



**EDMONTON
TRIBUNALS**

*Subdivision &
Development
Appeal Board*

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Date: December 9, 2016
Project Number: 227498417-001
File Number: SDAB-D-16-299

Notice of Decision

- [1] On November 24, 2016, the Subdivision and Development Appeal Board (the “Board”) heard an appeal that was filed on November 1, 2016. The appeal concerned the decision of the Development Authority, issued on November 1, 2016 to refuse the following development:

To construct a two-storey Accessory Building (Garage Suite on second floor, Garage on main floor; 7.62 metres by 8.61 metres).

- [2] The subject property is on Plan 2586AZ Blk 1C Lot 25, located at 15633 - 100A Avenue NW, within the RF1 Single Detached Residential Zone. The Mature Neighbourhood Overlay and Jasper Place Area Redevelopment Plan apply to the subject property.

- [3] The following documents were received prior to the hearing and form part of the record:

- Copy of the Development Permit application with attachments, proposed plans, and the refused Development Permit;
- The Development Officer’s written submissions; and
- Online responses

- [4] The following exhibits were presented during the hearing and form part of the record:

- Exhibit A – Article from the Edmonton Journal dated April 14, 2015
- Exhibit B – List of addresses for Garage Suites approved in the RF1 Zone
- Exhibit C – List of addresses of existing Garage Suites located in the immediate neighbourhood
- Exhibit D - A map illustrating the location of sites with outstanding development permit applications for Garage Suites
- Exhibit E – Article from the Edmonton Journal dated September 14, 2016 regarding proposed Bylaw changes for Garage Suites

Preliminary Matters

- [5] At the outset of the appeal hearing, the Presiding Officer confirmed with the parties in attendance that there was no opposition to the composition of the panel.
- [6] The Presiding Officer outlined how the hearing would be conducted, including the order of appearance of parties, and no opposition was noted.
- [7] The appeal was filed on time, in accordance with Section 686 of the *Municipal Government Act*, R.S.A 2000, c. M-26.

Summary of Hearing

i) *Position of the Appellant, D. Baum & B. Woolger, representing Baum & Woolger Homes Ltd*

- [8] It was their opinion that the Development Officer should have referenced Section 1.2.3 of the Jasper Place Area Redevelopment Plan which provides direction to both Applicants and Development Officers for development permit applications that involve the use of discretion.
- [9] An article from the Edmonton Journal outlines City Council's decision to allow Garage Suites as a Permitted Use within the next few months (marked Exhibit A). As such, the proposed development would be approved as a Permitted Use.
- [10] They believe that the proposed development is in keeping with the Vision and Guiding Principles of the Area Redevelopment Plan because it contemplates mixed uses.
- [11] The subject site is located across the street from an existing Transit Station and complies with a policy of the Area Redevelopment Plan to provide a mix of commercial and residential uses in close proximity to transit.
- [12] The proposed development is in keeping with the Guiding Principles of the Area Redevelopment Plan by providing housing choices that are vibrant and diverse and provide housing opportunities for all individuals and families as well as a mix of uses near transit with buildings that are scaled to transition into neighbourhoods. It is the property owner's plan to build the Garage Suite now and at some time in the future build a new single detached house on the site.
- [13] The proposed development will enhance the character of the neighbourhood and increase property values.
- [14] Residents of this property will have easy access to public transit and all of the other amenities on Stony Plain Road.

