

**SUBDIVISION
AND
DEVELOPMENT APPEAL BOARD
AGENDA**

**Wednesday, 9:00 A.M.
June 6, 2018**

**Hearing Room No. 3
Churchill Building,
10019 - 103 Avenue NW,
Edmonton, AB**

**SUBDIVISION AND DEVELOPMENT APPEAL BOARD
HEARING ROOM NO. 3**

TO BE RAISED

I 9:00 A.M. SDAB-S-18-007

To create two (2) commercial lots

5138 - Gateway Boulevard NW

Project No.: 273258505-001

II 1:30 P.M. SDAB-D-18-079

To construct a Semi-detached House with fireplace, rear uncovered deck, verandas, Rooftop terrace and to demolish an existing Single Detached House and Accessory Building (rear detached Garage)

11316 - 73 Avenue NW

Project No.: 275792653-001

NOTE: *Unless otherwise stated, all references to “Section numbers” refer to the authority under the Edmonton Zoning Bylaw 12800.*

TO BE RAISED

ITEM I: 9:00 A.M.

FILE: SDAB-S-18-007

AN APPEAL FROM THE DECISION OF THE SUBDIVISION AUTHORITY

APPELLANT:

APPLICATION NO.: 273258505-001

APPLICATION TO: To create two (2) commercial lots

DECISION OF THE
SUBDIVISION AUTHORITY: Approved Subject to Conditions

DECISION DATE: April 5, 2018

DATE OF APPEAL: April 12, 2018

MUNICIPAL DESCRIPTION
OF SUBJECT PROPERTY: 5138 - Gateway Boulevard NW

LEGAL DESCRIPTION: Plan 1525501 Blk 94 Lot 1

ZONE: CB2-General Business Zone

OVERLAY: Major Commercial Corridors Overlay

STATUTORY PLAN: N/A

Grounds for Appeal

The Appellant provided the following reasons for appealing the decision of the Development Authority:

We respectfully submit that you should waive the Municipal Reserve Fee for the following reasons:

1. The property is located in a retail/industrial area and there is not a park in the area to maintain.
2. In accordance with the Act, lands used for Municipal Reserve are typically used for public parks, sports fields or for other public recreation purposes. Peters' Drive-In would actually be using the land to build and maintain its own outdoor park for the Municipality, similar to the landscaping we maintain at our locations in Calgary and Red Deer.

3. Section 666(1)(b) provides for the Municipality to receive cash in lieu of the Municipal Reserve land. Peters' Drive-In would be maintaining this park at its own expense. We plan to spend approximately \$50,000 per year to maintain the park we will be building. Forcing us to pay another park maintenance fee is duplicitous.
4. The land has been vacant for many years and our use would be a significant improvement to the Municipality.
5. Our transaction is conditional upon us obtaining the requested waiver of the Municipal Reserve Fee as we are not able to move forward without such waiver.
6. Waiving the Municipal Reserve fee has indirect benefits for the Municipality. The City of Edmonton will benefit from the jobs created by the construction of the building, which is anticipated to take approximately 6-8 months.
7. The City of Edmonton would benefit from the creation of approximately 100 ongoing jobs for citizens of the City of Edmonton, beginning in early 2019 when the drive-in would open.
8. The City of Edmonton would benefit from receiving significant property and significant corporate taxes that would be paid by Peters' Drive-In and the significant taxes that would be paid by our approximate 100 employees, all ongoing benefits.
9. The property was previously sub-divided and then merged into one property. Subdividing it again should not result in the assessment of this fee.

<i>General Matters</i>

The Subdivision and Development Appeal Board made and passed the following motion on May 17, 2018:

"That the appeal hearing for the above noted project be scheduled for June 6, 2018."

The Subdivision and Development Appeal Board made and passed the following motion on April 19, 2018:

"That the above noted appeal hearing be scheduled for May 17, 2018."

