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**CALGARY SUBDIVISION AND DEVELOPMENT APPEAL BOARD**

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Hearing held at: Calgary, Alberta

Date of hearing: December 19, 2013, January 02, 14, 2014 and February 20, 2014

Members present: Stefne Madison, Chair  
Jo Anne Atkins  
John Attrell  
Sally Haggis  
Heather Hiscock

Basis of appeal: This is an appeal from an approval by the Development Authority for a development permit made on the application of **NORR Architect Planners** for a **new: multi-residential development, retail and consumer service (2 buildings, 47 units), temporary residential sales centre** at 90, 94 and 98 Mission Road SW.

Appeal filed by: **Rick Moses**

This appeal was originally scheduled for November 28, 2013, but was adjourned to December 19, 2013 to allow time for re-advertising of the appeal. On December 19, 2013, the Board heard submissions from all parties but consequently adjourned the hearing to January 02, 2014 due to insufficient time to conclude the matter. The hearing was further adjourned to February 20, 2014 in order to conclude the public hearing.

**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, retail and consumer service (2 buildings, 47 units) and temporary residential sales centre at 90, 94 & 98 Mission Road SW. The property is located in the community of Parkhill and has a land use designation of DC Direct Control District pursuant to Bylaw 6D2012.

**Hearing:**

The Board heard verbal submissions from:

Kenneth Melanson, representing the Development Authority;  
Dale Lynch, representing Transportation Planning;  
Rick Moses, the appellant, in favour of the appeal;  
David Kroeker, an affected property owner, in favour of the appeal  
William Gagnon, an affected property owner, in favour of the appeal;  
Bill Fischer of Erlton Community Association, in favour of the appeal;  
Peter Alles, an affected neighbour, in favour of the appeal;  
Peter Schryvers of CityTrend, representing the property owner/applicant; in opposition to the appeal;  
Ken Scott of NORR Architects, the applicant, in opposition to the appeal; and  
Jonathan Allen, the property owner, in opposition 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 the notice of appeal and any documents, materials or written submissions submitted by the appellant, 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;
- Considered all the relevant planning evidence presented at the hearing and the arguments made; and
- Considered the circumstances and merits of the application.

1. The appeal is allowed and the decision of the Development Authority is overturned.
2. The development permit is revoked and is null and void.

**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 and retail and consumer service (2 buildings, 47 units), and temporary residential sales centre, at 90, 94, and 98 Mission Road SW. The property has a land use designation of DC Direct Control pursuant to Bylaw 6D2012 in conjunction with Land Use Bylaw 1P2007.

2 The appellant, affected neighbours and the Erlton Community Association provided both written and oral submissions and submitted that, in their opinion, the proposed development is not respectful of the surrounding residential area and adjacent properties. The concerns can be summarized as follows:

- (a) The development is too massive, particularly in respect of the townhouse mews on the laneway. There is not enough articulation, particularly on the north and west faces of the mews townhomes. The shadowing is a concern, particularly with the residence to the north located at 67, 34 Avenue SW. The appellant felt that the outcome of the charrette during the ARP process was that the laneway townhomes would only be one storey;
- (b) The parkade entrances both on 34 Avenue SW and on Mission Road SW pose a safety concern; the site is heavily sloped and there are concerns both with visibility and pedestrian traffic for both entrances; and
- (c) Street parking is an issue generally in the area and there is a concern that the development will add to the ongoing difficulties in finding street parking.

3 The Board has particular regard to section 641(4) of the *Municipal Government Act*, which provides:

(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.

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

Section 13(65) states:

#### General Definitions

- (65) "**frontage**" means the linear length of a **property line** shared with a **street**.

Section 13(134) states:

- (134) "**street**" means:

- (a) any public road, including the boulevards, sidewalks and improvements, but excluding a **lane**, bridge or walkway; or
- (b) a **private condominium roadway**.

Section 22 states:

#### Reference to Other Bylaws in Direct Control Bylaws

- 22 (1) Where a **parcel** is designated with a Direct Control District:
  - (a) pursuant to this Bylaw, a reference to a section of this Bylaw within the Direct Control Bylaw is deemed to be a reference to the section as amended from time to time, unless a contrary intent is stated in the Direct Control Bylaw; and
  - (b) pursuant to a previous land use bylaw and such designation is continued pursuant to this Bylaw, the Direct Control Bylaw, as approved by **Council** at the time such designation was made, will continue to apply, unless a contrary intent is set out in the Bylaw designating the **parcel** Direct Control.
- (2) Direct Control Bylaws that were passed pursuant to previous land use bylaws and are denoted on the Land Use District Maps:

- (a) are hereby incorporated into and form part of this Bylaw as if repeated herein at length; and
- (b) notwithstanding the definitions contained in this Bylaw, each Direct Control Bylaw must assume only those meanings for the terms contained therein that were intended at the date of the original passage.

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.

5 The Board has particular regard to Direct Control Bylaw 6D2012 (DC Bylaw), which governs the site. Section 15 of the DC Bylaw states:

### **Building Setbacks**

- (1) The minimum *building setback* from a *property line* shared with a *street* is zero metres.

- (2) The maximum **building setback** from a **property line** shared with a **street** is 4.0 metres.
- (3) The minimum **building setback** from a **property line** shared with a **lane** is zero metres.
- (4) Unless otherwise references in subsection (5), the minimum **building setback** from a property line shared with another **parcel** is zero metres.
- (5) The minimum **building setback** from a property line shared with another **parcel** designated as **residential district** is 1.2 metres.
- (6) The maximum **building setback** from a property line shared with another **parcel** is 7.0 metres.

6 The DC Bylaw lists “Multi-Residential Development” and “Retail and Consumer Service” as discretionary uses in the subject DC Direct Control District.

7 The Board also has regard to the Municipal Development Plan (MDP) and Calgary Transportation Plan (CTP), and the Transit Oriented Development (TOD) Guidelines.

8 The Board also has regard to the Parkhill/Stanley Park Area Redevelopment Plan (ARP).

9 The Board acknowledges the written and oral submissions of all parties, including but not limited to the appellant, affected residents, the applicant and the Development Authority and any correspondence regarding the application contained in the Board report. The Board considered all submissions and relevant arguments either in favour or against the development.

10 The Board reviewed the context of the proposed development, having regard to sound planning considerations, the merits of the application and circumstances of the case, and the evidence presented.

11 Pursuant to section 22(1)(a), Direct Control Districts are part of Land Use Bylaw 1P2007.

12 DC Bylaws of The City of Calgary are typically a hybrid between a Direct Control District that would provide complete development control over a site and land use Districts of Land Use Bylaw 1P2007. Typically in the DC Bylaws the Development Authority is given discretion either with respect to the discretionary uses of a development and/ or with respect to development standards, except where expressly

stipulated otherwise. For the most part in the DC Bylaws of The City of Calgary Council does not exercise complete control over a specific site that is the subject of a development permit application as it leaves the Development Authority with discretion. In this case, the subject DC Bylaw is, in the Board's opinion, no exception to that.

13 Pursuant to section 1 of the DC Bylaw, the subject Direct Control District is intended to: (a) Provide for the implementation of a design charrette outcome; (b) Provide for form based control in conjunction with guidelines provided within the statutory plan applicable to the local area, and (c) – (f) [...]

14 Pursuant to section 2 of the DC Bylaw unless otherwise specified in this Bylaw, the rules and provisions of Parts 1, 2, 3 and 4 of Bylaw 1P2007 apply to the subject Direct Control District that governs the subject parcel. Therefore all general and specific rules and requirements of Land Use Bylaw 1P2007 apply unless otherwise specified in the DC Bylaw.

15 The Board notes that the DC Bylaw provides directions regarding: floor area ratio; density; setback areas; landscaping requirement; building height; rules for commercial uses; motor vehicle stalls; and building setbacks.

16 To the extent that Council did not provide directions to the Development Authority in the subject DC Bylaw, the provisions of Land Use Bylaw 1P2007 apply. This is expressly specified in sections 2 and 6 of the subject DC Bylaw.

17 The Board reviewed the context of the DC Bylaw. It is of significance to the Board that the subject DC Bylaw is not tied to plans. Neither is there a provision in the DC Bylaw that the plans for the development permit must be substantially the same or similar as any plans, renderings, or sketches for potential development of the site that were shown to Council as an outcome of the design charrette.

18 Where the DC Bylaw and Land Use Bylaw 1P2007 have given discretion to the Development Authority, the Board upon appeal re-exercises the same discretion. This is in accordance with how the Board consistently exercises its powers pursuant to section 687(3) and 641(4) of the *Municipal Government Act*.

19 It is common ground in law that the Board upon appeal steps in the footsteps of the Development Authority where a land use bylaw and DC Bylaw provides discretion to the Development Authority.

20 The Board notes that the development permit application is for development that is a discretionary use pursuant to the DC Bylaw in conjunction with Land Use Bylaw 1P2007. Therefore the development permit application can either be granted or refused on the basis of sound planning considerations.

21 The Development Authority provided a list of Bylaw relaxations. These relaxations include both relaxations of the DC Bylaw and relaxations of the Land Use Bylaw.

22 The proposed DC Bylaw relaxations are: (a) the building setback from the south property line at the southwest corner is 6.90 metres, which is a relaxation of 2.90 metres from the required 4.0 metre maximum under Bylaw section 15(2); (b) the building setback from the west property line at the parkade entrance is 5.10 metres, which is a relaxation of 1.10 metres from the required 4.0 metre maximum under Bylaw section 15(2); (c) the building setback from the angled north property line at 34<sup>th</sup> Avenue to the southwest corner of the westerly townhome is 6.80 metres, which is a relaxation of 2.80 metres from the required 4.0 metre maximum under Bylaw section 15(2); and (d) the building setback from the east property line to the westerly courtyard facade is 37.30 metres, which is a relaxation of 30.30 metres from the required 7.0 metre maximum under Bylaw section 15(6).

23 There was an additional DC Bylaw relaxation noted in the Bylaw Relaxations chart. However, the Development Authority advised at the hearing that they did not consider this to be a relaxation. Specifically, under section 15(5) of the DC Bylaw, the minimum building setback from a property line shared with another parcel designated a residential district is 1.2 metres and the proposed setback is 0.0 metre. The Board accepts the submission of the Development Authority that the adjoining parcel to the east falls under the purview of the same DC Bylaw and therefore is not considered a residential district. Thus the Board finds that this relaxation does not apply.

24 There are also several relaxations under the Land Use Bylaw, including projections into setback areas, landscaping, amenity space, retaining walls, garbage, and loading stalls. The Development Authority advised at the hearing that they did not consider some of these to be relaxations, specifically sections 643, 551(3)(b), and 555(b) of the Land Use Bylaw regarding landscaping requirements. Based on the evidence, the Board agrees with the Development Authority that these sections are not properly considered relaxations. However, in the Board's view, the remaining relaxations must be considered in the context of the effect they have on the use and enjoyment of properties of the affected neighbours and/or the amenities of the neighbourhood.

25 Both the applicant and the Development Authority pointed to the ARP for this site, specifically 3.2.4., entitled Administration and Decision Making. They highlighted a particular paragraph under that heading, specifically:

*It is recognized that inconsistencies may arise between this policy and provisions of the Land Use Bylaw. If this occurs the Approving Authority shall consider granting a relaxation of the rules of the land use bylaw in favour of this policy, in accordance with the powers contained in the Land Use Bylaw or the Municipal Government Act, where policy provides clear direction in support of the relaxation.*



26 Area Redevelopment Plans or ARP's have a specific role within the legislative scheme. The ARP is an important consideration for the Board in determining this matter.

27 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 ARP 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.

28 Pursuant to section 687(3)(a.1) of the *Municipal Government Act*, the Board in determining an appeal must comply with statutory plans. The ARP and MDP are statutory plans.

