



**EDMONTON
TRIBUNALS**

*Subdivision &
Development
Appeal Board*

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Date: November 23, 2017
Project Number: 256813032-001
File Number: SDAB-D-17-210

Notice of Decision

- [1] On November 8, 2017, the Subdivision and Development Appeal Board (the “Board”) heard an appeal that was filed on October 13, 2017. The appeal concerned the decision of the Development Authority, issued on October 10, 2017, to refuse the following development:

To construct a Single Detached House with rear attached Garage, veranda, rear uncovered deck, fireplace and Basement development (NOT to be used as an additional Dwelling)

- [2] The subject property is on Plan 1721646 Blk 13 Lot 14B, located at 6503 - 124 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:

- Copies of the refused permit, permit application, and plans;
- Development Officer’s written submissions dated November 2, 2017;
- Appellant’s supporting materials, including plot plan dated April 27, 2017 and Alberta Court of Appeal decision, *Newcastle Centre GP Ltd. v Edmonton (City)*, 2014 ABCA 295;
- Twelve letters from neighbouring property owners, including the community league, in opposition to the development; and
- Submissions from property owner, Ms. Lazar-Cross, with supporting materials.

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

- Exhibit “A” – Copy of information regarding the Mature Neighbourhood Overlay printed from the City of Edmonton website submitted by a neighbouring property owner
- Exhibit “B” – Copy of Bylaw 18013 provided by the Board Officer

Preliminary Matters

- [5] At the outset of the appeal hearing, the Chairman confirmed with the parties in attendance that there was no opposition to the composition of the panel.
- [6] The Chairman outlined how the hearing would be conducted, including the order of appearance of parties, and no opposition was noted.
- [7] The appeal was filed on time, in accordance with Section 686 of the *Municipal Government Act*, RSA 2000, c M-26.

Summary of Hearing

i) *Position of the Appellant, Fyz River West Homes:*

- [8] The Appellant was represented by legal counsel, Mr. K. Haldane. He was accompanied by the property owner, Ms. C. Zhang.
- [9] Mr. Haldane asked that if it was the decision of the Board to not grant the required variances that the appeal be tabled to allow the Applicant to submit revised plans for a detached rear garage. This would allow the development to be reviewed again without the required six month re-submission interval.
- [10] Mr. Haldane referenced the Alberta Court of Appeal decision *Newcastle Centre GP Ltd. v Edmonton (City)*, 2014 ABCA 295, 2014 Carswell Alta 1585 [*Newcastle*], which addresses the Board's test when considering whether to grant variances. The *Newcastle* decision determined that a variance does not create a presumption of negative impacts. Rather, it must be determined whether the proposed breezeway which gives rise to the variance interferes with the use and enjoyment of neighbouring properties.
- [11] Mr. Haldane referenced the Plot Plan dated April 27, 2017 to illustrate that the garage is 2.31 metres from the rear lot line and is connected to the house by a breezeway that is approximately 4.4 metres long. If the breezeway was removed and the garage was detached, the variance in the rear setback requirement would be 2.58 metres which is a relatively minor issue. Without the breezeway connection, the rear setback would be measured from the house.
- [12] The only property that will be impacted by the proposed breezeway is the property immediately to the north. That property is owned by his client and there is no objection to the required variance.
- [13] It was the Appellant's submission that the neighbours do not object to the proposed development per se but are unhappy about the approved subdivision for the subject lot. Under the existing legislation, the neighbours have no right of appeal on a subdivision approval and therefore have taken this opportunity to oppose the development.

- [14] However, the neighbours opposing the development need to address the impact that the required variances will have on their properties. Mr. Haldane submitted that the impact is minimal and will be primarily absorbed by the lot located immediately north of the subject site that is owned by his client.
- [15] The proposed front setback is 7.9 metres. The newly subdivided lot to the north will have a similar front setback; however, if that lot had been developed first, the variance for this lot could be reduced. His client would be willing to shift the development forward on the lot, should that be required by the Board as a condition for approval.
- [16] A diagram and photographs were referenced to illustrate that the proposed development is not that different from what currently exists on the lot, and that the proposed breezeway is a relatively small portion of the development. Elevation drawings illustrate that the breezeway cannot be seen from 65 Avenue because it is lower than the principal dwelling and the garage. The landscaping plan indicates that several mature trees and shrubs located on the property will be retained, further minimizing impact upon neighbours. If there is an impact, it will be completely absorbed by the lot immediately to the north.
- [17] Mr. Haldane referenced a copy of the refused development permit application, showing that the application was submitted on July 7, 2017 and refused on October 10, 2017. During this time period, amendments to the Mature Neighbourhood Overlay were passed by City Council. At the time of application, rear attached garages were permitted on corner sites. However, when the amendments came into effect on September 1, 2017, rear attached Garages were no longer allowed.
- [18] The regulations regarding vehicular access to properties where an abutting lane exists were also amended. Effective September 1, 2017, vehicular access from a public roadway, other than a Lane is no longer permitted where an abutting lane exists. Access to the proposed attached garage will be from the lane.
- [19] The community consultation requirements in the Mature Neighbourhood Overlay were also amended, and the assessed owners abutting the subject site and directly adjacent across the lane were consulted, pursuant to section 814.5(2).
- [20] Mr. Haldane referenced a letter of support received from the Community League contained, but noted that the Board subsequently received an email from the Community League indicating that they no longer support the proposed development. The Community League contended that they were not provided with all of the relevant information and based their support on incomplete and inaccurate information.
- [21] Mr. Haldane noted that the Community League's letter of opposition did not address the impact of the variances required for the proposed development. Ms. Zhang further clarified that she provided a copy of the Site Plan, east and west elevation drawings, and graphical renderings of the proposed development to the Community League at the

direction of her Architect. It was therefore unclear to the Appellant as to what information the Community League was missing.

