EDMONTON
TRIBUNALS
Subdivision & Development Appeal Board

10019 – 103 Avenue NW
Edmonton, AB T5J 0G9
P: 780-496-6079 F: 780-577-3537
sdab@edmonton.ca
edmontonsdab.ca

Date: December 16, 2016
Project Number: 189354056-001
File Number: SDAB-D-16-309

Notice of Decision

[1] On December 1, 2016, the Subdivision and Development Appeal Board (the "Board") heard an appeal that was filed on **November 9, 2016**. The appeal concerned the decision of the Development Authority, issued on November 9, 2016, to refuse the following development:

> **Construct a Garage Suite and to demolish the existing Accessory Building (Garage on main floor and Dwelling on upper floor, 7.47 metres by 7.92 metres)**

[2] The subject property is on Plan 600U Blk 23 Lot 6, located at 11119 - 65 STREET NW, within the RF1 Single Detached Residential Zone. The Mature Neighbourhood Overlay applies 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
- One email in opposition to the proposed development.

Preliminary Matters

[4] 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.

[5] The Presiding Officer outlined how the hearing would be conducted, including the order of appearance of parties, and no opposition was noted.

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

[7] The Development Officer provided the SDAB Office with a message indicating that he was unable to attend the hearing. The Board proceeded with the hearing and considered the Development Officer's written submission.

Summary of Hearing

i) Position of the Appellant, Mr. G. Mady

[8] He addressed the concerns of the email received from a neighbouring property owner in opposition to the proposed development.

[9] The email outlines that the neighbour did not have a concern previously but now has an issue with the Height.

[10] In Mr. Mady's opinion, the neighbour believes the garage will be higher than it actually is.

[11] He is willing to lower the garage slightly but it would not change the Height considerably.

[12] He stated that the neighbouring property owner does not live there and rents out the property.

[13] There are trees and bushes between the two properties which will mitigate any visual impact on the neighbouring property.

[14] He discussed the parking with the Development Officer and there is sufficient on-street parking.

[15] He stated that Transportation did not have an issue with parking.

[16] He stated that the parking regulations will change in January.

[17] He owns one vehicle and two motorcycles which are parked in the garage.

[18] He discussed the Site Coverage with the Development Officer and believes it is below the 40 percent allowable.

[19] The house is 102 years old and he is trying to improve the property and keep it characteristic of the neighbourhood. He has no intention of making it larger.

[20] The house is 900 square feet in size and he and his wife want to expand their family. They would be able to rent out the Garage Suite for the time being and then his family could use it.

[21] His wife is a graphic designer and she will be able to use that space to work.

[22] He was under the impression the Height was correct until recently when it was calculated that the Garage will be 47 centimetres too high.

[23] In his opinion, this will not have a visual impact on the neighbouring property.

[24] Upon questioning from the Board, the Appellant indicated that although the Development Officer cannot vary Height, it is not excessive. He is not sure how he would be able to reduce the Height of the Garage.

[25] Regarding the placement of the window on the north side of the garage, the Appellant stated that the window was moved from the back of the Garage Suite facing the rear lane to the north side. However, the window the neighbour is concerned about is the window on the west side. He does not want to move that window or there will only be one window for natural light.

[26] There are security issues in this neighbourhood and having people living in the Garage Suite closer to the rear lane will be helpful.

[27] The window on the east side toward the rear lane will be regular glass.

[28] He is unsure of the size of the trusses as the contractor was the one who chose this size.

[29] He confirmed that the windows face the subject house. If a person looked out the window they would see a lilac bush, two trees that are 10 to 12 feet tall, and a shrub.

[30] The neighbour in opposition to the proposed development is north of the subject site.

[31] The staircase is on the interior south side of the Garage.

[32] There is only one bedroom window that faces north and will overlook the neighbours parking area.

[33] The Appellant was asked to confirm the Site Coverage calculation as his number was different from the Development Officer's calculation. He confirmed that the Development Officer informed him that the City rounds down calculations.

[34] Mr. Mady stated that he is willing to reduce the Site Coverage to meet the 40 percent allowable.

[35] The Presiding Officer indicated that it is the Board's role to determine if there are other variances which may need to be clarified to the Board by the Development Officer.

[36] The Presiding Officer indicated that there are four variances, not three.

[37] Mr. Mady agrees with the conditions suggested by the Development Officer if the Board approves the proposed development.

[38] He reiterated that he wants the proposed development to make it more livable for his family.

Decision

[39] 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 development shall be constructed in accordance with the stamped and approved drawings.
2. WITHIN 14 DAYS OF THE APPROVAL DECISION BY THE SUBDIVISION AND DEVELOPMENT APPEAL BOARD and PRIOR to any demolition or construction activity, the applicant must post on-site a development permit notification sign (Section 20.2).
3. Only one of a Secondary Suite, a Garage Suite or Garden Suite may be developed in conjunction with a principal Dwelling (Section 87).
4. A Garage Suite shall not be allowed within the same Site containing a Group Home or Limited Group Home, or a Major Home Based Business and an associated principal Dwelling, unless the Garage Suite is an integral part of a Bed and Breakfast Operation in the case of a Major Home Based Business (Section 87).
5. Notwithstanding the definition of Household within this Bylaw, the number of unrelated persons occupying a Garage Suite shall not exceed three (Section 87).
6. The Garage Suite shall not be subject to separation from the principal Dwelling through a condominium conversion or subdivision (Section 87).

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

1. The maximum allowable Height of 6.50 metres as per Section 87.2(a)(i) is varied to allow an excess of 0.40 metres, thereby increasing the maximum allowed to 6.90 metres.
2. The maximum allowable Site Coverage for an Accessory building of 48.12 square metres as per Section 110.4(7)(a) is varied to allow an excess of 9.85 square metres, thereby increasing the maximum allowed to 57.97 square metres.
3. The maximum allowable total Site Coverage of 160.39 square metres as per Section 110.4(7)(a) is varied to allow an excess of 1.99 square metres, thereby increasing the maximum allowed to 162.38 square metres.
4. The minimum allowable number of Parking Spaces of 3 as per Section 54.2, Schedule 1(A)(2) is varied to allow a deficiency of 1 Parking Space, thereby decreasing the minimum allowed to 2 Parking Spaces.