- [15] The property owner purchased this site prior to the implementation of the Area Redevelopment Plan and it was his opinion that it is impossible to comply with those guidelines.
- [16] He provided a list of addresses for similar Garage Suites located in the RF1 Single Detached Residential Zone that have been approved by the Subdivision and Development Appeal Board over the past year, marked Exhibit B, and a list of addresses for Garage Suites that exist in the immediate neighbourhood, marked Exhibit C.
- [17] He submitted a map illustrating the location of sites that currently have outstanding development permit applications for a Garage Suite in the immediate area, marked Exhibit D.
- [18] In his opinion, this situation is unfair and places a significant financial burden on the property owner.

ii) Position of the property owner, Mr. B. Gyriska

- [19] He purchased this property in 2008 with plans to develop a revenue property.
- [20] This site was chosen because of its proximity to the proposed Valley Line project which has now been delayed.
- [21] He has tried to sell the property twice without success.
- [22] He has discussed different development options with the Sustainable Development Department over the past 4 years.
- [23] The implementation of the Jasper Place Area Redevelopment Plan has resulted in further development restrictions. He is not able to develop the site to its full potential and he cannot sell the property.
- [24] He wants to build the Garage Suite first and then redevelop a Single Detached House. This is a temporary stop gap to generate some revenue.
- [25] In response to questions, Mr. Gyriska referenced a map to illustrate the context of the area. This block face is comprised of older houses in need of repair and vacant lots. There is a strip mall on the far west end of the block that is being used as a temporary Mosque. The two lots furthest to the east are used for an artists' shop. The residential lots are surrounded by light industrial and commercial uses, an EMS dispatch center and a park. The Jasper Place Transit Terminal is located north of the subject site.
- [26] There is a mix of privately owned and rented houses on the block face.

- [27] None of the individual properties on the block comply with the mixed use reference contained in the Area Redevelopment Plan.
- [28] There is some mixed use on this block because of the Mosque and the Arts building located at the far east end.
- [29] He originally wanted to build a new house on the site with a basement suite. However, it was difficult to obtain financing. This proposal will add value to the land and security to hold the mortgage during construction. He will then be able to demolish the existing house and rebuild.
- [30] The existing house is similar in size and age to the other residential houses on the block face. It is only 700 square feet in size and will not accommodate an addition or renovation.
- [31] On-site parking for the house and the proposed Garage Suite will meet the Edmonton Zoning Bylaw requirements.
- [32] It was clarified that the Edmonton Journal article dated April 14, 2015, referenced Council's decision to allow property owners in an RF1 Zone to subdivide a property that was at least 50 feet wide and build a Garage Suite. An article from the Edmonton Journal dated September 14, 2016, regarding additional proposed Bylaw changes for Garage Suites was submitted, marked Exhibit E.
- [33] There are three-storey Apartment buildings located across the lane from the subject site.
- [34] This will be the newest development on the block.
- [35] The proposed development complies with all of the development regulations.
- [36] Mr. Baum reviewed and supported the suggested conditions of the Development Officer.
- [37] Mr. Baum agreed with the Court of Appeal decision that directs the Board to apply the underlying regulations of the *Edmonton Zoning Bylaw* when there is a conflict with a Statutory Plan.

iii) Position of the Development Officer, C. Lee

- [38] The subject site is zoned RF1 Single Detached Residential Zone and is subject to the Mature Neighbourhood Overlay and the Jasper Place Area Redevelopment Plan.
- [39] The locational criteria for Garage Suites located in an RF1 Zone were eliminated by City Council in April, 2015.

- [40] With the Bylaw revisions and the implementation of the Jasper Place Area Redevelopment Plan in August, 2015, there was a four month window between April and August when the proposed development would have been considered and approved as a Discretionary Use.
- [41] Aside from the Jasper Place Area Redevelopment Plan, it was Mr. Lee's opinion that the proposed development is totally appropriate for this site. It complies with all of the development regulations and is located across the street from a Transit Centre.
- [42] The Applicant has considered privacy concerns of the neighbours by complying with the setback requirements as well as window placement and treatments.
- [43] Part SPR4 of the Jasper Place Area Redevelopment Plan states that the Development Officer "shall ensure" all of the listed policies when considering rezoning or discretionary development. This mandatory wording made it difficult to approve the proposed development.
- [44] If the proposed Garage Suite is maintained, it will outlive the intent of the Jasper Place Area Redevelopment Plan, but it would not materially hinder redevelopment if the area were ultimately rezoned.
- [45] In response to a question, Mr. Lee acknowledged that an 8-storey structure could never be approved under the current zoning or even accommodated on the subject site.
- [46] City Council is currently considering several Bylaw amendments, some of them regarding Garage Suites, but they are just proposals at this time.
- [47] He agreed that the Development Authority should consider the Court of Appeal decision that directs the application of the underlying regulations of the *Edmonton Zoning Bylaw* to the extent of a conflict between it and any aspirational Statutory Plan.
- [48] The proposed development does not require any variances and is reasonably compatible in the current context. It is located in close proximity to public transit and there are other Garage Suites in the immediate neighbourhood.
- [49] Mr. Lee would have approved the development except for the provisions of the Jasper Place Area Redevelopment Plan.

