

**SUBDIVISION
AND
DEVELOPMENT APPEAL BOARD
AGENDA**

**Wednesday, 9:00 A.M.
April 4, 2018**

**Hearing Room No. 3
Churchill Building,
10019 - 103 Avenue NW,
Edmonton, AB**

**SUBDIVISION AND DEVELOPMENT APPEAL BOARD
HEARING ROOM NO. 3**

I	9:00 A.M.	SDAB-D-18-046	Construct an Accessory Building (Garage, 30.48m x 15.24m) 21007 - 97 Avenue NW Project No.: 227580248-002
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II	10:30 A.M.	SDAB-S-18-004	Create separate titles for a Semi-detached Dwelling 8710 - 128 Avenue NW Project No.: 270639194-001
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NOTE: *Unless otherwise stated, all references to “section numbers” refer to the authority under the Edmonton Zoning Bylaw 12800.*

ITEM I: 9:00 A.M.

FILE: SDAB-D-18-046

AN APPEAL FROM THE DECISION OF THE DEVELOPMENT OFFICER

APPELLANT:

APPLICATION NO.: 227580248-002

APPLICATION TO: Construct an Accessory Building (Garage,
30.48m x 15.24m)

DECISION OF THE
DEVELOPMENT AUTHORITY: Refused

DECISION DATE: March 13, 2018

DATE OF APPEAL: March 13, 2018

MUNICIPAL DESCRIPTION
OF SUBJECT PROPERTY: 21007 - 97 Avenue NW

LEGAL DESCRIPTION: Plan 5496HW Lot 14

ZONE: (RR) Rural Residential Zone

OVERLAY: N/A

STATUTORY PLAN(S): Lewis Farms Area Structure Plan
Webber Greens Neighbourhood Structure
Plan

Grounds for Appeal

The Appellant provided the following reasons for appealing the decision of the Development Authority:

Development permit was refused due to height allowance restrictions.
Past the forty day application decision.

General Matters

Appeal Information:

The *Municipal Government Act*, RSA 2000, c M-26 states the following:

Grounds for Appeal

685(1) If a development authority

- (a) fails or refuses to issue a development permit to a person,
- (b) issues a development permit subject to conditions, or
- (c) issues an order under section 645,

the person applying for the permit or affected by the order under section 645 may appeal to the subdivision and development appeal board.

Appeals

686(1) A development appeal to a subdivision and development appeal board is commenced by filing a notice of the appeal, containing reasons, with the board,

- (a) in the case of an appeal made by a person referred to in section 685(1)
 - (i) with respect to an application for a development permit,
 - (A) within 21 days after the date on which the decision is made under section 642, [...]

Hearing and Decision

687(3) In determining an appeal, the subdivision and development appeal board

...

- (a.1) must comply with the land use policies;
- (a.2) subject to section 638, must comply with any applicable statutory plans;
- (a.3) subject to clause (d), must comply with any land use bylaw in effect;

...

- (c) may confirm, revoke or vary the order, decision or development permit or any condition attached to any of them or make or substitute an order, decision or permit of its own;
- (d) may make an order or decision or issue or confirm the issue of a development permit even though the proposed development does not comply with the land use bylaw if, in its opinion,
 - (i) the proposed development would not

- (A) unduly interfere with the amenities of the neighbourhood, or
- (B) materially interfere with or affect the use, enjoyment or value of neighbouring parcels of land,

and

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

Non-conforming use and non-conforming buildings

643(1) If a development permit has been issued on or before the day on which a land use bylaw or a land use amendment bylaw comes into force in a municipality and the bylaw would make the development in respect of which the permit was issued a non-conforming use or non-conforming building, the development permit continues in effect in spite of the coming into force of the bylaw.

(2) A non-conforming use of land or a building may be continued but if that use is discontinued for a period of 6 consecutive months or more, any future use of the land or building must conform with the land use bylaw then in effect.

(3) A non-conforming use of part of a building may be extended throughout the building but the building, whether or not it is a non-conforming building, may not be enlarged or added to and no structural alterations may be made to it or in it.

(4) A non-conforming use of part of a lot may not be extended or transferred in whole or in part to any other part of the lot and no additional buildings may be constructed on the lot while the non-conforming use continues.

(5) A non-conforming building may continue to be used but the building may not be enlarged, added to, rebuilt or structurally altered except

- (a) to make it a conforming building,
- (b) for routine maintenance of the building, if the development authority considers it necessary, or
- (c) in accordance with a land use bylaw that provides minor variance powers to the development authority for the purposes of this section.

(6) If a non-conforming building is damaged or destroyed to the extent of more than 75percent of the value of the building above its foundation, the building may not be repaired or rebuilt except in accordance with the land use bylaw.