Reasons for Decision

[41] A Garage Suite is a Discretionary Use in the RF1 Single Detached Residential Zone.

[42] The Board determined there is a variance required for the excess in maximum allowable total Site Coverage. The Board finds the lot is 400.98 square metres in size (City of Edmonton records), the Principal Dwelling is 104.41 square metres in size (submitted plans), and the proposed development is 57.97 square metres in size (submitted plans).

[43] Based on the information submitted, the Board finds that the proposed Garage Suite is compatible with the neighbourhood and the proposed Garage Suite is replacing an existing Garage Suite.

[44] The variance in Height is granted for the following reasons:

a) This unique lot has a back to front slope and the Garage Suite is located at the highest point of the lot. When calculating the average Grade using the 4 corners of the property, the required Height variance is mitigated as it is located at the highest point of the property and is indistinguishable from the street or sidewalk.
b) After examining the plans, the Height of the wall and roof assemblies are of the standard nature and does not contribute to the excess in maximum allowable Height.

[45] The Board could find no planning reasons that by granting the variance in maximum allowable Site Coverage for the Accessory structure and maximum allowable total Site Coverage, the variances would have a negative impact on the neighbourhood.

[46] The Board accepts the Appellant's submission that there are no issues with on-street parking and that Transportation Services is not opposed to the proposed development.

[47] The Board accepts the Appellant's submission that there is landscaping between the subject Site and the neighbouring property which will help mitigate any privacy concerns.

[48] The Appellant has made many changes to address the concerns of the neighbouring property owner.

[49] Based on the plans submitted, the Board finds that the interior staircase and mechanical room on the main floor add a significant amount of Site Coverage to the overall size of the building. Having an interior staircase will help mitigate privacy and overlook concerns as well as increase safety when compared to an exterior staircase.

[50] The Board concludes that the proposed development with the conditions imposed is reasonably compatible with the neigbourhood and is of the opinion that granting the required 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.

Mr. V. Laberge, Presiding Officer
Subdivision and Development Appeal Board

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
Subdivision & Development Appeal Board

10019 – 103 Avenue NW
Edmonton, AB T5J 0G9
P: 780-496-6079 F: 780-577-3537
sdab@edmonton.ca
edmontonsdab.ca

Date: December 16, 2016
Project Number: 233140341-002
File Number: SDAB-D-16-310

Notice of Decision

[1] On December 1, 2016, the Subdivision and Development Appeal Board (the "Board") heard an appeal that was filed on **November 16, 2016**. The appeal concerned the decision of the Development Authority, issued on November 10, 2016, to approve the following development:

Construct and operate a Residential Sales Centre

[2] The subject property is on Plan 1225087 Blk 2 Lot 2, located at 8240 - 217 STREET NW, within the RSL Residential Small Lot Zone. The Lewis Farms Area Structure Plan and Rosenthal Neighbourhood Area Structure 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 approved Development Permit;
- Written submission from the Development Authority; and
- An email with additional information and photographs from the Appellant.

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

- Exhibit A – Rosenthal Traffic Report from the Respondent.

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.

[8] The Presiding Officer indicated that an email was received from the Appellant indicating he was not able to attend the appeal hearing. The Appellant provided the Board with an email outlining his concerns with photographs of the area. The Appellant asked the Board to proceed with the hearing based on his written submission.

[9] The Presiding Officer indicated to all parties in attendance that the documents submitted by the Appellant have been provided to everyone for review.

Summary of Hearing

i) Position of the Development Officer, Mr. J. Folkman who was accompanied by Ms. M. Ziober

[10] The proposed development is a Discretionary Use and notices were sent out to the surrounding neighbours and the Community League. The proposed development is compatible with developments in the surrounding area.

[11] The Residential Sales Centre is in a converted attached garage of a Single Detached House. The Residential Sales Centre will be temporary. The proposed development meets the required on-site parking. The Residential Sales Centre will help facilitate the sale of houses and lots in the area.

[12] The main concern of the Appellant is parking and the photographs show that there is sufficient parking in the area. The on-street parking is not reviewed as there is sufficient off-street parking. There are two parking spaces in the driveway.

[13] The Appellant references a 2015 SDAB Decision in his submission. In the Development Officer's opinion, that decision has no relevance to the subject appeal because the site in the 2015 Decision is in well-established area within the Mature Neighbourhood Overlay. The subject Site is in a new area and a Residential Sales Centre fits in with other houses in the area. In the 2015 Decision, the Floor Area Ratio calculations were disputed and the Development Officer's calculation was questioned. In their opinion, a Residential Sales Centre use was never contemplated in a Mature Neighbourhood. In the 2015 Decision, there were no sidewalks on either side of the street which is a concern for pedestrians. The location of the subject Site is a Single Family neighbourhood where there are existing houses, street lights are installed, and there are sidewalks for pedestrians.

[14] In response to questions by the Board, they indicated that to calculate on-site parking they determined that the garage is 50 square metres in size and only one parking space is required for every 20 square metres of Floor Area. Two parking spaces are provided. They confirmed that the calculation was rounded down as calculated at 20 metres of a portion thereof. There are no parking regulations that use this formula.

[15] The Residential Sales Centre is attached to the showhome that can be accessed from the Sales Centre.

[16] With regard to whether there is a parking requirement for a showhome, they stated that showhomes are treated differently. The Sales Centre is the main office portion and that part is considered commercial which makes it a Major Development Permit and the parking is considered for that.

[17] The proposed development permit is for a residential house and was not applied for as a showhome by itself.

[18] When the house was approved, there was a stamped drawing for the garage.

[19] After two years, unless the Sales Centre Use is extended, the Sales Centre needs to be used as a garage with a Single Family Dwelling.

[20] They confirmed that ten Residential Sales Centres per parcel are permitted in the area. A showhome is like a Realtor selling a house, where there is regular traffic viewing the property. A showhome does not require a permit.

[21] Showhomes are usually located on the fringe of an area which is consistent with the locational criteria.