iv) Rebuttal of the Appellant

- [50] Mr. Gyriska had nothing to add in rebuttal except that he was sure that the Board totally understands the situation.

Decision

[51] That the appeal is **ALLOWED** and the decision of the Development Authority is **REVOKED**. The development is **GRANTED** as applied for to the Development Authority, subject to the following **CONDITIONS**:

1. The maximum Height shall not exceed 6.5 metres or up to 1.5 metres greater than the Height of the principal Dwelling as constructed at the time of the Development Permit Application, whichever is the lesser, where the building containing the Garage Suite has a roof slope of 4/12 (18.4 degree) or greater.
2. Notwithstanding the definition of Household within the Bylaw, the number of unrelated persons occupying a Garage Suite or Garden Suite shall not exceed three.
4. A Garage Suite or Garden Suite shall not be subject to separation from the principal Dwelling through a condominium conversion or subdivision.
5. An approved Development Permit means that the proposed development has been reviewed against the provisions of the bylaw. It does not remove obligations to conform with other legislation, bylaws or land title instruments including, but not limited to, the *Municipal Government Act*, the *Safety Codes Act* or any caveats, restrictive covenants or easements that might be attached to the Site.

Reasons for Decision

[52] The proposed Garage Suite is a Discretionary Use in the RF1 Single Detached Residential Zone. It complies with all applicable development regulations.

[53] The subject Site is located in a small RF1 Single Detached Residential Zone comprised of approximately 12 small residential lots surrounded by commercial, high density residential, public utility and park zones. Older, smaller single detached housing stands on the 10 interior lots within this RF1 Zone.

[54] This property is also subject to the Jasper Place Area Redevelopment Plan enacted on August 24, 2015.

[55] Based on the evidence provided by the parties, the Board finds that

- i) Garage Suites are characteristic of the immediate neighbourhood;
- ii) The proposed Garage Suite will comply with the objectives of City Council to increase density in mature areas close to transit; and,
- iii) The proposed Garage Suite will enhance the existing streetscape of this block face.