29 Under the scheme of the *Municipal Government Act* the MDP and ARP are statutory plans that provide policies and guidelines for development of lands that are subsequently implemented through the operations of a land use bylaw. Typically the policies and guidelines of the MDP are broad in nature and provide guidance for long term planning and development in city areas. The MDP and ARP differ in this regard from the Land Use Bylaw in that they typically use prescriptive and/ or permissive language. A land use bylaw is a regulatory document rather than a policy document. However, the ARP for this site does use words such as "shall" and "must" in some specific guidelines. This suggests that the intent of Council is that some of the provisions of the ARP (where indicated by using express wording) are mandatory and must be adhered to in the proposed development. Where the word "shall" or "must" is used in an ARP regarding a specific guideline or policy, no relaxation or variance of that specific ARP guideline or policy is possible.

30 Section 3.2.9 (page 19) of the ARP states:

***Vehicular Access, Parking and Comprehensive Development***

- *To minimize disruptions to the public sidewalk, the streetscape and to vehicular traffic flow on Mission Road SW, parking for properties on Mission Road SW should be accessed from the lane, except where there is no lane or where the grade of the lane makes lane access impractical. Where lane access is deemed impractical by the Director, Transportation Planning, vehicular access to new multi residential development should then be considered from the side streets and finally, where there is no other practical alternative, from Mission Road SW as per Figure 6: Special Policy Area Regulating Plan.*

31 In the Board's opinion, the ARP in section 3.2.9 is very specific and clear: Only when, due to its grade, lane access is deemed impractical by the Director of Transportation Planning, should vehicular access to new multi-residential development be considered from the side streets and finally, where there is no other practical alternative, from Mission Road SW as per Figure 6: Special Policy Area Regulating Plan.

32 In this regard, upon questioning from the Board, the representative of the applicant stated that he had no documentation from the Director of Transportation deeming that access from the rear lane was impractical. He indicated that the proposed parking configuration is dictated by the proposed density for the site.

33 Mr. Lynch, the representative of Transportation Planning, stated he was advised by the applicant that lane access is impractical and that he was not provided any evidence of this impracticality by the applicant. Furthermore, he advised that the decision was not based on the grade of the lane, as they had no information on the grade of the lane and how it impacts accessibility. According to Mr. Lynch, once the decision was made not to use the lane to access parking, the Development Authority no longer considered the grade of the lane to be material.

34 Having regard to section 3.2.9 of the ARP, the Board finds that the Development Authority and Director of Transportation fettered their discretion regarding vehicular access for the development by not properly reviewing potential access from the lane and the impracticality of that due to the grade of the lane. The Development Authority and Transportation Department solely relied on the applicant without sufficient supporting evidence, contrary to the direction of the ARP. Having regard to a purposive and contextual interpretation of section 3.2.9 of the ARP, and the express wording of this section, the Board finds that in accordance with the direction of the ARP, the Director of Transportation was obliged to make a determination regarding potential access from the lane first before the Development Authority could consider access from the side streets. While lane access may well be impractical, in the Board's view the Development Authority and Transportation Department should have reviewed this issue more carefully.

35 Furthermore, the ARP in section 3.2.9 indicates that *"Surface or visible parking is discouraged. All parking should be located within buildings. [...] Surface parking areas that can be viewed from the street are not allowed."* The Board notes that visitor parking stalls along the lane are visible from the street. The Board, based on the evidence, finds that in this regard this ARP section is not met.

36 Therefore the Board considers the failure of the Development Authority, in particular Transportation Department, to follow the mandatory provisions of the ARP to be one of the reasons for the Board to overturn the decision of the Development Authority to grant a development permit for the proposed development.

37 The Board also considered the parking entrances on both Mission Road and 34 Avenue SW. In this regard the Board considered the ARP direction in terms of the hierarchy of entrances contemplated by the ARP. Additionally, the Board must consider the evidence provided by all parties in respect of the grade of the roads and safety issues for pedestrians and drivers. Based on the evidence provided by the parties, the Board finds that the applicant and the Development Authority not only did not give adequate consideration to positioning the parkade entrance off the lane, but also have not adequately considered mitigating potential safety issues with respect to the proposed parkade driveways. In particular, the fact that City Transportation did not consider the Bunt Report's mitigation recommendation for signage to notify drivers of the 34<sup>th</sup> Avenue driveway indicates that not sufficient consideration has been given to this location in terms of safety measures. The Board notes that the Bunt Report indicates it is highly unlikely that speeds faster than 30 kilometres per hour can be safely achieved past this driveway and bases the adequacy of the stopping sight distance on this factor. However, the representative of Transportation Planning stated that he was not aware of any posted speed limit on 34<sup>th</sup> Avenue requiring a reduced speed of 30 kilometres per hour. He stated that the 50 kilometre per hour standard on a low density local road would apply if there was not a posted speed limit. In the Board's opinion these factors may impact on the safety of the 34<sup>th</sup> Avenue parkade access.

38 In the opinion of the appellant and affected neighbours, the additional driveway for the waste/recycling and loading bay creates safety issues and will impact walkability for pedestrians. The Bunt Report in its sight line analysis along 34<sup>th</sup> Avenue did not review the location of the waste/recycling and loading driveway, nor was there a review of pedestrian movement in the area of the site. The Board takes into consideration the CPC Recommendation Report to Council, which states "*Intensification in the form of this land use amendment [...] is appropriate when accompanied by improvements to properly accommodate pedestrians, bicycles and transit users, including minimizing driveways, [...] management of traffic movement in and out of the subject parcels [...]*". In this regard the Board notes that the applicant's revised plan, showing truck turning requirements for exiting the service bay, indicates that it is not possible to manoeuvre vehicles completely within the boundaries of the site. To exit the servicing area vehicles are required to back up partly over the sidewalk. Although the applicant stated a two-man flag operation would be confirmed through a private contractor agreement with a waste management company, there was no indication of how moving vans and delivery trucks would function in this regard. These are factors to be considered.

39 The proposed design of the parkade entrances, either at Mission Road or 34 Avenue, does not, in the Board's opinion, meet the intent of ARP section 3.2.9, that the "*... parkade entrances should be designed to accommodate safe pedestrian movements including physical design features that create a pleasant walking environment.*" The Board questions the need for two parkade entrances. In the Board's view the two access points as proposed have a negative effect on the pedestrian and public realm. More could have been done to reduce the scale of the large commercial parkade doors to create a more pedestrian scaled facade element. Alternatives such as

providing two separate single doors or using a translucent polycarbonate glazing material in the doors would provide a better fit with the residential character of the streetscape.

40 The Board also takes into consideration the fact that the ARP illustrates a “Possible Shared Parking Entry” on Mission Road (Figure 6: Special Policy Area Regulating Plan, page 13 of the ARP – page 282 Board report), which is the same location as the proposed parkade entrance. The ARP provision for shared driveways is intended to limit the number of parking access locations off Mission Road. This is stated under section 3.2.9 Vehicular Access, Parking and Comprehensive Development, whereby *“Any proposed access to Mission Road SW should be shared with adjacent development parcels to minimize the number of driveways and to provide for comprehensive development as per Figure 6: Special Policy Area Regulating Plan [...]”*. Given this particular parkade entrance is indicated in the ARP as a shared driveway location, in the Board’s opinion there has not been sufficient consideration as to how it will function as a shared driveway.

41 The applicant has incorporated all parking access options into this development: off Mission Road, off the lane, and off the side street (34 Avenue) even though the ARP in section 3.2.9 implies that only one access location should be provided. In the Board’s opinion this does not meet the intent of the ARP to minimize disruptions to the public sidewalk, to accommodate safe pedestrian movements, and to create a pleasant walking environment.

42 The applicant placed emphasis upon the form based controls in the ARP. The Board considered these Form Based Controls and notes that 3.2.6 of the ARP dictates that *“Discretionary developments shall comply with the Form Based Controls provided below [...]”* The Board finds these directions lacking in clarity and difficult to interpret regarding Council’s intention. Within the Form Based Controls as indicated in section 3.2.6 on page 14 of the ARP there are, in the Board’s view, ambiguities. The diagrams on page 14 of the ARP do not correspond in some aspects with statements in the left column relating to Parcel Width, Building Disposition, Building Height and Building Frontages. For example, regarding building disposition for rear setback of secondary buildings it states, among other things, that: *“(2) The setback from the rear property line shall be 0.0m where it abuts a lane, and 1.2m in all other instances.”* On the same page regarding *“Setbacks – Secondary Building”* and in the associated diagram it states that: *“The facades of the Secondary Building shall be distanced from the Parcel lines as shown.”* The diagram shows a maximum setback of 12 metres for a corner parcel condition and a maximum setback of 1.2 metres for a mid-block condition. Also, the shaded area representing the Secondary Building area does not extend to the property line that appears to be at the rear of the parcel.

43 Additionally, these Form Based Controls are to some extent inconsistent with the DC Bylaw, and as outlined previously, the ARP stipulates in section 3.2.4 that

inconsistencies between the Land Use Bylaw and the ARP should be resolved in favour of the ARP. However the DC Bylaw is not mentioned in this statement, and in the Board's opinion clearly shows Council's intention was to allow a relaxation of the Land Use Bylaw and not of the DC Bylaw relevant to this site. If Council meant to include the DC Bylaw in this referenced statement in section 3.2.4 of the ARP regarding the Land Use Bylaw it would have said so. It did not do so.

44 The Board found it telling that the Development Authority struggled to properly assess the exact relaxations or variances required under the DC Bylaw and Land Use Bylaw. As stated above, during the course of the hearing the Development Authority conceded that upon further review some identified Bylaw relaxations ultimately would not be relaxations. It is also of note that the Development Authority did not identify the setback of the secondary building from the lane property line as a relaxation. In the Board's view this underscores the fact that there are ambiguities between the provisions of the DC Bylaw and the Form Based Control provisions as stipulated in the ARP, which are significant in nature.

45 Furthermore, as stated above, where an ARP guideline is very specific and uses express mandatory wording it cannot be varied or relaxed. Therefore as the ARP in section 3.2.6, Form Based Controls (page 14), stipulates that the setback from the rear property line shall be 0.0 metres where it abuts a lane, and 1.2 metres in all other instances, the Board finds that this ARP guideline cannot be relaxed or varied. However, the Development Authority relaxed this guideline/policy of the ARP for the setback of the secondary building along the rear property line that abuts the lane. The provision for a zero setback at the lane is consistent with both the DC Bylaw and the ARP. There is, however, no support in the ARP to relax this rule, other than indicating on page 13 under section 3.2.6 "Form Based Controls" that Secondary Buildings are an optional building form.

46 Plan #DP203 of the applicant's drawings shows the back wall of the townhouses at grade level are located 6.551 metres from the property line abutting the lane. The applicant's representative argued that this is not a relaxation because the lane is considered a "street" and the upper floor of the townhouses are 1.2 metres and 0.6 metre from the north property line, and therefore would fall under section 15(2) of the DC Bylaw.

47 The Board does not accept the applicant's evidence and argument in this regard. According to section 13(134) of Land Use Bylaw 1P2007 a lane is not included in the definition of a "street". There is no evidence that the lane is being either re-designated, reconfigured or otherwise will function as a "street", as defined in the Land Use Bylaw. In addition, the ARP in section 3.2.6, page 15, under "e. Mews" does make reference to "...a public or private lane configured as a secondary street...", and the definition for "frontage" in section 13(65) of Land Use Bylaw 1P2007 also indicates "...a property line shared with a street." However, Page 14 of the ARP, in the illustration for "Building

Heights” (top right diagram), shows the “Mews Frontage” as being on the interior of the site and the facade of the Secondary Building is shown right up to the lane property line. In the Board’s view there seems to be some inconsistency here between the language used in Land Use Bylaw 1P2007 and the ARP, but the illustration on page 14 clearly shows the intent and that is a mandated zero setback to the property line abutting the lane.

48 The Board also finds that the ARP while being very specific in its guidelines and policies, in particular in section 3.2.6 in the “Form Based Controls”, is weak in providing rationale or directions for consideration of relaxations of the rules of Land Use Bylaw 1P2007 or the DC Bylaw. There is limited planning rationale in support of Bylaw relaxations provided in the ARP. In any event, under the scheme of the *Municipal Government Act* and Land Use Bylaw 1P2007, and its operations, an ARP cannot restrain the Development Authority’s discretion under sections 31 and 36 of the Land Use Bylaw for granting Bylaw relaxations, or the Board’s power under section 687(3)(d) of the Act.

49 In conclusion, based on the evidence, the Board finds that the proposed development does not meet the express provision in the ARP that the so-called “mews” secondary buildings along the lane shall have a setback of zero metres.

50 The Board reviewed the intent of Council when it enacted the DC Bylaw by reviewing the CPC report, which was before Council at the time of the enactment of the DC Bylaw. The Board finds it significant that the CPC report (pages 49-64 of the Board report) references key policies of the MDP (Sections 2.3.2B, 3.5.2A, 3.5.2D). Section 2.3.2B states: “*Ensure an appropriate transition of development intensity, uses and built form between low-density residential areas and more intensive multi-residential or commercial areas.*” This is a factor to be considered.

51 Having regard to the CPC report, in the Board’s view Council’s intent was to allow for as much intensity of site development as could be achieved within the regulations of the Land Use Bylaw and DC Bylaw in combination with the policies and guidelines of the ARP, and to the extent applicable meeting the goals of the MDP. This intensification relates, among other things, to Transit Oriented Development (TOD) policies for parcels in close proximity to an LRT station. It is of note there are no regulated maximum floor area ratio or density parameters in the DC Bylaw.

52 Within the “Form Based Controls”, building setbacks and height provide the basis for the building envelope, but in the Board’s opinion, from a planning and transportation perspective, parking requirements in terms of parking configuration are a main constraint in achieving density for the site. The Board finds that the intent to intensify the site has been achieved in the proposed development. However, other policies contained in the MDP, which were referenced in CPC’s Recommendations Report to Council have, in the Board’s view, not been given adequate consideration. The CPC’s

report, among other things, states under “Site Access & Traffic” that: *“Intensification in the form of this land use amendment [...] is appropriate when accompanied by improvements to properly accommodate pedestrians, bicycles, and transit users, including minimizing driveways [...] management measures.”* (page 55 of the Board report). The Board, based on the evidence, finds that the proposed development has not accomplished this.

53 Moreover, the Board finds that the ARP regarding Secondary Buildings (or mews) appears to envision that the lane could be reconfigured as a secondary street with a vital public realm. The Development Authority noted in the hearing that the intent for a zero metre setback is to address Council’s desire to activate the lane and not create dead spaces at the rear of the development. In the Board’s opinion the proposed lane facade of the townhouses lacks the elements that are characteristic of a typical residential street frontage such as entry features, and windows at street level. Moreover the at-grade area adjoining the lane is proposed mainly for vehicles and the windows on the upper level of the townhouses have high sill heights to accommodate privacy for the adjacent properties. In considering these factors, the Board does not accept the argument that the design of the townhouses meets Council’s intent.

54 The ARP also contemplates that waste and recycling should not be located where visible to main roads. The evidence is that waste and recycling is accessed and located next to 34 Avenue. Additionally the evidence is that the waste and recycling is only partially screened and the ARP contemplates screening compatible with the residential context. The Board, based on the evidence, also finds that the curb cut contemplated on 34 Avenue is wider due to the driveway location being at an angle to the avenue and its direct adjacency to the existing lane access, which could affect safety and pedestrian walkability along this street. Overall, the Board, based on the evidence, finds that the location of waste and recycling for the development does not comply with the direction in the ARP and substantially affects the use and enjoyment of neighbouring properties.

55 To the Board it became apparent that one of the driving rationales for the proposed development was the business model of the developer which was to maximize the number of multi-residential dwelling units proposed to be built on this site. The applicant stated that potential changes such as a different configuration for underground parking would result in a loss of some parking stalls, would be too costly, were limited by the type of development proposed on the site, and that alternative parkade access would be impractical. In this regard the Board notes that market demand, marketability of the units, monetary considerations, and/or the costs of the development as a whole, are irrelevant and are not planning considerations. Therefore, the Board does not place positive or negative weight on these arguments as they are lacking in meritorious planning rationale.

56 The appellant provided a sun/shadow study that indicated there is an impact on the immediately adjacent home across the lane. He subsequently updated his study at the second hearing date. Although the applicant's representative questioned the appellant's shadow study, the applicant did not provide a shadow study to support his position. From the evidence presented, the Board finds that the proposed development results in substantial overshadowing of Mr. Kroeker's property at #67 - 34 Avenue SW.

57 The Board takes into consideration that in terms of building height the proposed development meets the provisions of the DC Bylaw and Land Use Bylaw 1P2007. However, the proposed development is a discretionary use and in accordance with section 35(d) and (j) of the Land Use Bylaw compatibility with adjacent development and sound planning considerations are also important factors that must be taken into account. The Board acknowledges that it is a difficult site to develop due to the topography and sloping grades. In this regard the Board notes that the secondary building, the townhouses, is not a required provision under the ARP, thus allowing for the assessment of site specific appropriateness.

58 In addition, the Board finds that the relaxations in their totality, including relaxations of the DC Bylaw as well as the relaxations of the Land Use Bylaw are significant from a planning perspective. Ultimately, for the Board's decision, whether something is a relaxation or not is less determinative for the outcome of the decision in light of all other reasons stated in this Board decision.

59 The Board finds that the impacts on the adjacent neighbours and neighbourhood are mainly from the intensity of the site development, i.e. the number of proposed dwelling units and consequently the amount of on-site parking required, and this has resulted in a number of relaxations being sought. If there were fewer units, the surface parking off the lane would not be required, the area of common amenity space could be enlarged, and a separate on-site loading stall could be provided, thereby negating some of the relaxations.

60 On the balance of all the evidence, the Board accepts the evidence of the appellant. The Board in weighing the evidence finds that the appellant and affected residents provided compelling arguments to conclude that the proposed development would have a negative impact on the use and enjoyment of their properties.

61 Accordingly, pursuant to section 687(3)(d) of the *Municipal Government Act*, the Board finds that the proposed development would unduly interfere with the amenities of the neighbourhood, or materially interfere with or affect the use or enjoyment of neighbouring parcels of land.

62 In rendering its decision, the Board finds that the ARP policies in this case have been used selectively while at the same time ignoring other relevant applicable policies of the MDP that also serve the compatibility aspects as referenced in section 35(d) of Land Use Bylaw 1P2007.



63 The Board, based on the evidence and the aforementioned factors, finds that the proposed development does not respect the local context of the surrounding homes to the north. In particular, the massing of the mews townhomes and the shadowing effect on the property across the lane have, in the Board's opinion, from a planning perspective, a negative impact on this residential property due to the location and orientation of the home. The townhouses along the lane do not fulfill the ARP's vision of activating the lane as a secondary street as there is no evidence that the abutting lane's public realm effectively will be improved in association with the proposed secondary building. In addition, the proposed development does not achieve the goal of the MDP in ensuring an appropriate transition of development intensity, uses and built form between low-density residential areas and more intensive multi-residential or commercial areas, as stipulated in section 2.3.2B of the MDP. In the Board's opinion from a planning perspective the transition to the low-density residential homes across the lane is insensitive to the south oriented amenity spaces (backyards, decks and balconies) of these houses.

64 The Board acknowledges that there are some merits in respect of the proposed development. The architectural elements, including the corner tower feature, and the variation of materials on the Mission Road façade provide an attractive streetscape for this particular urban context. In addition, the mix of commercial and residential uses on Mission Road will enliven the pedestrian realm. The applicant has also provided the opportunity to convert the four dwelling units fronting Mission Road to live-work units in the future.

65 Having regard to the merits of the application, or lack thereof, and 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 development as proposed is not compatible with the adjacent developments and immediate neighbourhood. The proposed development is from a planning perspective not appropriate for the site.

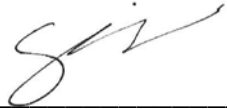
66 In the Board's opinion, however, the site could be developed in compliance with the DC Bylaw, Land Use Bylaw, ARP and meeting the goals of the MDP while being more sensitive to the context of the location and compatibility with the surrounding homes.

67 Having regard to Council's direction set forth in the DC Bylaw and the ARP, and based on all of the evidence and aforementioned reasons, the Board in accordance with section 641 of the *Municipal Government Act* finds that in approving the subject application the Development Authority did not follow the directions of Council in this instance and failed to exercise its discretion appropriately.

68 In reviewing and weighing all of the evidence, the Board thus finds that the proposed development does not warrant approval.

69 For the above reasons, the Board allows the appeal and overturns the decision of the Development Authority.

70 Therefore, the development permit is revoked. The permit is null and void.



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Stefne Madison, Presiding Officer  
Subdivision and Development Appeal Board

Issued on this 28<sup>th</sup> day of March, 2014

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

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

**The Development Authority:**

Mr. Kenneth Melanson of the Development Authority presented exhibits including the report, viewgraphs, photographs, and power point. In addition to the Land Use Bylaw the relevant planning document for the site is the Parkhill/Stanley Park Area Redevelopment Plan. He then submitted the following:

The item being presented is an appeal of the Development Authority's decision to approve an application for a new multi-residential development, retail and consumer service, consisting of two buildings, 47 residential units, and a temporary residential sales centre which has a two year approval period. It is located at 90, 94 and 98 Mission Road SW in the community of Parkhill. The site is designated Direct Control District and is intended to implement the Charrette that was done in 2011 to carry out the outcome of that Charrette providing for a form-based design primarily for multi-residential and limited commercial uses in a mixed use format. M-H1 high density low rise uses apply with specified setbacks.

The site is currently vacant and has extreme sloping from the rear lane downward towards Mission Road SW varying from approximately 4.5 metres to 7 metres in grade changes. There is a series of single detached and duplex dwellings abutting the site to the east, south, and west of the parcels including some multi-dwelling development to the north on 34 Avenue SW.

The subject parcel area is a portion of the total DC site outlined in the DC bylaw, having lane access as noted and adjacent single and duplex dwellings to the east which are sited fronting onto Mission Road SW. The site was notice posted and circulated to affected parties. Objections were received regarding the building height, scale, design, parking, and numerous traffic concerns.

The site plan contour detail shows the extremes of the grade changes which are the steepest at the northerly areas of the parcel whereas the southern parcel areas show much more gradual grade changes.

The site area shows the boundary highlighted in orange with some variation in the depth and width lengths, which for the most part is approximately an average of 39 metres deep and approximately 54 metres wide. The larger southern

building contains 42 residential units and accompanying retail uses. The smaller northern building has five residential units.

The Level One floor plan shows the at-grade retail space facing onto Mission Road in the southwest corner of the building, with four additional live-work units abutting the retail on the east frontage with the parkade entrance also fronting Mission Road with access to 25 parking stalls at this level as noted.

Level Two shows the parkade entrance accessed from 34 Avenue SW with a ramp up to the second level parkade for 22 cars. New unit access is also introduced from 34 Avenue SW on this level and an interior corridor is provided for the south building for unit access.

Level Three shows the introduction of the five residential units accessing the lane along with the third level of living space for the Mission Road frontage units, and the second level of living space for the 34 Avenue frontage units. An interior courtyard area for common use for the residential units is also provided.

Level Four shows the second level of the five rear lane accessed units as well as additional floor developments in the remaining units which does not require any height relaxations of the Land Use Bylaw when completed.

The south elevation of the building facing onto Mission Road shows the at-grade retail space and at-grade unit entry to the abutting four residences or live-work units to the east. There are material changes to help reduce the monolithic appearance as well as balcony projections to reduce massing and to create visual variation and interest to this prominent street-facing facade. Variations in corrugated metal siding treatments and brick masonry, long board horizontal siding, and vertical board create appropriate material presentation and effective and suitable building appearance. The west elevation has similar material changes to capture the same visual effect and appearance.

The cover sheet of the approved plans provides the coloured rendering in a partial 3D view which illustrates the material and colour changes from the building viewpoint looking north from the southwest corner of the parcel.

The east elevation of the south building faces an interior parcel and the lower retaining wall indicates the severity of the slope changes from Mission Road towards the lane. The interior courtyard elevation or north view of the building is two storeys only due to the grade changes. The north elevation of the narrow northerly portion of the south building has a partial third level to help reduce its massing towards the lane and adjacent dwellings. Similar building material treatments noted on Mission Road and 34 Avenue SW have been applied to these frontages.

The five unit northerly residential building abutting the lane and the adjacent dwellings to the north have a maximum of 7.65 metres in height on the north elevation detail keeping it to two storeys in height to limit mass and be as sensitive as possible to the adjacent residences. There are also minimal window openings to reduce possible overlooking conflicts into the adjacent properties' rear yard amenity areas. The lower level on this elevation facing the lane is for vehicle parking and is not enclosed from the lane view. The south elevation courtyard views show at-grade access to the units from the interior courtyard. Similar building treatment and materials apply consistently with other facade appearances for this development.

The red shaded and circled areas on the plan shows the soft surface landscaped area which is prominent in the front setback area of the live-work units and the inner courtyard common amenity spaces.

There is a mix of dwarf lilac and snowberry shrubs along the front units facing Mission Road which also includes a series of ash trees in the boulevard area requiring line assignments for their placement. This creates a nice curb appeal and walking environment along Mission Road. There is also additional landscaping on 34 Avenue SW requiring line assignments for the offsite planting being proposed. This too enhances the retail corner and appearance of the residential units facing 34 Avenue SW. There is significant landscaping being provided in the interior courtyard to allow for rear unit privacy and create well landscaped common areas.

The Development Authority would like to advise the Board that in addition to the Land Use Bylaw the proposed development is also subject to the Parkhill/Stanley Park ARP which identifies the site area as part of a form-based regulation area applicable to Mission Road.

Under section 3.2.5 of the ARP it states "discretionary development shall comply generally with the regulating plan provided. Under section 3.2.6 describing form-based controls it notes "discretionary development permits shall comply with the form-based controls noted below".

In order to comply with these controls the ARP also notes under section 3.2.4 Administration and Decision Making that the approving authority has the power to relax the rules where adherence to the policy can support the requirements of the Land Use Bylaw.

He further quoted from the ARP, Section 3.2.4, "It is recognized that inconsistencies may arise between this policy and provisions of the Land Use Bylaw. If this occurs the Approving Authority shall consider granting a relaxation of the rules of the land use bylaw in favour of this policy, in accordance with the powers contained in the Land Use Bylaw or the Municipal Government Act,

where the policy provides clear direction in support of the relaxation.” This was added as part of the amendment to the ARP and the land use designation as it was recognized that when the design charrette process was occurring there was no active concept or application on the site. There was a recognition that the form-based controls and the direct control bylaw were written in the absence of a concept or idea that may apply to the site and it was envisioned that the northern portion which is part of this application would be developed as one piece. We are now seeing it being developed in a number of pieces so there was a recognition that there were a number of things that were not known at the time.

He distributed the relaxation table to the Board as follows:

<b>Bylaw Relaxations DP2012-5065</b>		
<b>Regulation</b>	<b>Standard</b>	<b>Provided</b>
Building Setbacks As per DC	15(1) The minimum building setback from a property line shared with a street is zero metres. 15(2) The Maximum building setback from a property line and a street is 4.0 metres.	Plans indicate the maximum building setback from the South property line is 6.90m (+2.90m).  Plans indicate the maximum building setback from the West property line is 5.10m (+1.10m).  Plans indicate the maximum building setback from the North property line is 6.80m (+2.80m).
	15(5) - The minimum building setback from a property line shared with another parcel designated a residential district is 1.2 metres.	Plans indicate the minimum building setback from the South East property line is 0.00m (-1.20m).
	15(6) - The Maximum building setback from a property line shared with another parcel is 7.0 metres.	Plans indicate the maximum building setback from the South East property line is 37.30m (+30.30m).
549 Projections Into Setback Areas	(5) Eaves and window wells may project a max. of 0.6 m into any setback area.	Plans indicate the South eaves project 0.10m (+0.10m) into the setback area.  Plans indicate the West eaves project 0.46m (+0.46m) into the setback area.  <i>Note: Eaves project past the property lines</i>
	(6) Landings not exceeding 2.5 square m, ramps other than wheelchair ramps and unenclosed stairs may project into any setback area.	Plans indicate landings within the setback area that exceed 2.5m <sup>2</sup> .
550 General Landscaped Area Rules	(5) All soft surfaced landscaped areas must be irrigated by an underground irrigation system, unless a low water irrigation system is provided.	Plans indicate the parcel is to be manually irrigated from hose bibs.

	<p>(6) Unless otherwise referenced in subsections (7) and (8), all areas of a parcel, except for those portions specifically required for motor vehicle access, motor vehicle parking stalls, loading stalls, garbage facilities, or any purpose allowed by the Development Authority, must be a landscaped area.</p> <p>(7) All setback areas adjacent to a street or another parcel, except for those portions specifically required for motor vehicle access, must be a landscaped area.</p> <p>(8) All setback areas adjacent to a lane, except for those portions specifically required for motor vehicle access, motor vehicle parking stalls, loading stalls or garbage facilities must be a landscaped area.</p>	<p>Plans do not indicate the surface material used for portions of the site.</p> <p>Plans indicate portions of the building to be located within the setback area.</p>
643 Landscaping and 551 Specific Rules for Landscaped Areas	<p>(3) The max. hard surfaced landscaped area is:                  (b) 40.0 % of the req. L.S. area, in all other cases.</p>	Plans indicate 44.29% (+4.29%) or 369.13m <sup>2</sup> (+35.73m <sup>2</sup> ) of the parcel is hard surface landscaped.
555 Enhanced Landscaping Option	(b) deciduous trees a min. calliper of 65 mm. 50.0% of the provided deciduous trees must have a min. calliper of 85 mm.	Plans indicate the number of deciduous trees provided with a caliper of 85 mm is 12 (-2).
557 Amenity Space	(4) The req. min. amenity space is 5.0 m <sup>2</sup> /unit.	Plans indicate 150.18m <sup>2</sup> (-89.83m <sup>2</sup> ) of amenity space is provided for the units.
	Private amenity space 8 (b) have no min. dimensions of less than 2.0 m.	Plans indicate the private amenity space provided has dimensions less than 2.0m.
	Common Amenity space Outdoors 9 (c) must have a contiguous area of not less than 50.0 m <sup>2</sup> .	Plans indicate the area of the common amenity space provided is 44.17m <sup>2</sup> (-5.83m <sup>2</sup> ).
	Common Amenity space Outdoors 9 (c) No dimension less than 6.0 m.;	Plans indicate a dimension of the common amenity space provided is 3.50m (-2.50m).
570 Retaining Walls	<p>(1) A retaining wall must be less than 1.0 m. in height, measured from lowest grade at any point next to the retaining wall:                  (b) within 3.0 m. of a property line.</p>	Plans indicate retaining walls within 3.0m of a property line that exceed 1.0m in height.
556 Garbage	(2) A garbage container enclosure: (a) must not be located between a building and a public street; and	Plans indicate the proposed garbage enclosure is located between a building and a public street.
	(2) A garbage container enclosure: (b) unless specified in subsection (3) must not be located in a setback area.	Plans indicate the garbage enclosure provided is within a setback area.
Loading Stalls	See Parking Spreadsheet	Plans indicate 0 (-1) loading stalls.

While there are a number of relaxations identified, some are only technical in nature and the Development Authority felt that the relaxations collectively were reasonable while still achieving the specific form-based controls and goals directed in the Area Redevelopment Plan (ARP).

In speaking with the Transportation Department I note that there is a small error in the bylaw check for the on-site parking requirement. There is a two stall deficiency for the required parking for residential and commercial; however, there is a two stall overage for visitor parking. If the Board is of the mind to vary the decision that overage can be dealt with by simply flipping the two visitor stalls to two resident stalls and the calculations would work out to show the relaxations shown on your sheet.

In conclusion, the proposed development was reviewed extensively and the required relaxations were considered and granted with the intention of achieving the form-based controls of the ARP and the specific directions of the direct control district. The Development Authority feels all those have been met. The application was therefore approved with the conditions noted in the Board's report.

Mr. Melanson also noted there were representatives of the Transportation Department in attendance until noon.

Upon questioning by the Board, the Development Authority's representative, Mr. Melanson, and Mr. Dale Lynch, Transportation Department, clarified the following:

- Any building located within 15 metres of the intersection of 34 Avenue and Mission Road cannot be greater than 24 metres in height. The application does not seek any relaxation on this height rule.
- The parking configuration is not part of the development permit application.
- In the interim, as it stands, the Transportation Department determined that the angled parking will not be a part of this application but can be retrofitted after the fact without impact on the development as proposed.
- The off-site angled parking stalls are not required to make up for the deficiency in parking for the commercial use. There is an oversight and typographical error in the bylaw check and there is a two parking stall deficiency for the residential and commercial count, however, there are two excess stalls in the visitor parking count. The representative suggested that should the Board vary the conditions, the Board can flip it to make sure the math works out. All visitor parking and commercial parking with the exception of the loading stall is provided on site.
- Some of the live-work units fronting Mission Road could be eventually converted to commercial use. Part of the vision of the design charrette was to create a mixed-use environment. At this point, live-work units are not contemplated in this building. They are not an approved use, but they could occur. That was the



whole point of the design charrette was to get into the broader discussion of what planners refer to as adaptive re-use of buildings recognizing that the building you build today could convert to a different use later on. The four units have the 14.5 metre height required to allow for future commercial development in those suites.

- Mr. Melanson and Mr. Lynch clarified that 8 stalls are required for visitor parking for the residential component and visitor parking is not required for the commercial portion. Ten stalls are provided for visitor parking resulting in an overage of two stalls. However, there is a deficiency of two stalls for the residential parking. The fact that two stalls are mislabeled as visitor instead of residential is a typographical error on the approved plans that can be corrected with a prior to release condition.
- The requirement for residential parking stalls is 47 less 5 stalls which is an automatic reduction for TOD sites. This equals 42 stalls for residential parking plus 8 stalls for visitor parking. The commercial component requires 7 stalls so the total number required is 57 stalls and this has been provided. The plans do not distinguish between residential and commercial stalls, however, a prior to release condition could require the identification of specific stalls for each use. In general the Development Authority prefers not to be too prescriptive in this regard.
- There are ten parking stalls provided off the lane for residential use. Some visitor parking could be located at the back of the townhomes and the balance could be located at the P1 parkade level with access off Mission Road. The bulk of visitor stalls, residential stalls, and commercial stalls will be provided in the underground parkade. It makes sense that only residential parking be permitted off of 34 Avenue in order to manage traffic flows better.
- The site also qualifies for the Transit Oriented Development (TOD) parking reduction due to its proximity within 600 metres of the 39 Avenue LRT station which only applies to residential parking. The bylaw check table is not up to date as it did not note the 10% TOD reduction in residential parking stalls.
- The Mission Road parkade access will be restricted to right-in and right-out turns but an all-turns would work at this driveway. In terms of the overall impact it would be immaterial. The traffic volume impacts are not significant. The approved plan shows it as a right-in/right-out, however, if this is changed, the median would have to be removed.
- One loading stall is required for residential use and there is no requirement for the commercial use. Plan DP-L100 indicates the waste and recycling area is marked as a loading zone. This does cross the property line and therefore, there is an encroachment which is considered a relaxation. The waste and recycling area will be shared as a loading zone. The primary use will be for waste and recycling service vehicles.
- There will be an enlargement of the curb cut at the lane as the loading zone is adjacent to the lane. There is a 2% grade and the stall would be graded to match that of the lane.
- The decision rendered plans show service vehicles accessing the waste and recycling stall by swinging wide on 34 Avenue and then backing out. Mr. Lynch

commented that atypical maneuvering such as this is not uncommon. Usually there would be a prior to release condition requiring a two-man flag operation. The PTR condition would usually be applied as a standard condition by Urban Development and while this was not done with this application, they have approved the intent shown in the plans. The condition itself needs to be changed.

- Mr. Lynch stated there are topographical and sightline challenges and the situation is not ideal. Having a two-man operation would be a benefit because it allows control over the maneuvers in the intersection. There are options other than the approved plans. Moving down the lane rather than backing out onto the roadway would be acceptable to the Transportation Department. The lane is adequate for this use.
- It is the Building Code that dictates how many accessible parking stalls are required as that requirement was taken out of the Land Use Bylaw. The location of the accessible parking is acceptable to the Development Authority.
- With respect to the building setback as per DC 15(5), the application has a 100 percent relaxation in the south east corner in the location of the driveway. It was anticipated this would be a shared driveway with future development to the east. The driveway configuration could be changed when the adjacent lands to the east are redeveloped to achieve the intent of the ARP. This was considered a reasonable relaxation by the Development Authority.
- With respect to the east elevation as shown on DP202, the setback relaxation extends along the length of the building on the east property line.
- The City has accident reports for the past three years (2010-2012) for the Mission Road/34 Avenue SW intersection. On page 295 of the Board's report the study indicates that for the last three years there were four accidents that were reported. Two accidents occurred in 2012 and another two in 2011. Two accidents occurred during snowy conditions and one of the accidents occurred in clear driving conditions at 3 a.m. None of these accidents had any injuries; only property damages and they were single occupant vehicles only.
- Mr. Lynch clarified the accident data. The accident rate translated into about 0.2 collisions per million entering vehicles into that intersection. For design purposes, the Transportation Department is only concerned about intersection design when the rate reaches 0.7. For comparison purposes, the intersection of Bow Trail and Sarcee Trail, has a rate of about 2.93 per million entering vehicles. Therefore, in the Transportation Department's view, the accident rates are low and the safety concern is very low.
- He also clarified that the proposed driveway or curb cut is also in the same location as the current driveway. In terms of entering and exiting the driveway from Mission Road, it is no different than the driveways for the neighbouring parcels on the west side of the street that also have front driveways on 34 Avenue SW. Sightlines are adequate at the driveway location. It is challenging topography due to the steep grade and curves in the road, especially approaching the top of the hill. A hidden driveway sign would be appropriate.

- Mr. Melanson commented that with respect to the amenity space, in section 557 the requirement in the Bylaw is a minimum amenity space of 5 square metres per unit and a relaxation is provided for that. Private amenity space is typically provided as a balcony off of the units and one of the minimum dimensions is 2 metres. The required common amenity space for this application is 150 square metres. This is not a DC specific requirement and is a general requirement in a multi-residential district. He noted many people do not always use the balcony as amenity space. This is his opinion based on his experience with many previous files. They are tending to get smaller.
- He clarified that section 556 is the standard rule that applies to all multi-residential development. The proposed garbage enclosure location is the only place they can actually put it to get the appropriate access for the garbage truck to get in and out. This is not a typical standard parcel and the garbage is not the standard container garbage system; hence the reason for the relaxation. To mitigate the negative visual impact of the garbage area on the neighbours and the street, they are using the Molok system which is not the standard garbage system as the containers are partially underground. The applicant can provide more detailed information.
- The reason a private amenity space is required by the bylaw is for the residents to enjoy the outdoors. Multi-residential development requires private amenity space (balcony) which acts as a deck where you would typically BBQ and entertain. Common amenity space allows residents of a complex to congregate. The nature of how this is functioning seems to be changing. The minimum dimension is 2 metres which was originally established in Land Use Bylaw 2P80. This seemed appropriate at the time and allowed for an adequate size to use the space. The bylaw checker has noted on the plans the least compliant balconies.

#### In Favour of the Appeal:

Mr. Rick Moses, the appellant, stated he lives directly north of the proposed development and distributed documentation to the Board including photographs and shadow studies and raised the following issues in favour of his appeal:

Long term goal:

Creation of a development plan that satisfies the property owners' right to develop this property in an economical scenario, while still respecting the property rights and community aspirations of the existing residents.

Building Massing and Density:

- Residential properties on three sides of this proposal are predominantly single family residences zoned RC-2.

- The built form of the proposal is incompatible with the surrounding community.
- The proposed development has a residential density of approximately 87 units per acre, nearly twice the density proposed in the Mission Charrette at 45 units per acre and eight times the density of any previous developments on this site.
- At 16.8 metres high, there are no taller structures within 600 metres and this is out of character with the neighbourhood.
- The east retaining wall is featureless and extends the entire length of the property from curb to lane with a 7.5 metre concrete barrier, 3.0 metres higher than the peak of the residence directly to the east.
- The concrete wall essentially compels future development to assume similar scaling and massing and built form.
- This will lead to significant over-densification of the residential area.
- The west façade is 14.6 metres tall and 20.8 metres long and has two driveways (parkade ramp and waste services driveway).
- Adjacent residences are single family infill homes.
- Parkade ramp on 34 Avenue opens near Mission intersection, on a steep hill that is prone to icing in the winter. It is very difficult to stop on this hill. In 2009, a year before the traffic study there was a ten vehicle pile-up in these conditions.
- The building form is not compatible with neighbourhood development.
- Adjacent residences are single family infills to the south on Parkhill Street and infills to the west on 34 Avenue.

#### Parking Deficiency:

- Neighbourhood street parking is a burgeoning problem and has been for 20 years.
- 34 Avenue west parking is limited by driveway entrances and north/south curbs on hilltop are currently used by residents that do not have alley parking access.
- 34 Avenue is also a designated snow removal route and at times it will be unavailable to all parking uses.
- Parkhill Street and 1 Street are very narrow and steep, with resident parking on both sides. It is usually impossible for oncoming traffic to pass.
- Mission Road parking is to be removed from the permit as a prior to release requirement.
- It seems apparent that this development must shoulder its entire parking burden on the property.
- The commercial units in the development have no designated parking allotment. In fact, the Development Authority relaxed the six required commercial parking spaces to zero.
- All commercial/retail traffic, whether staff, deliveries and customers will be parking in the adjacent residential area by default.

- The parking stalls in the mews townhomes also have substandard dimensions.
- Five of these are only 5 metres deep and 2.5 metres wide. This would be just long enough but too narrow for a Toyota Camry 2014 model.
- The 34 Avenue laneway is also below City standards at 5.2 metres so turning access to these parking spaces will be difficult. The current city minimum laneway width is 8 metres.
- Some of the laneway parking spaces are within 6 metres of an existing residence.
- In addition to issues of building form and impact, concerns have also been expressed regarding on-street parking congestion adjacent to multi-family residential areas.
- Problems appear to be more pronounced in certain areas of the community particularly along Erlton Court SW and between 38 and 38A Avenues, east of Parkhill Street SW.
- In order to reduce the problem of on-street parking congestion, multi-family residential building owners should seek ways of encouraging better utilization of on-site parking. Parking issues should be monitored and if on-street congestion intensifies in the future as the RM-4 areas of the community redevelop, the Transportation Department should work with the community on solutions to the address the problem.

#### Landscaping Deficiency:

- The development of two buildings covers 68.25 percent of the property; of the remainder approximately half is concrete or similar materials
- The residential coverage is 27.44 percent; the undeveloped area is deficient by 6.56 percent.
- There is very little public green space in the immediate area. There is a park at the Parkhill Stanley Park Community Association which is 550 metres south, and the Elbow Bluff natural area is 500 metres west. With significant distances to these open areas, amenity space for residents of this complex seems to be of neglected importance unless we are determined to cultivate a city of shoebox homeowners.

#### Shadow Study:

- He referred to the shadow studies that he submitted to the Board and indicated that the proposed development will have a severe shadow impact on the neighbouring residences.
- He stated that the townhomes component of the proposed development should not be allowed and should the Board allow the development, to limit the townhomes to just one storey to minimize the shadowing impact to the adjacent properties and follow the charette proposal of single storey developments. .

Mr. David Kroeker, an affected neighbour addressed the Board next and submitted the following:

- This development will negatively impact the use, enjoyment and value of our property.
- Our property will be completely covered by shadowing therefore; we will lose the enjoyment of our property. The plants in the garden will not survive due to lack of sunlight and we would have to change our landscaping.
- When we bought our property in the early 80's, there was a church and two older homes on the site that did not have any impact on our home.
- The current driveway was used very sporadically when there was a church in that location and also by the two older homes therefore, there were no negative impacts on our property. We are concerned about the traffic that will be generated.
- The townhouses will have third floor balconies that will overlook both our home and yard, thus eliminating the privacy that we currently cherish.
- Three storey townhouses will be higher than our house. The development will block our view that they have enjoyed all these years as residents in the community.
- We will not have any more space to park our vehicle when a snow route is imposed.

Mr. William Gagnon, an affected neighbour, addressed the Board and distributed documentation including photographs and raised the following issues in favour of the appeal:

I am a lawyer but I have not been retained by anyone in this matter. I am a former SDAB member and have served on the Municipal Government Board for eight years. I am familiar with planning matters.

I support the appeal against approval. At page 68 of the Board's report; you will find my initial comments concerning this development: I support redevelopment of Mission Road but not this project. This project represents a vast departure from what was intended in the design Charrette process, and marks a huge failure in it. Indeed, it undermines the planning process by having delivered precisely the thing that it was intended to avoid – namely, ad hoc, insensitive redevelopment. All that the Charrette delivered was a set of rules that no one is sure how to interpret now that the idea of comprehensive redevelopment of Mission Road has essentially been abandoned.

It is clear that the land use designation for the area had anticipated a comprehensive redevelopment plan, perhaps by phases, but with each phases complimenting or anticipating the other. Instead of comprehensive redevelopment of Mission Road promised by the Charrette, this project promises to be the first ad hoc redevelopment project. The current DC planning guidelines

make no sense in the context of ad hoc redevelopment. On that basis alone, the project should be relegated to the scrap yard. Start over properly.

On its merits, the project proceeds as though it were green field development. It does not look like anything in the neighbourhood and is not sensitive to it. It exceeds reasonable density limits by one whole building; namely the building at the rear or north side of the property.

The north building appears as an afterthought intended to squeeze five more units on the property than it can properly accommodate. It makes access/egress difficult from the lane and is inconvenient for neighbours. Much of the objection to this project would be overcome simply by eliminating the five units bordering the alleyway.

In my experience, I have learned that subjective issues such as cladding, roof lines, colour and facade are matters on which reasonable people can disagree. I will not burden the Board with any comments in that regard except to say that this project is ugly and clearly an attempt to push the boundaries beyond what can reasonably be accommodated on one site. More importantly, it will set a precedent for all other developments along Mission Road.

The zero lot line relaxation on the east side will present a difficult challenge for the developer of that project when it arises. The access relaxation on Mission Road represents an encumbrance on the easterly property.

My neighbours have addressed their concerns. Photographs in the Board's report provide evidence of the mess that occurs on 34 Avenue whenever there is snow or ice, and while there may not have been large numbers of reported accidents, I can assure you that there are a great many unreported cases where cars collide with one another on that hill. Access and egress is simply impossible on 34 Avenue.

In closing, I submit that if this project is subject to discretionary approval, then it would be prudent to exercise such discretion in saying no and to encourage the proponents to eliminate the rear yard of the second building project, and better address the access/egress issue on the two remaining sides of the project on Mission Road and 34 Avenue.

Mr. Bill Fischer of the Erlton Community Association addressed the Board and submitted the following:

I am here today on behalf of the Erlton Community Association.

This development is located on the south side of 34th Avenue SW, which is the dividing line between the communities of Erlton and Parkhill / Stanley Park.