Appeal Information:

The *Municipal Government Act*, RSA 2000, c M-26 states the following:

Appeals

678(1) The decision of a subdivision authority on an application for subdivision approval may be appealed

- (a) by the applicant for the approval,
- (b) by a Government department if the application is required by the subdivision and development regulations to be referred to that department,
- (c) by the council of the municipality in which the land to be subdivided is located if the council, a designated officer of the municipality or the municipal planning commission of the municipality is not the subdivision authority, or
- (d) by a school board with respect to
 - (i) the allocation of municipal reserve and school reserve or money in place of the reserve,
 - (ii) the location of school reserve allocated to it, or
 - (iii) the amount of school reserve or money in place of the reserve.

(2) An appeal under subsection (1) may be commenced by filing a notice of appeal within 14 days after receipt of the written decision of the subdivision authority or deemed refusal by the subdivision authority in accordance with section 681

- (a) with the Municipal Government Board
 - (i) if the land that is the subject of the application is within the Green Area as classified by the Minister responsible for the Public Lands Act,
 - (ii) if the land that is the subject of the application contains, is adjacent to or is within the prescribed distance of a highway, a body of water, a sewage treatment or waste management facility or a historical site, or
 - (iii) in any other circumstances described in the regulations under section 694(1)(h.2),

or

- (b) in all other cases, with the subdivision and development appeal board.

(2.1) Despite subsection (2)(a), if the land that is the subject-matter of the appeal would have been in an area described in subsection (2)(a) except that the affected Government department agreed, in writing, to vary the distance under the subdivision and development regulations, the notice of appeal must be filed with the subdivision and development appeal board.

(3) For the purpose of subsection (2), the date of receipt of the decision is deemed to be 7 days from the date the decision is mailed.

(4) A notice of appeal under this section must contain

- (a) the legal description and municipal location, if applicable, of the land proposed to be subdivided, and
- (b) the reasons for appeal, including the issues in the decision or the conditions imposed in the approval that are the subject of the appeal.

(5) If the applicant files a notice of appeal within 14 days after receipt of the written decision or the deemed refusal with the wrong board, that board must refer the appeal to the appropriate board and the appropriate board must hear the appeal as if the notice of appeal had been filed with it and it is deemed to have received the notice of appeal from the applicant on the date it receives the notice of appeal from the first board.

Hearing and decision

680(1) The board hearing an appeal under section 678 is not required to hear from any person or entity other than

- (a) a person or entity that was notified pursuant to section 679(1), and
- (b) each owner of adjacent land to the land that is the subject of the appeal,

or a person acting on any of those persons' behalf.

(1.1) For the purposes of subsection (1), "adjacent land" and "owner" have the same meanings as in section 653.

(2) In determining an appeal, the board hearing the appeal

- (a) must act in accordance with any applicable ALSA regional plan;
- (a.1) must have regard to any statutory plan;

- (b) must conform with the uses of land referred to in a land use bylaw;
- (c) must be consistent with the land use policies;
- (d) must have regard to but is not bound by the subdivision and development regulations;
- (e) may confirm, revoke or vary the approval or decision or any condition imposed by the subdivision authority or make or substitute an approval, decision or condition of its own;
- (f) may, in addition to the other powers it has, exercise the same power as a subdivision authority is permitted to exercise pursuant to this Part or the regulations or bylaws under this Part.

Approval of application

654(1) A subdivision authority must not approve an application for subdivision approval unless

- (a) the land that is proposed to be subdivided is, in the opinion of the subdivision authority, suitable for the purpose for which the subdivision is intended,
- (b) the proposed subdivision conforms to the provisions of any growth plan under Part 17.1, any statutory plan and, subject to subsection (2), any land use bylaw that affects the land proposed to be subdivided,
- (c) the proposed subdivision complies with this Part and Part 17.1 and the regulations under those Parts, and
- (d) all outstanding property taxes on the land proposed to be subdivided have been paid to the municipality where the land is located or arrangements satisfactory to the municipality have been made for their payment pursuant to Part 10.

(1.1) A decision of a subdivision authority must state

- (a) whether an appeal lies to a subdivision and development appeal board or to the Municipal Government Board, and
- (b) if an application for subdivision approval is refused, the reasons for the refusal.

