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**CALGARY SUBDIVISION AND DEVELOPMENT APPEAL BOARD**

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Hearing held at: Calgary, Alberta

Date of hearing: July 11, 2013

Members present: Rick Grol, Chairman  
Jo Anne Atkins  
John Attrell  
Heather Hiscock  
Natasha Pashak  
Terry Smith

Basis of appeal: This is an appeal from an approval by the Development Authority for a development permit made on the application of **Inertia** for a **new: multi-residential development (2 buildings, 3 units)** at 78 34 Avenue SW.

Appeal filed by: **Erlton Community Association represented by Bill Fischer**

This appeal was originally scheduled for May 30, 2013 but was adjourned to June 27, 2013 with the consent of all parties. Due to the state of local emergency, the Board adjourned this item to July 11, 2013.

**Description of Application:**

The appeal before the Subdivision and Development Appeal Board (Board) deals with an approval by the Development Authority of a development permit for a new multi-residential development (2 buildings, 3 units) at 78 34 Avenue SW. The property is located in the community of Erlton and has a land use designation of Multi-Residential – Contextual Grade-Oriented (M-CG d72) District.

**Hearing:**

The Board heard verbal submissions from:

Kenneth Melanson, representing the Development Authority;  
Bill Fischer of Erlton Community Association, the appellant, in favour of the appeal;  
Brian Kiers, an affected neighbour and representing affected neighbours, in favour of the appeal;  
Trent Litwiniuk of Inertia, the applicant, opposed to the appeal; and  
Tony Such, an affected neighbour, opposed to the appeal.

**Summary of Evidence:**

The Board report contains the Development Authority's decision respecting the development permit application and the materials submitted by the Development Authority that pertain to the application, and forms part of the evidence presented to the Board. The Board report contains notice(s) of appeal(s) and any documents, materials or written submissions submitted by the appellant(s), applicant and any other parties to the appeal.

Appendix A attached to this decision contains the summary of evidence from the parties submitted at the hearing and forms part of the Board's decision.

**Decision:**

In determining this appeal, the Board:

- Complied with the provincial legislation and land use policies, applicable statutory plans and, subject to variation by the Board, The City of Calgary Land Use Bylaw 1P2007, as amended, and all other relevant City of Calgary Bylaws;
- Had regard to the subdivision and development regulations; and
- Considered all the relevant planning evidence presented at the hearing, the arguments made and the circumstances and merits of the application.

- 1. The appeal is allowed in part and the decision of the Development Authority is varied.**
- 2. The development permit shall be issued as approved by the Development Authority subject to the following amendments/additions to the conditions of approval.**

## Conditions of approval

### Prior to release conditions

- Prior to release condition number one is deleted in its entirety and replaced with the following conditions:

1. The applicant shall, to the satisfaction of the Development Authority, submit a total of six (6) complete sets of amended plans (file folded and collated) to the File Manager.

In accordance with the decision of the Subdivision and Development Appeal Board (SDAB2013-0072), the amended plans shall, to the satisfaction of the Development Authority, indicate the following:

- (a) A privacy screen shall be included on the landing of the entrance of dwelling unit C (west side of the landing);
- (b) The west facing foyer window of dwelling unit C shall be obscured in the form of manufactured obscured glass;
- (c) The front amenity space of dwelling units A and B shall have a permeable surface; and
- (d) A privacy wall shall be included on the east and west sides of the north balcony of dwelling unit C, extending 2.0 metres from the building facade and measuring a minimum height of 1.8 metres.

In order to expedite the review of the amended plans, please include the following in your submission:

- (1) Three (3) of the plan set(s) shall highlight all of the amendments;
- (2) Three (3) detailed written response(s) to the conditions of approval document that provides a point by point explanation as to how each of the prior to release conditions were addressed and/or resolved; and
- (3) Two (2) of the plan set(s) shall highlight all of the amendments with annotations accordingly.

In addition to the full sized plans requested above, please submit one (1) 11 x 17 complete set of plans for the purpose of the development completion permit (DCP) process.

Please ensure that all plans affected by the revisions are amended accordingly.

- 1.1 The maximum permitted hard surfaced landscape area for the site is 40.0 percent of the required landscaped area. The plans indicate 52.57 percent (+12.75 percent) or 117.44 square metres (+28.08 square metres) of the required landscaped area is hard surfaced. Amend the plans so that hard landscaping does not exceed 40.0 percent of the required landscaped area.

### Reasons:

1 Having considered the written, verbal, and photographic evidence submitted, the Board notes that the appeal pertains to an approval by the Development Authority of a development permit for a new multi-residential development (2 buildings, 3 units) at 78 34 Avenue SW. The property has a land use designation of Multi-Residential - Contextual Grade-Oriented (M-CG d72) District pursuant to Land Use Bylaw 1P2007.

2 The appellant submitted that the proposed development fails to conform to the rules contained in section 35(d) and 36(a) of Land Use Bylaw 1P2007. In the appellant's opinion the development does not respect the Municipal Development Plan or the Area Redevelopment Plan, nor the neighbouring homes and properties. The development results in a radical change in height and built form in their community.

3 At the hearing Ms. Jamison, who resides in the most eastern unit in Erlton Terrace Condominium (number 4 Erlton Terrace Place SW) to west of the proposed development, submitted, through her representative Mr. Kiers, a letter in opposition to the development. The letter is also signed by residents from the immediate area. The main concern is regarding the proposed dwelling unit in the rear.

4 The Board has particular regard to Land Use Bylaw 1P2007, including but not limited to the following sections:

Section 35 states:

#### Discretionary Use Development Permit Application

**35** When making a decision on a *development permit* for a *discretionary use* the *Development Authority* must take into account:

- (a) any plans and policies affecting the *parcel*;
- (b) the purpose statements in the applicable land use district;

- (c) the appropriateness of the location and *parcel* for the proposed *development*;
- (d) the compatibility and impact of the proposed *development* with respect to *adjacent development* and the neighbourhood;
- (e) the merits of the proposed *development*;
- (f) the servicing requirements;
- (g) access and transportation requirements;
- (h) vehicle and pedestrian circulation within the *parcel*;
- (i) the impact on the public transit system; and
- (j) sound planning principles.

