EDMONTON
TRIBUNALS
Subdivision & Development Appeal Board

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Date: July 21, 2016
Project Number: 185799584-006
File Number: SDAB-D-16-154

Notice of Decision

[1] On July 6, 2016, the Subdivision and Development Appeal Board (the Bheard an appeal that was filed on **June 8, 2016**. The appeal concerned the decision of the Development Authority, issued on June 2, 2016, to refuse the following development:

> **To construct an Accessory Building (rear detached Garage, 8.23 metres by 9.75 metres)**

[2] The subject property is on Plan 8111ET Blk 8 Lot 6, located at 12331 - 81 Street NW, within the RF1 Single Detached Residential Zone. The Mature Neighbourhood Overlay applies to the subject property.

[3] The following documents, which were received prior to the hearing and are on file, were read into the record:

- A Development Permit Application, including the plans of the proposed Development;
- The refused Development Permit; and
- The Development Officer's written submissions.

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

- Exhibit A – Community Consultation and pictures

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*, RSA 2000, c M-26 (the "*Municipal Government Act")*.

Summary of Hearing

i) Position of the Appellant, Mr. J. Demelo

[8] The Appellant submitted Exhibit A, which included pictures of detached garages around city and the neighbourhood and a community consultation.

[9] The Appellant submitted that no individuals had issues with the increased height of the detached garage. He was not able to get in contact with the neighbours to the north, who just sold the house. The neighbour to the south is a tenant who had no issue with the proposed development. Individuals whom he consulted with were shown plans of the proposed garage and house. The areas in question were highlighted and variances explained.

[10] For the last 15 to 20 years, the Appellant has been paying rent to lease a space to conduct artistic work. He does not profit from these activities. He is looking for a rent-free space with no interruptions. The proposed garage is higher than the regulations allow because it will have studio space above it where he can pursue his artistic work.

[11] The roof line of the proposed detached garage will match the home, which is currently being built.

[12] Upon questioning from the Board regarding what exists on the adjacent properties, the Appellant stated to the north of the proposed garage is a spruce tree and to the south is a shed and detached garage. Some of the branches of the spruce tree overhang on his property and he would like to work with his new neighbour to deal with them.

[13] Upon questioning from the Board, the Appellant stated the reason for the extra height is to match the house and have enough space to make the studio comfortable.

ii) Position of the Development Officer, Ms. F. Hetherington

[14] Upon questioning from the Board, the Development Officer confirmed how she calculated the height.

[15] Upon questioning from the Board, the Development Officer confirmed that the proposed development complies with all other *Zoning Bylaw* and Mature Neighbourhood Overlay regulations. She also confirmed that the high point of the roof faces the principal dwelling to the west and that would be the greatest impact.

iii) Rebuttal of the Appellant, Mr. J. Demelo

[16] The Appellant confirmed the height variance is 4 foot 2 inches.

[17] The Appellant concluded this is his dream property and hopes the Board will approve the proposed development.

Decision

[18] 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 CONDITION and ADVISEMENT:

Condition
Eave projections on the rear detached garage shall not exceed 0.46 metres into required yards or Separations spaces less than 1.2 metres. (Reference Section 44.1(b))

Advisement
An Accessory building (rear detached Garage) shall not be used as a Dwelling. (Reference Section 50.3(1))

[19] In granting the development, the following variances to the *Zoning Bylaw* are allowed:

1. The maximum allowable building Height to midpoint of 4.3 metres per Section 50.3(2) is varied to allow an excess of 1.3 metres, thereby increasing the maximum allowable building Height to midpoint to 5.6 metres.

2. The maximum allowable building Height to the ridgeline of roof of 5.8 metres per Section 52.2(c) is varied to allow an excess of 0.7 metres, thereby increasing the maximum allowable building Height to the ridgeline of roof to 6.5 metres.

Reasons for Decision

[20] A Single Detached House is a Permitted Use in the RF1 Single Detached Residential Zone. The proposed development is Accessory to a Permitted Use and is, therefore, a Permitted Use.

[21] The two variances in issue are the maximum allowable Height of the Accessory building and the maximum allowable Height to the ridgeline of the roof.

[22] The highest point of the development, the ridgeline, faces the principal building on the site minimizing any appreciable effect on neighbouring parcels of land.

[23] The variance of 1.3 metres for the maximum allowable Height of the structure will not significantly impact neighbouring parcels because of the siting the building.

[24] The design of the building with a nearly flat roof minimizes any potential effect of the proposed development.

[25] The Appellant submitted several signatures of support for the proposed development. There were no letters of opposition received and no one appeared to oppose the proposed development.

[26] For the above reasons, it is the opinion of the Board that the proposed development will not unduly interfere with the amenities of the neighbourhood, nor materially interfere with or affect the use, enjoyment or value of neighbouring parcels of land.

