



**EDMONTON
TRIBUNALS**

*Subdivision &
Development
Appeal Board*

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Date: May 7, 2019
Project Number: 140256112-001
File Number: SDAB-D-19-058

Notice of Decision

[1] On April 24, 2019, the Subdivision and Development Appeal Board (the “Board”) heard an appeal that was filed on **April 2, 2019**. The appeal concerned the decision of the Development Compliance Officer, issued on November 5, 2018, to comply with the following:

To decommission one suite within the Apartment Housing and acquire a Development Permit for Secondary Suite before December 20, 2018 or decommission the Apartment Housing before December 20, 2018.

[2] The subject property is on Plan 3816P Lot 2, located at 11005 - 95 Street NW, within the (RF6) Medium Density Multiple Family Zone. The Medium Scale Residential Infill Overlay and the Boyle Street McCauley Area Redevelopment Plan applies to the subject property.

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

- A copy of the Stop Order with attachments;
- The Development Compliance Officer’s written submission and PowerPoint Presentation; and
- The Appellant’s written submission.

[4] The following exhibit was presented during the hearing and forms part of the record:

- Exhibit A – Email between the Appellant and the Development Compliance Officer, submitted by the Appellant.

Preliminary Matters

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

- [6] The Chair outlined how the hearing would be conducted, including the order of appearance of parties, and no opposition was noted.
- [7] The Chair raised a jurisdictional issue regarding when the appeal was filed. The Chair explained to the Appellant that the Board is constrained by the 21-day limitation period prescribed by section 686(1)(a) of the *Municipal Government Act*, RSA 2000, c M-26, which states:

Appeals

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

(a) in the case of an appeal made by a person referred to in section 685(1)

(i) with respect to an application for a development permit,

(A) within 21 days after the date on which the written decision is given under section 642, or

(B) if no decision is made with respect to the application within the 40-day period, or within any extension of that period under section 684, within 21 days after the date the period or extension expires,

or

(ii) with respect to an order under section 645, within 21 days after the date on which the order is made, [...]

- [8] The Board must therefore, determine whether the Appellant filed the appeal within the 21-day limitation period. If the appeal was filed late, the Board has no authority to hear the matter.

Summary of Hearing on Preliminary Matter

i) *Position of the Development Compliance Officer, Mr. A. Reid, who was accompanied by Ms. K. Lamont*

- [9] An inspection of the subject Site was conducted on November 1, 2018. It was determined that there was no permit for the Secondary Suites.
- [10] A Stop Order was issued on November 5, 2018 and sent to the Appellant by regular mail to the address of the subject Site and the address listed on the Land Title Certificate.

ii) Position of the Appellant, Mr. E. Pineda

- [11] He did not receive the Stop Order by mail and found out about the Stop Order in an email dated April 1, 2019 that was sent by the Development Compliance Officer.
- [12] He was in attendance when the inspection took place. During the inspection, he was advised of what his options were regarding the Secondary Suites.
- [13] He spoke to a Development Officer, Ms. Vander Hoek, who provided him with details for rezoning the property.
- [14] Mr. Pineda provided the following information in response to questions by the Board:
- a. He picks up the mail every day at the subject Site where he lives.
 - b. He confirmed that he was aware of the options for the Secondary Suites in an email from Mr. Reid.

iii) Rebuttal of the Development Compliance Officer, Mr. A. Reid

- [15] An entry is put into the POSSE System for any mail that is sent out.
- [16] He confirmed that the entry was made but could not provide the Board with a screenshot of the entry.
- [17] Mr. Reid provided the following information in response to questions by the Board:
- a. He had discussions with the Appellant as referenced in the email submitted by the Appellant.
 - b. He confirmed that there were discussions in an email dated December 11, 2018 between the Appellant and himself with options for the Appellant.
 - c. He confirmed that December 20, 2018 was the compliance date.
 - d. He confirmed that there were discussions to apply for rezoning or decommission the Secondary Suites.
 - e. In his opinion, Mr. Pineda was aware of the Stop Order as there were several discussions regarding the Secondary Suites.

