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: July 13, 2017
Project Number: 246610002-002
File Number: SDAB-D-17-112

Notice of Decision

[1] On June 28, 2017, the Subdivision and Development Appeal Board (the "Board") heard an appeal that was filed on **June 6, 2017**. The appeal concerned the decision of the Development Authority, issued on May 26, 2017, to refuse the following development:

> **Construct exterior alterations to a Semi-detached House existing without permits (Lot 15: Driveway extension, 1.2m x 5.5m).**

[2] The subject property is on Plan 1120739 Blk 2 Lot 15, located at 17108 - 126 Street NW, within the (RF4) Semi-detached Residential Zone. The Castle Downs Extension Area Structure Plan applies to the subject property.

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

- A copy of the Development Permit application with attachments, proposed plans, and the refused Development Permit;
- The Development Officer's written submission; and
- A submission by the Appellant.

[4] The following exhibit was presented during the hearing and forms part of the record:

- Exhibit A – A copy of an aerial photograph submitted from the Development Officer.

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.

Summary of Hearing

i) *Position of the Appellant, Mr. A. Nizamov, who was accompanied by his Realtor, Ms. N. Pronchuk*

[8] Mr. Nizamov extended the driveway for the convenience of his family. They needed a sidewalk. It is not an extension of the driveway. It was put in to allow a hard surface sidewalk because previously this area was dirt. The change made it more accessible and comfortable.

[9] Parking on the road is difficult as the front property line is curved.

[10] They were not aware that a development permit was required for the extension. In their opinion, vehicle street parking is dangerous for children playing outside.

[11] They submitted photographs showing other similar extended driveways in the neighbourhood.

[12] Ms. Pronchuk and Mr. Nizamov provided the following information in response to questions from the Board:

a. The extension is mainly used for the convenience of a walkway and not for additional parking. The extra width facilitates foot traffic from the vehicle parked on the driveway to the front entrance of the residence.

b. They are not opposed to the conditions suggested by the Development Officer. They do oppose condition 5 if it requires physical barriers. Physical barriers will prevent people from walking over to the walkway and will impede shoveling of snow. They would agree to painting the walkway to identify the area where parking is not allowed.

c. When he submitted the application, there was no discussion with the City about whether the development was a walkway or a driveway extension.

d. Two vehicles are registered with the family. One vehicle is parked in the garage and one is parked on the driveway in front of the garage door. They are parked in tandem and they never park two vehicles side-by-side on the driveway.

e. They confirmed that the aerial photograph contained in the Development Officer’s submission shows a vehicle belonging to the Appellant’s brother parked on both the driveway and the additional portion which they use as a walkway.

f. They confirmed that the subject dwelling has been sold and the need for a compliance certificate prompted the application and appeal for the extension. The new owners would like the extension to remain as it is. They could not confirm if the new owners would park on the extension.

ii) Position of the Development Officer, Ms. S. Watts

[13] Ms. Watts stated that the approved driveway design was for a single car garage and a single car driveway. It was never designed to allow parking of two vehicles.

[14] The maximum allowed width of the driveway is the lesser of the width of the garage or 3.7 metres. With the extension, the hard surfaced area is 4.89 metres wide.

[15] The *Edmonton Zoning Bylaw* was recently amended to accommodate for a wider driveway. However, a wider driveway is still required to lead to the garage. The extension does not lead directly to the garage.

[16] There is no differentiation between the walkway and driveway portions. If the extension is approved as a sidewalk, Bylaw enforcement cannot control illegal parking on the extension. Adding bollards, a raised concrete curb, or a hedge would prevent illegal parking on the extension.

[17] She submitted an aerial photograph showing two other driveway extensions in the immediate area. She noted that they do not have development permits and that the City would object to issuing development permits for them as well.

[18] The amount of green space in the front yard is limited by the driveway extension and water run-off onto neighbouring properties should be considered.