- [56] No letters of opposition were received and no one attended the hearing in opposition to the proposed development.
- [57] The Board notes that the Development Officer supports the proposed development and considers it appropriate for the subject Site, but for the long term policies of the Jasper Place Area Redevelopment Plan.
- [58] The Area Redevelopment Plan is an ambitious, aspirational document which proposes significantly different uses for this small RF1 Zone as part of a larger redevelopment plan centered on the construction of a nearby LRT Transit Centre. It was anticipated that the plan would come to fruition in the next 15 to 20 years. However, a timeline has not been established for the planned LRT line. Based on the submissions of the parties, one or more other LRT lines are now expected to proceed in advance of this one which may delay the original construction timeline for the centerpiece LRT Transit Centre.
- [59] The Jasper Place Area Redevelopment Plan anticipates future rezoning of the subject Site to meet its long term objectives. However, these few lots on the southern block face of 100A Avenue currently remain RF1. Given their size and ownership, uses which meet the vision of the Jasper Place Area Redevelopment Plan cannot currently be developed on these lots.
- [60] Accordingly, the Appellant is currently caught in an unfortunate situation where he cannot propose a development on the subject Site which meets both the current RF1 Single Detached Residential zoning and the aspirational mixed uses which allow future development up to a maximum of eight storeys contemplated in the Jasper Place Area Redevelopment Plan.
- [61] The Board accepts the opinion of the Development Officer that approval of the proposed Garage Suite will be inconsequential to future development if the area is rezoned and will not impede the long term plans of the Jasper Place Area Redevelopment Plan which will require land assembly.
- [62] Therefore, the Board finds that the proposed development complies with the development requirements of the RF1 Single Detached Residential Zone and is not inconsistent with the long term aspirations contained in the Jasper Place Area Redevelopment Plan.
- [63] However, the Board does acknowledge that the Jasper Place Area Redevelopment Plan anticipates mixed use development of a much denser scale for this area. To the extent that this could be considered a conflict with the regulations of the RF1 Single Detached Residential Zone, the Board recognizes that the *Edmonton Zoning Bylaw* is a regulatory document that takes precedence over the Jasper Place Area Redevelopment Plan, pursuant to the *McCauley Community League v. Edmonton (City)*, 2012 ABCA 224, paragraph 39.

- [64] The Appellant reviewed and agreed to the imposition of conditions proposed by the Development Authority and included in this decision.
- [65] For these reasons, the Board finds that the proposed Discretionary Use, with the conditions imposed, is reasonably compatible with surrounding development and will not unduly interfere with or affect the use, enjoyment or value of neighbouring properties.

Ms. K. Cherniawsky, Presiding Officer
Subdivision and Development Appeal Board

Board members in attendance: Mr. V. Laberge, Mr. I. O'Donnell, Ms. G. Harris, Ms. D. Kronewitt Martin

Important Information for the Applicant/Appellant

1. This is not a Building Permit. A Building Permit must be obtained separately from the Sustainable Development Department, located on the 5th 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*, RSA 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 5th 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.



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Date: December 9, 2016
Project Number: 225488673-001
File Number: SDAB-D-16-300

Notice of Decision

- [1] On November 24, 2016, the Subdivision and Development Appeal Board heard an appeal that was filed on November 3, 2016. The appeal concerned the decision of the Development Authority, issued on November 2, 2016, to refuse the following development:

To construct a Semi-detached House with rear uncovered decks (2.13 metres by 1.22 metres), second floor balcony, and Basement development (NOT to be used as an additional Dwelling), and to demolish an existing Single Detached House and an Accessory Building (rear detached Garage).

- [2] The subject property is on Plan 169HW Blk 11 Lot F, located at 11233 - 78 Avenue NW, within the RF3 Small Scale Infill Development Zone. The Mature Neighbourhood Overlay and McKernan / Belgravia Station Area Redevelopment Plan apply to the subject property.

- [3] The following documents were received prior to the hearing and form part of the record:

- Copy of the Development Permit application with attachments, proposed plans, and the refused Development Permit;
- The Development Officer's written submissions; and
- Online responses

- [4] The following exhibits were presented during the hearing and form part of the record:

- Exhibit A – Front Elevation to illustrate the difference in building height
- Exhibit B – Powerpoint – Photographs of similar Semi-detached Houses in the neighbourhood
- Exhibit C – Third Floor Plan to illustrate balconies

Preliminary Matters

- [5] At the outset of the appeal hearing, the Presiding Officer confirmed with the parties in attendance that there was no opposition to the composition of the panel.
- [6] The Presiding Officer outlined how the hearing would be conducted, including the order of appearance of parties, and no opposition was noted.
- [7] The appeal was filed on time, in accordance with Section 686 of the *Municipal Government Act*, R.S.A 2000, c. M-26.

