



**EDMONTON  
TRIBUNALS**

*Subdivision &  
Development  
Appeal Board*

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Date: May 4, 2018  
Project Number: 089885265-004  
File Number: SDAB-D-18-055

**Notice of Decision**

- [1] On April 19, 2018, the Subdivision and Development Appeal Board (the “Board”) heard an appeal that was filed on **February 27, 2018**. The appeal concerned the decision of the Development Authority, issued on February 7, 2018, to refuse the following development:

**To operate a Major Home Based Business in a Single Detached House - Auto repair (C & M ENTERPRIZES INC)**

- [2] The subject property is on Plan 2107KS Blk 8 Lots 12-13, located at 11318 - 38 Street NW, within the RF1 Single Detached Residential Zone. The Mature Neighbourhood Overlay applies to the subject property.
- [3] The following documents were received prior to the hearing and form part of the record:
- Copy of the Development Permit application with attachments, proposed plans, and the refused Development Permit;
  - The Development Officer’s written submissions;
  - The Appellant’s written submissions; and
  - Online responses.

**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 (the “*Municipal Government Act*”).

**Summary of Hearing***i) Position of the Appellant, Mr. Boonstra*

- [7] The Major Home Based Business is a Discretionary Use because the business meets the requirements under the *Edmonton Zoning Bylaw*.
- [8] The application is for a renewal of an existing business that has been in operation for 22 years. He renews the business application every five years and has had support from the majority of neighbouring property owners every time.
- [9] He has never received any complaints from neighbouring property owners. He feels that the statement about a noise complaint in the Development Officer's submission is incorrect and is not relevant.
- [10] He provided the Board with a petition containing 44 signatures from neighbouring property owners who reside across the street and adjacent to the subject Site in support of the proposed development.
- [11] He referred to the photographs contained in the Development Officer's written submission showing that his yard is untidy. However, these photographs are not recent and the yard has been cleaned up.
- [12] The adjacent neighbours cannot see construction materials inside the yard because of the height of the fence.
- [13] Equipment related to the demolition business is stored off site. The demolition business only operated until the end of January.
- [14] Automotive repairs are done occasionally and he may only have one customer visit per day which still requires a permit.
- [15] The materials in the back yard are from renovations being done to the property and are not related to the business. The construction is contained in the rear yard and does not impact the neighbours.
- [16] It was his opinion that construction being done by the City has a bigger impact on the neighbouring properties.
- [17] In response to questions by the Board, Mr. Boonstra stated that equipment for the demolition is not stored on the subject Site.
- [18] He has a contract for three storage lots located in close proximity to the subject Site where he stores materials and equipment for the Major Home Based Business.
- [19] Equipment from the business may be on his property while he is doing work at a customer's property.

- [20] The services for the auto repair service consist of repairs on brakes, suspensions, tune ups, fixing lights, and oil changes. The oil is stored and later removed from the site. There are hydraulics in the garage and no power tools that are used. The majority of the business is demolition work.
- [21] The back hoe is occasionally parked at the subject site and his personal vehicles are parked on the street if he is working at a customer's property.
- [22] He confirmed that equipment and machinery is stored at a storage facility.
- [23] With regard to the signatures in support of the Major Home Based Business, he stated that he has not received any complaints from neighbouring property owners after speaking to them the week of the hearing. The signatures were from neighbours who reside within a block of the subject Site.
- [24] He owns two vehicles, a backhoe, 2 trackhoes, a gravel truck, and a large truck and trailer to haul the excavator, all of which are stored off site.
- [25] The commercial vehicle shown in the photographs is associated with the demolition business.
- [26] The backhoe shown in the photographs is not used for renovations being done at the subject Site.
- [27] The bobcat shown in the photographs is used by a contractor working at the subject Site. A portion of the fence slides open so the bobcat can access the back yard.
- [28] The truck shown in the photograph is a customer's truck that he is working on.
- [29] He could have received more signatures in support from neighbouring property owners if he had more time to prepare for the hearing. He did not speak to anyone who opposed the proposed development.
- [30] He confirmed that the demolition portion of the business operates under C & M Enterprises Inc. He confirmed that the equipment for the demolition business is stored off site.
- [31] He confirmed that he does not own any air tools.
- [32] He has lived at the property for 25 years.

*ii) Position of Mr. Andronyk, an affected Property Owner in Opposition of the Appellant*

- [33] Mr. Andronyk lives approximately four houses west of the subject Site.
- [34] He owns a commercial truck and used to park behind his property until he received a complaint.
- [35] There are several commercial vehicles stored at the subject Site.
- [36] Several vehicles are parked in the rear lane blocking access to the rear lane for neighbouring property owners.
- [37] The fence on the subject Site is built right up to the sidewalk and the excess of vehicles parked on the street impacts sight lines.
- [38] On several occasions, he has seen the bobcat and truck parked at the site. In his opinion, the subject Site is being used as a storage lot.
- [39] There is an excess of noise coming from the subject Site and he has made calls to Bylaw Enforcement to complain.
- [40] It was his opinion that the subject Site is an eyesore and a hazard to the neighbourhood.