[19] With respect to questions from the Board, Ms. Watts provided the following:

a. She agreed that the subject extension could be used as a walkway. An extension could be considered a walkway if it leads to a door and it not be used for parking.

b. Each case must be considered on its own and this determination can be difficult when the walkway and driveway are connected.

c. However, in her view this extension was not necessary as the subject dwelling with a single front garage was designed for one vehicle on the driveway and allowed space for use by pedestrians.

d. The extension is not typical for this area which is characterized by single car garages and single car driveways.

e. She confirmed that the definition of driveway excludes walkways.

f. As shown in the submitted photographs, the extension has been used for parking.

iii) Rebuttal of the Appellant, Mr. Nizamov and Ms. Pronchuk

[20] They never park two vehicles side by side on the driveway and extension.

[21] In their opinion, the extension is a walkway and not a driveway.

[22] They acknowledge that the submitted picture shows that a vehicle was parked on the extension and a portion of the driveway and that their written materials may suggest that they wished to park two vehicles on the driveway. However that is not their intent.

Decision

[23] The appeal is **ALLOWED** and the decision of the Development Authority is **REVOKED**. The development is **GRANTED** as a Walkway, subject to the following condition:

1. Parking is not allowed on the walkway and parking on the extension is therefore illegal (reference section 6.1(119) and section 54 of the *Edmonton Zoning Bylaw*).

Reasons for Decision

[24] Under section 6.1(29) of the *Edmonton Zoning Bylaw* (the *"Bylaw"),* Driveway means:

> an area that provides access for vehicles from a public or private roadway to a Garage or Parking Area and does not include a Walkway.

[25] A definition for Walkway was added to the *Bylaw*, April 27, 2017. Under section 6.1(119) of the *Bylaw*, Walkway means:

> Walkway means a path for pedestrian circulation that cannot be used for vehicular parking.

[26] During the hearing evidence was submitted as to whether or not the subject extension constituted a Driveway or a Walkway.

[27] The Board finds that the proposed development falls within the definition of Walkway for the following reasons:

1. The proposed development is 1.2 metres in Width.

2. The proposed development leads directly from the public sidewalk to the front entry of the subject Dwelling. It does not lead to the attached single Garage.

3. Nothing in the *Bylaw* precludes the development of a Walkway which abuts a Driveway and the Development Officer agreed that the two developments may or may not be connected.

4. The proposed development abuts the existing single Driveway which was approved with a Width of 3.69 metres. The maximum Width of a single Driveway is the lessor of 4.3 metres or the Width of the Garage. The Driveway by definition does not include a Walkway.

5. The total Width of the Driveway and the proposed development is 4.89 metres. This is insufficient to meet the minimum Width required for two parking spaces. In other words, even with the extension, the total Width of continuous hard surfacing in the Front Yard does not allow for two legal side-by-side parking spaces, nor is it typical of the Width of a double Driveway for a double Garage (which under the regulations is the lesser of the Width of the double Garage or 7.4 metres).

[28] The Board received mixed evidence about the past use of the proposed development. In particular, evidence was submitted of illegal parking on the extension (in the form of a photograph), but evidence was also submitted that the area is for the use of pedestrians and that the intent is to park only one vehicle in the Front Yard on the Driveway. In any event, the Appellant has in fact sold the Dwelling and could not confirm the new owner's intentions regarding future use of the extension.

[29] The parties agreed that there were no complaints of illegal parking on the extension. The Appellant applied for a development permit for the Driveway extension to obtain a Compliance Certificate for a pending sale of the Dwelling.

[30] Based on the totality of submitted evidence, the Board could neither confirm what the new property owners will use the extension for, nor assume that the proposed development would be used illegally going forward. In any event, the Board notes that future illegal use in contravention of an issued Development Permit is an enforcement matter and separate from this approval.

[31] As a Walkway is an Accessory Use to a Permitted Use (Semi-detached House) in the (RF4) Semi-detached Residential Zone, the Board finds the proposed development is a *Class A Development* with no variances.

[32] This decision in no way authorizes parking on the proposed development. The Board has added condition 1 as authorized per section 15.1 of the *Bylaw* to emphasize that parking is not contemplated, nor allowed, on the approved Walkway. Any parking on the Walkway would contravene the *Bylaw*, including section 6.1(119) and section 54.

Ms. K. Cherniawsky, 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 2nd Floor, Edmonton Tower, 10111 – 104 Avenue NW, Edmonton, AB T5J 0J4.