(1.2) If the subdivision authority is of the opinion that there may be a conflict or inconsistency between statutory plans, section 638 applies in respect of the conflict or inconsistency.

(2) A subdivision authority may approve an application for subdivision approval even though the proposed subdivision does not comply with the land use bylaw if, in its opinion,

(a) the proposed subdivision would not

(i) unduly interfere with the amenities of the neighbourhood, or

(ii) materially interfere with or affect the use, enjoyment or value of neighbouring parcels of land,

and

(b) the proposed subdivision conforms with the use prescribed for that land in the land use bylaw.

(3) A subdivision authority may approve or refuse an application for subdivision approval.

Conditions of subdivision approval

655(1) A subdivision authority may impose the following conditions or any other conditions permitted to be imposed by the subdivision and development regulations on a subdivision approval issued by it:

(a) any conditions to ensure that this Part and the statutory plans and land use bylaws and the regulations under this Part, and any applicable ALSA regional plan, affecting the land proposed to be subdivided are complied with;

(b) a condition that the applicant enter into an agreement with the municipality to do any or all of the following:

(i) to construct or pay for the construction of a road required to give access to the subdivision;

(ii) to construct or pay for the construction of

(A) a pedestrian walkway system to serve the subdivision, or

(B) pedestrian walkways to connect the pedestrian walkway system serving the subdivision with a pedestrian walkway system that serves or is proposed to serve an adjacent subdivision, or both;

(iii) to install or pay for the installation of a public utility described in section 616(v)(i) to (ix) that is necessary to serve the subdivision, whether or not the public utility is, or will be, located on the land that is the subject of the subdivision approval;

(iv) to construct or pay for the construction of (A) off-street or other parking facilities, and (B) loading and unloading facilities;

(v) to pay an off-site levy or redevelopment levy imposed by bylaw;

(vi) to give security to ensure that the terms of the agreement under this section are carried out.

(2) A municipality may register a caveat under the *Land Titles Act* in respect of an agreement under subsection (1)(b) against the certificate of title for the parcel of land that is the subject of the subdivision.

(3) If a municipality registers a caveat under subsection (2), the municipality must discharge the caveat when the agreement has been complied with.

(4) Where a condition on a subdivision approval has, prior to the coming into force of this subsection, required the applicant to install a public utility or pay an amount for a public utility referred to in subsection (1)(b)(iii), that condition is deemed to have been validly imposed, whether or not the public utility was located on the land that was the subject of the subdivision approval.

General Provisions from the *Edmonton Zoning Bylaw*:

Section 340.1 states the **General Purpose** of **(CB2) General Business Zone** is to provide for businesses that require large Sites and a location with good visibility and accessibility along, or adjacent to, major public roadways.

Conditions under appeal

The subdivision approval was subject to a number of conditions, one of which the Appellant objects to:

1. that the owner provide money in place of Municipal Reserve (MR), in the amount of \$376,834.00 representing 0.094 hectares pursuant to Section 666 and Section 667 of the *Municipal Government Act*.

Notice to Applicant/Appellant

Provincial legislation requires that the Subdivision and Development Appeal Board issue its official decision in writing within fifteen days of the conclusion of the hearing.



Subdivision Authority

7th Floor, Edmonton Tower
10111 – 104 Avenue NW
Edmonton, Alberta T5J 0J4

April 5, 2018

File No. LDA18-0067

Cushman & Wakefield Edmonton
2700 - 10088 102 Avenue NW
Edmonton, AB T5J 2Z1

ATTENTION: Abdul Khurshed

RE: Tentative plan of subdivision to create two (2) commercial lots from Lot 1, Block 94, Plan 152
5501 located north of 51 Avenue NW and east of Calgary Trail; **CALGARY TRAIL NORTH**

I The Subdivision by Plan is APPROVED on April 5, 2018, subject to the following conditions:

1. that the owner provide money in place of Municipal Reserve (MR) , in the amount of \$376,834.00 representing 0.094 ha pursuant to Section 666 and Section 667 of the Municipal Government Act;
2. that the owner prepare the necessary plans and documentation to grant new or carry forward existing easements and restrictive covenants in favour of the City of Edmonton, EPCOR Distribution & Transmission Inc., EPCOR Water Services Inc., and EPCOR Drainage Services, as required by the aforementioned agencies or shown on the engineering drawings that are deemed to be part of the Servicing Agreement; and
3. that the owner pay all outstanding property taxes prior to the endorsement of the plan of survey.

