



**EDMONTON
TRIBUNALS**

*Subdivision &
Development
Appeal Board*

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Date: May 3, 2018
Project Number: 264979496-001 and
264980762-001
File Number: SDAB-D-18-052 / 053

Notice of Decision

- [1] On April 18, 2018, the Subdivision and Development Appeal Board (the “Board”) heard appeals that were filed on **March 23, 2018**. The appeals concerned the decisions of the Development Authority, issued on March 15, 2018, to refuse the following developments:

SDAB-D-18-052: (Plan 1820541 Blk 3 Lot 22A)

To construct a Single Detached House with Unenclosed Front Porch, Rooftop Terrace and rear uncovered deck (4.06m x 5.18m) (Lot 22A) located at 10211 – 89 Street NW

SDAB-D-18-053: (Plan 1820541 Blk 3 Lot 22B)

To construct a Single Detached House with Unenclosed Front Porch, Rooftop Terrace and rear uncovered deck (4.06m x 5.18m) (Lot 22B) located at 10213 – 89 Street NW

- [2] The subject properties are within the (RF2) Low Density Infill Zone. The Mature Neighbourhood Overlay, the Floodplain Protection Overlay, and the Riverdale Area Redevelopment Plan apply to the subject properties.
- [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 original appeal and supporting materials.
- [4] The following exhibits were presented during the hearing and form part of the record:
- Exhibit A – Sketch of shading effects on property to the north.
 - Exhibit B – Mark-up of second floor plans showing locations of additional planters.

Preliminary Matters

- [5] At the outset of the appeal hearing, the Presiding Officer confirmed with the parties in attendance that there was no opposition to the composition of the panel.
- [6] The Appellants confirmed the two proposed Single Detached Houses are identical and that they would be making the same arguments for both proposed developments.
- [7] The Presiding Officer outlined how the hearing would be conducted, including the order of appearance of parties, and no opposition was noted.
- [8] 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, Euro Design Master Builder

- [9] Mr. V. Vilimanovich and Mr. D. Hempel appeared to represent Euro Design Master Builder. Mr. O. Brewster, Construction Manager, was also present. Euro Design Master Builder is geared towards building infill projects in mature neighbourhoods.
- [10] The Appellants were not aware of any opposition to the proposed developments until they read the Development Officer's report. No concerns were expressed when they spoke with the neighbours to the south. They were not able to contact the property owners of the duplexes to the north as they are rentals. They did not speak to any of the property owners directly across the street nor any of the property owners across the lane. Some are being built and some are renters. They clarified that they only spoke to properties on the same side of the street.
- [11] Because of the east / west orientation of the proposed development, the property most affected by increased shading and massing is the property immediately to the north; the property to the south would not be affected by shading at all.
- [12] There are different methods to calculate height. Heights on pitched roof applications are measured to the mid-point of the roof while a flat roof application is done to the highest point of the roof. The half storey is less than fifty percent of the floor area. The height calculation is usually done to the majority of the roof. The majority of the roof goes to the second floor area and falls under the rules of the *Edmonton Zoning Bylaw* (the *Bylaw*). If this were a pitched roof on a two storey building, the height would be calculated to the mid roof and would be in compliance with the height regulations. The height is irrelevant in any kind of shading application because it would be there whether this was a conventional roof or not. If this project did not have a flat roof they would not be at the appeal board. If the attic space were removed and replaced with a pitched roof it would cast the same shadow on neighbours within a few inches on the top.

- [13] The current design, with the half story located in the middle of the house, lessens the shading and the massing effect. The Appellant drew a sketch of the rooftop configuration to show that the proposed 1 ½ second storey in the middle of the house casts less shading on the property to the north than if the house had a second storey with a pitched roof. (Exhibit A). The Appellants did not obtain a sun shadow study (which can cost \$2,000.00). They felt they would try this appeal instead. They believe the difference will be minimal. In response to a request for clarification from the Board, they recognized that different roof types have different impacts and massing and that the ridgeline of a pitched roof is necessarily recessed.
- [14] The original plot plan prepared by Pals Geomatics Corp. showed the main floor higher from average grade by 0.2 metres than what was originally proposed. One way to help lessen the variance would be to drop the houses into the ground. The Appellants advised they could drop the main floor back to 1.02 metres from the average grade.
- [15] Basically they can reduce the overall height by 0.2 metres. This would allow the majority of the roof to comply with the maximum permitted height and only the attic space would still be over height.
- [16] The Appellants agree that the proposed developments have a predominately flat roof design. They consider the pitched portion to be a shed roof. While section 52.1(d) of the *Bylaw* suggests there are different methods of calculating height, the Appellants have always shown the height calculation to the midpoint of the shed roof for any of these types of developments they have done.
- [17] In response to questions from the Board, the Appellants confirmed that the pitched portion of the roof is limited and it is predominantly a flat roof. The front portion of roof is a shed roof which rises higher to the north and the ridgeline is flush with the main elevation on the north side at a height similar to the parapet of the highest level.
- [18] Many of the challenges they face are due to the different methods of measuring height and the Development Officer's discretion. Mr. Vilimanovich has been working with the City and professional associations to clarify these dualities. They believe the shed roof height should be calculated as a sloped roof. They would like standardized methods, but they agreed that there could be instances where one is better than another. They acknowledged that section 52.1(d) provides the development officer discretion in calculating height and that he must consider impacts and shading for neighbouring properties in exercising that discretion.
- [19] All shed roofs are measured to the mid-point. The shed roofs of each of the proposed developments are sloped upwards to the north in the same direction in order to maximize sun exposure and surface area for future PV panels which may be installed, but are not in the current design. When asked, they concurred that the smaller shed portion creates more massing and height on the north side than a hip roof due to the location of the ridgeline at the facade and that the majority of the roof was a flat design.