[22] The Appellant provided the following information in response to questions from the Board:

- a) The existing house was built in the 1950s and does not fit the needs of Ms. Zhang's family. The proposed new design is slightly smaller than some of the adjacent houses but will be designed to fit her family's needs.
- b) Ms. Zhang talked to the President of the Community League. Further information was requested and provided. A Board meeting was held in September and Ms. Zhang was contacted afterward to discuss the proposed finishing materials and the retention of mature landscaping on the property.
- c) Ms. Zhang spent a considerable amount of time discussing the proposed development with neighbours. It was her opinion that the neighbours were angry that the lot had been subdivided. Ms. Lazar-Cross lives immediately north of the newly subdivided northern lot. She indicated that she could not support this development until she had information regarding how the northern lot would be developed.
- d) The neighbour across the lane supports the proposed development. The Community League and the neighbour who resides east of the subject site initially provided support for the proposed development.
- e) There are many attached garages in this neighbourhood which no longer comply with the amended regulations in the Mature Neighbourhood Overlay.
- f) The proposed development complies with the maximum allowable Site Coverage requirement. There is an existing carport at the rear of the property that is not shown on the Plot Plan. The proposed development will not significantly change the footprint of what already exists on the lot. The variance required is the result of a portion of the two storey projection and the proposed breezeway.
- g) This development has to be reviewed using the amended regulations that came into effect on September 1, 2017, including the new regulations governing community consultation. The Board can determine whether there has been sufficient compliance with the new regulations governing consultation.
- h) The design process began in February 2017 with the goal of completion by September 2017. Due to the desired time for completion, the Appellant wanted the proposed development to comply with all of the Bylaw requirements without any variances and the Architect designed the development accordingly. They were not advised when the application was made that amendments to the Zoning Bylaw were being considered.

- i) Many of the neighbours who oppose the proposed development have expressed concern regarding the removal of trees to accommodate the development. However, a large tree at the front of the lot will be retained as well as two mature trees that must remain as a condition of the subdivision approval.
- j) The minimum required rear setback could be complied with if the house was moved 2.85 metres toward the front of the lot. A large front setback is required because of the existing large setback on the immediately adjacent lot. However, if the subdivided lot to the north had been developed first, the minimum required front setback for the subject lot would change. The proposed attached garage would comply if the house was sited toward 65 Avenue.

ii) *Position of Affected Property Owner in Opposition to the Development, Ms. H. Lazar-Cross*

- [23] Ms. Lazar-Cross emphasized that the neighbours and the Community League who initially provided support have now indicated non-support for the proposed development.
- [24] She submitted Exhibit “A”, a printout from the City of Edmonton website containing information regarding the Mature Neighbourhood Overlay amendments. The printout explained that after July 7, 2017, all development permit applications will be reviewed using the new Overlay regulations. She noted that the Development Officer’s report included the date of July 10, 2017.
- [25] She conceded that she and her neighbours were initially upset that the subdivision of this lot was approved but they have accepted it. In this instance, they would like to address the proposed development and the impacts it will have in the neighbourhood.
- [26] She and her husband own the abutting property directly north of this proposed development. There will be another home developed between their two lots on a 28 foot wide lot. They have not seen any plans for that development but it was her opinion that the future development of this second subdivided lot must be considered in the overall picture.
- [27] The proposed development does not conform with the development regulations contained in the Mature Neighbourhood Overlay and was refused based on variances required to those regulations, specifically because of the proposed rear attached garage and the reduced rear setback.
- [28] She referenced the Site Study Plan document from her supporting materials, which showed that the proposed development and the future development on both of the subdivided lots will most likely result in the removal of all of the trees and shrubs on the existing property, except for one large tree on the northwest portion of the lot.

- [29] A photograph of her side yard was referenced to show how the trees overhang along the shared fence creating privacy between the yards. These trees are located on the lot to the south but will have to be removed.
- [30] Section 814.3(4) of the Mature Neighbourhood Overlay states that the minimum rear setback shall be 40 percent of the site depth; the subject development proposes a rear setback at six percent of the site depth. Therefore the proposed development will not have any rear yard. All houses in this neighbourhood have rear yards with mature trees.
- [31] The proposed development will create a 97 foot wide wall immediately south of their property which will drastically decrease the amount of sunlight in their yard and have a destructive effect on flowering perennials and full sun plantings, especially along the south fence and patio. All of these plants are a main feature of her yard.
- [32] She referenced a diagram to show that even though her house is a metre higher in elevation, the angle of the proposed development and the massing has the potential for sun loss and shadowing. This diagram did not consider the future development of a house on the lot between the subject property and her house.
- [33] Over the past 17 years, she has completely renovated her house and a tranquil, natural rear yard living space has been developed. All of the healthy mature trees around the perimeter of the rear yard were retained and complemented with new trees and shrubs. Trees and shrubs were chosen according to the levels of sunlight in the yard.
- [34] The proposed development is on a corner lot at the entrance to the cul-de-sac and the proposed 97 feet wide frontage is completely out of scale to any of the other houses in the neighbourhood. An existing two Storey house on the adjacent corner is only 52 feet wide and her own house is only 50 feet wide.
- [35] Section 814.3(19) of the Mature Neighbourhood Overlay states that rear attached garages shall not be allowed. This development has a rear attached garage connected to the house.
- [36] The rear setback requirement of 40 percent does not align where the house joins the garage connector. An additional 3.35 metres of the two storey house that projects into the rear setback also does not conform with the requirement. This further impacts the loss of sun into her yard as well as into the adjacent 28 foot wide lot
- [37] The new Mature Neighbourhood Overlay regulations allow a further projection into the front setback. A 20 percent maximum of site depth is now permitted. This allows an approximately eight feet projection beyond the front of the house, representing an additional three to four feet from what would have been allowed under the previous regulations. The resulting sun shadow could damage a mature spruce tree in her front yard.

