on September 9, 2015.
2. A Canada Post confirmation indicated that delivery of the refused permit was received on September 1, 2015.
3. Based on the evidence provided, the Board determined the Appellant was notified of the refusal of the development permit on September 1, 2015 and filed the appeal on September 9, 2015. Therefore, pursuant to section 686(1)(a)(i) of the *MGA*, the appeal was filed within the allowable 14 days.

The Board heard an appeal of the decision of the Development Authority to refuse an application to change the Use from a Commercial School to a Restaurant (68.75 sq.m. of Public Space with 40 seats, expansion of an existing Restaurant - CHUTNEY RESTAURANT), located at 6104 - 172 Street NW. The subject Site is zoned DC2.697 Site Specific Development Control Provision. The development permit was refused because of a deficiency in the overall number of required vehicular parking spaces.

Prior to the hearing the following information was provided to the Board, copies of which are on file:

- A written submission received from Sustainable Development;
- A copy of a Canada Post confirmation;
- A copy of an email between Development Officers;
- A copy of an email from the Development Officer; and
- An on-line response from the Lessard Community League in opposition to the proposed development.

The Board heard from Mr. Khan and Mr. Afsar, both representing the Appellant, Chutney Restaurant, who together made the following points:

1. They took over the business a few years ago and need more space and applied for a development permit for additional seating.
2. In their opinion, there is sufficient on-site parking, which will not be an issue outside the prayer time for the Mosque.
3. The restaurant is open until 10:00 p.m. but is closed during the prayer time.
4. The restaurant does not serve liquor as it is family-oriented.
5. They provided the Board with 22 photographs of the subject Site showing the typical parking lot during the times of the week outside of the prayer times, marked "Exhibit A".

In response to questions by the Board, Mr. Khan and Mr. Afsar provided the following information:

1. The restaurant is closed on Mondays, open on Tuesdays, Wednesday, and Thursday, 11:30 a.m. to 8:30 p.m. and open Saturday and Sunday 10:00 a.m. to 10:00 p.m.
2. The restaurant is open on Fridays from 11:30 a.m. to 10:00 p.m. but closed during the prayer time.
3. The Friday prayer is approximately one hour but varies on start time depending on the time of year.
4. The restaurant operating hours is outside of the previous development permit approved times; however they were not aware of the previous development permit and the conditions of approval.
5. They provided the Board with a copy of a Memorandum from Transportation Services marked "Exhibit B" and highlighted that Transportation Services had no objection to the parking deficiency.

The Board then heard from Ms. Li, representing Sustainable Development, who was accompanied by Mr. Kowal, who together provided the following information in response to questions by the Board:

1. They clarified that the green area shown on the Site Plan identifies only the public space used in the parking calculations.
2. With regard to the two calculations, they stated that they tried to reflect the overall Site requirement based on the Uses and tenants as well as trying to be consistent with the approved variances that have been granted to date.
3. When considering the overall parking calculation, the hours of operation of the Uses is not always considered.
4. In reviewing development permit applications, they could not give consideration to the operating hours of the various businesses as it is not addressed in the Zoning Bylaw and if hours of operation were stipulated as a condition of approval, it could then become a Bylaw Enforcement issue.
5. This property has received several complaints over the years regarding parking.
6. They clarified the difference in parking calculation for the change of Use and stated that they relied on the Parking Schedule in Section 54 of the Edmonton Zoning Bylaw as the parking requirements were not addressed in the DC2.697 Site Specific Development Control Provision as the DC2 refers to Sections 310.4 and 310.5 of the Edmonton Zoning Bylaw.
7. They clarified which plans were used in their decision as the original floor plan that was submitted at the time of the application was out of date and not to scale. They had requested more information from the Appellant and a revised floor plan was submitted.
8. They met with the Appellant on two occasions to provide direction on the application.
9. They confirmed that portions of the new development permit cover space that was previously a commercial school.
10. They clarified that the two calculations were due to the different Uses on the commercial Site and the entire Site calculation.
11. With regard to the parking justification by the Appellant, they stated that it refers to the subject on-site attendance at a specific time and that the Appellant's timeline did not include Friday prayers at the Mosque.