- [20] There are challenges to developing within the guidelines in mature neighbourhoods so they are here to work with the Board and the City to get developments that work. They know they are considerably over height based on the plans in front of the Board, but they are trying to show that this has little effect.
- [21] The rooftop terrace does not interfere with neighbours' amenities. The Appellants reviewed photos from their submission which provided examples of houses which include rooftop terraces with zero front stepbacks and varied railings that exist within a 60-metre radius. They were not aware if any of these terraces were built prior to the enactment of the current stepback regulations that came into force in August 2017.
- [22] With these narrow applications there is not much amenity area. The proposed rooftop terraces with 18 inch wide planters on one side help provide the families additional usable amenity area and take advantage of the river valley view. They also allow an entertainment room while accommodating secondary suites in the homes.
- [23] The Appellants would be willing to add 18 inch wide planters on the other side of the rooftop terraces as well. They marked the location of these proposed additional planters on the second floor plans (Exhibits B1 and B2). Compliance with the stepback development regulations would reduce the amenity area significantly and make it less usable for their buyers or to fit outdoor furniture. They want a beautiful, usable space with a green area for character. If they follow the *Bylaw* stepbacks regulations, the space would be smaller and their clients want larger areas to use.
- [24] They intend to put five-foot high, stuccoed privacy walls on either side of the terrace to limit overview of the neighbour's yards.
- [25] Asked to comment on the additional massing effect of putting five foot barriers up on the side of the houses along the terraces, they stated that they are using colour and texture to address that and jog outs to be more visually appealing and not one giant form. They opted for the stuccoed walls rather than glass railings as they are more economical, afford more privacy and prevent dirt from spilling out of the planters and over the side. It was chosen because they must weigh application and cost to the project; translucent glass would be a lot more expensive. They will carefully select building materials that fit into the existing neighbourhood.
- [26] The proposed developments do not interfere with the amenities of the property to the north. The neighbours to the north have no garage and no useable backyard. Windows on the proposed development have been offset with those of the property to the north to mitigate any privacy issues.
- [27] Windows on the side walls were offset from the existing window configuration on the neighbouring buildings and some are obscured.
- [28] The proposed developments are each 1.2 metres from the north side property line. It appears that the duplex to the north is approximately the same distance from the property line as well, but the Appellants could not confirm that measurement. The front setback is

within the 1.5-metre average of the adjacent developments. They are pretty much in line with the property to the north except for the front porch extension.

[29] The Appellants have reviewed and agree with the imposition of all of the recommended conditions of the Development Officer should the proposed developments be approved.

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

[30] Mr. Yeung provided a written submission, but did not attend the hearing.

Decision

SDAB-D-18-052: (Plan 1820541 Blk 3 Lot 22A)

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

SDAB-D-18-053: (Plan 1820541 Blk 3 Lot 22B)

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

Reasons for Decision

[33] The proposed developments are Single Detached Housing, a Permitted Use in the (RF2) Low Density Infill Zone. Both require variances to the applicable development regulations for Height and for the rear and side Stepbacks for Rooftop Terraces.

[34] The Board heard the two appeals simultaneously as the Appellants confirmed that the proposed developments are identical in terms of their exterior dimensions and required variances for Height and Stepbacks and that the Appellants would be making the same submissions for both proposed developments.

[35] Although they did not specifically allege that the calculated Height was incorrect, the Appellants nonetheless questioned the Height determination. The Appellants felt the Development Officer should have less discretion with Height calculations. They submitted that Height should be calculated based on the roof over of the majority of the Floor Area. Here that would be to the top of the second storey or to the midpoint of the shed portion of the roofs rather than to the top of the higher flat roofs over the third floor loft areas.

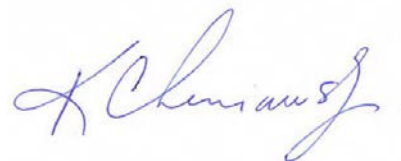
[36] Based on the stamped drawings and the Appellants' comments, the Board notes that the majority of the roofs employed a flat roof design and a much smaller shed roof portion at the front of the buildings with the highest ridges of that portion flush to the remainder of the north facades of the buildings.