- [38] Ms. Lazar-Cross then reviewed several alternatives for the proposed development which would be suitable in her view. These alternatives would conform with the Bylaw requirements, namely that the proposed garage be detached.
- [39] In her view, the proposed development is too big for the subject lot and does not conform to the Bylaw requirements. Bylaws are adopted for all to follow so that everyone knows what to expect when a new development is approved. New neighbours are welcomed with the hope that they will respect the beauty of the neighbourhood and the Bylaws that govern development.
- [40] Ms. Lazar-Cross provided the following information in response to questions from the Board:
- a) The sun shadow study she submitted does not cover different times of the year. She acknowledged that shadowing would probably not occur in the summer months but plants need sunlight all year long, including winter. In order for their yard to have sunlight at all times of the year it would be necessary for both of the newly subdivided lots to be developed with detached garages.
 - b) She would have preferred that someone buy the subject property and renovate it. Based on current circumstances, the best outcome for neighbours would be for both of the newly subdivided lots to comply with all of the setback requirements which would minimize the amount of sun shadow.
 - c) She referenced an article from the Edmonton Journal which stated that 70 percent of survey respondents preferred a large rear yard rather than a large front yard. The amendments to the Mature Neighbourhood Overlay would allow the development to be sited three to four feet further into the front yard.
 - d) None of the three alternative solutions she provided were discussed with the Appellant.
 - e) The Community League did not contact any of the neighbours before making the decision to support the proposed development. She met with a member of the Community League Board to review the proposed drawings and it was discovered that part of the covered front porch was not included in the site coverage calculation. This oversight was subsequently corrected by the Development Officer.
 - f) She received notice that the subdivision was approved on April 6, 2017. She accepts that the lot has been subdivided, but remains concerned about the size of future developments on the subdivided lots.
 - g) The existing house and attached garage are approximately 77 feet wide without the carport, 20 feet narrower than the proposed development and therefore has less impact on sunlight penetration into her yard when compared to the proposed development.

- h) She acknowledged that the proposed development complies with the maximum allowable site coverage requirements and that if this development is refused, an application could be made to build a larger house that complies with all of the Bylaw requirements.
- i) Moving the development further to the west would have the potential of damaging a large mature tree and would result in sunlight penetration into her front yard.

iii) Position of Affected Property Owner in Opposition to the Development, Mr. Fleming

- [41] Mr. Fleming reiterated the concerns of Ms. Lazar-Cross.
- [42] Many of the homes in the area have been renovated and new houses have been built on large lots to maintain the character of the neighbourhood.
- [43] Feedback was provided to the Subdivision Authority that they were opposed to the proposed subdivision. The major concern was increased density and the resulting traffic problems due to proximity to the University of Alberta South Campus. It was also his opinion that this neighbourhood is desirable to individuals who want to subdivide a large lot and develop two houses in order to make a profit.
- [44] The amended Mature Neighbourhood Overlay regulations are intended to better protect mature neighbourhoods. The proposed development does not preserve the character of the neighbourhood. It covers almost two 55 feet wide lots with a 97 feet wall directly across the street from his house. The proposed development should be more consistent with the surrounding properties and the streetscape.
- [45] He acknowledged that the existing house requires the same two variances as the proposed development because of the amendments made to the Mature Neighbourhood Overlay. He also acknowledged that there are three other houses with attached rear garages on corner lots in this neighbourhood. However, City Council must have been aware that there are some rear attached garages in mature neighbourhoods, yet it still decided to amend the regulations and not permit attached rear garages at all. As such, this development should be assessed using the new regulations that came into effect on September 1, 2017.
- [46] This appeal was his first opportunity to provide feedback regarding the proposed development following the amended consultation requirements. The Appellant made no attempt to contact him to discuss the proposed development.
- [47] It was his opinion that it is not fair for the Appellant to ask to come back before the Board with revised plans if the appeal is not successful.

iv) Position of Affected Property Owner in Opposition to the Development, Mr. Gregory

[48] The renovations for his own house comply with all of the development regulations contained in the Mature Neighbourhood Overlay. Rules change over time and it is only fair that the current regulations are applied to the proposed development. In his opinion, granting variances to one neighbour is unfair. Rules should be followed by everyone.

v) Position of Affected Property Owner in Opposition to the Development, Ms. S. Lambert

[49] It was her opinion that the onus should be on the Appellant to prove that there is no harm caused by the proposed development and the required variances.