12. They stated that Transportation Services' review is based on information provided by the Appellant and that Transportation Services did not visit the subject Site.
13. With regard to where the hours of operation were taken from, they stated that they were taken from the on-site signage and there was no indication that the restaurant was closed during Friday prayers.
14. They confirmed that the development permit would be refused even if the hours of operation were amended to ensure the restaurant would be closed during prayers.
15. With regard to the parking calculation justification, they stated that there are several variances on the subject Site for parking. Given the number of parking complaints on file, the granting of any additional parking variances for this Site will have a negative impact on the neighbourhood

The Board then heard from Mr. Rogerville, representing the Lessard Community League, who made the following points:

1. He clarified that the Compliance Order issued for the subject Site was related to the Mosque with regard to the number of people in attendance.
2. He confirmed that traffic accessing the subject Site on Fridays is a concern; however, traffic in the neighbourhood is also a concern.
3. On-street parking is an issue during Fridays and other holidays. In his opinion, the parking lot is often full in addition to the Friday prayer times.
4. A Bylaw Enforcement Officer and two Police Officers are regularly at the subject Site issuing tickets.

In rebuttal, Mr. Khan and Mr. Afsar made the following points:

1. The previous owner did not inform them of the hours of operation on the original development permit.
2. With regard to the parking concerns, the peak parking occurs on Fridays for one hour and during the Ramadan holiday.
3. The restaurant is closed during the prayer time, which varies depending on the time of the year.
4. They referenced the original plans submitted, marked "Exhibit C" and the original restaurant configuration from the previous development permit, marked "Exhibit D".
5. The provided the Board with a layout of the whole development, marked "Exhibit E".

**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, and the deficiency of 23 on-site parking spaces (equivalent to a deficiency 11 on-site parking spaces taking into account all previously granted variances as outlined in the Development Authority's written submission) on the entire subject site be **ALLOWED**, subject to the following **CONDITIONS**:

1. No parking, loading, storage, trash collection, outdoor service or display area shall be permitted within a Setback. Loading, storage and trash collection areas shall be located to the rear or sides of the principal building and shall be screened from view from any adjacent Sites, public roadways or Light Rail Transit lines in accordance with the provisions of subsection 55.4 of this Bylaw. If the rear or sides of a Site are used for parking, an outdoor service display area or both, and abut a Residential Zone or a Lane serving a Residential Zone, such areas shall be screened in accordance with the provisions of subsection 55.4 of this Bylaw. Reference Section 310.4(7).
2. 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. Reference Section 54.1(1) (c).
3. Any outdoor lighting for any development shall be located and arranged so that no direct rays of light are directed at any adjoining properties, or interfere with the effectiveness of any traffic control devices. (Reference Section 51 of the Edmonton Zoning Bylaw 12800).

#### NOTES:

1. The Development Permit shall NOT be valid unless and until the conditions of approval, save those of a continuing nature, have been fulfilled; and no notice of appeal from such approval has been served on the Subdivision and Development Appeal Board within the time period specified in subsection 21.1 (Ref. Section 17.1).
2. This Development Permit is not a Business Licence. A separate application must be made for a Business Licence.
3. Signs require separate Development Applications.
4. 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.
5. 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.
6. 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.

**Reasons for Decision:**

The Board finds the following:

1. The proposed development, a Minor Eating and Drinking Establishment, is a listed Use in the DC2.697 Site Specific Development Control Provision.
2. With regard to Section 641(4)(b) of the *Municipal Government Act*, the Board finds that the DC2.697 Site Specific Development Control Provision is silent on the subject of parking and; therefore, no direction has been provided to the Development Authority by City Council through this Site Specific Development Control Provision.
3. While the Board acknowledges the existence of parking issues at the subject Site during prayer service at the Religious Assembly Use, the Appellant cannot be held responsible for increasing these issues since the Board accepts the appellant's evidence that the operation of the restaurant is and will continue to be closed during those peak periods.
4. The Board acknowledges the concerns of the Community League with regard to parking; however, no evidence was provided indicating that these parking issues would be affected by the expansion of the proposed development.
5. Section 54.1(2)(h) of the Edmonton Zoning Bylaw states that in the case of the multiple Use of a Site, the Development Officer shall calculate the vehicular parking, Bicycle Parking and total off-street loading requirement for each individual Use and the total shall be deemed to be the required vehicular parking, Bicycle Parking or off-street loading for the Site, unless the applicant can demonstrate that there is complementary use of the parking or loading facilities which would warrant a reduction in the requirements. Where such reduction is made, this shall be considered a variance and the Development Officer shall state the reduction and the reasons for it on the Development Permit.
6. In assessing the parking requirement, the Development Authority is allowed to grant a variance based on different hours of operation for each business. The Development Authority failed to recognize the complementary Use to justify the parking.
7. Based on the evidence that the proposed development does not operate during periods of peak parking demand, the Board is satisfied the variance granted is justified.
8. Accordingly, the proposed development will not unduly interfere with the amenities of the neighbourhood, or materially interfere with or affect the use, enjoyment or value of neighbouring parcels of land.