Summary of Hearing

- i) *Position of the Appellant, D. Baum & B. Woolger, representing Baum & Woolger Homes Ltd.*
- [8] This application was refused because of an excess in the maximum allowable Height.
- [9] The maximum allowable Height pursuant to the Mature Neighbourhood Overlay is 8.6 metres while height regulations contained in the RF3 Zone allow a Height of 10.0 metres.
- [10] A front elevation drawing, marked Exhibit A, shows the Height of the building to the midpoint of the main trusses to be 8.54 metres, which complies with the maximum allowable 8.6 metre requirement in the Mature Neighbourhood Overlay.
- [11] Because of the proposed dormers, the Development Officer measured the Height to the midpoint of the highest set of trusses which in his opinion is not an accurate calculation of the overall Height.
- [12] The ridge line of the roof is 1.57 metres above the maximum permitted building Height, instead of 1.5 metres, but the plans could be revised to comply with this requirement.
- [13] The dormers can be redesigned, but it will not change the overall Height of the building.
- [14] Mr. Baum used a PowerPoint presentation, marked Exhibit B, to show photographs of similar Semi-detached Houses that have been developed in this neighbourhood. He assumed that similar variances were required although he could not provide specific details or dimensions regarding these developments.
- [15] Mr. Baum conceded that the width of the proposed dormers significantly exceeds the maximum allowable width.
- [16] The Development Officer reviewed the proposed Semi-detached House as one structure and calculated the width of the proposed dormers accordingly. If the dormers on each Dwelling were measured separately, they would comply with the regulation. Each of the

- dormers on the proposed upper balconies is approximately 2.29 metres wide and less than the maximum allowed 3.1 metres. The dormers do share a single roof line.
- [17] Several of the Semi-detached Houses in the photographs submitted have dormers that are wider than 3.1 metres and were constructed on lots of a similar width.
- [18] The proposed Semi-detached House was designed to maximize square footage on the third floor and with dormers to add architectural detail to the front façade. Without the dormers, there would be a blank and much more imposing wall.
- [19] In order to comply with the Height requirement, the dormers would have to be removed. The dormers are an architectural feature, eliminating them would make the roof more imposing and massive.
- [20] Reducing the square footage would create other problems with egress and safety.
- [21] The proposed Semi-detached House supports the principles of the Area Redevelopment Plan by encouraging increased density close to public transit and it is characteristic of this neighbourhood.
- [22] The property owner undertook community consultation and contacted 39 neighbours. Ultimately, two neighbours objected to the proposed development.
- [23] One of the neighbours in opposition raised concerns about sun shadowing and safety. However, it was noted that the most affected neighbours did not express any concerns about sun shadowing. None of the neighbours who were consulted raised any privacy or overlook concerns.
- [24] It was also noted that the Side Yard setback requirements have been met.
- [25] Asked to explain why the proposed development will not materially impact any of the neighbouring property owners, Mr. Baum stated that they applied for a Development Permit based on the specifications of their client, the property owner, who saw numerous other Semi-detached Houses being built in the neighbourhood and asked for the same type of development.
- [26] This specific block includes a mix of older houses and some new development.
- [27] One of the proposed Semi-detached Units is approximately 1900 square feet in size and the other Unit is approximately 1876 square feet in size.
- [28] Complying with the maximum allowable dormer width would result in a decrease in square footage for both of the proposed Units.

- [29] It was conceded that the proposed development does not comply with the definition of a half Storey, pursuant to Section 6.1(48) of the *Edmonton Zoning Bylaw*.
- [30] The property owner did contact the Community League and was advised that they did not support the proposed development.
- [31] The conditions proposed by the Development Officer and provided to the Board were reviewed and Mr. Baum indicated that he did not object to any of the conditions if the development was approved by the Board.
- [32] Mr. Baum did not have any other planning reasons to support the required variances or concerning the massing of the proposed development.