(7) The land use or the use of a building is not affected by a change of ownership or tenancy of the land or building.

General Provisions from the *Edmonton Zoning Bylaw*:

A **Mobile Home** is **neither** a Permitted Use **nor** a Discretionary Use in the (RR) Rural Residential Zone.

Under section 7.2(4), **Mobile Home** means:

development consisting of transportable Single Detached Housing which is suitable for permanent occupancy, designed to be transported on its own wheels, and which is, upon its arrival at the Site where it is to be located, ready for occupancy except for incidental building operations such as placement on foundation supports and connection to utilities.

Under section 240.2(5), **Single Detached Housing** is a **Permitted Use** in the (RR) Rural Residential Zone.

Under section 7.2(8), **Single Detached Housing** means:

development consisting of a building containing only one Dwelling, which is separate from any other Dwelling or building. Where a Secondary Suite is a Permitted or Discretionary Use in a Zone, a building which contains Single Detached Housing may also contain a Secondary Suite. This Use includes Mobile Homes which conform to Section 78 of this Bylaw.

Section 7.1 provides the following with respect to *Use Definitions*:

1. Uses, as set out in subsections 7.2 through 7.9 inclusive, are grouped according to common functional or physical impact characteristics.
2. Use definitions are used to define the range of Uses, which are Permitted Uses or Discretionary Uses, within the various Zones of this Bylaw.
3. The following guidelines shall be applied in interpreting the Use definitions:
 - a. the typical purposes or activities, which may be listed in the definitions, are not intended to be exclusive or restrictive;

- b. where specific purposes or activities do not conform to any Use definition or generally conform to the wording of two or more Use definitions, the Development Officer may, at their discretion, deem that the purposes or activities conform to and are included in that Use which they consider to be the most appropriate. In such a case, the Use shall be considered a Discretionary Use, whether or not the Use is listed as a Permitted Use or Discretionary Use within the applicable Zone; and
- c. the headings such as Residential Uses or Commercial Uses do not mean that the Uses listed under these headings are permitted only in Residential or Commercial Zones of this Bylaw. Reference must be made to the lists of Permitted Uses and Discretionary Uses within each Zone.

Section 78 provides the following with respect to *Mobile Homes*:

- 1. in any Zone, other than the RMH Zone, where a Mobile Home is the development proposed in an application for a Development Permit for Single Detached Housing, the following regulations shall apply:
 - a. the Mobile Home shall be not less than 5.5 m in width or length; and
 - b. the Mobile Home shall be placed on a permanent foundation.

Section 50.1(1) provides the following with respect to *Accessory Uses and Buildings*:

A Use shall be Accessory to a Permitted or Discretionary Use which is a principal Use on the Site, if such Use complies with the definition of Accessory in this Bylaw. Notwithstanding the foregoing, Accessory parking may be on the same Site as the principal Use or comply with subsection 54.2(2) of this Bylaw.

Under section 6.1(2), **Accessory** means:

when used to describe a Use or building, a Use or building naturally or normally incidental, subordinate, and devoted to the principal Use or building, and located on the same lot or Site.

Under section 6.1(46), **Garage** means:

an Accessory building, or part of a principal building designed and used primarily for the storage of motor vehicles and includes a carport.

Under section 6.1(120), **Use** means:

the purposes or activities for which a piece of land or its buildings are designed, arranged, developed or intended, or for which it is occupied or maintained.

Section 240.1 states that the **General Purpose** of the **(RR) Rural Residential Zone** is:

to provide for Single Detached Residential development of a permanent nature in a rural setting, generally without the provision of the full range of urban utility services. The RR Zone is intended to regulate rural residential development within existing rural residential subdivisions that existed prior to the passage of this Bylaw, and is not intended to facilitate future rural residential development and subdivision, which is contrary to the Municipal Development Plan.

<i>Height</i>

Section 50.3(3)(a) states “an Accessory building or structure shall not exceed 4.3 m in Height, [...]”


Under section 6.1(54), **Height** means “a vertical distance between two points.”