[22] They do not believe the hours of operation for a Residential Sales Centre are outlined in the Bylaw but are in a Sales Centre agreement. Every builder that has a showhome is required to have a showhome agreement. However, they were not able to provide one to the Board. They confirmed that the hours will be consistent with the Agreement.

ii) Position of the Respondent, Mr. Schillabeer, resenting the Respondent, Parkwood Master Builder Inc.

[23] Parkwood Master Builder Inc. is the builder of the showhome. Parkwood Master Builder has been in the City for 28 years and has built 50 to 60 showhomes. This is the first time there has been any concern.

[24] The hours of most Residential Sales Centres are standard.

[25] The showhome is part of the neighbourhood where people are already living.

[26] On occasion a function will be held at the Sales Centre and all the neighbours get invited.

[27] If they are aware the neighbours are having a function, they will put no parking signs so their customers do not infringe on the neighbours properties.

[28] The primary function of the Sales Centre is to be located in a new area, sell the lots, and move out.

[29] The permit will be for a two year period; however, if the lots sell quickly they will move out earlier.

[30] Families that buy in a new area early should be aware that there will be disruption in the neighbourhood with a Sales Centre, developers, and construction workers.

[31] There used to be four Sales Centres in that area but two have closed due to economic times. Currently, there are two existing Sales Centres on the same street and the proposed Sales Centre will make it three.

[32] Traffic will be accessing the parade of Sales Centres and not just the proposed Sales Centre.

[33] He provided the Board with a Rosenthal Traffic Report from January, 2016 to mid-September, 2016, marked Exhibit A. For the two Sales Centres that are open, the Report shows that there was a high traffic volume of up to 40 visits per week and as low as 12 to 14 for an average of 2 visits per day.

[34] With regard to the photographs showing the street view, he stated that vehicles are allowed to park on the street in front of the showhome. The photographs do not show an excess of vehicles parked on the street so this should not be an issue.

[35] The Appellant indicated in his submission that he has the support from neighouring property owners. However, no letters were received in opposition and no one attending the appeal hearing.

[36] They would like to move into the area and move out with minimal disruptions and the Appeal process is slowing down what they would like to accomplish.

iii) Position of the Developer, Ms. Monson, resenting Melcor Developments Ltd.

[37] Ms. Monson works at Melcor Developments Ltd. who is the developer.

[38] The Respondent, Parkwood Master Builder, contacted her after the appeal was filed as they have never had any issues prior to this appeal.

[39] She contacted the Appellant to see if they could ease any of their concerns.

[40] She suggested possibly adding signage or additional parking spaces. However, the Appellant was not interested in discussing any suggestions and would be at the hearing to discuss it there.

[41] They welcome any feedback from the community.

[42] Living near a showhome is expected when people move into a new area.

[43] The Residential Sales Centre will be temporary and the hours of the showhome will be posted.

[44] They are committed to completing the proposed development.

[45] In response to questions by the Board, she stated that there is approximately 500 acres in this area and they are half way through the development process.

[46] They plan to relocate the showhome in one to two years or less if they can. They have no intention to extend the duration of the Residential Sales Centre.

Decision

[47] The appeal is DENIED and the decision of the Development Authority is CONFIRMED. The development is GRANTED as approved by the Development Authority, subject to the following CONDITIONS and VARIANCE:

CONDITIONS

This Development Permit authorizes the development of a building for the operation of a Residential Sales Centre pursuant to Section 82 of Zoning Bylaw 12800. It is the opinion of the Development Officer, that the Variance does not unduly interfere with the amenities of the neighbourhood; or materially interfere with or affect the use, enjoyment or value of neighbouring properties.

1. This approval is valid for a period of two years and the Development Permit expires on Nov. 11, 2018.

2. This proposed building is not a Dwelling unit. The building shall not be used as a Dwelling prior to the registration of individual lots and the expiration and/or cancellation of the Development Permit for the Residential Sales Centre.

3. Sufficient parking shall be made available on or adjacent to the site so that parking congestion will not develop on that portion of local streets serving existing development in the vicinity of the Residential Sales Centre. (Reference Section 54.2 Schedule 1 and Section 82).

4. All off-premise directional signage and on-premise advertising signage, including the display of advertising copy and supergraphics on hoardings or false fronts used to enclose temporary structures, shall be in accordance with Section 59 of this Bylaw.

5. All exterior lighting shall be developed in accordance with Section 51 and 58 of this Bylaw. (Reference Section 82).

NOTES:

1. 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. (Reference Section 5.2)

2. Unless otherwise stated, all above references to "section numbers" refer to the authority under the Edmonton Zoning Bylaw 12800.

VARIANCE

Discretionary Use - A Residential Sales Centre is approved as a Discretionary Use (Section 12.4).

Reasons for Decision

[48] The proposed development is a Discretionary Use in the RSL Residential Small Lot Zone.

[49] The Board accepts the parking calculation and the review of the Development Officers that no variances are required for the proposed development.

[50] The Board accepts the presentation of the Development Officers that Residential Sales Centres are conducive to new areas, are an expectation to new areas, and compatible with the neighbourhood.

[51] There are two existing Residential Sales Centres adjacent to this property and the Board finds that the Discretionary Use in this location is compatible with the neighbourhood.

[52] The location of the Residential Sales Centre is at the entrance of the subdivision.

[53] The Board accepts the presentation of the Respondent that the traffic counts do not appear to be an issue.

[54] The Board finds that the Residential Sales Centre has a temporary permit for this site which will expire in two years from the date of the decision.

[55] The Board finds that the subject Site will be decommissioned as a Residential Sales Centre and moved on to the next stages in Rosenthal.

[56] The Board reviewed the 2015 SDAB Decision submitted by the Appellant and found that the two applications are different. The 2015 Decision dealt with a proposed showhome in a Mature Neighbourhood that had no designated Sales Centre and it had significant locational differences including sidewalks and busy arterial roads that it abuts.

