

*Edmonton Subdivision and  
Development Appeal Board*

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DATE: March 27, 2015  
PROJECT NO.: 161242059-002  
FILE NO.: SDAB-D-15-051

**NOTICE OF DECISION OF THE SUBDIVISION AND DEVELOPMENT APPEAL BOARD**

This appeal dated January 19, 2015, from the decision of the Development Authority for permission to:

Construct an uncovered deck (irregular, 8.61 metres by 4.89 metres at 0.95 metres in Height and 6.01 metres by 1.01 metres at 0.34 metres in Height), existing without permits

on Plan 4587AK Block 8 Lot 9, located at 11012 - 76 Street NW, was heard by the Subdivision and Development Appeal Board at its hearing held on March 12, 2015. The decision of the Board was as follows:

**SUMMARY OF HEARING:**

At the outset of the appeal hearing, the Chair confirmed with the parties in attendance that there was no opposition to the composition of the panel.

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

The Board heard an appeal of the decision of the Development Authority to refuse an application to construct an uncovered deck (irregular, 8.61 metres by 4.89 metres at 0.95 metres in Height and 6.01 metres by 1.01 metres at 0.34 metres in Height), existing without permits, located at 11012 – 76 Street NW. The subject Site is zoned RF1 Single Detached Residential Zone and is within the Mature Neighbourhood Overlay. The development permit application was refused because of an excess in the maximum allowable projection of a Platform Structure into a Setback or Separation Space with a depth of less than 4.0 metres.

Prior to the hearing the following submissions were provided to the Board, copies of which are on file:

1. A letter of opposition from Mr. d'Alquen and Ms. van Hauff (the "North Neighbours"), the neighbouring property owner to the immediate north of the subject Site, received March 11, 2015; and

2. A written submission from the Development Authority, received March 12, 2015.

The following exhibits were received during the hearing, copies of which are on file:

1. An email from Ms. Ziober, the Development Officer, submitted by Mr. Grotski, Legal Counsel for the Appellant, Tom Parada, marked as Exhibit 'A';
2. A copy of the Real Property Report submitted by Mr. Grotski, Legal Counsel for the Appellant, Tom Parada,, marked as Exhibit 'B'; and
3. A written submission, including several photographs, submitted by Mr. and Mrs. Hamilton, the current owners of the subject Site, marked as Exhibit 'C'.

The Board heard from Mr. Grotski, Legal Counsel for the Appellant, Tom Parada, who provided the following information in support of the appeal:

1. Mr. Grotski acted as solicitor for Mr. Parada during the sale of the subject property and the term of that contract includes the issuance of a Compliance Certificate.
2. The house on the subject property was built approximately 20 years ago and his client assumed that all of the necessary permits were issued at that time. During the sale of the property it was discovered that the uncovered deck did not have a permit.
3. Mr. Parada had the side walkway and deck built at the same height to provide wheelchair access from the side entry to the rear deck to accommodate family members.
4. The walkway on the north side of the house was rebuilt in 2013 with upgraded materials and steel support brackets connected to the concrete foundation. Mr. d'Alquen and Ms. van Hauff (the "North Neighbours"), who own the property to the immediate north, have objected to the proposed development. The North Neighbours purchased their property approximately 16 years ago, at which time the walkway and deck existed. In addition, the North Neighbours witnessed the upgrades to the deck that were made in 2013.
5. The North Neighbours have renovated and rebuilt their house during their 16 year ownership and their privacy concerns could have been addressed during this process.
6. Mr. Parada had discussions with the Development Officer and it was his understanding that the development permit would be granted subject to consultation with the North Neighbours, as shown in Exhibit 'A'.
7. Now the North Neighbours want the structures removed.