*iii) Position of the Development Officer, Ms. E. Lai*

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

*iv) Rebuttal of the Appellant*

- [42] Complaints are brought up every time he applies to renew the Major Home Based Business even though all the concerns have been addressed.
- [43] There is an excess of vehicles parked on the street whenever there is a function taking place at the school located across the street from the subject Site.
- [44] The fence is built up the sidewalk and has been that way for 15 years. He has addressed this with the City who has allowed the fence to stay the way it is.
- [45] Prior to finding off site storage, the backhoe and bobcat were stored at the subject Site. On occasion they are at the subject Site for short periods of time.
- [46] There are three properties between the subject Site and Mr. Andronyk's property. In his opinion, the business will not negatively affect his property.
- [47] He applied for a business license which was approved and thought he could operate the business with that approval. He was notified that the development permit expired and he needed to apply for a renewal.

**Decision**

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

**Reasons for Decision**

[49] The proposed development is a Major Home Based Business for Auto repair which is a Discretionary Use in the RF1 Single Detached Residential Zone.

[50] Automotive and Equipment Repair Shops are neither a Permitted nor Discretionary Use in the RF1 Single Detached Residential Zone. Therefore, in order for this permit to be granted, it can only be granted as a Major Home Based Business. A Major Home Based Business is defined in Section 7.3(7) of the *Edmonton Zoning Bylaw*:

Major Home Based Business means development consisting of the Use of an approved Dwelling or Accessory building by a resident of that Dwelling for one or more businesses that may generate more than one business associated visit per day. The business Use must be secondary to the Residential Use of the building and shall not change the residential character of the Dwelling or Accessory building. The Dwelling may be used as a workplace by a non-resident. This Use includes Bed and Breakfast Operations but does not include General Retail Sales, Cannabis Retail Sales or Cannabis Production and Distribution.

[51] The Court of Appeal, in *Edmonton (City) v. Edmonton (Subdivision and Development Appeal Board)* and *Grewal*, 2017 ABCA 140 (“*Grewal*”) stated that it is essential for a Major Home Based Business to meet the definition in the above section exactly and must only “consist of the use of an approved dwelling or accessory building”.

[52] The *Grewal* case is clear that no other portion of the site may be used as part of a Major Home Based Business. The evidence before the Board in this case is that this requirement is not met.

[53] The Board finds, based on the following evidence, that the auto repair business is using other portions of the site in addition to the accessory building:

- a. Photographic evidence was provided by the Development Officer that automotive parts, tires, and oil containers is being stored outside the Accessory Building; and
- b. The vehicles being repaired by the auto repair business are kept outside and not indoors while they are waiting to be fixed or picked up.

- [54] The proposed development consists of the use of more than the approved Accessory Building and therefore it cannot be a Major Home Based Business. The proposed use is neither Permitted nor Discretionary in the RF1 Single Detached Residential Zone, and the Board must deny the appeal.
- [55] Even if that was not the case, the Board would not exercise their discretion to grant a Discretionary Use.
- [56] The Board notes that several signatures were received in support of the proposed development. That is not determinative. The Board finds that an auto repair business that generates externally audible noise and includes the outdoor storage of vehicles is incompatible with the RF1 Single Detached Residential Zone.
- [57] Furthermore, the development does not satisfy the development regulations for a Major Home Based Business.
- [58] The Board finds that the proposed development violates Section 75 of the *Edmonton Zoning Bylaw*. In particular, Section 75.2 states:

There shall be no mechanical or electrical equipment used that creates external noise, or visible and audible interference with home electronics equipment in adjacent Dwellings.

The evidence before the Board was that the development was creating external noise that could be heard four houses away from the subject Site.

- [59] Section 75.3 of the *Edmonton Zoning Bylaw* states:

The Major Home Based Business shall not generate pedestrian or vehicular traffic, or parking, in excess of that which is characteristic of the Zone in which it is located.

The evidence before the Board from a neighbor in opposition was that the Major Home Based Business is generating an excess of vehicular parking in the area and the rear lane which is obstructing the view of traffic along the alley which is not in character with the RF1 Single Detached Residential Zone.

- [60] Section 75.5 of the *Edmonton Zoning Bylaw* states:

There shall be no outdoor business activity, or outdoor storage of material or equipment associated with the business. Indoor storage related to the business activity shall be allowed in either the Dwelling or Accessory buildings;

The Board finds that there is outdoor business activity or outdoor storage of material or equipment associated with the business.

[61] Section 75.9 of the *Edmonton Zoning Bylaw* states:

The Major Home Based Business shall not be allowed if, in the opinion of the Development Officer, such Use would be more appropriately located in a Commercial or Industrial Zone having regard for the overall compatibility of the Use with the residential character of the area.

The Board agrees with the Development Officer that the auto repair business would be more appropriately located in an Industrial or Commercial Zone having regard for the overall compatibility of the use with the residential character of the area.

[62] The Board would not entertain any variances to Sections 75.2, 75.3, 75.5 or 75.9 as the nature of the violations of these sections is such that they will unduly interfere with the amenities of the neighbourhood, and materially interfere with or affect the use, enjoyment or value of neighbouring parcels of land.

[63] The Appeal is denied.

A handwritten signature in blue ink, appearing to read "I. Wachowicz".

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

Board members in attendance:

Mr. V. Laberge; Ms. M. McCallum; Mr. A. Nagy; Ms. K. Thind

**Important Information for the Applicant/Appellant**

1. This decision may be appealed to the Alberta Court of Appeal on a question of law or jurisdiction under Section 688 of the *Municipal Government Act*, RSA 2000, c M-26. If the Subdivision and Development Appeal Board is served with notice of an application for leave to appeal its decision, such notice shall operate to suspend the Development Permit.
  