Section 585 states, in part:

#### **Building Height and Cross Section**

- 585** (1) Unless otherwise referenced in subsections (2) and (3), the maximum *building height* is 12.0 metres.
- (2) The maximum *building height* on a *parcel* that shares a *property line* with another *parcel* that has no *buildings* or that has a *building* with a height greater than 6.0 metres above *grade* at that shared *property line*, and where the other *parcel* is designated with a *low density residential district* or M-CG District:
- (a) is 8.0 metres measured from *grade* at the shared *property line*; and
  - (b) increases proportionately to a maximum of 12.0 metres measured from *grade* at a distance of 4.0 metres from the shared *property line*.
- (3) The maximum *building height* on a *parcel* that shares a *property line* with a *parcel* that has a *building* with a *height* that does not exceed 6.0 metres above *grade* at that shared *property line*, and where the other *parcel* is designated with a *low density residential district* or M-CG District:
- (a) is 6.0 metres measured from *grade* at the shared *property line*; and

- (b) increases proportionately to a maximum of 12.0 metres measured from **grade** at a distance of 6.0 metres from the shared **property line**.
- (4) – (5) [...]

Section 570(1) states:

### Retaining Walls

- 570 (1)** A **retaining wall** must be less than 1.0 metres in height, measured from lowest **grade** at any point next to the **retaining wall**:
- (a) in the case of a **Multi-Residential Development – Minor**; and
- (b) for all other **developments**, within 3.0 metres of a **property line**.

Section 587(1)(i) lists “Multi-Residential Development” as discretionary use in the M-CG District.

5 The Board also has regard to the Municipal Development Plan (MDP) and the Elton Area Redevelopment Plan (ARP). The ARP states on page 4, in section 2.1.2, in part:

#### 2.1.2 Recommended Policies:

- 2.1.2.1 Reaffirm the policy of conservation for south Erlton. Infill development is encouraged; this should be compatible with the scale of surrounding development and the local streetscape. Infill development should be sensitive to and complement the natural features associated with the riverbank and escarpment.

[...]

- 2.1.2.8 Future development in the Erlton district must address the site-specific land use recommendations as set out in the following tables.

6 The Board acknowledges the written and oral submissions of all parties, including but not limited to the appellant, applicant and interested/ affected parties, as well as letters and correspondence received regarding the application and appeal. The Board considered all relevant arguments either in favour or against the proposed development.

7 The application is for a multi-residential development on the subject property in the form of two buildings. One building is located at the front of the property and contains two units (unit A and B). The other building is located at the rear of the property and contains one unit (unit C) above the garages for all units. The garages are oriented towards the lane at the rear of the property. All units have three bedrooms.

8 The application requires one relaxations of Land Use Bylaw 1P2007. Effectively, the Development Authority granted a relaxation of section 570 of the Land Use Bylaw 1P2007 for over height portions of retaining walls. The Development Authority imposed a prior to release condition that the minimum required front setback pursuant to the Land Use Bylaw must be met and that requirements for permitted hard surface landscaping must be met as well.

9 The Board questions the interpretation of the subject Bylaw sections in terms of where grade is identified from. In this case on both sides of the property along the west and east property lines are retaining walls. Apparently the Development Authority measured grade from the top of the retaining walls as shown on the plans as the retaining walls appear to be on the property line. The Board questions the intent of the Bylaw where it speaks of “measured from grade at the shared property line” as referenced in section 585(2) and (3) and whether retaining walls should be included in the grade for the purpose of these Bylaw sections. In this regard the Board notes that section 13(69) of the Bylaw defines “grade” and it does not include an artificial embankment. Under the scheme of Land Use Bylaw 1P2007, a retaining wall is a structure. In the Board’s view a retaining wall is an embankment, having regard to generally accepted dictionaries. In the Board’s opinion, the result of where grade is measured from, either the top of the retaining walls or the finished ground surface has significant consequences for the maximum allowable height, because in this case it would result in almost an additional full storey for a development. In the Board’s view these Bylaw sections are ambiguous. In any event, insofar this would result in relaxations of the Land Use Bylaw for the proposed development the Board will address the appropriateness of such relaxations below.

10 The Development Authority felt the application was respectful of both the Land Use Bylaw and ARP. In the Development Authority’s opinion, the proposal positively adds to the existing and changing context of the streetscape.

11 The proposed development is a discretionary use. Therefore, pursuant to Land Use Bylaw 1P2007, the development permit application can either be granted or refused on the basis of sound planning considerations.

12 Pursuant to section 35 of Land Use Bylaw 1P2007, when making a decision on a development permit application for a discretionary use the Development Authority must take into account the things listed in subsections (a) through (j). Subsection (a) of this

section lists the plans and policies affecting the parcel. Therefore, the MDP and the ARP guidelines must be taken into account by the Development Authority. In addition, the compatibility and impact of the proposed development with respect to adjacent development and the neighbourhood as well as the merits of the proposed development and sound planning principles, among other things, must be taken into account.

13 The Board finds that the ARP gives clear direction. It states in section 2.1.2.1, among other things, that “[i]nfill development is encouraged; this should be compatible with the scale of surrounding development and the local streetscape.” While the ARP has not the same status as a land use bylaw and the Development Authority has discretion to implement the policies of the ARP, in particular where the ARP does not use mandatory but directive language, the aforementioned policy is a factor to be considered. The Development Authority has discretion how it applies the policies of the ARP.

14 The subject parcel is located in the Low Density Residential area number one, as indicated on Map 2, Land Use, page 11 of the ARP.