The character of the streetscape in both our communities promotes walkability and pedestrianism, with lanes to accommodate traditional “back of house” uses such as vehicle access. Vehicles crossing public sidewalks do not contribute to a pedestrian-friendly environment.

We therefore object to the two unnecessary driveways and sidewalk crossings on 34th Avenue SW, as proposed by this discretionary development. They are shown on plan 6 of page 25 of the Board’s report. One is the parkade entrance approximately halfway down the hill. The other is the waste and recycling driveway right beside the existing driveway to the lane. These two elements of this design effectively convert the public realm of the street into an alleyway function, eliminating on-street parking that would accommodate visitors to the neighbourhood, slow through traffic, and protect pedestrians. In addition, they create both an impediment to walkability and a hazard to pedestrians.

Section 35 of the Land Use Bylaw (LUB) states:

**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***;

Land Use Bylaw Section 8(e) states: “must is to be construed as a compulsory obligation;”. As shown on page 101 of the Board’s report, the Development Authority considered only the Parkhill ARP, and thus failed to properly apply this rule.

The Municipal Development Plan (MDP) and The Calgary Transportation Plan (CTP) are statutory documents approved by City Council. They govern and affect this property, with each providing specific guidelines relative to the local context. They are so significant that The City crafted a Guide to the MDP and CTP to ensure proper application of these policies.

On page 12 under the heading, “How will the MDP and CTP be used for Discretionary Use applications?” the guide states, “The city-wide policies in the MDP Part 2 and Typology policies in MDP Part 3 will be referenced to guide this use of discretion ...” and “In reporting on its decisions, Administration should support its decision by referencing key policies used to inform its discretion and demonstrate to the Approving Authority how the decision is moving in the directions envisioned by the MDP and CTP.”



There is no indication in The City's report to the Board that either of these actions occurred.

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.

The MDP encourages measures to make the city more walkable and pedestrian friendly:

At section 2.4.3(a) it states "Design streets and sidewalks to encourage pedestrian comfort, safety and linkages ..." and at Section 2.4.3(b) it states "Safe pedestrian connections ... should be provided to facilitate all travel modes".

At section 3.3.1(i) it states "Pedestrian environments should be the priority design element, focusing on pedestrian convenience, safety, comfort and enjoyment."

The Calgary Transportation Plan (CTP) is yet another relevant policy.

At section 1.4(2.) it states, 'Create walkable environments.'

The Transportation Sustainability Triangle in section 3.1 places walking at the top and automobiles at the bottom. This implies that where decisions are required - walking vs the automobile - a design that supports walking should take priority.

Section 3.2, under the heading "Walking and Cycling" states an objective of the plan is "to make walking and cycling attractive and convenient through the provision of additional or enhanced infrastructure..." and further on, states "... people will choose to walk if it is a convenient way to travel" and "... making walking a convenient, year-round option for more Calgarians requires:

- direct and convenient connections to destinations;
- sufficient unobstructed space to walk comfortably;

- well maintained routes with character that feel safe and secure; and
- adequate separation from traffic ...”

We believe the intent of both the MDP and CTP is clear, and can be achieved by eliminating unnecessary driveway crossings over this public sidewalk in order to enhance the convenience and safety for walking.

Most major high-rises, commercial and residential, and most low-rise buildings have only one parking entrance / exit. The Municipal building is one example. The parkade access on Mission Road is easily capable of handling the total parking requirements for this apartment building.

The Bunt & Associates Transportation Study on page 291 of your report, at Parkade Usage, states that “The parkade will provide parking for the 47 residential units” and “... the parkade will generate 29 trips in the morning peak hour and 33 trips in the afternoon peak hour.”

On page 293 of the Board’s report, at Theoretical Gap Analysis, it states “... there would be 243 to 223 gaps greater than 5.5 seconds within the traffic stream on Mission Road ... during the morning and afternoon peak hours” and “The estimated gaps are greater than the maximum number of vehicles expected to exit the site during each of the traffic peak hours.”

This professional report clearly shows the ability of the Mission Road parkade access point to handle all traffic needs, making the 34th Avenue entrance and sidewalk crossing unnecessary. In fact, using the figures provided by this study, and doing a little calculation, the Mission Road entrance alone will provide approximately five times the required vehicle access opportunities to the roadway that would be needed if all 47 vehicles exited the parkade at the same time. We understand and accept that this would require an internal connection between the two parkade levels.

Finally, the proposed driveway for the waste and recycling is contiguous with the existing lane driveway, and when combined with the existing crossing, more than doubles the length. We submit that a properly designed pad for waste and recycling could be configured to utilize access from the lane, thus eliminating the second sidewalk crossing. After all, the City waste and recycling trucks navigate this lane each week, and have done so for many decades.

If the Board is not persuaded to refuse this development permit based just on the section 35(d) shadow study evidence of other appellants, we ask that prior to release conditions be added to the development permit, whereby the parkade and waste driveways are eliminated from 34th Avenue.

Mr. Peter Alles, an affected neighbour, addressed the Board and submitted the following in favour of the appeal:

- He lives on Parkhill Street SW and has been a resident of Parkhill since the 1970's and he was a member of the Parkhill Community Association in the early 2000's.
- When the church was sold and occupied by a different use that is when the parking issues started. Every Friday when there was a large influx of vehicles, people who attended the site parked in front of the neighbouring residences.
- Due to the slope and some mitigating issues, The City put up a No Parking sign from Parkhill Street down to Mission Road on the east side and parking was only allowed on the west side. That measure did not help with the parking issues as there was also a crosswalk on Mission Road.
- He also stated that the proposed development overlooked that there are crosswalks on both Mission Road and Parkhill Street. In his opinion, angled parking on Mission Road will not be feasible as they will be blocking the crosswalk where people will be crossing.
- Mission Road is also a snow route and evidently, the site has now only two parking stalls as it exists on a parallel basis on the north part of Mission Road with the curb cut.
- He added that with the proposed 47 units there will be at least 47 cars and with approximately 75 persons in the complex they would likely have two vehicles each. In his opinion, there will not be enough parking spaces and consequently, people will park on the street that will exacerbate the parking issues in the area.
- He concluded that should the proposed development be allowed; he will lose his view of downtown Calgary and the eight lots on the site cannot accommodate the proposed development.

Upon questioning by the Board, the appellant, affected neighbours and the Erlton Community Association's representative clarified the following:

- Mr. Moses clarified that his own property will have limited impact of the shadowing by the proposed development.
- He has a garage with a setback of about 2 metres from the back lane and his home is about 50 feet from the property line.
- He also clarified that should the townhouses be removed from the proposal; he does not have any issue with the development.
- His biggest concern with the parkade entrance on 34 Avenue is the slope. In his opinion, it will create safety issues.
- Garbage pickups in his neighbourhood are from the alley.
- Mr. Kroeker clarified that he is not familiar with the Charrette and he was not involved with it as he was out of town at the time.
- Their porch area is located on the west side of their property where they get the most sun and therefore it is used the most.

- He is concerned about facing a long wall to the south of his property.
- Mr. Kroeker's property is at the same level as the lane and from the lane up to the bottom of their house to the top of the eaves is 454 centimetres.
- He also clarified that they do not have a garage on their property and their house was built in 1910. They have one vehicle.
- The houses and church were demolished in 2007.
- Mr. Gagnon did not participate in the meetings regarding the Charrette.

### Opposed to the Appeal:

The applicant's group which included Mr. Peter Schryvers, Mr. Ken Scott, and Mr. Jonathan Allen submitted documents to the Board prior to the hearing which included photographs and they submitted the following in opposition of the appeal:

Mr. Schryvers was the first speaker to address the Board:

This is an application on a Direct Control District.

- Section 642 (2)(b) of the Municipal Government Act:

This appeal is regarding a development permit that is in a Direct Control (DC) District (page 275 of the Board's report).

641(4)(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.

- He then quoted the Parkhill/Stanley Park Area Redevelopment Plan (ARP) on page 281 of the Board's report:

### 3.2 Special Policy Area

In 2011, Council initiated an "Innovation Project" entitled the "Mission Road Main Street Innovation Project" that piloted the use of the National Charrette Institute Charrette Process and examined the potential use of a SmartCode form-based code for implementation....

#### 3.2.1 Introduction

...The intent is to provide for a Neighbourhood Activity Centre under the Municipal Development Plan with primarily multi-residential development and limited retail/commercial in a mixed use format as well as implementation that includes form based controls, a redesigned Mission Road right of way and allows for a design developed through the Mission Road Main Street Project, as directed by Council. In conjunction with this policy, a Direct Control District is considered appropriate to implement policy for these lands.

- Mr. Schryvers stated that the Direct Control District that regulates this site indicates the importance of parking and Transit Oriented Developments (TOD) relaxations. In this land use bylaw under Purpose, it provides for a neighbourhood activity centres with pedestrian and transit oriented development in proximity to an LRT station area. The developments are also encouraged to provide primarily multi-family residential development with a mixed use format only. He deduced that Council understands that this is a TOD area and passed the bylaw with an understanding of its implications for parking and the like.
- He further stated that this bylaw also encourages ground floor commercial and mixed use through reduced parking rates and prohibits stand-alone commercial buildings.
- There are other regulations specifically for the density and height. Direct Control district is where Council passed a land use where there is no maximum floor area ratio, and in this case, where there is a building envelope which provides flexibility in unit size which is the purpose of form-based code. Council is more concerned about how the building looks and how it is oriented on the site.
- The building height is 20.5 metres throughout the site. For site 1, there is a modification in the height requirement to a maximum of 24 meters to allow for a spire or clock tower within 15 metres of the intersection of 34 Avenue and Mission Road. This is further referred to on page 283 of the Board's report.
- The representative further stated that on page 283 of the Board's report, the principal building allows for a maximum of four storeys if it is all residential. If the principal building is a mixed use, the maximum allowed is five storeys. For the secondary building, the height allowed is a maximum of two storeys. These have both been approved by Council in both the ARP and the Land Use Bylaw which specifically allowed for two-storey buildings on the lane. The proposal as approved is significantly lower in height than what is allowed in the ARP and Land Use Bylaw which are both statutory documents.
- In regards to parking, the site plan indicates and concurs with the Development Authority's submission that there are 47 residential units and 57 stalls will be provided for the residential, commercial, and visitor parking.
- He also addressed the concern with the location of the visitors' parking along the lane. He reasoned that this chosen location makes them more accessible for visitors so they do not have to get buzzed in to enter the parkade. Also visitors

will come and go while residents will typically go out at least once a day and during peak times. There will be more activity in the in both entrances for residents, therefore, the location for the visitor parking is not a burden. Their location on the lane makes more sense and is more practical as these parking stalls tend to be used during the evening and weekends for visitors who are visiting family or friends in the complex. There will not be as much impact on peak period on traffic flows to the parkade with the present location for the visitor stalls. The parking on Mission Road is a nod to the charrette process although at this point, it is not entirely clear how the parking stalls are going to be funded and it is not a part of the development permit application.

