



**EDMONTON  
TRIBUNALS**

*Subdivision &  
Development  
Appeal Board*

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Date: November 9, 2017  
Project Number: 084287777-003  
File Number: SDAB-D-17-196

**Notice of Decision**

- [1] On October 25, 2017, the Subdivision and Development Appeal Board (the “Board”) heard an appeal that was filed on **October 2, 2017**. The appeal concerned an Order issued by the Development Authority on September 19, 2017, to

Decommission the Dwellings in the Basement on both sides of the Semi-detached House on or before November 1, 2017

- [2] The subject property is on Condo Common Area (Plan 0823629), Units 1-2, located at 10020/10022 - 153 Street NW, within the RA7 Low Rise Apartment Zone. The Medium Scale Residential Infill Overlay applies to the subject property.

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

- Copy of the Order to Comply;
- The Development Officer’s written submissions;
- Postponement Request from the Appellant; and
- Correspondence with an affected Property Owner.

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

- Exhibit A – Written Submission from the Appellant

**Preliminary Matters**

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

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

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

**Summary of Hearing***i) Position of the Appellant, Mr. M. Chavda*

[8] Mr. Chavda was accompanied by Ms. J. Chavda.

[9] When Mr. Chavda called the office on Monday to request a postponement, he was advised he would have to come and speak to this request and has therefore decided to go ahead with the hearing.

[10] Mr. Chavda submitted a submission (marked Exhibit A) which he reviewed with the Board.

[11] This property was purchased on June 16, 2011, as is, and no improvements have been made other than regular maintenance. Tenants were already occupying all four suites at the time of purchase and the units are rented on a month to month basis.

[12] The Stop Order should be quashed as it falsely states that on September 14, 2017, the Compliance Officer “conducted an interior land-use inspection of the building on the property noted above”. No one was available to allow the officer entry on September 14, 2017, as per the following documents Mr. Chavda submitted:

- a) A document confirming he had an appointment at the University Hospital on September 14, 2017.
- b) Signed statements from both downstairs tenants indicating the hours they were not home on September 14, 2017.
- c) A note posted on the door advising that “Basement Suites at this location do not have permits. Inspection required. Please call back to reschedule”.

The statement in the Order clearly states that an interior inspection was conducted but as shown this is not true.

[13] Mr. Chavda then provided a timeline of recent events:

- |                 |  |
|-----------------|--|
| March 14, 2017: | Application made for a Major Development Permit.   |
| June 30, 2017:  | A request for additional information was received from the Development Officer.                                    |
| July 16, 2017:  | Mr. Chavda requested a time extension due to his ill health and the holiday season.                                |
| July 25, 2017:  | A letter was received from the Development Officer advising that the Development Permit application was cancelled. |

- August 11, 2017: Mr. Chavda applied for a refund which was received on October 6, 2017.
- Sept 1, 2017: A letter was received from Mr. Bolstad requesting an inspection on September 14, 2017.
- Sept. 12, 2017: Mr. Chavda submitted a new permit application and spoke with a Development Officer, Mr. P. Belzile, who explained in detail what additional information was required. On this same date, Mr. Belzile e-mailed Mr. Bolstad requesting an extension of any deadlines for a few weeks.
- Sept 14, 2017: Mr. Bolstad conducted an unsuccessful inspection.
- Sept 19, 2017: A *Municipal Government Act* Order was issued.

Mr. Chavda's conversation with Mr. P. Belzile on September 12, 2017, was the first time the Planning Department clearly explained what information was required. He has advised his consultant and the required information has been re-submitted. He is making a concerted effort to remedy the situation. Had he known that an extension would not be granted he would have made arrangements for the inspection on September 14, 2017, to be conducted properly.

- [14] A copy of the latest Development Permit application was submitted showing that no decision has been made yet. The Stop Order should not be enforced until a decision has been issued regarding this application.
- [15] An Edmonton Journal Article; a June 16, 2016, Executive Committee motion; correspondence with Mayor Iveson and an excerpt from the City of Edmonton public website were submitted to show that Edmonton is moving towards allowing suites in Semi-detached and Duplex housing to help provide safe, affordable housing. Mr. Chavda submitted a copy of a cheque stub from one of his tenants who is earning a minimum wage of \$12.50 an hour and is in need of the safe, affordable housing he is providing.
- [16] The proposed development should be allowed to proceed in accordance with Policy 4.4.1.1. of the Municipal Development Plan, *The Way We Grow*, which encourages the provision of a broad and varied housing choice, incorporating housing of various demographic and income groups in all neighbourhoods.
- [17] The City has allowed secondary suites in other similar properties as shown in photos submitted:
- a) 12730 / 12732 113A Street is a Semi-detached house with a total of six suites (three on each side). This property has been granted a permit allowing the Secondary Suites and falls under the Safe Housing Guidelines. Mr. Chavda did a search of "Safe Housing" on the Edmonton website but nothing came up.