[50] Rear attached garages are not allowed and the Appellant should build a detached garage to comply with the Bylaw requirements. The proposed development will result in a loss of sunlight for neighbouring property owners and will impact potential resale values. The proposed development will have a harmful ripple effect in the neighbourhood.

vi) Position of the Development Authority

[51] The Development Authority provided written submissions and did not attend the hearing.

vi) Rebuttal of the Appellant

[52] The Board is dealing only with the limited portion of the proposed development that requires a variance. The Board must evaluate the proposed development in accordance with the Bylaw requirements that exist at this time.

[53] In response to the sun shadow study submitted by Ms. Lazar-Cross, it was his opinion that the proposed development will not have any impact on sun shadow on the west side of the property, even on October 24th (being the date of the study). Sun shadow studies are not typically prepared for this type of development because in this part of the world, a development is not going to have any impact on neighbouring properties between May and September.

Decision

[54] The appeal is **ALLOWED** and the decision of the Development Authority is **REVOKED**. The development is **GRANTED** as approved by the Development Authority, subject to the following conditions:

1. The development shall be constructed in accordance with the stamped and approved drawings;

3. The maximum Height shall not exceed 8.9m, in accordance with Section 52 of the Edmonton Zoning Bylaw 12800;
4. Platform Structures located within a Rear Yard or interior Side Yard, and greater than 1.0 metres above the finished ground level, excluding any artificial embankment, shall provide Privacy Screening to prevent visual intrusion into Abutting properties (Reference Section 814.3.9);
5. Single Detached Housing/Semi-detached housing requires 1 parking space per dwelling; parking may be in tandem as defined in Section 6.1.112 (Reference Schedule 1 of Section 54.2);
6. For Single-detached Housing, Semi-detached Housing and Duplex Housing, a minimum Private Outdoor Amenity Area shall be designated on the Site plan. Neither the width nor length of the Private Outdoor Amenity Area shall be less than 4.0 metres. The Private Outdoor Amenity Area may be located within any Yard, other than a Front Yard, and shall be permanently retained as open space, unencumbered by an Accessory Building or future additions (Reference Section 47);
7. Landscaping shall be installed and maintained in accordance with Section 55;
8. Frosted or opaque glass treatment shall be used on windows as indicated on the drawings to minimize overlook into adjacent properties (Reference Section 814.3.8);
9. The proposed Basement development(s) shall NOT be used as an additional Dwelling. An additional Dwelling shall require a separate Development Permit application.
10. Proposed wet bar shall only be used by the household which uses the principal kitchen on the main floor.
11. No lockable doors shall be installed that physically separates the main floor and basement.

ADVISEMENT:

1. Any future deck development greater than 0.6m (2ft) in height will require development and building permit approvals.
2. Any future deck enclosure or cover requires a separate development and building permit approval.
3. Any future additional dwelling such as Secondary Suite shall require a separate development permit application.

4. The driveway access must maintain a minimum clearance of 1.5m from the service pedestal and all other surface utilities.
5. Lot grades must match the Edmonton Drainage Bylaw 16200 and/or comply with the Engineered approved lot grading plans for the area. Contact Drainage Services at 780-496-5576 or lot.grading@edmonton.ca for lot grading inspection inquiries.
6. Unless otherwise stated, all above references to "section numbers" refer to the authority under the Edmonton Zoning Bylaw 12800.
7. An approved Development Permit means that the proposed development has been reviewed against the provisions of this bylaw. It does not remove obligations to conform with other legislation, bylaws or land title instruments including, but not limited to, the Municipal Government Act, the Safety Codes Act or any caveats, restrictive covenants or easements that might be attached to the Site.
8. A Building Permit is required for any construction or change in use of a building. Please contact the 311 Call Centre for further information.

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

1. The requirements of section 814.3(19) are waived to allow a rear attached Garage at this location.
2. The minimum required Rear Setback as per section 814.3(4) is varied to allow a deficiency of 13.6 metres, thereby decreasing the minimum required to 2.3 metres (6% of Site Depth) instead of 15.9 metres (40% of the Site Depth).

Reasons for Decision

[56] The proposed development is for a Single Detached House, which is a Permitted Use in the RF1 Single Detached Residential Zone. The subject Site is also located in the Mature Neighbourhood Overlay ("MNO"), and as a result, additional development regulations have been considered in the assessment of the proposed development.

[57] The proposed development complies with all of the development regulations pursuant to Section 110 of the *Edmonton Zoning Bylaw*, and all but two of the development regulations pursuant to Section 814 of the *Edmonton Zoning Bylaw*.

[58] The Board has granted the required variances for the following reasons:

- a) Neighbouring property owners who appeared in opposition to the proposed development addressed two main objections, specifically:

- i) A potential negative effect on a lot located two lots north of the subject Site because of a loss of sunlight penetration; and
 - ii) Potential massing effect created by the Garage attached to the principal Dwelling, thereby creating one large structure that has the potential to negatively impact the streetscape along 65 Avenue.
 - b) Based on the evidence provided, the Board did not find the concern regarding sunlight penetration to be convincing. Based on a review of the plans, the Board finds that it is the proposed two Storey principal Dwelling (which complies with the Bylaw requirements) that will cause most of the sun shadowing on neighbouring properties. The variance required for a portion of the projection and breezeway will not significantly impact sunlight penetration north of the subject site because the Garage is connected to the principal Dwelling by a single Storey, narrow breezeway. The breezeway will not create a significant shadow, and while the entire structure may impact sun shadowing on lands to the north, the variances requested will not have a significant impact.
 - c) The Board was more concerned with the potential massing impact that the conjoined structure could have on the streetscape of 65 Avenue. Despite these concerns, the Board has found that the massing effect will not have a material impact on the use, value or enjoyment of neighbouring parcels of land or the amenities of the neighbourhood for the following reasons:
 - i) The garage portion of the structure, when viewed from many angles, still looks like a separate building. Only from some angles can it be determined that the house portion of the development and the garage portion of the development are joined. These two portions are joined by a narrow breezeway and as a result, the house portion and the garage portion of the development are very clearly defined. This architectural articulation and definition substantially mitigates any negative affect that may be caused by the development of a rear attached Garage.
 - ii) The Board notes that the breezeway connecting the garage and the principal Dwelling is screened from the street view on 65 Avenue by both a privacy screen and substantial existing mature landscaping, which further obscures the view of the breezeway from 65 Avenue.
- [59] Based on a review of the aerial photographs provided and the evidence of those opposed to the appeal, the Board finds that rear attached Garages on corner lots are, in fact, characteristic of this neighbourhood. The Board notes that those opposed to the development all found that the existing structure on the subject Site was characteristic of the neighbourhood and wanted it to remain if possible. The Board notes that the existing house has a rear Garage that does not comply with the minimum required Rear Setback requirement. Based on this evidence, the Board finds that the objections of the neighbours who oppose the development were based primarily on other architectural

features of the development rather than the proposed attached rear garage or the variance required in the minimum rear setback.

- [60] For the above reasons, the Board finds that the proposed development with the variances required, will not unduly interfere with the amenities of the neighbourhood nor materially interfere with or affect the use, enjoyment or value of neighbouring parcels of land.

Mr. I. Wachowicz, Chairman
Subdivision and Development Appeal Board

Board members in attendance: Mr. V. Laberge, Mr. A. Bolstad, Ms. D. Kronewitt-Martin, Mr. R. Hobson

Important Information for the Applicant/Appellant

1. This is not a Building Permit. A Building Permit must be obtained separately from the Sustainable Development Department, located on the 2nd Floor, Edmonton Tower, 10111 – 104 Avenue NW, Edmonton, AB T5J 0J4.
2. Obtaining a Development Permit does not relieve you from complying with:
 - a) the requirements of the *Edmonton Zoning Bylaw*, insofar as those requirements have not been relaxed or varied by a decision of the Subdivision and Development Appeal Board,
 - b) the requirements of the *Alberta Safety Codes Act*,
 - c) the *Alberta Regulation 204/207 – Safety Codes Act – Permit Regulation*,
 - d) the requirements of any other appropriate federal, provincial or municipal legislation,
 - e) the conditions of any caveat, covenant, easement or other instrument affecting a building or land.
3. When an application for a Development Permit has been approved by the Subdivision and Development Appeal Board, it shall not be valid unless and until any conditions of approval, save those of a continuing nature, have been fulfilled.
4. A Development Permit will expire in accordance to the provisions of Section 22 of the *Edmonton Zoning Bylaw, Bylaw 12800*, as amended.
5. This decision may be appealed to the Alberta Court of Appeal on a question of law or jurisdiction under Section 688 of the *Municipal Government Act*, RSA 2000, c M-26. If the Subdivision and Development Appeal Board is served with notice of an application for leave to appeal its decision, such notice shall operate to suspend the Development Permit.
6. When a decision on a Development Permit application has been rendered by the Subdivision and Development Appeal Board, the enforcement of that decision is carried out by the Sustainable Development Department, located on the 2nd Floor, Edmonton Tower, 10111 – 104 Avenue NW, Edmonton, AB T5J 0J4.

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



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SDAB-D-17-208

Project No. 154848241-004

To convert a Semi-detached House into four Dwellings of Apartment Housing was
WITHDRAWN



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Date: November 23, 2017
Project Number: 258130328-001
File Number: SDAB-D-17-212

Notice of Decision

- [1] On November 8, 2017, the Subdivision and Development Appeal Board (the “Board”) heard an appeal that was filed on October 13, 2017. The appeal concerned the decision of the Development Authority, issued on September 28, 2017, to refuse the following development:

To convert three (3) Dwellings of Row Housing to a Lodging House (maximum 21 residents) and to construct interior alterations, existing without permits

- [2] The subject property is on Condo Common Area (Plan 1621602), located at 8804C - 119 Avenue NW, within the RF3 Small Scale Infill Development Zone. The Mature Neighbourhood Overlay and the Alberta Avenue/Eastwood Area Redevelopment Plan apply to the subject property.
- [3] The following documents were received prior to the hearing and form part of the record:
- Copy of the Development Permit application with attachments, proposed plans, and the refused Development Permit;
 - The Development Officer’s written submissions; and
 - The Appellant’s written submissions including a petition and letters of support.