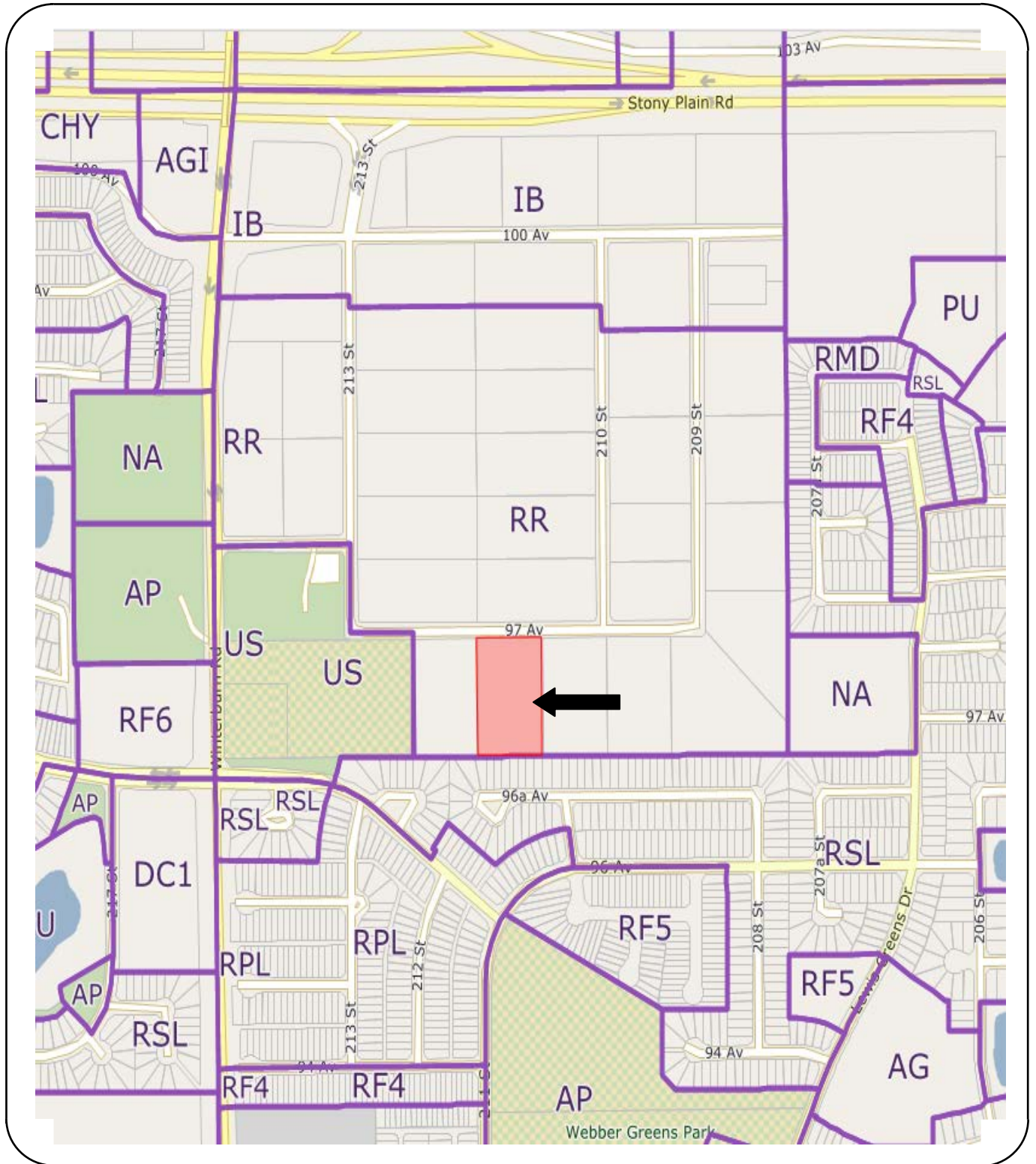
Development Officer’s Determination

Accessory Building Height - The garage is 5.8m in height instead of 4.3m. (Section 50.3.3) [unedited]

Notice to Applicant/Appellant

Provincial legislation requires that the Subdivision and Development Appeal Board issue its official decision in writing within fifteen days of the conclusion of the hearing. Bylaw No. 11136 requires that a verbal announcement of the Board’s decision shall be made at the conclusion of the hearing of an appeal, but the verbal decision is not final nor binding on the Board until the decision has been given in writing in accordance with the *Municipal Government Act*.