- b) 12735 – 127 Street has a total of four suites (two on each side). The Development Officer had refused the permit allowing Secondary Suites in this property but another panel of this Board overturned the decision and allowed the development in a decision issued on November 28, 2014. (SDAB-D-14-295).
- [18] Mr. Chavda submitted he is also providing Safe Housing and allowing his property to continue operating in the short term, until the Development Permit application is completed, would not unduly interfere with the amenities of the neighbourhood nor materially interfere with or affect the use, enjoyment or value of neighbouring parcels of land.
- [19] There is a mix of multi-unit properties in the area and a neighbouring property owner of a twelve suite apartment commented that he has never had difficulties with any of Mr. Chavda's tenants. Photos of neighbouring properties were submitted.
- [20] Current tenants are not aware of the Stop Order and have not been provided with a date to vacate their suites. Mr. Chavda requests a minimum three month extension of the Order to be able to provide his tenants with 90 days' notice as per the requirements of the *Residential Tenancies Act*.
- [21] Mr. Chavda does not believe it is the City's intention to make people homeless which would be the result if this Order is enforced. He is providing affordable housing to low income families who would not qualify for Boardwalk or Main Street housing.
- [22] The Appellant was not aware of the first notice of inspection which was issued on February 13, 2012. He did receive the notice issued on February 26, 2014, and as a result applied for a Development Permit which was refused and subsequently appealed. The appeal was unsuccessful and he was advised he could reapply six months later. Mr. Chavda has been diligently working to remedy the situation in order to be able to provide safe housing.
- [23] He was unaware that the suites were not legal at the time he purchased the property. He has never personally lived at this location and the suites have always been rented out.

ii) *Position of the Development Officer, B., Bolstad*

- [24] Mr. Bolstad was accompanied by his supervisor, Ms. K. Lamont.
- [25] The Stop Order was issued pursuant to Section 23.1(3) of the *Edmonton Zoning Bylaw* for a development in contravention of a Development Permit which conditions that the basement development shall not be used as additional dwelling units.
- [26] He was able to access one of the main floor suites and one of the basement units on September 14, 2017. There was strong evidence that both sides of the basement were being used as separate suites. The two basement suites were separated by a locked door

and a written note inside the upstairs dwelling said not to lock the exterior door because tenants do not have a key. He therefore felt justified to include the entire building in the Order.

- [27] The permit requires the Owner to remove the cooking facilities from the basement. This includes the removal of the stove, hot plates, toaster ovens and all wiring from the stove to the panel. The locked separations between the main floor and the basement areas on each side of the Semi-detached building must also be removed. These changes would be simple and straight-forward to reverse should regulations change in the future.
- [28] The violation was first discovered five years ago. Enforcement did not occur immediately in order to allow time for the owners to go through the permit application process. In 2015, the permit application was refused by another panel of this Board as it was determined that the application could not be approved in the building's current state. Mr. Bolstad noticed a new pending application to convert the building to Stacked Row Housing in 2016 and decided to let the permit application process runs its course. Numerous requests for information were not responded to; therefore, the application was cancelled. He therefore felt it was appropriate to issue the Stop Order and require the building to be converted back to what was originally approved on Permit 71345842-005 issued on September 12, 2007. This is the only legal permit in place and it conditions that no basement suites are to be developed.
- [29] The first application was the most complete and got to point of being heard by the Board. All other applications have been cancelled as not enough information was provided to thoroughly review the applications. The September 12, 2017, permit application is currently not being formally reviewed and requests for further information have been made.
- [30] Submitting partial applications to delay enforcement indefinitely is a hardship to the City and results in the City never being able to enforce anything. In order to approve this development, fifteen variances would be required to the development regulations for Apartment Housing.
- [31] Council is currently discussing allowing Secondary Suites in Semi-detached houses and a series of open houses will occur in the next few months; however, the eventual outcome is speculation at this point.
- [32] Mr. Bolstad agreed that a compliance date of November 1, 2017, does not allow sufficient time to provide notice to tenants.

*iii) Rebuttal of the Appellant*

- [33] Mr. Chavda disputes what was written in the Order and still maintains that only a partial inspection was done on September 14, 2017.

- [34] One of the documents in Mr. Bolstad's submission is a Building Permit issued on May 11, 2009, for basement development at 10020 – 153 Street. It is his understanding that this allows the basement development.
- [35] If the Order is not quashed, he requests an extension as he has to give his tenants 90 days' notice as per the *Residential Tenancies Act*.

### **Decision**

- [36] The appeal is DENIED and the Stop Order is UPHELD. The decision of the Development Authority is CONFIRMED.

### **Reasons for Decision**

- [37] The most recent Development Permit (71345842-005) was issued on November 15, 2007, "To construct a Semi-Detached House with front uncovered decks (each 1.06 metres by 1.20 metres) and rear attached garages (each 3.66 metres by 6.71 metres)." It was a condition of this permit that "The proposed basement developments shall not be used as additional dwelling units."
- [38] Based upon not only the evidence of the Development Authority but also upon the admission of the Appellant, there are two Secondary Suites being operated as separate dwellings in contravention of the above mentioned condition in the 2007 Development Permit. The Appellant has never received a Development Permit to allow those basement suites. In fact, the Appellant did apply for them in 2014, was denied, and appealed to this Board and in decision SDAB-D-15-066, this Board confirmed the decision of the Development Authority and denied the permit application.
- [39] The terms of the Stop Order are not overly broad and simply require that the condition that was in the 2007 Development Permit be complied with. As a result, the Board finds that the Stop Order was validly issued by a Development Compliance Officer having the authority to exercise development powers pursuant to the *Municipal Government Act* and as a result the appeal is denied.

Ian Wachowicz, Chair  
Subdivision and Development Appeal Board

### Board Members in Attendance:

Mr. V. Laberge; Ms. M. McCallum, Mr. A. Nagy, Mr. C. Buyze

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



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Date: November 9, 2017  
Project Number: 246313184-001  
File Number: SDAB-D-17-197

**Notice of Decision**

- [1] On October 25, 2017, the Subdivision and Development Appeal Board (the “Board”) heard an appeal that was filed on **September 27, 2017**. The appeal concerned the decision of the Development Authority, issued on September 8, 2017 to approve the following development:

Construct a Single Detached House with Unenclosed Front Porch, Front Partially Covered deck (4.29 metres by 1.78 metres), rear uncovered deck (1.22 metres by 3.23 metres), Fireplace and Basement development (NOT to be used as additional dwelling) and to demolish a Single Detached House

- [2] The subject property is on Plan RN39B Blk 59 Lot 18, located at 10925 - 126 Street NW, within the DC1 Direct Development Control Provision. The West Ingle Area Redevelopment Plan applies to the subject property.