Decision on Preliminary Matter

- [18] The appeal was not filed on time, in accordance with section 686(1)(a) of the *Municipal Government Act*.

Reasons for Decision

[19] The Board has no jurisdiction to hear the appeal as it was filed outside of the timelines set out in section 686 of the *Municipal Government Act* that states:

Appeals

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

(a) in the case of an appeal made by a person referred to in section 685(1)

(i) with respect to an application for a development permit,

(A) within 21 days after the date on which the written decision is given under section 642, or

(B) if no decision is made with respect to the application within the 40-day period, or within any extension of that period under section 684, within 21 days after the date the period or extension expires,

or

(ii) with respect to an order under section 645, within 21 days after the date on which the order is made, [...]

[20] This is an appeal by a person who was affected by a Stop Order that was issued under section 645 of the *Municipal Government Act*. As a result, it is an appeal launched pursuant to section 685(1) of the *Municipal Government Act* that states:

Grounds for Appeal

685(1) If a development authority

(a) fails or refuses to issue a development permit to a person,

(b) issues a development permit subject to conditions, or

(c) issues an order under section 645,

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

[21] Section 686(1)(a) of the *Municipal Government Act* sets out the timelines that must be followed by persons referred to in section 685(1) who are appealing.

[22] The Board must determine when the Order was made as outlined in section 645 of the *Municipal Government Act*.

[23] Section 645 of the *Municipal Government Act* states:

Stop order

645(1) Despite section 545, if a development authority finds that a development, land use or use of a building is not in accordance with

- (a) this Part or a land use bylaw or regulations under this Part, or
- (b) a development permit or subdivision approval,

the development authority may act under subsection (2).

(2) If subsection (1) applies, the development authority may, by written notice, order the owner, the person in possession of the land or building or the person responsible for the contravention, or any or all of them, to

- (a) stop the development or use of the land or building in whole or in part as directed by the notice,
- (b) demolish, remove or replace the development, or
- (c) carry out any other actions required by the notice so that the development or use of the land or building complies with this Part, the land use bylaw or regulations under this Part, a development permit or a subdivision approval,

within the time set out in the notice.

(2.1) A notice referred to in subsection (2) must specify the date on which the order was made, must contain any other information required by the regulations and must be given or sent to the person or persons referred to in subsection (2) on the same day the decision is made.

[24] This legislates the information that the Stop Order notice must contain, and that the notice must be “given or sent” to the person referred to on the same day it was made.

[25] The Stop Order is dated November 5, 2018. The Development Compliance Officer provided verbal evidence to the Board that:

- a. The Stop Order was issued on November 5, 2018.
- b. The Stop Order was provided to the Compliance Officer Clerk to be mailed immediately.

- c. The Stop Order was sent to the address of the subject Site which is the address and property owner which is listed on the Land Title Certificate, who is the Appellant.
 - d. The office Clerk keeps an electronic record of when the Stop Order was mailed out.
 - e. The Development Compliance Officer confirmed that the Stop Order was mailed out on November 5, 2018 to the Appellant.
- [26] The Appellant confirmed that he picked up the mail at the subject Site on a daily basis in November 2018 but did not receive the Stop Order.
- [27] Section 686(1) in combination with section 645(2.1) of the *Municipal Government Act* does not require proof of service. In fact, it specifically requires that it be sent “to the person”.
- [28] Based on the evidence submitted, the Board finds that it is more likely than not, that the Stop Order was mailed on November 5, 2018.
- [29] The fact that the Development Compliance Officer confirmed that the Stop Order was mailed on November 5, 2018 combined with testimony that the electronic entry of when the Stop Order was mailed, the Board determined that the Stop Order was issued on time to the Appellant.
- [30] As a result, the Stop Order was issued correctly in accordance with section 645 of the *Municipal Government Act* on November 5, 2018.
- [31] The Appeal was filed on April 2, 2019, far in excess of 21 days from when the Stop Order was dated November 5, 2018.
- [32] The appeal was not filed on time, in accordance with section 686 of the *Municipal Government Act* and the Board does not have the jurisdiction to hear this appeal.