**Important Information for Applicant/Appellant**

1. This is not a Building Permit. A Building Permit must be obtained separately from the Sustainable Development Department, located on the 5<sup>th</sup> 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.

*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.*

Mr. N. Somerville, Presiding Officer  
Subdivision and Development Appeal Board

CC:

***Edmonton Subdivision and  
Development Appeal Board***

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**SDAB-D-15-230**

Application No. **146204539-007**

An appeal by Yan Yun Chen to Convert an existing Semi-detached House into 4 Dwellings of Apartment Housing, located at on Plan 7239AH Blk 6 Lot 13, located at 11135 - 127 Street NW, was **WITHDRAWN**.

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Date: October 22, 2015  
Project Number: 169981523-001  
File Number: SDAB-D-15-231

## **Notice of Decision**

This appeal dated September 11, 2015, from the decision of the Development Authority for permission to:

Construct 3 Dwellings of Apartment Housing

on Plan I23A Blk 160 Lot 20, located at 11041 - 84 Avenue NW, was heard by the Subdivision and Development Appeal Board on October 7, 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 approve an application to construct 3 Dwellings of Apartment Housing, located at 11041 - 84 Avenue NW. The subject site is zoned DC1 Direct Development Control Provision.

The development was approved subject to conditions and variances granted in the minimum required Site Area; the minimum required Site Width; and the minimum required Side yard. The approved development permit application was subsequently appealed by the Garneau Community League.

Prior to the hearing the following information was provided to the Board, copies of which are on file:

- A written submission received from Sustainable Development;
- A copy of a letter from Fire Rescue Services;
- A copy of the Site Plan, Elevations, Floor Plans, and Cross Sections;
- A copy of a memorandum from Transportation Services;
- An on-line response in support of the proposed development; and
- A copy of a written submission from Legal Counsel for the Respondent.

The Board heard from Ms. de Villars, representing The Garneau Community League, who made the following points:

1. She addressed the issue of jurisdiction and whether or not the Development Authority or the Board can grant a variance in the DC1 Direct Development Control Provision under the Garneau Area Redevelopment Plan (GARP).
2. She submitted that the Development Authority failed to follow the directions of City Council as outlined in Section 641 of the *Municipal Government Act*.
3. She was aware that the Board cannot change the decision of the Development Authority if the directions of City Council were followed.
4. She submitted that the Development Authority's interpretation of the GARP is incorrect as follows:
  1. The direction of City Council under GARP, Policy Number: 1.1 Sub-Area 1, City Council removed a part of Sub-Area 1 that included the site to be designated a "Special Character Residential Area".
  2. This contains historical houses that are an asset to the City and it is clear that City Council's intention is to preserve its character in the DC1 Direct Development Control Provision.
  3. She outlined the DC1 Direct Development Control Provision and found Sub-Area 5 of the GARP the rationale for the "Special Character Residential Area".
  4. The rationale for the "Special Character Residential Area" is defined as architectural detailing and variety in built form.
  5. This contains existing structures and the regulations are intended to ensure sensitivity to existing structures followed by a list of Uses to be considered and emphasized the list of Uses is merely for consideration.
  6. The Development Criteria is referred to in Section 710.4 of the Land Use Bylaw (LUB) 1992.
  7. She referenced the 1982 Bylaw 5996, the RF3 Low Density Redevelopment Zone and stated that the current RF3 regulations are not to be considered.
  8. In reference to the RF3 in the LUB 5996 the argument was made that the proposed development built on the required Site Area and Site Width would not be compatible with the scale, massing and siting of adjacent buildings.
  9. In her opinion, the Development Authority does not have the jurisdiction to vary the Site Area and Site Width.

The Board then heard from Mr. Vasquez, representing Sustainable Development, who made the following points:

1. He was speaking on behalf of the Mr. Harrison, the Development Authority that reviewed the development permit application.
2. He reviewed Mr. Harrison's written submission, marked "Exhibit A".
3. He provided reasons why the GARP supports the proposed development and the steps he took when reviewing the application, granting the variances and approving the proposed development.

4. In the original submission, if the subject Site was to be enveloped at 800 square metres that the decision may not meet the criteria set out in the DC1 Direct Development Control Provision specifically under Clauses 3 and 5 of the Development Criteria.
5. He provided the Board with an email showing the results of consultation with the City Heritage Planner who supports the look of the house as it meets the style that existed in the 1920's which is an English Cottage style look, marked "Exhibit B".