Enclosure I is a map of the subdivision identifying major conditions of this approval.

MR for legal description in the amount of \$376,834.00, representing 0.094 ha, is being provided by money in place with this subdivision.

Please be advised that the approval is valid for one (1) year from the date on which the subdivision approval is given to the application. An extension beyond that time may be granted by the City of Edmonton.

Please be advised that an appeal may be lodged in accordance to Section 678 of the Municipal Government Act with the Subdivision and Development Appeal Board, 10019 – 103 Avenue NW, Edmonton Alberta, T5J 0G9, within 14 days from the date of the receipt of this decision. The date of receipt of the decision is deemed to be seven (7) days from the date the decision is mailed.

If you have further questions, please contact Marco Beraldo at marco.beraldo@edmonton.ca or 780-496-6092.

Regards,

A handwritten signature in black ink, appearing to read "Blair McDowell". The signature is fluid and cursive, with the first name being more prominent.

Blair McDowell
Subdivision Authority

BM/mb/Posse #273258505-001

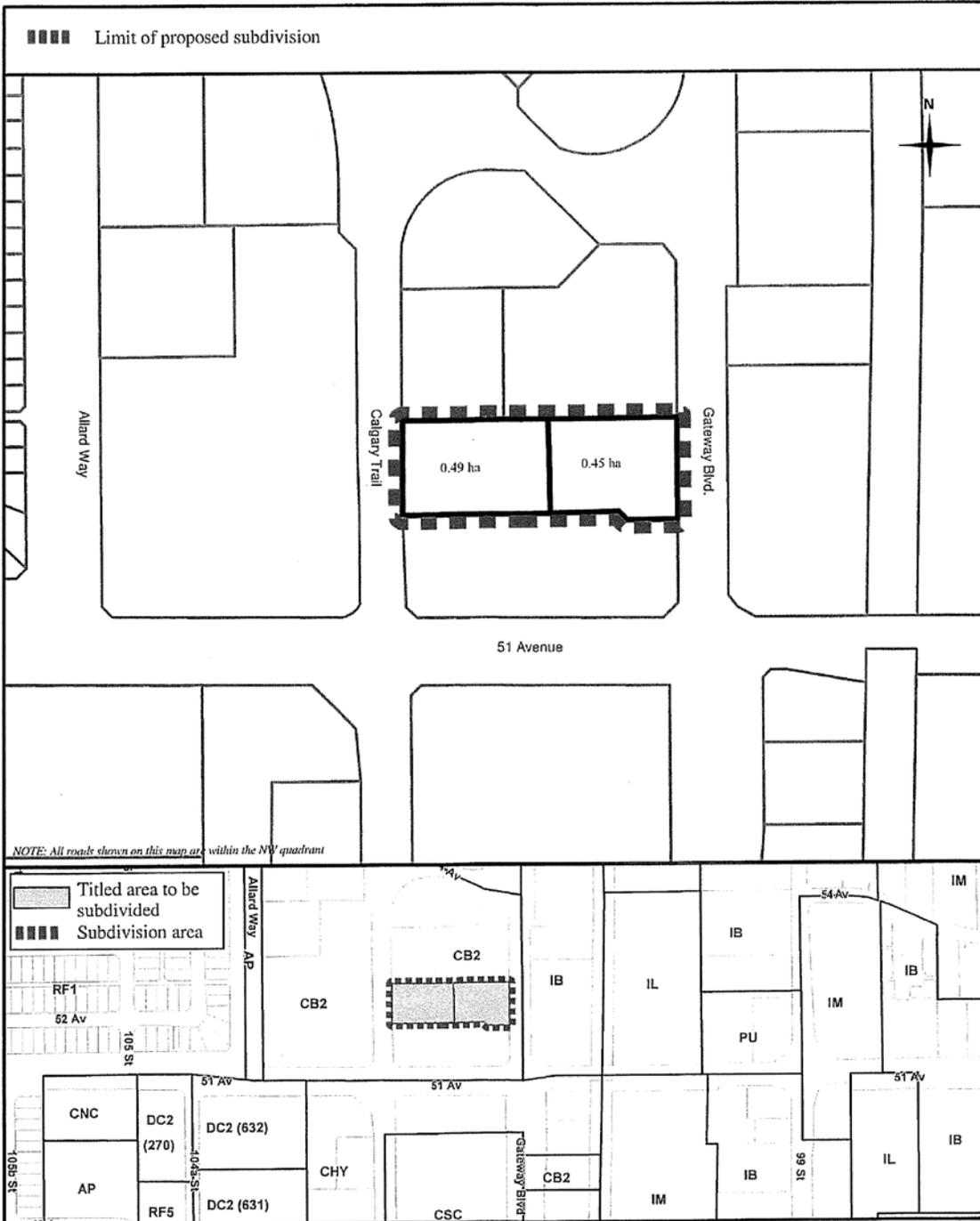
Enclosure

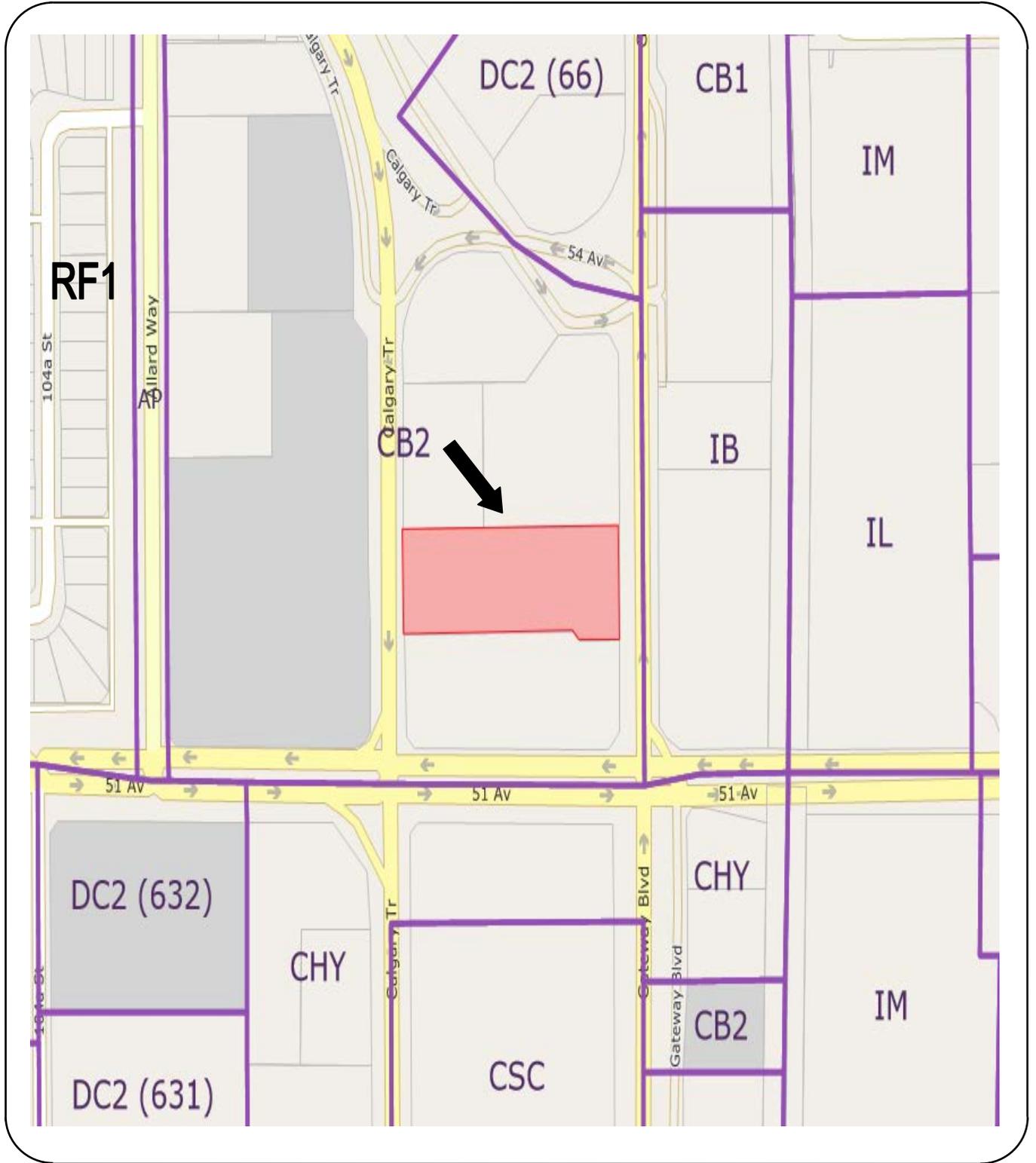
ENCLOSURE I

SUBDIVISION CONDITIONS OF APPROVAL MAP

April 5, 2018

LDA 18-0067





SURROUNDING LAND USE DISTRICTS

Site Location ←

File: SDAB-S-18-007



ITEM II: 1:30 P.M.

FILE: SDAB-D-18-079