ii) *Position of the Development Officer, B. Langille*

- [33] Mr. Langille explained that he could not approve this development application because of the excess in maximum allowable Height.
- [34] In his opinion, the subject site is conducive to accommodate increased density, but the scale of the development has to be a consideration.
- [35] Dormer widths are restricted in the *Edmonton Zoning Bylaw* to prevent visual or physical massing impacts.
- [36] A house can contain a series of articulated dormers which would increase Floor Area and sunlight while not competing with the dominant roof line.
- [37] However, in his opinion the overall size and design of the upper Storey of the proposed Semi-detached House does not comply with the definition of a half Storey and is more similar to a full third Storey.
- [38] Therefore, the Height was measured to the midpoint of the roof line connecting the rear and front dormers because of the over-massing and impact of this feature.
- [39] He acknowledged that the proposed front dormer is an interesting architectural feature, but it has to be measured as one dormer and the width exceeds the maximum allowable width of a single dormer.
- [40] It is the intent of the Area Redevelopment Plan to support an overall intensification of development while remaining sensitive to the existing low-density character of the neighbourhood.
- [41] It was his opinion that this site is more conducive to the development of a Single Detached House with a Secondary Suite or Garage Suite which would still be in keeping with the intent of the Area Redevelopment Plan.

- [42] His concerns are related more to the design of the development and not the use of the site for Semi-detached Housing.
- [43] He could not provide specifics about all of the developments in the submitted photographs. He was familiar with one of the Semi-detached houses shown in the photographs provided by the Appellant and he considered it to be very different. It is located along 76 Avenue which is a much wider, arterial roadway. It is flanked by 2 and ½ storey houses, not bungalows. It faces a park.
- [44] In response to questions, Mr. Langille advised that Section 52 of the *Edmonton Zoning Bylaw* provides the Development Officer with several different methods to calculate Height.
- [45] He used his discretion to use the edge of the rear and front dormers to obtain the midpoint. If the dormers were removed the existing 6/12 roof peak would comply with the Height requirement. The .07 metres variance to the ridgeline is not perceptible, but it still exceeds the upper limit for Height set by the development regulation.
- [46] The area was subdivided and the lot size set many years prior to the current RF3 regulations.
- [47] Window locations were provided with the development permit application and he does not have any overlook or privacy concerns for adjacent neighbours.
- [48] In his opinion, the community consultation undertaken by the Appellants was sufficient.
- [49] In his opinion, the required variances will negatively impact adjacent property owners because the surrounding houses are smaller. The scale of the proposed development with the proposed third storey with balconies will disrupt the scale of the block and have a visual impact on the streetscape.

iii) Rebuttal of the Appellant

- [50] The Appellants had nothing further to add in rebuttal.

Decision

- [51] The appeal is **ALLOWED** and the decision of the Development Authority is **REVOKED**. The development is **GRANTED** as applied for to the Development Authority, subject to the following **CONDITIONS**:

CONDITIONS

1. The Height of the Principal Building shall not exceed 9.67 metres as per the Height definition of Section 6.1(50) of the *Edmonton Zoning Bylaw* 12800;
2. Any future basement development may require development and building permit approvals. A Secondary Suite shall require a new development permit application;
3. The Basement elevation shall be no more than 1.2 metres above Grade measured as the distance between grade level and the floor of the first Storey;
4. Platform Structures greater than 1.0 metres above Grade shall provide privacy screening to the satisfaction of the Development Officer to prevent visual intrusion into adjacent properties;
5. Landscaping shall be developed in accordance with Section 55 and Section 140.4(18) of the *Edmonton Zoning Bylaw* 12800;
6. All yards, visible from a public roadway other than a lane, shall be seeded or sodded within eighteen (18) consecutive months of the issuance of an Occupancy Certificate for the development. Seeding or sodding may be substituted with alternate forms of ground cover, including hard decorative pavers, washed rock, shale or similar treatments, perennials, or artificial turf, provided that all areas of exposed earth are designed as either flower beds or cultivated gardens (Reference Section 55). Alternative forms of landscaping may be substituted for seeding or sodding as specified in Section 55
7. Notwithstanding the Landscaping regulations of Section 55 of the Bylaw, where new development consists of replacement or infill within areas of existing housing, Landscaping shall be implemented as a component of such new development in order to replace vegetation removed during construction or to reinforce an established Landscaping context in the area;
8. Landscaping shall be provided on a Site within 18 months of the occupancy of the Semi-detached House. Trees and shrubs shall be maintained on a Site for a minimum of 42 months after the occupancy of the Single Detached House (Reference Section 55.2.1);
9. One deciduous tree with a minimum Caliper of 50 mm, one coniferous tree with a minimum Height of 2.5 metres and four shrubs shall be provided on the property. Deciduous shrubs shall have a minimum Height of 300 mm and coniferous shrubs shall have a minimum spread of 450 mm (Reference Section 55.2.1);