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 2nd Floor, Edmonton Tower, 10111 – 104 Avenue NW, Edmonton, AB T5J 0J4.

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.

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

Date: July 13, 2017
Project Number: 221659085-008
File Number: SDAB-D-17-113

Notice of Decision

[1] On June 28, 2017, the Subdivision and Development Appeal Board (the "Board") heard an appeal that was filed on **June 5, 2017**. The appeal concerned the decision of the Development Authority, issued on May 15, 2017, to approve the following development:

Install (1) Major Digital On-premises Freestanding Sign (two Digital panels 1.4m x 2.8m facing north / south) (A&W RESTAURANT).

[2] The subject property is on Plan 5109KS Lot B, located at 5035 - Gateway Boulevard NW, within the (CHY) Highway Corridor Zone. The Major Commercial Corridors Overlay applies to the subject property.

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

- A copy of the Development Permit application with attachments, proposed plans, and the approved Development Permit;
- The Development Officer's written submission; and
- E-mails between the Appellant and the Respondent.

Preliminary Matters

[4] At the outset of the appeal hearing, the Presiding Officer indicated that an e-mail was received from the Respondent showing an e-mail conversation between the Appellant and the Respondent. The e-mail exchange outlined that the Respondent provided the Appellant information regarding the proposed Sign. The Appellant indicated in an e-mail that he no longer had an issue with the proposed Sign. Both parties indicated in the e-mail exchange that they would not be attending the hearing.

[5] The Board made their decision in their absence based on the e-mails received.

Decision

[6] The appeal is **DENIED** and the decision of the Development Authority is **CONFIRMED**. The development is **GRANTED** as approved by the Development Authority.

Reasons for Decision

[7] The concerns of the Appellant centered on the lack of information regarding height, location, and content to be displayed on the proposed Major Digital On-premises Freestanding Sign.

[8] Prior to the hearing, the Board received a copy of the correspondence between the Appellant and the Respondent indicating that the information was provided to the Appellant who responded that he was not opposed as long the Sign followed the directives provided by the Respondent.

[9] No letters were received in opposition to the proposed development and no one appeared in opposition at the hearing.

[10] Accordingly, the appeal is dismissed.

Ms. K. Cherniawsky, 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*, 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 2nd Floor, Edmonton Tower, 10111 – 104 Avenue NW, Edmonton, AB T5J 0J4.

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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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: July 13, 2017
Project Number: 223539053-012
File Number: SDAB-D-17-114

Notice of Decision

[1] On June 28, 2017, the Subdivision and Development Appeal Board (the "Board") heard an appeal that was filed on **June 1, 2017**. The appeal concerned the decision of the Development Authority, issued on May 11, 2017, to approve the following development:

> **Construct a two-Storey Accessory Building (Garage Suite on second floor and Garage on main floor; 7.32m x 8.18m).**

[2] The subject property is on Plan 2938HW Blk 10 Lot 32, located at 11615 - 73 Avenue NW, within the (RF1) Single Detached Residential Zone. The Mature Neighbourhood Overlay and the McKernan / Belgravia Station Area Redevelopment Plan apply to the subject property.

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

- A copy of the Development Permit application with attachments, proposed plans, and the approved Development Permit;
- The Development Officer's written submission;
- The Appellant's written submission; and
- The Respondent's written submission.

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

- Exhibits A-1 to A-7, submitted by 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* (the *"MGA"*), RSA 2000, c M-26.

[8] The Presiding Officer indicated that the Board understood that the Appellant would be requesting a postponement of the hearing. The Presiding Officer directed the parties in attendance to speak only to the adjournment request.

i) Position of the Appellant, Mr. C. Huculak, who was accompanied by Ms. A. Hensch

[9] Mr. Huculak would like to postpone the hearing to allow him more time to prepare. He has submitted a Freedom of Information and Protection of Privacy ("FOIP") request to receive information from the City concerning a previous house development on the subject site and he first saw the Development Officer's written submission just last Friday.

[10] He contacted three Engineering firms outside of Edmonton to get a quote for a sun shadow impact study. However, the costs he was quoted were high and he would like to find a company that can do it at a lower cost.