Mr. V. Laberge, Presiding Officer
Subdivision and Development Appeal Board

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
Subdivision & Development Appeal Board

10019 – 103 Avenue NW
Edmonton, AB T5J 0G9
P: 780-496-6079 F: 780-577-3537
sdab@edmonton.ca
edmontonsdab.ca

Date: December 16, 2016
Project Number: 221368646-003
File Number: SDAB-D-16-311

Notice of Decision

[1] On December 1, 2016, the Subdivision and Development Appeal Board heard an appeal that was filed on November 10, 2016. The appeal concerned the decision of the Development Authority, issued on October 21, 2016, to approve the following development:

> Construct interior and exterior alterations to a Single Detached House (change roofline, add window, interior doors, second floor kitchen)

[2] The subject property is on Plan RN50 Blk 101 Lot 3, located at 11511 Fort Road NW, within the RF3 Small Scale Infill Development Zone. The Mature Neighbourhood Overlay applies 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 plans;
- Approved Development Permit decision;
- Copies of the approved plans;
- August 2016 Real Property Report;
- Development Officer's written submissions, dated November 30, 2016;
- Petition signed in support of the development; and
- Appellant's written submissions and supporting documentation.

Preliminary Matters

[4] 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.

[5] The Presiding Officer outlined how the hearing would be conducted, including the order of appearance of parties, and no opposition was noted.

[6] The decision of the Development Officer was dated October 21, 2016. The Notice of development was published in a daily newspaper on October 27, 2016, pursuant to section 20.1(3) of the *Edmonton Zoning Bylaw 12800*. The appeal was filed on November 10, 2016. The Board finds that the appeal was filed on time, in accordance with section 686(1)(b) of the *Municipal Government Act*, RSA 2000, c M-26.

Summary of Hearing

i) Position of the Appellant, Parkdale-Cromdale Community League

[7] The Community League was represented by Mr. R. Williams.

[8] Mr. Williams explained that residents were concerned that the application for a Single Detached Housing dwelling is incompatible with the actual description of the work, which appears to be for a Secondary Suite. Referring to documents included in Appendix 1 of the Community League's submissions, he submitted that the Applicant has misled the City's planning department in the past.

[9] The Board noted that the Development Officer has clearly indicated on the proposed plans that Secondary Suites are not to be permitted. The Appellant stated that he had not been aware of this detail, but maintained that residents are concerned about the development for the previously stated reasons.

[10] While the Appellant recognized that violation notices issued by Alberta Health Services are outside the jurisdiction of this Board, he submitted that this information is relevant to the Development Officer's consideration as to whether a development will have a material impact upon the neighbouring properties.

[11] Upon questioning by the Board, Mr. Williams was unable to speak to the previous alterations to this property. He confirmed that he is visually familiar with the property and can only speak to the current or proposed development.

ii) Position of the Development Authority

[12] The Development Authority was represented by Mr. G. Robinson.

<u>Background Information</u>

[13] Mr. Robinson explained that the building is an old structure, with the most recent record on file being from 1946 for a Development Permit for a beauty parlour in the current living room space. Since 2000, there has been no approved permit for the parlour, and therefore, that non-conforming use has expired. He noted that there is an encroachment agreement in place for the property's encroachment onto the public right of way. As the encroachment agreement is very old, there are not many conditions attached.

[14] Mr. Robinson also reviewed the submitted plans. He stated that it was his understanding that the Real Property Report represents the current situation. As per the plans, only the second floor is permitted to have cooking facilities.

Section 643(5)(c) "Minor Variance Powers"

a) Consideration of Height Alteration

[15] The Board noted that under section 643(5)(c) of the *Municipal Government Act*, one of the criteria in which a non-conforming building may be enlarged, added to, rebuilt or structurally altered is "in accordance with a land use bylaw that provides **minor variance powers** to the development authority for the purposes of this section." [emphasis as reflected in the questioning] Referring to photographs submitted which indicated a structural alteration to the roof and subsequent increase in Height, the Board questioned whether such an alteration could be considered "minor".

[16] In reply, the Development Officer stated that there is no actual Height variance being granted, as the altered Height remains below both the maximum allowed for the underlying RF3 Zone (6.93 metres), as well as the Mature Neighbourhood Overlay (6.86 metres). As such, although it could be argued that the increase in Height has added living space to the second floor, he would not consider that a major variance. However, he acknowledged that the Board may have a different interpretation.

[17] The Board noted that although the building footprint has not changed, the structural alterations made to the Height of the building could contribute to increased massing. In addition, the deficiencies in the Setbacks could further exacerbate the massing effect. The Board questioned whether this potential impact could be considered "minor".

[18] The Development Officer referenced the document titled "City of Edmonton: Additions and Alterations to Non-Conforming Buildings", which he submitted as Exhibit "A". As per the document, the phrase "minor variance" is not defined. It is therefore the department's practice to encourage applicants to avoid increasing the non-conforming factors. In this case, although he acknowledged that there is an increase in massing, the application ultimately does not increase the non-conformity of the building.

b) Consideration of Lifecycle of Non-conforming Building

[19] Having reviewed Exhibit "A", the Board noted that the document sets out a number of potential factors to consider when determining a "minor variance". The Board questioned whether these factors or any factors were considered by the Development Officer in this regard. Mr. Robinson stated that he considered a number of factors, including whether the development would aggravate the non-conformity, or result in a change in building footprint or the Use. However, when questioned as to whether he considered that the development might extend the lifecycle of the non-conforming building, he acknowledged that he was not sure whether he turned his mind specifically to that point.

[20] Exhibit "A" also quotes a previous decision of the Calgary Subdivision and Development Appeal Board: "The purpose 'of section 634(5) seems to be the expectation of the Legislature that a non-conforming building after the end of its economic lifespan over time will be phased out or at some point in time would become compliant to the land use bylaw in effect.'" The Board noted that in this case, the alterations appear to include the removal of walls, increase in living space, and changes to cooking and washing facilities. The Board questioned whether these alterations could be considered to add to the lifespan of this non-conforming structure. In reply, Mr. Robinson stated that although he was not an engineer, one might argue that the lifespan has been increased.

[21] The Board drew attention to his written report which indicated seven deficiencies resulting in the non-conformity. In response to questioning, Mr. Robinson stated that he would not have granted the seven variances if this application were for an entirely new development. The structure is encroaching upon city property, and the city does not approve encroaching developments.

iii) Position of the Respondent, Home Placement Systems

[22] The Respondent was represented by Mr. A. Shah. He was accompanied by Ms. J. Wong and Ms. S. Fassman.