15 The Board recognizes that the subject site, due to its topography, is a challenging site to develop.

16 Regarding the previous development application and the Board’s decision regarding that development, the Board notes that is irrelevant. Each application is determined on the basis its own merits, the circumstances of the case, the evidence submitted and sound planning considerations.

17 Nevertheless, the Board, based on the evidence, finds that the proposed development is a different development than the previous application which had a different form and design.

18 The Board takes into account that one of the objectives of the MDP is densification and adding more dwelling units to inner city communities. The proposed multi-residential development of three dwelling units each containing three bedrooms advances family accommodation which contributes to inner city living. From a planning perspective this is a relevant factor.

19 The Board notes that the applicant has mitigated the massing of the development through a sensitive design of the rear building. The roof of the rear building has a significant slope and slopes down towards the adjacent properties. The semi-detached building on the front of the parcel also steps down from east to west following the slope of the street. The staggered floors and façade elements break up the building mass and define the building into two distinct units.

20 The Board accepts the applicant's evidence that the overshadowing of the rear building is limited due to the sloping roof of the building and the topography of the adjacent property and the existing retaining wall and fence.

21 In terms of privacy, the Board finds that the trees located along the easterly property line on the Erlton Terrace property provide some screening. In addition, the applicant has included a 6 foot fence along the Westside of the development. In the Board's view this will provide sufficient screening since the property to the west has a substantial lower grade. In the Board's view the applicant has reduced the amount of overlooking from the rear building as much as possible. As well, the applicant would be willing to obscure some additional windows if the Board would deem such necessary. In addition to the design measures taken by the applicant to mitigate impacts of overlooking, the Board deems it necessary to provide privacy walls at the landing and balcony of dwelling unit C. This would provide some further screening.

22 Furthermore, the Board takes into consideration that the Land Use Bylaw allows a secondary suite in conjunction with a detached garage to be located in the rear of the subject property. The proposed configuration of one dwelling unit in the rear building, attached to the garages, is in the Board's view from a planning perspective not that much different. In addition, there is no development to the north of the lane as there is a cemetery. The design of the rear yard dwelling has taken advantage of this particular land use relationship by locating the main living spaces towards the lane, thereby animating and increasing visibility onto the lane. Unfortunately the Development Authority has no policy for rear yard development pertaining to infill multi-residential parcels. Only in relation to secondary suites in the rear yard does the Bylaw provide specific setback rules in order to be sensitive to adjacent developments. While the proposed development changes the pattern of rear development on the block face, the Land Use Bylaw does allow for this type of development in the applicable land use district and at this location. In this instance the context of the parcel adjacent to a cemetery also provides an opportunity for sensitive rear yard development. These are factors to be considered in this case.

23 In the Board's opinion, the rear building will be noticeable from the street through to the location of the front entrance of dwelling unit C. However, it does not dominate the parcel as the roof slopes down towards the side yards and the ridge line is split, reducing the overall height and mass. Also, in order to provide a line of sight from the street to the main entry of the rear dwelling unit, the west side yard is wider than required, which reduces the mass of the front semi-detached building.

24 Furthermore, the height of the proposed development is relatively in context with the Erlton Terrace development to the west since the subject development is located at the lower portion of 34 Avenue SW.

25 The Board finds that the relaxation for the over height retaining walls have no negative impact on the adjacent properties given the topography of these properties. In addition, the applicant at the hearing stated that the retaining wall in the front of unit B on the east side (enclosing the amenity space area) will be lowered as much as possible. The Board takes this into account. Insofar as the application would require relaxations of the chamfer rule contained in section 585 of Land Use Bylaw 1P2007, the Board finds that such relaxations are in this instance appropriate from a planning perspective. The height of the development is within context of the developments to the west and is, from a planning perspective, acceptable. The proposed development and required relaxations for the development do meet the criteria of section 687(3)(d) of the *Municipal Government Act*, as there is no established negative impact from these relaxations.

26 Accordingly, pursuant to section 687(3)(d) of the *Municipal Government Act*, the Board determines that the proposed development and required relaxations would not unduly interfere with the amenities of the neighbourhood, or materially interfere with or affect the use or enjoyment of neighbouring parcels of land.

27 The Board, based on the evidence and aforementioned factors, finds that the proposed development meets the policies of the ARP and MDP. In the Board's opinion, the development is sensitive to and respectful of the streetscape and the adjacent properties.

28 Having regard to the merits of the application and to sound planning considerations, the Board, based on the evidence and aforementioned factors, in keeping with section 35 of Land Use Bylaw 1P2007, finds that the proposed development is compatible with the adjacent developments and the immediate neighbourhood. The Board, based on planning rationale, finds that the development is appropriate for the site.

29 However, that is not to say that the subject proposed development can be used as a precedent for rear yard developments on the subject street. Each development needs to be reviewed based on the merits of an application, location, lot size, context, built form, design, sensitivity to adjacent developments, access issues, topography of the lot, sound planning considerations etc. The Board would recommend to The City to consider some guidelines regarding rear yard developments of infill multi-residential parcels.

30 In reviewing and weighing all of the evidence, the Board thus finds that the application warrants approval subject to some additional conditions.

31 Having regard to sound planning considerations, the Board imposes the following additional conditions. A prior to release condition requiring that: (a) A privacy screen be included on the landing of the entrance of dwelling unit C (west side of the landing); (b) The foyer window of unit C shall be obscured in the form of manufactured obscured glass; (c) The front amenity space shall have a permeable surface; and (d) A privacy wall shall be included on the east and west sides of the north balcony of dwelling unit C,

extending 2.0 metres from the building facade and measuring a minimum height of 1.8 metres.

32 For the above reasons the Board allows the appeal in part and varies the decision of the Development Authority.

33 The development permit will be issued as approved by the Development Authority subject to the aforementioned amendments/additions to the conditions of approval.

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Rick Grol, Chairman  
Subdivision and Development Appeal Board

Issued on this 20<sup>th</sup> day of August, 2013

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**APPENDIX A****Summary of Evidence:**

Evidence presented at the hearing and considered by the Subdivision and Development Appeal Board.