[11] He believes that a sun shadow impact study will provide him with information that will support his appeal.

[12] The Presiding Officer outlined the Board's authority under the *MGA* and asked how a FOIP request concerning a previously approved development would help the Board with their decision as this appeal concerns the proposed garage suite only and not the house. The Board has no jurisdiction with respect to the house.

[13] Mr. Huculak stated that he filed an appeal when the house was being built and after speaking to the property owner regarding the location of their proposed garage suite, he withdrew his appeal as he believed the proposed development would be located on the west side of the subject site.

[14] The Presiding Officer reiterated that the Board cannot reopen the decision about the house, it can only deal with the proposed garage suite.

[15] The Presiding Officer indicated that if there was an agreement with the Respondent, it is a private matter outside of the Board's authority.

[16] Mr. Huculak stated that the community consultation conducted by the Respondent was inaccurate and reiterated that he was told the garage suite would be on the west portion of the subject site and not the east.

[17] The Presiding Officer indicated that the only requirement for community consultation that the Board was aware of was the one found in section 814.3(24) of the *Edmonton Zoning Bylaw* and it is only required when there is a variance in the Mature Neighbourhood Overlay. In this case there is no variance.

[18] Mr. Huculak indicated that he does not dispute that, but he would like to get a sun shadow impact study done for the Board to review in any event.

[19] The Presiding Officer indicated that a sun shadow impact study may not affect their decision and asked how he would be impacted by proceeding with the hearing without a sun shadow impact study. A member of the Board indicated that the proposed development has no variances.

[20] Mr. Huculak stated that, in his opinion, the Board cannot determine if there is sun shadow impact without a study being done for review. In his view, the Board should look outside the development requirements to see if the sun shadow from the garage suite will affect his property.

[21] He would not have withdrawn his appeal on the house if he knew there would be changes to the location of the garage suite.

[22] It could take up to 30 days to get a sun shadow impact study done and he is requesting a 30-day postponement to allow him that time.

ii) Position of the Development Officer, Mr. K. Yeung

[23] The Development Officer took no position on the issue of a postponement.

iii) Position of the Respondent, Mr. B. Woolger, representing Baum and Woolger Homes, who was accompanied by the property owners, Mr. and Mrs. T. Yonge

[24] Mr. Woolger does not agree to the postponement request as the application process started a long time ago and they would like to start building as soon as possible.

[25] The property owners indicated that they would be inconvenienced if the hearing were delayed and they were required to attend on another day. They wish to personally attend given the Appellant's allegations and they would like the hearing to be dealt today as they are teachers and will be away for the summer.

[26] In response to a question by the Board, they confirmed that the first development permit application was only for the house.

iv) Rebuttal of the Appellant, Mr. C. Huculak

[27] Mr. Huculak stated that he will also be inconvenienced to come to the hearing on another day, but feels a 30-day postponement is not unreasonable.

Decision on the Preliminary Matter

[28] The request for a postponement is **DENIED**.

[29] After consideration of the parties' submissions and the respective impacts of a delay for both the Appellant and the Respondents, the Board finds that the interests of and potential prejudices to the parties favour proceeding with the matter.

[30] The Appellant seeks an adjournment of this hearing for two reasons: to obtain information from the City concerning the 2016 approval of the principal residence; and, to obtain a sun shadow impact study at a more reasonable cost than he was previously quoted.

[31] The Appellant agreed that the proposed development is a Discretionary Use and that it fully complies with all applicable development regulations.

[32] The Board notes that the information which the Appellant seeks from the City concerns a development that was previously approved and is not under appeal before the Board.

[33] The Board's authority is limited to planning matters, specifically to determining compliance with the applicable development regulations and suitability of the proposed Garage Suite at the subject Site. Any representations or agreements that may exist between the parties are private matters beyond the jurisdiction of the Board.

[34] A sun shadow impact study is not required by the applicable statutory plans. However, it is an item that may be required, if warranted, at the discretion of the Development Officer. It was not ordered in this case.