[23] Mr. Shah provided a brief overview about the history of the subject development. He explained that when he purchased the property, the previous owner had already initiated various alterations, as they had intended to develop four suites. At the time, he was unaware as to whether permits had been granted for those alterations. When Mr. Shah came into ownership of the building, he decided that the simplest development was to revert the four suites back to a Single Detached House.

[24] Mr. Shah submitted that the Appellant's appeal was frivolous and vexatious, and that the Community League was using this opportunity to complain about the property owner and tenants. He submitted that the Development Authority must make its decision based on the proposed Use, not the user. Referring to the violation notices from Alberta Health Services that had been submitted by the Appellant, Mr. Shah pointed out that it is not out of the ordinary to have three to four orders per year, when one considers the number of properties he manages.

[25] It was his view that the Development Authority made the correct decision, and that there would not be a negative material impact upon the neighbouring properties, as reflected in the petition of support he had provided to the Board. The Board noted that out of all the signatures, it would appear that only one was located within the 60 metre notification radius. Mr. Shah stated that he was not the individual who conducted the community consultation, and that the consultation excluded feedback from his own properties.

[26] He noted that none of the deficiencies identified in the Development Officer's report add to the existing non-conformity, and that the permit recognizes that the house is a legally

non-conforming building. He submitted that non-conforming buildings are characteristic of the area.

Lifecycle

[27] With respect to the Board's previous questioning of the Development Authority regarding extending the lifecycle of a non-conforming building, Mr. Shah directed the Board to its previous 2015 decision, file reference SDAB-D-15-138, wherein the Board did not take lifecycle into account.

[28] Upon questioning by the Board, Mr. Shah acknowledged that there is nothing in either the Board's "Decision" or "Reasons for Decision" from SDAB-D-15-138 stating that lifecycle was not taken into account. However, he noted that when discussing the development with the Development Officer, it was agreed that no foundation work would be required, and that neither the square footage nor the building footprint would be altered.

Parkdale Area Redevelopment Plan

[29] Mr. Shah referenced various sections of the ARP, including Plan Goal 2, which states: "To maintain Parkdale as a stable, family oriented residential community." He also noted that Policy 2.3 General Land Use Policy states: "Future residential development in Parkdale will provide for a mix of unit types. This will be defined by size, amenity space, and access. Family oriented housing will be especially encouraged."

[30] He submitted that the proposed development aligns with the ARP, that the footprint remains unchanged, and that the development therefore remains compatible with the surrounding neighbourhood.

"Minor" Variance

[31] Mr. Shah stated that his plans for the development is to put it on the market, but if it does not sell within 90 days, then he intends to rent out the property.

[32] Based on the amount of work that would have to be done to realize his goals, the Board questioned whether he would characterize those alterations as "major" or "minor". Mr. Shah stated that for the average person, the changes may possibly be considered "major"; however, from his perspective, as someone who has flipped a number of properties, he would not consider these changes "major".

[33] Upon questioning by the Board, Mr. Shah confirmed that the pre-existing pony wall located on the southeast of the building was approximately 1.5 to 2.0 feet high; with the alterations, the wall has been increased approximately 5.5 feet, for a total of about 7.5 feet.

[34] The Board also questioned whether structural supports such as beams were added. Mr. Shah confirmed an engineer did find that a lack of trusses for the roof presented a safety concern, as it prevented the roof from bearing any loads. As a result, structural supports were added to address this concern.

iv) Rebuttal of the Appellant

[35] The Community League reiterated that the development should be refused as it will have an undue impact upon the amenities of the neighbourhood. The Appellant also noted that depending on the number of people living in the building, parking could be impacted.

Decision

[36] The appeal is ALLOWED and the decision of the Development Authority is REVOKED. The development is REFUSED.

Reasons for Decision

Background Information

[37] The proposed development is for the construction of interior and exterior alterations to a Single Detached House, which is a Permitted Use in the RF3 Small Scale Infill Development Zone. The proposed alterations, as set out in the Scope of Application, include roofline change, and the addition of windows, interior doors, and a second floor kitchen.

[38] In the Development Authority's decision to grant the development, it was noted that the property is a "Non-Conforming Building – This house no longer conforms to current zoning rules… This permit does not increase the non-conformity of the building front, side or rear setbacks, eave projections, the Site area, the Site depth, or Site Coverage." The development was accordingly granted as a Class B Discretionary Development.

Relevant Legislation

[39] Typically, when faced with an appeal that does not comply with the land use bylaw, the Board must determine whether the development meets the test established under section 687(3)(d) of the *Municipal Government Act.* Where the Board finds that the development would not unduly interfere with the amenities of the neighbourhood, or that it would not materially interfere with or affect the use, enjoyment or value of neighbouring parcels of land, the Board *may* grant variances to those development regulations and approve the development.

[40] However, in the case of non-conforming buildings, the Board must take into account section 643 of the *Municipal Government Act*, in particular, subsections (1) and (5) as follows:

> **Non-conforming use and non-conforming buildings**
> **643(1)** If a development permit has been issued on or before the day on which a land use bylaw or a land use amendment bylaw comes into force in a municipality and the bylaw would make the development in respect of which the permit was issued a non-conforming use or non-conforming building, the development permit continues in effect in spite of the coming into force of the bylaw.
> …
> **(5)** A non-conforming building may continue to be used but the building may not be enlarged, added to, rebuilt or structurally altered except
>
> (a) to make it a conforming building,
>
> (b) for routine maintenance of the building, if the development authority considers it necessary, or
>
> (c) in accordance with a land use bylaw that provides minor variance powers to the development authority for the purposes of this section.

[41] Under section 643(1), a Use or building becomes "non-conforming" by virtue of an amendment to the land use bylaw which would result in the existing development no longer complying with the new regulations. Under section 643(1), the development permit that had been previously granted for the existing development remains in effect. As such, although the building no longer complies with the development regulations in the land use bylaw, it is considered a "legally" non-conforming building by operation of section 643(1), and may therefore continue to be used.