ADVISEMENTS:

1. Lot grades must comply with the *Edmonton Drainage Bylaw 16200*. Contact Drainage Services at 780-496-5500 for lot grading inspection inquiries.
2. Any future deck development greater than 0.6 metres (2 feet) in height will require development and building permit approvals.
3. Any future deck enclosure or cover requires a separate development and building permit approval.
4. The driveway access must maintain a minimum clearance of 1.5 metres from any service pedestal and all other surface utilities.
5. 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 of Primate Contractor must apply for an OSCAM online at:

http://www.edmonton.ca/bylaws_licences/licences_permits/oscam-permit-request.aspx.

6. Unless otherwise stated, all above references to “section numbers” refer to the authority under the *Edmonton Zoning Bylaw 12800*.
7. 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 Direction 079, the *Edmonton Safety Codes Permit Bylaw* or any caveats, covenants or easements that might be attached to the Site.

[52] In granting the development the following variances to the *Edmonton Zoning Bylaw* were allowed:

1. The maximum allowable Height of 8.60 metres as per Section 814.3(13) is varied to allow an excess of 1.07 metres, thereby increasing the maximum allowed to 9.67 metres.
2. The maximum ridge line of the roof of 1.5 metres as per Section 52.2(c) is varied to allow an excess of 0.07 metres, thereby increasing the maximum allowed to 1.57 metres.
3. The maximum allowable width of the front dormer of 3.1 metres as per Section 814.3(15) is varied to allow an excess of 6.27 metres, thereby increasing the maximum allowed to 9.37 metres.

4. The maximum allowable width of the rear dormer of 3.1 metres as per Section 814.3(15) is varied to allow an excess of 4.22 metres, thereby increasing the maximum allowed to 7.32 metres.
5. The minimum allowable Site Width of 13.40 metres as per Section 140.4(3)(b) is varied to allow a deficiency of 0.91 metres, thereby decreasing the minimum allowed to 12.49 metres.

Reasons for Decision

- [53] Semi-detached Housing is a Permitted Use in the RF3 Small Scale Infill Development Zone
- [54] The subject Site falls within a portion of the McKernan / Belgravia Station Area Redevelopment Plan in close proximity to public transit where increased density is anticipated.
- [55] The Board accepts the determinations of the Development Officer regarding the Height and dormer width calculations and finds that the proposed development requires five variances to the *Edmonton Zoning Bylaw*.
- [56] The Board accepts the submissions of the Appellants, as confirmed by the Development Officer, that the requirements for Community Consultation, pursuant to Section 814.3(24) of the *Edmonton Zoning Bylaw* were substantially met.
- [57] The property owner visited affected parties within the required notification area on two separate occasions and received only one objection to the proposed development.
- [58] The Board received one letter of objection from a property owner who resides within the 60 metre notification zone who was concerned about potential sun shadowing and the fact that variances were required.
- [59] The Community League was contacted, but was unwilling to provide a letter of support.
- [60] Section 814.3(13) has been relaxed to allow a variance of 1.07 metres in the overall Height of the Principal dwelling based on the following:
- a) Although the overall Height has been correctly calculated by using the top of the dormer roofs, the overall building Height to the mid-point of the main roof is 8.54 metres and complies with the maximum allowable Height of 8.6 metres.
 - b) The immediately adjacent neighbours and passersby will not be impacted because the excess in height is the result of the inclusion of proposed dormers. These dormers break the main roof of the building and mitigate its massing impact. They

are set back significantly from the Side Lot Lines. The immediately adjacent neighbours did not object to the proposed development.