8. The variance required for the deck is very small, being a 0.6 metre variance in the projection of the deck into the north Side Setback.
9. The subject property was sold for market value with the existing walkway and deck and it was his opinion that the existing development will not affect the value of the property to the north.
10. Discussions have been undertaken with the North Neighbours including potential installation of additional lattice on the fence to address their privacy concerns.
11. Referring to the North Neighbours' submission, photograph 6 provides a fairer representation of the actual view from the deck than photograph 8.
12. It appears that the south side yard on the North Neighbours' property is comprised of gravel, does not provide direct access from the front to the rear of the lot and is used primarily for storage.
13. It is the responsibility of the Board to render equitable decisions and Mr. Grotski questioned whether the North Neighbours have come to the Board with clean hands as some of the construction and accessory structures on their property may not comply with the Edmonton Zoning Bylaw.

Mr. Grotski provided the following responses to questions:

1. Mr. Parada did not obtain a development permit when the walkway was upgraded in 2013 because he assumed that a development permit had been issued in 1996 when the deck was originally constructed.
2. When the deck was upgraded steel brackets were installed, but the height and size of the deck did not change.

The Board then heard from the current property owners, Mr. and Mrs. Hamilton, who provided the following information in support of the appeal:

1. The portion of the deck that requires a variance is integral to the structure of the deck, provides access to the side door, and it would be burdensome to remove.
2. The deck has existed for 20 years and existed when the North Neighbours purchased their house.
3. They referred to a photograph contained in Exhibit 'C' to illustrate that the walkway was built when the City gave the final inspection approval for the house.
4. They have had ongoing discussions with the North Neighbours to attempt to find solutions for their concerns. When they offered to install higher lattice on the fence to address the privacy concerns they were told by the North Neighbours that it would block light to the side yard windows.

5. The houses on this street are very close together and a lack of privacy is a factor for many residents. Many other neighbours have made efforts to increase their privacy with well-placed sheds or gazebos, screening and planting material.
6. They referred to photographs in Exhibit 'C' to illustrate how the second floor balcony on the North Neighbours' property is intrusive on their privacy.
7. If the permit for the deck is approved they plan to build a screened enclosure to increase privacy on the subject Site.
8. Removing the walkway would be a wasteful demolition. It is not practical because it would be very disruptive to their family with no real benefit.
9. They do not agree with the North Neighbours that the side door access is overbearing and disruptive.
10. The North Neighbours have made extensive home design choices under the assumption that the deck was fully permitted and it is unreasonable to now expect the demolition of the walkway.

Mr. and Mrs. Hamilton provided the following responses to questions:

1. They have considered alterations to the portion of the deck that extends into the side yard, but they were not sure if these would be structurally sound.

The Board then heard from Ms. Ziober, representing the Sustainable Development Department, who provided the following information:

1. She refused the development permit application because of privacy concerns for the North Neighbour.
2. The existing deck does not comply with the maximum allowable projection of a Platform Structure into a Setback or Separation Space with a depth of less than 4.0 metres. The projection exceeds by 0.6 metres, leaving a 0.0 metre setback.
3. It was her opinion that this variance unduly affects the use, enjoyment and value of a neighbouring property because it is located in the minimum required side yard. This space is required as a separation space from the neighbouring property to the north.
4. She asked the Applicant to provide a letter of support from these neighbours but a letter was not forthcoming.
5. Ms. Ziober had discussions with Mr. and Mrs. Hamilton, the new owners, regarding possible remedies to address the concerns of the neighbours.

Ms. Ziober provided the following responses to questions:

1. The photograph of the inspection sticker submitted by Mr. and Mrs. Hamilton in their written submission was for the house and not specifically the deck.
2. She could not provide any information regarding the development regulations that were in place in 1996 when the deck was initially constructed.
3. It was her opinion that this is a new development permit application and she had to review the structures according to the regulations of the day.
4. Fences are not permitted as a rail for a deck.

The Board then heard from Mr. d'Alquen and Ms. Von Hauff, the North Neighbours, who provided the following information in opposition to the proposed development:

1. From the time that they purchased their property, until December 2014, they incorrectly understood that the existing structure had an approved development permit. This is why they had never made a complaint to the City although the deck development has been an ongoing concern because of the impact that it has on the use and enjoyment of their property.
2. Mr. Parada contacted them in December 2014 and asked them to sign off on the variance that was required which they were not prepared to do.
3. The main purpose of setbacks is to maintain privacy so that all property owners can enjoy their rear yards.
4. They do not use their rear yard very often because of the existing walkway and deck that adjoin the fence, which have a negative impact on their privacy.
5. They referred to photographs from their written submission to illustrate the view from the existing deck into their dining room windows and the impact that this has on their privacy.
6. The fence between their property and the subject Site is approximately 5.5 feet with an additional 17 inches of lattice. The fence is used as a railing for the deck and has been used as a place to put beverages during outdoor gatherings on the subject Site.
7. Traffic between the side door and the back deck is an overbearing and distracting presence. They need to fully cover their south side windows to prevent people from looking into their house as they walk between the side door and the back deck.
8. Installing a privacy screen would significantly limit sunlight into their rear yard, would be unsightly, and could negatively impact the future sale of their home.
9. The use and enjoyment of their property is materially impacted by their combined concerns.

10. They tried to mitigate the impacts of the existing walkway and deck during renovations on their property, but a negative impact still exists.
11. They would support the replacement of the deck with a landing and two sets of stairs from the side door. They referred to photographs contained in their written submission to illustrate that this has been done on other properties in the neighbourhood.

Mr. Grotski made the following points in rebuttal:

1. It was his opinion that the North Neighbours' concerns about the traffic created by the use of the side door are overstated. There are patio doors at the rear of the house that provide access and the shortest route to the rear deck and the path from the side door to the back deck is secondary.
2. The removal of the portion of the deck to make the development comply is not inconsequential. It will result in significant cost to the Appellant and the construction involved could have longer term ramifications.
3. The Development Officer did not properly review the application because the development may have been considered a legal non-conforming use.
4. It was his opinion that the North Neighbours' claims about the impact of the development on the use and enjoyment of their rear yard are exaggerated.
5. The new property owners share the privacy concerns of their neighbours and will make every attempt to mitigate the situation.

**DECISION:**

that the appeal be ALLOWED and the development GRANTED and the deficiency of 0.60 metres in the maximum allowable projection of a Platform Structure into a required Setback or Separation Space be permitted, subject to the following conditions:

1. Any future deck enclosure or cover requires a separate development and building permit approval;
2. Height to top of deck railing from grade not to exceed 1.85 metres;
3. An approved Development Permit means that the proposed development has been reviewed only against the provisions of the Edmonton Zoning Bylaw. It does not remove obligations to conform with other legislation, bylaws or land title instruments such as the Municipal Government Act, the ERCB Directive 079, the Edmonton Safety Codes Permit Bylaw or any caveats, covenants or easements that might be attached to the Site.

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

**REASONS FOR DECISION:**

The Board finds the following:

1. The proposed development is Accessory to a Permitted Use in the RF1 Single Family Residential Zone.
2. This neighbourhood is comprised of narrow lots and the Board finds that construction and redevelopment on any of the lots will impact surrounding property owners.
3. Based on a review of the photographic evidence provided, the Board notes that two Storey Single Detached Houses have been developed on the subject Site and the immediately adjacent Site to the north in what appears to be an attempt to maximize the amount of living space on these small lots.
4. The Board finds that the privacy impact of the proposed development will not have a materially adverse effect on the use, enjoyment or value of neighbouring properties for the following reasons:
  - a. Reducing the size of the deck by 0.60 metres to comply with the maximum allowed projection into the Side Setback will not significantly address the privacy concerns that already exist.
  - b. Based on a review of photographs of the subject site, the Board notes that the portion of the rear deck that abuts the southern property line is larger than the portion of the deck that abuts the property line to the north. This provides a larger amenity area on the southern portion of the rear yard that will mitigate the required variance in the Side Setback along the north property line.
  - c. There is a door located at the rear of the Principal building that provides direct access to the rear deck which will mitigate the frequency of the use of the portion of the deck located within the Side Setback.
5. Based on the above, 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.

**IMPORTANT INFORMATION FOR 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. 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.

3. A Development Permit shall expire and shall no longer be valid after one year from the date of approval of the Permit, if no construction has been initiated. However, if the permit holder is unable to proceed pending a court decision involving the proposed development, time shall not run until such proceedings are finally completed. For further information, refer to Section 22 of the Edmonton Zoning Bylaw, 12800.
4. Notwithstanding clause (3) above, if a Building Permit is issued for the development within the twelve month period, the Development Permit issued therefore shall not lapse unless and until the Building Permit so issued is cancelled or allowed to lapse by virtue of work not having commenced within the statutory minimum period.
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.

Mr. R. Colistro, Chairman  
SUBDIVISION AND DEVELOPMENT  
APPEAL BOARD



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DATE: March 27, 2015  
PROJECT NO.: 162475236-002  
FILE NO.: SDAB-D-15-052

**NOTICE OF DECISION OF THE SUBDIVISION AND DEVELOPMENT APPEAL BOARD**

This appeal dated February 17, 2015, from the decision of the Development Authority for permission to:

Change the use from General Retail Store to Indoor Participant Recreation Services Use with Accessory Personal Service Shop and to construct interior alterations (98.20 square metres of Public Space) - True Yoga Edmonton Inc.

on Plan I Blk 59 Lot 27, located at 10046 - 81 Avenue NW, was heard by the Subdivision and Development Appeal Board at its hearing held on March 12, 2015. The decision of the Board was as follows:

**SUMMARY OF HEARING:**

At the outset of the appeal hearing, the Chair confirmed with the parties in attendance that there was no opposition to the composition of the panel.

The Presiding Officer first addressed the issue of jurisdiction and whether the appeal was filed within the allowable 14-day appeal period, pursuant to Section 686 of the *Municipal Government Act*, R.S.A. 2000, c. M-26.

The Board noted the following:

1. The notification period, as indicated on the permit, ended on February 16, 2015.
2. The SDAB Office was closed on February 16, 2015.
3. Mr. Glombick filed the Appeal on February 17, 2015.

**MOTION:**

That the Board assumes jurisdiction pursuant to Section 686(1)(a)(i) of the *Municipal Government Act*.

## REASONS FOR DECISION:

The Board finds the following:

1. Based on the evidence provided, the Board determined that the appeal was filed on February 17, 2015. Therefore, pursuant to section 22(2) of the *Interpretation Act*, R.S.A. 2000, c. I-8 and section 686(1)(a)(i) of the *Municipal Government Act*, R.S.A. 2000, c. M-26, the appeal was filed within the allowable 14 days.

## SUMMARY OF HEARING (CONTINUED):

The Board heard an appeal of the decision of the Development Authority to approve, subject to conditions and a variance in the minimum required number of on-site parking spaces, an application to change the Use from General Retail Store to Indoor Participant Recreation Services Use with Accessory Personal Service Shop and to construct interior alterations (98.20 square metres of Public Space) - True Yoga Edmonton Inc., located at 10046 – 81 Avenue. The approved development permit application was subsequently appealed by an adjacent property owner.

Prior to the hearing a written submission from the Development Authority, dated February 24, 2015, was provided to the Board, a copy of which is on file.:

The Board heard from the Appellant, Mr. Glombick, who provided the following information in support of his appeal:

1. He has no concerns about the proposed Yoga Studio itself and wishes the owner well. However, he owns a small warehouse across the street from the subject site and his current tenants have concerns about renewing his lease because of parking problems in the area and the impact of the parking variance that has been granted for this development.
2. There are many small businesses operating in this area that all need parking.
3. The proposed business is different than most because of the number of students, up to 26, and the length of classes, up to 2 hours.
4. A Personal Service Shop is also proposed in addition to the Yoga Studio. At least 20 parking spaces are required to service both uses.
5. The five street parking spaces immediately in front of the subject Site are limited to 30 minutes. Due to this time limit, participants in the classes will not be able to use those parking spaces.
6. He acknowledged that the owner of the Yoga Studio will encourage students to park at the rear of the building.