2. When a decision on a Development Permit application has been rendered by the Subdivision and Development Appeal Board, the enforcement of that decision is carried out by Development & Zoning Services, 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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Date: May 4, 2018  
Project Number: 272711352-001  
272709914-001  
File Number: SDAB-D-18-056  
SDAB-D-18-057

**Notice of Decision**

- [1] On April 19, 2018, the Subdivision and Development Appeal Board (the “Board”) heard appeals that were filed on **March 21, 2018**. The appeals concerned the decisions of the Development Authority, issued on March 20, 2018, to refuse the following developments:

**SDAB-D-18-056: 10336 – 1335 Street NW**

To construct a Single Detached House with Basement development (NOT to be used as an additional Dwelling), front uncovered deck 5.18 metres by 3.05 metres), rear uncovered deck (1.22 metres by 1.52 metres), second floor balcony and rooftop terrace

**SDAB-D-18-057: 10340 – 1335 Street NW**

To construct a Single Detached House with Basement development (NOT to be used as an additional Dwelling), second floor balcony, front uncovered deck (1.52 metres by 2.16 metres), rear uncovered deck (1.22 metres by 1.52 metres) and rooftop terrace (Proposed North Lot)

- [2] The subject properties are within the RF1 Single Detached Residential Zone. The Mature Neighbourhood Overlay applies 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;
  - The Appellant’s written submissions; and
  - Email in opposition to the proposed developments.

### **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. The Chairman advised that evidence for SDAB-D-18-056 and SDAB-D-18-057 will be heard together but will be considered as two separate appeals.
- [6] The appeals were filed on time, in accordance with Section 686 of the *Municipal Government Act*, RSA 2000, c M-26 (the "*Municipal Government Act*").

### **Summary of Hearing**

*i) Position of the Appellant, Mr. Gosine*

- [7] Mr. Gosine referred to the Development Officer written submission.
- [8] In his opinion, the increase in height will not negatively impact the neighbourhood as there will be a 1.0 metre parapet wall around the rooftop terrace. This will meditate any privacy issues.
- [9] It was his opinion that noise will decrease as you move higher up in the building and the noise level will not be a factor.
- [10] The rooftop terrace is approximately 150 to 200 square feet in size and will hold 4 to 5 people. The terrace will be used only in the summer for small groups of people.
- [11] Stony Plain Road and the future LRT site are located approximately 50 feet away from the subject Site which will create more noise than people using the rooftop terrace.
- [12] There are two proposed LRT stations across the street from the subject Site. There will be an increase in the noise level with several people walking and trains travelling in that area.
- [13] He spoke to neighbouring property owners who reside across the street who did not understand the scope of the development. He reviewed the plans with the neighbours and provided them with a visual of what was going to be built.
- [14] The house next door to the subject site has a large patio that overlooks their yard.
- [15] It was his opinion that the neighbours are more concerned about the subdivision of the lot and the development of two houses rather than the size of the house.

- [16] He showed the neighbours examples of the type of houses that would be built. There are other similar developments located in close proximity to the subject site.
- [17] In his opinion, the proposed development is characteristic of the neighbourhood and will be an asset.
- [18] Mr. Gosine intends to live at the subject Site with his family.
- [19] He does not agree with the Development Officer's statement that there is no hardship or difficulty associated with the development of this site.
- [20] He referred to the plans and reviewed the Grade calculations with the Board.
- [21] He stated that the adjacent properties are approximately 12 to 14 inches higher than the subject Site.
- [22] He referred to the rises and the distance from the grade to the main floor.
- [23] He referred to other houses in the area showing the roof line and the rooftop terrace.
- [24] If they are measured from the ground to the top, the other houses with balconies are higher than the proposed development.
- [25] He has signatures in support from the immediately adjacent neighbours.
- [26] In response to questions from the Board, Mr. Gosine agreed that the calculation for the highest point of the roof is correct.
- [27] He will have to shear down part of the yard to accommodate for proper drainage.
- [28] In his opinion, the neighbouring properties will not be negatively impacted because of sun shadowing. The property behind the subject Site is owned by the City of Edmonton and will be used for a future LRT expansion.

*ii) Position of the Development Officer, Mr. Langille*

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

**Decision**

- [30] The appeals are **ALLOWED** and the decisions of the Development Authority are **REVOKED**. The developments are **GRANTED** as applied for to the Development Authority, subject to the following **CONDITIONS (for each Development Permit)**:
1. The proposed Basement development(s) shall NOT be used as an additional Dwelling. An additional Dwelling shall require a new Development Permit application.

- 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 (Reference Section 6.1(32)).
  - Household means: one or more persons related by blood, adoption, foster care, marriage relationship; or 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 interdependent 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 (Reference Section 6.1(57)).
2. A Secondary Suite shall require a new development permit application.
  3. The Basement elevation of structures of two or more Storeys in Height shall be no more than 1.5 metres above Grade. The Basement elevation shall be measured as the distance between Grade level and the floor of the first Storey.
  4. Platform Structures greater than 1.0 metres above Grade shall provide privacy screening to the satisfaction of the Development Officer to prevent visual intrusion into adjacent properties.
  5. All unenclosed steps shall not project more than 0.60 metres into required Setbacks of 1.20 metres or greater (Reference Section 44.1(a))
  6. All yards, visible from a public roadway other than a lane, shall be seeded or sodded within eighteen (18) consecutive months of the issuance of an Occupancy Certificate for the development. Alternative forms of landscaping may be substituted for seeding or sodding as specified in Section 55.2(1).
  7. Landscaping shall be developed in accordance with Section 55 of the *Edmonton Zoning Bylaw*.
  8. A. Landscaping shall be provided on a Site within 18 months of the occupancy of the Single Detached House. Trees and shrubs shall be maintained on a Site for a minimum of 42 months after the occupancy of the Single Detached House (Reference Section 55.2(1)).  
  