[42] However, although the non-conforming building may continue to be used, it may not be enlarged, added to, rebuilt or structurally altered, *except* in the three circumstances as set out under subsections 643(5)(a) to (c).

[43] Before engaging in its discussion regarding the applicability of section 643(5), the Board notes that sections 643(2) through (4) were not specifically addressed by the parties at the hearing. Notwithstanding, the Board provides the following comments with respect to those sections:

a) Section 643(2) states that where a non-conforming use has been discontinued for a period of six consecutive months or more, any future use of the land or building must conform with the land use bylaw then in effect. Based on the evidence submitted by the Development Officer with respect to the history of development for the subject Site, and noting that there were no submissions in this regard by the parties, the Board

finds that the previously approved beauty parlour granted in 1946 has expired. It may therefore be argued that any future use of the subject land or building must conform with the land use bylaw now in effect. That being said, the Board recognizes that though there is a lack of records, the subject Site was at some point in time approved for a Single Detached House and this Use otherwise continues for the subject Site.

b) Section 643(3) states that although the non-conforming use of part of a building may be extended throughout the building, the building itself may not be enlarged, added to, or structurally altered. The Board notes that this section is subject to the exceptions as set out in subsections 643(5)(a) to (c), which will be further discussed in the reasons that follow.

c) Section 643(4) prohibits both the extension or transference of the non-conforming use to any other part of the lot, as well as the construction of any additional buildings on that lot while the non-conforming use continues. The Board heard no submissions in this regard, and accepts that this issue is not before the Board.

Legal Issues

[44] The Board must therefore turn its mind to the following legal issues:

1) Is the subject building a non-conforming building as contemplated under section 643(1)? If not, the Board falls back on its standard test under section 687(3)(d), and need not consider section 643(5). However, if the subject property is a non-conforming building, the Board must continue its enquiry under section 643(5).
2) If the subject building is a non-conforming building, do the proposed interior and exterior alterations constitute an "enlargement, addition, rebuild or structural alteration" as contemplated under section 643(5)? If not, then the enquiry ends, as a non-conforming building is permitted to remain so long as it is not being enlarged, added to, rebuilt, or structurally altered.
3) However, if the subject development does propose to enlarge, add to, rebuild or structurally alter a non-conforming building, is it doing so under one of three exceptions identified in subsections 643(5)(a) to (c)? If yes, then the alterations may be allowed; if not, then the alterations are prohibited under section 643(5), and the development must be refused.

Analysis

i) The Board finds that the proposed development is a non-conforming building as contemplated under section 643(1).

[45] During the course of the hearing, the Board heard from all parties that the subject building is old. The Respondent said that the building had been built in 1920. The Development Officer's written submissions states that the most recent approved Development Permit on record for the subject house is a 1964 permit for a beauty parlour, attached to a single family dwelling.

[46] The Development Officer identified seven deficiencies to the subject development, when reviewed against the current regulations, including deficiencies to the Front/Rear/Side Setbacks, eave projections, minimum Site Area, Site depth, and Site Coverage.

[47] None of the parties before this Board raised objections or disagreed with these seven identified deficiencies.

[48] As such, the Board accepts that an approved Development Permit was granted for the subject Single Detached House sometime prior to 1964. As a result of amendments to the land use bylaw, including the 2001 amendments that resulted in the current *Edmonton Zoning Bylaw 12800* and the Mature Neighbourhood Overlay, which applies to the subject property, the existing Single Detached House no longer complies with the development regulations of the current land use bylaw.

[49] As such, the Board finds that the proposed development is a non-conforming building as contemplated under section 643(1).

ii) The Board finds that the proposed alterations constitute an enlargement, addition, or structural alteration to a non-conforming building.

[50] The Board reviewed all information provided by the parties, including both written and verbal submissions. Based on the proposed plans and photographic evidence, the Board finds that the proposed development includes an addition to the second floor of the southeast façade of the building, wherein a pony wall of approximately 1.5 to 2.0 feet in Height has been structurally altered such that it is now approximately 7.5 feet in Height. As a result of this change to the roofline, what was previously non-liveable space due to a lack of headroom is now liveable space. Though the square footage has not increased, the additional Height has resulted in a volumetric enlargement inside the house, while enlarging the exterior façade as well.

[51] During the hearing, the Board also heard from the Respondent that an engineer visited the Site and recommended structural changes be completed to ensure that the roof can bear loads. In a memorandum dated May 19, 2016, CMG Engineering Services provided the following information:

> We recently submitted a brief report on the spatial layout and structural details of this property on which renovations are being carried out by Home Placements Ltd. This addendum note concerns the upper floor.
>
> On the ***north*** side of the house, the slope of the roof has required short internal vertical walls to be built along the side blocking off normal access to the triangular space at the eaves, thus somewhat reducing available floor space from that of the full plan area. On the ***south*** side the roof level has been raised, so the full floor plan area is made available - but no floor space has been added. [emphasis as per original document]

[52] From the documents provided to this Board, it is evident that an engineering inspection and report was conducted for the subject property. Though the entirety of the report was not provided for the purposes of this appeal, the Board accepts the evidence of the Respondent that an engineer recommended structural alterations to the building for safety purposes, and that these recommendations were implemented.

[53] Based on the verbal submissions of the parties, as well as the documentary evidence submitted, the Board finds that the change to the roofline as contemplated in the Scope of Application, and as set out in the memorandum from CMG Engineering Services, amount to an enlargement, addition, and structural alteration which was made (or was in the process of being made) to both the north and south side of the house (or more accurately, the southwest, northeast and southeast elevations).

iii) The Board finds that the proposed enlargement, addition, and structural alteration (collectively, the "proposed alterations") do not fall under any of the three exceptions contemplated under subsections 643(5)(a) to (c).

[54] Under section 643(5), a non-conforming building may not be enlarged, added to, or structurally altered *except* in three circumstances.

[55] The first of these exceptions under subsection 643(5)(a) is that the proposed alterations are for the purposes of making the building a conforming building. No information was presented to this Board that the development proposes to make the house a conforming structure. Indeed, it was the submission of the Development Authority – which was uncontested by the other parties – that the proposed development does not comply with seven development regulations, and that the development will not remedy these deficiencies. The development therefore does not fall under this first exception.