AN APPEAL FROM THE DECISION OF THE DEVELOPMENT OFFICER

APPELLANT:

APPLICATION NO.: 275792653-001

APPLICATION TO: Construct a Semi-detached House with fireplace, rear uncovered deck, verandas, Rooftop terrace and to demolish an existing Single Detached House and Accessory Building (rear detached Garage)

DECISION OF THE DEVELOPMENT AUTHORITY: Refused

DECISION DATE: April 25, 2018

DATE OF APPEAL: May 11, 2018

MUNICIPAL DESCRIPTION OF SUBJECT PROPERTY: 11316 - 73 Avenue NW

LEGAL DESCRIPTION: Plan 1324HW Blk 6 Lot 4

ZONE: RF1-Single Detached Residential Zone

OVERLAY: Mature Neighbourhood Overlay

STATUTORY PLAN: McKernan/Belgravia Station Area Redevelopment Plan

Grounds for Appeal

The Appellant provided the following reasons for appealing the decision of the Development Authority:

I will be providing a hard copy of backup documents and submissions during the week of May 14, 2018. I would appreciate it if I could have input regarding scheduling of the appeal.

The following is a summary of my reasons for appeal:

1. A semi-detached house is a discretionary use in this RF1 zoned area;
2. The proposed development is consistent with the McKernan-Belgravia Station Area Redevelopment Plan, By-Law 16408, which identifies prime

infill areas within 400m of an LRT station. This property is well within that 400m radius;

3. This property backs on to the St. Peter Centre, where redevelopment is planned, converting a portion of the St. Peter Centre to medium density residential uses including low rise apartments and row housing;

4. Neighbors on both sides of the street have been consulted and no one has objected to the proposed development; some written consents have been obtained;

5. The proposed development does not unduly interfere with the amenities of the neighborhood and other requirements of s. 687(3)(d) MGA.

6. The lot is a mere 6 inches narrower than the minimum site width for a semi detached house. All set back requirements will be met.

<i>General Matters</i>

Appeal Information:

The *Municipal Government Act*, RSA 2000, c M-26 states the following:

Grounds for Appeal

685(1) If a development authority

- (a) fails or refuses to issue a development permit to a person,
- (b) issues a development permit subject to conditions, or
- (c) issues an order under section 645,

the person applying for the permit or affected by the order under section 645 may appeal to the subdivision and development appeal board.

Appeals

686(1) A development appeal to a subdivision and development appeal board is commenced by filing a notice of the appeal, containing reasons, with the board,

- (a) in the case of an appeal made by a person referred to in section 685(1)
 - (i) with respect to an application for a development permit,

- (A) within 21 days after the date on which the decision is made under section 642, [...]