**The Development Authority:**

The Development Authority presented exhibits including the report, maps, viewgraphs and photographs and additionally submitted the following:

This item is an appeal of the Development Authority's decision to approve an application for a New: Multi-Residential Development consisting of two buildings and a total of three units located at 78 34 Avenue SW in the community of Erlton. The site is designated M-CG d 72, Multi-Residential – Contextual Grade Oriented District, and this is a discretionary application. The site is surrounded by a cemetery to the north, single and semi detached dwellings to the south, east and west with a spotting of multi-residential development.

This aerial photograph provides some context for the site. The sites on the north side of 34 Av SW and Erlton Terrace are all designated M-CG d 72, Multi-Residential – Contextual Grade Oriented District and consist of a variety of development forms such as semi-detached dwellings, four unit multi-residential buildings and a large site to the west contains a ten unit comprehensively design multi-residential development approved in 2001. The parcels on the southern portion of 34 Avenue SW up to the lane (note lane location) are designated R-C2, Residential Contextual One/Two Dwelling District and consist of single and semi-detached dwellings. To the south of the lane, are a series of parcels under DC Bylaw 6D2012 which are the Mission Road design project, the future use will be for multi-residential development.

The site was notice posted and circulated to affected parties. Concerns were expressed by the Community Association over relaxation requirements of the LUB. After considerable review, and negotiation, satisfactory amended plans were received and approved by the Development Authority. One relaxation for retaining walls was approved with the application. This was necessitated to accommodate grade changes on the parcel. Two temporary relaxations were granted; with appropriate prior to release conditions requiring amended plans to correct these issues.

The proposal is providing front setback amenity areas for the two units facing 34 Avenue and a common amenity space between both buildings. In yellow, a series of scrubs and trees are being added respecting the requirements of the

Land Use Bylaw. The rear setback area has an at grade visitor stall and three stalls in the rear detached building.

This coloured plan indicates the areas of hard landscaping shown in purple and soft landscaping shown in green. Amenity space for the proposed building is shown in pink.

The contextual front setback requirement of 4.6 metres has been indicated in red on this site plan, with the location of the proposed building highlighted. While there is a minor encroachment requiring a temporary relaxation, a prior to release condition to amend the plan to meet the contextual front yard setback has been provided which will negate this issue.

The building design is a more contemporary style of building with a variety of roof forms, flat for the front units and sloped for the rear building. This mimics the variety of roof forms on the street, which provide an adjacent context. The townhouse development to the west uses flat roof forms, while some other smaller buildings use a variety of flat or sloping roofs.

The south or front units abutting 34 Avenue SW have a mix of both stucco and cedar wood siding treatments and hardy panel material treatments. Variations in the building footprint and building projections help reduce the monolithic appearance of this prominent facade location on the streetscape. The side elevations have similar building material treatments with minimal window openings to respect adjacent privacy. The internal rear elevation of the unit also provides stucco materials. The use of different materials on the side elevations also helps to reduce the massing appearance to the adjacent parcels.

Parking for each unit is provided in an attached garage as part of the rear building. Each unit has one parking space provided off of the lane, while a visitor parking is provided to the east of the parking garage for unit B. Access to each is provided to grade with pedestrian pathways from each unit to the garages. In the case of the Unit C garage, a mud room adjoining the unit is provided.

As shown on the proposed plan, each unit provides three bedrooms. This fulfills the goals of the Municipal Development Plan by providing dwelling units which promote potential family accommodation, as two or more bedrooms in a unit achieves this goal.

As mentioned previously there was a temporary relaxation granted for the contextual front yard setback granted with the approval. However, this will be addressed through a prior to release condition to meet the setback. An additional temporary relaxation for the amount of hard surfacing was also granted, but similarly has a prior to release condition requiring the rule be met.

The table shown on screen shows the only permanent relaxation required to facilitate this proposal, which pertains to retaining walls on the side and one retaining wall on the front. This is due to the grade changes on the site; however it is my understanding that the applicant will be changing amending the front retaining wall of the east unit to reduce the height to under 1 metre.

<b>Bylaw Relaxation</b>		
<b>Regulation</b>	<b>Standard</b>	<b>Provided</b>
570 Retaining Walls	(1) A retaining wall must be less than 1.0 metres in height, measured from lowest grade at any point next to the retaining wall: (b) within 3.0 metres of a property line.	Plans indicate various retaining walls over 1.0 metre within 3.0 metre of the property line (necessary to accommodate grade

Shown is page 1 of the conditions of approval indicating the prior to release conditions I previously mentioned eliminating the temporary relaxations for the contextual front yard setback and hard landscaping.

An additional prior to release (PTR) condition for privacy was also added.

The subject development is located within the boundaries of the Erlton Area Redevelopment Plan (ARP). The plan encourages in the multi-residential areas such as the subject site a variety of housing types except apartment buildings, which this development would not be considered a typical form of. The proposed development mimics two low density buildings on one parcel, which is an acceptable configuration under a multi-residential land use. This proposal has been done in a variety of other configurations throughout the city; however this appears to be the first time that it has appeared in this community.

Provided are some 3D illustrations of the proposed development. Noted is the retaining wall at the front which I mentioned was over the 1 metre height and part of the relaxation granted. As I mentioned, it is my understanding that this will be amended by the applicant to meet the 1 metre height requirement and that only the side retaining walls would remain over height.

The Development Authority felt the application was respectful of both the Land Use Bylaw and Erlton Area Redevelopment Plan. The proposal positively adds to the existing and changing context of the streetscape and was subsequently approved with the conditions noted in the Board’s report.