- [37] There is no provision in the *Edmonton Zoning Bylaw* (the *Bylaw*) to support the Appellants' proposal that Height be measured to the lower flat portion of the buildings or the midpoint of the shed roof portion. The Board finds that the Height was calculated correctly to the highest portion of the flat roof in accordance with the sections 52.1(b) and (d) of the *Bylaw* which provide:
- “(b) For the flat roof type, Height shall be determined by measuring from the horizontal plane through Grade to the midpoint of the highest parapet, provided the resulting top of the parapet is no more than 0.4 metres above the maximum Height allowed in the zone or overlay; or, ...
- (d) For all other roof types, including saddle, dome, dual-pitch, shed, butterfly or combination roofs, the Development Officer shall determine Height by applying one of the previous three types that is most appropriate for balancing the development rights and the land use impact on adjacent properties.”
- [38] After the Board found that the Height calculation was correct, it did again consider the Appellants' comments about Height and roof design with regard to the potential impacts of the required variances.
- [39] As one of the required variances involved a Height regulation contained within the Mature Neighbourhood Overlay, the Board first considered the Development Officer's written submission and confirmed that the necessary community consultation had occurred in substantial compliance with section 814.5(1) of the *Bylaw*.
- [40] During the hearing, the Appellants raised potential changes to the Height, the Rooftop Terrace planters and even the roof. However, no alternate plans were provided and the Board has considered only the stamped refused plans currently under appeal in making this decision.
- [41] The Appellants presented street views of other nearby properties with similar Heights, flat roof designs and Rooftop Terraces with varied privacy screens. Some had no apparent front Stepbacks. The Appellant could not provide the precise Height for these developments. The Appellants could not say whether the examples were approved with Height variances or whether they were constructed before or after the Rooftop Terrace Stepback regulations were implemented. The Board notes that it is not bound by precedent and must review each case on its own merit and circumstance. Therefore, the Board took notice of these photographs only as evidence of similar types of designs nearby.
- [42] The majority of the reasons that the Appellants advanced to support approval of the proposed developments were based on economic issues and the preferences of their potential purchasers rather than the potential impact of the required variances. The Board has made its determination in accordance with section 687(3)(d) of the *Municipal Government Act*. Accordingly, it has not taken these submissions about builder cost and buyer preferences into account in considering the variances.

- [43] The Board considered the impact of the proposed variances individually and in concert on neighbouring parcels of land and on the neighbourhood amenities and declines to grant the required variances for the reasons which follow.
- [44] The available evidence about the views of the neighbours was limited and somewhat conflicting. As noted by the Development Officer, one of the most affected neighbours, the owner of the property immediately to the south was not supportive, citing concerns for compliance with the Stepbacks for the Rooftop Terraces and lack of Height information. Another neighbour within the 60-metre notification radius raised concern about sun shadowing for the adjacent neighbour to the south. The Board also noted that the Appellants indicated they had consulted with the two neighbours immediately to the south and had thought they were not opposed to the proposed development. The owners of other neighbouring properties surrounding the subject Sites were not contacted by the Appellants. No other correspondence was received by the Board or noted by the Development Officer.
- [45] The Appellants opined that the proposed flat roof design with only a partial third storey would have sun shadowing and massing impacts only minimally different than those of a fully compliant two storey building with a pitched roof design especially given the east/west orientation of the lots. The Board notes that the front of the subject lots face mainly towards the west, but are also skewed somewhat to the south with potential for sun shadowing effects in both directions along the blockface.
- [46] The Appellants did not provide a sun shadow study, nor any other supporting evidence other than a hand drawn sketch which approximated the roof from above. Further, the Appellants also acknowledged that any hypothetical pitched roof would necessarily include a recessed ridgeline and consequently a different effect for both sun shadowing and massing.
- [47] Based on the stamped, refused plans, the proposed buildings include partial third storeys to accommodate the loft areas which open to Rooftop Terraces above the second storeys towards the rear. The Board accepts the Appellants' submission that the loft areas comprise less than half of the Floor Area square footage for the buildings.
- [48] However, in considering the impact for neighbouring properties the Board took account of the exterior of the buildings. The Board finds it is also true that the top of the parapet above the loft is 10.4 metres in Height, which exceeds the allowed Mature Neighbourhood Overlay limit of 8.9 metres by 1.5 metres. The Appellants concurred that this is a significant excess. However, in making its decision, the Board remained mindful that the magnitude of a variance alone is not determinative.
- [49] In these two buildings, the highest sections of the flat roof parapets include a portion which hangs over the Rooftop Terraces. They extend for 28 feet (8.53 metres) along either side of the proposed developments, plus an additional 3 feet (0.91 metres) for the overhang at 10.4 metres in Height. Also, no side Stepbacks are proposed for either the Rooftop Terraces or the loft areas. They extend across the full width of the building and

are flush with the remainder of the lower facades of the side walls maximizing the massing and sun shadow impacts of the flat roof design.