Mr. M. Young, 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*, R.S.A. 2000, c. M-26. If the Subdivision and Development Appeal Board is served with notice of an application for leave to appeal its decision, such notice shall operate to suspend the Development Permit.

6. When a decision on a Development Permit application has been rendered by the Subdivision and Development Appeal Board, the enforcement of that decision is carried out by the Sustainable Development Department, located on the 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: July 21, 2016
Project Numbers: 164329606-011/188590187-002
File Numbers: SDAB-D-16-155/SDAB-D-16-156

Notice of Decision

[1] On July 6, 2016, the Subdivision and Development Appeal Board heard two appeals that were filed on **June 8, 2016**. The appeals concerned the decision of the Development Authority, issued on May 25, 2016, to refuse the following developments:

> **To construct exterior alterations (stationary mechanical system in side yard) to an existing Single Detached House.**

[2] One subject property is on Plan 1424961 Blk 25 Lot 21, located at 10746 - 123 Street NW, within the RF3 Small Scale Infill Development Zone. The other subject property is on Plan 1424961 Blk 25 Lot 22, located at 10742 - 123 Street NW, within the RF3 Small Scale Infill Development Zone. The Mature Neighbourhood Overlay and the West Ingle Area Redevelopment Plan apply to the subject property.

[3] The following documents, which were received prior to the hearing and are on file, were read into the record:

- Development Permit Applications, including the plans of the proposed Developments;
- The refused Development Permits;
- The Development Officer's written submissions;
- Online submission of support (10746 - 123 Street NW); and
- Online submission of opposition (10742 - 123 Street NW).

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

- Exhibit A – Hand-drawn rendering
- Exhibit B – Hand-drawn rendering
- Exhibit C – Picture
- Exhibit D – Picture
- Exhibit E - Picture
- Exhibit F – Revised Plan

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 appeal was filed on time, in accordance with Section 686 of the *Municipal Government Act*, RSA 2000, c M-26 (the "*Municipal Government Act")*.

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

[8] The Board notes that evidence and exhibits were applicable to both SDAB-D-16-155 (10746-123 Street NW) and SDAB-D-16-156 (10742-123 Street NW). The Board noted in its decision when specific portions were allocated to a specific address.

Summary of Hearing

*i) **Position of the Appellants, J. Wass and G. Papas for Haya Homes***

[9] The Appellants stated a fence surrounds the air conditioning units and several trees (mainly cedars) surrounds the property which mitigates any potential noise emissions.

[10] The Appellants submitted that the air conditioning units have an approximate decibel rating of 75 at full capacity. The units were installed in May 2016 but have never been operated, so none of the neighbours would have heard any sounds from them.

[11] Upon questioning from the Board why the units were not installed in the rear, the Appellants stated they hired a professional company to install the units. The installer was not aware of any restrictions on the placement of air conditioners and they have never had any complaints with the placement of units in side yards before. Typically units are placed on the side.

[12] Upon questioning from the Board, the Appellants confirmed that the new air conditioning units are high efficiency and would keep the noise down. The unit they chose is the least noisy that could be installed but still work for the size of the house.

[13] Upon questioning from the Board regarding why the units were not installed on the side yards between the two new houses, the Appellants stated the units should be as close as possible to the mechanical room for a shorter pipe length. Keeping the pipe length as short as possible would increase the efficiency of the units, meaning they would not have to run as much. Further, the space between the houses was used for walkways from the front of the lots to the rear. Placing the air conditioning units there would interfere with these walkways. The property drains towards the front. The Appellant submitted a hand-drawn diagram to illustrate, marked Exhibit A.

[14] Upon questioning from the Board, the Appellants stated the approximate size of each unit is three feet by three feet by three feet and sits upon a frame mounted on the wall.

[15] **Specifically for SDAB-D-16-155 (the "north property"):** The subject site of 10746 – 123 Street NW abuts two properties to the north. One neighbour is in attendance at the hearing and supports the location of the air conditioning unit. The Appellants spoke to the other neighbour, who has no objection, but provided nothing in writing. The Appellant was unsure of the exact window placement of that neighbour's house.

[16] **Specifically for SDAB-D-16-156 (the "south property")**: The subject site of 10742 – 123 Street NW is located closer to the front property line as compared to the neighbour to the south so there should be minimal sound resonation (Exhibits D and E). If the air conditioning unit was located in the rear, there is more potential for sound to bounce off the garage. The Appellants stated the air conditioning unit is located in front of the fireplace.

ii) ***Position of the Development Officer, M. Ziober***

[17] The Development Officer reviewed her written submissions. Each application is to construct exterior alterations (stationary mechanical system in side yard) to an existing Single Detached House. The properties are zoned RF3 and a Single Detached House is a Permitted Use.