Upon questioning by the Board, the Development Authority’s representative clarified and stated the following

- The rationale for the relaxation to the retaining wall is due to the grade change. The grade at the rear will be the higher point and front part being the lower point. The design necessitates a retaining wall that exceeds the Bylaw requirement from the lowest point to the highest point.
- On page 31 of the Board's report under the detailed team review (DTR), it indicated that the front yard amenity spaces which are the patios in the front would not comply under section 557(2) of the Land Use Bylaw. Mr. Melanson clarified that for street oriented multi-residential building has to be at least a minimum of 4.6 metres or less to the street by virtue of the contextual setback. The provisions of section 551(1) does not apply to parcel designated multi-residential at grade district.
- Context of this street is changing and there are already changes that occurred in the neighbourhood. He added that some of the objectors to the proposed development are that they are looking at what happened before however, context is not only looking back but context is also looking at the future as well. When an application comes in, the Development Authority does not only protect what is out there but it is also mindful of what is coming. There is a proposed multi-residential to the south of the proposed development just outside of community of Erlton but it will be a significant change to the overall context of the street. He added that the one neighbour who spoke in favour of this development, there are people who buy properties in the area with the idea of rebuilding their properties. The Development Authority looks at the balance of protecting what is currently there and at the same time mindful of future developments.
- He also addressed Mr. Fischer's submission on policies and the MDP that requires for low density neighbourhood. Mr. Melanson stated that Erlton is a mixed or mishmash community. In his opinion, there is no policy conflict. The Development Authority is trying to encourage in the multi-residential area where there is a designated MC-G which does not allow for apartment block to incorporate multi-residential density in as many forms as they can that are not an apartment blocks. The proposed application does that because it mimics a semi-detached dwelling in the front and then it places a single detached in the back. In terms of form, it is very much a form that is consistent with the neighbourhood as there are single and semi detached dwellings in the neighbourhood.
- Furthermore, in regard to the rear yard, he reiterated that multi-residential developments are different from low density developments. They do not have the same typical rear yards. In MC-G districts, secondary suite detached garden and secondary suite detached garage are listed uses in those districts therefore, one could apply for a secondary suite detached garage or detached garden that will be in the physical rear and that is where they are intended and are acceptable within the MC-G district. In his opinion, this concept is not unheard of in this land use. Although this may be the first occurrence in Erlton, they are actually throughout the city.
- In section 585(2) of the Bylaw, the purpose of chamfer rule for multi-residential development is to be sensitive to adjacent low density development.
- This is a change in the pattern within the block face by having a dwelling in the rear yard. The Development Authority is not trying to equate a secondary suite to this

proposed dwelling in the rear; rather, he is illustrating that to take the setback in a broader sense that you can still have that dwelling in the rear yard in some form. The Development Authority has ability under section 35 where they need to consider when approving these types of development.

### In Favour of the Appeal:

Bill Fischer of the Erlton Community Association, the appellant, distributed documentation to the Board including photographs, and plans and raised the following issues in favour of their appeal:

First, let me emphasize that our community fully supports redevelopment and the renewal of housing. Redevelopment requires an understanding of, and sensitivity towards, existing development. It must respect the established homes, including built form and recent re-development, and carefully integrated into the block face to maintain both the character and the living experience in our community. This discretionary design does not do that.

The streetscape view shown at the top of plan DP3, page 140 and plan sheet 3/8 of the Board's report clearly demonstrates the three-storey front building towering over all surrounding homes by many metres.

The front elevation shown on plan DP6, page 143 and plan sheet 6/8 the Board's report depicts the front building's apparent compliance with Land Use Bylaw section 585. Sections 585(2) and (3) proscribe the construction envelope in which the building must fit. For the west side, as defined by 585(3)(a), the maximum height requirement is 6.0 metres measured from grade at the shared property line.

The Development Authority determined compliance with section 585(3) by measuring the envelope from the top of a retaining wall, instead of grade. Plan DP3 shows the elevation of the retaining wall as 1068.93 metres. DP6 shows the West 6.0 metres envelope starting at an elevation of 1068.93 metres, the top of the retaining wall and terminating at 1074.93 metres exactly 6 metres. Plan DP3, however, shows grade at the property line, the point where the retaining wall emerges from the finished ground to be at 1066.87 metres. The top photograph on page 137 of the Board's report shows the top of the wall and the ground at the property line. This retaining wall scheme gives a 2.06 metres advantage over the proper use and interpretation of section 585.

We cannot improve on the Board's previous explanation of this defect, as defined and explained in paragraph 8 of their decision on the prior appeal relating to this property SDAB2012-0023. It's shown on page 119 of the Board's report.

The Board questions the interpretation of the subject Bylaw sections in terms of where grade is identified from. In this case on both sides of the property along the west and east property lines are retaining walls. Apparently the Development Authority measured grade from the top of the retaining walls as shown on the plans as the retaining walls appear to be on the property line. The Board questions the intent of the Bylaw where it speaks of “measured from grade at the shared property line” as referenced in section 585(2) and (3) and whether retaining walls should be included in the grade for the purpose of these Bylaw sections. In this regard the Board notes that section 13(69) of the Bylaw defines “grade” and it does not include an artificial embankment. Under the scheme of Land Use Bylaw 1P2007, a retaining wall is a structure. In the Board’s view a retaining wall is an embankment, having regard to generally accepted dictionaries. In the Board’s opinion, the result of where grade is measured from, either the top of the retaining walls or the finished ground surface, has significant consequences for the maximum allowable height, because in this case it would result in almost an additional full storey for a development. In any event, the Board finds that in this case relaxations are required of section 585(2) and (3). The difference would be the size and magnitude of the subject relaxations.

Roughly drawing the section 585 envelope on the west side without this 2 metre advantage shows that the building requires a 2 metre or 6.5 foot height and width relaxation. No reasonable person would consider such a huge relaxation to be a prudent or thoughtful exercise of discretion.

This property in south Erlton has a land use designation of Multi-Residential - Contextual Grade-Oriented (M-CG d72) District pursuant to Land Use Bylaw 1P2007.