In response to questions by the Board, Mr. Vasquez provided the following information:

1. He provided the Board with a diagram showing the development if it was on an 800 square metres site compared to the proposed site, marked "Exhibit C".
2. The enlarged site will have excessive Side Yards which will not have the same look and feel and massing as the general residential feel and look in the neighbourhood.
3. With regard to the LUB and the RF3 regulations specific to whether there were any guidelines, regulations, or provisions within the GARP that alters the RF3 regulations and provisions. There seems to be something missing here.
4. He confirmed that the majority of lot sizes in this neighbourhood are 10 metres wide.

The Board then heard from Mr. Murphy, Legal Counsel for the Respondent, Crestwood Condominiums Inc., who made the following points:

1. He provided the Board with a copy of the original Subdivision Plan for the area, which showed a number of similar sized lots.
2. He provided the Board with a document showing a standard size of half a chain (33 feet) by 2 chains (132 feet) for approximately 400 square metres, marked Exhibit D.
3. Since the original Subdivision was initially approved there have been no subdivisions in the area except for some consolidation of lots including three lots that were turned into two lots but nothing large enough to get to 800 square metres.
4. He reviewed his written submission with the Board that was provided at the outset of the hearing.
5. He referred to TAB 1 of his submission, the initial development permit application, and stated that there are two legal addresses listed on the development permit.
6. Initially, the Respondent planned to build on the two lots; however, they were told that a development would not be approved as the resulting mass will be out of character in the neighbourhood.
7. The reason the RF3 Low Density Redevelopment Zone was not reproduced in the DC1 Direct Development Control Provision was because City Council did not want the consolidation that is common in RF3 to occur in this area.
8. They wanted the DC1 Direct Development Control Provision to incorporate changes made to the RF3 zone in the LUB.
9. The references to the LUB should be read as it existed in 2001 and not in 1982. In his opinion, this point was immaterial for the Board to consider.
10. He referred to TAB 2 of his submission, an introduction to the GARP and talked about how the proposed development fits in the goals in the family framework.

11. He characterized the goals as seeking to increased density in the area that can be a compact form of the development, as it existed in 1982.
12. With regard to the parking goal that the subject Site provided for six parking spaces on the subject Site.
13. He referred to TAB 3 of his submission, the GARP, Policy Number 1.1 that applies to the subject Site.
14. The previous house on the subject Site was torn down and the goals with regard to the retention and rehabilitation of existing buildings does not apply in this case.
15. The other two goals relate to the look and feel of the buildings and not the type of house.
16. He referred to TAB 4 of his submission, a copy of the DC1 Direct Development Control Provision. The rationale of the DC1 Direct Development Control Provision contemplated infill development, which was an important goal in 1982. Infill remains an important goal today, and Mr. Murphy referred to the Edmonton Infill Roadmap included in TAB 4.
17. He conceded that the DC1 Direct Development Control Provision is different from other DC1 zones and the Uses are not listed but considered suggestions the Development Authority retained the element of Discretion to allow a permit.
18. The DC1 Direct Development Control Provision relates to a small area and all of the Uses have been listed as considered Uses notwithstanding the small area in which most lots are 33 feet wide.
19. With regard to the Apartment Housing Use for four or fewer units, this is a form of infill land in an RF3 Low Density Redevelopment Zone to consolidate lots of this development. However, consolidation of lots was not the way to proceed because it would not comply as advised by the Heritage Planner.
20. The support of the Heritage Planner brought into consideration developments that are sensitive in scale to other buildings in the area.
21. He referred to TAB 6 of his submission, an email between the Respondent and the Heritage Planner that indicates the Heritage Planner suggested that the windows should be changed, which has been done.
22. With regard to the DC1 Direct Development Control Provision found in TAB 4 of his submission, he stated that there is not a Special Land Use Provision that applies in Clause 1 of the Development Criteria as Clause 2 indicates that the variance power was in addition to the variance power provided to the Development Authority under Section 11 of the Edmonton Zoning Bylaw.
23. Clause 1 of the Development Criteria requires the Development Authority to find hardship but Clause 2 of the Bylaw does not require a Development Authority to find hardship but allows the Development Authority to vary the RF3 regulations of the Land Use Bylaw if doing so meets the development criteria of the DC1 Direct Development Control Provision.
24. The second decision referred to by Ms. de Villars related to a Row Housing development that was rejected due to massing concerns.
25. In that decision, the Board found that the Development Authority erred by not finding hardship prior to granting a variance and this was a mischaracterizing of the Development Authority's variance power.