[18] The Development Officer included a portion from the West Ingle Area Redevelopment Plan, highlighting that one side of the dwelling should be kept free to ensure free flow to amenity space, which supports the Appellants' desire to place the units on the exterior side yards rather than the interior side yards where the walkways are.

[19] The Development Officer stated that each unit was installed without a Development Permit and violation notices had been issued after a complaint was received regarding the unit at the south property. The process requiring Development Permits for air conditioning units is relatively new. Section 45.8 of the *Edmonton Zoning Bylaw* was enacted in 2013. The ideal placement for air conditioning units, whether side yard or rear yard, will be subjective and difficult to regulate.

[20] The Development Officer stated that whether the Site width is 7.5 metres or 10 metres, the minimum Side Setback requirement is 1.2 metres. She is not entirely clear why Section 45.8 of the *Edmonton Zoning Bylaw* only requires an air conditioning unit be placed in the rear if the Site Width is less than 9.0 metres. She stated it is most likely because the density with "skinny lots" is greater so perhaps this provision was passed to mitigate any potential impact. However, she felt that, since the minimum Side Setback requirements are the same regardless of Site Widths, the noise impact of an air conditioning unit in a side yard could be the same on wider lots as it is on skinny lots.

[21] The Development Officer has suggested only one condition for the Board's consideration:

> "This Development Permit authorizes the development of exterior alterations (stationary mechanical system in side yard) to an existing Single Detached House. The development shall be constructed in accordance with the stamped and approved drawings."

[22] Upon questioning from the Board, the Development Officer agreed that moving the air conditioning unit from the side yard to the rear yard will not necessarily lessen any impact of the unit. In fact, it could potentially have greater impact in the rear where it would be closer to amenity areas.

[23] The Development Officer confirmed there are no other requirements if a unit is located in the rear yard and can be placed anywhere along the house.

[24] The Development Officer confirmed air conditioning units still have HVAC and electrical permits requirements.

[25] The Development Officer confirmed the City does have a noise bylaw regulation, under the Community Standards Bylaw. The decibel rating of the proposed units is in the realm of typical outdoor background noise that one hears daily. She would need to confirm with a bylaw enforcement officer whether they would issue a ticket for this sound.

[26] **Specifically for SDAB-D-16-156, the south property**: The Development Officer confirmed that the house on the property at 10742 – 123 Street NW is located approximately two feet closer to the front property line as compared to the house to the south. The Development Officer noted that the plan shows the air conditioning unit as being located to the rear of the fireplace. However, the Appellants' evidence is that it is located to the front of the fireplace. The plan was revised to reflect its proper placement (Exhibit F). The placement of the unit towards the front would lessen any potential noise impact becasue not all of the noise would reverberate between the houses.

iii) ***Position of Affected Property Owners in Support of the Appellant, M. Galandak***

[27] The neighbor came to the hearing to support the current location of the air conditioning unit for 10746-123 Street NW, the north property. He submitted a hand-drawn diagram, marked Exhibit B, to illustrate the location of his property in relation to the unit.

[28] The neighbour stated new developments are allowed very few windows on the sides of properties and most are located on the front and back.

[29] In his opinion, if the air conditioning unit was located in the rear yard, it would be more disturbing to him. This would especially be the case for his children, whose bedrooms are located in the rear of his house.

[30] The neighbour stated the air conditioning unit is shielded by a fence. Also, it is shielded by numerous trees, as evidenced in the picture, marked Exhibit C. He was not even aware of the unit until he received notice of the hearing.

[31] The neighbor advised that his deck is located approximately four feet from each property line. His other neighbour has a shed closest to the air conditioning unit.

iv) ***Position of Affected Property Owners in Opposition of the Appellant located at 10738-123 Street***

[32] The neighbour located at 10738 – 123 Street submitted the following comments for the Board's review:

> This is a written response to the appeal between the property on 10742 123 Street and the development officer. We would have preferred to attend the appeal hearing in person but due to an unavoidable prior engagement it is impossible for us to do so.
>
> The stationary mechanical system referred to in the appeal is an air conditioning unit placed between our house on 10738 and 10742, the house in the appeal. The wall to wall distance between the two houses is 2.85 meters and both houses are two stories high with a roof overhang. Any mechanical sound being emitted between the two houses will resonate and stay trapped between the two houses. On the affected side of our house we have three windows on two floors that open, and during the summer they are open the vast majority of the time for air flow and temperature control. When turned on, the air conditioning unit at its current location will significantly impact our enjoyment within our home due to its noise pollution.
>
> We were surprised to see that the air conditioning unit was installed at the end of March 2016 in a location that is in clear violation of section 45.8 of the zoning bylaw and without consultation with us as direct neighbours.
>
> For the reasons described above we respectfully request that section 45.8 of the zoning bylaw (Objects Prohibited or Restricted in Residential Zones) remains honoured, and that the air conditioning unit is removed from the side of the property on 10742 123 Street.

v) Rebuttal of the Appellant

[33] The Appellants stated it is not feasible to place the air conditioning units at the rear because of the placement of an electrical meter on one corner and a gas meter on the other corner of each house, which require a 3.5-foot clearance. There are also a rear decks that the air conditioning units may interfere with.