- [50] In addition, the ridgelines of the shed roof portion of the buildings are flush with the north facade and very close in Height to the highest parapet for an additional 8 foot (2.44-metre) section or a total of 36 feet (10.97 metres) adding to the potential massing and sun shadowing impacts for the properties immediately to the north.
- [51] The Board also considered that Appellants concurrently seek variances to waive the 2.0 metres Stepbacks entirely along both sides of the Rooftop Terraces and to reduce the rear 2.0- metre Stepbacks by 0.6 metres.
- [52] Rooftop Terrace Stepbacks are required to provide privacy and visual relief from massing for neighbouring properties.
- [53] To reduce the negative impact of oversight into the neighbouring properties, the Appellants propose to screen the Rooftop Terraces with solid stucco walls that are 5 feet (1.52 metres) in Height. These solid walls will extend for 12 feet 8 inches (3.86 metres) flush along the remainder of the south and north solid stucco facades. These walls will wrap around a portion of the rear of each of the buildings. While these walls may add some privacy, the Board finds that they also add significantly to the massing effect for the adjacent properties to the north and south, particularly given the overall proposed Height of the buildings and their location toward the rear of the buildings above the second storey rooftop terraces.
- [54] Based on the limited materials before it, the Board is of the opinion that the proposed variances to Height for the flat roofs, in conjunction with waivers of both side Stepbacks and the rear Stepback variance and the five foot (1.52-metre) solid stucco walls screening the Rooftop Terraces flush with the stucco side walls, will have material adverse impacts for neighbouring properties, particularly for the neighbouring properties to the north in terms of massing and sun shadowing. These adverse impacts will also be greater for the properties to the north due to the position and Height of the ridge of the shed roof portions of the buildings.
- [55] For the reasons above, the appeals are denied.



Ms. K. Cherniawsky, Presiding Officer
Subdivision and Development Appeal Board

Board Members in Attendance:

Ms. P. Jones; Mr. R. Handa; Mr. K. Hample; Mr. J. Wall

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.
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.



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Date: May 3, 2018
Project Number: 262666743-002
File Number: SDAB-D-18-054

Notice of Decision

- [1] On April 18, 2018, the Subdivision and Development Appeal Board (the “Board”) heard an appeal that was filed on **March 27, 2018**. The appeal concerned the decision of the Development Authority, issued on March 13, 2018, to refuse the following development:

Change the Use from Single Detached House to a Child Care Service (20 children), and to construct an addition to the second floor (17.4 m²), a deck to the North side of the building (2.1m x 3.8m), and interior and exterior alterations (new windows on the North side of the Garage loft and North and East sides of the Principal Building, a 1.8m tall railing on the existing Rooftop Terrace, a new Basement doorway and retaining wall, and a new Fence in the Front and Rear Yard).

- [2] The subject property is on Plan 1027072 Blk 1 Lot 1, located at 308 - Magrath Boulevard NW, within the (RPL) Planned Lot Residential Zone. The Magrath Heights Neighbourhood Area Structure 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 attachments, proposed plans, and the refused Development Permit, site plan markup, circulation responses from Transportation and Fire Rescue Services;
- The Development Officer’s written submissions;
- The Appellant’s written submissions;
- A submission from legal counsel representing an affected party; and
- Ten responses in opposition from affected property owners.

Preliminary Matters

- [4] At the outset of the appeal hearing, board member Mr. Hample disclosed that he knows one of the affected parties present today through a previous working relationship (Ms. Reghelini).

- [5] The Presiding Officer noted that Mr. Colistro, who is present representing an affected party, is the former chair of the Subdivision and Development Appeal Board. While he has not sat on hearings for at least three years he would have sat with the vast majority of the board members at some point.
- [6] The Presiding Officer confirmed with the parties in attendance that there was no opposition to the composition of the panel.
- [7] The Presiding Officer outlined how the hearing would be conducted, including the order of appearance of parties, and no opposition was noted.
- [8] 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. G. Leung

- [9] Mr. Leung would like to open the daycare as a result of the difficulties he experienced finding suitable child care for his own children. He has not previously operated a daycare.
- [10] He submitted three City of Edmonton administration reports illustrating the need for high quality child care in Edmonton. City Council responded by reducing the parking requirements for daycares in residential zones in May 2016.
- [11] While the above reports refer mainly to the downtown area, his personal research has shown there is a large shortage of child care facilities in the City's southwest; there are only 13 childcare programs in this area which are all operating at capacity. He does not know how many day homes are operating in the area.
- [12] Last fall Mr. Leung identified this lot as a suitable location to convert a single detached residence to a daycare. This corner lot is a reverse pie shape abutting a lane. It is close to a newly constructed junior high / elementary school.
- [13] He initially thought that seven parking spaces could be provided in the rear but due to setback requirements only six are permitted. Parking spaces would be paved and access would be from the lane entry off of May Link. Vehicles would have to back into the lane to exit the stalls. The lane has a second entry from May Gate to the south.
- [14] He abandoned his original plan to add an additional level to the house after his pre-application meeting with the City and to respect the wishes of the immediately adjacent neighbour.
- [15] His original submission for 40 children was subsequently reduced to 30 children. He further reduced the application to 20 children after speaking with the Development

Officer and reading Facebook posts in opposition. The posts indicated a commercial use should not be located in a residential zone due to the traffic and excessive noise.