[35] Section 14.3(3) of the *Edmonton Zoning Bylaw* provides that any sun shadow impact study "shall be evaluated based on the difference in shadow between the allowable three-dimensional building massing and the proposed three-dimensional building massing […]". Sun shadow impact studies are comparative analyses. Given that all parties agree the proposed development is fully compliant with all applicable development regulations, the "allowable three dimensional building" and the "proposed three-dimensional building" are one in the same with regards to impact.

[36] Given these circumstances, the Board finds no prejudice to the Appellant by proceeding.

[37] On the other hand, the Respondents submitted that they would be prejudiced by the adjournment. They prepared for the scheduled date. They wish to attend in person given the grounds of appeal and will not be available in 30 days. They also state this has already been a lengthy process and any adjournment will delay the construction of a Garage Suite which all parties agree complies with the development regulations.

[38] The applicable portions of the *Municipal Government Act* and the *Edmonton Zoning Bylaw* contemplate a scheme under which decisions are made in a timely manner. They impose relatively short time lines on decision makers including the Development Officer and the Board and on affected parties such as the Appellant. This scheme promptly advances certainty balancing the rights of property owners to deal with their own property against the interests of their neighbours, the prescribed timelines are in the interests of all parties.

Summary of Hearing (Continued)

v) Position of the Appellant, Mr. C. Huculak

[39] Mr. Huculak was disappointed that the postponement request was denied. He felt he could better explain how the garage suite will affect his property with a sun shadow impact study.

[40] There was a lack of community consultation. Community consultation requires the homeowner to speak with the neighbours so they understand how the development will impact them. Consultation only took place in October, 2016, it should also have occurred in May, 2017.

[41] The sun will move from east to west throughout the day. The proposed garage suite will significantly reduce the amount of sun light on his property. There will be no direct sun on his property until 2:00 p.m.

[42] Although the Development Officer's report stated that the footprint of the garage suite will not be different than the existing garage, the height of the garage suite is the issue. The garage suite is large and his property will feel closed in by having a large building on the east side of the property.

[43] He recognizes that the garage suite is not contrary to the Mature Neighbourhood Overlay, nor to City policies for densification. However, increased densification in Belgravia has led to issues with an excess of traffic in the neighbourhood. This raises safety concerns. Although densification does not affect him, a garage suite next door to his property impacts the densification. The community was developed with single family dwellings and specific pockets of higher density.

[44] Some neighbouring property owners informed him that they are concerned with the proposed garage suite, but they were not able to attend the hearing.

[45] He is most troubled by the approval process in this case. The City has a planning and development process which considers how proposed developments will affect neighbouring property owners. This process was not followed and it did not consider how he was impacted.

[46] Mr. and Mrs. Yonge have owned the property for ten years, their children are the same age as his, and they go to the same school. The Appellant does not want to create issues with the neighbours or their proposed development, but he wants to maximize the use and enjoyment of his own property.

[47] In his opinion, the value of his property will decrease. However, as he does not intend to sell his property in the near future, the value of his property is a moot point to him.

[48] In October and December of 2016 the neighbours did consult and they entered an agreement on a handshake and word of mouth which was not honoured. Based on this agreement, he removed his objection. If he had not removed his objection, the Respondents would not have been able to go ahead with the house.

[49] In response to questions by the Board, he confirmed he has no issue with the proposed garage suite if it was moved to the west side of the property as agreed to with the Respondent.

[50] He reiterated that the west side of his property will be shadowed by the proposed garage suite but has no concrete evidence without a sun shadow impact study. There was an existing double garage on the subject property and a similar footprint where the proposed garage was going to be; however, the proposed garage suite is twice as high.

[51] He believes a variance was granted to the back and front setbacks for the house.

vi) Position of the Development Officer, Mr. K. Yeung

[52] Mr. Yeung did not add to his submitted report and answered questions from the Board.

[53] He approved the house plans and he approved the proposed garage suite. He was not aware of any agreement between the Appellant and the Respondent.

[54] There was one variance granted to the house and that was for the front setback. It pushed the house forward on the lot. The house complied with the rear setback as is shown in the current site plan.

[55] The proposed garage suite meets all the requirements of the *Edmonton Zoning Bylaw* development regulations are an indicator of the compatibility of a Discretionary Use for a site.