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

Board Members in Attendance:

Ms. K. Cherniawsky; Ms. M. McCallum; Ms. K. Thind; Ms. L. Delfs

CC: City of Edmonton, Development & Zoning Services, Attn: Mr. A. Reid / Mr. A. Jabs /
Ms. K. Lamont / Mr. B. Lamichhane

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 Development & Zoning Services, located on the 2nd Floor, Edmonton Tower, 10111 – 104 Avenue NW, Edmonton, AB T5J 0J4.



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Appeal Board*

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Date: May 7, 2019
Project Number: 275948150-001
File Number: SDAB-S-19-002

Notice of Decision

[1] On April 24, 2019, the Subdivision and Development Appeal Board (the “Board”) heard an appeal that was filed on **March 28, 2019**. The appeal concerned the decision of the Subdivision Authority, issued on March 21, to refuse the following subdivision:

Keep the existing Single Detached House and to create one (1) additional Single Detached Residential Lot.

[2] The subject property is on Plan 9422111 Blk 12 Lot 1, located at 11304 - 9 Avenue NW, within the (RF1) Single Detached Residential Zone. The Twin Brooks 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:

- A copy of the refused Subdivision Letter with attachment;
- The Subdivision Authority’s written submission and PowerPoint presentation; and
- The Appellant’s written submissions.

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

- Exhibit A – Google Map of the area, submitted by Ms. T. Hanse, representing City of Edmonton, Transportation.
- Exhibit B – Map of the area showing lot assessments, submitted by the Appellant.
- Exhibit C – Map of the area showing lot assessments, submitted by the Appellant.
- Exhibit D – Drawing of the proposed subdivision, submitted by the Appellant.

Preliminary Matters

- [5] At the outset of the appeal hearing, the Chair confirmed with the parties in attendance that there was no opposition to the composition of the panel.
- [6] The Chair 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 678 of the *Municipal Government Act*, RSA 2000, c M-26.

Summary of Hearing*i) Position of the Appellant, Mr. F. and Mrs. B. Fernando*

- [8] They like this area and want to subdivide their property to build a smaller retirement home on the current Site.
- [9] The proposed house will be approximately 1300 to 1400 square feet with an attached garage.
- [10] Vehicular access to the proposed lot will be required from 9 Avenue which will not impact visibility for vehicles travelling west or east on 9 Avenue.
- [11] There are several houses that have main road access along 9 Avenue and on 12 Avenue in front of George P. Nicholson Elementary School, where there is a pedestrian crossing.
- [12] There is an ETS bus route that runs in the area.
- [13] The existing boulevard trees will not be removed with the proposed subdivision.
- [14] The proposed (east) lot size is 397 square metres which is over the minimum 350 square metre requirement in the RF1 Single Detached Residential Zone.
- [15] There is a deficiency of 1.49 metres in the Site Depth and a variance is required.
- [16] The proposed house can be situated closer to the existing house but they would like to leave room for landscaping and green space.
- [17] There is sufficient room to subdivide the lot and build a small house which will complement the neighbourhood.

The Chair advised the Appellants that the Board can only deal with the proposed subdivision and not the access that is required for the subdivision, which can be dealt with by the City of Edmonton, Transportation.

[18] Mr. and Mrs. Fernando referred to the Subdivision Authority's written submission and the photographs showing the Site views from 9 Avenue.

[19] They have not received any opposition from neighbouring property owners.

