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: November 24, 2016
Project Number: 227067620-003
File Number: SDAB-D-16-281

Notice of Decision

[1] On November 9, 2016, the Subdivision and Development Appeal Board heard an appeal that was filed on October 13, 2016. The appeal concerned the decision of the Development Authority, issued on October 6, 2016, to refuse the following development:

> Erect an overheight 2.44m (8') fence in the front yard of a Single Detached House

[2] The subject property is on Plan 1252AH Blk 34 Lot 19, located at 9235 - 118 Street NW, within the RF1 Single Detached Residential Zone. The Mature Neighbourhood Overlay applies to the subject property.

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

- Copy of the Development Permit application with proposed plans;
- Refused Development Permit decision;
- Development Officer's written submissions, dated November 3, 2016;
- Appellant's supporting documents, including photographs; and
- One online response in opposition to the development, and one email in partial opposition.

Preliminary Matters

[4] At the outset of the appeal hearing, the Presiding Officer confirmed with the parties in attendance that there was no opposition to the composition of the panel.

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

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

Summary of Hearing

i) Position of the Appellant, Mr. K. Cherneski

[7] Mr. Cherneski explained that a contractor installed the overheight fencing in his front yard as a form of privacy screening. His neighbours to the south have some amenity space in their front yard, and the overheight fence provides extra privacy for both himself as well as his neighbours.

[8] He had assumed that all permits were in order and had not consulted with the neighbours immediately adjacent to him specifically about the screening. However, when he built the existing fencing around his property, he did approach his neighbours to determine whether they wished to share the costs. Both neighbours declined to do so, and the resultant fencing is entirely within his property line, including the portion that is overheight.

[9] The overheight portion has actually existed for about two years. It was his understanding that the overheight portion came to the City's attention because of a complaint filed by the neighbour to the north on the side furthest from the overheight fence. He noted that this neighbour has a 20-foot long fence extending into his front yard, with a lattice that extends the height to nine feet. It was therefore his view that the subject overheight fence that is eight feet tall has no impact on this neighbour. Furthermore, the property owner to the north does not actually live in the house and uses it as an investment property.

[10] Upon questioning by the Board, Mr. Cherneski acknowledged the concerns expressed by the neighbours immediately adjacent to the south. He has spoken with these neighbours, and understands that they appreciate the additional privacy screening his fence provides, but they would prefer it if the fence were only six feet high. He confirmed that he is prepared to remove a portion of the overheight fence so that it will be six feet high.

[11] The Board noted that in several pictures submitted by the Appellant, there appear to be other landscaping elements that may impact his neighbours' views, including a large spruce tree located near the south property line in the front yard. The overheight portion of the front yard fencing also appears to have climbing vines that are growing over onto the other side of the fencing that faces the south neighbour.

[12] Mr. Cherneski replied that the spruce tree impacts his own view as well, but that tree is a mature tree and actually enhances the view. Neither he nor his neighbours have concerns about this tree. He further noted that this house is located in a mature neighbourhood, and every single home along this street has trees or hedges that will impact the homeowners' view in some form.

ii) Position of the Development Officer, Mr. J. McArthur

[13] Mr. McArthur observed that the regulations governing fencing in residential zones include privacy screens, so there would appear to be some overlap between the two in the *Edmonton Zoning Bylaw*. The only strong distinction between the two is that fencing is intended to restrict access. As the subject development is attached to a fence with a gate which does restrict access, he characterized the overheight portion as a fence. However, he is not particularly opposed to characterizing the development as a privacy screen either.

[14] Upon questioning by the Board, he clarified that both fencing and privacy screening can be relaxed to permit a height of up to six feet in the front yard. Different height limits come into play with respect to privacy screens and fences located along a side yard.

Decision

[15] The appeal is ALLOWED IN PART and the decision of the Development Authority is REVOKED. The development is GRANTED as applied for to the Development Authority, with the following changes:

1) The original Scope of Application to "Erect an overheight 2.44m (8') fence in the front yard of a Single Detached House" is denied.
2) The amended Scope of Application shall read: "Erect a 1.85 metre (6.0 foot) Privacy Screening in the Front Yard of a Single Detached House." The amended Scope of Application is approved.

[16] The development is subject to the following CONDITIONS:

1) The maximum Height of the Privacy Screening shall be no more than 1.85 metres along its entire length.

[17] In granting this development, the following VARIANCE is allowed:

1) Section 49.2(g)(i) is relaxed to permit the portion of the Privacy Screening constructed in the Front Yard to be a maximum of 1.85 metres high.

Reasons for Decision

[18] Based on the evidence before the Board, the proposed development, existing without a development permit, is Privacy Screening rather than a Fence. It is 14 feet long, 10 feet of which extends into the Front Yard. It was constructed specifically to provide privacy screening from the adjacent neighbour to the south, who has a patio in the Front Yard.

[19] The Privacy Screening is Accessory to a Single Detached House. Since the Single Detached House is a Permitted Use in the RF1 Single Detached Residential Zone, the Accessory Privacy Screening is also a Permitted Use pursuant to section 50.1(2) of the *Edmonton Zoning Bylaw*, which states:

> Accessory Uses and buildings are permitted in a Zone when Accessory to a principal Use which is a Permitted Use in that same Zone and for which a Development Permit has been issued.