[56] There is a Public Utility Lot between the shared side lot line and garage suite. The east setback for the proposed garage suite varies from 1.91 to 2.21 metres. This exceeds the minimum required side setback of 1.2 metres. Property owners cannot build on the Public Utility Lot but it is included in the setback calculation.

[57] Section 14.3 of the *Edmonton Zoning Bylaw* outlines the special information requirements for a sun shadow impact study. A sun shadow impact study is required by the City for higher density developments such as apartment buildings where the shadow impacts abutting lots. It is up to the discretion of the development officer to request a study where warranted, but here it is not required.

[58] The section of the *Edmonton Zoning Bylaw* dealing with sun shadow impact studies is not specific to this proposed development. He could have requested a study but it is not required for a low density development that would include a garage suite. To his knowledge, sun shadow impact studies are not routinely requested for garage suites.

[59] Also, sun shadow impact studies are not required if a development is fully compliant with the development regulations. He reiterated that the proposed development complies with all the development regulations of the *Edmonton Zoning Bylaw* and a sun shadow impact study is not required because there is nothing to compare as the garage suite is both the proposed building and an allowable building.

vii) Position of the Respondent, Mr. B. Woolger, representing Baum and Woolger Homes, who was accompanied by the property owners, Mr. and Mrs. T. Yonge

[60] Mr. Woolger believes that they did everything they were supposed to do during the application process for the garage suite.

[61] They did not need to do a community consultation, but they conducted one in good faith anyway.

[62] When their garage suite approval was appealed, they talked to 13 neighbours: nine neighbours had no issues; one property was not occupied; one neighbour was indifferent, one neighbour saw both the positive and negative aspects of the proposed development, but had no objection: and, one neighbour was not in favour of the proposed development.

[63] They noted that the Board has received no proof that increased density in the McKernan / Belgravia neighbourhood affects its roadways.

[64] The garage suite meets all of the policies of the McKernan / Belgravia Station Area Redevelopment Plan (the "ARP"), and all of the regulations of the Mature Neighbourhood Overlay and the RF1 Single Detached Residential Zone.

[65] Mr. Woolger referenced figure 15 and the definition of *Small Scale Infill* from the ARP, (*Exhibit A1* and *A2*), to show that the subject site supports small scale infill which includes garage suites.

[66] This garage suite could be used by the property owners' children when they are older; for a short term rental; or occupied by students or seniors (including their mother who is a long time resident of the area).

[67] Garage suites are specifically contemplated in other sections of the ARP, particularly under *Neighbourhood Infill 4.4.6*, policy 5, (*Exhibit A3*) and *Affordable Housing* 4.4.14, policy 5, (*Exhibit A4*).

[68] Their plans changed over time. They submitted the original garage plan in 2016. It had a two-tier deck and a yoga studio (*Exhibit A5*). They were told by the City that it would be taxed the same as a garage suite so they decided investing in a garage suite was the better option for their family.

[69] They have tried to be as forthcoming and open as possible with their neighbours. He talked to the Appellant and he suggested that moving the garage suite to the west side was a good idea. However, once their old house was demolished they had a better understanding of their layout and determined having it on the east side was better for their yard. Sun shadowing was never mentioned by the Appellant, only that he did not like densification.

[70] Three other houses on the block needed front setback variances due to the block face. The Appellant never had an issue with the front setback of the house; the concern was about the garage.

[71] They started in March, 2017 with the garage suite application that is before the Board. There was never an agreement with the Appellant; it was their choice to position the garage suite on the east portion of their lot.

[72] They looked for evidence with respect to property values decreasing with a garage suite and they could not find anything. Page 6 of their documentation shows new infill actually helps neighbourhoods like Belgravia.

[73] Currently there is a birch tree and 4 large pine trees in their yard. The trees are very tall and already provide natural shade in the Appellant's yard. In their opinion, the situation will not be much different with their garage suite.

[74] They reiterated that they are not trying to negatively impact the Appellant's family. They are just doing what they are allowed to do on their own property and what is best for their family.