Hearing and Decision

687(3) In determining an appeal, the subdivision and development appeal board

...

- (a.1) must comply with the land use policies;
- (a.2) subject to section 638, must comply with any applicable statutory plans;
- (a.3) subject to clause (d), must comply with any land use bylaw in effect;

...

- (c) may confirm, revoke or vary the order, decision or development permit or any condition attached to any of them or make or substitute an order, decision or permit of its own;
- (d) may make an order or decision or issue or confirm the issue of a development permit even though the proposed development does not comply with the land use bylaw if, in its opinion,

- (i) the proposed development would not

- (A) unduly interfere with the amenities of the neighbourhood, or

- (B) materially interfere with or affect the use, enjoyment or value of neighbouring parcels of land,

and

- (ii) the proposed development conforms with the use prescribed for that land or building in the land use bylaw.

General Provisions from the *Edmonton Zoning Bylaw*:

Section 110.1 states that the **General Purpose** of the **(RF1) Single Detached Residential Zone** is to provide for Single Detached Housing while allowing other forms of small scale housing in the form of Secondary Suites, and Garden Suites, as well as Semi-detached Housing and Duplex Housing under certain conditions.

Section 814.1 that the **General Purpose** of the **Mature Neighbourhood Overlay** is to regulate residential development in Edmonton's mature residential neighbourhoods, while responding to the context of surrounding development, maintaining the pedestrian-oriented design of the streetscape, and to provide an opportunity for consultation by gathering input from affected parties on the impact of a proposed variance to the Overlay regulations.

Discretionary Use

Under section 110.3(8) **Semi-detached Housing** is a **Discretionary Use** in the **(RF1) Single Detached Residential Zone**.

Under section 7.2(7), **Semi-detached Housing** means development consisting of a building containing only two Dwellings joined in whole or in part at the side or rear with no Dwelling being placed over another in whole or in part. Each Dwelling has separate, individual, and direct access to Grade. This type of development is designed and constructed as two Dwellings at the time of initial construction of the building. This Use does not include Secondary Suites or Duplexes.

Development Officer's Determination

110.3(8) - Semi-detached Housing is a Discretionary Use within the RF1 Single Detached Residential Zone.

Site Width

Section 110.4(3)(b) states on a non-Corner Site, the minimum Site Width shall be 14.8 metres, except that if the Dwellings are arranged along the depth of the Site rather than the width, the minimum Site Width may be 12.0 metres.

Development Officer's Determination

Section 110.4(3)(b) On a non-Corner Site, the minimum Site Width for a Semi-Detached House shall be 14.8 m.

- Proposed Site Width: 14.6 m

Locational Criteria

Section 110.4(4) states Semi-detached Housing and Duplex Housing shall only be located:

- a. on Corner Sites;
- b. on Sites abutting an arterial or service road;
- c. where both Side Lot Lines abut existing Duplex or Semi-detached Housing; or

- d. where a minimum of one Side Lot Line:
 - i. abuts a Site where Row Housing, Apartment Housing, or a commercial Use is a Permitted Use, or
 - ii. is not separated from a Site where Row Housing, Apartment Housing or a commercial Use is a Permitted Use by a public roadway, including a Lane, more than 10.0 metres wide.

Development Officer's Determination

- Proposed Site does not meet any of above location criteria

Notice to Applicant/Appellant

Provincial legislation requires that the Subdivision and Development Appeal Board issue its official decision in writing within fifteen days of the conclusion of the hearing.