[20] The Privacy Screening was built approximately two years ago. At the time, the Appellant believed that the appropriate permits had been obtained by the contractor he had hired. When a complaint was recently filed, he learned that the portion of the eight-foot high Privacy Screening that extended into the Front Yard was over the maximum allowable Height of 1.2 metres.

[21] The most affected neighbours immediately to the south have indicated that they are fine with the Privacy Screening so long as the height is reduced to six feet (1.85 metres). The Appellant stated that he is willing to reduce the Height to six feet. The other immediately adjacent neighbour to the north is opposed to any Fence or Privacy Screening that is higher than what is allowed by the development regulations.

[22] The Board notes that Section 49.2(i) states that "In the case where the permitted Height of Privacy Screening is 1.2 m, the Development Officer may vary the Height of Privacy Screening to a maximum of 1.85 m in order to prevent visual intrusion and provide additional screening from adjacent properties." The Board is of the view that granting a variance to allow the Privacy Screening to be 1.85 metres high will be to the benefit of both the Appellant and the neighbour to the south by providing additional screening to prevent visual intrusion.

[23] The Board is of the view that the Privacy Screening will have no discernable negative impact on the neighbour to the north or on the neighbourhood as a whole. It will not interfere with the sightlines of the neighbour to the north and it will not be out of character in the neighbourhood, particularly with the vines growing on it that will soften its visual impact.

[24] Accordingly, the Board is of the view that the Privacy Screening should be altered so that it is no more than 1.85 metres in Height along its total length. At this Height, the Privacy Screening will not unduly interfere with the amenities of the neighbourhood, nor will it materially interfere with or affect the use, enjoyment or value of neighbouring parcels of land.

Mark Young, Presiding Officer
Subdivision and Development Appeal Board

Board Members Present:
P. Jones, G. Harris, C. Weremczuk, K. Thind

Important Information for the Applicant/Appellant

1. This is not a Building Permit. A Building Permit must be obtained separately from the Sustainable Development Department, located on the 5th Floor, 10250 – 101 Street, Edmonton.

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

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

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

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

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

6. When a decision on a Development Permit application has been rendered by the Subdivision and Development Appeal Board, the enforcement of that decision is carried out by the Sustainable Development Department, located on the 5th Floor, 10250 – 101 Street, Edmonton.

NOTE: The City of Edmonton does not conduct independent environmental checks of land within the City. If you are concerned about the stability of this property for any purpose, you should conduct your own tests and reviews. The City of Edmonton, when issuing a development permit, makes no representations and offers no warranties as to the suitability of the property for any purpose or as to the presence or absence of any environmental contaminants on the property.

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Date: November 24, 2016
Project Number: 225226844-001
File Number: SDAB-D-16-282

Notice of Decision

[1] On November 9, 2016, the Subdivision and Development Appeal Board heard an appeal that was filed on October 13, 2016. The appeal concerned the decision of the Development Authority, issued on September 30, 2016, to refuse the following development:

> Construct an Addition (a new entrance to Basement) to an existing Single Detached House

[2] The subject property is on Plan 239HW Blk 13 Lot 4, located at 5722 - 110 Street NW, within the RF1 Single Detached Residential Zone. The Mature Neighbourhood Overlay applies to the subject property.

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

- Copy of the Development Permit application with proposed plans;
- Refused Development Permit decision;
- Canada Post receipt confirming delivery of the refusal decision;
- Development Officer's written submissions, dated November 3, 2016;
- Results of community consultation; and
- Appellant's supporting documents, including photographs.

Preliminary Matters

[4] At the outset of the appeal hearing, the Presiding Officer confirmed with the parties in attendance that there was no opposition to the composition of the panel.

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

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

Summary of Hearing

i) Position of the Appellant, Mr. P. Lock

[7] Mr. Lock was accompanied by his son, Mr. J. Lock.

[8] Mr. Lock explained that currently, the access to his basement is located in the middle of the house, which requires walking from the front door through the living room or from the back door through the kitchen to get to the stairs leading to the basement. He would prefer to have direct access to the basement via the proposed front entrance. Two of the three bedrooms in the basement are currently occupied by tenants, and the new entrance would afford them and him greater privacy. He confirmed that the basement has a kitchen and that the third bedroom is currently unoccupied. There is a lockable door separating the basement from the rest of the house.

[9] He is also a part-time massage therapist with a Minor Home Based Business development permit that allows one client visit per day to his home. In the future, if he is approved for a Major Home Based Business permit, which would allow him to see more clients, he would like to run his business out of his basement. The proposed basement access would, therefore, provide an additional benefit. He has not applied for a development permit for a Secondary Suite in the basement because it was his understanding that he could not have both a Secondary Suite and a Major Home Based Business.

[10] In addition to his written submissions as set out in his reasons for appeal, Mr. Lock stated that he would be prepared to replace the existing front door entrance with glass if having two entrances facing the street would result in his application being refused. He does not use the front door very much, as his home has a number of other, more widely used entrances.

[11] To address the reasons for refusal as set out in the Development Officer's decision, Mr. Lock reiterated the various options he would be prepared to consider as set out in his written submissions. When questioned by the Board, he stated that he would prefer to not locate the basement access at the southeast corner of the house, as he would then lose the usage of the southeast bedroom on the main floor. Locating the entrance at the southeast corner would also require new stairs to be constructed to the basement, which would be expensive. In his view, the proposed location at the front of the house is the best option, as there is already staircase access at that point.

ii) Position of the Development Officer, Mr. J. McArthur

[12] Mr. McArthur reviewed the definition of a Secondary Suite under section 7.2(7) of the *Edmonton Zoning Bylaw*. He noted that the current Basement development meets all the criteria of a Secondary Suite, except that it has no "separate entrance from the entrance to the principal Dwelling, either from a common indoor landing or directly from the side or

rear of the structure." In his view, approving the proposed second entrance would give the Basement a separate entrance, though it would not be at the side or rear of the principal Dwelling.

[13] He also noted that one of his reasons for refusal was based on section 86(4), one of the Special Land Use Provisions governing Secondary Suites, which requires that "the exterior of the principal building…appear as a single Dwelling." Locating the second entrance at the front, particularly on a flat façade, would give the property the appearance of a Semi-detached House.

[14] Upon questioning by the Board, he confirmed that the only variance required under the Mature Neighbourhood Overlay is to the regulation governing Front Setbacks. Community consultation regarding this variance was completed, with no opposition from the community.

[15] Mr. McArthur also clarified that, because of the Secondary Suite in the basement, four parking spaces are required rather than three, because of the three Basement bedrooms. There is physical space on the Driveway for tandem parking for two vehicles, one behind the other. However, the *Edmonton Zoning Bylaw* does not permit double tandem parking, so there is only one legal parking spot on the Driveway. If the Appellant converted the third Basement bedroom into some other type of room – for example, an entertainment room – only three parking spaces would be required, and the Appellant would, therefore, meet the parking requirements.

[16] In his view, the Appellant's proposal to provide additional parking on his Front Yard is not appropriate, as Front Yard parking is prohibited. Furthermore, a Driveway requires access from the roadway directly to the Garage, and it is questionable whether expanding the Driveway for the purposes of Front Yard parking would meet that criteria. However, he noted that there does appear to be ample street parking based on Google street view photos.

[17] Upon questioning by the Board with respect to client visits for Major and Minor Home Based Businesses, Mr. McArthur acknowledged that the definition of Minor Home Based Business under section 7.3(8) includes the limitation of one business associated visit per day, while the definition of Major Home Based Business under section 7.3(7) states that "such businesses may generate more than one business associated visit per day."

[18] Mr. McArthur explained that Sustainable Development's practice has been to approve Minor Home Based Businesses where that would be one client visit per day (perhaps two, if a courier is to be included). A Major Home Based Business would typically be allowed up to five visits per day. Ultimately, Sustainable Development considers the impact of the business upon adjacent properties. A Minor Home Based Business should typically be invisible to the public with no discernable change in traffic or the number of visits to the house.

[19] The Board referred to two photos submitted by the Appellant which he claimed demonstrated that homes with two separate front entrances are characteristic of the neighbourhood. In response, Mr. McArthur noted that one of these photos showed a door that is located to one side of the house. Although this door faced the front, it did not give the appearance of a door that you would use to enter the Dwelling. The other photo showed the second entrance was oriented toward the interior of the lot and appeared to provide access to the Garage rather than to the principal Dwelling. Further, both houses in the photos appeared to be Single Detached Houses rather than Semi-detached Houses.

iii) Rebuttal of the Appellant

[20] The Appellant stated that if he had were to choose between a permit for a Secondary Suite or a Major Home Based Business, he would choose the Secondary Suite as it would allow for improved accessibility and privacy.

[21] Regarding the photograph he submitted of the house with a second entrance to the Garage, he stated that he had personal knowledge that the door does indeed provide access directly to the basement. The Board noted that, notwithstanding that the door leads to the basement, the door does not give the appearance that there is more than one Dwelling on the property.

Decision

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

1) The Applicant shall obtain a Development Permit for a Secondary Suite in the basement, prior to beginning construction of the subject Addition (new entrance to the Basement).
2) The subject development shall be constructed in accordance with the stamped and approved drawings.
3) As far as reasonably practicable, the design and use of exterior finishing materials used shall be similar to, or better than, the standard of surrounding development. (Reference Section 57.2(1))
4) Immediately upon completion of the addition, the site shall be cleared of all debris.

[23] In granting this development, the following VARIANCES are allowed:

1) Section 814.3(1) is relaxed to permit a reduced Front Setback of 5.78 metres instead of the required 6.74 metres.

2) Section 86(4) is waived to permit the Addition (new entrance to the Basement) to be located at the front of the Single Detached House, thereby altering the exterior of the principal building such that it may have the appearance of housing two Dwellings.

Reasons for Decision

[24] The proposed development is for an Addition to a Single Detached House, which is a Permitted Use in the RF1 Single Detached Residential Zone. The proposed Addition is a new entrance to an existing Basement development.

[25] When the Appellant purchased the subject property, it already had a Basement with a kitchen, sanitary facilities, and sleeping/living facilities. The only way to enter the Basement development from the outside is through one of the exterior doors to the Principal Dwelling and going through the living space of the main floor of the Dwelling to access the Basement entrance.

[26] Section 7.2(7) defines Secondary Suite as follows:

> Secondary Suite means development consisting of a Dwelling located within, and Accessory to, a structure in which the principal use is Single Detached Housing. A Secondary Suite has cooking facilities, food preparation, sleeping and sanitary facilities which are physically separate from those of the principal Dwelling within the structure. A Secondary Suite also has an entrance separate from the entrance to the principal Dwelling, either from a common indoor landing or directly from the side or rear of the structure. This Use Class includes the Development or Conversion of Basement space or above Grade space to a separate Dwelling, or the addition of new floor space for a Secondary Suite to an existing Single Detached Dwelling. This Use Class does not include Apartment Housing, Duplex Housing, Garage Suites, Garden Suites, Semi-detached Housing, Lodging Houses, Blatchford Lane Suites, Blatchford Accessory Suites, or Blatchford Townhousing.

[27] The Basement development fits all the criteria of a Secondary Suite, but for an entrance that is separate from the entrance of the Principal dwelling. However, there was never an approved Development Permit for the Basement development, and the building permit for the Basement development specifically stipulated that there were to be no cooking facilities in the Basement.

[28] The Board is cognizant that, by allowing the proposed development for a separate entrance directly to the Basement development, it is effectively granting the Appellant the last element required for a Secondary Suite. Accordingly, the Board is of the view that a Development Permit for the proposed second entrance should only be approved on

the condition that the Appellant cannot begin construction until he obtains a Development Permit for a Secondary Suite in the Basement.

[29] The proposed development requires a variance to Section 814.3(1) in the Mature Neighbourhood Overlay (the "MNO") regarding a reduced Front Setback. When a variance is required to the MNO regulations, it is a condition precedent to granting a Development Permit that the community consultation process mandated by Section 814.3(24) of the MNO has been complied with. The Board is satisfied that the Appellant has substantially complied with the community consultation process and that no objections were voiced to the Front Setback variance.

[30] The Board is of the opinion that the required variance of 0.96 metres to the Front Setback is minimal and will not have a significant impact on the neighbourhood or on neighbours, particularly considering the existing protruding bay window and the main front door landing.

[31] The Board acknowledges that this second front entrance to the Dwelling will give the appearance of two separate Dwellings contrary to Section 86(4). However, the Board is of the view that the design of the front elevation of the house with its various architectural features is such that the second entrance will not look out of place. Also, the second entrance will be located below Grade, which will minimize the appearance of the second entrance.

[32] Accordingly, the Board finds that the proposed second front entrance 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.

Mark Young, Presiding Officer
Subdivision and Development Appeal Board

Board Members Present:
P. Jones, G. Harris, C. Weremczuk, K. Thind

Important Information for the Applicant/Appellant

1. This is not a Building Permit. A Building Permit must be obtained separately from the Sustainable Development Department, located on the 5th Floor, 10250 – 101 Street, Edmonton.

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

    f) 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,
    g) the requirements of the *Alberta Safety Codes Act*,
    h) the *Alberta Regulation 204/207 – Safety Codes Act – Permit Regulation*,
    i) the requirements of any other appropriate federal, provincial or municipal legislation,
    j) the conditions of any caveat, covenant, easement or other instrument affecting a building or land.

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

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

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

6. When a decision on a Development Permit application has been rendered by the Subdivision and Development Appeal Board, the enforcement of that decision is carried out by the Sustainable Development Department, located on the 5th Floor, 10250 – 101 Street, Edmonton.

NOTE: The City of Edmonton does not conduct independent environmental checks of land within the City. If you are concerned about the stability of this property for any purpose, you should conduct your own tests and reviews. The City of Edmonton, when issuing a development permit, makes no representations and offers no warranties as to the suitability of the property for any purpose or as to the presence or absence of any environmental contaminants on the property.

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

Date: November 24, 2016
Project Number: 024987724-006
File Number: SDAB-D-16-283

Notice of Decision

[1] On November 9, 2016, the Subdivision and Development Appeal Board heard an appeal that was filed on October 12, 2016. The appeal concerned the decision of the Development Authority, issued on October 7, 2016, to refuse the following development:

> Demolish an existing Automotive and Recreational Vehicle Sales/Rentals building and change the use of the site to Non-accessory Parking

[2] The subject property is on Plan B3 Blk 4 Lot 211, located at 10617 - 105 Street NW and Plan B3 Blk 4 Lots 209-210, located at 10430 - 106 Avenue NW, within the CB1 Low Intensity Business Zone. The Central McDougall/Queen Mary Park Area Redevelopment Plan applies to the subject property.

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

- Copy of the Development Permit application with proposed plans;
- Refused Development Permit decision;
- Memorandum from Urban Transportation;
- Canada Post receipt confirming delivery of the refusal decision;
- Development Officer's written submissions, dated November 4, 2016;
- Appellant's written submissions;
- Written submissions of Affected Property Owner, Ms. D. Strate, in opposition to the development;
- Written submissions of the Central McDougall Community League, in opposition to the development;
- Written submissions of Catholic Social Services, in opposition to the development;
- Two online responses, three emails and three letters in opposition to the development; and
- One petition in opposition to the development.

Preliminary Matters

[4] At the outset of the appeal hearing, the Presiding Officer confirmed with the parties in attendance that there was no opposition to the composition of the panel.

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

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

Summary of Hearing

i) Position of the Appellant, Jutt Management Inc.

[7] The appellant was represented by Mr. F. Jutt.

[8] Mr. Jutt explained that his company purchased the subject lots in 2014, and the deal was finalized recently in 2016. The initial plans had been to develop a commercial hotel, but his company subsequently learned that a hotel development was underway on a nearby site to the south of the subject property. As a result, they have reevaluated their options, and are considering a residential apartment development. However, much depends upon the neighbouring developments of Katz Group, WAM Development, etc., as well as the LRT expansion and the economy.

[9] In the meantime, he wished to assure the community that his company is invested in the neighbourhood. He referred to before and after photographs of the subject Site, which showed that his company has renovated the Site by paving it with asphalt and installing a new fence and various light posts. So far, they have invested $70,000.00.

[10] Mr. Jutt also provided some background information about the proposed development. If approved, the parking lot will operate seven days a week, and his company will ensure that company personnel will attend the Site every hour. Cleaning of the parking lot will take place both at the beginning and end of the day. Upon questioning by the Board, Mr. Jutt confirmed that he owns various businesses and employs 67 employees, who will be providing the manpower to clean and check on the parking lot.

[11] He anticipates that approximately 40 to 50 vehicles will be parked on the lot during the day. Depending on the setbacks approved by this Board, the parking lot could theoretically have capacity for 63 vehicles. He confirmed that full use of the parking lot is anticipated for special events.

[12] With respect to the landscaping requirements, Mr. Jutt stated that he is prepared to provide landscaped islands. However, he would ask that the Board consider alternative temporary landscaping such as planters, as landscaped islands cost money, and this parking lot is intended to be a temporary development while his company determines what would be an appropriate permanent development for the lot. He submitted that the worst case scenario would be a landscaping condition that would require the asphalt to be cut up.

[13] Mr. Jutt noted that, should the development be approved, the City has requested the access off 105 Avenue and 106 Street to be closed off. However, the result is that access to the parking lot would be restricted to the rear alley and neighbours on the other side of this alley have expressed their opposition and concerns regarding this rear alley access.

[14] Upon questioning by the Board about potential impacts on neighbouring property owners, Mr. Jutt expressed the view that the proposed five LED lampposts will not affect neighbouring residential apartments, nor will people leaving the arena and flooding onto the parking lot have an undue impact upon noise.

[15] He also believed that safety concerns would be appropriately mitigated by the two parking lot attendants who will be assigned to the parking lot on special events. He confirmed that these attendants would be provided prior to special events to assist with efficient parking, but none would be provided when vehicles are leaving. He submitted that the security cameras will be sufficient for post-event surveillance.

[16] Upon questioning by the Board, Mr. Jutt confirmed that he proceeded with site demolition and constructed the asphalt parking lot prior to receiving a development permit. As a result of the demolition, the previously existing landscaping located on his property was removed. He also confirmed that there are several parking lots in the vicinity, including an Impark parking lot directly south of the subject development across 106 Avenue.

ii) Position of the Development officer, Mr. P. Belzile

[17] Mr. Belzile explained that one of his reasons for refusing the development permit stemmed from the change in traffic intensity and impacts upon the community. Previously, the Site was used as a car sales lot, which involved long term storage of vehicles and did not generate much traffic to and from the Site.

[18] The proposed change in Use will involve short term vehicular parking, particularly during special events when the parking lot will experience a flood of vehicles arriving and leaving at the same time. This impact is further exacerbated by Urban Transportation's condition that the accesses to 106 Avenue and 105 Street be closed off. The only remaining access would be from the rear alley, which will impact the abutting

properties. Vehicles leaving the alley will shine their headlights into the windows of the apartments along this alley.

[19] Upon questioning by the Board, Mr. Belzile acknowledged that the intent of removing the 105 Avenue and 106 Street accesses is to increase pedestrian walkability by reducing the number of cars crossing the sidewalk. The result is that either way there will be negative impacts: maintaining the 105 Avenue and 106 Street accesses will impact the amenities of the neighbourhood by affecting pedestrian traffic; restricting access to the rear alley only will impact the use and enjoyment of neighbouring parcels of land.

[20] In his view, the type of traffic generated by the proposed parking lot is distinguishable from apartment-generated traffic, which experiences traffic spread out throughout the day.

[21] If the Board were to grant the proposed development as a temporary permit, he would not be opposed to concrete planters to provide the required landscaping. However, he noted that section 55 of the *Edmonton Zoning Bylaw* stipulates some restrictions regarding at-grade planting, so the Board would need to consider allowing exceptions to that regulation. Upon questioning by the Board, he expressed the view that two years would be appropriate for a temporary permit of this nature.

[22] Mr. Belzile also stated that he would prefer to see some landscaped islands spaced throughout the parking lot, not simply perimeter planting. He noted that the regulation prohibiting parking within the setback is partially to ensure that there is some landscaping to mitigate the effects of an asphalt parking lot. The development regulations governing landscaping under section 55 are intended to promote a greener, more attractive Edmonton. Even without considering the applicable provisions of the Area Redevelopment Plan, the development would not have been approved as it would not have met this purpose.

[23] Upon questioning by the Board, he explained that he had initially considered the development with appropriate landscaped islands, and therefore requested that the Appellant submit landscaping plans. However, at the time, there were mature trees on the property. The premature removal of these trees by the Appellant has effectively negated any sort of mitigating effect that could have been gained from the mature trees. Mr. Belzile confirmed that trees planted between the Site and sidewalk along 104 Avenue as well as one tree along 105 Avenue have also been removed.

[24] Referring to the refused landscaping plans, he confirmed that the 12 trees and 27 shrubs were to be permanent plants. In his view, permanent landscaping is preferable to temporary planters because it is possible that, if the Site is not permanently developed for a long period of time, the planters may end up being full of dead plants.

iii) Position of Central McDougall Community League, Opposing the Development

[25] The Community League was represented by Mr. W. Champion.

[26] Mr. Champion submitted that the proposed development is not suitable for this location. He referred to portions of the Central McDougall/Queen Mary Park Area Redevelopment Plan (the "ARP") in support of his position. Map 8 showing the Downtown North Edge Development Concept identifies the subject Site as "Precinct B" for Medium Rise Apartments. The purpose of Precinct B is: "To preserve and maintain the residential character of the area by maintaining the existing low rise (walk-up) apartment building stock and allowing compatible 6 storey infill at higher densities under the existing (RA8) Medium Rise Apartment Zone." It was his view that the proposed parking lot is not consistent with this goal.

[27] Mr. Champion also reviewed the Strategic Priorities as set out in the ARP. He drew particular attention to those portions which encouraged non-vehicular modes of transport, high quality developments and aesthetics, support for Transit Oriented Development, and minimization of the impacts of surface parking lots.

[28] The Board noted that page 59 of the ARP with respect to Vehicular Parking, Access and Loading provides that "Adverse effects of vehicular parking, access, and loading within the Study area will be reduced". This wording suggests that parking lots are contemplated by the ARP. In reply, Mr. Champion noted that there must be appropriate screening.

[29] Furthermore, a surface parking lot creates a visually unattractive environment and the community has been working toward improving the perception of the neighbourhood as a place to call home. Although the previous car sales lot was not supported by the community, it caused far fewer problems, with less disturbances, traffic and invasive lighting. Mr. Champion also noted that parking lots often attract drug dealers.

[30] Mr. Champion stated that it is unfair to bend the rules for someone who has proceeded with development without first obtaining the required permits. He noted that the Appellant's submissions amount to a request to the Board to approve the development simply on the grounds that money has already been invested in the subject parking lot. He also disagreed that the Appellant's intent is for a temporary parking lot. In Mr. Champion's view, people do not pave over a lot with asphalt if the development is intended to be temporary.

[31] Upon questioning by the Board, Mr. Champion stated that the Community League would prefer a temporary parking lot over a permanent parking lot. However, he noted that there is nothing preventing the developer from requesting, and being granted, an extension to a temporary permit. Regardless of the length of the permit, neighbouring residences will be negatively impacted by the noise, crime and post-game disturbances that the parking lot will generate.

[32] When asked to describe the surrounding developments, Mr. Champion described the residential developments directly adjacent to the parking lot, across from the rear alley. One of these developments is a condominium building owned by a property owner who is also in attendance at this hearing. The remainder of the surrounding developments are largely residential buildings as well. On the other side of 105 Avenue is a small office building, which has off-street parking with access off an alley. The lot at the corner of 107 Avenue and 105 Street will be converted into a park. The LRT line also runs along 105 Avenue, and it is not possible for cars to cross the LRT line, so there is only one-way traffic on either side of the LRT line.

[33] Mr. Champion also disagreed with the Appellant's submissions that the proposed development is consistent with the various parking lots in the area. He stated that the parking lot on 102 Street is illegal and has been purchased recently. Other parking lots in the area are in the process of being demolished and removed. He referred to a bylaw passed by City Council in 2004 that resulted in a stretch of parking lots becoming non-conforming uses. In sum, parking lots in this area are being actively discouraged to promote a more pedestrian-friendly neighbourhood.

iv) Position of Affected Property Owner, Ms. D. Strate

[34] Ms. Strate was accompanied by Mr. K. Strate.

[35] Ms. Strate explained that she owns the apartment building across the rear alley of the parking lot. When purchasing the property and to be confident about what she was purchasing, she became very familiar with the ARP and the Revitalization Zone. The ARP played a significant role in her decision to purchase the property. Based on her understanding of the ARP, it was her conclusion that the proposed development is simply incompatible with the area, does not conform with the ARP, and fails to meet the test under section 687(3)(d) of the *Municipal Government Act.*

[36] Ms. Strate reviewed the Strategic Priorities of the ARP, focusing on the crime prevention and safety aspect. In her view, the parking lot is unattractive, uninviting, does not have a quality aesthetic, and has an undue negative impact upon both the safety of pedestrians and of neighbouring residences.

[37] With respect to pedestrian safety, she noted that cars often use the parking lot as a shortcut between 106 Avenue and 105 Street, though she acknowledged that if the permit were approved, these accesses would be closed off pursuant to Urban Transportation's recommended conditions.

[38] Another concern is that pedestrians often cut through the rear parking lot of her apartment building to access the subject parking lot. There is a large garbage bin located on a southern section of her parking lot. She has spoken with various City of Edmonton departments to discuss alternative placements for this garbage bin, to no avail. As a

result, this garbage bin poses a blind spot for both the vehicles exiting the subject parking lot through the rear alley and for pedestrians cutting across her property. In support, she referred to a photograph in her PowerPoint presentation (slide 21 of 40, top right hand photo), which showed a pedestrian stepping out of the blind spot into the path of an oncoming vehicle.

[39] The Board questioned whether this type of pedestrian traffic could be expected even without the subject parking lot given how close the Site is to the new arena. Mr. Strate replied that to verify the impact, he stood on the other side of the parking lot to gauge where the pedestrians were going. In his view, the existence of the subject parking lot is the direct cause of the pedestrian traffic cutting across his property, as there are no other parking lots further along that block. The pedestrian traffic is, therefore, primarily from event-goers returning from an arena event to retrieve their vehicles from the subject parking lot.

[40] Ms. Strate stated that she has spoken with a representative at the neighbourhood fire hall. Though the individual did not wish to go on record to avoid any potential conflict of interest with other City departments, Ms. Strate stated that this individual told her that first responders are concerned that vehicles exiting the parking lot could potentially prevent access to the rear alley in the event of an emergency.

[41] In addition to concerns about pedestrian safety, Ms. Strate stated that, since the parking lot was built, panhandlers have been observed walking between the parked cars and making their way to the neighbouring properties. Her tenants have commented that they no longer feel safe. Event-goers returning from arena events often walk onto the property, hit the patios as they walk past, or peer into the windows of the first floor units. Her tenants expressed the view that they had not experienced those types of disruptions before the parking lot was constructed.

[42] Based on the concerns of her tenants, Ms. Strate felt that the parking lot negatively affected her ability to attract good tenants. Although she had no empirical data about the impact of the parking lot upon the value of her property, she referred to a document from her realtor about the potential negative impact. In sum, it is unlikely that the subject parking lot will result in an appreciation to her property's value. Should the development permit be granted, she sees no other option short of selling her apartment building to the Appellant to facilitate an expansion of the subject parking lot.

[43] Ms. Strate also spoke with neighbouring small business owners, including a nearby coffee shop and the Colours art supply store. Contrary to popular opinion that arena traffic will bring more business to the downtown shops, these business owners expressed the view that event nights actually pushes away existing traffic. One shop owner stated that at this point, he does not want new business; he would just like his old business to return.

[44] Upon questioning by the Board, Ms. Strate confirmed that once the vehicles are parked and the event-goers have left for the arena, there is nobody monitoring the parking lot. She is not in favour of either a permanent or a temporary parking lot.

v) Position of Catholic Social Services

[45] Catholic Social Services was represented by Mr. P. Kostaras. He read the letter that Catholic Social Services had submitted prior to the hearing, a copy of which is on file. Upon questioning by the Board, Mr. Kostaras stated that Catholic Social Services would not be in support of a temporary permit either.

vi) Position of Affected Property Owner, Mr. P. Zygmunt

[46] Mr. Zygmunt advised that he owns a condominium in the building immediately to the north of Ms. Strate's apartment building.

[47] His parking spot abuts the alley and he has almost been hit by vehicles that were parked in the subject parking lot and were leaving through the alley. He has seen people looking into his vehicle to determine whether there is anything of value to steal. He is aware of these security concerns as he has installed cameras for his parking spot.

[48] The subject parking lot has attracted certain types of individuals who have slept on his property, urinated, and scoped out vehicles for valuables.

[49] Upon questioning by the Board, he confirmed that the subject parking lot became operational on the day that the arena was opened.

vii) Rebuttal of the Appellant

[50] The Appellant acknowledged that there is shared consensus that the subject parking lot has been the cause of a number of problems. However, in his view, these problems are caused by the opening of the Rogers Place Arena. Even if the subject lot were to be developed into another commercial development, the traffic will not go away.

[51] To prevent crime in the area, he is prepared to install a six-foot by nine-foot sign with clear indication that the area is monitored by surveillance cameras.

[52] Mr. Jutt provided a summary of the financial costs to him of operating the parking lot, and reiterated that his company is in the community to invest in it.

Decision

[53] The appeal is DENIED and the decision of the Development Authority is CONFIRMED. The development is REFUSED.

Reasons for Decision

[54] Pursuant to section 687(3)(a.1) of the *Municipal Government Act*, the Board must comply with any applicable statutory plans in effect. In this case, the Central McDougall/Queen Mary Park Area Redevelopment Plan (the "ARP") is a statutory plan that applies to this Site.

[55] The subject parking lot is located in Precinct B of the ARP. This precinct is designated in the ARP as appropriate for Medium Rise Apartments under the existing RA8 Zone. However, Council has not yet changed the zoning of Precinct B. The subject Site is currently zoned CB1 Low Intensity Business Zone. In this Zone non-Accessory Parking is a Discretionary Use.

[56] Although the ARP mentions the undesirable effects of surface parking lots in the area, it does not ban them outright. Rather, it speaks to mitigating their impacts. Under the heading *General Design Principles* at page 59 it states: "Adverse effects of vehicular parking, access and loading within the Study area will be reduced by: …encouraging the use of fencing and planting to screen surface vehicular parking; orienting surface vehicular parking and loading accesses to the rear of buildings and utilizing lanes for access; and requiring the proper lighting, surfacing, and drainage of surface vehicular parking areas."

[57] Starting at page 64, the ARP sets out its vision for Precinct B. It does not specifically mention surface parking lots. In contrast, at page 67 where the development principles for Precinct D are set out, it states: "Surface vehicular parking lots shall not be permitted fronting onto 105 Avenue (Multi-use Trail) or any north/south street."

[58] From the above, the Board concludes that there is nothing in the ARP prohibiting non-Accessory Parking in Precinct B or on the subject Site.

[59] The Board heard that this parking lot began operating without a development permit at the same time the new Rogers Place arena opened in September 2016. Several existing mature trees on the Site were removed and the Site was completely asphalted. Since then, in the relatively short amount of time that has passed, nearby residents in the adjacent apartment and condo buildings, particularly those living along the Lane separating them from the lot, have experienced significant problems that they attribute to this parking lot. Their concerns centre primarily on the noise and light generated by vehicular and pedestrian traffic to and from the lot, vehicular congestion in the adjacent Lane and the presence of undesirable people such as transients and drug dealers attracted

by people using the lot. The Board was presented with a petition against the development signed by many residents of adjacent residential developments.

[60] Although some of the problems being experienced by these residents are probably caused by the increased activity associated with the opening of the new arena, the Board is satisfied based on the evidence it heard that many of the problems they are experiencing are related directly to the increased vehicular and pedestrian traffic generated by the parking lot.

[61] To this point in time, the parking lot has been operating with vehicular access from 105 Street and 106 Avenue as well as from the adjacent Lane. However, the City of Edmonton's Urban Transportation Department has recommended as one of their conditions the closure of street access from 105 Street and 106 Avenue. The closure of these two access points would mean that all vehicles entering and exiting the parking lot would have to go through the narrow rear Lane separating the parking lot from residential developments.

[62] The Board is of the view that the problems experienced by the affected neighbours with respect to the parking lot will be exacerbated by the requirement for Lane-only access, which will force all the vehicles to use the Lane.

[63] Accordingly, the Board is of the opinion that a development permit for this Discretionary Use should not be issued because non-Accessory Parking on this Site is not reasonably compatible with the surrounding development. Although the Appellant indicated that the parking lot would only be temporary, the Board is of the view that even temporary non-Accessory Parking on this Site would not be reasonably compatible with surrounding development.

[64] Further, even if the Board had been inclined to allow non-Accessory Parking at this location, it would have required more landscaping around the perimeter of the Site than required by Section 55.3(1)(b)(i) or proposed in the Appellant's landscaping plan. Also, the Board would not have granted the necessary variances related to the landscaped islands required by Sections 54.2(3)(a) and (b). As was referred to above, the ARP specifically mentions the importance of mitigating the impact of surface parking through the use of, among other things, landscaping. Adequate perimeter landscaping and landscaped islands are integral to achieving the goals set out in the ARP.

[65] Although the Appellant submitted a landscaping plan to the Development Officer, at the hearing he indicated that he didn't want to plant trees and shrubs because the parking lot would only be temporary. Rather, he wanted to use plants in containers. He also indicated that he did not want to remove asphalt around the perimeter of the lot or in the centre of it to plant vegetation or install landscaped islands.

[66] The Board is of the view that even the landscaping around the perimeter of the parking lot proposed in the landscaping plan is insufficient to mitigate the negative visual impact of the parking lot from the street, from the surrounding properties, and from the LRT line.

The Board is also of the opinion that the lack of landscaped islands within the parking lot is unacceptable because they are necessary to mitigate the visual impact of the large expanse of asphalt. The lack of these landscaping elements would, in the opinion of the Board, unduly interfere with the amenities of the neighbourhood, and materially interfere with or affect the use and enjoyment of neighbouring parcels of land.

[67] For the above reasons, the appeal is dismissed.

Mark Young, Presiding Officer
Subdivision and Development Appeal Board

Board Members in Attendance:
P. Jones; G. Harris; C. Weremczuk; K Thind

Important Information for the Applicant/Appellant

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

2. When a decision on a Development Permit application has been rendered by the Subdivision and Development Appeal Board, the enforcement of that decision is carried out by the Sustainable Development Department, located on the 5th Floor, 10250 – 101 Street, Edmonton.