Overall, this design is not contextual. In fact, as shown on page 140 and plan sheet 3/8 of the Board’s report, Unit 3 is a stand-alone building situated in what is the grassy back yard of every other home in south Erlton. This unit is also the largest of the three units, so its presence in the back yard is magnified. Its location there will destroy the living experience of this portion of our community for the nearby neighbours, and significantly alter the character of development in south Erlton.

Since this proposal is a discretionary use, Land Use Bylaw section 35 applies, stating: When making a decision on a development permit for a discretionary use the Development Authority must take into account: (a) any plans and policies affecting the parcel;

I have read the report from cover to cover. Nowhere in the 147 pages of the Board’s report is there any indication that the Development Authority considered or discussed any plans and policies affecting this parcel.

The City publishes the list of policy plans applicable to this property. The Municipal Development Plan and the Erlton Area Redevelopment Plan (ARP) are two of these. Both are statutory documents approved by City Council. They govern this property, with each providing specific guidelines relative to the local context.

The MDP became effective in April 2010, and in Part 2 - City-wide policies, it states:

The city-wide policies presented in this section are the integrated land use and mobility policies of the MDP. They are the policies that guide growth and change across the city as a whole and speak to the kind of city Calgarians want for the future. The policies also have relevance and provide direction across many specific scales of planning in the city, (e.g. Local Area Plans, outline plans, land use amendments and development permits).

Please note the reference to relevance and providing direction to development permits.

- o The Municipal Development Plan (MDP) in section 2.2.5, the Objective, states:

The City promotes infilling that is sensitive, compatible and complementary to the existing physical patterns and character of neighbourhoods.

Section 2.2.5 also states, in Policies, Neighbourhood Infill and Redevelopment:

- a. Encourage growth and change in low-density neighbourhoods through development and redevelopment that is similar in scale and built form...

Later, in section 2.3.2, Policies, it states:

- c. Ensure infill development complements the established character of the area and does not create dramatic contrast in the physical development pattern.

And in section 3.5.1 General – Developed Residential Area Policies, Land use policies, it states:

- a. Recognize the predominantly low density, residential nature of Developed Residential Areas and support retention of housing stock, or moderate intensification in a form and nature that respects the scale and character of the neighbourhood.

Each of these MDP references recognizes the importance of and respect for existing scale and built form. This proposed form of a residential unit in a building in the back yard does not exist in our community.

- City Council approved the Erlton ARP in March 1985 and last amended it in 2008. It thus reflects their policy and wishes, as well as those of our community – otherwise we would have changed it.

In the Preface section of our ARP it states the purpose of ARPs: Area Redevelopment Plans are planning documents which set out land use policies and other planning proposals for communities within the City. As such, they are intended to supplement the Land Use By-law by providing a policy context within which the discretion of the Approving Authority should be exercised in a particular community.

The Executive Summary, under Land Use and Development states: The conservation policy for south Erlton is reaffirmed and redesignation of the conservation area from R-2 to RM-2 is provided for.

In the Introduction, the Overview of the Study Area states: South Erlton (the area south of 25th Avenue S.E.) has an established, low-rise, residential character which should be maintained and revitalized.

In the Goals portion of our ARP, Section 1.3.2 states: To reaffirm the conservation policy for the south Erlton area and to revitalize and enhance the established residential community.

In the Objective portion of our ARP, Section 2.1.1 states: To preserve and enhance the established residential character in south Erlton...

Further, Section 2.1.2.1 states: Reaffirm the policy of conservation for south Erlton. Infill development is encouraged; this should be compatible with the scale of surrounding development and the local streetscape.

In our view, conservation means new development that is respectful of and sensitive to the character of existing homes. Form being one of them. Due to its height and form, the proposed development does nothing to maintain the established, low-rise, residential character of our community, nor conserve, nor enhance, nor preserve the established nature of the homes.

The proposed development is thus incompatible with the surrounding development. Recent re-development in this portion of our community has been in the form of single family homes and townhouses. All these are within a few feet of this proposed development. The Erlton Terrace townhouses,

shown on page 132 and to the left on page 136 of the Board's report, are examples of a respectful development maintaining the established scale, form, massing, and character of the area.

There is nothing in the MDP or our ARP that contemplates this radical change in height or built form in our community and we ask that this development permit be denied.

Mr. Fischer also read a letter submitted by Tamara Kulus, an affected neighbour:

I own the property situated at 82 34 Avenue SW. My property lies adjacent and parallel to the West property line of the proposed development at 78 34 Avenue SW. I have reviewed the approved plans for this development. I feel the amended drawings have improved on several issues that were of concern and I appreciate the design and character of the two units facing 34 Avenue SW.

However, I feel that the development is still over massed for the property. I feel that the unit situated in the back overshadows the backyard of my property, eliminating the privacy of my rear yard. This will impact the use and enjoyment of my property, as well as impair future redevelopment opportunities on my property and ultimately compromise my property value.

I believe this proposed development exceeds many of the guidelines defined in the Erlton Area Redevelopment Plan and also, I believe, the height policies outlined in City of Calgary's Land Use Bylaw. I find this result to be disrespectful to the Erlton Community Association, to the adjacent property owners and to the neighbouring residents in the community of Erlton. I agree with the other neighbours and the community association. I believe that a development with a backyard would fit the block better.

Mr. Brian Kiers, spoke for Lorna Jamison, an affected neighbour, and distributed documentation to the Board including photographs, petition and raised the following issues in favour of the appeal:

He read the neighbour's petition against the proposed development:

We, the undersigned, have has the opportunity to look at the approved plan for 78 34 Avenue SW which is a neighbouring property on our street. While we see that some changes were made to the front duplex in response to the concerns of the Board at last year's hearing, we are very disappointed that there remains a plan to have a residential dwelling in the backyard. We all want development that is consistent with Erlton's ARP and compatible with our neighbourhood and thus, must oppose this development plan.

We purchased our homes here in south Erlton because it is a lower density community where people are able to enjoy their yards. We object to any residential dwelling in backyards on our street. This particular dwelling, although a single unit, is actually the same height and takes up the same surface area if not more than the backyard duplex in the previous plan.