	Project Number: 275792653-001 Application Date: FEB 27, 2018 Printed: April 25, 2018 at 2:09 PM Page: 1 of 2										
<h2 style="margin: 0;">Application for Minor Development Permit</h2>											
This document is a Development Permit Decision for the development application described below.											
Applicant <div style="border: 1px solid black; height: 60px; width: 100%;"></div>	Property Address(es) and Legal Description(s) 11316 - 73 AVENUE NW Plan 1324HW Blk 6 Lot 4 Specific Address(es) Entryway: 11316 - 73 AVENUE NW Entryway: 11318 - 73 AVENUE NW Building: 11316 - 73 AVENUE NW										
Scope of Application To construct a Semi-Detached House with fireplace, rear uncovered deck, verandas, Rooftop terrace and to demolish an existing Single Detached House and Accessory Building (rear detached Garage).											
Permit Details <table style="width: 100%; border: none;"> <tr> <td style="width: 50%; border: none; vertical-align: top;"> # of Dwelling Units Add/Remove: 2 Client File Reference Number: Minor Dev. Application Fee: Semi-Detached House Secondary Suite Included?: N </td> <td style="width: 50%; border: none; vertical-align: top;"> Class of Permit: Lot Grading Needed?: Y New Sewer Service Required: Y Stat. Plan Overlay/Annex Area: Mature Neighbourhood Overlay </td> </tr> </table>		# of Dwelling Units Add/Remove: 2 Client File Reference Number: Minor Dev. Application Fee: Semi-Detached House Secondary Suite Included?: N	Class of Permit: Lot Grading Needed?: Y New Sewer Service Required: Y Stat. Plan Overlay/Annex Area: Mature Neighbourhood Overlay								
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I/We certify that the above noted details are correct. Applicant signature: _____											
Development Application Decision Refused Reason for Refusal <ol style="list-style-type: none"> 1. Section 110.4(4) - Semi-detached Housing and Duplex Housing shall only be located: <ol style="list-style-type: none"> a. on Corner Sites; b. on Sites abutting an arterial or service road; c. where both Side Lot Lines abut existing Duplex or Semi-detached Housing; or d. where a minimum of one Side Lot Line: <ol style="list-style-type: none"> i. abuts a Site where Row Housing, Apartment Housing, or a commercial Use is a Permitted Use, or ii. is not separated from a Site where Row Housing, Apartment Housing or a commercial Use is a Permitted Use by a public roadway, including a Lane, more than 10.0 m wide. 2. Section 110.4(3)(b) On a non-Corner Site, the minimum Site Width for a Semi-Detached House shall be 14.8 m. Proposed Site Width: 14.6 m 3. 110.3(8) - Semi-detached Housing is a Discretionary Use within the RF1 Single Detached Residential Zone. Rights of Appeal The Applicant has the right of appeal within 21 days after the date on which the decision is made, as outlined in Section 683 through 689 of the Municipal Government Act.											
Issue Date: Apr 25, 2018 Development Authority: HETHERINGTON, FIONA Signature: _____											
<table border="1" style="width: 100%; border-collapse: collapse;"> <thead> <tr> <th style="width: 30%;">Fees</th> <th style="width: 20%;">Fee Amount</th> <th style="width: 20%;">Amount Paid</th> <th style="width: 20%;">Receipt #</th> <th style="width: 10%;">Date Paid</th> </tr> </thead> <tbody> <tr> <td colspan="5" style="text-align: center; padding: 5px;">THIS IS NOT A PERMIT</td> </tr> </tbody> </table>		Fees	Fee Amount	Amount Paid	Receipt #	Date Paid	THIS IS NOT A PERMIT				
Fees	Fee Amount	Amount Paid	Receipt #	Date Paid							
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Application for Minor Development Permit

Project Number: **275792653-001**
Application Date: FEB 27, 2018
Printed: April 25, 2018 at 2:09 PM
Page: 2 of 2

Fees

	Fee Amount	Amount Paid	Receipt #	Date Paid
Lot Grading Fee	\$286.00	\$286.00	04822065	Feb 27, 2018
Dev. Application Fee	\$485.00	\$485.00	04822065	Feb 27, 2018
Sanitary Sewer Trunk Fund	\$1,629.00	\$1,629.00	04822065	Feb 27, 2018
Development Permit Inspection Fee	\$204.00	\$204.00	04822065	Feb 27, 2018
Total GST Amount:	\$0.00			
Totals for Permit:	<u>\$2,604.00</u>	<u>\$2,604.00</u>		

THIS IS NOT A PERMIT



SURROUNDING LAND USE DISTRICTS

Site Location ←

File: SDAB-D-18-079