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

- Copy of the Development Permit application with attachments, proposed plans, and the approved Development Permit;
- The Development Officer’s written submissions;
- The Appellant’s written submissions; and
- E-mails in Opposition to the Development.

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

- Exhibit A – Black’s Law Dictionary – Page 1433 (Appellant)
- Exhibit B – Definition of Streetscape (Appellant)
- Exhibit C – Four photographs in the immediate vicinity of the subject site (Appellant)
- Exhibit D – Series of e-mails between Appellant and Heritage Planner
- Exhibit E – Three photographs submitted by Respondent



### **Preliminary Matters**

- [5] At the outset of the hearing Mr. I. Wachowicz, Chair, disclosed that he had previously worked at the same law firm as Mr. Garber, one of the Appellants. None of the parties in attendance had any opposition to the composition of the panel.
- [6] The Presiding Officer outlined how the hearing would be conducted, including the order of appearance of parties, and no opposition was noted.
- [7] The appeal was filed on time, in accordance with Section 686 of the *Municipal Government Act*, RSA 2000, c M-26 (the "*Municipal Government Act*").
- [8] The Presiding Officer explained to the parties that this site is zoned DC1 Direct Development Control District. City Council has taken special control of the site. The Board's authority is limited under Section 641(4)(b) of the *Municipal Government Act*, which states:

Despite Section 685, if a decision with respect to a development permit application in respect of a direct control district, 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.

The Presiding Officer asked all of the Parties to make submissions to the Board to explain how the Development Officer did or did not follow the directions of Council.

### **Summary of Hearing**

*i) Position of the Appellants, A. Garber and K. Garber*

- [9] Mr. Garber was accompanied by his assistant, Ms. A. Sorensen.
- [10] Prior to the hearing commencing, an amended ground for appeal was submitted to the Board: "The grounds for this appeal are that the development officer erred in granting a development permit which is contrary to the West Ingle Area Redevelopment Plan as amended by bylaw 11421."
- [11] Mr. Garber asked if the e-mails submitted to the Board by residents who live outside of the 60 metre notification area but within the Westmount Architectural Heritage Area (WAHA) would be considered. The Chair clarified that any "affected" party may make a submission and that the Board would consider these submissions on a case by case basis.
- [12] The Respondents moved into the neighbourhood about a month ago and reside next door to the Appellants. Mr. Garber holds no ill will towards them personally and this has not

been a pleasant process for either party to go through. They are here as Appellants because the integrity of the WAHA is at stake and needs to be preserved.

[13] The WAHA is a Direct Control Area which is governed by Section 710.1 of the *Edmonton Zoning Bylaw*. The purpose of this Provision is to provide for detailed, sensitive control of the Use, development, siting and design of buildings and disturbance of land where this is necessary to establish, preserve or enhance:

a. areas of unique character or special environmental concern, as identified and specified in an Area Structure Plan or Area Redevelopment Plan; ...

[14] In the 1980's, residents identified a number of issues in their neighbourhood which were verified by the Planning Department. Most of the houses on 125 Street and 126 Street between 107 Avenue and 110 Avenue were constructed between 1912 and 1925 and have retained their original architectural character. Over the past five to seven years property owners in this area have shown great interest in repairing and renovating these older homes and there is a need to ensure that future renovation and redevelopment that occurs will conserve the original architectural features and character of these homes.

[15] The Garbers moved into the neighbourhood in 1986. By that time, the West Ingle Area Redevelopment Plan was already in place and Direct Control provisions came into force in 1997 for 125 and 126 Street between 107 and 111 Avenue. This is a very small area in terms of the overall City of Edmonton.

[16] Policy 1 – Architectural Heritage Area is found on page 15 of the West Ingle Area Redevelopment Plan and reads:

The portion of West-Ingle between 107 Avenue and 111 Avenue, the lane west of 124 Street and the lane east of 127 Street will be known as an Architectural Heritage Area and be districted DC1 (Direct Control) District. Property owners in this area are encouraged to renovate or rebuild in the architectural styles which characterized West-Ingle between 1912 and 1925, and existing streetscapes **will** be maintained to reflect the area's original; [emphasis added]

[17] The word will was overlooked by the Development Officer. Black's Law Dictionary defines the word "will" as: *An auxiliary verb commonly having the mandatory sense of "shall" or "must." It is a word of certainty, while the word "may" is one of speculation and uncertainty.* (Exhibit A). The above section of the Area Redevelopment Plan makes it mandatory for owners to maintain the original streetscape of the area.

[18] Two definitions of "Streetscape" were submitted. (Exhibit B).

(1) Streetscape is a term "that refers to (and) is used to describe the natural and built fabric of the street, and defined as the design quality of the street and its visual effect." The concept recognizes that a street is a public place where people are able to engage in various activities. Streetscapes and their visual experience largely influences public places where people interact, and it ultimately helps

define a community's aesthetic quality, economic activity, health, and sustainability.

- (2) Streetscape – The visual elements of a street, including the road, adjoining buildings, sidewalks, street furniture, trees and open spaces, etc., that combine to form the street's character.

The Development Officers have overlooked what constitutes “streetscape” and that it will be maintained.