[34] The Appellants stated that many properties in Edmonton have air conditioning units located in the side yard and wondered about the ramifications of this regulation.

[35] The Appellants provided the exact dimensions of the air conditioning units.

[36] **Specifically for SDAB-D-16-156, the south property**: The Appellants agreed with the revised plans as showing the correct location of air conditioning unit at 10742 – 123 Street NW.

Decision

[37] The appeals are ALLOWED and the decisions of the Development Authority are REVOKED. The developments are GRANTED as applied for to the Development Authority, subject to the following CONDITION:

i. This Development Permit authorizes the development of exterior alterations (stationary mechanical system in side yard) to an existing Single Detached House. The development shall be constructed in accordance with the stamped and approved drawings by the Board.

[38] In granting the developments, the Board waives the requirements of Section 45.8 of the *Edmonton Zoning Bylaw*, which states on a Site in a residential Zone, any component of a stationary mechanical system that emits noise or is designed to emit noise outside of a building that is audible on any Abutting Site in a residential Zone; and is located on, or Abutting, a Site in a residential Zone that has a Site Width of less than 9.0 metres, shall be located in a Rear Yard.

Reasons for Decision

[39] A Single Detached House is a Permitted Use in the RF1 Single Detached Residential Zone. The proposed developments, therefore, are alterations to a Permitted Use.

[40] The Board heard from the Development Officer that Section 45.8 of the *Edmonton Zoning Bylaw* is a relatively new regulation and there are very few instances where it had been enforced to date. The regulation limits where a mechanical system, such as an air conditioning unit that emits noise, can be place on a lot that is less than 9.0 metres wide.

[41] The Board notes that the minimum Side Setback is 1.2 metres for narrow lots like these as well as for wider lots. This means that a house on a larger lot could have an air conditioning unit located just as close to the neighbouring property as the units on these properties. It is difficult for the Board to reconcile why air conditioning units on narrow lots should be restricted to the rear yard if the concern is to limit the noise impact on neighbours because it could be the same in both cases. The Board must evaluate each case on its own merits to determine if requiring air conditioning units to be located in rear yards is appropriate.

[42] In these cases, the Board heard evidence that leads it to believe that allowing the units to remain in their current locations will not unduly or materially interfere with the neighbourhood or neighbouring parcels of land.

[43] The Board was told that the units in question are the quietest versions available for that size of house. The Development Officer indicated the decibel rating for the units is equivalent to normal outdoor noises.

[44] Both air conditioning units are located towards the front of the dwellings and the Board is of the view that any noise generated will be somewhat dissipated toward the street rather than all of it reverberating between the buildings.

[45] The Board heard evidence that there are constraints on where air conditioning units can be located due to the presence of gas metres, electric metres and decks at the rear of the houses and the need to provide appropriate side walkways to allow for access between the front and rear yards.

[46] The Board is of the view that placing the units in the rear yards of the properties would result in a greater impact on the amenity areas of neighbouring parcels of land.

[47] The northern property located at 10746 - 123 Street NW abuts two lots to the north. One of the neighbours to the north was in favour leaving the unit where it was in the side yard because moving into the rear yard would put it closer to his house and would have a greater impact on him. The Board was advised that the other neighbour to the north does not have concerns about the current location of the air conditioning unit.

[48] With respect to the northern property, the Board is of the opinion that allowing the air conditioning unit to remain at its current location 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.

[49] With respect the southern property located at 10742 – 123 Street NW, the neighbour to the south expressed concerns about the location of the air conditioning unit. The Board was advised that these air conditioning units have never been operated so the concern is based solely on the potential for excessive noise as opposed to actual noise that the neighbour has experienced. For the reasons above, the Board is of the view that the neighbour's concerns are not justified and that allowing the air conditioning unit to remain at its current location 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.

[50] For both properties, any neighbours affected by excessive noise caused by the air conditioning units have the option of filing complaints that can be dealt with pursuant to the *Community Standards Bylaw*.

Mr. M. Young, Presiding Officer
Subdivision and Development Appeal Board

Important Information for the Applicant/Appellant

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2. Obtaining a Development Permit does not relieve you from complying with:

    a) the requirements of the *Edmonton Zoning Bylaw*, insofar as those requirements have not been relaxed or varied by a decision of the Subdivision and Development Appeal Board,
    b) the requirements of the *Alberta Safety Codes Act*,
    c) the *Alberta Regulation 204/207 – Safety Codes Act – Permit Regulation*,
    d) the requirements of any other appropriate federal, provincial or municipal legislation,
    e) the conditions of any caveat, covenant, easement or other instrument affecting a building or land.