26. TAB 5 of his submission is the RF3 Low Density Redevelopment District from the old Land Use Bylaw.
27. TAB 7 of his submission is the map showing the support from neighbouring property owners based on the community consultation that was carried out.
28. TAB 8 of his submission is a rendering of the streetscape and landscaping plan.
29. The proposed development fits in with the scale of other houses on the street.
30. He referred to the Consulting Report done by Altus Group that he submitted at the outset of the hearing. On Page 15, the Consultant stated that 72 percent of the houses in that area are two Storey or two and a half Storey developments.
31. TAB 9 of his submission are two decisions with attached photographs, where the SDAB approved a three Dwelling Apartment Housing to be built in the immediate area of the subject Site. Mr. Murphy suggested the developments are characteristic of the neighbourhood.
32. His interpretation of Section 641.4 of the *Municipal Government Act* is that when the Development Authority has exercised discretion, the SDAB can review that exercise. This time the Development Authority exercised Discretion in a manner to advance the goal of the GARP and should not be interfered with.
33. TAB 10 of his submission are photographs of another house in the area which is considered aesthetically pleasing; however, when old houses need to be redeveloped it should be done in a sensitive way such as this.

In response to questions by the Board, Mr. Murphy provided the following information:

1. With regard to City Council's intent to control density by requiring a minimum Site Width and Site size, he stated that the plan should not be reviewed in pieces but as a whole. That is, the Development Authority granted a variance power under the DC1 Direct Development Control Provision.
2. He confirmed that Community Consultation was undertaken even though it was not required.
3. The variance power in the DC1 Direct Development Control Bylaw was in addition to the power in Section 11 incorporated by the specific regulations in the Bylaw.

In rebuttal, Ms. de Villars made the following points:

1. The Garneau area has increased in density and is the second densest area in the City besides Oliver.
2. The proposed development is specific to the DC1 Direct Development Control Provision and applies to a number of blocks in central area to be preserved.
3. Policy Number 1.1 talks about what it looks like but refers to the DC1 Direct Development Control Bylaw which discusses Uses and Density.
4. Approval of the proposed development would mean that every 33 foot lot could have four units on it, which is not the intention of the GARP.
5. City Council wants to preserve the area by restricting the type or kind of housing one can build, based on the volume of land that one owns.

6. In regard to Community Consultation, she stated that she represents 53 people on the Planning Committee who live throughout the Garneau neighborhood.
7. The GARP intends to preserve older detached housing and reiterated that the Development Authority does not have the power to vary that.

At this point, Mr. Kropf, a technical advisor, wanted to provide additional comments.

The Presiding Officer was reluctant to allow Mr. Kropf to speak as Ms. de Villars is the Appellant and provided comments in rebuttal.

Mr. Murphy indicated that he did not object to Mr. Kropf providing additional comments as long as he could provide a rebuttal to his comments.

Mr. Kropf referenced the Garneau Municipal Plan as it existed prior to Plan Edmonton. The Presiding Officer called the meeting to order as this was new material being presented in rebuttal.

### **Decision:**

The appeal is DENIED and the decision of the Development Authority is CONFIRMED. The development is GRANTED as approved by the Development Authority and the following variances are ALLOWED:

1. Pursuant to Section 140.4 (1) (f) the minimum Site Area is relaxed from 800 m<sup>2</sup> to 404 m<sup>2</sup>.
2. Pursuant to Section 140.4 (2) (e) the minimum Site Width is relaxed from 20 m to 10 m.
3. Pursuant to Section 140.4 (8) (a) the minimum Side Yard is relaxed from 2.0 m to 1.2 m.

The development is granted subject to the following CONDITIONS:

1. All planting shall be installed to the finished grade. Where, in the opinion of the Development Officer, this is not practical, planters may be used. Such planters shall be of adequate design, having sufficient soil capacity and insulation to promote healthy growth.
2. Landscaping which extends onto or over City-owned lands shall be developed in accordance with the Boulevard Bylaw No. 7829, as amended.
3. Any future deck development greater than 0.6m (2ft) in height will require development and building permit approvals.

Note: 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.