- [19] Mr. Garber participated in the development of this area as a Direct Control Zone and worked closely with architect Peter Ordinec. There was a concern that builders might not know how to achieve the construction of a building that conforms to existing streetscapes; therefore, the Architectural Guidelines contained on pages 76 and 77 of the West Ingle Redevelopment Plan were written. Because the guidelines are voluntary, the mandate to preserve streetscape has been lost.
- [20] Mr. Garber reviewed a “walking tour” he had submitted to the Board – Westmount Architectural Heritage Area – A Cherished Neighbourhood at Risk.
- a) This presentation highlights the characteristics of some of the traditional style homes in this area, some of which have been designated a Historic Resource by the City of Edmonton. Property owners have paid an additional levy to have traditional style street lamps installed.
  - b) Double hung windows, steep pitched roofs, large verandas, carriage houses, knee braces, brick and dormers are some of the features of these homes. Some of the homes have been extensively renovated to preserve the original character of the home and others are newer homes which have been built to conform to the streetscape.
  - c) Two recently built modern homes stick out like “sore thumbs” and clearly do not fit into the area. There are many other places in Edmonton where such modern homes would be more appropriate. Many residents were not aware of these developments and feel it should be mandatory that all property owners within the WAHA area are notified of all new developments, not just those within the standard 60 metre notification area.
  - d) Another home which clearly does not fit in has a front attached garage. The zoning has now been changed and front-access garages are prohibited from being built in the WAHA.
  - e) A photo of the Appellants' home shows a 1920's style Arts and Crafts home built in the 1980's. They made changes to their original design at considerable expense to accommodate requests by the Heritage Planner including replacing a proposed plate glass window with double-hung windows and substituting river rock with brick.

- f) Page 20 of the report shows a rendering of the Respondent's proposed development followed by a letter from Bennett Architect Inc. outlining how this home does not conform to the style and character of the WAHA. The Respondents have been requested by the heritage planner to change the large areas of plate glass and the front doors but have refused to do so. The Appellant is not saying this is not an attractive home; it just does not fit into the streetscape. Almost all of the traditional homes previously shown have a front porch or veranda which brings a horizontal element. There is nothing like that here.
- [21] Three more photos of traditional homes immediately adjacent to the subject site were submitted as Exhibit C. It is quite obvious how strikingly different these homes are from the Respondents' proposal.
- [22] A photo of the house which the Respondents wish to demolish was shown – a small bungalow with vinyl siding (Exhibit C). The Appellant agrees that this house needs to be replaced but replace it with something that fits into the neighbourhood and meets the mandatory requirements of the bylaw which the development officers have overlooked.
- [23] Mr. Garber quoted the final paragraph of Mr. Bennett's letter:
- In general the proposed development disregards the stylistic design cues of neighbouring historic structures. In our opinion, it cannot be held to “conserve the original architectural features and character” of nearby West-Ingle homes and will if constructed, detract from the scale and character of the Architectural Heritage Area of West-Ingle.
- Mr. Garber submits that the opinion from this architect is exactly on-point to the mandatory verbiage of the bylaw requiring the original streetscape to be maintained.
- [24] Numerous e-mails supporting this appeal were submitted to the Board and Mr. Garber read excerpts from some of these e-mails.
- [25] As a result of the guidelines being voluntary, modern buildings like those on pages 13 and 19 of the submission have been built in an area that has Direct Control provisions and is designated as an architectural heritage area. The Community is currently working with the City to make the guidelines mandatory.
- [26] Mr. Garber referenced e-mail correspondence between himself and the Heritage Planner regarding the proposed development (marked Exhibit D). This correspondence discusses balancing the desires of the applicant with the interest to preserve heritage value and the voluntary nature of the guidelines. It appears that since the guidelines are clearly voluntary the Development Officers and Planners feel they have no ability to control at all. If this is the case what is the point of having a Direct Control area? These planners are missing the mandatory component of the bylaw.

- [27] The Board asked Mr. Garber to interpret the “mandatory” verbiage of the Development Criteria in Section 4 of Bylaw 11421 versus the “voluntary” verbiage of the Architectural Guidelines in Section 5 of this bylaw as this is the direction that has been provided by City Council. It appears that Mr. Bennett’s report concludes that the proposed development does not deal with the Development Criteria but rather with the non-compliance with the voluntary Architectural Guidelines.
- [28] In response, Mr. Garber submitted that Mr. Bennet concludes that this proposed development cannot be held to conserve the original architectural features and character of the area which is one of the purposes of the Area Redevelopment Plan. Either Direct Control means something and the Board can interpret it to be consistent with the intent of the Area Redevelopment Plan or it means nothing. Mr. Garber does not believe that when City Council enacted this Bylaw that they were contemplating that homes like those on page 13 and 19 would be built.
- [29] Mr. Garber quoted from case law – *Finlay v. Canada*, [1993] 1 SCR 1980, and quoted a passage from *Brown v. Bates 363, F. Supp. 897(N.D. Ohio. 1973)*,:

“that an interpretation which purports to be faithful to the letter of the law cannot be sustained if that interpretation “totally defeats the spirit of the law, and serves only a sterile administrative purpose.”

If this bylaw imposes no obligations at all on the builder two things happen. The purpose of the plan has been thwarted (which is to conserve the unique heritage of West-Ingle) and second, the purpose of maintaining the streetscape has been negated. The Panel must not take an interpretation that “totally defeats the spirit of the law and serves only a sterile administrative purpose”.

- [30] Mr. Garber went on to quote *R. v. St. Pierre*, [1995] 1 SCR 791, the Supreme Court of Canada:

This court in *Crosthwait* effectively rejected one possible interpretation of s. 258(1)(c) -- the "plain meaning" approach advocated by the appellant -- and adopted an interpretation that was more consistent with the of the law, having regard to the mischief which the legislation was intended to address, as well as with the spirit and purpose of the presumption.