- c) The location of the dormers will have little sun shadowing impact given their location and the Height of the overall building.

[61] Section 52.2(c) has been varied to allow an excess of 0.07 metres in the maximum allowable Height of the ridge line above the maximum permitted building Height for the following reasons:

- a) A 0.07 metre variance is de minimis and will be imperceptible to neighbouring property owners or passersby.

[62] Section 814.3(15) has been varied to allow an excess in the maximum allowable width of the front dormers for the following reasons:

- a) A significant variance is required because the two individual front balconies share a single roofline and were assessed as a single dormer. However, the front balconies have been designed to read as two distinct structures, each under the 3.1 metres maximum allowable width.
- b) Despite the shared roofline, the proposed balconies increase articulation and architectural design along the front façade. This adds depth and will mitigate the massing impact of the main roof which would be compliant without the dormer. The dormer design enhances the streetscape.

[63] Section 814.3(15) has been varied to allow an excess in the maximum allowable width of the rear dormers for the following reasons:

- a) The dormers proposed on the rear elevation will add an architectural feature and break up the massing of the main roof structure.
- b) The proposed rear dormers will not impact the streetscape.
- c) There are no balconies on the rear elevation or windows that will create privacy or overlook concerns for adjacent property owners and none of the most affected adjacent property owners objected to the proposed development.

[64] Section 140.3(3)(b) of the Edmonton Zoning Bylaw has been varied to allow a Site Width of 12.49 metres which is deficient by 0.91 metres for the following reasons:

- a) The Board accepts the Development Officer's opinions that Site Width is not the best measurement of whether or not a Use should be allowed on a specific lot and that if a development complies with all of the regulations of the *Edmonton Zoning*

Bylaw, including Side Setbacks, the impact of the structure should not be any different than the development of a Single Detached House of a similar size.

- b) In this instance, the proposed development complies with the Side, Front and Rear Setbacks, Site Area and Site Coverage requirements which together with Site Width provide a better indicator of the suitability of the proposed development on this Lot. The Board concludes that the proposed variance to Site Width will have no material adverse impacts for neighbouring properties.
- [65] The Appellants contended that the variances should be allowed based on the existence of other similar developments in this neighborhood. While pictorial evidence of apparently similar developments may establish that this type of development is not uncharacteristic of this neighbourhood, the Board has not placed significant weight on this evidence because details were not provided regarding the exact dimensions of those developments nor their respective specific site conditions relative to the proposed development.
- [66] The Board notes that the Development Officer took exception to some of the comparable developments cited by the Appellant and identified differences between them and the proposed development. However, the Board notes that the Development Officer could not provide specific information to support his position.
- [67] Further, this Board is not bound by precedent and considers each appeal based on its own merit.
- [68] The Appellant reviewed and agreed to the imposition of the conditions proposed by the Development Authority that have been included in this decision.
- [69] Based on the above, it is the opinion of the Board, that the proposed development with the required variances and conditions imposed, 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.

Ms. K. Cherniawsky, Presiding Officer
Subdivision and Development Appeal Board

Board members in attendance: Mr. V. Laberge, Mr. I. O'Donnell, Ms. G. Harris, Ms. D. Kronewitt Martin

Important Information for the Applicant/Appellant

1. This is not a Building Permit. A Building Permit must be obtained separately from the Sustainable Development Department, located on the 5th 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*, RSA 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 5th 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.



**EDMONTON
TRIBUNALS**

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SDAB-S-16-003

An appeal by Stantec Consulting Ltd. to create (1) one additional rural residential lot was **TABLED** to January 11 or 12, 2017