	Project Number: 227580248-002 Application Date: JAN 31, 2018 Printed: March 13, 2018 at 3:41 PM Page: 1 of 1																														
<h2 style="margin: 0;">Application for</h2> <h3 style="margin: 0;">Accessory Building Development and Building Permit</h3>																															
This document is a record of a Development Permit and/or Building Permit application, and a record of the decision for the undertaking described below, subject to the limitations and conditions of this permit, of the Edmonton Zoning Bylaw 12800 as amended, Safety Codes Act RSA 2000, Safety Codes Act Permit Regulation, Alberta Building Code and City of Edmonton Bylaw 15894 Safety Codes Permit Bylaw.																															
Applicant	Property Address(es) and Legal Description(s) 21007 - 97 AVENUE NW Plan 5496HW Lot 14																														
Scope of Application To construct an Accessory Building (Garage, 30.48m x 15.24m).																															
Permit Details																															
Building Area (sq. ft.): 5000 Stat. Plan Overlay/Annex Area: (none)	Class of Permit: Type of Accessory Building: Shed (040)																														
I/We certify that the above noted details are correct. Applicant signature: _____																															
Development Application Decision Refused Reasons for Refusal Accessory Building Height - The garage is 5.8m in height instead of 4.3m. (Section 50.3.3) Variances Rights of Appeal The Applicant has the right of appeal within 14 days of receiving notice of the Development Application Decision, as outlined in Chapter 24, Section 683 through 689 of the Municipal Government Amendment Act.																															
Issue Date: Mar 13, 2018 Development Authority: BERNUY, MICHELLE Signature: _____																															
Fees <table style="width: 100%; border-collapse: collapse;"> <thead> <tr> <th style="width: 30%;"></th> <th style="width: 15%; text-align: right;">Fee Amount</th> <th style="width: 15%; text-align: right;">Amount Paid</th> <th style="width: 15%; text-align: left;">Receipt #</th> <th style="width: 25%; text-align: left;">Date Paid</th> </tr> </thead> <tbody> <tr> <td>Building Permit Fee</td> <td style="text-align: right;">\$108.00</td> <td style="text-align: right;">\$108.00</td> <td>04773801</td> <td>Jan 31, 2018</td> </tr> <tr> <td>Safety Codes Fee</td> <td style="text-align: right;">\$4.50</td> <td style="text-align: right;">\$4.50</td> <td>04773801</td> <td>Jan 31, 2018</td> </tr> <tr> <td>Dev. Application Fee</td> <td style="text-align: right;">\$116.00</td> <td style="text-align: right;">\$116.00</td> <td>04773801</td> <td>Jan 31, 2018</td> </tr> <tr> <td>Total GST Amount:</td> <td style="text-align: right;">\$0.00</td> <td></td> <td></td> <td></td> </tr> <tr> <td>Totals for Permit:</td> <td style="text-align: right; border-top: 1px solid black;">\$228.50</td> <td style="text-align: right; border-top: 1px solid black;">\$228.50</td> <td></td> <td></td> </tr> </tbody> </table>			Fee Amount	Amount Paid	Receipt #	Date Paid	Building Permit Fee	\$108.00	\$108.00	04773801	Jan 31, 2018	Safety Codes Fee	\$4.50	\$4.50	04773801	Jan 31, 2018	Dev. Application Fee	\$116.00	\$116.00	04773801	Jan 31, 2018	Total GST Amount:	\$0.00				Totals for Permit:	\$228.50	\$228.50		
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THIS IS NOT A PERMIT																															



SURROUNDING LAND USE DISTRICTS

Site Location ←

File: SDAB-D-18-046



ITEM II: 10:30 A.M.

FILE: SDAB-S-18-004

AN APPEAL FROM THE DECISION OF THE SUBDIVISION AUTHORITY

APPELLANT:

APPLICATION NO.: 270639194-001

APPLICATION TO: Create separate titles for a Semi-detached Dwelling

DECISION OF THE SUBDIVISION AUTHORITY: Refused

DECISION DATE: February 22, 2018

DATE OF APPEAL: March 7, 2018

MUNICIPAL DESCRIPTION OF SUBJECT PROPERTY: 8710 - 128 Avenue NW

LEGAL DESCRIPTION: Plan 4830Q Blk 10 Lot 1

ZONE: (RF4) Semi-Detached Residential Zone

OVERLAY: Mature Neighbourhood Overlay

STATUTORY PLAN: N/A

Grounds for Appeal

The Appellant provided the following reasons for appealing the decision of the Subdivision Authority:

The above noted subdivision application has been refused because it does not comply with the minimum Development Regulations identified in Section 150.4(2) of the City of Edmonton Zoning Bylaw.

Some background on the situation:

The lot (and former single residence) was purchased in 1989 and the residence was demolished. Prior to demolition the single residence faced 88 Street/West. A new permit was requested and granted in 1990 to build the existing residence (a duplex) that now faces 128 Ave/South.