1. The fence shall be installed entirely on or within property lines
2. The fence shall not impede any sightlines for vehicular or pedestrian traffic

3. The fence shall not exceed <height of approved fence> in height as approved in this permit
4. The materials of the fence shall be similar to, or better than, the standard of surrounding development (Section 57.2)
4. An approved Development Permit means that the proposed development has been reviewed against the provisions of this bylaw. It does not remove obligations to conform with other legislation, bylaws or land title instruments such as the Municipal Government Act, the Edmonton Building Permit Bylaw or any caveats, covenants or easements that might be attached to the Site (Section 5.2).
5. PRIOR TO THE RELEASE OF DRAWINGS FOR BUILDING PERMIT REVIEW, the applicant or property owner shall pay a Lot Grading Fee of \$ 220.00.
6. A detailed landscaping plan shall be submitted by the applicant in accordance to Sections 15.4 and 69.2 of the Edmonton Zoning Bylaw 12800 and shall be to the satisfaction of the Development Officer.
7. PRIOR TO THE RELEASE OF DRAWINGS FOR BUILDING PERMIT REVIEW, the applicant or property owner shall provide a guaranteed security to ensure that landscaping is provided and maintained for two growing seasons. The Landscape Security may be held for two full years after the landscaping has been completed. This security may take the following forms:
  - a) cash to a value equal to 100% of the established landscaping costs;
  - or
  - b) an irrevocable letter of credit having a value equivalent to 100% of the established landscaping costs.
8. 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.
9. 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.
10. PRIOR TO THE RELEASE OF DRAWINGS FOR BUILDING PERMIT REVIEW, the applicant or property owner shall pay a Sanitary Sewer Trunk Fund fee of \$ 2,042.00. 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.
11. Exterior finishes shall primarily emphasize subdued colours.

12. 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.
13. Any alley, sidewalk 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.

#### ADVISEMENTS

1. Bicycle parking should meet the requirements of the Zoning Bylaw.
2. Transportation Services has no objection to the proposed tandem parking stalls.
3. The applicant is advised that reconstruction of the sidewalk on 84 Avenue would be supported with the redevelopment of the site. The applicant may contact Mohammed Bashar (780-496-1799) for more information on sidewalk construction requirements.

#### Reasons for Decision:

The Board finds the following:

1. The proposed development is within the Garneau Area Redevelopment Plan, which was developed in 1984 when the Edmonton Land Use Bylaw 5996 was in effect.
2. Pursuant to Section 2.7 of the Edmonton Zoning Bylaw, the Board is required to refer back to the Land Use Bylaw 5996, which directs the application of the RF3 Low Density Development Zone in the DC1 Direct Development Control Provision.
3. The proposed development is a three-dwelling Apartment Building and Apartment Housing containing no more than four dwellings is listed as a Use to be considered in the DC1 Direct Development Control District.
4. Pursuant to Section 641.4(b) of the *Municipal Government Act*, the Board does not accept the Appellant's contention that the Development Authority failed to follow the directions of Council by varying three regulations of the RF3 Low Density Redevelopment Zone of the Land Use Bylaw 5996. For the following reasons:
  - a. Clause 2 of the Development Criteria on page 147 of the Garneau Area Redevelopment Plan specifically authorizes the Development Officer to relax the regulations of the RF3 zone where such relaxation assists in achieving the development criteria in clauses 3, 4 and 5.
  - b. The proposed development is compatible with clause 3 because of the scale, massing and siting of adjacent buildings, as illustrated at Tab 8 of the Respondent's submission and as confirmed by written submission from the Heritage Planner.

- c. The proposed development is compatible with clause 4 because it does retain historically appropriate details of rooflines, doors and windows, trim, exterior finishing materials to the greatest extent possible, as confirmed by the submitted plans and the submission of the Heritage Planner.
- d. The design and appearance of the proposed development is compatible with clause 5 because it incorporates building details and finishing materials common to early 1920 detached housing in the area.
5. The Board acknowledges the Appellant's contention that the proposed development is located within a "Special Character Residential Area" to which special development criteria apply, but finds that the proposed residential development is compatible with those criteria.
6. The Board is satisfied that the Development Authority did follow the direction of council and further, that the Development Authority exercised the available discretion in a reasonable manner.
7. Accordingly, the Board is satisfied that the proposed development will not unduly interfere with the amenities of the neighbourhood, or materially interfere with or affect the use, enjoyment or value of neighbouring parcels of land.

### **Important Information for Applicant/Appellant**

1. This is not a Building Permit. A Building Permit must be obtained separately from the Sustainable Development Department, located on the 5<sup>th</sup> 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.

*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.*

Mr. N. Somerville, Presiding Officer  
Subdivision and Development Appeal Board

CC: