

Date: July 9, 2015  
Project Number: 158438261-002  
File Number: SDAB-D-15-133

### **Notice of Decision**

This appeal dated May 27, 2015, from the decision of the Development Authority for permission to:

Construct three Dwellings of Row Housing and a rear detached Garage and to demolish an existing Single Detached House and detached Garage

On Plan 1916HW Blk 24 Lot 1, located at 11519 - 122 Street NW, was heard by the Subdivision and Development Appeal Board at its hearing held on June 24, 2015. The decision of the Board was as follows:

#### **Summary of Hearing:**

At the outset of the appeal hearing, the Chairman confirmed with the parties in attendance that there was no opposition to the composition of the panel.

The appeal was filed on time, in accordance with Section 686 of the *Municipal Government Act*, R.S.A 2000, c. M-26.

The Board heard an appeal of the decision of the Development Authority to approve, subject to conditions and variances, an application to construct three Dwellings of Row Housing and a rear detached Garage and to demolish an existing Single Detached House and detached Garage, located at 11519 – 122 Street NW. The subject Site is zoned RF3 Small Scale Infill Development Zone, is within the Mature Neighbourhood Overlay and the West Ingle Area Redevelopment Plan. The approved development permit application was subsequently appealed by an adjacent property owner.

The Board notes that a written submission, including a copy of the Major Development Review, was received from the Development Authority on June 10, 2015, a copy of which is on file.

The Board heard from the Appellant, Mr. Lutz, who submitted a petition of support for his appeal that included the signatures of most of the residents who reside within the 60 metre notification radius as well as two residents who reside outside of the notification radius, on the east side of 122 Street, marked Exhibit “A”, three photographs of the subject site, marked Exhibit “B” and an article from the Edmonton Journal regarding City Council’s reaction to variances being granted to the Edmonton Zoning Bylaw by the Development Authority, marked Exhibit “C”. Mr. Lutz provided the following information in support of the appeal.

1. He explained that the residents who signed the petition who reside outside of the 60 metre radius will be affected by the impact that the proposed development will have on the use of the lane way.
2. Mr. Lutz referenced and submitted a copy of a previous decision of the Subdivision and Development Appeal Board for a very similar development in this neighbourhood that was refused by the Board, marked Exhibit "D".
3. The primary reason for his appeal is based on Section 140 of the *Edmonton Zoning Bylaw* which does not allow front entrances to face a lane way.
4. The laneway is quite narrow, approximately 9 metres wide.
5. A Semi-detached House was built on a lot abutting the lane and the lane right-of-way was used for parking and he is concerned that this will happen again.
6. The proposed development will add to the already existing parking problems because residents want to park as close as possible to their properties.
7. Pedestrians frequently use the lane to access the park which is an off leash dog area and the Edmonton Food Bank which is located in close proximity.
8. The proposed development will increase foot traffic in the lane and create a safety concern because of the vehicles that also use the lane.
9. Mr. Lutz uses the lane to access his rear yard as do many of the other residents in this neighbourhood and the proposed development will impede the use of the lane way and devalue property values in this neighbourhood.
10. The majority of houses in the neighbourhood have a front yard, a rear yard, a detached garage and a driveway behind the garage. It was his opinion that this common flow makes the neighbourhood appealing for families because it provides a yard for children to play.
11. The proposed development provides little recreation space and is therefore not appealing with families with children.
12. The proposed development will result in the piling of snow in the lane which will cause congestion during the winter months.
13. The proposed development will bring six more vehicles into the neighbourhood and negatively impact on-street parking which is already limited because of the number of rental units and a home based business.
14. Although it was determined that sufficient onsite parking spaces will be provided behind the detached garage, the Appellant was concerned that the proposed tandem parking will become burdensome on the residents who will then park on the street.
15. The privacy of the most affected neighbour to the south will be impacted because of overlook into their yard.
16. Mr. Lutz provided a petition of support for the appeal, marked Exhibit "E".

The Board then heard from Mr. Illingworth, representing the Sustainable Development Department, who reviewed his written submission and provided the following information:

1. The previous decision of the Subdivision and Development Appeal Board referenced by the Appellant was for a four dwelling development that did not comply with the Site Area, Site Width or private outdoor amenity requirements.
2. He considers the minimum area and amenity requirements as particular indications of the over development of a site which in his opinion was the cause for the refusal of the Board in October 2013.

3. He considered these requirements during the review of the proposed development that is before the Board.
4. It was his opinion that the deficiency in the minimum required Site Width was mitigated by the additional Site Depth.
5. He referenced the Plot Plan to illustrate that the site provides an outdoor amenity area that complies with the requirements.
6. This is a unique plan that proposes adequate amenity area for the front and middle units and addresses a common problem for Row Housing developments.
7. If the front unit had also been oriented to the lane, the development could have been a half storey higher and complied with the front and rear setback requirements.
8. It was his opinion that the proposed development has a better design and will address the needs of the occupants and the amenities of the neighbourhood.
9. Having two entrances on the lane is a positive design feature because it will add eyes on the roadway and increase safety in the neighbourhood. Increased pedestrian traffic and lighting will also make the area more secure.
10. The proposed units that face the lane will benefit the lane that provides a very public connection in this neighbourhood.
11. The proposed development complies with all of the parking requirements and the configuration of the parking spaces is common for this type of development.
12. The City cannot regulate resident behaviour but the zoning regulations can be used to encourage compliance with parking requirements.
13. The Traffic Bylaw can be used to discourage lane parking on a complaint basis.
14. Street parking is on public land and available on a first come basis.
15. He referenced page 1 of his written submission to address several policies contained in the *Municipal Development Plan* that support infill development in established neighbourhoods.
16. He reviews the policies established by City Council to determine how decisions can be made to support rather than refuse infill developments.
17. Section 4.0 of the *Municipal Development Plan* states:

“Within Edmonton’s older neighbourhoods, maintaining communities while accommodating intensification and revitalization initiatives is a priority .... A variety of housing choices contributes to the long term stability of a neighbourhood and creates a varied built form which enlivens the physical and social character of the neighbourhood. A varied built form also provides flexibility for accommodating changing housing needs as the neighbourhood evolves through its life cycle. Increasing the variety of housing within a neighbourhood provides more consumer choice, increases affordability and enhances the City’s ability to provide transit and other community services more efficiently and effectively.”
18. It was his opinion that the proposed development will add to the variety of housing in this neighbourhood.
19. It was his opinion that the question of affordability is a relative factor.
20. The proposed development will support the use of transit and community services and its close proximity to a public trail system will provide pedestrian access to the downtown core.
21. Policy 4 of the West Ingle Area Redevelopment Plan states:

“The Administration will encourage small scale, infill housing which reflects the character of surrounding older homes in those areas of West-Ingle districted for RF3 (Low Density Redevelopment) District Section 140 of the Land use Bylaw. Infill

housing that would be encouraged includes discretionary uses such as threeplexes, and row housing up to four units. ... Row and apartment housing containing up to 4 units are discretionary uses and may be approved at the discretion of the Development Officer, subject to the right of appeal.”

22. This reference is outdated because Row Housing is now a Permitted Use in the RF3 Zone.
23. The front elevation of the proposed development is similar in design to the sketches contained in Figure 3 of Policy 4 of the Area Redevelopment Plan. The proposed development will have the appearance of a single detached house from 122 Street because fencing will screen the entrance to Unit B.
24. Mr. Illingworth provided his justification for granting the required variances:
  - a) The proposed development does not comply with the locational requirements for Row Housing because the subject site is not a corner lot pursuant to the definition contained in the Edmonton Zoning Bylaw. However, it has some of the same characteristics given that 122 Street borders the site to the west and paved lanes flank the site to the north and east.
  - b) The subject site is buffered by the lane and the park which in his opinion creates a similar appearance to a corner lot and given the potential security benefits for users of the lane, this is an acceptable variance.
  - c) The required site width is based on a traditional arrangement of three units in a row facing onto 122 Street. The requirement does not contemplate the proposed design for an interior lot flanked by a lane which makes a variance reasonable.
  - d) The variance to the requirement that each dwelling have an entrance door or entrance feature facing a public roadway was granted for two of the proposed dwellings because the public lane to the north is paved; it is reasonable for entrances to face this direction; and because the lane to the north leads towards a public park.
  - e) A variance was granted in the minimum required Privacy Zone because the north Side Yard is characteristic of a flanking Side Yard and if the lane to the north was instead a public road, the proposed living room windows would actually be subjected to more public exposure than they will be facing the lane.
  - f) The variances in the minimum required Front and Rear Setbacks were granted because if the four lots at the south end of the block with a very large front setback are excluded, the block face average would be 8.2 metres, and the development would be within the allowable Front Setback.
25. He was surprised to see the petition of opposition provided by the Appellant because the only objection that he was aware of during the development review was raised by the Appellant. Therefore, it would be helpful to know the substance of the objections
26. It was his opinion that the proposed development is well designed and will be a positive addition to the community.

Mr. Illingworth provided the following responses to questions:

1. He was initially concerned that the proposed development did not meet the locational requirements for Row Housing but the quality of the design and the willingness of the developer to minimize the variances mitigated his concerns.
2. The development requirements of the *Edmonton Zoning Bylaw* cannot contemplate every situation.
3. He reviewed the proposed development with the intent of supporting an application for infill housing and determined that the subject site was similar enough to a Corner Lot to allow the granting of the required variances.
4. He worked with the developer to minimize any privacy concerns for the most affected neighbour to the south and that neighbour supports the proposed development.
5. He referenced drawings of the south elevation to review the window locations to illustrate that one of the windows overlooks the roof, one will be frosted and the third window is located in the bathroom of one of the proposed dwellings which will be more of a concern for the occupants of that unit than the neighbouring property owner.
6. It was his opinion that the design and footprint of the proposed development is more sympathetic to the neighbourhood than a Semi-detached House would have been because a Semi-detached House would have a larger massing.
7. If a development complies with the minimum required Setback, it is the policy of the Sustainable Development Department not to require compliance with the Privacy Zone requirements because a variance would be required for every proposed Row Housing development.
8. He measured the width of the lane, including the public right of way, to be 9 metres.

The Board then heard from Mr. and Mrs. Dhiman, representing the Respondent, Ashton Property Development, who provided the following information:

1. They undertook a careful evaluation of this neighbourhood and the community amenities when selecting this site and developing the plans.
2. This site is attractive because it is located close to a park and a school.
3. This is a family friendly community that is located in close proximity to the downtown core which makes commuting easy.
4. They hired a local Architect who has designed many multi-family developments in Inglewood.
5. They also engaged in a pre-application meeting with the Sustainable Development Department to review their application and were encouraged by the positive reaction to their proposal.
6. Based on feedback from that meeting the plans were finalized and the development permit application was submitted.
7. They worked with the Development Officer and modified the plans to maximize privacy and enhance the proposed landscaping plan.
8. The proposed landscaping meets the standard required for Apartment Housing and the requirements to provide a Private Outdoor Amenity area are met.
9. They undertook community consultation by visiting 20 houses located within the 60 metre notification radius. They talked to 10 residents in this radius, 8 were not opposed to the development and two were opposed, including the Appellant.

10. They openly discussed the development, reviewed the plans and in some cases left a copy of the plans with neighbours to review.
11. They were surprised by the petition submitted by the Appellant because they had met with many of the people whose signatures were on the petition.
12. They agreed with the Development Officer that it was difficult to address the objections of those individuals who signed the petition without knowing the substance of their concern.
13. It was their opinion that the proposed development is a nicely proportioned building with an aesthetically pleasing front elevation that is characteristic of this neighbourhood.
14. They submitted a letter of support from the most affected neighbour who resides immediately south of the subject site, marked Exhibit "F". This neighbour was unable to attend the hearing because of work commitments.
15. The Respondents worked closely with this neighbour to address concerns while developing the plans.
16. The proposed development complies with all of the parking requirements and it was their opinion that the Appellant's concerns regarding vehicles parked in the lane can be addressed through enforcement of the Traffic Bylaw.
17. The proposed dwelling units that face the lane will provide enhanced lighting that will improve security and add definition to the entrance to the park.
18. Residents will use the sidewalk to access the park rather than walking in the lane.
19. Adequate space is provided to accommodate snow clearing during the winter months and it is highly unlikely that the residents of these dwellings will block the lane that they will need to access their garages.
20. They are small developers who only undertake a few projects a year in order to design thoughtful infill developments for families in family friendly neighbourhoods.
21. They are open to working with the community to address any of their concerns.

Mr. & Mrs. Dhiman provided the following responses to questions:

1. Specific recommendations regarding the type of plantings to be included in the landscaping plan were made by the Sustainable Development Department to ensure long term sustainability.
2. The development will have separate land titles at some point in the future.

Mr. Lutz made the following points in rebuttal:

1. He did not have an opportunity to review the proposed plans until today.
2. The neighbourhood school is currently experiencing increased enrollment.
3. When he petitioned his neighbours he reviewed the 2013 decision of the Board, his reasons for the appeal, the Major Development Permit application and sections of the *Municipal Government Act*.
4. His neighbours told him that they liked traditional single family houses because they provided more privacy than multi-family dwellings. The recently developed duplex has a modern design that was not appealing and did not fit into the neighbourhood. The new single detached house that was recently constructed had a better design that was characteristic of the neighbourhood.

5. Most of his neighbours were concerned about parking, over densification, decreased water pressure, the impact of multi-family dwellings on power and sewer and parking congestion that will make it difficult to access the lane on the east side of 122 Street.
6. It is better to require more parking at the outset than to rely on enforcement.
7. The property owner who resides immediately south of the subject site rents her property and it was his opinion that her opinions are moot because she does not live there.
8. He does not want to see any conflicts arise because of parking problems.
9. It was his opinion that the proposed development will not provide affordable housing.
10. A duplex would be a better fit for the neighbourhood.
11. The proposed sidewalk along the lane will result in snow being removed into the lane.
12. His main concern is neighbourhood continuity and it was his opinion that Row Housing is not appropriate for this neighbourhood.
13. Row Housing is not suitable for this site because it does not comply with the locational requirements.

Mr. Lutz provided the following response to a question:

1. He did not know if complaints about vehicles being parked in the lane were made to Bylaw Enforcement.

The Chairman allowed Ms. Dhiman to respond to the evidence provided by the Appellant regarding the most affected neighbour to the south. She advised that the property owner told them that she was moving back into the house on this site at the end of this month.

In final rebuttal Mr. Lutz stated that he does not see this individual on a regular basis and could not comment on that information.

**Decision:**

the appeal is **DENIED** and decision of the Development Authority is **CONFIRMED**. The development is **GRANTED** as approved by the Development Authority, subject to the following conditions:

- 1) **PRIOR TO THE RELEASE OF DRAWINGS FOR BUILDING PERMIT REVIEW**, the owner/applicant shall pay the Sanitary Sewer Trunk Charge (SSTC). SSTC is applicable to the property for 3 multi-family dwellings at \$1,021/dwelling with credit given for one single family dwelling at the rate of \$1,430/dwelling under the current DP#158438261-002. The number of dwellings is based on the drawings submitted with the Application for Major Development Permit.

This SSTC charge is quoted at the year 2015 rate; however, the final SSTC is based on the prevailing rate at the time the applicant/owner makes payment at the 5th Floor cashiers, Sustainable Development, 10250-101 Street NW.

- 2) **PRIOR TO THE RELEASE OF DRAWINGS FOR BUILDING PERMIT REVIEW**, the owner/applicant shall pay a Lot Grading Fee of \$385.00.

- 3) PRIOR TO THE RELEASE OF DRAWINGS FOR BUILDING PERMIT REVIEW, the owner/applicant shall pay a Notification Fee of \$100.00.
- 4) PRIOR TO THE RELEASE OF DRAWINGS FOR BUILDING PERMIT REVIEW, the applicant or property owner shall provide a guaranteed security to ensure that landscaping is provided and maintained for two growing seasons. The Landscape Security may be held for two full years after the landscaping has been completed. This security may take the following forms: cash to a value equal to 100% of the established landscaping costs; or an irrevocable letter of credit having a value equivalent to 100% of the established landscaping costs. Any letter of credit shall allow for partial draws. If the landscaping is not completed in accordance with the approved Landscape Plan(s) within one growing season after completion of the development or if the landscaping is not well maintained and in a healthy condition two growing seasons after completion of the landscaping, the City may draw on the security for its use absolutely (reference Section 55.6 of Edmonton Zoning Bylaw 12800). Please contact Alina Cross at 780-442-2581 to initiate this process.
- 5) The existing private sidewalk from the west property line to the curb face on 122 Street must be removed and the boulevard must be restored to grass, as shown on Enclosure I of the Transportation Memorandum dated March 23, 2015. The applicant must contact Loli Fernandez (780-944-7683) a minimum of 48 hours prior to construction, to arrange for inspection.
- 6) There may be utilities within road right-of-way not specified that must be considered during construction. The owner/applicant is responsible for the location of all underground and above ground utilities and maintaining required clearances as specified by the utility companies. Alberta One-Call (1-800-242-3447) and Shaw Cable (1-866-344-7429; [www.digshaw.ca](http://www.digshaw.ca)) should be contacted at least two weeks prior to the work beginning to have utilities located. Any costs associated with relocations and/or removals shall be at the expense of the owner/applicant.
- 7) There are existing boulevard trees adjacent to the site that must be protected during construction. Prior to construction, the owner/applicant must contact Marshall Mithrush of Community Services (780-496-4953) to arrange for hoarding and/or root cutting. All costs shall be borne by the owner/applicant.
- 8) Any hoarding or construction taking place on road right-of-way requires an OSCAM (On-Street Construction and Maintenance) permit. It should be noted that the hoarding must not damage boulevard trees. The owner or Prime Contractor must apply for an OSCAM online at: [http://www.edmonton.ca/bylaws\\_licences/licences\\_permits/oscam-permit-request.aspx](http://www.edmonton.ca/bylaws_licences/licences_permits/oscam-permit-request.aspx)
- 9) Any alley, sidewalk or boulevard damage occurring as a result of construction traffic must be restored to the satisfaction of Transportation Services, as per Section 15.5(f) of the Zoning Bylaw. The alley, sidewalks and boulevard will be inspected by Transportation Services prior to construction, and again once construction is complete. All expenses incurred for repair are to be borne by the owner.



## ADVISEMENTS:

- 1) The Development Permit shall not be valid unless and until the conditions of approval, save those of a continuing nature, have been fulfilled; and no notice of appeal from such approval has been served on the Subdivision and Development Appeal Board within the time period specified in subsection 21.1 (Ref. Section 17.1).
- 2) The applicant is advised to research the Land Title for this property and to be aware of any restrictions in the Restrictive Covenant. This approval does not imply consent for any structure that does not meet the requirements of the Restrictive Covenant.
- 3) An approved Development Permit means that the proposed development has been reviewed only against the provisions of the Edmonton Zoning Bylaw. It does not remove obligations to conform with other legislation, bylaws or land title instruments such as the Municipal Government Act, the ERCB Directive 079, the Edmonton Safety Codes Permit Bylaw or any caveats, covenants or easements that might be attached to the Site.
- 4) The City of Edmonton does not conduct independent environmental checks of land within the City. If you are concerned about the suitability of this property for any purpose, you should conduct your own tests and reviews. The City of Edmonton, in issuing this Development Permit, makes no representations and offers no warranties as to the suitability of the property for any purpose or as to the presence or absence of any environmental contaminants on the property.
- 5) A Building Permit is required for any construction or change in use of a building. For a building permit, and prior to the Plans Examination review, you require construction drawings and the payment of fees. Please contact the 311 Call Centre for further information.

In granting the development the following variances to the *Edmonton Zoning Bylaw* are allowed:

1. Subsection 140.4(6) of the *Edmonton Zoning Bylaw* requires that Row Housing be located on corner sites, on sites abutting an arterial or service road, or where both Side Lot Lines abut existing Apartment Housing or where a minimum of one Side Lot Line abuts a Site where a commercial Use, or Apartment Housing with a maximum Height greater than four Storeys, is a Permitted Use. A variance to this requirement is granted given that the subject site does not meet these criteria.
2. To permit a reduced Site Width of 14.0 m, whereas subsection 140.4(4)(b) of the *Edmonton Zoning Bylaw* requires a minimum Site Width of 17.4 m.
3. To permit two dwellings of Row Housing to have entrances facing the lane to the north, whereas subsection 140.4(20) of the *Edmonton Zoning Bylaw* requires each dwelling to have an entrance door or entrance feature facing a public roadway.
4. To permit a reduced Privacy Zone of 2.0 m between the Principal Living Room Window of two of the proposed dwellings and an on-site walkway, and 3.0 m between the same Principal

Living Room Windows and a public Lane, whereas subsection 48.2(2) of the *Edmonton Zoning Bylaw* requires a minimum Privacy Zone of 4.5 m.

5. To permit a reduced Front Setback of 6.7 m, whereas subsection 814.3(1) of the *Edmonton Zoning Bylaw* requires a minimum Front Setback of 1.5 m less than the adjacent lots and the general context of the blockface, or in this case 7.0 m.

6. To permit a reduced Rear Setback of 17.2 m, whereas subsection 814.3(5).5 of the *Edmonton Zoning Bylaw* requires a minimum Rear Setback of 40% of Site Depth, or in this case 18.3 m.

### **Reasons for Decision:**

The Board finds the following:

1. Row Housing is a Permitted Use in the RF3 Small Scale Infill Development Zone.
2. The proposed development was approved subject to conditions and the six variances noted above.
3. The Board has granted variances to Section 140.4(6), Section 140.4(20) and Section 48.2(2) of the *Edmonton Zoning Bylaw* for the following reasons:
  - a) Based on the evidence provided, the subject Site is not a Corner Lot.
  - b) The Site is an interior lot that has some unique features that make it characteristic of a Corner Lot given that 122 Street borders the Site to the west and paved lanes flank the site to the north and the east and a municipal park abuts the lane to the east. Based on these unique features, the Board finds that while not a Corner Lot, pursuant to Section 6.1(18) of the *Edmonton Zoning Bylaw*, the Site possesses many of the attributes of a Corner Lot including the ability to provide access from one of the Side Yards. The subject Site only abuts one residential lot and is located adjacent to a park which enhances the unique context of the Site and supports infill development because the location will buffer many of the potential impacts of the development on the surrounding community.
  - c) Further, The Board finds that the proposed development furthers the goal established in Policy 4 of the West Ingle Area Redevelopment Plan to encourage infill housing in this area, including three-plexes and Row Housing of up to four Dwellings.
  - d) Even more generally, this type of development is encouraged by Section 4.4.1.1 of the Municipal Development Plan, *The Way We Grow*, “to provide a broad and varied housing choice, incorporating housing for various demographic and income groups in all neighbourhoods”.
  - e) Based on evidence provided, a Semi-detached House is currently under construction on a site located immediately north of the 9 metre wide lane that abuts the subject Site which indicates that multi-family infill housing is becoming characteristic of this neighbourhood.
  - f) The Appellant provided evidence that the lane that abuts this Site to the north is routinely used by pedestrians to access the walking paths in the adjacent park from 122 Street. Given that the lane is already used as a pedestrian walkway, allowing two of the proposed three Dwelling Units to front onto the lane will create a pedestrian friendly design for the streetscape that is in keeping with Section 814.1 of the *Edmonton Zoning Bylaw*.

- g) The Board notes that the owner of the most affected property, located immediately south of the subject Site has provided a letter of support, marked Exhibit “F”.
  - h) The Board is satisfied that the approved landscaping plan will further mitigate the visual impact of the proposed development from the neighbouring parcels of land.
  - i) Additionally, the Board has reviewed the submitted plans and notes that the proposed front elevation contains architectural features and articulations that will decrease any massing affect that the proposed two Storey structure will have on the surrounding streetscape.
  - j) Based on the above, the Board finds that allowing these variances will not unduly interfere with the amenities of the neighbourhood nor materially interfere with or affect the use, enjoyment or value of neighbouring parcels of land.
4. The Board has granted variances to Section 140.4(4)(b), 814.3(1) and 814.3(5) of the *Edmonton Zoning Bylaw* for the following reasons:
- a) The Board accepts the evidence of the Development Authority and finds that the subject Site is an interior lot. However, the Site is flanked by a lane, and two of the proposed three Dwelling Units face onto a flanking Side Yard. Therefore, the need to comply with the minimum required Site Width is significantly reduced.
  - b) The Board finds that four of the lots located at the south end of the block have very large Front Setbacks which significantly affects the block face average. Therefore, the Board accepts the evidence of the Development Authority that the proposed Front Setback is in keeping with the Front Setbacks of lots on the block that are located closer to the subject Site.
  - c) The Board has reviewed the submitted plans and finds that the proposed development will provide adequate Amenity Area between the proposed Principal Building and the detached Garage which will mitigate the effect of the incursion of the Principal Building into the required 40 Percent Rear Setback.
  - d) The Board notes the support of the most affected property owner who resides immediately south of the subject Site and most affected by these required variances.
  - e) Based on the above, the Board finds that allowing these variances will not unduly interfere with the amenities of the neighbourhood nor materially interfere with or affect the use, enjoyment or value of neighbouring parcels of land.
5. The Board finds that the proposed development includes six onsite parking spaces which complies with the parking requirements.
6. The primary concern of the Appellant was a fear that illegal parking will occur along the lane. However, this is an enforcement matter and that approval of this development in no way encourages or allows illegal parking along the lane.
7. Based on the above, it is the opinion of the Board, that the proposed development will not unduly interfere with the amenities of the neighbourhood nor materially interfere with or affect the use, enjoyment or value of neighbouring parcels of land.

1. This is not a Building Permit. A Building Permit must be obtained separately from the Sustainable Development Department, located on the 5<sup>th</sup> Floor, 10250 – 101 Street, Edmonton.
2. Obtaining a Development Permit does not relieve you from complying with:
  - a) the requirements of the *Edmonton Zoning Bylaw*, insofar as those requirements have not been relaxed or varied by a decision of the Subdivision and Development Appeal Board,
  - b) the requirements of the *Alberta Safety Codes Act*,
  - c) the *Alberta Regulation 204/207 – Safety Codes Act – Permit Regulation*,
  - d) the requirements of any other appropriate federal, provincial or municipal legislation,
  - e) the conditions of any caveat, covenant, easement or other instrument affecting a building or land.
3. When an application for a Development Permit has been approved by the Subdivision and Development Appeal Board, it shall not be valid unless and until any conditions of approval, save those of a continuing nature, have been fulfilled.
4. A Development Permit will expire in accordance to the provisions of Section 22 of the *Edmonton Zoning Bylaw, Bylaw 12800*, as amended.
5. This decision may be appealed to the Alberta Court of Appeal on a question of law or jurisdiction under Section 688 of the *Municipal Government Act*, R.S.A. 2000, c. M-26. If the Subdivision and Development Appeal Board is served with notice of an application for leave to appeal its decision, such notice shall operate to suspend the Development Permit.
6. When a decision on a Development Permit application has been rendered by the Subdivision and Development Appeal Board, the enforcement of that decision is carried out by the Sustainable Development Department, located on the 5<sup>th</sup> Floor, 10250 – 101 Street, Edmonton.

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

Mr. I. Wachowicz, Chairman  
Subdivision and Development Appeal Board

# **Edmonton Subdivision and Development Appeal Board**

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Date: July 9, 2015  
Project Number: 170327437-001  
File Number: SDAB-D-15-134

## **Notice of Decision**

This appeal dated May 22, 2015, from the decision of the Development Authority for permission to:

Install (1) Freestanding Off-premises Sign (West Granville Centre)

On Plan 1124954 Blk 1 Lot 72, located at 7255 - Winterburn Road NW, was heard by the Subdivision and Development Appeal Board at its hearing held on June 24, 2015. The decision of the Board was as follows:

### **Summary of Hearing:**

At the outset of the appeal hearing, the Chairman confirmed with the parties in attendance that there was no opposition to the composition of the panel.

The appeal was filed on time, in accordance with Section 686 of the *Municipal Government Act*, R.S.A 2000, c. M-26.

The Board heard an appeal of the decision of the Development Authority to refuse an application to install (1) Freestanding Off-premises Sign (West Granville Centre), located at 7251 Winterburn Road NW. The subject Site is zoned DC2.791 Site Specific Development Control Provision. The proposed application was refused because of an excess in the maximum allowable Height and the Development Officer cannot vary the maximum allowable Height requirement pursuant to Section DC2.791(4)(p) of the *Edmonton Zoning Bylaw*.

The Board notes that a written submission was received from the Development Authority on June 18, 2015. The Board also notes that a submission was received from the Appellant on June 19, 2015, copies of which are on file.

At the outset of the hearing the Presiding Officer referenced Section 641(4) of the *Municipal Government Act*, Chapter M-26 which states that despite section 685, if a decision with respect to a development permit application in respect of a direct control district is made by a council, there is no appeal to the subdivision and development appeal board, or is made by a development authority, the appeal is limited to whether the development authority followed the directions of council, and if the subdivision and development appeal board finds that the development authority did not follow the directions it may, in accordance with the directions, substitute its decision for the development authority's decision.

The Board heard from Mr. Pampu, representing the Appellant PM Signs, who provided the following information:

1. Mr. Pampu referred to photographs contained in his written submission to illustrate the existing signage on the site.
2. The proposed Sign will have the same design features.
3. The cantilevered arms are unique to this type of sign and are part of the engineering of the sign.
4. He reviewed other photographs to illustrate the orientation of the proposed Sign on the Site and the distance from Whitemud Drive and 215 Street.
5. He also referenced a photograph to illustrate a view of the proposed sign from the parking lot.
6. Photographs 7, 8 and 9 were referenced to illustrate the impact of lowering the proposed sign on the visibility of the Sign from Whitemud Drive, 215 Street and the parking lot.
7. It was his opinion that lowering the height of the Sign by 1.7 metres would not be aesthetically pleasing and would restrict the visibility of the Sign.
8. It is not possible to simply remove a portion from the top of the proposed sign because it is integral to the engineering of the entire Sign.
9. He referenced photograph 10 to illustrate an existing Sign at Manning Crossing that in his opinion set a precedent for this development. The Sign that was approved at Manning Crossing has a larger Sign Area than the proposed Sign.
10. He confirmed the Development Officer followed the DC2 regulation.

The Board then heard from Mr. Willem Kellerman, on behalf of Dialog, who provided the following information:

1. The topographical difference between the subject site and Whitemud Drive would make visibility of the Sign very difficult if the height was reduced by 1.7 metres.
2. The location is specific and the height is specific but it was his opinion that a precedent had been set by the Sign that was approved at Manning Crossing.
3. It was his opinion that the intent of the DC2 was to provide visibility for the proposed Sign.

The Board then heard from Mr. Liam McClellan, representing the Sustainable Development Department, who provided the following information:

1. He did not have authority to relax the maximum allowable Height requirement in the DC2 Zone because he had to follow the direction of Council.
2. He did not consider the topography of the site or precedents.
3. It was his opinion that the developer should apply to City Council for a text amendment to the Bylaw if there is a compelling reason to increase the height of the proposed Sign.

**Decision:**

that the appeal is **DENIED** and the decision of the refusal by the Development Authority **CONFIRMED**

**Reasons for Decision:**

1. Section 641(4)(b) of the *Municipal Government Act*, Chapter M-26 states, “if a decision with respect to a development permit application in respect of a direct control district is made by a development authority, the appeal is limited to whether the development authority followed the directions of council, and if the subdivision and development appeal board finds that the development authority did not follow the directions it may, in accordance with the directions, substitute its decision for the development authority’s decision.”
2. A Freestanding Off-premises Sign is a listed Use in the DC2.791 Site Specific Development Control Provision.
2. Section DC2.791.4(p) states that a free-standing “V” shaped Off-premises pylon Sign in the general location indicated on the Landscape Plan attached as Appendix 2 shall be permitted to a maximum height of 12.5 metres and a maximum width of 8.75 metres.
3. Based on a review of the plans and evidence provided by the Appellant, the Height of the proposed Freestanding Off-premises Sign is 14.2 metres.
4. The Appellants also agreed that the location of the proposed Freestanding Off-premises Sign is regulated by Section DC2.791.4(p).
5. The Board finds that the Development Authority followed the direction of Council in refusing this development permit application because it does not comply with DC2.791.4(p) of the Site Specific Development Control Provision and therefore the appeal must fail.

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**Important Information for the Applicant/Appellant**

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1. This decision may be appealed to the Alberta Court of Appeal on a question of law or jurisdiction under Section 688 of the *Municipal Government Act*, R.S.A. 2000, c. M-26. If the Subdivision and Development Appeal Board is served with notice of an application for leave to appeal its decision, such notice shall operate to suspend the Development Permit.
2. When a decision on a Development Permit application has been rendered by the Subdivision and Development Appeal Board, the enforcement of that decision is carried out by the Sustainable Development Department, located on the 5th Floor, 10250 – 101 Street, Edmonton.

Mr. I. Wachowicz, Chairman  
Subdivision and Development Appeal Board