I would like to appeal the decision made on Feb 22, 2018 for the following reasons;

- No physical changes are being made to any structure, the request was made to split the title from one land title to two separate titles on a duplex that has existed for 28 years
- The duplex is built in an approved RF4 Zone – Semi Detached Residential Zone
- There was no mention of site discrepancies in 1990 when the permit was granted; If having separate titles was an issue due to site discrepancies, I feel it should have been noted at the time the permit was granted and we could've made a more informed decision prior to constructing a duplex that may have to remain one title forever
- The duplex directly across the street from us is also "site deficient" by the same definition and is two separate titles
- The duplex was constructed prior to 1992 when the rules surrounding the Sewer and Water Services were changed, therefore the separate sewer issue does not apply in this situation, but we would have the required inspections as set out by EPCOR Storm/Sewer and EPCOR Water services completed to meet full compliance

<i>General Matters</i>

Appeal Information:

The *Municipal Government Act*, RSA 2000, c M-26 states the following:

Appeals

678(1) The decision of a subdivision authority on an application for subdivision approval may be appealed

- (a) by the applicant for the approval,
- (b) by a Government department if the application is required by the subdivision and development regulations to be referred to that department,
- (c) by the council of the municipality in which the land to be subdivided is located if the council, a designated officer of the municipality or the municipal planning commission of the municipality is not the subdivision authority, or
- (d) by a school board with respect to
 - (i) the allocation of municipal reserve and school reserve or money in place of the reserve,
 - (ii) the location of school reserve allocated to it, or

- (iii) the amount of school reserve or money in place of the reserve.

(2) An appeal under subsection (1) may be commenced by filing a notice of appeal within 14 days after receipt of the written decision of the subdivision authority or deemed refusal by the subdivision authority in accordance with section 681

- (a) with the Municipal Government Board
 - (i) if the land that is the subject of the application is within the Green Area as classified by the Minister responsible for the Public Lands Act,
 - (ii) if the land that is the subject of the application contains, is adjacent to or is within the prescribed distance of a highway, a body of water, a sewage treatment or waste management facility or a historical site, or
 - (iii) in any other circumstances described in the regulations under section 694(1)(h.2),

or

- (b) in all other cases, with the subdivision and development appeal board.

(2.1) Despite subsection (2)(a), if the land that is the subject-matter of the appeal would have been in an area described in subsection (2)(a) except that the affected Government department agreed, in writing, to vary the distance under the subdivision and development regulations, the notice of appeal must be filed with the subdivision and development appeal board.

(3) For the purpose of subsection (2), the date of receipt of the decision is deemed to be 7 days from the date the decision is mailed.

(4) A notice of appeal under this section must contain

- (a) the legal description and municipal location, if applicable, of the land proposed to be subdivided, and
- (b) the reasons for appeal, including the issues in the decision or the conditions imposed in the approval that are the subject of the appeal.

(5) If the applicant files a notice of appeal within 14 days after receipt of the written decision or the deemed refusal with the wrong board, that board must refer the appeal to the appropriate board and the appropriate board must hear the appeal as if the notice of appeal had been filed with it and it is deemed to have received the notice of appeal from the applicant on the date it receives the notice of appeal from the first board.

Hearing and decision

680(1) The board hearing an appeal under section 678 is not required to hear from any person or entity other than

- (a) a person or entity that was notified pursuant to section 679(1), and
- (b) each owner of adjacent land to the land that is the subject of the appeal,

or a person acting on any of those persons' behalf.

(1.1) For the purposes of subsection (1), “adjacent land” and “owner” have the same meanings as in section 653.

(2) In determining an appeal, the board hearing the appeal

- (a) must act in accordance with any applicable ALSA regional plan;
- (a.1) must have regard to any statutory plan;
- (b) must conform with the uses of land referred to in a land use bylaw;
- (c) must be consistent with the land use policies;
- (d) must have regard to but is not bound by the subdivision and development regulations;
- (e) may confirm, revoke or vary the approval or decision or any condition imposed by the subdivision authority or make or substitute an approval, decision or condition of its own;
- (f) may, in addition to the other powers it has, exercise the same power as a subdivision authority is permitted to exercise pursuant to this Part or the regulations or bylaws under this Part.

Approval of application

654(1) A subdivision authority must not approve an application for subdivision approval unless

- (a) the land that is proposed to be subdivided is, in the opinion of the subdivision authority, suitable for the purpose for which the subdivision is intended,
- (b) the proposed subdivision conforms to the provisions of any growth plan under Part 17.1, any statutory plan and, subject to subsection (2), any land use bylaw that affects the land proposed to be subdivided,
- (c) the proposed subdivision complies with this Part and Part 17.1 and the regulations under those Parts, and
- (d) all outstanding property taxes on the land proposed to be subdivided have been paid to the municipality where the land is located or arrangements satisfactory to the municipality have been made for their payment pursuant to Part 10.

(1.1) A decision of a subdivision authority must state

- (a) whether an appeal lies to a subdivision and development appeal board or to the Municipal Government Board, and
- (b) if an application for subdivision approval is refused, the reasons for the refusal.

(1.2) If the subdivision authority is of the opinion that there may be a conflict or inconsistency between statutory plans, section 638 applies in respect of the conflict or inconsistency.