The mischief that is all over this policy, that it is designed to address, is the loss of heritage and corresponding intent as clearly stated to conserve the unique, architectural heritage of West-Ingle.

- [31] The panel must look at the policy as a whole in a way that makes it meaningful. If this Direct Control provision does not mean anything there is nothing to stop builders from coming in, bulldozing the character homes and putting up a house like that on Page 19.

He submits this was not the intent of the City when the Area Redevelopment Plan was passed. The guidelines may be voluntary and many of the existing homes do not meet all or any of the guidelines but the streetscape, that look, must be maintained.

- [32] It is not easy to define “traditional character”. The Board has to adopt an interpretation consistent with the spirit and purpose of the law having regard to the mischief that the legislation is intended to address. The mischief is to address these new houses that destroy the fabric of this neighbourhood. This panel will have to decide if the proposal conforms to intent and secondly whether that proposed development offends the requirement to maintain the area’s original streetscape.
- [33] In response to a question from the Board, Mr. Garber said there are the two new recently built modern homes already referred to and a few homes built in the 1960’s and 1970’s. With these few exceptions, the majority of the area consists of heritage homes.
- [34] Mr. Garber quoted another email by an affected property owner: “Although our residence is not located adjacent to the proposed new construction, we are very concerned that another square “monster box” may appear on our street and in our old neighbourhood. We already have two of these aberrations here and this development certainly does not fit the neighbourhood, and could be likened to a broken tooth in an otherwise lovely smile.”
- [35] Mr. Garber concluded by saying there is a responsibility to preserve this very small piece of original Edmonton. The proposed development does not meet with this.

*ii) Position of Affected Property Owner, Mr. B. Ziff, in Support of the Appellant*

- [36] Mr. Ziff’s backyard would look onto the proposed house which would have a dominating presence over his property.
- [37] He has lived in this neighbourhood since 1989 in two different houses on the same block. He was attracted to the Westmount area because it reminded him of the house he grew up in in an old neighbourhood in Toronto. There are very few neighbourhoods in Edmonton with this kind of ambiance.
- [38] In many neighbourhoods people congregate in the back yard. These houses were not built for this and residents live outside on the front porch. This goes to the point of the significance of a porch as part of the fabric of the community. Newer neighbourhoods such as Terwillegar have returned to this idea.
- [39] While he welcomes the Respondents to the neighbourhood, he agrees that this house will stand out like a sore thumb and he hopes that it will be modified.
- [40] In response to a question from the Board regarding his interpretation of the Direct Control provision bylaw, Mr. Ziff referred to the Development Criteria in Section 4. He feels that items (a) to (f) are not intended to be exhaustive and were included to address

certain questions that have arisen in the past. In other words at “least” (a) to (f) but not necessarily “only” (a) to (f).

*iii) Position of Affected Property Owner, Mr. T. Steele, in Support of the Appellant*

- [41] Mr. Steele lives in the neighbourhood on 109A Avenue within the WAHA.
- [42] He moved into the neighbourhood in 1994 because of the heritage designation. He fully restored the home he purchased to 1912 standards and later built an extension. His proposal came before this Board in 1995 and he worked with the neighbours to develop an acceptable house that would maintain the streetscape.
- [43] He understands that “must” and “will” is very difficult and the definition is based on styles across four different periods of architecture.
- [44] The thirty plus e-mails indicate that the proposal does not fit the area and no one is in support of it. He is more than happy to sit down with the Respondents to go through all of his notes and design books. He would like to share the benefit of his experience and what he has found to be acceptable and not acceptable to become part of the neighbourhood.
- [45] It is very clear that the City wanted a heritage area and modern buildings should not be introduced here. As a comparison, one does not put a 1925 style building on 1885 Street in Fort Edmonton Park because it does not fit. Houses must be from that era or appear to be from that era.
- [46] He spent the last 18 months re-building the “Hunt House” (page 23 of Mr. Garber’s presentation) to exactly the same 1922 standards as it was so it would not be lost. This house had been abandoned, flooded, two walls caved in and the chimney was falling off.

*iv) Position of Affected Property Owner, Ms. M. Parker, in Support of the Appellant*

- [47] Ms. Parker owns a property within the WAHA. This is the third house they have owned within the WAHA and they have always tried to leave each one better than when they got it. Her current home, built in 1912, is stuccoed and she had to put in a new basement.
- [48] She lives right behind the “big gray box” depicted on Page 19 of Mr. Garber’s submission. She has gotten to know the occupants on another matter but other people in the neighbourhood have not been so receptive.
- [49] She cannot see how the City would go to the lengths to put a Direct Control Provision in place if it was meant to do nothing. She cannot believe that the City would have put something in place concerned only with setbacks and let the rest fall where it may and not end up with an area that is preserved.

- [50] A former City Heritage Planner she spoke with referred to this situation as “death by 1000 cuts”. She believes that the Board can determine that the proposed development does not preserve the streetscape. This house has missed the mark.
- [51] Examples have been provided of new houses in the neighbourhood that fit in and it is obvious that the homes depicted on Page 13 and 19 of Mr. Garber’s submission do not. A person can do anything he or she wants on the inside of their home.
- [52] The City and this Board have the right and obligation to control development to be consistent with the City’s Bylaw.

v) *Position of Affected Property Owner, Mr. D. Kraatz, in Support of the Appellant*