- [16] He contacted the Terwillegar Community League president in early March. While this individual agreed that child care spaces are urgently needed in the area, he wanted the league to stay neutral and felt the matter should be dealt with between the neighbours and the City.
- [17] Mr. Leung feels that the proposed six parking spaces are sufficient based on the following:
- a) The site is very close to public transit.
 - b) There is on-street parking available along May Common, the north side of May Link and along Magrath Boulevard. He confirmed that Magrath Boulevard is a bus route and is subject to seasonal parking bans, but snow clearing only occurs once or twice a year. He plans to hire a snow removal service to remove any resulting windrows.
 - c) He does not believe four parking spaces will be required by staff. His research of other daycares indicates that only 50 percent of daycare staff drive personal vehicles to work.
 - d) There will be preferential enrolment for families living within the neighbourhood and for siblings which reduces the demand for drop-off spaces.
 - e) The Transportation Department did not have any concerns regarding the deficiency of one parking space.
- [18] A commercial loading space is not required:
- a) A staff member will be picking up any required supplies.
 - b) There would be space along May Common if a truck ever needed to park.
 - c) The Transportation Department did not indicate that the lack of a loading space was a concern.
 - d) Mr. Leung believes there are other daycares in the City that do not have a loading space.
- [19] All patrons of the daycare will enter through the front door. A gate in the rear fence will allow parents and children to enter the back yard and walk to the front of the building.
- [20] Hours of operation would be between 7:00 a.m. and 6:00 p.m. The child care will not operate on evenings and weekends and no one will reside at the property. There will be no out-of-school care provided and the age range would be from infant to pre-kindergarten.

[21] He was unable to find suitable commercial space in the area for the proposed development. The spaces that would be suitable are either fully leased or too close to gas stations.

[22] Mr. Leung provided the following responses to questions from the Board:

- a) The 1.2-metre right-of-way shown on the plans is owned by Epcor; he assumes it is for power.
- b) He confirmed that patrons arriving by transit would have to cross either May Link or Magrath Boulevard to access the daycare.
- c) He has not done a traffic survey and cannot confirm how many vehicles use the lane. The homes across the lane are townhouses and all of the garages are located off the lane. With the lot being on the corner he does not believe there will be a problem with traffic congestion in the lane.
- d) There is a 300 square foot empty space above the garage, with windows, that may be used as a staff room. This space has no bathroom, kitchen or plumbing.
- e) While he acknowledged that the daycare could possibly have a negative impact to neighbours in close proximity he did not know to what level. He submitted a realtor's opinion indicating that a small daycare in the area could be a bonus for potential buyers.
- f) There will be noise from children playing outside but not all of the children will be outside at the same time. The play space is in the yard between the fence and the house; therefore, the house would act as a noise buffer for the neighbours to the south.
- g) The existing second floor deck will be used as an additional play area and he plans to install a 72 inch high tempered opaque glass railing. This deck can only be accessed from inside the building.

[23] He has reviewed the recommended conditions for approval in the Development Officer's report and has no concerns with any of them. He would be willing to have a condition for hours of operation from 7:00 a.m. to 6:00 p.m. from Monday to Friday inclusive.

ii) Position of the Development Officer, Mr. P. Adams

[24] City Council has indicated that more child care services are required, but they must be in an appropriate area that will not negatively impact neighbours. This is why Child Care Services is a Discretionary Use in residential areas. In this case he exercised his discretion to refuse the application after considering the traffic congestion in the lane, noise impact and limited parking in the area.

- [25] Parking regulations for Child Care Services have been relaxed but some regulations have still been maintained. In this case the required three pick-up and drop-off spaces have been provided; there is a deficiency of one staff parking space.
- [26] The over-height garage was previously approved by the SDAB and the loft area cannot be used as a dwelling space.
- [27] While it is the applicant's duty to ensure they are in compliance with all requirements of the utility-right-of way, Mr. Adams forwarded details of the application to Epcor and did not receive any negative feedback.
- [28] Mr. Adams provided the following responses to questions from the Board:
- a) He estimates that the rear lane is approximately 6.2 metres in width. This would be tight for two way traffic; a commercial site requires a 7-metre wide drive aisle for two way traffic.
 - b) The large park area to the east seems to be well integrated with pedestrian sidewalks. He does not know how heavily it is used by the community.
 - c) He is not in a position to comment on complaints received regarding daycares located in other residential areas.
 - d) There is currently not much commercial space in the area and he has no information on what would be available for lease.
 - e) When he refused the application he considered that there was no parking on the immediately flanking side and street parking in the area in front of the subject site is sparse due to front driveways and bus access.
 - f) He would expect that half of the residents on the block would drive north to exit the lane and the other half would use the south exit. There are approximately 26 rear garages off the lane on this half of the block.
 - g) He would have no issue if the Board included maximum occupancy or hours of operation as a condition of approval.

iii) Position of Affected Property Owners in Opposition

Mr. Colistro, legal counsel for Mr. Linder (immediately adjacent neighbour)

- [29] If the Board were to approve this discretionary development it must also consider if the parking variances should be granted by reviewing relevant planning principles. Economic factors are not relevant when considering the impact on neighbouring properties.

[30] Mr. Colistro referred to the Magrath Zoning map for context. The proposed site is located in a predominantly residential area in a small pocket zoned (RPL) Planned Lot Residential. The immediately surrounding zones are also residential:

- a) The homes facing the subject Site across Magrath Boulevard are located in a large (RSL) Residential Small Lot Zone. These have front attached garages with the driveways taking away from potential street parking.
- b) This property shares the lane with row housing and all units have garages exiting into the lane.

He also identified the location of the commercial areas, parks, community garden, a school, and a future high density mixed residential / commercial use area.

[31] The General Purpose of the (RPL) Planned Lot Residential Zone is:

To provide for small lot Single Detached Housing, serviced by both a Public Roadway and a Lane that provides the opportunity for the more efficient utilization of land in developing neighbourhoods, while maintaining the privacy and independence afforded by Single Detached Housing forms.