[56] The second of the three exceptions under subsection 643(5)(b) is that the proposed alterations are for routine maintenance of the building, if considered necessary by the Development Authority. Again, no information was provided to this Board that the alterations were for routine maintenance. In fact, the Board heard from the Appellant that when he came into possession of the subject property, some alterations had already been made by the previous owners for the purpose of developing four suites. The subsequent change to the roofline by the Appellant was for the purpose of increasing the headroom to make that portion of the floor space accessible and liveable. The Board therefore finds that although some of the existing alterations made by the previous owners may fall under "routine maintenance" work, the second floor addition to increase headroom was not required to maintain the non-conforming structure. In fact, the alteration enlarges the structure, constitutes an entirely new construction, and therefore does not fall under this second exception.

[57] The third of the three exceptions under subsection 643(5)(c) permits a structural alteration where the Development Authority exercises a *minor variance power* provided

under the land use bylaw for the purposes of that section. It is under this third exception that the proposed alterations may be permitted. If the proposed alterations fail to fall under this final remaining exception, then the development must be refused pursuant to the general prohibition against enlargements, additions, and structural alterations to non-conforming buildings under subsection 643(5).

Subsection 643(5)(c): The determination of what constitutes a "minor variance" depends on the impact of those variances, based on the unique set of facts and circumstances surrounding each development.

[58] To determine whether the proposed alterations are "in accordance with a land use bylaw [the *Edmonton Zoning Bylaw*] that provides minor variance powers to the development authority for the purposes of" alterations to non-conforming buildings, the Board must turn its mind to the question of what constitutes a "minor variance".

[59] In this regard, the Development Authority submitted a legal memorandum titled "City of Edmonton: Additions and Alterations to Non-Conforming Buildings". The memorandum identified section 11.3(3) of the *Edmonton Zoning Bylaw* as the authority for the Development Officer's variance powers to approve alterations to a non-conforming building. Section 11.3(3) states:

> 3. the Development Officer may approve, with or without conditions as a Class B Development, an enlargement, alteration or addition to a legal non-conforming building if the non-conforming building complies with the uses prescribed for that land in this Bylaw and the proposed development would not, in his opinion:
>
> a. unduly interfere with the amenities of the neighbourhood; or
>
> b. materially interfere with or affect the use, enjoyment or value of neighbouring properties.

[60] In reviewing that provision, the Board notes firstly that it provides no guidance as to what amounts to a "variance", nor does it clarify what constitutes a "minor variance", particularly for the purposes of a non-conforming building.

[61] The Board reviewed the *Municipal Government Act* as well as the relevant *Subdivision and Development Regulation*, Alta Reg 43/2002, and *Subdivision and Development Forms Regulation*, Alta Reg 44/2002, which also provide no guidance as to what constitutes a "variance" or a "minor variance." Indeed, the Board notes that there are only two occurrences of the word "variance" in the Act: one is in subsection 603.1(4)(b), in reference to the *Equalized Assessment Variance Regulation*, which has no bearing upon this appeal; the second occurrence is in the very provision which is before this Board, that being subsection 643(5)(c), and therefore provides no further enlightenment as to what constitutes a "variance". "Variance" is also undefined in the *Edmonton Zoning Bylaw*.

[62] The Board therefore applies the generally accepted usage of "variance" as understood in Edmonton's development industry, meaning a relaxation of a requirement under the development regulations of the land use bylaw that is granted by the Development Authority or this Board.

[63] In reviewing the Development Officer's reasons for approving the proposed development, the Board notes that no variances were granted. It would therefore appear that not only were there no "minor variance" powers exercised, there was in fact no variance powers *simpliciter* exercised at all.

[64] However, the Board notes the following findings as set out in the Development Officer's written submissions (page 2 of 6):

> **Appeal by an Affected Party, where the permit was approved with variances to the regulations**
> Upon review of the application, it was found that the development did not meet the current regulations for:
>
> - Front Setback
> - Rear Setback
> - Side Setback
> - Eave projections
> - Minimum Site Area
> - Site depth
> - Site Coverage
>
> …
> - The variance will not unduly interfere with the amenities of the neighbourhood… because this existing non-conforming building is not being added to or changed to alter any of the existing setbacks or regulations. [formatting as per original document]

[65] The Board disagrees with the findings and approach of the Development Officer.

[66] First, the Board notes that even in the Development Officer's own submissions, the seven deficiencies are referenced twice as "variances". Although no "variances" were granted in the Development Officer's approval decision, issued on October 21, 2016, the Board finds that by granting the subject development, the Development Officer has implicitly granted variances to the seven deficiencies, effectively eliminating the non-conformities and approving an "as-built" permit.

[67] Indeed, in the aforementioned legal memorandum from the Development Authority, it was noted that "Bringing about conformity may occur in one of two ways: (a) by altering the structure to make it [a] conforming building, as authorized under s. 643(5)(a) [of the *Municipal Government Act*], or *(b) to bring an application for 'as-built' variances to the Zoning Bylaw to make it a conforming structure*." [emphasis added] Since the proposed development does not bring the subject property into conformity under subsection

643(5)(a), the Development Authority – by its very own internal policy – has effectively granted the seven "as-built" variances and made the subject building a conforming structure. It would therefore appear that the Development Officer misapplied his own department's internal document.

[68] Second, the Development Officer notes in his written submissions that the "existing non-conforming building is not being added to or changed to alter any of the existing setbacks or regulations." However, the third arm of the test for alterations to non-conforming structures as set out under subsection 643(5)(c) is not whether the development will alter or change the existing non-conformities. Rather, the test is whether the variances required to effect the requested structural alterations amount to "minor variances".

[69] In the absence of guidance from the Board's enabling statute, the Board has reviewed relevant case law. It is noted that in *Smithers v Olsen*, 60 BCLR 377, 1985 CanLII 371, the British Columbia Court of Appeal found that the Board's approval of a requested 20% variance did not fall outside the definition of a minor variance in those circumstances. In *Metchosin (District of) v Metchosin Board of Variance*, 105 DLR (4th) 419, 81 BCLR (2d) 156, 1993 CanLII 2882, the British Columbia Court of Appeal found that it was within the Board's jurisdiction to make a finding that a 47% reduction in the front setback, and a 70% reduction in the rear setback, constituted a "minor variance", and that it met the applicable standard of reasonableness in the circumstances.