Mr. Kiers then read the letter from an adjacent neighbour Lorna Jamison:

My name is Lorna Jamison and I live in the property referred to as left neighbour on page 132 of the Board's report at 4 Erlton Terrace SW. The only resident owner who supports this project lives in 74 34 Avenue SW.

As this letter states, the majority of resident homeowners on 34 Avenue are disappointed that this current development plan for 78 34 Avenue includes a residential dwelling in the backyard. We oppose this backyard development for the same reasons that we opposed the double duplex in the backyard that was in the previous plan. We are concerned with massing, height, design compatibility, sun shadowing and privacy and thus oppose any residential dwelling in backyards on this Avenue. In point of fact, the current single family dwelling is the same height and covers more surface area that did the proposed backyard duplex in the first plan.

We are all eager for development especially of the unsightly rundown and abandoned appearance of several of the properties on the block, including this one at 78 34 Avenue. They are shameful looking eyesores that we unanimously want replaced with reasonable dwellings that are consistent with Erlton's ARP. In the Board's decision in March 2012 regarding the first development plan for the site, it was stated that Erlton Terrace townhouses are a good example of the type of new development that is respectful of the ARP principles. My husband and I live in one of those townhouses and we all have backyards.

At the last appeal, documents were submitted in favour of the development that were signed by absentee landlords, renters and people who live blocks away, one of whom specifically stated that he would not want such backyard development to be a model for the rest of south Erlton.

The developers of the site 78 34 Avenue state "the support for this development is vast, however, most importantly are the immediate neighbours whom have been consulted throughout the design process and are largely in favour". This was not true a year ago and it is definitely not true today.

If the development of the property in question actually does believe what they claim to believe, that consulting with the immediate neighbours throughout the design process is the most important part of the development process, then they

will be in full agreement with me today because I represent 13 separate resident homeowners whose support they do not have. They, on the other hand, have only one resident homeowner. This owner is Mr. Suche along with the owners of the four unoccupied properties who do not reside here, hope to make significant financial gain by completely transforming our neighbourhood, in ways that contravene the principles of the ARP. The people opposing it, on the other hand, simply call this block in Erlton home and believe that the ARP should be respected.

We know that approval of this development is precedent setting and will determine the development in our neighbourhood. Backyards will disappear and the narrow lane will likely become another front street.

Comments to clarify confusing, misleading or incorrect information:

Page 68 of the Board's report of Tony Suche email copied to our Alderman Gian-Carlo Carra:

- The fourplex next door at 82 34 Avenue is owned by Mr. Flaig's daughter, Tamara Flaig Kulus who opposes this development (see letter from her dated May 28, 2012) and letter page 75 of November 12, 2012). Tamara grew up here in south Erlton and is committed to maintaining its lower density character (excerpts from her letter on page 75 of the Board's report).
- Before maligning Mr. Fischer about wanting to keep Erlton in the dark ages and filled with ugly, nondescript bungalows, Mr. Suche states that he is one of several other properties awaiting the outcome of this appeal, clearly this is a precedent setting decision.

Page 77 of the Board's report of Tony Suche email also copied several people including the Alderman Gian-Carlo Carra:

- Many of us local residents who are members of the Erlton Community Association take offense at the way the Planning Committee conduct their business...
- Its streets are filled with too many non-descript 50 to 100 years old bungalows of no architectural or historical value whatsoever. Many of them are simply dumps. 34 Avenue is one of the worst.

Page 147 of Alderman Gian-Carlo Carra:

- Previous development application overturned due to numerous relaxations as well as its contravention of contextual policy within the Erlton ARP.

- 13 of the most immediate homeowners on the block, 12 of whom are residents which to point out that this second development appeal also contravenes the contextual policy within the Erlton ARP.
- Vexing disconnect between policy in the ARP regarding the character of South Erlton as a traditional lower density neighbourhood on the other hand, and the higher density Land Use districts applied to this area under Land Use Bylaw 1P2007 on the other:
  - Use type: discretionary application.
  - RM-2 Residential Low Density Multi-Dwelling District in the ARP.
  - Developed area (M-CG): Multi-Residential, Contextual, Grade-Oriented District: In the Developed Area some districts require that multi-residential development.
- I was a bit taken aback when a seasoned expert like Mr. Fischer maintained a position of opposition to the project when the terms of this arrangement were ostensibly achieved.
  - First, I would like to say that Mr. Fischer is well respected for his volunteer commitment to this community.
  - Second, the Alderman might be more “taken aback” if he realized that of the 13 resident owners in the alderman’s constituency who are voicing their opinion today, 12 of them oppose this development.
- The backyard is the epitome of private space and its treatment should be more a product of private choice.
  - I was taken aback when I read this. As an alderman and rural planner. I am surprised that a statement that contradicts zoning and development policies would be made by Gian-Carlo Carra. Actually, I am here today and representing my neighbours precisely because we want our backyards to be private spaces. Our alderman frequently mentions Jane Jacobs, the iconic Canadian urban planner (not formally trained with whose work I am also familiar). I would like to read a quote from Jane Jacobs biographers:
    - She is described as “a female writer and mother who criticized experts in the male-dominated field of urban planning,”
    - “Jane Jacobs will be remembered as being an advocate for the mindful development of cities and has left a legacy of empowerment for citizens to trust their common sense and become advocates for their place”.

After showing you the photographs I took yesterday and reading Mr. Suche’s description of these properties, I would like to quote Jane Jacobs directly, (she created the term “unslumming”):

- “Unslumming stems population decline and transiency. People take pride in where they live. Parks and streets are safer and tidier.”
- “It may be that we have become feckless as a people that we no longer care how things do work, but only what kind of quick, easy and outer impression they give. If so, there is little hope for our cities or probably for much else in our society. But I do not think this is so.”