[75] Page 11 of their documentation shows photographs of other garage suites in the area. Although he does not know if all of them have permits. Garage suites are a growing trend in Belgravia.

[76] There is a school and field across the street, and plenty of parking on-site and on the street.

[77] Mr. Woolger provided the following with respect to questions from the Board:

a. There is a garage suite located two houses to the west of the subject site and a garage suite to the east that is located just outside the Subdivision and Development Appeal Board (the "SDAB")-notification map.

b. There is a non-suite two-storey garage to the southwest just outside the notification radius and there are other one-storey garages with roof patios.

c. During the consultation, they showed the proposed stamped approved plans to all the neighbours and confirmed the plans showed the garage suite on the east side of their property.

viii) Rebuttal of the Appellant, Mr. C. Huculak

[78] Mr. Huculak reiterated that he would like to receive information from the FOIP request that will show the timelines of the e-mails between the Development Officer and the Respondent concerning the house approval. He is asking the Board not to make a decision today, but rather to reserve their decision and take additional time to review the information in more detail.

[79] He spoke to the Development Officer and the Respondent about moving the garage. He thought it was going to be for a mother-in-law suite in the future. He is concerned that the garage suite will be used as a rental property in the future.

[80] In his opinion, the Development Officer should have requested a sun shadow impact study to be done as the Development Officer was aware of his concerns.

[81] He agrees that the proposed development meets all the regulations of the *Edmonton Zoning Bylaw* and fits in with the ARP. However, the proposed development will negatively impact the use, value, and enjoyment of his property.

[82] The City's Municipal Development Plan, "The Way We Grow" aims to bring families into the mature neighbourhoods. In his opinion, garage suites do not do that as there is no room for children to play if there are large buildings in the rear yards. This does not fulfill the City's desire to bring families in the neighbours when more people are occupying the property.

[83] He reiterated that he is asking the Board to reserve their decision to take time to fully review the documents and correspondence relating to the timelines. He would like to appeal and to have the benefit of testimony under oath before the courts in this matter.

[84] The Presiding Officer stated that under the SDAB Bylaw, the Board is required to provide all parties with a verbal decision on the day of the hearing, but that the final written decision is issued in 15 days after the hearing and that written decision is appealable to the Court of Appeal. The Presiding Officer also noted that in the normal course of an appeal, the record of proceeding is provided to the Court of Appeal and that it does not receive testimony under Oath from the parties.

Decision

[85] The appeal is **DENIED** and the decision of the Development Authority is **CONFIRMED**. The development is **GRANTED** as approved by the Development Authority.

Reasons for Decision

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

[87] All parties agreed that the Garage Suite is fully compliant with all applicable development regulations in the *Edmonton Zoning Bylaw* (the *"Bylaw"*) including: the underlying Zone (RF1 Single Detached Residential Zone), the Mature Neighbourhood Overlay and the Special Land Use Provisions specific to Garage Suites under section 87.

[88] As the proposed development is a Discretionary Use requiring no variances, the Board must determine whether or not it is reasonably compatible with surrounding properties and whether or not there is a valid planning reason to deny it.

[89] The Board finds that the proposed development is reasonably compatible with surrounding properties for following reasons:

1. It is a fully compliant, Discretionary Use. As the Development Officer noted, full compliance with development regulations applicable to the subject Site and to Garage Suites in particular is one indicator of compatibility.

2. The proposed Garage Suite is also consistent with the goal of the Municipal Development Plan, "The Way We Grow" to increase densification of older areas.

3. Per section 687(3)(a.1) of the *Municipal Government Act* (the *"MGA"*) the Board must comply with applicable statutory plans. All parties agreed that a Garage Suite at the subject Site is consistent with the McKernan / Belgravia Station Area Redevelopment Plan (the "ARP"). This particular lot has been explicitly identified in the ARP as suitable for Garage Suites.

4. The voluntary community consultation undertaken by the Respondents revealed broad support, which further demonstrates compatibility with surrounding properties. The location for the Garage Suite proposed in the approved plans was shown to 13 neighbouring properties and all of the adjacent and therefore most affected, save the Appellant, were in support.

5. The Respondent's pictorial evidence and oral submissions show that Garage Suites and two-Storey Garages are common in this area and there are two in very close proximity to the subject Site.