B. One deciduous tree with a minimum Caliper of 50 mm, one coniferous tree with a minimum Height of 2.5 m and Four shrubs shall be provided on the property. Deciduous shrubs shall have a minimum Height of 300 mm and coniferous shrubs shall have a minimum spread of 450 mm (Reference Section 55.2(1)).

- C. All Yards visible from a public roadway, other than a Lane, shall be seeded or sodded. Seeding or sodding may be substituted with alternate forms of ground cover, including hard decorative pavers, washed rock, shale or similar treatments, perennials, or artificial turf, provided that all areas of exposed earth are designed as either flower beds or cultivated gardens (Reference Section 55.2(1)).
9. 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)).

Development Advisements:

- i.) Lot grades must comply with the *Edmonton Drainage Bylaw 16200*. Contact Drainage Services at 780-496-5500 for lot grading inspection inquiries.
- ii.) Any future deck development greater than 0.6 metres (2 feet) in height will require development and building permit approvals
- iii.) Any future deck enclosure or cover requires a separate development and building permit approval.
- iv.) The driveway access must maintain a minimum clearance of 1.5 metres from any service pedestal and all other surface utilities.
- v.) Any hoarding or construction taking place on road right-of-way requires an OSCAM (On-Street Construction and Maintenance) permit. It should be noted that the hoarding must not damage boulevard trees. The owner or Prime Contractor must apply for an OSCAM online at: [http://www.edmonton.ca/bylaws\\_licences/licences\\_permits/oscam-permit-request.aspx](http://www.edmonton.ca/bylaws_licences/licences_permits/oscam-permit-request.aspx)

- [31] In granting the development, the following variances to the *Edmonton Zoning Bylaw* are allowed:

**10336 – 133 Street NW**

1. The maximum allowable building Height of 8.9 metres as per Section 814.3(5) is varied to allow an excess of 0.77 metres, thereby increasing the maximum allowed Height to 9.67 metres.

**10340 – 133 Street NW**

1. The maximum allowable building Height of 8.9 metres as per Section 814.3(5) is varied to allow an excess of 1.31 metres, thereby increasing the maximum allowed Height to 10.21 metres.

2. The maximum allowable Height to the ridge line of the roof of 10.4 metres as per Section 52.2(c) is varied to allow an excess of 0.39 metres, thereby increasing the maximum allowed Height to 10.79 metres.

### **Reasons for Decision**

- [32] Single Detached Housing is a Permitted Use in the RF1 Single Detached Residential Zone.
- [33] The issue before the Board is if a variance in the maximum allowable Height for each development could be granted.
- [34] The Board notes that the Development Officer conducted the required Community Consultation.
- [35] The Board granted the variance in Height for each lot for the following reasons:
1. The extent of the variance required was to some degree affected by the shape of the roof. Namely one eave on one side of the highest roof was lower than the eave on the other side of the ridgeline because of the presence of the small rooftop patio.
  2. The Board finds that buildings with two and two and a half storeys are characteristic of the neighbourhood. This is not a situation where the structures will be surrounded by single storey bungalows making a variance in Height more pronounced.
  3. While some opposition was provided from the Community Consultation, the Board finds that the most affected adjacent property owners are in support of the proposed developments.
- [36] The Board finds that the two houses will be built on narrower lots. Having the buildings extend vertically allows for larger structures to be built in a smaller lot area which is in accordance with the City's desire to densify residential areas which are adjacent to proposed LRT locations.

[37] Based on the above, it is the opinion of the Board, that the proposed developments 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. Therefore, the variances have been granted and the appeals are allowed.



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

Board members in attendance:

Mr. V. Laberge; Ms. M. McCallum; Mr. A. Nagy; Ms. K. Thind

**Important Information for the Applicant/Appellant**

1. This is not a Building Permit. A Building Permit must be obtained separately from Development & Zoning Services, 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 Development & Zoning Services, 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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Date: April 27, 2018  
Project Number: 238906941-002  
File Number: SDAB-D-18-058

**Notice of Decision**

[1] On April 19, 2018, the Subdivision and Development Appeal Board (the “Board”) heard appeals that were filed on **March 20, 2018 and March 28, 2018**. The appeals concerned the decision of the Development Authority, issued on March 1, 2018 to approve the following development:

**To construct four Row House buildings (12 Dwellings) with attached Garages and balconies.**

[2] The subject property is on Plan 6447AL Blk 27 Lot 9, located at 9751 - 92 Street NW and Plan 6447AL Blk 27 Lots 10-12, located at 9745 - 92 Street NW, within the DC1 Direct Development Control Provision. The North Saskatchewan River Valley and Ravine System Protection Overlay, the Floodplain Protection Overlay and the Cloverdale 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 approved Development Permit;
- The Development Officer’s written submissions;
- The Appellants’ written submissions;
- Numerous letters and emails in opposition to the proposed development;
- One letter of support received from an adjacent property owner; and
- Online responses in opposition to the proposed development.