- Mr. Schryvers then discussed the handicapped parking. He submitted that within the bylaw, there is no requirement for a barrier free or handicapped parking stalls. The location of these stalls are typically determined by the City and they can request the location to be moved.
- He further submitted that the parking stall dimensions meet and exceed the required depth in all cases. The depth as approved is 6.551 metres from the face of the wall to the property line, therefore, every stall is well over the 5.4 metre depth required by the City. The width as proposed is 3 metres and that again is well over the City requirement. -There were no relaxations granted for the parking stalls along the lane.
- In regards to the waste and recycling, Mr. Schryvers referred to page 15 of the Board's report and an Urban Development Prior to Release Condition (PTR) 3(e) which states: "Backing out onto a public thoroughfare or excessive manoeuvring is not permitted". He submitted that was the reason why the access and egress point has been changed.
- Further, Mr. Scott stated that the proposed bins are not the typical garbage bins. These bins are the Molok system. They are cylinders that sit above grade by 3 or 4 feet and underground by about 8 feet. There will be a private company picking up the waste and they will use a crane to pick up the bins and replace them with a different bin.
- Mr. Schryvers then addressed the question about landscaping and the amenity space for the proposed development. The amenity space requirement is 5 square metres per unit. That can be a private amenity space which is typically a balcony or a common amenity space. There are several units that have balconies and there is also a large courtyard. There are 47 units proposed and multiplied by 5 square metres this equals 235 square metres. The proposed development is providing 423 square metres of courtyard. Therefore, the requirement for this building is already met even just with the courtyard as shown on page 6 of 25 of the approved plans. While the balconies may not meet the requirement for private amenity space, all the requirements for amenity space are met by the proposed courtyard and landscaping in the middle of the development.
- The applicant's representative further addressed the landscaping. A lot of the landscaping and building coverage rules are contained within the ARP and the

DC guidelines. On page 283, 80 percent is the maximum as opposed to the 60% that was mentioned by the appellant. He referred to page 261 of the Board's report:

#### 10 Landscaping Requirement

All areas on a *parcel*, not including those areas covered by *buildings*, or those portions specifically required for motor vehicle access, sidewalks, or any other purpose allowed by the *Development Authority*, must be landscaped.

- He then addressed the issue of the townhomes on the lane. He reiterated that Council was very specific about allowing two storey townhouses along the lane. There has been an effort to provide façade articulation along the lane. In terms of the allowable distance from the lane, he submitted that in the ARP, the rear setback is 0 metres where it abuts the lane and Council specifically approved this at the public hearing. The proposal is moved back from the lane.
- Mr. Schryvers then addressed the shadow study. The shadow study from the appellant in his opinion is not very accurate. He argued that the submission was done incorrectly. The shadow study does not have a geodetic reference point and indicates the site is flat where in reality the site is sloped. In terms of the width of the lane and the location of the lane, in the shadow study the power pole is shown to be on the property but in reality, it is located within the lane. There were other issues that in his opinion are incorrect. He then referred to Drawing 2 of the approved plans. The actual physical lane starts sloping into the site.
- Moreover, in the shadow study, the measurement from Mr. Kroeker regarding the height of his house is incorrect in his opinion. The standard residential floor is 3 metres high while this one is 2.34 metres. He argued that the shadow study is incorrect and asked the Board to take into consideration the accuracy of the study as it does not make a fair representation of the proposal as well as the orientation and location of other buildings.
- He then addressed the side setback of the easterly portion of the parcel. It was noted that it does go up against the property line. He referred to section 15(4)(5) of the Land Use Bylaw for the rule that governs this setback and referred the Board to the map that clarifies the setbacks. He elaborated on how the bylaw and ARP are to be interpreted and that buildings can be 0.0 metres on the side setback.
- Mr. Schryvers then summarized that Council approved what type of building can be built on the site. He submitted that the bulk of the appellant and affected neighbours' arguments are about land use issues. Part of this is due to the fact that the charrette process is new to Calgary and no one understood the ramifications of the process but the ultimate outcome is the ARP amendment and the land use bylaw. In his opinion, the arguments should have been raised at the Council meeting and ultimately Council decided and approved what can be built

on the site and the applicant adhered to the ARP amendment and the Land Use Bylaw.

- He then asked the Board to uphold the Development Authority's decision and deny the appeal filed against the development.

Upon questioning by the Board, Mr. Schryvers, Mr. Scott and Mr. Allen clarified the following:

- The Development Authority did not require a shadow study therefore the applicant did not submit one.
- DP 5.02 and page 19 of 25 of the approved plans indicate floor plans, and measurements of the parking stalls on the lane.
- On the parkade plan, all parking stalls for the 47 units will be located below grade and all visitor parking and commercial parking are above grade.
- The reason why there are two separate garage entrances is due to the requirement of The Transportation Department. Originally there was only going to be one entrance off of Mission Road however, the result was that the parking would be insufficient for the proposed density. Therefore they created two entrances to meet the requirement for parking for all the units.
- The shared entrance on Mission Road will work in the future by amending the current curb cut for the proposed development so two developments can share the curb cut.
- The main amenity space is the courtyard and each unit has a little bit of amenity space. Some of the units have a Juliet style balcony where one can open the doors and let fresh air in.
- Mr. Allen also stated that there are two variations of amenity spaces for the proposal. For this development, the first is a designer aesthetic which follows the Charrette design to provide a more organic feel with more variation in format. In low rise urban multi-family, it is not uncommon to have fairly uniform balconies but for this development; they tried to avoid that kind of uniformity and went with a more interesting facade. In the south and east faces, they are deliberately asymmetrical.
- He further clarified that the second reason for the variation is for economic reasons. It does not matter whether the amenity is indoor or outdoor; they cost money for the purchaser therefore, the proposal provides four different types of outdoor amenity space and they offer three different types of balconies with varying sizes.

*January 14, 2014*

The Board continued with the questioning of the applicant's group:

- The existing lane is to remain unpaved.



- The surface material for the service area is heavy duty concrete to hold the weight of the garbage trucks.
- There will not be a curb between the edge of the unpaved lane and the concrete area. The lane and loading zone will be flush with each other to allow the service vehicles to use the lane. This will be a flexible area that can also be used as a loading stall.
- DP 302 illustrates the view from north of 34 Avenue which is the north façade of the main building. DP L1 – 00 is the site plan with landscaping and illustrates some articulation of the buildings. The windows on the side do not allow for looking into neighboring properties but provide breakup of the façade and there will also be landscaping in that corner.
- The intent is to provide taller landscaping to screen the building and create visual interest and vegetation. The courtyard will also have some risers and enhanced landscaping with stone and bricks and hardy plants. The gate will also be enhanced to provide a security feature but will also provide articulation. The landscaping would also continue to the waste and recycling area.
- The base of the buildings is basically brick. There is also corrugated metal on the west elevation of the townhouses and along the courtyard.
- The applicant had proposed a different door for the access on 34 Avenue but the Transportation Department suggested having two doors.
- The ramp for the parkade is angled downward so headlights will be directed towards the roadway instead of towards the residences across the street.
- According to Figure 6 of the ARP, 34 Avenue and Mission Road are both primary frontage roadways. Due to the dual primary frontages, the applicant tried to provide articulation and activity for both frontages. On Mission Road, there are the live-work units with entrances directly onto the street. On 34 Avenue is the main entrance for the residences.
- He clarified that the provisions in the DC bylaw are not relaxable except when there is a conflict with the ARP. On page 261 of the Board's report, those rules that are within the MH-1 District are relaxable because Council did not have specific rules about things like landscaping and amenity space. Where Council has a specific rule, for instance in section 11, the building height cannot be more than 20.5 metres and that is not a relaxable rule but all the rules on the main land use bylaw are relaxable.
- This district where the site is located is a Direct Control District. In 1P2007 there are no maximum setbacks and everything is a minimum.
- The intent of the 0.0 metre setback is due to Council's desire to activate the lane and not create dead spaces in the back.
- In Land Use Bylaw 1P2007, Section 643, on page 269 of the Board's report it states: "At least 50.0 percent of the required landscaped area must be provided at grade." On page 261 of the Board's report, Section 10 of Bylaw 6D2012 it states: "All areas on a parcel, not including those areas covered by buildings, or those portions specifically required for motor vehicle access, sidewalks, or any other purpose allowed by the Development Authority, must be landscaped."

- A parcel is a legal title of land and a site is an area that is the subject of a development permit.
- He clarified that the ARP prevails where there is discrepancy between the DC Bylaw and the ARP. On page 288 of the Board's report in section 3.2.9 on the third bullet point, in the applicant's opinion, the proposal does comply with this section.
- He also clarified that the parkade entrances are recessed back from the sidewalk to prevent vehicles entering the parkade from blocking the sidewalk. There is also some landscaping provided in this area.
- It was clarified that the storage areas located in the parkade are for the residents. The other storage areas are still being discussed with the developer and it will be decided from marketing perspective on who gets those storage areas.
- There is interior bike storage right off the main level and there are also ways to maneuver the amenity space/storage space by hanging the bicycles to allow some space for storage.
- All the townhouses have the same plan that has an elevated deck area and they also have access to the courtyard.
- He stated it would not be possible to have an entrance off the lane due to the steep grade and the width required for a circular ramp. It would require more levels to provide the required number of stalls.
- You could not eliminate the driveway off Mission Road and have all access off 34 Avenue (or vice versa) without losing a large number of parking stalls due to the ramp that would be required. To just have one access and include a ramp in the parkade would reduce the space available for parking stalls and would not be financially feasible. Having a three storey underground parkade would be too expensive. One drive aisle with stalls on either side is the most efficient use of space.
- The applicant's representative confirmed they do not have any letter from the Director of Transportation to indicate that Transportation recommended having two parkade entrances to meet the parking requirement and due to the site constraints.
- The parking required is dictated by the density of the site.
- The waste and recycling area which includes 2 larger Molok 5000 bins is screened by a standard height wood fence. The two smaller bins which are 0.95 metres in diameter are located right off the lane but they are only 3-4 feet high. The height of the fence is not specified on the plans. The smaller bins cannot be screened due to the maneuvering required by the service vehicles. There is some exposure to the street due to the location of the waste area. Pick up will be once a week and will be fairly quick.

Upon questioning by the Board, the Development Authority and Transportation representatives clarified the following:

- Mr. Melanson explained the process for every development permit application that goes to the (Corporate Planning Application Group) CPAG process. Each department sends their representative and the whole group makes their decision together. There is a representative from Transportation, Urban Development, and the Development Authority.
- Residential districts have a 1.2 metre setback. The Land Use Bylaw 1P2007 defines low density and multi residential districts. Direct Control districts are separate and not a part of the residential districts. There is no setback required for this Direct Control District. There are nine parcels in this one section and they are all direct control districts and not MH-1. With all the discussions it was envisioned that this site was to be comprehensively developed.
- One of the comments that went to Council and why Council acted to relax the policy and also the DC specific rule is due to different ownership. Where Direct Control rules specify, it does override the rule in the bylaw.
- He clarified the bylaw relaxation on setbacks as submitted to the Board and on the file is incorrect in section 15(5) and the Development Authority used an incorrect calculation.
- He further clarified in the relaxation chart that on the east side on plan DP 202 of the approved plans for the east setback, the relaxation for the setback as noted is incorrect and it is an error by the Development Authority. The bylaw relaxation is not applicable due to the site being a Direct Control district and section 10 also does not apply to this application. Relaxations on the general landscaping in the chart were erroneously noted.
- The rules under 1P2007 for separation of parking for residential and commercial development do not apply under the DC bylaw.
- (3.29) Mr. Lynch stated as a general approach to road hierarchy and access management Transportation Planning prefers to have access off of rear lanes and then move to higher order roads, however, we do recognize there are instances when this is not feasible or practical. That is our usual starting point. This site has grading requirements and we have certain design standard requirements and if they cannot make the grades that are within our design standards to accommodate their ramping systems, we will look at alternatives. There were challenges that precluded the applicant from taking their access off the lane.
- Regarding the potential for an access off the lane, we had a conversation about the challenges of the topography and I understood the challenges but I did not look at any specific designs that showed that. It was explained to me there were significant grades and understanding the constraints of our design standards I agreed to look at the other alternatives. With respect to the circular design, without looking more specifically at the design, I accepted the fact that it was a significant challenge in order to meet our design criteria, which has a maximum grade of 29% over a certain horizontal length and still get all the parking on site. Otherwise, some form of parking relaxation would be required. The functionality of getting something appropriately off of the lane on this particular site isn't there. Those grade changes cannot be achieved by a circular ramp. I don't typically consider the economics.

Within the realm of reason, it isn't physically possible. I haven't looked at the specific design but based on my experience and discussions with the applicant it is problematic. We looked at the design alternatives that were available to us.