(2) A subdivision authority may approve an application for subdivision approval even though the proposed subdivision does not comply with the land use bylaw if, in its opinion,

- (a) the proposed subdivision would not
 - (i) unduly interfere with the amenities of the neighbourhood, or
 - (ii) materially interfere with or affect the use, enjoyment or value of neighbouring parcels of land,

and

- (b) the proposed subdivision conforms with the use prescribed for that land in the land use bylaw.

(3) A subdivision authority may approve or refuse an application for subdivision approval.

General Provisions from the *Edmonton Zoning Bylaw*:

Under section 150.2(6), **Semi-detached Housing** is a **Permitted Use** in the (RF4) Semi-Detached Residential Zone.

Under section 7.2(7), **Semi-detached Housing** means:

development consisting of a building containing only two Dwellings joined in whole or in part at the side or rear with no Dwelling being placed over another in whole or in part. Each Dwelling has separate, individual, and direct access to Grade. This type of development is designed and constructed as two Dwellings at the time of initial construction of the building. This Use does not include Secondary Suites or Duplexes.

Section 150.1 states that the **General Purpose** of the **(RF4) Semi-Detached Residential Zone** is “to provide a zone primarily for Semi-detached Housing and Duplex Housing.”

<i>Site</i>

Section 150.4(2) states the following with respect to Site Regulations for Semi-detached and Duplex Housing:

- a. the minimum Site area shall be 442.2 m²;
- b. the minimum Site Width shall be 13.4 m, where a Lane exists;
- c. the minimum Site Width shall be 15.0 m, where no Lane exists; and
- d. the minimum Site depth shall be 30.0 m.

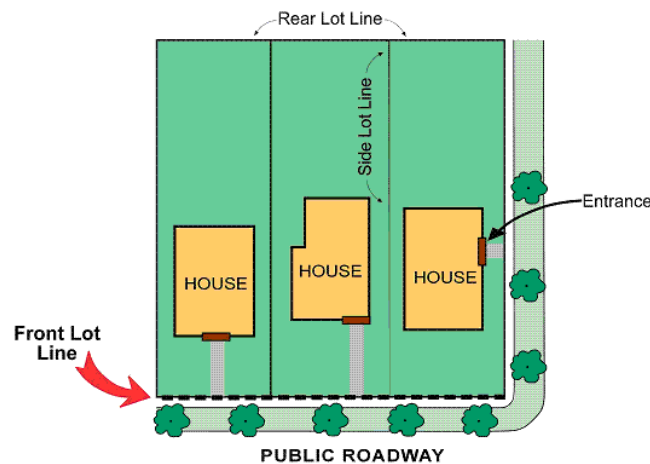
Under section 6.1(101), **Site** means “an area of land consisting of one or more abutting Lots.”

Under section 6.1(103), **Site Depth** means “the distance between the mid-points of the Front Lot Line and the mid-points of the Rear Lot Line.”

Under section 6.1(105), **Site Width** means “the horizontal distance between the side boundaries of the Site measured at a distance from the Front Lot Line equal to the required Front Setback for the Zone.”

Under section 6.1(43), **Front Lot Line** means:

the property line separating a lot from an abutting public roadway other than a Lane. In the case of a Corner Lot, the Front Line is the shorter of the property lines abutting a public roadway, other than a Lane. In the case of a Corner Lot formed by a curved corner, the Front Lot Line shall be the shorter of the two segments of the property line lying between the point determined to be the actual corner and the two points at the extremities of that property line;



Development Officer's Determination

The proposed subdivision does not comply with the minimum Development Regulations identified in Section 150.4(2) of the City of Edmonton Zoning Bylaw. The minimum site depth identified in the (RF4) Semi-detached Residential Zone for permitted and discretionary uses is 30.0 metres. The site depth of proposed Lot A is 22.86 metres and is therefore deficient by 7.14 metres or 23.8%. The site depth of proposed Lot B is 15.25 metres and is therefore deficient by 14.75 metres or 49.2%. This proposal will result in site depths, and ultimately lot sizes, that are uncharacteristically small when compared to properties on the adjacent block faces.

[unedited]

Notice to Applicant/Appellant

Provincial legislation requires that the Subdivision and Development Appeal Board issue its official decision in writing within fifteen days of the conclusion of the hearing. Bylaw No. 11136 requires that a verbal announcement of the Board's decision shall be made at the conclusion of the hearing of an appeal, but the verbal decision is not final nor binding on the Board until the decision has been given in writing in accordance with the *Municipal Government Act*.