3. When an application for a Development Permit has been approved by the Subdivision and Development Appeal Board, it shall not be valid unless and until any conditions of approval, save those of a continuing nature, have been fulfilled.

4. A Development Permit will expire in accordance to the provisions of Section 22 of the *Edmonton Zoning Bylaw, Bylaw 12800*, as amended.

5. This decision may be appealed to the Alberta Court of Appeal on a question of law or jurisdiction under Section 688 of the *Municipal Government Act*, R.S.A. 2000, c. M-26. If the Subdivision and Development Appeal Board is served with notice of an application for leave to appeal its decision, such notice shall operate to suspend the Development Permit.

6. When a decision on a Development Permit application has been rendered by the Subdivision and Development Appeal Board, the enforcement of that decision is carried out by the Sustainable Development Department, located on the 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: July 21, 2016
Project Number: 188462714-001
File Number: SDAB-D-16-157

Notice of Decision

[1] On July 6, 2016, the Subdivision and Development Appeal Board heard an appeal that was filed on **June 10, 2016**. The appeal concerned the decision of the Development Authority, issued on June 1, 2016, to approve the following development:

> **To construct a Semi-Detached House with front verandas, fireplaces and rear uncovered decks (3.66 metres by 5.18 metres).**

[2] The subject property is on Plan 426HW Blk 19 Lot S, located at 9534 - 73 Avenue NW, within the RF3 Small Scale Infill Development Zone. The Mature Neighbourhood Overlay and Ritchie Area Redevelopment Plan apply to the subject property.

[3] The following documents, which were received prior to the hearing and are on file, were read into the record:

- Development Permit Application, including the plans of the proposed Development;
- The approved Development Permit;
- The Development Officer's written submissions; and
- Online submission

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

- Exhibit A – Appellant's pictures
- Exhibit B – Development Officer's PowerPoint presentation
- Exhibit C – Development Officer's technical review

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*, RSA 2000, c M-26 (the "*Municipal Government Act")*.

[8] The Presiding Officer directed the parties to Section 685(3) of the *Municipal Government Act*, which states in part that "no appeal lies in respect of the issuance of a development permit for a permitted use unless the provisions of the land use bylaw were relaxed, varied or misinterpreted." The Presiding Officer directed the Appellant to focus on how the *Zoning Bylaw* was misinterpreted and on the listed variance in this matter, that is a variance to the minimum required Site Width.

Summary of Hearing

i) Position of the Appellant, M. Smith

[9] The Appellant advised the Board that the wrong Appellant property was marked in the 60-metres notification map. His property is located north, across the lane, a couple properties east of the proposed development.

[10] The Appellant raised a procedural matter. He had asked the Development Officer to provide copies of relevant records and documents he relied upon in determining whether a variance is appropriate. The Development Officer advised the Appellant he needed to make a FOIP request to access all documents. The Appellant was of the opinion that the appeal process should be transparent. He could not exactly specify which documents he was looking for, but suggested surveys, plans, or older revisions of plans. He wanted the Development Officer to state what documents he relied upon in making his decision. The Presiding Officer indicated that the Board was only looking at plans approved by the Development Officer, not any plans that had been revised. The Board does not typically allow for cross-examination. The Board has no authority to direct the Development Officer to provide documentation and can only hear an appeal related to the Development Permit in accordance with the *Municipal Government Act*. The Appellant decided to proceed but wanted to ensure the Board was aware that in his opinion there were documents he required access to.

[11] The Appellant directed the Board to Section 687 of the *Municipal Government Act*.

> **687(3)** In determining an appeal, the subdivision and development appeal board
>
> (d) may make an order or decision or issue or confirm the issue of a development permit even though the proposed development does not comply with the land use bylaw if, in its opinion,
>
> (i) the proposed development would not

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

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

and

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

[12] The Appellant directed the Board to Section 814.1 of the *Edmonton Zoning Bylaw* which states the "General Purpose of the Mature Neighbourhood Overlay is to ensure that new low density development in Edmonton's mature residential neighbourhoods is sensitive in scale to existing development, maintains the traditional character and pedestrian-friendly design of the streetscape, ensures privacy and sunlight penetration on adjacent properties and provides opportunity for discussion between applicants and neighbouring affected parties when a development proposes to vary the Overlay regulations."

[13] The Appellant directed the Board to its informational handout which states in making a determination regarding Section 687 of the *Municipal Government Act*, the Board will consider relevant planning and development concerns (supported by independent and reliable evidence as appropriate), which may include the following: proposed use; massing effect; siting of development; sun-shadowing effect; streetscape; compatibility; pedestrian or vehicular traffic; parking; noise; feedback from community consultation; and any additional planning concerns.