[90] The Appellant opposed the Garage Suite based on three concerns:

i) a lack of community consultation,

ii) the sun shadowing on his yard will cause a severe impact on the enjoyment of his property, will negatively affect property values, and

iii) he believed he had an agreement with the Respondents that the Garage Suite would be located on the southwest corner of the lot, not the southeast corner and based on this agreement he withdrew his appeal on an earlier, separate Development Permit application for the principal residence, which required a variance to the Front Setback.

[91] As the proposed development requires no variances to the Mature Neighbourhood Overlay, the Board finds that there is no legal requirement for community consultation.

[92] Absent a legal requirement, the lack of community consultation is not a planning reason to deny this application.

[93] In any event, the Board notes that the Respondent undertook a voluntary community consultation with the most directly impacted neighbours in June, 2017. The results of the consultation were generally positive.

[94] The Appellant opined that the Garage Suite would reduce the value of his property. The Respondent's held the opposite belief. Neither party provided evidence to substantiate their conflicting opinions. During the hearing, the Appellant acknowledged that his main concern was not the monetary value as he intends to remain in his home.

[95] Given the parties' conflicting opinions and lack of evidence, the Board finds change in property value is not a planning reason to deny this application.

[96] During the hearing, the Appellant emphasized that his main concern was ensuring the full use and enjoyment of his property and that he would suffer from significantly increased sun shadowing given the two-Storey Garage Suite was moved from the west to the east portion of the subject Site. He felt a sun shadow impact study would prove this.

[97] Section 14.3 of the *Bylaw*, governs sun shadow impact studies. They are not mandatory, but may be ordered where warranted at the discretion of the Development Officer for any type of development including Garage Suites.

[98] Section 14.3(3) of the *Bylaw* states:

> The shadow impact **shall be evaluated based on the difference in shadow between the allowable three-dimensional building massing and the proposed three-dimensional building massing**, during the March equinox. The Development Officer may require changes to the proposed development, may refuse to grant a variance, or approve a Class B Discretionary Development based on that information. [Emphasis added]

[99] The proposed development is below the maximum allowable Height and it exceeds the minimum Side Setback required from the Side Lot Line shared with the Appellant. In these circumstances an allowable three dimensional building could be both taller and closer to the Appellant's property thereby creating a greater shadowing impact that the proposed development. In other words, there can be no adverse difference given the current development regulations.

[100] The Board finds that sun shadowing due to a fully compliant building is not a valid planning reason to deny the proposed development.

[101] The Appellant submitted that he believed he had a "handshake agreement" in 2016 with the Respondent to the effect that if he withdrew his appeal on the approved House which required a variance to the Front Setback, then the proposed Garage Suite would be located on the west side of the subject Site. The Appellant stated he was surprised by the location of the approved Garage Suite.

[102] The Respondent agreed there was discussion, but deny that there was an agreement. They pointed out that their proposal falls within the allowable parameters. The Development Officer indicated he has no information about such an agreement.

[103] The principal residence was approved in 2016 and was not appealed within the required statutory appeal period. The decision to approve the Development Permit Application for a Garage Suite, approved with conditions and made on May 11, 2017 is the sole matter before the Board.

[104] Further, any verbal agreement between the parties or any potential misrepresentation from the City concerning approval of the House in return for limiting the location of the Garage Suite is a private matter similar to a restrictive covenant. Such matters are outside of the Board's purview, they are not a relevant consideration in this appeal and the Board makes no determinations about their existence or content.

[105] Accordingly, any private agreement or misrepresentation as alleged by the Appellant is not a valid planning reason to deny the application for a Development Permit for the proposed Garage Suite.

[106] For the above reasons, the Board finds that there are no valid planning reasons to deny this fully compliant Discretionary Use and the appeal is dismissed.

Ms. K. Cherniawsky, 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 2nd Floor, Edmonton Tower, 10111 – 104 Avenue NW, Edmonton, AB T5J 0J4.

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 2nd Floor, Edmonton Tower, 10111 – 104 Avenue NW, Edmonton, AB T5J 0J4.

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.