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

- Exhibit A – Mr. Zabos’ speaking notes

**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 Presiding Officer 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 (the “*Municipal Government Act*”).
- [8] At the outset of the hearing, the Presiding Officer referenced Section 685(4) of the *Municipal Government Act*, Chapter M-26 which states that if a decision with respect to a development permit application in respect of a direct control district is made by a development authority, the appeal is limited to whether the development authority followed the directions of council, and if the subdivision and development appeal board finds that the development authority did not follow the directions it may, in accordance with the directions, substitute its decision for the development authority’s decision. The Appellants were asked to address this matter during their submissions to the Board.

**Summary of Hearing***i) Position of the Appellants:*Mr. Zabos – Appellant No. 1

- [9] Mr. Zabos provided his speaking notes, marked Exhibit “A”.
- [10] He commended the developer and the design team on a thoughtful concept for the development. The community has always been open to development that is respectful of the Cloverdale Area Redevelopment Plan.
- [11] The proposed development requires material variances in height, front, side and rear setbacks as well as visitor parking. In this case, the variances are too many and too big. The requirement of these types of variances is a sign that the development, as planned, is not appropriate for the site.
- [12] The approved variance reduces the rear setback from the required 7.5 metres to 3.0 metres and the side setback from the required 4.5 metres to 3.1 metres. These variances abut two busy back lanes that run east to west and north to south. The existing sight lines are challenging and garbage trucks, large vehicles and emergency vehicles need extra room on the corner to maneuver. These setbacks are required by the Area Redevelopment Plan because a blueprint or diagram does not reflect the amount of traffic, children playing, pedestrians walking dogs in the back lane or garbage trucks and other larger vehicles trying to negotiate the already tight corners.

- [13] The developer has not addressed the need to move a power pole that will be impacted by the required variances.
- [14] He questioned how a development requiring variances in every measurable dimension could reasonably be thought to meet the intent of the Area Redevelopment Plan because the requirements are a concrete, detailed manifestation of the intent.
- [15] The Area Redevelopment Plan deals with height in metres and the number of storeys. Section 5.7.4.5 states that the maximum height shall not exceed 12 metres nor 3 storeys. Even though the proposed development does not exceed 12 metres, it is a 4 storey structure.
- [16] While the developer can dictate the selling price of their units, there is no rigorous economic nor scientific evidence available to suggest that this will somehow increase the value of neighbouring properties. It was his opinion that the many significant variances will actually have a detrimental effect on the value of adjacent properties.
- [17] Visitor parking is required even though two-car garages are proposed for each unit.
- [18] Other adjacent developments should not be used to rationalize the need or acceptability of the required variances.
- [19] He reiterated that his concerns are not about the development as a whole but he is concerned about the number and size of the required variances and wants to ensure that the proposed development complies with the Area Redevelopment Plan by being sensitive to the existing scale and character of the neighbourhood.
- [20] Mr. Zalos provided the following information in response to questions from the Board:
- a) He is not a member of the Community League Board of Directors.
  - b) He respects the Development Officer's opinion to grant variances for the proposed development but it was his opinion that the development requires too many large variances.
  - c) Garbage trucks maneuvering at the intersection of the back lanes often have to cut the corner.
  - d) It was his opinion that the Development Authority did not follow the direction of Council because it is over height and will impact sight lines, views and the general character of the neighbourhood.
  - e) He acknowledged that other developments in the neighbourhood have required variances but not has many or as large as the variances required for the proposed development.

- f) Some community members do not like the modern design and finishes proposed.

Mr. Gower – Appellant No. 2

- [21] Mr. Gower advised the Board that he was appearing both personally and on behalf of the Board of Directors for Cloverdale Hill Condominiums. Their building is a three storey structure, containing 15 dwelling units and is located immediately south of the proposed development site.
- [22] He and the other residences are concerned about the number and size of the variances that have been granted for the proposed development.
- [23] It was his opinion that the Development Authority failed to follow the directions of Council because the proposed development is four Storeys instead of three and does not comply with Section 5.7.5.5 of the DC1.
- [24] He acknowledged that Section 5.7.4.27 provides authority for the Development Officer to grant relaxations to the provisions of this District, if, in his opinion, such a variance would be in keeping with the General Purpose of this District and would not affect the amenities, use, enjoyment and value of neighbouring properties. However, affected neighbours and the Community League do not agree that the opinion of the Development Officer is reasonable.
- [25] Mr. Gower provided the following information in response to questions from the Board:
- a) He is not a member of the Condominium Board but noted written objections submitted by the owners of 7 dwelling units as well as the Board of Directors for Cloverdale Hill Condominiums.
  - b) Their building is located immediately south of the subject site. He did not personally attend meetings held with the developer but other residents did attend and the findings were discussed at a Condominium Board meeting.
  - c) It was his opinion that the Development Officer erred when considering the visitor parking requirement. It is not justifiable to reduce the amount of required visitor parking because of the proposed double car garages for the residents. Visitor parking is totally separate from resident parking.
  - d) This error will allow the Board to review and substitute their decision.