Homes are generally built closer together and have more site coverage. Given the proximity of the buildings in the immediately surrounding areas the impact of the proposed development on neighbouring properties could be more significant than in other areas.

[32] Figure 4 (Development Concept) in the Magrath Heights Neighbourhood Area Structure Plan illustrates that the majority of land in Magrath is designated low density residential with an area intended as commercial use located in the NW corner.

[33] Item 3.1.2 of this Plan states that:

Low density residential development will be planned in clusters/cells to provide a greater sense of identity, to create a safe pedestrian environment and to encourage relationships with immediate neighbours within the various residential sub-areas.

The proposed development is not occupied by residents and does not encourage relationships with neighbours. Child Care Services is not associated with low density.

[34] There were ten e-mails / letters opposing the proposed development and a number of people appeared in opposition today. Support for the development is from people much further away (300 metres) as indicated by Appellant.

[35] Child Care Services is a permitted use in the (CSC) Shopping Centre Zone which suggests that commercial zones are best for daycare uses. In Magrath, the commercial area is surrounded by higher density development and is further away from the lower density residential development.

[36] Mr. Colistro used a PowerPoint presentation to illustrate his client's main concerns:

- a) The proposed development and his client's home are in very close proximity to each other.
- b) A person on the second floor balcony, which is proposed as a play area, would have the ability to see into his client's bedrooms and backyard sitting area. This proposed play area also causes noise concerns. The balcony is currently a putting green and infrequently used.
- c) Even if the clear glass railing is changed to opaque glass it may not be truly opaque and the additional height will significantly change the appearance of the property contrary to section 80.4(c) of the *Edmonton Zoning Bylaw*.
- d) Daycares have scheduled outdoor activities resulting in constant noise which would be concentrated in a fairly small area. The fence would not act as a sound barrier and would only establish a visual barrier between the two properties. He questioned how effective the existing stone fence with metal rails would be at preventing children from climbing out.
- e) There is no hard surfaced walkway from the rear parking area to the entry of the daycare as required in section 130.10(c)(ii) of the *Edmonton Zoning Bylaw*. Such a walkway would take away more play space pushing the play area into the front yard. There are currently no fences in any of the front yards and children play in the rear yards or surrounding parks; again this would significantly change the appearance of the property.
- f) With the existing overheight garage, the second storey addition to the front of the property and the balcony with the raised railing the overall impact of the development becomes greater.

[37] Mr. Colistro submitted a letter from a realtor with knowledge of the area, including properties along the specific block face. It suggests an approved daycare facility would result in a reduction in property value of \$75,000 to \$100,000 to the immediately adjacent neighbour.

[38] The proposed development will result in more traffic coming into the neighbourhood because it will act as a destination. The already busy lane will become more congested and people will be making U-turns and illegally parking on the flanking side of May Link or will have to cross May Link to access the daycare.

[39] Magrath Boulevard is a bus route as well as a snow route. Snow clearing would leave people dealing with windrows which tend to push more cars to the centre of the street.

[40] There are restrictions as to how close you can park to a corner leaving only one possible parking space in front of the proposed daycare. Other available street parking in the neighbourhood is often used by residents.

- [41] If there are four parking stalls in addition to the existing garage driveway, then there is limited space left to pile snow in the winter. This could result in the possible reduction of one of the six parking spaces if there is a lot of snow.
- [42] Commercial garbage service may be required to deal with increased garbage which could result in additional garbage trucks accessing the lane. There is also limited space for garbage storage.
- [43] Section 80.4(c) of the *Edmonton Zoning Bylaw* states:

A converted Dwelling shall not change the principal character or external appearance of the Dwelling in which it is located.

The following changes to appearance are proposed:

- a) A basement entrance is being created with a retaining wall.
- b) Fencing is being added to the front yard.
- c) The railing of the second floor balcony is being altered.
- d) Additional parking spaces are being added along the lane in the rear yard.

These changes alter the external appearance and are not in keeping with the principal character. They are more consistent with a commercial development.

- [44] Mr. Colistro referred to two previous SDAB decisions regarding Child Care Services (SDAB-D-18-007 and SDAB-D-16-177) which upheld refusals of the Development Officer. Both of the proposed developments had similar issues to the subject development.
- [45] The reports submitted by the Appellant are more focused on downtown and are policy documents, not law. City Council has already reduced parking requirements for Child Care Services and this development does not meet the new regulations for required parking indicating that the proposed development is not suitable at this location.
- [46] While the report from Transportation did not include an objection to the parking variance, it does not really express much of an opinion on potential traffic conflicts. It is not clear whether Transportation considered traffic movement in the lane and the intensity of the current use and may not have considered the impact of additional parking stalls.
- [47] While there currently may be some staff that do not drive to work, staff members can change and operators can change. Once a Use is approved it runs with the property.
- [48] Limiting the hours of the development does not take away traffic conflicts as pick-up and drop-off times also coincide with the busiest traffic times for residents of the block who must use the lane.

- [49] Outdoor noise from children playing at the daycare can affect the ability of children to take naps in adjacent homes.