[20] Mr. and Mrs. Fernando provided the following information in response to questions by the Board:

- a. There is access from 9 Avenue to a cul-de-sac in the area.
- b. There are several properties in close proximity to the school that has access from the collector road.
- c. In their opinion, access to the proposed subdivision will not have a negative impact on the neighbourhood.
- d. There are no commercial properties in the neighbourhood. Anthony Henday Drive is in close proximity to the neighbourhood.
- e. The existing mail box will not be affected by the proposed subdivision.
- f. Access to the proposed subdivision will be along the existing garage and will not be in the area of the pedestrian walkway.
- g. The general speed limit in the area is 45 kilometres per hour but is reduced to 35 and 30 kilometres per hour in certain areas.
- h. There is no playground in the area.

ii) Position of the Subdivision Authority, Ms. K. Rutherford

[21] Ms. Rutherford read from her written submission and PowerPoint presentation.

[22] The proposed subdivision is to create one additional single detached residential lot. The property owner intends to retain the existing residential development and construct a single detached dwelling on the proposed east lot.

[23] The property currently contains one single detached house that faces 9 Avenue.

- [24] The Twin Brooks Neighbourhood Area Structure Plan identifies this property within an area designated for Single Detached Residential uses. The site is subject to *Edmonton Zoning Bylaw* development regulations found within the (RF1) Single Detached Residential Zone. Single Detached Housing is a Permitted Use within the RF1 Zone.
- [25] This property is located at the intersection of 9 Avenue and 113 Street. The vicinity is predominantly residential. Properties to the west, south, and east of this site are also within the RF1 Zone and they are occupied by single detached housing. Immediately north of the site is a Public Utility Lot containing gas lines and a high pressure pipeline. Residential development continues across this utility corridor, on its north side.
- [26] Notices were sent to adjacent properties regarding the proposed subdivision. One response was received in opposition from a neighbouring property owner.
- [27] The proposed subdivision does not comply with the minimum development regulation identified in section 110.4(1)(c) of the *Edmonton Zoning Bylaw*. The minimum Site Depth identified in the RF1 Zone for Single Detached Housing is 30.0 metres.
- [28] Section 6.1 of the *Edmonton Zoning Bylaw* defines the Front Lot Line of a Corner Lot as the shortest property line abutting public roadway. Therefore, this application's east Lot fronts onto 113 Street and its Rear Lot Line is the delineation proposed by this subdivision.
- [29] Section 6.1 of the *Edmonton Zoning Bylaw* defines Site Depth as the distance between the mid-points of the Front and Rear Lot Lines. The Site Depth of the proposed east Lot is approximately 27.69 metres, and is deficient by 2.31 metres or approximately nine percent.
- [30] The size of the proposed east lot is uncharacteristically small when compared to the surrounding properties. Site Depths in this vicinity typically range from approximately 34.0 to 40.0 metres. The 10 residential lots immediately west of the subject Site yield an average Site Area of 629.8 square metres. The proposed east lot has a Site Depth of 27.69 metres and a Site Area of 397 square metres, creating a property that is considerably smaller than other lots in the area.
- [31] When the minimum development setbacks identified in section 110.4 of the *Edmonton Zoning Bylaw* are applied to the proposed east lot, the Site Area yields a relatively small building envelope. The minimum Front Setback identified in the RF1 Zone for Single Detached Housing is 4.5 metres.
- [32] The minimum Side Setback identified in the RF1 Zone for Single Detached Housing is 1.2 metres. A utility right-of-way is registered on the Certificate of Title for this property, prohibiting development within 2.0 metres of the abutting Public Utility Lot. The Side Setback along 9 Avenue can be increased from the 1.2 metres minimum up to 4.5 metres, depending on the development's orientation and the presence of an attached Garage.