I would also suggest that Jane Jacobs were here, she would be vociferously essentially the same as we had in the previous appeal and these reasons were articulated in the Board’s ruling for that first appeal wherein the following statements were made:

Date of hearing, March 08, 2012: Pages 93 to 123 of the Board’s report. Reference in particular to reasons 4, 11, 12, 13, 14, 15, 16, 19, 21, 22, 23, 26, 28, 29, and 30:

I come here today, not representing architects or realtors or developers or speculators. I respect the work they do so insofar as it respects the mindful development policies such as the ARP and respect the neighbourhood. I represent busy working professionals who are also doing their jobs to the best of their abilities. They simply want to maintain the character of their neighbourhood and come home at the end of their day and enjoy their property. None of them signed the letter because they like me or as a general sign of support. They are adamantly opposed to this development because they will be directly impacted affected by it and all the subsequent development that will take place on their block if this development goes through. Most of us lived here, on this block, for ten years or more. Our street will become a beautiful part of south Erlton development continues to take place.

Upon questioning by the Board, the appellant and affected neighbours clarified and stated the following:

- Mr. Fisher stated that the entire third storey creates a height that is unacceptable. The concern of the Community Association is in regard to the built form of the proposed development. The physical presence of the proposed development is their main objection.
- There is residential building to the west and there are balconies in the front portions.

#### Opposed to the Appeal:

Trent Litwiniuk of Inertia, the applicant, submitted photographs and plans and raised the following points opposed to the appeal:

- He stated that the previous development permit application which was approved by the Development Authority but was overturned by the Board was a 4 unit configuration development. He admitted this new proposed development is not very different from the 4 unit. The main change to the proposed was based on the concerns raised by the appellants at that time and they had a discussion with the community. Therefore, the proposed, in their opinion is more appropriate for the site and it will fit with the existing context.
- The applicant submitted that the retaining wall already exists on both sides and there will not be any changes to it. Also, when the appeal for this current development permit came in, the applicant was surprised as in his understanding with their discussion with the community association; the applicant has addressed all their concerns on the massing and the relaxation. In their view, the current proposal has less density and will integrate more in the neighbourhood.
- He submitted that the rear unit is shrunk tremendously from the previous application and the rear amenity space above the garage so there is no chance of overlooking into the neighbour's property with about 16 to 17 feet from the property line.
- He demonstrated that the proposed development does not make it worse than what exists on the site. The adjoining property is much lower than the subject site so in the applicant's opinion, there is an expectation of overlooking due to the lay of the land. The proposed also does not have any windows in that elevation; therefore, in his opinion there is no potential of overlooking at that elevation. He added that there are lots of trees in between the properties so one cannot see through and it is an added deterrent for any overlooking on both properties.
- Mr. Litwiniuk submitted that the proposed development when seen from the west yard does not pose a significantly larger mass than a standard garage would pose. Even though the proposed is a two storey, the wall height is lowered along the side and it is less than 8 feet wall.
- In the site plan, he demonstrated the amenity space above the garage and it is the only available space in their unit where someone could look west. He added that if a person is in the amenity space and will look west; the site line shows the line of trees therefore, there is not a lot of an opportunity for overlooking to the neighbour's rear yard.
- He also submitted that from the discussion with The City, the proposed development is a good fit and a good use of the zoning in the area. The proposed is scaled back from the previous application and in their opinion; they are under building on what is allowed on the site. The proposed development is sensitive to the existing context of the neighbourhood and it respects the neighbouring properties. The three unit development does not have any negative impact to the use, value and enjoyment of the neighbouring properties.

Upon questioning by the Board and during rebuttal, the applicant clarified and stated the following:

- There is a proposed fence as illustrated on the approved site plan 2 of 8 submitted by the applicant. It will be a solid wooden fence with 6 feet in height. Since the fence is quite high, there is no chance of overlooking into the adjoining property. There is no screening provision for the deck as it is pretty far enough away from the neighbour. However, the applicant stated he is willing to provide screening should the Board deem it necessary.
- The applicant explained the sun shadow studies for the development and at different times of the study, the applicant submitted there is no significant over shadowing to the neighbouring properties during the summer solstice. During winter, there are long shadows and although it is hard to determine which projects the most shadow, in the applicant's view, the existing retaining wall casts most of the shadowing in the amenity space. Overall, the study shows that the proposed development will not be overshadowing the neighbouring properties and essentially the neighbours are shadowing their own yards.
- The start of the new building is roughly behind the adjacent building. When standing on the landing, the fence will still be about 2 feet in height and there is no possibility of overlooking. They also added more soft landscaping to meet the requirement and as part of the prior to release conditions, the patios will have a permeable surface with part grass so that prior to release conditions will be addressed.
- In order to get the variance of 2 metres, in his opinion, the community association took their grade point from the surface of the adjacent west property line.
- The window of the main floor on the rear building in the foyer of the front entry is not obscured. Should the Board deemed it necessary to have it obscured, the applicant is willing to accommodate that.
- The balcony of the rear unit from the base from the rear façade is 13 feet.
- The middle garage belongs to the rear unit and the two outer garages have exterior doors on the outside will walk down the side.
- Where the grade point is determined from which when measured vertically, the height of adjacent house determines of whether you are allowed 6 metres before angling or 8 metres before angling and the grade point is the height of the adjacent house it was measured from.

Tony Suche also addressed the Board and submitted his points in opposition to the appeal and in favour of the development:

- He stated that he lives next door to the proposed development on the east side and he will be the most affected party to this development. He stated he supported the previous proposal and he again is in favour of this current proposal. He has resided at 74 34 Avenue SW for the past 13 years as it is a great place to live.
- Mr. Suche also stated that this community is changing and while he is not redeveloping his own property yet, many property owners will be redeveloping their properties in the future.

- He further stated that there is a misunderstanding by Mr. Fischer of the community association of the proposed 3 unit configuration. In his opinion, the community is nit picking yet again and, in his opinion, they should move on as it is a great addition to the community. Everyone will benefit from this development.