7. It was his opinion that Transportation Services should reconsider the parking requirements.
8. He acknowledged that there are a number of high rise buildings and condominiums in the area.
9. He agreed that students of the Yoga Studio coming from the north might walk.

The Board then heard from Mr. Chan, representing the Sustainable Development Department, who provided the following information:

1. The variance was granted based on feedback from Transportation Services and because additional on-site parking spaces could not practically be provided.
2. The Applicant advised him that most of the students will walk, bike or use public transit to access the site.

The Board then heard from Ms. Wasserfall, representing the Respondent, True Yoga Edmonton. Inc., who provided the following information in support of the proposed development:

1. The Yoga Studio has been operating in this neighbourhood for 7 years and most of the students live in the area.
2. Forty to fifty percent of her students walk, bike or use public transit. Those who drive to the site are encouraged to park at the rear of the building.
3. The early morning classes, which occur from 6:00 a.m. to 7:45 a.m., will have a minimal impact on parking because none of the surrounding businesses will be open at that time.
4. Students for the mid-morning classes, which occur from 9:15 a.m. to 11:10 a.m., will trickle in and out at different times, due to the nature of the class, which provides one-by-one instruction for a group of participants.
5. Evening classes, which occur between 5:45 p.m. and 9:00 p.m., will have minimal impact as neighbouring businesses are closed and the demand for parking is decreased.
6. She provided Exhibit 'A', which contained attendance for the week of March 5, 2015, to March 11, 2015, and a schedule of classes offered. Exhibit 'A' illustrates class attendance for a typical week, with between 3 and 19 students per class.
7. She has entered into an agreement with K & K Auto to use the parking spaces at the rear of their building. K & K Auto is open from 9:00 a.m. to 6:00 p.m.
8. She is currently in discussion with another adjacent business owner regarding the use of their on-site parking spaces.

9. There is only one instructor for each yoga class.
10. It is not practical for her students to use the time limited parking spaces at the front of the building or the restricted parking on 82 Avenue.
11. She submitted a diagram marked Exhibit 'B' to illustrate the location of on street parking in the area. There is unrestricted on street parking available at a nearby church and in front of some of the adjacent businesses.
12. The proposed Personal Services Use is for two therapists with a limited number of clients.
13. Ms. Wasserfall provided letters of support from neighbouring business owners, marked Exhibit 'C'.

Mr. Glombick made the following points in rebuttal:

1. He did not solicit neighbouring property owners because he wanted them to make their own decision regarding the proposed development.
2. It was his opinion that students attending the early morning classes would use parking spaces required for neighbouring businesses as employees or owners arrive to open the businesses.
3. It was his opinion that at least 19 spaces are required for the proposed business.
4. K & K Auto uses street parking spaces rather than their on-site parking spaces, which further increases the demand for parking in the area.
5. There are various parking restrictions with regard to on street parking in this neighbourhood.
6. He conceded that the 30 minute parking spaces located in front of the Yoga Studio could be changed to allow longer parking.
7. He referred to an email from the Appellant that indicated that the largest class could accommodate 26 students.

#### DECISION:

that the appeal be DENIED and the decision of approval by the Development Authority CONFIRMED

The decision of approval by the Development Authority contains the following variance and condition:

1. Any outdoor lighting for any development shall be located and arranged so that no direct rays of light are directed at any adjoining properties, or interfere with the effectiveness of any traffic control devices. (Reference Section 51 of the Edmonton Zoning Bylaw 12800.)

**NOTES:**

- 1) This Development Permit is not a Business Licence. A separate application must be made for a Business Licence.
- 2) Signs require separate Development Applications.
- 3) A Building Permit is required for any construction or change in use of a building. For a building permit, and prior to the Plans Examination review, you require construction drawings and the payment of fees. Please contact the 311 Call Centre for further information.
- 4) The City of Edmonton does not conduct independent environmental checks of land within the City. If you are concerned about the suitability of this property for any purpose, you should conduct your own tests and reviews. The City of Edmonton, in issuing this 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.
- 5) An approved Development Permit means that the proposed development has been reviewed only against the provisions of the Edmonton Zoning Bylaw. It does not remove obligations to conform with other legislation, bylaws or land title instruments such as the Municipal Government Act, the ERCB Directive 079, the Edmonton Safety Codes Permit Bylaw or any caveats, covenants or easements that might be attached to the Site
- 6) Subject to the right of appeal the permit is NOT VALID until the required Notification Period expires (date noted below in accordance with Section 21.1 and 17.1)

**Variance:**

Variance to Section 54.2, Schedule 1(36) - Overall on-site parking reduced from 31 spaces to 5 spaces.

**REASONS FOR DECISION:**

The Board finds the following:

1. An Indoor Participant Recreation Services Use is a Permitted Use in the CB2 General Business Zone.

2. A Personal Services Shop is a Permitted Use in the CB2 General Business Zone.
3. The variance in the minimum required number of parking spaces has been granted for the following reasons:
  - a) The Site is located in a mixed use area that promotes walkability and the site has limited on-site parking.
  - b) A number of the proposed yoga class times are outside the hours of operation of most of the adjacent businesses.
  - c) Based on the evidence provided by the Applicant, the proposed Yoga Studio will not operate at maximum capacity.
  - d) Based on the past experience of the Applicant, a significant portion of students will walk, bike or use public transit.
  - e) The subject site is located in close proximity to bus stops located on 82 Avenue.
  - f) The Applicant has entered into a written agreement with a neighbouring business owner regarding the use of shared parking spaces.
  - g) There is sufficient on-street parking available in close proximity to the subject site.
  - h) Transportation Services has reviewed the application and supports the required parking variance.
  - i) The Applicant submitted four letters of support from neighbouring business owners, as well there were no letters of objection and no one appeared to support the appeal.
  - j) The property is non-conforming and therefore the options to modify or develop additional on-site parking spaces are limited.
4. Based on the above, 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.

#### **IMPORTANT INFORMATION FOR 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. 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.
3. A Development Permit shall expire and shall no longer be valid after one year from the date of approval of the Permit, if no construction has been initiated. However, if the permit holder is unable to proceed pending a court decision involving the proposed

development, time shall not run until such proceedings are finally completed. For further information, refer to Section 22 of the Edmonton Zoning Bylaw, 12800.

4. Notwithstanding clause (3) above, if a Building Permit is issued for the development within the twelve month period, the Development Permit issued therefore shall not lapse unless and until the Building Permit so issued is cancelled or allowed to lapse by virtue of work not having commenced within the statutory minimum period.
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.

Mr. V. Laberge, Presiding Officer  
SUBDIVISION AND DEVELOPMENT  
APPEAL BOARD

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DATE: March 27, 2015  
PROJECT NO.: 165491804-001  
FILE NO.: SDAB-D-15-053

**NOTICE OF DECISION OF THE SUBDIVISION AND DEVELOPMENT APPEAL BOARD**

This appeal dated February 13, 2015, from the decision of the Development Authority for permission to:

Change the Use from a Limited Group Home to a Group Home (increasing number of residents from 6 to 10), to construct a rear uncovered deck (existing without permits), exterior alterations (exchange two windows into doors on second floor) and extended concrete Driveway

on Plan 7923032 Blk 56 Lot 8, located at 18929 - 99A Avenue NW, was heard by the Subdivision and Development Appeal Board at its hearing held on March 12, 2015. The decision of the Board was as follows:

**SUMMARY OF HEARING:**

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.

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

The Board heard an appeal of the decision of the Development Authority to refuse an application to change the Use from a Limited Group Home to a Group Home (increasing number of residents from 6 to 10), to construct a rear uncovered deck (existing without permits), exterior alterations (exchange two windows into doors on second floor) and extended concrete Driveway, located at 18929 – 99A Avenue NW. The subject site is zoned RF1 Single Family Residential Zone. The development permit application was refused because of an excess in the maximum allowable occupancy of a Group Home, a deficiency in the minimum required number of on-site parking spaces and loading space, an excess in the maximum allowed width of a Driveway and an excess in the maximum allowable Site Coverage.



Prior to the hearing a written submission from the Development Authority, dated February 18, 2015, was provided to the Board, a copy of which is on file.

The Board heard from Ms. Jack, representing the Appellant, Castlewood Care Homes, who provided the following information in support of the appeal:

1. A Limited Group Home has been operating at this location for several years. The Limited Group Home provides care for residents to age in place to the end of life.
2. The Single Detached House was originally renovated to accommodate 10 residents, but the Limited Group Home allowed for only 6 residents. There are currently 6 residents and there is space for an additional 4 residents.
3. There is currently a waiting list for prospective residents and high demand for facilities of this kind in the community.
4. The house currently operates with a ratio of 5 residents to 2 staff members.
5. Parking and loading spaces are adequate and they have never received any complaints from the neighbours.
6. Visitors park on the driveway and it is uncommon for family members to visit at the same time.
7. A loading zone is not required because Ms. Jack does all the shopping herself and the only other delivery to the site is from a pharmacy in a normal passenger vehicle, which parks on the driveway during the delivery.
8. She provided Exhibit 'A', comprised of two letters circulated to neighbouring properties, which indicate support for an increase in occupancy.
9. Ms. Jack also provided Exhibit 'B', comprised of five photographs of the subject Site, which show the Driveway without any vehicles parked on it.

Ms. Jack provided the following responses to questions:

1. Residents have been diagnosed with dementia or Alzheimer's disease. The residents are mobile when they arrive but the level of care increases as they age.
2. The doors are equipped with alarms and chimes, but it is not a locked down facility.
3. Nursing homes are larger facilities with a staff ratio of 17 residents to 2 staff members.

4. Two staff members are on site during the day and one staff member at night.
5. A sprinkler system has to be installed and approved in order to accommodate the change from a Limited Group Home to a Group Home.
6. A staffing ratio of 3 residents to 2 staff members, as identified by the Development Officer, is not required because most of the residents are very mobile.
7. She acknowledged that the Group Home status will stay with the property, but she has every intention of operating from this location for many years and she wants to be able to keep seniors in their community.
8. Her facility does not receive any government funding.
9. There are two parking spaces available in the garage and the driveway is used for visitor parking.
10. The cook is an additional staff member but is not considered as part of the nursing staff.
11. The driveway extension was in place when the house was purchased. The extension provides wheelchair access for the residents.
12. There are three other similar Group Homes operating in different parts of the city.
13. Ms. Jack is a Registered Nurse and operated a group home for seniors in her own home before moving to this location.
14. She provides quality care and has not increased the rates in 5 years.
15. A similar permit was refused in 2014 because of safety code deficiencies. A security system was required and the sprinkler system needed to be upgraded. Both of these changes have now been made.
16. Additional nursing staff will not be required with an increase of 4 residents because she provides all of the primary health care.

The Board then heard from Ms. Bauer, representing the Sustainable Development Department, who provided the following information:

1. This is the Applicant's second request to the Subdivision and Development Appeal Board for an increase in the number of residents.
2. A similar application was refused in 2012 because of complications with the building permit, sprinkler and fire alarm upgrades.
3. The Development Permit for the Limited Group Home, which was approved on June 20, 2012, did not include a variance for a loading space, as this was missed in the review by the Development Officer.
4. The rear deck was built without a development permit and results in an overage in Site Coverage. In addition, a second floor exit door has been installed to the rear deck.

5. The Applicant now wants to convert another window adjacent to the existing second floor exit door into an additional exit door. No justification for this change was provided.
6. Basement storage rooms have been converted into bedrooms for residents.
7. There will be a total of 8 bedrooms which could accommodate up to 11 residents.
8. Ms. Bauer provided a printout of Site Visit Details from Alberta Health, marked Exhibit 'C', which indicated on February 25, 2015, the Limited Group Home had 7 residents, and 8 students working in the home.
9. Variances are required for the driveway extension, the existing deck and the loading zone.