- [33] The proposed building envelope does not comply with the minimum development regulation identified in section 110.4(9) of the *Edmonton Zoning Bylaw*. The minimum Rear Setback identified in the RF1 Zone for Single Detached Housing is 7.5 metres, but can be reduced to 4.5 metres, based on the presence of an attached garage and the development's orientation.
- [34] The proposed subdivision creates a non-conforming lot that does not meet development regulations in the *Edmonton Zoning Bylaw*. This situation creates unnecessary hardship for existing and future property owners. Property owners wishing to further develop or redevelop the proposed Site will be required to seek one or more development permit variances.
- [35] The proposed Lot requires legal access from an adjacent roadway. A driveway along 113 Street will not be permitted due to the proximity of the intersection at 9 Avenue and 113 Street, creating a significant safety concern.
- [36] Given the absence of a rear lane, the Appellant proposes two access points to the east lot off of 9 Avenue. The accesses will affect the existing sidewalk and may require boulevard trees to be relocated. The Twin Brooks neighbourhood has been designed so that driveways do not front onto 9 Avenue to accommodate this collector roadway's traffic volumes.
- [37] Proposed access No. 1 is located along a curved portion of 9 Avenue and is in close proximity to the 113 Street intersection. This access location creates a concern about appropriate visibility and safety for the vehicles, approaching drivers, cyclists, and pedestrians. Proposed access No. 2 cannot be supported due to the proximity to the 113 Street intersection, a marked pedestrian crosswalk, and a Canada Post community mailbox.
- [38] The proposed subdivision does not align with the intent of the Municipal Development Plan, *The Way We Grow*. This strategic growth plan supports redevelopment and residential infill that are both safe and sensitive to a community's character. Policy 5.2.1.1 directs development to fit with the existing and planned neighbourhood context. It is required to respect the scale, form, massing, style, and materials of the neighbourhood.
- [39] Ms. T. Hinse, Ms. K. Rutherford, and Mr. R. Zhou provided the following information in response to questions by the Board:
- a. Access close to a crosswalk with a driveway adjacent to it is not uncommon. However, this is a collector road and there is a concern for pedestrians.
 - b. There needs to be 30 metres from an intersection to an access point and the centre of the driveway will be less than 30 metres.
 - c. Collector roads in the area are wider at the intersections and become narrow as vehicles move further into the residential area.

- d. Ms. Hinse provided the Board with an aerial photograph showing the portion of the roadway that is 14.4 metres wide. As the road curves down to the subject Site, the road becomes 11.4 metres wide, which is the dimension of a standard collector road (*Exhibit A*).
- e. She could not confirm the dimension of the road that is east of 111 Street and she showed on the map the ring road that abuts Twin Brooks Park.
- f. The speed limit on 9 Avenue is 50 kilometres per hour and is then reduced to 35 kilometres per hour due to a curve in the road on 9 Avenue. The speed limit is reduced to 30 kilometres per hour when pedestrian lights are flashing.
- g. She could not confirm the location of other pedestrian walks or lights in the area.
- h. Ms. Rutherford confirmed that the east lot created by the proposed subdivision will be uncharacteristically small. The lots could have been subdivided when the property was purchased before amendments were made to the *Edmonton Zoning Bylaw*.
- i. With the size of the lot and the required Setbacks, the proposed house will need to be reduced.
- j. It was suggested that a Garden Suite would be more appropriate than subdividing the property.
- k. Mr. Zhou stated that any development on the subject Site will require a variance in the Rear Setback.

iii) Rebuttal of the Appellant, Mr. and Mrs. Fernando

- [40] Mr. and Mrs. Fernando provided the Board with two maps of the area showing lot assessments and that one lot is 467 square metres and one is 638 square metres (*Exhibit B and C*).
- [41] They provided the Board with a drawing of the proposed subdivision showing how the house will be laid out (*Exhibit D*).
- [42] In their opinion, they can accommodate the Rear Setback requirement.
- [43] The proposed house will be a bungalow and approximately 1300 to 1400 square feet.
- [44] The current house is 1600 square feet on the main floor.
- [45] They only want a small yard so it is easy for them to maintain.

[46] In their opinion, a Garden Suite will not be characteristic for the neighbourhood and will be an issue if they decide to sell the property.

iv) Rebuttal of the Subdivision Authority, Ms. Rutherford

[47] Ms. Rutherford referred to *Exhibit B* and *C*, and stated that although some of the lots in the area are 476 square metres and 638 square metres, the average lot size in the area is 629 square metres. The proposed lot is 397 square metres. In her opinion, the proposed lot and development is not in scale with other homes in the neighbourhood.