[14] The Appellant submitted that a variance should not be permitted in a case of Site Width. If City Council thought it was appropriate that a Semi-detached House could be built on lots less than 13.4 metres wide, they could amend to the *Edmonton Zoning Bylaw* to provide for this. If the Board allowed the proposed development, it would be undercutting the bylaw. The Appellant appreciates that, on its face, it appears the requested variance is minor and the Board's variance power technically applies. However, the Ritchie area should be exempt given its unique diversity of homes and varying lot widths.

[15] The Appellant directed the Board to the Plot Plan which provides a Front Setback of 4.39 metres to the entry and 4.69 metres to the foundation. There is a slight difference between the west and east units. The Appellant needed more information to determine if the Development Officer properly determined whether the Front Setback complied with Section 814.3(1) of the Mature Neighbourhood Overlay, which provides, in part, that "the Front Setback shall be a minimum of 3.0 metres and shall be consistent within 1.5 metres of the Front Setback on Abutting Lots and with the general context of the blockface."

[16] The Appellant stated the Front Setback for the neighbour to the east is 6.37 metres. This means the proposed development will be considerably closer to the street than the Development Officer has determined. The Appellant submitted Exhibit A, photographs he took showing a stake in the ground where he had determined the front of the proposed development would be relative to the existing properties. In his opinion, this distance is unsatisfactory in terms of sunlight penetration and massing effect and asked the Board to consider a revision.

[17] The Appellant also raised a parking concern. Since the property is pushed so far forward, the Respondent is able to provide a generous parking pad. However, this is at the expense of the Front Setback. If the Board requires a reduced Front Setback, the Board should account for the parking in the back.

[18] The Appellant stated there is no bylaw or legislation in place that monitors the proportion of Semi-detached Homes versus Single Family Dwellings, which should be in place to maintain consistency and compatibility with surrounding properties. He had been advised by the Development Officer that precedent is not considered in determining whether variances should be granted. In the Appellant's opinion, it is the role of Board to prevent too many Semi-detached Houses from being built among Single Family Dwellings. Once variances are allowed, control over the process is lost.

[19] The Appellant stated there is no prejudice to the builder if the proposed development is refused as he has the option to build a Single Family Dwelling or sell the lot and purchase a lot that properly accommodates a Semi-detached house. There is considerable prejudice to the neighbourhood if the proposed development is granted.

[20] Upon questioning from the Board, the Appellant advised that he used a tape measure and took his stake measurement from the inner most edge of the sidewalk, where the grass started.

ii) Position of Affected Property Owners in Support of the Appellant, C. Exner

[21] Mr. Exner resides in the property immediately abutting the subject property to the east.

[22] In Mr. Exner's opinion, Ritchie is a beautiful community and the allowance of Semi-detached Housing on deficient lots changes the feel of the neighbourhood. He is worried that the new homeowner will not park on their pad and congest the street. He is concerned about potential damage and compensation if the fence between the properties needs to be moved.

iii) Position of Affected Property Owners in Support of the Appellant, A. Kirkpatrick

[23] Ms. Kirkpatrick resides close to the proposed development. There is a new Row Housing development across the other side of the street. She is worried about how parking is going to be affected. There are also other lots close by in jeopardy to be used for Semi-detached Housing.

iv) Position of Affected Property Owners in Support of the Appellant, M. Winchester

[24] Ms. Winchester agrees with all the submissions thus far.

v) Position of the Development Officer, B. Langille

[25] The Development Officer submitted a PowerPoint, marked Exhibit B. The Board took a recess to allow the Appellant and the other parties to have an opportunity to review the Exhibit.

[26] The Development Officer indicated the builder made revisions to his original plans so that only Site Width required a variance. The Front Setback was revised to comply with the regulation in the Mature Neighbourhood Overlay so no variance was required.

[27] The Development Officer can only vary a regulation in the case of unnecessary hardship, by virtue of Section 11.4 of the *Edmonton Zoning Bylaw*. In other neighbourhoods zoned RF3 Zone, such as the McKernan and Bonnie Doon areas, most lots have a Site Width of 13.4 metres or more, which meets the requirements of Section 140.4(3)(b). At the time Ritchie became part of the City, it had already been subdivided with most of the lots being narrower than 13.4 metres. The result is that the only way to allow the Permitted Use of Semi-detached Housing in this neighbourhood is to vary the minimum Site Width. Similar low-density use classes in the RF3 Zone that could be approved as a Class A Development include Single Family Home (with Secondary Suite), Duplex House and front to back Semi-detached House.

[28] The Development Officer reviewed three relevant goals of the Ritchie Area Redevelopment Plan:

- That Ritchie be maintained as a predominantly single family residential community.
- That Ritchie be maintained as a "low" density residential area.
- That Richie have no more than 40 persons per acre (98.8 per hectare).