Subdivision Authority

7th Floor, Edmonton Tower
10111 – 104 Avenue NW
Edmonton, Alberta T5J 0J4

February 22, 2018

File No. LDA18-0023

RE: Tentative plan of subdivision to create separate titles for a semi-detached dwelling from Lot 1, Block 10, Plan 4830 Q, located north of north of 128 Avenue NW and east of 88 Street NW;
KILLARNEY

The Subdivision by Plan is REFUSED on February 22, 2018 for the following reason:

1. The proposed subdivision does not comply with the minimum Development Regulations identified in Section 150.4(2) of the City of Edmonton Zoning Bylaw. The minimum site depth identified in the (RF4) Semi-detached Residential Zone for permitted and discretionary uses is 30.0 metres. The site depth of proposed Lot A is 22.86 metres and is therefore deficient by 7.14 metres or 23.8%. The site depth of proposed Lot B is 15.25 metres and is therefore deficient by 14.75 metres or 49.2%. This proposal will result in site depths, and ultimately lot sizes, that are uncharacteristically small when compared to properties on the adjacent block faces.

Please be advised that an appeal may be lodged in accordance to Section 678 of the Municipal Government Act with the Subdivision and Development Appeal Board, 10019 – 103 Avenue NW, Edmonton Alberta, T5J 0G9, within 14 days from the date of the receipt of this decision. The date of receipt of the decision is deemed to be seven (7) days from the date the decision is mailed.

If you have further questions, please contact Stephanie Mah at stephanie.mah@edmonton.ca or 780-442-5387.

