

Calgary Subdivision and Development Appeal Board  
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**CALGARY SUBDIVISION AND DEVELOPMENT APPEAL BOARD**

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*Citation: 2014 CGYSDAB 60*

Case Name: SDAB2014-0060 (Re)

File No: DP2013-2892

Appeal by: Erlton Community Association represented by Bill Fischer

Appeal against: Development Authority of The City of Calgary

Hearing date: July 10, 2014

Decision date: August 14, 2014

Members present: Rick Grol, Chairman  
Kerry Armstrong  
Heather Hiscock  
Dale Hodges  
Natasha Pashak  
Judy Steele

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**DECISION**

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**Basis of appeal:**

This is an appeal from an approval by the Development Authority for a development permit made on the application of **Tricor Designs** for a **new: multi-residential development (1 building, 4 units)** at 69 31 Avenue SW.

**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 (1 building, 4 units) at 69 31 Avenue SW. The property is located in the community of Erlton and has a land use designation of Multi – Residential – Contextual Grade-Oriented (M-CG d72) District.

**Adjournment:**

On June 05, 2014 the hearing began with the consideration of procedural issues. The Board adjourned the hearing to June 17, 2014 with the consent of all parties involved. On June 17, 2014 the Board further adjourned the matter to July 10, 2014 at the request of the Development Authority.

**Hearing:**

The Board heard verbal submissions from:

Lynn McKeown, representing the Development Authority;  
Bill Fischer of Erlton Community Association, the appellant, in favour of the appeal;  
Mike Borkristl of Tricor Designs, the applicant, opposed to the appeal; and  
Gary Kreuzer, the property owner, opposed to the appeal.

**Summary of Evidence:**

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

Appendix A attached to this decision contains the summary of evidence submitted by the parties 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 null and void.**

**Reasons:**

1 The Board considered the written, verbal, and photographic evidence submitted, and notes that the appeal pertains to an approval by the Development Authority of a development permit for a new multi-residential development (1 building, 4 units) at 69 31 Avenue SW. The property is located in the community of Erlton and has a land use designation of Multi – Residential – Contextual Grade-Oriented (M-CG d72) District.

2 Mr. Fisher, who resides to the immediate east of the proposed development, submitted that the Bylaw relaxations negatively impact the streetscape and the neighbouring homes. He is concerned about his privacy and overlooking onto his property, among other things, including that the invasive rooftop amenity space and shadowing will unduly interfere with or affect the use, enjoyment or value of his property.

3 The appellant, as a representative of the community association, referenced section 35 of Land Use Bylaw 1P2007 and stated that the proposed development is out of context and incompatible with the neighbouring properties. He also referenced the Municipal Development Plan, Calgary Transportation Plan, and the Area Redevelopment Plan. In the appellant's opinion the massing and front driveways will interfere with the amenities of the neighbourhood.

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

Section 35 states:

**Discretionary Use Development Permit Application**

- 35 When making a decision on a **development permit** for a **discretionary use** the **Development Authority** must take into account:
- (a) any plans and policies affecting the **parcel**;
  - (b) the purpose statements in the applicable land use district;
  - (c) the appropriateness of the location and **parcel** for the proposed **development**;
  - (d) the compatibility and impact of the proposed **development** with respect to **adjacent development** and the neighbourhood;
  - (e) the merits of the proposed **development**;
  - (f) the servicing requirements;
  - (g) access and transportation requirements;
  - (h) vehicle and pedestrian circulation within the **parcel**;
  - (i) the impact on the public transit system; and
  - (j) sound planning principles.

Section 576 states:

**Purpose**

**576** The Multi-Residential – Contextual Grade-Oriented District:

- (a) is intended to apply to the **Developed Area**;
- (b) has **Multi- Residential Development** that will typically have higher numbers of **Dwelling Units** and traffic generation than low density residential dwellings;
- (c) has **Multi- Residential Development** designed to provide some or all **Units** with direct access to **grade**;
- (d) provides for **Multi- Residential Development** in a variety of forms;
- (e) has **Multi- Residential Development** of low height and low **density**;
- (f) allows for varied **building height** and **front setback areas** in a manner that reflects the immediate context;

- (g) is intended to be in close proximity or **adjacent** to low density residential development;
- (h) provides outdoor space for social interaction; and
- (i) provides landscaping to complement the design of the **development** and to help screen and buffer elements of the **development** that may have impacts on residents or nearby **parcels**.

Section 585 states, in part:

#### Building Height and Cross Section

- 585**
- (1) Unless otherwise referenced in subsections (2) and (3), the maximum **building height** is 12.0 metres.
  - (2) The maximum **building height** on a **parcel** that shares a **property line** with another **parcel** that has no **buildings** or that has a **building** with a height greater than 6.0 metres above **grade** at that shared **property line**, and where the other **parcel** is designated with a **low density residential district** or M-CG District:
    - (a) is 8.0 metres measured from **grade** at the shared **property line**; and
    - (b) increases proportionately to a maximum of 12.0 metres measured from **grade** at a distance of 4.0 metres from the shared **property line**.
  - (3) The maximum **building height** on a **parcel** that shares a **property line** with a **parcel** that has a **building** with a **height** that does not exceed 6.0 metres above **grade** at that shared **property line**, and where the other **parcel** is designated with a **low density residential district** or M-CG District:
    - (a) is 6.0 metres measured from **grade** at the shared **property line**; and
    - (b) increases proportionately to a maximum of 12.0 metres measured from **grade** at a distance of 6.0 metres from the shared **property line**.
  - (4) The maximum area of a horizontal cross section through a **building** at 10.5 metres above **average grade** must not be greater than 40.0 per cent of the maximum area of a horizontal cross section through the **building** between **average grade** and 9.0 metres.

- (5) The following diagrams illustrate the rules of subsections (2), (3) and (4):  
[...]

Section 578(1)(i) lists “Multi-Residential Development” as a discretionary use in the M-CG District.

5 The Board has regard to the Municipal Development Plan (MDP).

6 The Board also has regard to the Erlton Area Redevelopment Plan (ARP). The ARP states on page 2, in section 1.3.2:

**1.3 Goals**

- 1.3.2 To reaffirm the conservation policy for the south Erlton area and to revitalize and enhance the established residential community.

It states on page 4, in section 2.1.2, in part:

**2.1.2 Recommended Policies:**

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

[...]

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

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

8 The application is for a multi-residential development in the form of four dwelling units (as townhouse style development). The application requires a number of relaxations of the rules and requirements of Land Use Bylaw 1P2007, which are outlined in the chart provided by the Development Authority at the hearing.

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

10 Regarding the subject development permit application, the Board finds that Mr. Fisher, as the immediate neighbouring property owner and resident, is affected by the proposed development.

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

12 Pursuant to section 35 of Land Use Bylaw 1P2007, when making a decision on a development permit application for a discretionary use the Development Authority must take into account the things listed in subsections (a) through (j). Subsection (a) of this section lists the plans and policies affecting the parcel. Therefore, the MDP and ARP must be taken into account by the Development Authority. In addition, among other things, the compatibility and impact of the proposed development with respect to adjacent development and the neighbourhood, the appropriateness of the location and parcel for the proposed development, the merits of the proposed development and sound planning principles must be taken into account.

13 Pursuant to section 687(3)(a.1) of the *Municipal Government Act*, RSA 2000, c. M-26, as amended, the Board in determining an appeal must comply with statutory plans. The ARP is a statutory plan.

14 The Board takes into account that one of the objectives of the MDP is densification and adding more dwelling units to inner city communities.

15 The Board notes that both the Land Use Bylaw and the ARP have designated the South Erlton area, in which the subject parcel is located, for low density residential development, including low density multi-residential development.

16 Furthermore, the ARP is clear in its directives. It states in section 2.1.2.1, among others, that infill development is encouraged and should be compatible with the scale of surrounding development and the local streetscape.

17 While the ARP does not have the same status as a land use bylaw, the Development Authority has discretion to implement the policies of the ARP, particularly where the ARP does not use mandatory but directive language. The aforementioned policy is a factor to be considered. The Development Authority has discretion in terms of how it applies the policies of the ARP.

18 The Board further notes that section 1.3.2 (page 2) of the ARP emphasizes conservation as the guiding policy for South Erlton and recognizes the role of the established residential community in revitalizing and enhancing the area.

19 The Board notes that any previous development applications and the Board's decision regarding any previous applications are irrelevant. Each application and appeal is determined on the basis its own merits, the circumstances of the case, the evidence submitted and sound planning considerations.

20 The land use designation M-CG District is in accordance with the policies and directives of the ARP for development on the subject land, which is a factor to be considered.

21 However, it is significant to the Board that section 576(e) and (f) of Land Use Bylaw 1P2007, which contains the purpose statement of the M-CG District, provide that this district has multi-residential development of low height and low density that allows for varied building height and front setback areas in a manner that reflects the immediate context. While the purpose statement of a district under the Land Use Bylaw is not binding, it does provide the intent, purpose and context of the land use district that governs the parcel.

22 The Board further notes from the photographic evidence that South Erlton has been characterized by bungalows, bi-levels and two storey homes. However, the area is in transition and some properties have been redeveloped.

23 The Board takes into account that recent redevelopment on 31 Avenue SW are reducing the number of front-accessing driveways to meet the objects of the land use district and the ARP.

24 The Board takes into consideration the immediate context of the streetscape of 31 Avenue SW, particularly the block face on the south side of the Avenue. Consequently the Board finds it important that the first redevelopment on this block face is sensitive to the streetscape and the low profile developments on the block face. As revitalization occurs over time, it is important that the development of the subject parcel sets the tone for densification with a project that is in keeping with the character of the surrounding area and in a form respectful of the scale and character of the neighbourhood, in accordance with the policies of the MDP and ARP.

25 The ARP considers 31 Avenue SW a conservation area of the community. In the Board's view, this suggests that continuity in the built-form is a priority with regard to setbacks, height, lot coverage, style etc.

26 The streetscape pattern is characterized by street-facing (towards the Avenue) residential properties with rear-yard amenity space and lane-accessed garages (mostly). Although there are some semi-detached dwellings on the Avenue, the Board notes that there are no three storey residential buildings on 31 Avenue SW.



27 The Board considers that the community association supports higher density development in the northern portion of the community and supports conservation in the southern portion of the community, as per the ARP.

28 There are examples of multi-family development in the conservation area of the community, but only on lots where appropriate - where the impact of a multi-family building is mitigated by side-yard setbacks and rear-yard setbacks, which maintain the pattern of development characteristic of the community while meaningfully adding density.

29 The proposed development is a three storey residential development. While the development is set back at the second and third storey from the appellant's home, which to some extent mitigates the extent of the massing, the development spans the length of the appellant's adjacent single family home and its rear yard amenity space. In the Board's opinion the development dominates the corner parcel due to the overall height, style and rooflines and the orientation of the building with three dwelling units oriented toward Erlton Street SW. In addition, the mansard style roof exacerbates the massing effect.

30 The development is not in keeping with the pattern of residential development on the streetscape including the block face across the avenue. In the Board's opinion the subject lot is either too small for the subject development or there is too much development proposed for the parcel. In the Board's view density can be achieved in a different form on the parcel either with fewer dwelling units or smaller dwelling units, perhaps including a secondary suite development. This would better serve the objectives of the MDP, which also aims to increase affordable housing and a variety of housing forms, while maintaining community character and increasing population density.

31 In the Board's view, having regard to sound planning considerations, the parcel could be developed in a manner that would be more sensitive to the immediate surrounding developments.

32 Having regard to all the evidence, the Board finds that due to the footprint of the proposed development and the orientation of the units, Mr. Fisher's property is adversely affected. Although the applicant stated that the appellant's trees overshadow his property, the Board, upon further review of the presented sun/shadow studies, concludes that the proposed development will result in additional overshadowing of the appellant's back yard.

33 The Board further takes into account that the development requires a significant number of relaxations of Land Use Bylaw 1P2007.

34 The applicant challenged the Development Authority's interpretation of section 585(4). Having regard to a purposive and contextual interpretation of this section and

the plain and ordinary meaning of the words in this section, the Board finds that the Development Authority correctly applied this section and determined that the development requires a Bylaw relaxation of this section. In the Board's experience this is consistent how the Development Authority applies section 585(4).

35 On the balance of all the evidence, the Board accepts the evidence of Mr. Fisher and the community association over the evidence of the Development Authority and the applicant. The Board finds Mr. Fisher and the community association provided compelling evidence of a planning rationale in opposition to the proposed development. The Board takes into account that neighbouring residents on 31 Avenue SW and Erlton Street that live in the immediate vicinity of the development support the appeal.

36 The Board, based on the balance of all the evidence, finds that the proposed development creates substantial overlooking issues onto the adjacent properties, in particular Mr. Fisher's property. In the Board's view the proposed privacy walls for the amenity spaces are insufficient to mitigate the privacy and overlooking issues resulting from the development, which have an adverse impact on the adjacent neighbouring properties.

37 The Board, based on the evidence, finds that, compounded, the required relaxations of Land Use Bylaw 1P2007 result in a development that due to its size, height, massing, situation on the lot and density, has a negative impact on the adjacent neighbouring properties and affects the use and enjoyment of the neighbouring properties. Therefore, the Board, based on the evidence and aforementioned factors, finds that the development and its relaxations do not meet the criteria of section 687(3)(d) of the *Municipal Government Act*.

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

39 In the Board's opinion, having regard to all the evidence and aforementioned factors, the proposed development is not compatible with the streetscape. It is not sensitive and responsive to the context of the adjacent developments and the streetscape, as envisioned by the ARP and the Land Use Bylaw.

40 Based on the evidence and aforementioned factors, the Board finds the proposed development does not meet the policies of the ARP.

41 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 the proposed development is not compatible with the adjacent developments and the immediate neighbourhood. The Board, based on planning rationale, finds the development as proposed is not appropriate for the site.

42 In reviewing and weighing all of the evidence, the Board thus finds the application does not warrant approval.

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

44 Therefore the development permit is null and void.

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Rick Grol, Chairman  
Subdivision and Development Appeal Board

Issued on this 14<sup>th</sup> day of August, 2014

## APPENDIX A

### Summary of Evidence:

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

### The Development Authority:

Ms. Lynn McKeown of the Development Authority presented exhibits including the report, viewgraphs, photographs, and overhead items. In addition to the Land Use Bylaw the relevant planning document for the site is the Erlton Area Redevelopment Plan and additionally submitted the following:

The item being presented is an appeal of the Development Authority's decision to approve a four unit multi-residential development located at 69 31 Avenue SW in the community of Erlton.

The site is designated M-CGd 72 Multi-Residential Contextual Grade Orientated District with a density modifier of 72 UPH. This is a discretionary application. In addition to the Land Use Bylaw, the

application is also subject to the development guidelines of the Erlton Area Redevelopment Plan. The Low Density Residential Housing Guidelines for Established Communities do not apply in this application as this is not a single, semi-detached or duplex infill development.

The site is surrounded by single and semi-detached dwellings to the north and east and a cemetery to the south and west. The site was notice posted and circulated to effected parties. Objections were received from the Community Association and adjacent neighbors regarding over looking, massing and shadowing.

This photograph shows the broad context of the site. This is a corner lot located adjacent to the intersection of 31 Avenue SW and Erlton Street SW. Note, there is a rear lane. The large open area to the west and south is St. Mary's Cemetery.

The parcel slopes approx. 1.0 to 1.5 metres downwards from 31 Avenue towards the rear lane. Along the west property line the red line indicates a 3 m setback requirement of the Land Use Bylaw. The provided setback is varied, up to 1.22m from the west property line. This relaxation faces onto Erlton Street and does not adversely impact the adjacent dwellings or the street context. Pulling the building towards the street creates a strong street presence and reduces the building mass from the adjacent dwelling to the east.

Parking is being provided from both the Street and the rear lane. Each access point provides two stalls for a total of 4 residential stalls. The 6.0 m driveway off 31 AV at the front of the site is theoretically long enough to allow for an additional 2 tandem parking stalls.

The inner courtyard and outdoor patios provide amenity space for future residents. Note, as per the plans, the applicant intends to retain the existing mature tree in the SE corner of the parcel. This will provide screening and assist with mitigating privacy issues for the adjacent single detached dwelling's rear yard.

The front setback facing 31 Avenue SW is also consistent and respectful of the abutting single detached dwelling to the east.

There is an assortment of soft mulch and grass landscaping areas being provided as well as hard exposed aggregate landscape patios. The mix of trees and shrubs proposed meets the requirements of the Land Use Bylaw.

From the streetscape view the building mass has been sensitively stepped back and away from the adjacent single detached dwelling to the east and is orientated towards Erlton Street.

Variations of the roof pitch and building materials also serve to reduce the effects of building mass from the street view.

On the west elevation facing Erlton Street you have a variety of material treatments including stone, stucco and asphalt shingles. The material changes help to create visual interest and reduce a monolithic appearance from the street.

The 9 metres and 10.5 metres height lines are shown in red. As per the Bylaw, the maximum cross section area taken from 10.5 metres cross section should not exceed 40 percent of the roof area taken from the cross section at 9.0 metres. In this instance a relaxation of 7 percent is required. However, this section of the roof is well setback from the adjacent single detached dwelling.

To clarify the roof height discrepancy, this computer generated bylaw check identifies the roof area in light blue at 9 metres from grade. The darker blue shaded area identifies the roof area at 10.5 metres from grade. This area is 47 percent versus the bylaw maximum of 40 percent. However, as previously noted, these roof areas are well setback from the adjacent properly to the east.

On the rear or east elevation abutting the adjacent single detached dwelling, note that the 12 metres maximum height plane has been respected. There are also a number of window openings that are a transom style. This will mitigate over viewing conflicts. In addition the balconies are well screened. The larger windows circled in red are obscured. To ensure they remain permanently obscured, a prior to release (PTR) condition has been added to amend the plans to reflect the type of glazing.

On the north elevation fronting 31 Avenue SW the building mass is stepped away from the abutting single detached dwelling. There are similar stone, stucco and asphalt materials. Note the garage door has been broken up with a stone material break to reduce the visual impact onto the avenue. One of the unit entries is oriented to this frontage.

The south elevation abutting the lane has similar building treatments and respects the height rules of the Land Use Bylaw.

<b>Bylaw Relaxations DP2013-2892</b>		
<b>Regulation</b>	<b>Standard</b>	<b>Provided</b>
583 Building Setbacks (min.)	(3) Where the contextual multi-residential building setback is 0.0 m, the min. building setback from a property line shared with a street is 3.0 m.	Plans indicate that the setback from the West property line to both building 1 and building 2 is 1.22m (-1.78m) 59% relaxation (The buildings have been orientated towards Elrton Street to create a stronger street presence and reduce the massing impact on the adjacent single-detached dwellings to the east. Relaxation deemed reasonable.)
549 Projections Into Setback Areas (max.) (Applies to all Setbacks)	(1) Unless otherwise referenced in subsections (2), (3), (4), (5), (6), and (7), a building or air conditioning units must not be located in any setback area.	Plans indicate that both buildings are located in a setback area. See above
	(5) Eaves and window wells may project a max. of 0.6 m into any setback area.	Plans indicate that the West eaves of both buildings project 2.24m (1.64m). Plans indicate that 4 window wells project into the West setback area 2.39m (1.79m) and two window wells project into the West setback area 2.09m (1.49m). See above
585,13 Building Height and Cross Section (max.) Refer to Diagrams in Bylaw for Clarification	(4) The max. area of a horizontal cross section through a building at 10.5 m above average grade must not be greater than 40.0 % of the max. area of a horizontal cross section through the building between average grade and 9.0 m.	Plans indicate that the area of the horizontal cross section through building 1 at 9.0m above average grade is 121.76m <sup>2</sup> and that the area through a horizontal cross section at 10.5m is 57.35m <sup>2</sup> (8.65m <sup>2</sup> ) or 47.10% (7.10%). (Relaxation is not unreasonable and the majority of the roof area is well setback from the adjacent dwellings to the east. Impact negligible, relaxation granted.)
558 Motor Vehicle Parking Stall Requirements	(2) Where a <u>building</u> contains three or more <u>units</u> with no shared entrance facilities in a <u>Multi-Residential Development</u> and <u>Multi-Residential Development – Minor</u> , the minimum <u>motor vehicle parking stall</u> requirement: (c) in Area 3 of the "Parking Areas Map", as illustrated on Map 7: (ii) for each <u>Dwelling Unit</u> is 0.15 <u>visitor parking stalls</u> per unit;	Plans indicate that the number of visitor parking stalls provided is 0 (-1). (The parcel is located approximately 700m from the Elrton LRT station and in addition, the two units fronting 31 Avenue SW have two tandem parking stalls available. Technically there are 6 stalls available on the parcel, but the bylaw only recognizes four. Relaxation granted.)

583 – Building setback – as detailed earlier, this discrepancy is oriented to Erlton Street to the west away from the adjacent dwelling. Moving the building forward to the street will create a stronger street presence. Three entries are oriented to this frontage. As well, this allows the building mass to be moved further away from the singled detached dwelling to the east. The Development Authority supports this relaxation.

549 – Eaves/Building – These relaxations are directly related to the previous item with the building located closer to Erlton Street, both the building itself and the eaves require relaxation. The Development Authority supports this relaxation.

585 – Building Height – The roof area generating the relaxation is well setback from the adjacent single detached dwelling. The Development Authority felt this relaxation was reasonable as the potential impact would be minor.

558 – Visitor Parking (1 stall) – the parcel is located approximately 700 metres from the Erlton Light Rail Transit (LRT) station and 215 metres, 450 metres from bus zones for a number of different bus routes. Further, the two units fronting on to 31 Avenue have 6.0 metres long driveways, which is long enough to accommodate an additional two tandem parking stalls. Although not recognized by the Land Use Bylaw, these tandem stalls will serve to accommodate both residential and visitor parking thus reducing the need for on street parking.

The Erlton Area Redevelopment Plan (ARP) recognizes the parcel as part of site 1, a low density RM-2 District which was transitioned to M-CG Multi-Residential Contextual Grade orientated District when bylaw 1P2007 was adopted. It is important to note that M-CG is not a low density district but rather a multi-residential district.

The ARP lays out a number of guidelines that are encouraged for land use and development of parcels in site 1.

The guidelines in 2(a) encourage a variety of housing types excluding apartments which this proposal complies with.

For 2(b), the variations in the wall face, materials and roof pitches respect this guideline.

For 2(c), the development meets this guideline.

For 2(d), the development does not meet this guideline. However, as noted earlier, the residential stall requirement has been met; there is easy access to both LRT and bus service and the presence of two additional tandem parking stalls.

For 2(e) all the required parking is internal to the dwellings within attached garages. There is an existing 1.0m fence as well as some landscaping provided in the setback area adjacent to tandem stalls to provide screening from the adjacent single detached dwelling to the east.

Finally, a number of photographs were shown for the existing context:

- 1 – front of the site
- 2 – property to the east
- 3 – property two houses to the east
- 4 – properties across 31 Avenue to the north
- 5 – rear of the property facing north
- 6 – view of the west side of the property facing north
- 7 – view of the rear lane

In conclusion, the Development Authority felt that this proposal was supportable for a number of reasons:

1. The proposal is respectful of the intent and rules of the Land Use Bylaw and the MC-G district by requesting reasonable relaxations.
2. The proposal meets the intent of the ARP by adequately addressing the development guidelines.
3. The proposal meets the intent of the MDP.
4. And the proposal presents a supportable design that attempts to fit well into in the context of the site and streetscape.

The application was subsequently approved with the attached conditions as noted in the Board's report.

Upon questioning from the Board, the Development Authority's representative clarified the following:

- There was no shadow study provided nor the Development Authority required one from the applicant.
- The proposed is under the maximum building height.

In Favour of the Appeal:

Mr. Bill Fischer of the Erlton Community Association, the appellant and affected neighbour, submitted the following points in favour of their appeal:

I am here on behalf of the Erlton Community Association and on my own behalf as an affected neighbour. First let me say that our community and I, as a resident, support good development. This development shows 3-story elevations in two buildings with garages accessed from both the lane and 31st Avenue.

Along with significant relaxations it doesn't meet the definition of good development. It is out of context with the area, would adversely impact neighbouring properties, and typifies insensitive development. This portion of our community is zoned M-CG. Section 578(1)(i) of the Land Use Bylaw 1P2007 lists multi-residential development as a discretionary use. Thus Section 35, items (a) through (j) apply.



Section 35 states: 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 25 of the Board's report, the Development Authority considered only the Erlton ARP, and thus failed to properly apply this rule.

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

The Municipal Development Plan (MDP) is 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 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 two 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 in section 2.2.5, the Objective states:

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

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

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

Later, in section 2.3.2, Policies, it states:

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

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

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

Each of these MDP references recognises the importance of sensitivity to, compatibility with, and respect for the existing physical pattern, scale, built form, and character of neighbourhoods. This proposed form of a second two-unit three-story building in the back yard that shadows our home and yard is clearly foreign to our community, and the exact opposite of the type of infilling the MDP promotes and is referenced throughout the MDP policy.

City Council approved the Erlton ARP in March 1985 and last amended it in 2008. It thus reflects their policy and wishes, and reaffirms those of our community.

In the Preface section of our ARP it states the purpose of ARPs:

Area Redevelopment Plans are planning documents which set out land use policies and other planning proposals for communities within the City. As such, they are intended to supplement the Land Use By-law by providing a policy context within which the discretion

of the Approving Authority should be exercised in a particular community.

In the ordinary meaning of words, should is used to indicate obligation, duty, or correctness.

The Executive Summary, under Land Use and Development states:  
The conservation policy for south Erlton is reaffirmed ...

In the Introduction, the Overview of the Study Area states:

South Erlton (the area south of 25th Avenue ...) has an established, low-rise, residential character which should be maintained and revitalized.

In the Goals portion of our ARP, Section 1.3.2 states:

To reaffirm the conservation policy for the south Erlton area and to revitalise and enhance the established residential community.

In the Objective portion of our ARP, Section 2.1.1 states:

To preserve and enhance the established residential character in south Erlton ...

Further, Section 2.1.2.1 states:

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

In our view, conservation means new development that is respectful of and sensitive to the character of existing homes. Form being one of them. Due to its three-story height and two-building form extending the depth of the lot, the proposed development does nothing to maintain the established, low-rise, residential character of our community, nor conserve, or enhance, or preserve the established nature of the surrounding original and infill homes.

The neighbourhood has a distinct character, which is both pleasing to the eye and the lifestyle of the residents. All the homes surrounding this proposal are relatively modern, most are recently built, and changes to them cannot be expected for many years. This proposed complex is thus incompatible with the surrounding development.

Re-development in this portion of our community has been in the form of single family and semidetached homes - all with substantial front landscaping.

Here's a photograph of our home beside this proposed development. It is a modest two-storey with 8-foot ceilings.

Here are some photographs of the two-storey single family and semi-detached infill homes across the avenue. The homes are numbered 1 through 7, and run west to east from Erlton Street along the north side of 31st Avenue. They are examples of respectful development maintaining the established scale, form, massing, and character of the area.

The Land Use Bylaw rules establish a minimum level of fairness, transparency, and certainty. In our opinion, they are not a maximum that can then be relaxed just because a developer demands them.

The needs of a community and surrounding property owners must be considered along with the desires of a developer. In this instance, we believe that the Development Authority has lost sight of this dual objective.

Land Use Bylaw section 35 states: When making a decision on a development permit for a discretionary use the Development Authority must take into account:

- (d) the compatibility and impact of the proposed development with respect to adjacent development and the neighbourhood;

From a community perspective, the proposed development is on a lot 120 feet deep. This two-building complex occupies 102 feet of the depth, or 85 percent. As shown on plan DP2.0, the Section 583(3) relaxation presents these 3-story buildings closer to Erlton Street as a visually imposing mass that dominates the streetscape. The relaxation of Section 585(4) then allows a larger top heavy mass higher in building 1 to amplify its towering aspect right at the corner of Erlton Street and 31st Avenue where it then dominates both roadways. It should make a positive contribution to the street character of both, yet this design does just the opposite.

Since this site is located on Erlton's major through street, it will draw more attention to the massing of the building and its unfriendly street visage. It is in fact insensitive and unresponsive to the context of the surrounding two-storey homes and streetscape.

Furthermore, the front driveways on 31 Avenue eliminate substantial landscaping which ordinarily contributes much to the character of our community. The Development Authority cites the front drive garage of my property as justification for the two front garages for the proposed

development. They neglected to consider that our home and driveway were properly constructed under a building permit over 30 years ago. No relaxations or special permissions were required.

When our home was built, there were three driveways directly across from our home on 31 Avenue. Now there are none. Our home with its front drive garage is still legal in that it was constructed with the appropriate building permit at the time; however it no longer meets the new rules.

Similarly, the other three original front driveways on 31 Avenue will be eliminated when those properties are re-developed. Even now, the detached garages they service are located in the rear yards, so any vehicle parked in the driveway is not parked in the front yard. The home at 42 31 Avenue, on the left in this photograph, will soon be replaced with a semi-detached dwelling under DP2014-1910, and its driveway will be removed. And then there were two.

We understand the intention of the Land Use Bylaw to be that, as Development Permits are applied for and granted, later buildings will conform with the new rules, in this case no front driveways, thereby allowing the city as a whole to adapt to a new policy direction.

Allowing new front drive garages on 31 Avenue is not appropriate, since it would inevitably result in the parking of additional vehicles in the front yards. This will negatively affect the views and amenities of the neighbourhood. Underground parking accessed from the lane is an option that should be explored.

From a personal perspective, the approved plans DP2.0 and DP3.2 show a 250 square foot rooftop amenity space on the second floor of Unit 1. This is at the same height and across from my wife's bedroom window. This is particularly invasive and does not respect our privacy and ensure the continued quiet and peaceful enjoyment of our home. As noted in item 5 on page 29 of the Board's report, the file manager asked that the plans be amended to move this balcony space to the west elevation.

The developer's response, as shown on page 40 of the Board's report, was that it would require a redesign to move the balcony space from the rear (east side) to the front (west side). In our opinion, just because it requires some effort on the developer's part to correct this design defect, is no excuse or rationale for number 5. The Authority to approve it as is. Relocating it to face away from our home, or deleting it are the only ways to remove this egregious design element.

In our August 20, Community comment on this application, shown on page 88 of the Board's report, we asked for a cross-section showing the relationship of this proposed development with our home to the east. We

also asked for a shadow study. The purpose is to enable our community, and the Development Authority, to perform the due diligence necessary to fairly judge the impact of the massing and shadowing caused by this development on our home.

Land Use Bylaw section 26(3) empowers the Development Authority to obtain these plans. Sadly, they did not do it. We overlaid our home on plan DP2.0 as a cross-section to visually demonstrate the huge negative impact of the mass of this three storey, two building complex on our home and property.

On page 63 of the Board's report, the developer states:

The sun exposure issue we feel we have reduced that as much as possible by location of the buildings. This would provide no more shading onto the neighbouring properties than the existing trees that existing (sic) already. The tree immediately next to the neighbour is one the wish to be kept, which we have done. In fact the neighbour is flanked by two large coniferous trees allowing only sun to reach the property directly from the south.

Here is a photograph showing ample sunlight entering our yard from the east through these two large coniferous trees.

Here is a photograph showing the ample light available through the existing trees to the west, where this development is proposed. I will leave it up to this Board to imagine the amount of light that will penetrate the 3-storey walls and roof of building 2 and reach our yard. We created a March 21 at 4 p.m. shadow study on plan DP1.02 to visually demonstrate the shadow cast by the rear three storey building. It will have a large negative impact on our home and rear amenity space, thus negatively affecting our use and enjoyment of them.

In approving this development permit, the Development Authority has essentially expropriated our right to privacy, sunlight, protection from massing and noise, and the quiet and peaceful enjoyment of our home and property, and then conveyed those rights to the developer to exploit for profit.

In summary, the massing and front driveways will interfere with the amenities of the neighbourhood; and the invasive rooftop amenity space, the massing, and the shadowing will unduly interfere with or affect the use, enjoyment or value of our property.

We submit that the Development Authority's approval of this development permit violates sections 35(a) and 35(d) of the Land Use Bylaw. Furthermore, in our view, there is no sound planning principal as

envisioned under Land Use Bylaw section 35(j) to allow any of this. We ask that this development permit be denied.

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

- Most of Mr. Fischer's amenity space is towards the west side of their property.
- The appellant has a vegetable and flower garden in the rear yard.
- There are three-storey developments that back onto St. Mary's cemetery that has been there for at least 15 years.
- All the recent infills are two storey developments and there are no more bungalows being built in recent years.
- The community is in favour of densification of Erlton.

#### Opposed to the Appeal:

The applicant's group consisted of Mr. Mike Borkristl of Tricor Designs and Mr. Gary Kreuzer, the developer/property owner distributed documentation to the Board including photographs and plans. They raised the following issues in opposition of the appeal:

Mr. Borkristl was the first speaker to address the Board and outlined their presentation and introduced the property owner:

We were established in 1985 and have had several technicians and architects on our staff. But over the last five years, our main focus has been inner city development.

Personally, I sit in the Inner City Builders Council and the Land Use Bylaw working group with the Home Builders Association. I have also sat on the Bylaw Sustainment Team and Explore Group with the Development Authority.

Directly or indirectly, we are responsible for an average of 120 development permits per year over the last five years so we are very familiar with this type of development and the process involved in dealing with the Development Authority, unfortunately there are projects that meet with certain challenges which brings us before the Board today.

Tricor was commissioned to review this project in late 2011 after a previous design was approved by the Development Authority but overturned by the Board on appeal. Since 2012, our firm has been working closely with the Development Authority during this whole process, with several design concepts and concerns ironed out prior to any approvals being reached. Many of the resulting decisions by the Board at

that time is the basis on which we approached the new design before the Board.

From a page in the Erlton Area Redevelopment Plan (ARP), we find area architecture and characteristics, in particular the gambrel style roof in the upper left. Photographs of homes from the Erlton area feature gambrel style roofs. Further photographs show multi-family development in Erlton that also incorporate this style of architecture.

The next set of items shows how our development incorporates those gambrel and dormer features that exist in the community and provides some continuity.

In order to reach a reasonable unit size in terms of livability, affordability and viability, a fair amount of the usable area allowed under the Bylaw was incorporated, but not all. But what is more important to note is that large amount of usable area was on the main floor only.

Item 15 of our submission shows the footprint of the bungalow of main floor of our project and item 16 shows how the upper floor is cut back considerably from the maximum footprint. The design has also been articulated to provide a green space buffer between the buildings and to preserve a large tree which was asked to be saved in the previous submission.

To further demonstrate the impact this buffer has on the project on item 17, under the M-CG rules, this shows the chamfer rule put in place to reduce shadowing on neighbouring properties. As you can see we have more than respected this rule and the neighbour. This also shows the worst case scenario.

Item 18 actually shows how further building articulation keeps shadowing away from the neighbour. As a further building articulation keeps shadowing away from the neighbour. As a further design consideration, being sensitive to the surroundings, item 19 shows the most stringent rules under M-CG, which does not apply in this case as the neighbouring home is over 6 metres in height. But you can, trying to be as respectful as possible; the new design is well under that bylaw as well.

In terms of maximizing the side yard requirements, all side yards are within the rules set out by M-CG. The only issue in regard to the side yards is on Erlton Street. This was done for two reasons. The first, in working with the development Authority, it puts most of the massing away from the neighbour and closer to Erlton Street and also in terms of context.



In determining side yards on corner lots, adjacent or abutting properties determine context. Since there are cemeteries both behind and across from the subject property, the only lot for context is directly across on 31 Avenue. Item 20 is the legal survey showing that property to have a 1.2 metres side yard and therefore that is the context that was used.

Item 21 is currently what is going on across 31 Avenue, while design is totally subjective, these read to us as large blocky type developments and we struggled to find elements in them that were in keeping with the neighbourhood. But aside from that, what is of more importance, item 22 is what would be the impact of a development similar to these on our subject lot.

As you can see the block massing significantly changes and with the addition of a garage, it actually covers more of the lot than our proposed project.

Item 22 shadowing is also greatly affected, as you can see the close proximity to adjacent property and the two storey wall affect it would have. Item 22B, when we add the tree shadow in, we can see the impact. So we feel that similar project like the ones on the street would negatively impact the neighbouring property in a similar fashion.

In part 5 of the decision, items of privacy were addressed and in current submissions but the neighbour affected, privacy and windows also were of concern. In working with the design and the Development Authority, we were sensitive to the privacy issues and this is how we addressed them.

On item 23, you see the first floor layout and the windows towards the neighbour. Each of the windows is first floor windows and views would be blocked mostly by the fence between the two properties. Also keep in mind that these windows are not 1.2 metres from the property but 19 feet to the kitchen and hall.

Item 24 shows the second floor plan and the windows in question are for light only. Transom windows at 1.5 metres from the floor which were put in place in the bylaws to address overlook and privacy. It also shows the two private amenity spaces in question with 2 metres high walls around the entire space. This provides privacy for both neighbours. Please also note that we lowered the amenity space over the garage to further minimize any possibility of overlook and it is now the neighbours second floor windows that look down into these spaces.

These amenity spaces are also 16 feet away from the property line to further provide separation from the neighbour.

Item 25 show our top level, built entirely into the roof space, and show the only two windows in question. Now while it is not our intention to sell to people who would actually climb into a tub and have to open an obscure window to look into a neighbours yard, strange things have happened. One option is to make this window a picture window and get ventilation mechanically.

Item 26 show the windows from the exterior perspective. One thing the plans do not show is the rather large tree we are protecting.

In the second half of part 5 of the Development Authority's decision, the decision talks about west sunlight which the home was built to capture and enjoyment of the rear yard.

While it can be argued that a home with a straight flat façade facing due south (item 27) was built to capture west sunlight, that is not for us to debate at this time. The massing and enjoyment of a rear yard space is the question. For a home built to capture sunlight, perhaps tell 1000 words. Here is the south shot and the vegetation currently in place in item 29 providing shade to the lot already. What is more telling, is a concern that the proposed development will shadow their rear yard (item 30) shows how the landscaping in their own yard currently shadows the prominent light from the south.

In addition to these shadows, please look at items 31 to 42, and particular items 36. This shows the shadows of the tree alone and how much shadow it provides across the property. If there is some question on the validity of the shadow, these images are produced with google earth and sketch up built specifically for this purpose, but if you go to item 43, you will see exactly how much shadow those large trees cast.

When we looked at a shadow study for the proposed project in item 44 and then looked at a contextual semi detached which is not even as large as the ones currently on the street, taken on June 20, the summer solstice, you will note that the shadows are very similar. If anything, the semi detached actually blocks out what sunlight the trees at the back of the property do not block out as we saw on item 30.

Also, as shown on item 46, only a portion of the neighbours' full lot is shadowed by the articulation of the new design. It is our design belief that a semi detached unit, at item 46 S, 4 feet from the property line and built to the same size as the units across the street, would actually create more mass and shadowing than the proposed development.

In part 6 of the decision, the decision notes that a design could have achieved perhaps a different outcome.

While it is not the Board's intent to design or even create design, and we respect that, the goal is to allow designers to create different products that might be more appropriate in all situations. How appropriate or creative a design may be always be subjective but the directives that were given in this decision is what helped bring us to this concept.

In revising the front façade, as viewed from 31 Avenue, and also what the neighbours see from across the street, somewhat in reference to a recent letter from the neighbour, and the impact this project would have to them.

Item 47 the current home next door is a large wide two storey structure, with a roof, a front door and double front car garage. When viewing our project, item 48 you see a somewhat narrower structure, with a floor built into the roof, a front door and double garage. It could be argued that this reads as a single family home from this view.

In looking from Erlton Street, item 49 which no one on 31 Avenue can see and the cemetery on Erlton has no dwelling that can view this side, what do we see? In our design experience we see two buildings, one entrance door which appears to be one large home and a second building with a front door and perhaps a secondary mudroom.

The use of articulation and architecture that is in the Area Redevelopment Plan and the area creates the illusion that it may not be a multi family project. Of further note on item 50, the biggest reducing of massing occurs past the half way mark of the property further impact on the neighbouring lot.

Part 7 of the decision, the decision notes the district is to provide for a mixture of family oriented dwelling units. This project provides for another form or mixture of units.

We agree that the previous submission on items 51 and 52 for your reference, with garages and , main floor den dominating the main floor and the living spaces primarily on the second floor were not family oriented and would cause privacy issues to the neighbour.

The submission before the Board is totally ground oriented as shown on items 53, 54 and 55 with all units have main floor living, kitchens and dining and ground level access to amenity space.

The decision also outlined parking and front door access as a concern. The previous submission had front doors that were not even visible which would case safety concerns. The design before the Board has all doors visible from either 31 Avenue or Erlton Street.

In terms of parking, outlined in the decision and also by the community, item 56 and in working with Enmax and the Development Authority, the parking solutions are before the Board. It would have been preferable to have all the parking off of the lane but the power pole (item 57) cannot be removed, therefore blocking opportunity for all garages off the lane. This would also have been the case in a semi detached design. Enmax proposed the pole could be moved (item 58) which would give us access to at least two garages. The other two garages would have to come from Erlton or 31 Avenue. Since backing on to Erlton, which is a busy road according to Transportation and the community would be hazardous.

The best alternative was coming off 31 Avenue since a driveway already exists on 31 Avenue where two cars could be parked on the driveway, the same condition as the Development Authority mentioned, could also occur on this project. It was not unique to the street at that point.

Visitor parking in multi-family units is always a point that needs to be addressed. One visitor parking was originally on an earlier version of the submission. In items 59, 60 and 61, with discussion with the Development Authority, this stall would also back onto Erlton, it detracted from the architecture and gave less room for landscaping and amenity space. So in working with the Development Authority, the visitor parking was relaxed because of the abundance of parking in the area.

In parts 8, 9 and 10 of the decision, the decision notes the ARP and the types of development in the area at the time. From photograph evidence, low rise single family homes were the character of the area at that time. The area has now undergone significant redevelopment and there are now many examples in the immediate area of development especially larger multifamily development next to single family dwellings and in fact bungalows. The intent on showing you these following photographs in items 62 through to 71 is not to say that just because they did it, we should be able to, but more importantly to demonstrate that this property and this type of development is no longer unique to the area and is in fact going on within close proximity to this property.

As I wrap up my part of the presentation, I want to show you three more items. In item 72, to properly articulate how we handled the massing for this project, please note the large reduction of massing closest to the neighbour from the street view.

Item 73 shows the articulation and massing reduction from the alley view and what is most interesting in item 74 in a design rationale scenario, a semi-detached unit with a reasonable roof pitch similar to the home to the left of the neighbour and the massing issue it could possibly create. If we

use the example in item 75 of the home across the street which has been mentioned as an alternative, item 75A and we use as similar roof pitch, we believe that the massing and articulation is not present in what has been designed for this site.

In conclusion, we believe what has been accomplished is a viable project for the developer, but also one that has taken into account important rulings by the Board, has been sensitive to the surrounding neighbours, paid close attention to the ARP and the character of the neighbourhood, while at the same time still providing density to the inner city.

Mr. Kreuzer addressed the Board next and submitted the following:

In the appellant's presentation, four similar points within the Municipal Development Plan (MDP) were specifically referenced, to eventually argue each point recognizes the importance of sensitivity to, compatibility with, and respect for the existing physical pattern, scale, built form and character of neighbourhood, and goes on to say this proposal is the exact opposite of what the MDP promotes.

Mr. Borkristl has spent the better part of an hour demonstrating how we feel we have been sensitive to, compatible with, and respectful of the existing physical pattern, scale, built form, and character of this community.

We feel we have met that threshold referenced several times in the MDP and in the appellant's presentation.

In contrast to what was presented by the appellant, if anything the MDP in fact promotes developments of this type. Not only do we feel we have demonstrated sensitivity, compatibility, and respect we have also addressed many objectives, principles, key directions, policies and goals referenced over and over, time and time again, within the MDP, specifically related to:

- Creating a diversity of housing opportunities, mix of built forms, and choices within complete communities close to job markets and in areas well served by the primary transit network;
- Supporting compact, well-designed, urban development and efficient use of land and infrastructure; and
- Promoting sustainable, diverse, and complete communities where people of varying ages, incomes interests, and lifestyles feel comfortable and can choose between a variety of building types and locations in which to live and remain in their own neighbourhood as their housing change over their lifetime.

I will point out the objectives, principles, key directions, policies and goals itemed above have been stated over 20 times in that document.

To further demonstrate my point, the appellant has chosen to include only the first half of section 2.2.5, again which we feel addressed, namely to encourage growth and change in low density neighbourhoods through development and redevelopment that is similar in scale and built form. The latter half of that sentence reads as follows:

...and increases the mix of housing types such as accessory suites, semi-detached, townhouses, cottage housing, row, or other ground-oriented housing.

As an aside, I will also point out regarding our protection of the existing tree; we have taken into account section 2.6.4 of the MDP which states:

aa. further develop tree protection and planting measures to:

- i. Ensure maximum conservation of existing trees in the site design and layout of new buildings.

In summary, we feel this proposal has met each and every one of the relevant provisions within the MDP in a thoughtful manner, including those referenced by the appellant.

He then submitted numerous letters of support of the application from property owners in the neighbourhood.

Upon questioning by the Board, the applicant's group clarified the following:

- The applicant can place walls that are 2 metres high above the balcony level on all three sides of the development and the north can remain with a 42 inch railing.
- As part of the application, the tree is to remain and the applicant will take measures to protect it. The applicant also consulted with an arborist who declared the tree being healthy but they do not have that consultation on paper.
- On the east property line, the cross section will be mulch and the different types of trees are identified in the legend.
- The items 69 and 70 the development permits have already expired but the idea is not unique in the community.

*Rebuttal:*

During rebuttal, the Development Authority stated the following:

- The south end of Ertlon Street connects to 34 Avenue directly.

During rebuttal, the appellant stated the following:

- The mature trees already give shadow but the beauty of it, sunlight comes through the trees.
- In his opinion, that one tree the applicant is intending to keep will die due to construction as it is an unhealthy tree. The only reason why it is still alive is due to him and his wife watering it.
- The three-storey developments in Ertlon all back onto the cemetery, therefore they do not have an impact on the neighbours.
- He reiterated that there are numerous letters opposed to the development and these are property owners who own and live in their properties. They are the ones mostly affected by the proposed development.

During rebuttal, the applicant's group stated the following:

- They stated that even though there is existing vegetation in Mr. Fischer's property the proposed development will still cast shadow to that property but, in their opinion, they minimized the shadowing.

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