*ii) Position of the Development Officer, Mr. G. Robinson:*

- [26] Mr. Robinson indicated that his rationale for granting the required variances is outlined in detail in his written submission.

- [27] During the site design process, Fire Rescue Services requested that the drive aisle be wider which resulted in a large variance in the front and rear setbacks. They also required a walking pathway through the site to provide access to the rear units and a sprinkler system for the rear buildings.
- [28] Fire Rescue Services access is exclusively from the public roadway and distances are measured from the front curb to the site. A fire truck will only use a rear lane if they are able to drive through. For this site, access would be exclusively from the public roadway.
- [29] Waste Management did not raise any concerns about the required variances or access to this site.
- [30] Mr. Robinson provided the following information in response to questions from the Board:
- a) It was his opinion that the requested variances are in keeping with the intentions of City Council as provided in Direct Control Zone for Area 1 in the Cloverdale Area Redevelopment Plan. The proposed development is a “permitted” use in a district designed to provide medium-density housing in the neighbourhood which accommodates an increase in population and allows for a variety of housing forms.
  - b) Variance power was provided in Section 5.7.4.27 and it was his opinion and those of other colleagues that the required variances were justified.
  - c) The Applicant revised the plans several times in order to comply with the changes requested by Fire Rescue Services and the Landscaping Review Group. Some of these changes included providing a wider drive aisle, a centre access point, and complying with the setback requirements for the proposed roof top terraces.
  - d) The degree of the variances was reviewed in relation to the size of the site, the proposed number of units, massing and having regard for the land uses on abutting sites.
  - e) There is a public road right of way located west of the site and lane ways to the north and the east. The subject site abuts public road right of ways on three sides.
  - f) Even though the front and rear setbacks have been reduced by 3 metres, the maximum allowable Floor Area Ratio has not been exceeded.
  - g) The reduced setbacks will allow a wider drive aisle and additional separation space between the buildings.
  - h) The front elevation plan, A301, was referenced to illustrate that the third storey has been stepped back to accommodate the roof top balcony. Contemporary finishing materials and different colours are proposed to break up the massing of the building.

The separation space between the buildings will also help to reduce the massing. The north elevation was referenced to illustrate different design elements that will break up the massing of the building, including the use of metal and hardy siding and natural wood, contemporary finishing materials. It was his opinion that this is not out of character for the neighbourhood.

- i) The front doors will face the front roadway and the windows will break up the massing.
- j) The proposed height is similar to that of the building to the south and the existing stacked row houses along the avenue to the north.
- k) The character of the neighbourhood is medium density built form with parking at grade or below grade.
- l) The proposed development will not impact the amenities of the neighbourhood because it does not abut a public park and will not impact the streetscape. Vehicle access is from the lane. The proposed development is in keeping with the size, scale and scope of the Area Redevelopment Plan.
- m) The reduction in visitor parking is justifiable because of the provision of double car garages. Twelve parking spaces are required and 24 parking spaces are proposed. Transportation Services had no concerns regarding the deficiency in visitor parking.
- n) There is no requirement for community consultation. Community consultation would have been conducted through the public hearing process with City Council when the Area Redevelopment Plan was created.
- o) *Land Use Bylaw 5996* is specifically referenced several times in this DC1. Section 5.7.4.17 directs that parking be provided according to Section 66 and the Development Officer has the ability to vary parking in consultation with Transportation Services. Storeys are defined in the *Land Use Bylaw 5996*. The method used to calculate height was changed by City Council in 2015 and in modern zones, only the vertical measurement is used.
- p) The proposed development has the appearance of a three storey structure from the front and four storeys towards the interior of the site.
- q) The Applicant was asked to add the walkway from the front to the rear of the site to provide access from the front and to increase the amount of landscaping proposed.
- r) The Rationale of the DC1 is the same as the General Purpose. Based on the rationale of the DC1 and the variance power provided in Section 5.7.4.27, the decision was made to approve the proposed development.

- s) The Community League and residents had the ability to provide feedback to City Council through the public hearing process when the DC1 was created.

*iii) Position of the Respondents, Mr. D. Hanna & Mr. C. Shilabeer:*

- [31] Mr. Hanna referenced a rendering of a development that was proposed by another developer when he purchased this site. Although it complied with the maximum allowable height and number of storeys, it did not comply with his development style. The decision was made to get the community involved and design their own development.
- [32] He was aware of the community concerns regarding density, height, shadow and walkability. It was his opinion that the proposed development provides a good transition between a larger building to the south and the row housing developments located north of the subject site towards 98 Avenue.
- [33] The plans have been changed numerous times to address items identified through the consultation process. The proposed number of units was reduced, the roof was changed to a flat roof to address height issues, sprinklers were added to the rear units and a walkway was added in the centre of the site. The subject site is also located in the Flood Plan Overlay which resulted in ongoing consultation with the City.
- [34] Many challenges resulted from the fact that this Area Redevelopment Plan was created 20 years ago and the salability of dwelling units has changed over the years.
- [35] It was his opinion that providing double car garages for each dwelling unit to provide parking for all resident vehicles addressed the proposed reduction in visitor parking.
- [36] The power pole that was discussed at the community meeting is actually located on the site located across the lane from the proposed development. This results in residents driving across the corner of his site to maneuver around the pole. Therefore he cannot do anything about the existing pole or control how EPCOR addresses the problem.
- [37] He reiterated the evidence of the Development Officer that rear lanes are not typically used to provide emergency access.
- [38] The residential units located across the street are a mixed contemporary design and it was his opinion that the proposed development is not out of character with the neighbourhood.
- [39] Mr. Hanna and Mr. Shilabeer provided the following information in response to questions from the Board:
  - a) Drivers do cut across the northeast corner of the subject site.