- [53] Mr. Kraatz lives at the corner of 109 and 126 Street, half a block south of the property in question and within the WAHA. Eighty to Ninety percent of the homes within the WAHA are heritage homes. On his block there are no new homes on either side of the street. He has lived here for twenty two years and there has been a significant amount of redevelopment in the last few years, mostly towards the west. This redevelopment is starting to creep into the architectural heritage area.
- [54] The intent of the Direct Development Control Provision was to retain the feel of the streetscape. Allowing houses to be lost one by one was not the intent and will ultimately result in this not being a heritage area anymore.
- [55] The Community League has been trying to work with the City for the last three years to make the voluntary guidelines mandatory. The key here is that the intent of the West Ingle bylaw is to maintain the heritage nature of the area.
- [56] Streetscape is the character and the feeling of what you see as you drive by. It is defined by the look, shape and form of the buildings and what catches your eye and what strikes your eye as not fitting in. If something does not fit it is quite obvious and he believes the proposed house does not fit in.

vi) *Position of Affected Property Owner, Ms. D. Chmielewski, in Support of the Appellant*

- [57] Ms. Chmielewski lives across the street, two or three houses to right of the proposed property.
- [58] Although the architectural guidelines are voluntary, she doubts the community would have tried to get Direct Control in place if there were no restrictions and no benefit. Development is occurring all around, mostly to west, with new modern houses being built as well as more classic ones. She understands that subdividing a fifty foot lot increases the tax base, increases the use of public transit and increases school attendance. It should, however, be prevented in this small two block by five block area with its old style street lamps, old street names, plaques and large number of heritage looking houses.



Modern designs stick out like a sore thumb, are not in keeping with the neighbourhood and do not meet the architectural style trying to be maintained.

[59] In response to a question from the Board, she did not know why council made the architectural guidelines voluntary rather than more specific but feels council may have been concerned that putting too many controls on building a house would result in people being reluctant to move in resulting in a vacant piece of land.

[60] Ms.Chmielewski's house is depicted on the bottom of page 15 of Mr. Garber's submission. It was a small bungalow on a 50 foot lot which a builder had renovated. In 1993 she disassembled the house, made a new foundation and re-built the house to blend in perfectly with the architectural heritage of the area. A renovation last year was also done to fit in with the area.

[61] She bought here because of the style of the neighbourhood.

*vii) Position of the Development Officer, Mr. J. Joselito*

[62] The Development Officer did not attend the hearing and the Board relied on his written submission.

*viii) Position of the Respondents, Mr. B. Lawrence and Ms. M. Lawrence.*

[63] Mr. and Ms. Lawrence purchased the property in September, 2016. The current home on the property was built in 1942 and does not fall within the 1912 to 1925 time period. It is essentially a white vinyl box and does not fit in with the other homes in the neighbourhood.

[64] While Mr. Lawrence likes the style of the house previously described as a "big grey box" they understood that this would not fit into the neighbourhood and they expected that there would be guidelines that would have to be followed. In their research, the word that came out the strongest was "voluntary".

[65] They submitted Exhibit E which is a better rendering of the proposed development and shows the 15 foot verandah and the roof lines. They acknowledge that the front door has a large piece of glass but they want to be able to see who is at the front door.

[66] Red brick is a large part of the design and they have gone everywhere to source reclaimed brick to give a softer edge and older feel.

[67] The window design has not yet been finalized and is still up for review. They submitted a rendering of a possible alternate window design and a photo of a different style of window that they found in the Glenora area which they are considering. (Exhibit E).

[68] They bought the property because this street has one of the nicest elm canopies in all of Westmount. Other areas do not have the same streetscape and old homes. It is difficult to

- be in this position and they did not anticipate this kind of push back. They wrote a personal letter to everyone they thought would get a notice from the City.
- [69] A few houses in the WAMA have been up for sale for quite a number of months and many of these require a lot of work to be done and that could be why they have not sold. These homes could devalue the neighbourhood more than their proposal because potential investors may wonder if the neighborhood will become dilapidated because owners may not have the money to upkeep their homes.
- [70] They sold their home in Spruce Grove and have already invested a lot of money. They are currently living in a rental pending construction of their new home. The house they purchased is fairly small and the foundation cannot be added on to; therefore, they are building new. They started with the voluntary guidelines and tried to make them work for their family and their future. They have incorporated brick, stucco and a veranda. They want the big windows to take in the elm trees and the streetscape that everyone talks about. They are super passionate about their project and there are certain things their family wants for the money they are spending.
- [71] They love the area and respect the community and the people in the area, and appreciate the beautiful older homes. They have made a lot of good friends and their children attend school here. They cannot believe that the couple that built the box on the end of the street is outcast because of a house.
- [72] They cannot build their house in another part of Edmonton because they own this property. They sought legal counsel at the time of purchase. If they did not care about the streetscape they would have purchased in Windermere or Summerside. They want to be part of the downtown culture and want to give their kids a great place to live.
- [73] This process has not been comfortable for anyone and they did not want to personally hurt anyone. They live next door to the Garbers and the day after they moved in Mr. Garber told them “they had best be building a traditional style home otherwise they would endure the wrath of the neighbourhood.” That is definitely the case right now. There have been posts on social media and they feel this is a bullying tactic.
- [74] Last night was the first phone call they got from anyone in the neighbourhood. No one else has called to talk to them personally. They received a copy of the e-mails sent to the Board which contained many hurtful comments. They are willing to meet with every individual person who wrote an e-mail and welcome them to their home. They do not hold any ill will.
- [75] They were pleased when the Heritage Planner commented that their proposal appeared to be a foursquare house. They incorporated as many ideas of the Heritage Planner as possible such as bringing the pillars to the roof and upgrading the soffits. They understood that everything was voluntary and they chose to keep the large windows to enjoy the beautiful streetscape. They genuinely believe they are bringing something good to the area.

[76] They would love to incorporate windows like the ones that are on the house depicted on Page 12 of Mr. Garber's presentation which he described as the "gem of the neighbourhood". That type of window and that number of windows on that home are no longer a possibility as they are outside of the current Building Code.