Preliminary Matters

- [4] At the outset of the appeal hearing, the Chairman confirmed with the parties in attendance that there was no opposition to the composition of the panel.
- [5] The Chairman 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, Tsero Holdings Ltd.:*

- [7] The Appellant was represented by Mr. M. Melynychuk and Mr. S. Syskakis.
- [8] Mr. Melnychuk and Mr. Syskakis are both recovering addicts who want to give back to men struggling with addictions. The house for men in recovery was opened just over one year ago. Each Dwelling unit has 5 bedrooms, 2 ½ kitchens and 3 bathrooms. Seven men live in each unit.
- [9] The living arrangement is for like-minded men who want a new way of life. It starts with taking away the stress of all the costs associated with start-up rentals. Most of these men cannot qualify for any type of utilities or other types of service. As a result, they become overwhelmed and relapse.
- [10] The home has been designed for easy living, with rules and policies that ensure positive growth and the opportunity to become a productive and contributing member of society. The men are only governed by the house rules, such as abstinence and obeying curfews, and are otherwise free to come and go as they please to attend programs and meetings.
- [11] When they were notified that a complaint had been filed, City staff did not shut the house down but explained that they needed to apply for a development permit for a Lodging House Use. However, they did not agree that their house was a Lodging House. It was their assumption that a Lodging House is where someone rents a room and may have a communal shower.
- [12] In their view, the development is a home where brothers live together. The house is self-funded and does not receive any funding from government agencies.
- [13] Photographs of the house included in their supporting materials were referenced to illustrate the state and upkeep of the property. The residents take great pride in mowing the lawn and shoveling the snow. All units are separate from each other, with separate front and rear entrances.
- [14] They have spoken with neighbours, who have signed a petition and letters of support. Former residents of the home have also submitted letters of support. Many of the neighbours that they talked to were not even aware of how the dwellings were being used, demonstrating that the development has had little negative impact upon the neighbourhood.
- [15] There are many apartment buildings located in close proximity to their property and they tried without success to contact the owners.

- [16] Complying with the maximum allowed number of four sleeping units per Dwelling is not feasible. It is difficult to understand why they cannot continue to operate as they have for the past year based on the support of the neighbouring property owners.
- [17] At this point, the Presiding Officer reviewed both the Permitted Uses and Discretionary Uses listed in the RF3 Small Scale Infill Development Zone, as well as the definitions for Lodging House and Row Housing. It was noted that the restriction on the number of occupants is one of the determining factors.
- [18] In response, the Appellant explained that he was not aware of the restriction on the number of residents when the property was purchased. The subject property was purchased because it was suitable for his needs, and was located close to neighbourhood amenities, recovery meetings and public transit. He questioned how it would be allowable to have large families living in a Dwelling unit where the number of occupants would not be a concern, whereas the same number of non-related individuals living in a Lodging House would create concerns.
- [19] At this point the Presiding Officer referenced the definition of Household, and explained that if there were only three unrelated residents living together, then that unit might be considered a Household. However, adding more unrelated residents falls outside the scope of the definition of a Household and by extension, moves the Use from Row Housing to Lodging House. While the Board has the authority to vary development regulations, it cannot vary definitions or Use classes.
- [20] Since the proposed development has been characterized as a Lodging House, regulations governing Lodging Houses must be met. As the proposed development does not meet some of these regulations, the Appellant must explain why variances to those regulations would not unduly interfere with the amenities of the neighbourhood or neighbouring properties.
- [21] In response, the Appellant provided the following additional information:
- a) There is an Apartment House located directly across the street where prostitution and drug use frequently occurs. By contrast, it was Mr. Melynychuk's opinion that his house is a positive entity in the community and has resulted in many illicit activities moving out of the neighbourhood. The majority of the home's residents also do not own or drive vehicles and therefore have no impact on traffic or parking in the area.
 - b) Reducing the number of residents will result in the sale of the property. Currently, two beds are provided in the larger master bedrooms to accommodate two residents. This is a desirable situation because it provides accountability and companionship that helps during the recovery process. Residents are moved into private rooms as they progress. Most residents stay at the home for a minimum of one year.

- c) Central Edmonton is an ideal location for this type of development because there are seven recovery meetings operating within walking distance of this house and it is located close to public transit.
- d) Each unit is very comfortable and provides outdoor amenity space at the rear. There are three bedrooms located upstairs and two in the basement. Twenty-one residents is an ideal number and it was estimated that three beds are empty most of the time.
- e) Regarding density thresholds, the Development Officer would not provide information to them regarding the number or location of existing Special Residential Facilities located in this neighbourhood. Sustainable Development would not provide this information even if the purchase of another property was being considered.
- f) No one from the City of Edmonton discussed a possible re-zoning of the Site.

ii) Position of the Ms. F. Melnychuk:

- [22] Ms. Melnychuk explained that Mr. M. Melnychuk is her son and she has dealt with addictions over many years.
- [23] She agrees that the operation of his house is an asset to the community. It is always kept clean and tidy.
- [24] Residents of the house receive the help that they need and shutting down the house would be a detriment to the neighbourhood and the City as a whole. It was her opinion that the operation of this house should be looked at as a model for the entire City.
- [25] They have been working through the permitting process since June 2017.
- [26] Mr. Melnychuk reviewed and accepted the recommended conditions included in the written submission of the Development Officer.

ii) Position of the Development Authority:

- [27] The Development Authority provided written submissions and did not attend the hearing

Decision

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

Reasons for Decision

- [29] The proposed development is to convert three Dwellings of Row Housing to a Lodging House (maximum 21 residents) and to construct interior alterations, existing without permits. The existing Row House is located on a single lot in the RF3 Small Scale Infill Development Zone. The single lot contains a three Dwelling Row House.
- [30] A Lodging House is a Discretionary Use in the RF3 Small Scale Infill Development Zone.
- [31] The proposed development is to allow congregate living for 21 residents within 15 Dwelling units. Based on the evidence provided, the residents are non-related persons living in a congregate living situation. Each of the three existing row house dwellings have five sleeping units and up to seven non-related residents.
- [32] The Board considered the following definitions contained in the *Edmonton Zoning Bylaw*:

- a) Section 6.1(56) states:

Household means:

- i. one or more persons related by blood, adoption, foster care, marriage relationship; or
- ii. a maximum of three unrelated persons;

all living together as a single social and economic housekeeping group and using cooking facilities shared in common.