- Regarding the circular ramp, without seeing the actual design I would have to lean on my own understanding of the systems. You would need a 7.2 metre width with an inside radius of about 5-6 metres and an outside radius of 12 metres and you would have to bring it down in a circular manner that is about 20% circular all the way down so the length gets drawn out as you drop the grades. That takes up a lot of space on the parcel and I don't think there is enough space to do this appropriately.
- With regard to the access alternatives they proposed, if access is not possible off the lane, 34 Avenue would be the secondary point of access. There is an existing curb cut so we had no issue with that. Because of system in place, no internal connection was available to create internal connectivity between the parkade levels. I had asked if it was possible to achieve this but given the site and constraints imposed on it by topography and bylaw requirements I don't believe the space is there to ramp down internally from the P1 level on one side to the P2 level on the other side.
- It was noted the maximum setback on the southeast corner was relaxed to accommodate the parking entrance so some accommodation had been made to provide that in contravention of the bylaw. Mr. Lynch was asked if the Transportation Department would have felt comfortable if all access was taken from 34 Avenue. He replied that, given the amount of traffic to be generated from this development, he didn't have an issue with the amount of traffic as it was considered to be very minor. If all access came off 34 Avenue, in the morning a peak hour would be 29 two way trips and in the afternoon 33 peak hour two way trips. That's not a lot of traffic when you consider 60 trips in an hour is equal to a vehicle per minute and it is half of that. Having one access point would not be out of context in this particular instance. If it had to be off 34 Avenue I would not have had an issue with it.
- A loading area is required and minimum dimensions are 9 metres in length and 3 metres wide. The loading area designated for this development does not conform to the required dimensions on site as it straddles the property line but the Transportation Department does not take issue with this relaxation.
- The grade of 34 Avenue is around 5.5% from Mission Road to the curb cut where the proposed driveway will be built and at above that it is about 15 percent. Then it levels off as you go around the curve further up 34 Avenue. The access for the waste and recycling must maintain a 2% grade.
- It is important to clarify the word "safe" in terms of transportation planning engineering. There are degrees of safety – either less safe or more safe – and part of that is the nature of transportation. The approach we take to achieve things that are safe is through design, operations and regulations, and understanding driver behaviour. It's a multi-faceted approach.

- It is important to ensure adequate sightlines. Also, when topography doesn't allow us to achieve our desired design considerations then we introduce regulations such as lower speed limits and signs. We look at the probability of accidents and in this case the trip generation is very low. There is no historical evidence to suggest this is problematic and the reported accidents are likely isolated incidents.
- He clarified that when evaluating the application, Transportation does take into consideration the MDP and CTP along with their own rules. Their direction is to provide an environment for pedestrians first, then cyclists and transit users, but they have to manage the legal requirement for a parcel. There are other considerations when they evaluate an application. There was no study conducted about how many pedestrians access 34 Avenue past this site. Mr. Melanson added that while he was visiting the site at around 8:30 p.m. there were a few pedestrians on the site, however, the applicant does anticipate that pedestrian activity will increase.
- Mr. Melanson also clarified that in the photograph that was referred to and submitted by the appellant and affected neighbours, the accident occurred during a day when the temperature dropped and the roads were slick and slippery. He also submitted a photograph taken a day before the SDAB hearing on December 19, 2013 when there was a snow storm and there was a significant amount of snow accumulation. His vehicle is not equipped with winter tires and he stated that he did not have any issues getting up that hill and no issues coming down it either.
- The traffic surveys on page 296 of the Board's report indicates that during peak hours, there were less than 10 pedestrians and cyclists, therefore, the volume of pedestrians is quite low.
- 34 Avenue is a connector road which is more of a local road. There is no speed posting therefore the speed limit would be 50 kilometres per hour.
- It is also recommended that the Board add or require signage for the hidden driveway on 34 Avenue and perhaps add a speed limit sign of 30 kilometres per hour as a condition of approval. Mr. Lynch added that even if the Board does not add this requirement, Transportation can still require them from the applicant.
- Mr. Carkic of the Transportation Department addressed the possibility of a circular ramp off the laneway. He stated there was insufficient space to accommodate a circular ramp on the site without losing parking stalls.
- Mr. Melanson confirmed that the Development Authority did not require a shadow study from the applicant but was admittedly quite surprised with the shadow study provided by the appellant with the level of detail that indicated roof peaks. The Development Authority did not feel it was necessary to require a shadow study as the townhouses across the lane were only two storeys

*Rebuttal:*

Upon rebuttal, the appellant and affected neighbours stated the following:

- Mr. Moses referred to the approved site plan in DP L100 that deals with the alley exit, landscaping and waste garbage bins. He stated that he uses the back alley frequently and that the alley has very limited sightlines down the hill towards Mission Road; therefore, it takes a great deal of caution to go down the hill. It is a difficult corner. He noted that the NW corner of the proposed building will obscure the view for people entering or exiting the alley.
- He submitted drawings from the Charrette discussions which showed that the height of the townhomes along the laneway was limited to one storey.
- He also addressed the statement made by the Development Authority regarding the parking reduction of 10 percent when a development is within 600 metres of an LRT station which is outlined in the Transit Oriented Development Guidelines (TOD). He then referred to a TOD document published in 2005 with a map. He argued that most of the development is outside of the 600 metre distance and that it is an 800 metre walk to the closest LRT station. MacLeod Trail presents a physical barrier to safe and comfortable access to the 39 Street LRT station and there is very limited transit along Mission Road in the form of a small shuttle bus.
- The appellant then addressed the shadow study that he submitted at the previous hearing. The site was re-measured to confirm whether the original study was valid and several measurements were subsequently corrected and the study was redone and submitted to the Board.
- The top of the second floor windows of the residence is 5.3 metres above the lane, which is the reference elevation for the townhouses. The difference between this height and the previously quoted measurement of 4.6 meters is the 0.7 metre height of the south patio. The SW corner of the residence is 0.40 metres from the property line in the alley. The eaves on the SW corner of 67 - 34 Avenue extend over the property line into the alley by approximately 5 centimetres.
- Moreover, the top of the building envelope for the townhome structure is 2.37 metres higher than the second floor windows of the adjacent residence.
- The width of the alley is increased to 6.0 metres and the utility pole believed to be on the property line is entirely in the alley right-of way. The distance between buildings at the closest approach is 7.0 metres with an increase of 1.0 metre. The higher level of rendering detail on the townhouse building equals to a more accurate shadow positioning.
- He deduced that overall there were relatively minor changes in the scope of impact on the adjacent property with these corrections. The garden and southwestern exposures of the house still receive significant shadowing impact. Overshadowing occurs for large parts of the property in the spring, fall and winter afternoons. Sunlight into the first and second floor windows and south balcony is still negatively affected.
- He then summarized that the townhouse proposal seems to be unnecessary and asked the Board to amend the development and limit or restrict the height of the townhouses to one storey in the alley and dedicate the parking for the residential and commercial use.

Mr. William Gagnon, an affected neighbour also addressed the Board and submitted the following during rebuttal:

- He stated that it seemed the Development Authority has been bending over backwards to make this development happen and to fit the rules for the development. He wished that the Development Authority would have done the same thing for the existing residents as there should be balance.
- He stated he has lived across the alley for 20 years and has often observed dangerous conditions on 34 Avenue. There may be hundreds of days where accidents do not happen but the potential for accidents is high.
- He reiterated that the intersection of 34 Avenue and Mission Road is already very busy.
- He summarized that this development was not contemplated by the Charette, it is not the intent of the ARP and Land Use Bylaw, and it does not follow Council's intent. Redevelopment of Mission Road is inevitable and welcome to most people who live in this neighbourhood. However, this proposed development is simply too high, too massive, and too dense to fit well within the existing community. The solution would be to reduce the density and height and to provide greater setbacks in the alleyway.

Mr. Peter Alles also submitted the following during rebuttal:

- He asked the Board to remove the existing driveway entrance on Mission Road. He stated when the adjacent building is built the driveway will be too wide.
- He also stated that he does not want increased traffic from the development
- He is also concerned he will lose his view across Mission Road should this development get built and asked the Board to deny the application.

During rebuttal, Mr. Fischer of the Erlton Community Association submitted photographs and the following points:

In the December 19, 2013 hearing, the developer stated the parking access on 34 Avenue cannot be eliminated because an internal link between the two parking levels will not allow them to provide the required parking for the units.

The developer also stated that the waste and recycling driveway is required due to lack of space for maneuvering into and out of the garbage pad from the lane. That tells us that there is too much building on too little land.

One simple solution is to remove the west townhouse. It will reduce the parking stall requirement and allow the linkage of the two parking levels. It will also provide ample room to enter and leave the garbage pad from the lane. Finally, it

will allow the relocation of the garbage enclosure and eliminate the requirement to relax section 556. This would kill many birds with one stone.

Page 245 of the Board's report shows the layout of the site. A single level parkade accessed from Mission Road and covering the full site area underground would provide all necessary parking.

We are just laypersons and volunteers, so I am sure there are other viable solutions to eliminate the unnecessary 34 Avenue driveways and their negative impact on walkability and pedestrian safety. If the removal of one townhouse is insufficient to get the parking count under control, remove more.

Alderman Carra's December 18, 2013 letter states that there was 85 percent support for the Mission Road Innovation project. We agree, however, the vision that was supported was not this apartment building with its two storey townhouses on the lane. In fact, every feedback session produced only design sketches depicting a consistent one storey building height at the lane.

He referred to a number of sketches with a view looking west with the lane between Mission Road and 34 Avenue on the right side of the image. This view is a five section sketch of multiple points along Mission Road with four of them referencing a single storey at the lane.

The remaining 18 sketches are identical in achieving the vision of any development having little or no impact on the single family homes across the lane.

The Development Authority's approval of these two storey townhouses is the equivalent of expropriating Mr. Kroeker's right to sunlight and protection from shadowing and conveying those rights to the developer to exploit for profit. We do not believe that is the letter, the spirit, or the intent of the Land Use Bylaw and the Mission Road Innovation Project.

The Development Authority's approval materially interferes with the use and enjoyment of Mr. Kroeker's property and thus violates sections 35(d) and 36(a) of the Land Use Bylaw and fails to meet the test of section 687(3)(d)(i)(B) of the *Municipal Government Act*.

Mr. Schryvers on behalf of the applicant and Mr. Jonathan Allen stated the following during rebuttal:

- He reiterated that Council did not approve the Charrette proposal.
- The Land Use Bylaw and ARP are very clear with the direction for the site and he stated that if the area residents were unhappy with what was passed,



they should have attended the Council meeting and raised these issues. Council approved a two-storey development along the lane.

- In terms of parking and access, Mr. Schryvers stated that the appellant and the affected neighbours who presented to the Board made statements that access from the alley is too dangerous, no access should be allowed on 34 Avenue and also on Mission Road. Ultimately, an access to the site is to be provided; therefore, the proposed access is most suitable for the site and Transportation approved that proposal.
- He also commented on the appellant's recalculation of the shadow study he originally submitted. He noted that the time for this study was 5 p.m. which is not the time recommended in the guidelines for shadow studies.
- He then addressed the TOD rule that the appellant raised. The proposed development met the rules and guidelines for TOD development.
- Mr. Allen stated this is a development that responds to the intent of the Charrette process and reflects the City's density and urban development policy. He was involved in this process as a resident during the Charrette process.
- He further stated that they made a lot of significant revisions to the townhomes as a direct response to the residents and the appellant's concerns. They made changes to the height to fall within the guidelines established by the City and the oversight and privacy concerns. In their view, the application addressed all the concerns and followed the intent of the ARP, the Land Use Bylaw and City Council.

In rebuttal, Mr. Melanson of the Development Authority stated the following:

- He stated that he again checked in POSSE, a City program, to recalculate and revisit the rule of Transit Oriented Development (TOD). He reiterated that the development falls within the 600 metre rule to meet the TOD development guidelines.
- He also reiterated that City Council created the ARP to allow this site to have a higher density and the Direct Control District is written specifically to allow that also.