Ms. Bauer provided the following responses to questions:

1. The difference between a Limited Group Home and Group Home is the level of care and supervision.
2. A Group Home is a Discretionary Use in the RF1 Single Detached Residential Zone and the maximum occupancy is 6 residents.
3. The deck was built sometime between 2012 and 2013.
4. The deck is 10 to 12 feet high, and exceeds the maximum allowable site coverage requirement and overlooks neighbouring properties.
5. It was her opinion, although not a requirement, that staffing levels will increase if the permit is approved.
6. There is a requirement to provide 24/7 hour professional care with intermittent supervision.
7. The rear deck and the exterior doors on the second storey were not included in the development permit application that was made in 2012.

Ms. Jack made the following points in rebuttal:

1. She acknowledged that she did have 7 residents on a temporary basis for a period of 3 weeks.
2. Students do come to the site for training purposes.
3. It was her opinion that staffing levels do not need to increase.
4. She applied to become a Government facility but the application was not successful. Therefore she does not receive any government funding and operates privately and independently.
5. The Fire Department required the upgrade to the sprinkler system and the construction of the deck to provide an emergency exit.
6. She assumed that the deck had a development permit.

## DECISION:

that the appeal be DENIED insofar as it relates to the change in Use from a Limited Group Home to a Group Home, the construction of a rear uncovered deck and exterior alterations, the decision of refusal for which are CONFIRMED. However, the appeal is ALLOWED insofar as it relates to the development of the extended concrete Driveway, which is permitted, with the following variance:

- The excess of 1.44 metres in the maximum allowable Driveway width

## REASONS FOR DECISION:

The Board finds the following:

1. A Group Home is a Discretionary Use in the RF1 Single Detached Residential Zone.
2. Pursuant to Section 79 of the *Edmonton Zoning Bylaw*, the maximum occupancy of a Group Home in a Zone where Group Homes are a Discretionary Use shall be a maximum of 6 residents.
3. The Board finds that the proposed development will increase densification and the intensity of the Use on the subject site and is therefore not compatible in an RF1 Single Detached Residential Zone.
4. The Appellant failed to demonstrate to the satisfaction of the Board that the proposed change in Use from a Limited Group Home to a Group Home would not unduly interfere with the amenities of the neighbourhood or materially affect the use, enjoyment or value of neighbouring property owners.
5. The Board could not consider the application for the existing rear deck or the proposed exterior alterations because accurate plans and drawings were not provided.
6. The Board has granted the variance for the width of the Driveway based on evidence provided by the Appellant that it existed when the property was purchased and that it provides accessibility and visibility for the residents of the Limited Group Home.
7. While the Board recognizes the support of neighbouring property owners, the Board must also have regard for the regulations contained in the *Edmonton Zoning Bylaw*.
8. Based on the above, it is the opinion of the Board, that the proposed development will unduly interfere with the amenities of the neighbourhood nor materially interfere with or affect the use, enjoyment or value of neighbouring parcels of land.

**IMPORTANT INFORMATION FOR 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. 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.
3. A Development Permit shall expire and shall no longer be valid after one year from the date of approval of the Permit, if no construction has been initiated. However, if the permit holder is unable to proceed pending a court decision involving the proposed development, time shall not run until such proceedings are finally completed. For further information, refer to Section 22 of the Edmonton Zoning Bylaw, 12800.
4. Notwithstanding clause (3) above, if a Building Permit is issued for the development within the twelve month period, the Development Permit issued therefore shall not lapse unless and until the Building Permit so issued is cancelled or allowed to lapse by virtue of work not having commenced within the statutory minimum period.
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.

Mr. V. Laberge, Presiding Officer  
SUBDIVISION AND DEVELOPMENT  
APPEAL BOARD