For the purposes of this definition, two people living together in an adult interdependence relationship shall be deemed to be in a marriage relationship and each of the relatives of the parties to an adult interdependence relationship shall be considered to be related to the partners and to the other relatives thereof. One domestic worker or one boarder may be deemed the equivalent of a blood relative.

- b) Section 6.1(31) states:

Dwelling means a self-contained unit comprised of one or more rooms accommodating sitting, sleeping, sanitary facilities, and a principal kitchen for food preparation, cooking, and serving. A Dwelling is used permanently or semi-permanently as a residence for a single Household.

c) Section 6.1(18) states:

Congregate Living means four or more individuals occupying Sleeping Units in a building where the occupants share access to facilities such as cooking, dining, laundry, or sanitary facilities. Typical Uses where Congregate Living is found include Fraternity and Sorority Housing, Group Homes, Limited Group Homes, and Lodging Houses.

d) Section 7.2(5) states:

Row Housing means development consisting of a building containing a row of three or more Dwellings joined in whole or in part at the side only with no Dwelling being placed over another in whole or in part. Individual Dwellings are separated from one another by a Party Wall. Each Dwelling has separate, individual, and direct access to Grade. This Use does not include Stacked Row Housing or Blatchford Townhousing.

e) Section 7.3(6) states:

Lodging Houses means a building or part of building, used for Congregate Living, containing Sleeping Units and four or more persons, and where there is no provision of on-site care, treatment or professional services of a physical or mental health nature. This Use does not include Extended Medical Treatment Services, Detention and Correction Facilities, Fraternity and Sorority Housing, Group Homes, and Limited Group Homes.

[33] Based on a review of these definitions, the submitted plans and the evidence provided, the Board finds that the proposed Use fits the definition of a Lodging House which is a Discretionary Use in the RF3 Small Scale Infill Development Zone.

[34] This finding confirms for the Appellant that the proposed Use is a Lodging House and that the scope of the development permit application was correct.

[35] City Council has included extensive development regulations for a Lodging House Use in the *Edmonton Zoning Bylaw*, both generally and specifically for the RF3 Small Scale Infill Development Zone.

a) Section 76 provides as follows:

76. Lodging Houses

In addition to the regulations in Section 96 of this Bylaw, Lodging Houses shall comply with the following regulations:

1. The maximum occupancy of a Lodging House in a Zone where Lodging Houses are a Discretionary Use shall be a maximum of 6 residents;
2. The maximum occupancy of a Lodging House in a Zone where Lodging Houses are a Permitted Use shall be the greater of 6 residents or 1 resident per 60 m² of Lot size;
3. The Development Officer may restrict the occupancy of a Lodging House to less than the maximum number of residents allowed having regard for the threshold purpose identified in Section 96, the level of traffic generation, parking demand, and frequency of visits by emergency vehicles relative to that which is characteristic of the Zone in which the Lodging House is located;
4. A Lodging House shall be developed as either a purpose-built freestanding structure, or Single Detached Housing converted for the purpose, or part of an Apartment Housing development;
5. A Lodging House may be located in Duplex Housing or Semi-detached Housing converted for the purpose in a Zone where Lodging Houses are a Permitted Use and both units are operated by a single provider;
6. In a Zone where Lodging Houses are a Permitted Use and where more than 12 Sleeping Units are allowed in a development, Sleeping Units may include limited food preparation facilities such as bar fridge, mini-sink, and microwave;
7. No Major Home Based Business, Secondary Suite, Garden Suite or Garage Suite shall be permitted as part of a Lodging House development or on the Site of such development;
8. Where a Lodging House is designed as a freestanding structure it shall be of a size, scale, and outward appearance that is typical of surrounding residential development; and
9. Increases in vehicular traffic generation and parking demand must be to the satisfaction of the Development Officer and/or Transportation Services.

b) Section 96 provides as follows:

96. Fraternity and Sorority Housing, Limited Group Homes, Group Homes, and Lodging Houses Thresholds

1. Special Residential Facilities

For the purpose of this section, Fraternity and Sorority Housing, Group Homes, Limited Group Homes, and Lodging Houses shall be collectively referred to as Special Residential Facilities. Group Homes developed in combination with Apartment Housing either in one building or on one Site, and which meet the criteria of Section 94, Supportive Community Provisions, shall be exempt from the requirements of subsection 96(3)(b) and (c) of this Bylaw.

2. Threshold Purpose

The purpose of the Fraternity and Sorority Housing, Limited Group Homes, Group Homes, and Lodging Houses Thresholds is to:

- a) ensure that the capacity of any neighbourhood to accommodate Special Residential Facilities is not exceeded;
- b) ensure that Special Residential Facilities are available in all neighbourhoods; and
- c) protect existing Special Residential Facilities from concentration that could impair their proper functioning.

3. General Regulations

Special Residential Facilities shall comply with all thresholds contained in this Section in addition to any other regulations in this Bylaw including any relevant Special Land Use Provisions that apply. In all cases, the most restrictive threshold shall apply.