[70] The Board notes that the previously cited decisions were issued from the British Columbia Court of Appeal, and are not binding on this Board. However, they provide insight into determining what amounts to a "minor variance". In essence, the quantitative value of the variance is not the central issue; rather, it is the impact of those variances, given the circumstances surrounding the development, that factors into whether the required variances are "minor" in nature. In sum, the case law indicates that each development and its respective variances must be considered independently, based on the unique set of facts surrounding each matter.

[71] In determining what might constitute those relevant factors, the Board found persuasive some of the information provided by the Development Authority in the aforementioned legal memorandum (Exhibit "A"). The Board notes that this document is an internal policy document, and the Board is not bound by this document. However, having reviewed the relevant case law concerning minor variances, the Board finds that the document aligns in large part with the existing case law, in particular:

> **Minor** is not a defined term in the Zoning Bylaw or *Municipal Government Act*, and therefore must be given its ordinary meaning: "comparatively unimportant" (Merriam-Webster), "not serious [or] important" (dictionary.com), or "lesser in importance, seriousness or significance" (Oxford Online). On this basis, "minor" alterations to a non-conforming structure might include:
>
> - …

- Minor exterior alterations that do not serve to significantly extend the life of the non-conforming structure;

Factors in determining whether an alteration is *minor* might include cost of the alteration, degree of visibility from outside the structure, whether the alteration aggravates or intensifies the non-conformity, and/or whether the alteration will substantially impact the lifespan of the structure.

Where an application is received for an addition or alteration to a non-conforming structure, the preferred course of action is for the structure to be first brought into conformity- either physically or legally. [formatting as per original document.]

[72] First, the Board notes that even in the Development Authority's own internal policy document, the prolonging of a non-conforming building's lifespan is one of the factors in determining whether a variance is "minor" in nature. Yet during the hearing, the Board heard from the Development Officer that this factor was not specifically considered when the application was being reviewed. Under questioning, the Development Officer acknowledged that although he was not an engineer, it could be argued that the proposed alterations could extend the life of the non-conformities.

[73] Second, the document sets out other factors that might be considered, such as whether the alteration might impact the degree of visibility from outside the structure. During the hearing, the Board heard from the Development Officer that he did not consider this aspect, as the proposed alteration to the roofline still falls under the maximum Height regulations under both the Mature Neighbourhood Overlay and the underlying zone.

[74] While the maximum Height regulations might serve as limitations for regular development applications, the property before this Board is a non-conforming building. The determining factor is therefore not whether the proposed alterations fall within the development regulations of the land use bylaw. Indeed, it is because the development *does not* comply with the current regulations that it is characterized as a non-conforming building, thereby triggering section 643(5).

[75] Again, the Board stresses that where structural alterations are proposed for a *non-conforming building*, and where those alterations are not to bring the building into conformity nor for regular maintenance, the alterations may only be approved where they would require "minor variances". The Board finds that massing and the degree of visibility from outside the structure are relevant factors in this determination. In this regard, the Board does not support the conclusions of the Development Officer, who acknowledged that these factors were not specifically considered when he issued the permit.

Subsection 643(50)(c): The required variances to the seven deficiencies, combined with the cumulative impact in the change in roofline and Height, do not constitute "minor variances".

[76] Having found that in granting this development, the Development Officer has effectively eliminated the non-conformities by granting "as-built" variances, the Board must determine whether the circumstances surrounding this development would result in these variances being characterized as "minor" variances.

[77] In making this determination, the Board considered only relevant planning factors. During the course of the hearing, both the Appellant and Respondent provided submissions with respect to violation notices from Alberta Health Services, the Respondent's reputation in the media, and the problems caused by tenants in the Respondent's other rental properties. The Board placed no weight on this information, as they relate to matters that are outside the jurisdiction of this Board. The Board further notes that had it granted the development and should anything different than what was approved occur on the Site, those subsequent concerns would be a matter of enforcement and similarly fall outside the purview of this Board.

[78] As noted above in paragraphs 58 to 75, there is no clear definition of a "minor variance". The Board therefore considered relevant factors such as the change in the roofline, which increases the building Height and massing effect. In particular, the Board notes that one of the identified deficiencies is the Rear Setback. While the building Height remains below the maximum allowed under the Mature Neighbourhood Overlay, the massing effect of the second floor enlargement to the southeast portion of the development is further exacerbated by the Rear Setback deficiency. In particular, the massing effect and impact upon privacy to both the southeast and southwest elevations is further exacerbated by the reduced setback.

[79] Furthermore, the Board notes that the Development Officer acknowledged that if this were an application for an entirely new development, the Development Authority would not have granted variances to the seven deficiencies.

[80] As such, the Board finds that the required Rear Setback variance, combined with the cumulative effect of the increase in Height, amounts to a major variance.

[81] The Board was in receipt of a petition of support from the Respondent. However, the Board was not persuaded by the petition, as only one of the addresses was located within the 60 metre radius, and this address was not any one of the most affected neighbours immediately adjacent to the subject property. It would appear that the neighbours most directly affected by the proposed development were not consulted.

[82] For the reasons stated, the Board finds that the proposed alterations include an enlargement, addition, and structural alteration to a non-conforming building that does not fall under any of the three exceptions to which such alterations are permitted under

subsections 643(5)(a) to (c) of the *Municipal Government Act*. Accordingly, the development is denied.

Mr. V. Laberge, Presiding Officer
Subdivision and Development Appeal Board

Board Members in Attendance:
Mr. N. Somerville; Mr. R. Handa; Mr. R. Hobson; Mr. J. Wall

CC: Parkdale-Cromdale Community League, Attn: Richard Williams
City of Edmonton, Sustainable Development, Attn: George Robinson / Anlin Wen

Important Information for the Applicant/Appellant

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*, 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.

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.

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.