Mr. Linder

- [50] Backyards in the area are very nice to look at and have met very stringent architectural landscaping requirements. The overall visual appearance of the neighbourhood is consistent. The proposed changes with parking stalls would make the subject property look more like a commercial zone.

Mr. Bergstra

- [51] Mr. Bergstra lives in a townhouse directly behind the subject property. He clarified that his townhouse has five units; therefore, there are five garages right behind the subject property.
- [52] The congestion at the entry point to the alley is already very concentrated and this area is not meant for two way traffic.
- [53] The garages of the townhouses are set back into the yard allowing for a small car to park on the driveway. This driveway allows space to maneuver. The proposed daycare parking spaces go right to the alley which will result in daycare patrons improperly using his driveway on a daily basis.
- [54] Nearby parking is heavily used. Many people park along May Common to access the trails to the ravine. There will be even less parking once the large planned development to the east goes in across from his home on May Common.
- [55] “No stopping” signs are also located a certain number of metres back from the intersection of May Link and May Common along both sides of the roads.
- [56] The proposed commercial operation will result in increased litter.
- [57] There is no reason for the parking requirements to be relaxed. The regulations have already been relaxed to allow for Child Care Services in neighbourhoods.

Ms. Reghelini

- [58] Ms. Reghelini lives in one of the townhouses along the lane behind the proposed development. Her concerns relate to the enjoyment of her home, health and safety, and congestion.
- [59] She has always lived downtown in a high density area and moved to a residential area after retiring to enjoy the peace and quiet. She enjoys sitting in her back yard during the

day. The noise and congestion from this nearby commercial development is going to impact the enjoyment of her home.

- [60] Parking along May Common is very limited. There is always a car parked in front of her unit that is not hers. Parking is taken up by groups walking in the ravine and by construction workers building homes in the area.
- [61] Ms. Reghelini crosses Magrath Boulevard to access transit. She finds it very dangerous to cross this road because of the speed of the cars and the slight curve of the road by the subject site which creates a blind spot. There are no lights or crosswalk at the intersection of Magrath Boulevard and May Common which creates a very dangerous situation for children.
- [62] The City requires more daycares, but not at this location.

Ms. Hokanson

- [63] Ms. Hokanson lives approximately 300 metres from the subject site and feels she would be impacted by the proposed development. She walks her children to the school bus every morning which stops at the corner of May Link and Magrath Boulevard across from the subject site. Four school buses stop at that corner within a 15 minute period.
- [64] She believes it will be difficult and create safety concerns to access the daycare at the proposed location, especially given the parking restrictions and congestion she observes.
- [65] There are no parking signs along May Common north of May Link at her request as she experienced a fire at her home several years ago and parked cars impeded the fire truck access.
- [66] The area she lives in is called Larch Park and a commercial property here goes against the design of what this area was meant to be.

Ms. Kelbourn

- [67] Ms. Kelbourn lives directly behind the proposed development in the end unit of a set of five townhouses. The back lane is very congested and she almost hits the existing daycare fence when backing out. Her driveway is often used by vehicles to maneuver past other vehicles.
- [68] She is concerned that the proposed development will devalue her property.
- [69] Street parking in the area is already heavily used.
- [70] Safety is a concern as vehicles on Magrath Boulevard go very fast making it dangerous to cross that street. She fears for her daughter playing basketball on her driveway and she fears that she herself might hit a child.

- [71] She feels more than three or four staff will be required to care for twenty pre-school children.
- [72] Noise is a concern as she has a daughter who needs a quiet location to study.
- [73] The lane is narrow, many people already illegally cross her driveway to pass one another and have damaged it. This problem will get worse and more dangerous as parents use the on site parking spaces which are directly across the lane from her garage and also as people use her driveway to accommodate two-way traffic, especially while children are going in and out.

iv) Rebuttal of the Appellant

- [74] Although it is not shown on the site plan there will be a hard-surfaced walkway from the rear parking area to the front of the house as required in section 130.10(c)(ii) of the *Edmonton Zoning Bylaw*.
- [75] The subject property is the only bungalow in the area. Converting it to a two storey home would make it look the same as the rest of the houses on the block face.
- [76] The Appellant intends to hire a contractor to deal with windrows left behind from snow clearing. Snow will be moved onto the front yard; therefore, parking on the front street will not be reduced. Contractors will also be hired to clear the back parking area. Snow will be blown into the back yard where it can be made into a slide for children to play on.
- [77] The *Edmonton Zoning Bylaw* allows parking on the street within 150 metres of the corner.
- [78] The photos in his submission were taken at 8:00 a.m. on March 23 which coincides with drop off times. There are no vehicles parked in these photos which confirms there is adequate parking.
- [79] A response from Ms. Tywoniuk was received; however Ms. Tywoniuk's address is outside of the 60-metre notification zone.
- [80] There is no opportunity for commercial space on the school site. To his knowledge that site is designated for an ice rink and school playground. This morning he received an e-mail from Carrington, the developer of the Direct Control apartment zone, which advises that there will no longer be a commercial component to this development.
- [81] He acknowledges the realtor's opinion submitted by the parties in opposition, but noted that he also provided a realtor's opinion that the daycare will not impact property values and will add to neighbourhood amenities.
- [82] Once these high density developments go ahead the child care shortage in the area will be made worse. This development is needed in this area.