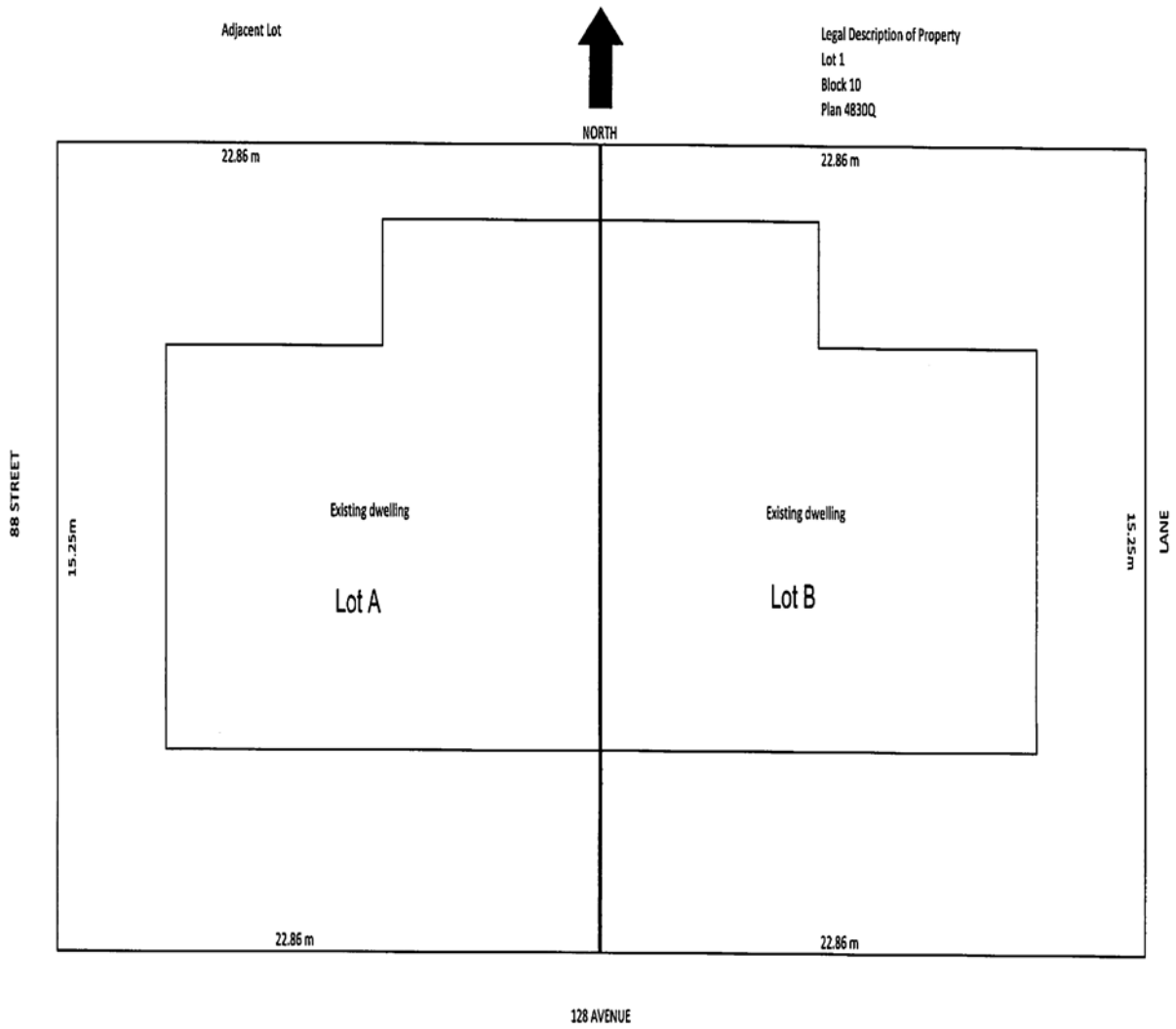
Regards,

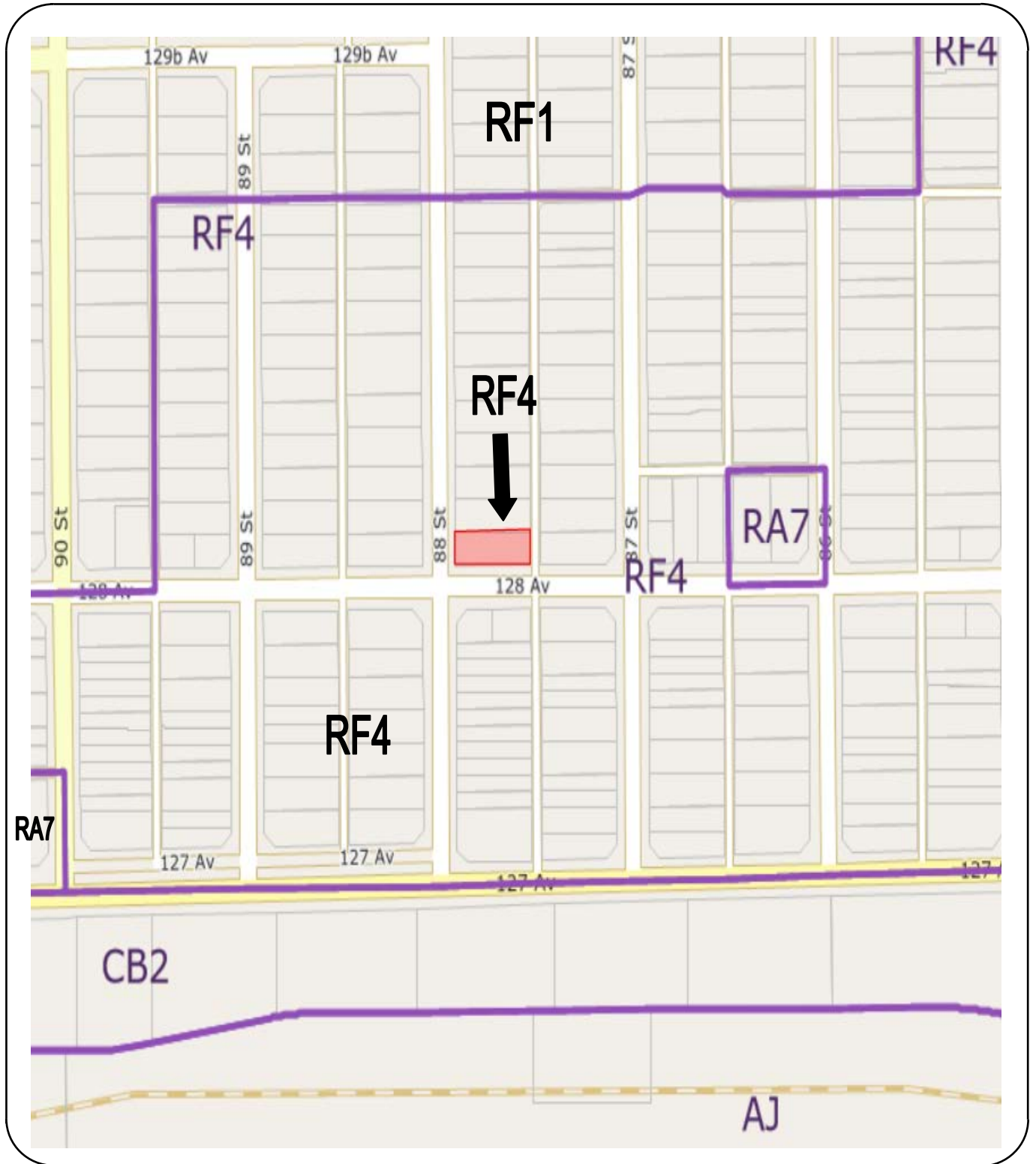
A handwritten signature in blue ink, appearing to read 'Blair McDowell'.

Blair McDowell
Subdivision Authority

BM/sm/Posse #270639194-001

Enclosure





SURROUNDING LAND USE DISTRICTS

Site Location ←

File: SDAB-S-18-004