- b) Mr. Shilabeer noted the concerns raised by numerous residents of the Cloverdale Hill Condominiums regarding the loss of view but it was his opinion that it was not their responsibility to maintain the view. Many design changes have been made to ensure that the proposed development would have minimal impact on the existing condominium to the south, including maintaining a setback which is not required. The proposed buildings have been separated by a walkway that will provide some light penetration to the building to the south.

*iv) Rebuttal of the Appellants*

Mr. Zabos and Mr. Gower:

- [40] They acknowledged the consultation process with other City departments but it was their opinion that you have to live in the neighbourhood to appreciate the full impact of the proposed variances. Residents in this neighbourhood deal with the LRT, close proximity to downtown and are the parking lot for the accidental beach.
- [41] The developer did not undertake any meaningful consultation with the residents or the Community League. The only discussion that occurred was done at the invitation of the Cloverdale Community League.
- [42] They reiterated that they do not object to the proposed development but are concerned about the impact of the variances granted.
- [43] The proposed two car garages do not satisfy the requirement to provide visitor parking.
- [44] The Development Officer quoted an incorrect section of the Area Redevelopment Plan which suggests that there may be some lack of due care and attention that may allow the Board to find that an error was made by the Development Officer.
- [45] It was their opinion that the Development Authority is only able to grant variances that are reasonable. Section 5.7.4.6 required a minimum 4.5 metre front yard along other frontages, except that in the area east of 92 Street, the Development Officer may reduce this requirement to 3.0 metres where the front lot line faces a public park. In this case, the front lot line does not face a public park.
- [46] They acknowledged that there was no requirement for community consultation but it was their opinion that it would have been good business practice for the developer to consult with the community.



**Decision**

[47] The appeals are **DENIED** and the decision of the Development Authority is **CONFIRMED**. The development is **GRANTED** as approved by the Development Authority.

**Reasons for Decision**

[48] Section 685(4)(b) of the *Municipal Government Act* states, “if a decision with respect to a development permit application in respect of a direct control district is made by a development authority, the appeal is limited to whether the development authority followed the directions of council, and if the subdivision and development appeal board finds that the development authority did not follow the directions it may, in accordance with the directions, substitute its decision for the development authority’s decision.”

[49] The subject property is zoned (DC1) Direct Development Control Provision – Area 1 – Cloverdale Area Redevelopment Plan.

[50] The proposed application is to construct four Row House buildings (12 Dwellings) with attached Garages and balconies.

[51] Section 5.7.3.2 states Stacked Row Housing Including Row Housing and Linked Housing is a Listed Use in the DC1 (Area 1) – Residential District Control District.

[52] The Development Officer approved this application with variances, pursuant to Section 5.7.4.27 of the Cloverdale Area Redevelopment Plan, which states that “the Development Officer may grant relaxations to the provisions of this District if, in his opinion, such a variance would be in keeping with the General Purpose of this District and would not affect the amenities, use, enjoyment and value of neighbouring properties.”

[53] The Board finds the Development Officer followed the directions of City Council.

[54] First of all, the Board agrees with the finding of the Development Officer that the variances are in keeping with the General Purpose of Section 5.7.2 of the Cloverdale Area Redevelopment Plan, which states:

the Rationale of the DC1 (Area 1) is to provide a district for medium-density housing in the neighbourhood, which accommodates an increase in population and allows for a variety of housing forms in order to achieve the intent of Sections 2.3, 2.4, 3.2 and 3.6 of this Plan. These provisions are primarily concerned with developments being sensitive towards the existing scale and character of the neighbourhood, encouraging buildings to “front” public roadways and usable open spaces within the developments.

[55] Further, the Board agrees with the opinion of the Development Officer that the variances granted do not affect the amenities, use, enjoyment and value of neighbouring properties.

The Board is satisfied, based on the evidence provided, that the Development Authority thoroughly reviewed and analyzed the proposed development with all of the required City Departments and worked with the developer to revise the proposed plans to ensure that relaxing the required regulations for the maximum allowed number of storeys, the minimum required front, side and rear setbacks and the requirement for visitor parking would not affect the amenities, use, enjoyment or value of neighbouring properties. It was the opinion of the Development Authority that the subject site is not overdeveloped because the proposed Floor Area Ratio and Density does not exceed the maximum allowed and the proposed number of parking spaces exceeds the minimum number required.