Decision

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

Reasons for Decision

[84] The proposed development, Child Care Services, is a Discretionary Use in the (RPL) Planned Lot Residential Zone. It requires variances to the number of required on-site parking spaces and to the requirement for a loading area.

[85] The Board finds there are valid planning concerns with safety, parking, traffic congestion and noise associated with the proposed development at this particular location.

[86] The parties cited previous decisions of the Board both for and against other Child Care Services. The Board is not bound by these precedents and is obliged to treat each appeal on its own merits. In any event, the Board notes that each of those cases could be distinguished and has made this decision based on the unique factors of this appeal.

[87] The Board considered, but did not give significant weight to the parties' submissions about the availability of other suitable locations in the broader area as it tasked to determine two questions: first, whether the proposed development is an appropriate Discretionary Use at the subject Site; second, whether the required variances to on-site parking and loading spaces would create a material adverse impact on surrounding properties or reduce the neighbourhood amenities.

[88] The Board weighed conflicting evidence about the impact on property values. Both written opinions came from realtors. The Appellant's realtor indicated that the proposed development would be considered an amenity to the area and would generally have no impact on property values. However, the letter submitted by the owner of the abutting site provided a more site specific evaluation. After considering the refused plans and his experience in selling properties on this specific block face, that realtor concluded there would be a substantial negative impact to the abutting neighbour's property value.

[89] The Board considered the mixed evidence presented regarding community support. The Appellant brought evidence that several neighbours located approximately 300 metres away from the proposed development were in support – mainly due to the perceived need for this type of business in this area.

[90] The parties who submitted correspondence in opposition to the proposed development or who appeared before the Board in opposition lived closer, most within the 60 metres notification area. They included two adjacent neighbours directly across the Lane and the most immediately affected abutting neighbour to the south. They argued that there are alternative and more appropriate locations and expressed concerns regarding commercial

developments in principle as well as noise, safety and traffic congestion, particularly in the rear Lane as parents drop off and pick up children.

- [91] The Board received mixed evidence about the availability of on-street parking in front of the development and on other streets within 150 metres.
- [92] The subject Site is a Corner Lot and therefore compliant with locational criteria in the development regulations for Child Care Services which is one indicator of a suitable location. However, this particular Corner Lot lacks available on-street parking along the flanking roadway which is a key characteristic of Corner Lots. Evidence was presented that parking is prohibited at all times alongside the subject Site and also along the remainder of the block on the south side of May Link, the flanking road. These parking restrictions are a strong indicator that this Use is not suitable at this particular Corner Lot location.
- [93] Further, there is limited space for parking at the front of the property along Magrath Boulevard due to the inverted pie shape of the lot and a cut out portion of the northwest corner of the lot. The houses on the other side of the street are zoned RSL and have front driveways which also reduces available spaces on Magrath Boulevard. The lack of available abutting on-street parking causes issues with children having to cross busy streets to access and exit the site.
- [94] The proposed Child Care Services provides six on-site parking spaces located at the far rear of the property and perpendicular to the Lane. Clients and staff must use the Lane to enter the rear parking spaces and must reverse into the Lane to exit them.
- [95] The Board heard evidence that there are two exits to the Lane. Homes on this block all have rear garages. It is reasonable to expect that half the block residents will use the exit behind the subject Site. Therefore, the drivers of vehicles for approximately twenty six double garages along the nearest half of the Lane (including the five double garages for the row house units directly across the Lane) would use the same exit as the daycare clients.
- [96] According to evidence provided by residents of this block, traffic congestion in the Lane already occurs at the times that will coincide with the times when traffic in the Lane will increase materially as the parents funnel into it to drop off and pick up their children.
- [97] Further, the Lane is not wide enough to accommodate two-way traffic. In order for two vehicles to pass each other in the Lane, one must illegally cross over the driveways of the row houses located immediately behind the subject Site or over the proposed parking spaces.
- [98] Given these circumstances, the Board finds that increased traffic and the maneuvering in and out of the perpendicular spaces adjacent to the entrance of the Lane, will add to congestion in the Lane and will materially impact the conditions of the Lane, particularly in the winter months.

- [99] The proposed development also includes a raised outdoor play area on the Rooftop Terrace in addition to outdoor play areas at ground level in both the front and rear yards. This raised play area is located next to the interior side lot line. It is accessed from the second floor of the building and to be enclosed with a six foot glass screen. The Board finds that the location of this outdoor area above grade and next to edge of the lot would create uncharacteristic noise and privacy issues that would adversely and materially impact the south abutting neighbour. The Board was less persuaded about the impact of noise for residents living further away from the proposed development.
- [100] For the reasons above, the Board finds that there are valid planning concerns related to traffic, safety and noise to deny the application for this Discretionary Use, a Child Care Services for 20 children.
- [101] Given this conclusion, the Board did not consider whether the on-site parking and loading space variances would unduly interfere with the amenities of the neighbourhood and materially interfere with or affect the use, enjoyment or value of neighbouring parcels of land.

Ms. K. Cherniawsky, Presiding Officer
Subdivision and Development Appeal Board

Board Members in Attendance:

Ms. P. Jones; Mr. R. Handa; Mr. K. Hample; Mr. J. Wall

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.
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.