Decision

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

Reasons for Decision

[49] The Board denies the appeal and confirms the decision of the Subdivision Authority for reasons that are centered around three issues:

- a. Whether or not the proposed subdivision is characteristic of the neighbourhood;
- b. Whether or not the subdivision will create a hardship; and
- c. Whether or not the creation of the new lot will lead to significant concerns with transportation access.

[50] Policy 5.2.1.1 of the Municipal Development Plan (*The Way We Grow*) requires

...development to fit with the existing and planned neighbourhood context, to respect the scale, form, massing, style and materials of the neighbourhoods and to incorporate other design elements that create a transition between the new development and the existing neighbourhood.

[51] The Subdivision Authority pointed out that the average lot size in the area is 629 square metres. The proposed lot will be 397 square metres which is significantly smaller than the average lot in the area. This was confirmed when the Appellant pointed out that the smallest lot they could find in the area was 476 square metres, which is larger than the proposed lot.

- [52] Based on the evidence provided to the Board, the lot size will be smaller than the average lots in the area. Granting the subdivision would not be creating a lot that would be characteristic of the style and size of the surrounding neighbourhood.
- [53] Given that the Board should be guided by the Municipal Development Plan, this leads the Board to deny the appeal.
- [54] The proposed lot would also be a lot that could not be built upon without a variance being granted by the Development Officer.
- [55] The Site Depth calculated is 27.69 metres which is shorter than the required Site Depth in the underlying Zone.
- [56] The Development Officer indicated that the Rear Setback will not be easily met. The Setback could be met by reducing the principal structure on the new lot. Granting the subdivision would create a lot that would require variances for any development to occur. Creating lots which could have no right of development on them should be discouraged.
- [57] 9th Avenue has a speed control of 50 kilometres per hour, which does not allow safe access from a driveway accessed directly from a collector roadway.
- [58] A review of the various aerial maps submitted show that there is no direct access to 9 Avenue in the entire neighbourhood. Small crescents are considered “shoulder” and “eyebrow” crescents, and other off-shoots from 9 Avenue that have access to the lots. These crescents are collectors for the driveway accesses and feed into a central access onto 9 Avenue. The driveways of the surrounding properties do not have direct access to 9 Avenue.
- [59] The Appellants pointed out that if a vehicle continues on 9 Avenue, the road eventually turns north and then eastward which becomes 12 Avenue. Along a portion of 12 Avenue, opposite the George P. Nicholson Elementary School, there are a few lots with direct access from 12 Avenue.
- [60] Transportation Services indicated that the speed limit in that area is 30 kilometres per hour where there is a playground zone for the majority of the day.
- [61] The Appellants indicated that houses on a portion of 110a Avenue on the east side of 111 Street have driveways fronting directly on to it.
- [62] Transportation Services indicated that this road is narrower than 9 Avenue and serves a much smaller enclave than the larger part of Twin Brooks that is serviced by 9 Avenue.

- [63] The Board finds that any driveway at the subject Site will be within 30 metres of an intersection containing a marked crosswalk. Transportation Services indicated that for safety reasons, all driveways need to be 30 metres away from all intersections. The proposed lot line of the new lot would be at approximately the 30 metre distance from the intersection.
- [64] For the above reasons, the Board confirms the decision issued by the Subdivision Authority and denies the appeal.

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

Board Members in Attendance:

Ms. K. Cherniawsky; Ms. M. McCallum; Ms. K. Thind; Ms. L. Delfs

CC: City of Edmonton, Subdivision Authority, Attn: Ms. K. Rutherford / Mr. B. McDowell / Ms. S. Mah / Ms. T. Nina / Mr. M. Berlado / Mr. T. Vandenberink / Ms. J. Vos
City of Edmonton, Development & Zoning Services, Attn: Mr. R. Zhou
City of Edmonton, Transportation Services, Attn: Ms. T. Hinse / Ms. P. Sundara

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.