- a) When determining the threshold for the number of Special Residential Facilities per neighbourhood, a maximum of 3 facilities per 1000 persons shall be allowed in any neighbourhood.
- b) When determining the threshold for the number of Special Residential Facilities by Use per block.
 - i. a maximum of 2 Special Residential Facilities shall be allowed on a single block in a residential Zone;

- ii. a maximum block length of 150 m measured from the nearest intersection shall be used to determine this threshold.
- c) When determining the threshold for the number of residents of Special Residential Facilities per opposing block face;
- i. accommodation for a maximum of 12 residents shall be allowed on an opposing block face in Special Residential Facilities in any residential Zone where either Group Homes or Lodging Houses are a Discretionary Use;
 - ii. accommodation for a maximum of 30 residents shall be allowed on an opposing block face in Special Residential Facilities in any residential Zone where either Group Homes or Lodging Houses are a Permitted Use; and
 - iii. a maximum block face length of 150 m measured from the nearest intersection shall be used to determine this threshold.

4. Density

For the purposes of calculating Density for a Group Home or Lodging House each Sleeping Unit shall be considered a Dwelling when a development contains seven or more Sleeping Units.

5. Register

For the purpose of applying these regulations the Development Officer shall maintain a register of all approved Special Residential Facilities. The register shall include the address of the facility, maximum occupancy of the facility, and any other necessary information.”

- c) Section 140.4(25) provides as follows:

For Lodging Houses, the following regulations shall apply:

- a. no more than four Sleeping Units may be developed, whether or not in combination with a Dwelling;

- b. the minimum Site area shall be 360 m² in all cases and the Site area shall be comprised of the aggregate of 200 m² for each Sleeping Unit, or for each of the Dwelling and each Sleeping Unit when they are in combination; and
- c. the Development Officer shall exercise discretion with respect to the number of Sleeping Units developed, having regard to the character and density of existing Residential Uses.

[36] The Development Authority refused the development permit application because it violates many of the above development regulations, specifically:

- a) It has 15 sleeping units instead of four, pursuant to Section 140.4(25)(a);
- b) A deficiency in the minimum required Site Area, pursuant to Section 140.4(25)(b); and
- c) The proposed development exceeds the threshold for the number of Special Residential Facilities per neighbourhood, pursuant to Section 96.3(a).

[37] The only evidence provided to the Board regarding thresholds was contained in the written submission of the Development Officer, indicating that this neighbourhood has a population of 4,304 people. Based on that number, section 96.3(a) only permits a maximum of 12.9 Congregate Living facilities to be located in this neighbourhood. The Development Officer provided information that there are currently 13 approved Congregate Living facilities located in this neighbourhood and an additional three pending accepted applications for Congregate Living in this area.

[38] The proposed development is for 21 occupants which exceeds the maximum allowable occupancy of six residents under section 76 of the Zoning Bylaw.

[39] Section 76.4 states that a Lodging House shall be developed as either a purpose-built freestanding structure, or Single Detached Housing converted for the purpose, or part of an Apartment Housing development. The conversion of a Row House development to a Lodging House is not permitted.

[40] The proposed development also does not comply with the minimum required number of on-site parking spaces, pursuant to Section 54.2 and Schedule 1.

[41] The Board finds that the intensity of the proposed development far exceeds what is allowed under the development regulations for a Lodging House.

- [42] The Board also notes that the General Purpose of the RF3 Zone is to “provide for Single Detached Housing and Semi-detached Housing while allowing small-scale conversion and infill redevelopment to buildings containing up to four Dwellings under certain conditions, and including Secondary Suites and Garden Suites”. It is clearly not the purpose of the RF3 Zone to include a development that operates at the level of intensity as the proposed development.
- [43] The variances required in order to allow the proposed development to proceed are extensive. It would be necessary to vary every applicable regulation contained in Section 76, Section 96 and Section 140.4(25) of the *Edmonton Zoning Bylaw*.
- [44] While considering the request for variances, the Board had very little evidence upon which to base a decision. The lack of opposition from affected property owners and the verbal assurances provided by the current operators of the Lodging House (that has been operating without a development permit for approximately one year), as well as letters of support from current and former residents of the Lodging House indicated to the Board that it may be appropriate to grant the required variances.
- [45] However, the Board was forced to make a decision without any additional evidence. The Board expresses regret that the Development Authority did not attend the hearing and the information contained in the written submission was limited. The Board, however, is required to make a decision based upon the evidence provided.
- [46] Granting variances of the magnitude requested, to allow an increase from 6 unrelated occupants to 21 unrelated occupants will significantly increase the intensification of Use and does not comply with the General Purpose of the RF3 Zone. For this reason, the Board finds that it is not appropriate to grant the required variances for a Discretionary Use in the RF3 Zone. Even a fully compliant Lodging House would be subject to the discretion of the Development Authority and the Board. A development of this magnitude and intensity does not allow the Board to apply its discretionary power without substantial evidence of compatibility, which was not provided to the Board.
- [47] The Board also requires substantive evidence that the requested variances that would significantly intensify the Use would 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. Based on a lack of evidence in this regard, the Board has not granted the required variances and the appeal is denied.

[48] The Board does note that the existing Lodging House operated by this particular Appellant provides a valuable service to the community. The Appellant may have other recourse directly to City Council through a rezoning application as this Board does not have the authority to rezone a Site, nor to approve a Use that is not listed in a zone.

Mr. I. Wachowicz, Chairman
Subdivision and Development Appeal Board

Board members in attendance: Mr. V. Laberge, Mr. A. Bolstad, Ms. D. Kronewitt-Martin, Mr. R. Hobson

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

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