- [56] The Development Authority also provided rationale for referencing regulations contained in *Land Use Bylaw 5996* that was in effect at the time of the creation of the subject Direct Control site, which the Board accepts as well, pursuant to *Parkdale-Cromdale Community League Association v. Edmonton (City)*, 2007 ABCA 309.
- [57] The Board was presented with what the Appellants' perceived to be an error on the Development Authority's part. Specifically, incorrectly referencing the specific section 5.7.4.16 of the DC1 in the variances granted in the Development Permit. While the proper section to deal with parking is 5.4.7.17, the Board is satisfied that this may have been a clerical error and not an error sufficient to deem that granting this variance was not following the instructions of Council. The Board further notes that the variance granted for the Side Setback was indicated in the approved Development Permit to be Section 5.7.4.8 when it should have been Section 5.4.7.9. The Development Authority provided the rationale for granting these variances, which as indicated below, the Board is satisfied with their conclusions.
- [58] Based on the evidence provided, the Board is satisfied that the Development Officer did follow the direction of City Council in approving the proposed development.
- [59] However, notwithstanding the above, had the Board found that the Development Authority did not follow the directions of Council, the Board would have granted the variances required for the following reasons:
- a) The developer worked with the Development Authority to revise the layout of the site and included design elements requested by various City departments, which included Transportation, Fire Rescue and Waste Management, that ultimately increased the size of some of the required variances. Specifically, this included the addition of a walkway on the south boundary of the property line, a walkway between the buildings east to west, and a widened entry and lane between the buildings.
  - b) The proposed development is not an over-development of the site because the proposed Floor Area Ratio is 1.2 while the maximum allowed is 1.5. The proposed Density is 12 units, while the maximum allowed is 20 units and 24 parking spaces are proposed while only 12 are required. As well, the buildings are not over the maximum height allowed in this DC1.

- c) A 1.5 metre setback is proposed on the south property line notwithstanding that no setback is required, to ensure that there is some separation space between the proposed development and the immediately adjacent residential development to the south. All of the landscaping requirements have been met despite the reduction the variances granted in the setback requirements.
- d) Section 5.7.4.6(b) states that the minimum front yard shall be 4.5 metres (14.8 feet) along other frontages, except that in the area of 92 Street, the Development Officer may reduce this requirement to 3.0 metres where the front lot line faces a public park. The majority of the building face on any site shall be constructed at the minimum front yard line. Section 5.7.4.7 states that the minimum rear yard shall be 7.5 metres (24.6 feet).

The Board has determined that the Front Yard required for this development is 4.5 metres and the variance required is 1.5 metres. This variance has been granted by the Development Authority. The Board heard that the widening of the space between the buildings on a north to south basis increased the variance by some 2.2 metres thus increasing the Front Setback by 1.1 metres and the Rear Yard by 1.1 metres. The Board understands that a variance would be needed notwithstanding these added increases asked for by the various City Departments consulted through this Development Application.

- e) Section 5.7.4.9 states the minimum required side yard shall be:
  - a) the same as if it were a front yard if adjacent to a public roadway, including a lane, and
  - b) in all other instances, nil.

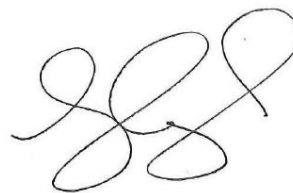
This regulation indicates a Side Yard of 4.5 metres is required and 3.1 metres is provided thus producing a variance of 1.4 metres. As noted above, the addition of a walkway on the south boundary and the added walkway/access on an east to west basis between the Buildings contributed to the size of the variance needed. In this instance, no evidence quantifying the impact of providing these spaces was provided by the Development Authority. However, providing the 1.5 metres side yard on the south boundary when none is required makes up for the variance on the north lane. Had the proposed building been built on property line, there could have been no variance required on the north property line next to the lane.

- f) The proposed Height meets the 12.0 metre vertical Height restriction but the proposed Row Housing buildings are four Storeys instead of three. However, the massing of the proposed buildings facing the public roadway and rear lane is broken up by stepping back the proposed fourth storey visible from the street.
- g) The Garage and utility rooms are determined to be a full Storey under the definition of Storey and are below the flood plan elevation. All of the living spaces are located

above the 100 year flood elevation. The inability to provide underground parking or deeper basements maybe partly why the fourth story is needed.

- h) The reduction in visitor parking is justifiable due to the provision of double garages, which provides an excess in the minimum required number of parking spaces. Transportation Services had no concerns with the variance granted in the required visitor parking.
- i) Based on the evidence provided, the Appellants do not object to the design or style of the proposed development and the Board finds that it is characteristic of the neighbourhood.
- j) The Board must, as stipulated in the Court of Appeal decision *Garneau Community League v Edmonton (City)*, 2017 ABCA 374, exercise its' powers to vary in the same way as the Development Authority. In this instance the variance powers are set out in Section 5.7.4.27 of the DC1 provision and the Board is satisfied had they found that the Development Authority did not follow instructions of Council, the Board would have granted the Variances for the reasons above.
- k) The Board was also presented by the Appellants that there were "too many and too big" variances. Pursuant to the Court of Appeal decision *Newcastle Centre GP Ltd v Edmonton (City)*, 2014 ABCA 295, the Court implied that the size and/or number of variances is not what is to be considered directly but the effect they have, if any, in meeting the Board's test in granting variances as laid out in Section 5.7.4.27 of the DC1 Provision and Section 687 3(b) of the *Municipal Government Act*. The Board is satisfied, for the reasons above, that it has correctly reviewed the variances granted by the Development Authority.

[60] Based on above, the Appeals are denied.



Mr. V. Laberge, Presiding Officer  
Subdivision and Development Appeal Board

Board members in attendance: Mr. L. Pratt; Ms. M. McCallum; Mr. A. Nagy; Ms. K. Thind

**Important Information for the Applicant/Appellant**

1. This is not a Building Permit. A Building Permit must be obtained separately from Development & Zoning Services, 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 Development & Zoning Services, 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.*