*ix) Rebuttal of the Appellant*

[77] The Garbers hold no ill will towards their neighbours. Mr. Garber acknowledged that before he saw the design he did tell Mr. Lawrence that he hoped they would build a traditional style home otherwise they would incur the wrath of the neighbourhood. He has lived here since 1986 and knows how passionate people are when it comes to defending the character of their neighbourhood.

[78] People did not get upset until they saw the elevations. Changing the windows will not remedy the underlying problem that the design itself is not suitable for this area.

[79] He is here today to defend the principles of this architectural area.

**Decision**

[80] The appeal is DENIED and the decision of the Development Authority is CONFIRMED. The development is GRANTED as approved by the Development Authority.

**Reasons for Decision**

[81] The subject site is located in a Direct Control District. Section 641(4) of the *Municipal Government Act* sets out the limited nature of an appeal with respect to a Development Permit application in respect of a DC District:

(641)(4) Despite section 685, if a decision with respect to a development permit application in respect of a direct control district

(a) is made by a council, there is no appeal to the subdivision and development appeal board, or

(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.

[82] As this decision was made by the Development Authority, the appeal is limited to whether or not the Development Authority followed the directions of council in the appropriate Direct Control provision. The Direct Control provision that pertains to this site and to this area was created in Bylaw 11421 on Feb 10, 1997. It is now part of the

*West Ingle Area Redevelopment Plan.* Single Detached Housing is a listed use in this Direct Control provision. The Direct Control provision sets out in Section 4 the development criteria that shall apply to the prescribed uses. All of these development criteria have been met and were in fact not even an issue in this appeal with the possible exception of development criteria 4(g).

#### 4. Development Criteria

The following development criteria shall apply to the prescribed uses pursuant to Section 710.4 of the Land Use Bylaw:

(a) The regulations of the RF1 District shall apply, except where superseded by the development criteria contained herein.

(b) Vehicular access to on-site parking shall be as follows:

(i) where a lane abuts a lot, vehicular access to on-site parking shall only be from an abutting lane; and,

(ii) where corner or interior lots do not abut lanes, vehicular access to on-site parking shall only be from the avenue, as opposed to the street.

(c) Front Yards shall be a minimum of 6.0m (19.7 ft.) except that the Development Officer may reduce the minimum Front Yard requirements, where one or more adjacent properties exhibit similar variations from the RF1 regulations, to a minimum of 3.0 m (9.8 ft.). Any development located between 3.0 m (9.8 ft.) and 6.0 m (19.7 ft.) of the front lot line shall have a maximum Height of one storey or 3.3m(10.8ft.).

(d) Garages shall be built as follows:

(i) where the garage is a detached, and the vehicle doors of the detached garage face a lane abutting the lot, no portion of the garage shall be located less than 4.88 m (16.0 ft.) from the rear property line, except that the distance may be less if, in the opinion of the Development Officer, it is consistent with the location of other garages in the same block face;, and,

(ii) no part of a garage shall be located between the front facade of a principal Dwelling and an abutting avenue or street.

(e) Each Dwelling shall have an entranceway incorporated into the front facade of the Dwelling facing onto a street or avenue.

(f) Where the lot width is 15.25 m (50 ft.) or more and the length 45.72 m (150 ft.) or more, the minimum Rear Yard shall be 10.0 m (32.8 ft.).

(g) For those development applications involving the architectural treatment of new construction and additions to existing development, the Development Officer shall make the development applicants aware of the voluntary

Architectural Guidelines as developed and written by the Westmount Architectural Heritage Area Residents Association, outlined in Section 5.

- [83] An e-mail from Heritage Planner Robert Geldart, that was in evidence before the Board stated that “the form, scale and massing [of the proposed building] fit into the Westmount Architectural Heritage Area (WAHA). As for materials, the brick and wood cladding meet the guidelines of the WAHA. The dimensions and glazing of the windows and front door do not meet the architectural guidelines or the intent of the guidelines. However, it is understood that you clearly stated you do not wish to meet those window guidelines. Overall the proposal is acceptable.”
- [84] Noting compliance with both the Use and all of the Development Criteria set out in Section 4; (a) through (f), the Development Authority concluded that in allowing the proposed structure they were following the directions set out by City Council in the Direct Control Provision. The Board concludes that the Development Authority was correct in its determination and that the Development Authority did indeed follow the directions of City Council when it allowed the application.
- [85] Development Criteria 4 (g) makes it very clear that the architectural guidelines developed and written by the Westmount Architect Heritage Area Residents Association is a voluntary and not a mandatory set of guidelines. Development criteria 4(g) really requires the Development Officer to make development applicants aware of their existence, and that it is City Council’s intent that these architectural guidelines be voluntary only is abundantly clear. Not only is that set out in criteria 4(g) it is also mentioned in Section 5 of the Direct Control guidelines which sets out the voluntary architectural guidelines where it states “adherence to these guidelines on the part of the applicants is voluntary”. This is also reflected in Section 1 of the Direct Control Provision which sets out the general purpose of this Direct Control District where it states: “The district is based on the RF1 Single Detached Residential Zone regulations but with additional Development Criteria and accompanying voluntary Architectural Guidelines, .....”.
- [86] Accordingly the Applicants are complying with both the Use and all mandatory Development Criteria set out in the Direct Control Provision. Had the Development Authority declined to grant a permit on the basis of non-compliance with the Architectural Guidelines, they would, in fact have been disregarding the clear intention legislated by City Council to not require adherence to the Westmount Heritage Area Architectural Guidelines.
- [87] Accordingly, the Board finds that the Development Authority followed the directions of Council and pursuant to section 641(4) of the *Municipal Government Act* the appeal must be dismissed.
- [88] The Appellant made much of Policy 1 of the residential policies that are set out in the West Ingle Area Redevelopment Plan. Policy 1 was amended by Bylaw 11421 on Feb 10, 1997, in conjunction with and as part of the implementation of the Direct Control provisions cited above. Policy 1 states as follows:

The portion of West-Ingle between 107 Avenue and 111 Avenue, the lane west of 124 Street and the lane east of 127 Street will be known as an Architectural Heritage Area and be districted DC1 (Direct Control) District. Property owners in this area are encouraged to renovate or rebuild in the architectural styles which characterized West-Ingle between 1912 and 1925, and existing streetscapes will be maintained to reflect the area's original;

The Appellant relied almost exclusively on the last portion of that policy where it stated "existing streetscapes will be maintained to reflect the area's original"

[89] The Applicant's argued that the phrase "existing streetscapes will be maintained" meant that the architectural and aesthetic nature of all proposed built structures in this Direct Control area would have to match the architectural style that characterized the area between 1912 and 1925. The Board disagrees with this interpretation. It is clear from Policy 1 that maintaining the architectural style that characterized West Ingle between 1912 and 1925 was to be voluntary. Note that the words of Policy 1 are "owners in this area are encouraged to renovate or rebuild in the architecture styles which characterized West-Ingle between 1912 and 1925". It is clear that the reference to existing streetscapes means something different or is still part of the voluntary nature of architectural conformity.

[90] Policy 1 includes an explanation paragraph which was also part of bylaw 11421:

The uses allowed for under the DC1 (Direct Control) District will be the same as those allowed for under the RF1 (Single Detached Residential) District (Section 110 of the Land Use Bylaw). The DC1 District contains development criteria for the maintenance of the area's existing streetscape and through architectural guidelines encourages property owners to renovate or rebuild using the architectural styles which characterised the area's original homes.

[91] This explanation shows that the mandatory development criteria that City council did set out in the Direct Control provision in Section 4 (a) through (f) are the tool by which City Council has decided to maintain the area's existing streetscape. The Board notes that once again the architectural guidelines are mentioned in a permissive context stating property owners are encouraged to follow them but are not required to follow them.

[92] In general, the Board also notes that the paragraph referred to and relied on by the Appellant is a general policy paragraph. City Council has decided how that policy paragraph is to be implemented via the Direct Control Provisions that it passed in the very same Bylaw 11421. The Direct Control Provisions are the clearest expression of the

intent of City Council. Those Direct Control Provisions for the WAHA may have been a compromise on Council's part to address all neighbourhood residents' input. They do mandate certain aspects of the streetscape including the elimination of front driveways, the requirement for all vehicular access to be from the rear of the lot, the orientation of the front doors to be towards the street and a series of setback regulations that are

designed to maintain the pedestrian oriented nature of this portion of West Ingle. It is clear to the Board that the type of architectural conformity requested by the Appellants was explicitly not required by City Council that went out of its way to show that compliance with the level of architectural specificity was voluntary. With respect to the more general aspects of the general purpose of the Westmount Architectural Heritage Area, the Board notes that many of the criteria listed in Section 1 of the Direct Control zone are in fact met by this proposed development. It will not affect the City owned boulevard with its mature trees, will not affect continuous sidewalks, will maintain rear lane access to on-site parking and will have a front yard verandah which is very much in keeping with the style of the neighborhood which features many front yard verandahs.

- [93] The Board also refers back to the comments of the City's Heritage Planner which reflect that, in fact, by and large, this house does conform with the architectural guidelines, varying only from them with respect to windows and doors.
- [94] For these reasons, in addition to those set out above the appeal is denied.

Ian Wachowicz, Chair  
Subdivision and Development Appeal Board

Board Members in Attendance:

Mr. V. Laberge; Ms. M. McCallum, Mr. A. Nagy, Mr. C. Buyze

**Important Information for the Applicant/Appellant**

1. This is not a Building Permit. A Building Permit must be obtained separately from the Sustainable Development Department, located on the 2nd Floor, Edmonton Tower, 10111 – 104 Avenue NW, Edmonton, AB T5J 0J4.
2. Obtaining a Development Permit does not relieve you from complying with:
  - a) the requirements of the *Edmonton Zoning Bylaw*, insofar as those requirements have not been relaxed or varied by a decision of the Subdivision and Development Appeal Board,
  - b) the requirements of the *Alberta Safety Codes Act*,
  - c) the *Alberta Regulation 204/207 – Safety Codes Act – Permit Regulation*,
  - d) the requirements of any other appropriate federal, provincial or municipal legislation,
  - e) the conditions of any caveat, covenant, easement or other instrument affecting a building or land.
3. When an application for a Development Permit has been approved by the Subdivision and Development Appeal Board, it shall not be valid unless and until any conditions of approval, save those of a continuing nature, have been fulfilled.
4. A Development Permit will expire in accordance to the provisions of Section 22 of the *Edmonton Zoning Bylaw, Bylaw 12800*, as amended.
5. This decision may be appealed to the Alberta Court of Appeal on a question of law or jurisdiction under Section 688 of the *Municipal Government Act*, RSA 2000, c M-26. If the Subdivision and Development Appeal Board is served with notice of an application for leave to appeal its decision, such notice shall operate to suspend the Development Permit.
6. When a decision on a Development Permit application has been rendered by the Subdivision and Development Appeal Board, the enforcement of that decision is carried out by the Sustainable Development Department, located on the 2nd Floor, Edmonton Tower, 10111 – 104 Avenue NW, Edmonton, AB T5J 0J4.

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