[29] The map in his presentation shows that Ritchie remains predominantly a single family residential community, fulfilling the first goal.

[30] A Semi-Detached House is a Permitted Use in the RF3 Zone and is considered low density residential, fulfilling the second goal.

[31] In 2014 Ritchie had 46.63 persons per hectare, which is well under the maximum in the third goal.

[32] It is the opinion of the Development Officer that the proposed Development would not unduly interfere with the amenities of the neighbourhood, nor materially interfere with or affect the use, enjoyment or value of neighbouring properties. Further, it is the opinion of the Development Officer that the Statutory Plan has been followed with the approval of this application.

[33] The Development Officer responded to the Appellant's arguments as follows.

[34] He was not able to provide all the documentation requested by the Appellant because the plans are protected by copyright. The Development Officer provided the documentation that he could legally provide.

[35] The proposed development meets the required number of Parking spaces of two spaces per dwelling for a total of four spaces.

[36] Regarding the Front Setback, the Development Officer referred to his Technical Review, which was stamped Exhibit C. A recess was taken so the Appellant and the other parties would have an opportunity to review the Exhibit. The Development Officer indicated he had provided his calculation regarding Front Setback to the Appellant prior to the hearing. According to the survey, the average Front Setback of the blockface is 6.19 metres. Using this, the proposed development could have a Front Setback between 4.69 metres and 7.69 metres and comply with the Mature Neighbourhood Overlay regulation. Based on the survey, the average Front Setback of the two immediately adjacent properties is 5.64 metres, meaning the Front Setback of the proposed development could be between 4.14 metres and 7.14 metres. The Development Officer took the more restrictive averages, requiring the Front Setback be between 4.69 metres and 7.14 metres. The proposed development is located 4.69 metres from the Front property line and thus complies with the regulation.

[37] Upon questioning from the Board, the Development Officer confirmed the proposed development is fully compliant with the Edmonton *Zoning Bylaw* except Site Width and it exceeds the minimum Site Area and Site depth requirements.

[38] Upon questioning from the Board, the Development Officer indicated that the Ritchie lots were already subdivided prior to being annexed by the City in 1912. Council subsequently zoned the area RF3, where Semi-detached Housing is a Permitted Use. In his opinion, Council at the time would have realized Site Widths were deficient for Semi-detached Housing and would have expected variances to be granted. The width of this lot is the norm in the area.

[39] Upon questioning from the Board, the Development Officer confirmed the Area Redevelopment Plan is an indication of Council's intent. It includes a map which indicates it applies to the whole neighbourhood, including the proposed development.

vi) Position of the Respondent, A. Awad

[40] The Respondent is a single family home builder who took an opportunity to build a Semi-detached house. He realized he would be deficient in Site Width but made sure the proposed development architecturally matched the neighbourhood and was sensitive in scale.

[41] The Respondent does not agree that the photographs in Exhibit A accurately reflect the Front Setback. The Front Setback of the house to the west is 4.9 metres. The proposed development has a Front Setback of 4.69 metres and 4.39 metres because of a slight jog in the design. That means the Front Setbacks are almost flush or within inches of the property to the west. The photographs provided by the Appellant indicate a good six to 10 foot difference, which is inaccurate. The Front Setback of the house to the east is 6.37 metres, which is quite a large Front Setback in comparison to the other properties on the blockface.

[42] The Respondent conducts business fairly. He believed he did his due diligence in making sure things done were properly. There should be minimal shadowing issues because the lots are oriented north-south. He did provide the neighbour to the east with a set of plans but received no comment.

vii) Rebuttal of the Appellant

[43] The Appellant took exception of the entry of Exhibits B and C because he did not have an opportunity to review them in advance of the hearing. In response, the Presiding Officer noted the Board also allowed the Appellant's entry of Exhibit A, which was not provided in advance. The Presiding Officer indicated he was not going to reverse his ruling regarding the marking of the documents as exhibits.

[44] The Appellant stated that the Board has an obligation to consider section 687 of the *Municipal Government Act*. Even if development complies with the *Edmonton Zoning Bylaw*, the Board can still make an order that the proposed development is not compatible.

[45] The Development Officer's PowerPoint presentation references the Area Redevelopment Plan from 2014 and the Appellant argued lots of things have happened in the neighbourhood since 2014. The Area Redevelopment Plan also states that Single Family Units should be maintained.

[46] The Appellant argued the *Edmonton Zoning Bylaw* states the intention of Council in regards to Site Width.

[47] The Appellant did not hear any arguments about how the Development Officer felt the Section 687 test of the *Municipal Government Act* was met. He did not take any of the factors in that section into account.

[48] The Appellant argued his photographs of the stake accurately depict the situation regarding Front Setback. The Hagen survey does not make sense. Upon questioning from the Board, the Appellant confirmed he is not registered as an Alberta Land Surveyor.

Decision

[50] The appeal is DENIED and the decision of the Development Authority is CONFIRMED.

Reasons for Decision

[51] Section 140.2(8) states that Semi-detached Housing is a Permitted Use in the RF3 Small Scale Infill Development Zone. Section 685(3) of the *Municipal Government Act*, states in part that "no appeal lies in respect of the issuance of a development permit for a permitted use unless the provisions of the land use bylaw were relaxed, varied or misinterpreted." In this case, the only variance was the reduction of 0.46 metres to the minimum Site Width required by Section 140.4(3)(b).

[52] Regarding whether the *Edmonton Zoning Bylaw* was misinterpreted, the only issue raised by the Appellant was his belief that the Front Setback was somehow incorrect. In support, the Board was shown photos of a stake put into ground, with the location determined by Appellant by tape measure from the edge of the sidewalk. The Appellant was given an opportunity to review the Development Officer's calculation to determine the required Front Setback, which was based on a survey carried out by a registered Alberta Land Surveyor. The Appellant declined that invitation but preferred to rely on the photos of the stake in the ground to show that some error had been made. The Board finds the evidence of the survey and the Development Officer's calculations to be more persuasive and finds that there is no variance required with respect to the Front Setback for the development.

[53] The Board heard no other evidence to suggest that the *Edmonton Zoning Bylaw* had been misinterpreted. The only basis for an appeal regarding this Permitted Use relates to the minimum Site Width requirement. The variance required is 0.46 metres.

[54] The Appellant takes the position that, even if no variance were required with respect to this development, the Board has the power to refuse to grant a development permit. The Board is of the view that this position is wrong. Section 685(3) of the *Municipal Government Act*, makes it clear that, in the absence of a misinterpretation of the Zoning Bylaw, there is no right to appeal the granting of a development permit for a Permitted Use unless the provisions of the Bylaw were relaxed or varied, meaning that, in this case, the Board can only refuse to issue a development permit because of the variance. Before the Board can grant this variance, it must be of the opinion, as per Section 687(3)(d), that the proposed development with the variance would not unduly interfere with the amenities of the neighbourhood or materially interfere with or affect the use, enjoyment or value of neighbouring parcels of land.

Accordingly, the issue before the Board is the effect the variance to minimum Site Width would have on the neighbourhood and neighbouring parcels of land.

[55] The Appellant argues that the minimum Site Width requirement should only be varied by Council as the lot sizes in this neighbourhood are one of the defining characteristics of the neighbourhood. The Board is of the view that, if the requirements of Section 687(3) are met, it has the same power to grant a variance to minimum Site Width as it does with respect to other zoning regulations.

[56] The Board heard from the Development Officer about some of factors he considered in allowing the variance to Site Width. The Board was advised that Ritchie was incorporated into the City many years ago when the lots had already been subdivided. In comparison to other neighbourhoods where Semi-detached Housing is a Permitted Use, the lots in these neighbourhoods are narrower. The Development Officer felt that Council would not have allowed Semi-detached Housing to be a Permitted Use in this neighbourhood with its narrow lots without expecting variances to the minimum Site Width to be allowed by the Development Authority in the appropriate circumstances.

[57] The Board notes that the required variance to minimum Site Width is only 0.46 metres. The proposed development is located on a large lot, with ample Site Area and Site depth. There are no other variances required, such as to Front Setback, Rear Setback, Side Setbacks, Amenity space, or Site Coverage.

[58] Although some of the affected neighbours raised concerns about parking, the Board notes no parking variance is required.

[59] The Appellant claimed that there is no legislation governing the proportion of Single Detached Houses to Semi-detached Housing. Whether or not that is correct, the Board has no mandate to regulate this unless, perhaps, it could be demonstrated that allowing this particular development would be contrary to a statutory plan. Based on the evidence of the Development Officer, the Board is satisfied that this development is not contrary to the provisions of the Ritchie Area Redevelopment Plan.

[60] Other affected property owners had concerns regarding construction in the area and that a precedent could be set in the neighbourhood if this development were allowed. The Board is of the view that these issues do not relate to the required variance. Accordingly, they are not factors the Board can consider to determine if the development permit should be issued.

[61] Based on the above, the Board is of the opinion that the proposed development with the required variance to minimum Site Width will not unduly interfere with the amenities of the neighbourhood, nor will it materially interfere with or affect the use, enjoyment or value of neighbouring parcels of land.

Mr. M. Young, 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*, R.S.A. 2000, c. M-26. If the Subdivision and Development Appeal Board is served with notice of an application for leave to appeal its decision, such notice shall operate to suspend the Development Permit.

6. When a decision on a Development Permit application has been rendered by the Subdivision and Development Appeal Board, the enforcement of that decision is carried out by the Sustainable Development Department, located on the 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.