



**EDMONTON
TRIBUNALS**

*Subdivision &
Development
Appeal Board*

10019 - 103 Avenue NW
Edmonton, AB T5J 0G9
P: 780-496-6079 F: 780-577-3537
sdab@edmonton.ca
edmontonsdab.ca

Date: May 12, 2016
Project Number: 186925677-001
File Number: SDAB-D-16-103

Notice of Decision

[1] On April 27, 2016, the Subdivision and Development Appeal Board heard an appeal that was filed on **March 31, 2016**. The appeal concerned the decision of the Development Authority, issued on March 10, 2016, to approve the following development:

To operate a Major Home Based Business (administration office for construction contractor - SEDSAFA CONSTRUCTION LTD).

[2] The subject property is on Plan 6455RS Blk 9 Lot 10, located at 3508 - 84 Street NW, within the RF1 Single Detached Residential Zone.

[3] The following documents, which were received prior to the hearing and are on file, were read into the record:

- A Development Permit Application;
- The approved Development Permit;
- A Certification of Incorporation for the proposed development; and
- The Development Officer's written submissions.

Preliminary Matters

[4] 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.

[5] Prior to the hearing, the Board raised a jurisdictional issue regarding the time at which the appeal was filed. The Board explained to the Appellant that it is constrained by the 14- day limitation period prescribed by Section 686(1)(b) of the *Municipal Government Act*, R.S.A 2000, c. M-26 ("*Municipal Government Act*").

Summary of Hearing on Preliminary Matter

i) *Position of the Appellants, Tim and Trish Moffat*

[6] The Appellants were away from March 22, 2016 until March 28, 2016. Community mail boxes were recently installed in their neighbourhood so they have not been routinely checking their mail. They did not check their mail immediately prior to leaving. They did check it on March 30, 2016 and were in receipt of the Notice of Development Permit for the proposed business. They called the Subdivision and Development Appeal Board (SDAB) offices on March 30, 2016 and were surprised that no appeal had been filed. They filed their appeal on March 31, 2016.

i) Position of the Development Officer, George Robinson

[7] The Development Officer mailed out the Notice of Development Permit on March 11, 2016. The notification period started on March 17, 2016 and ended on March 30, 2016.

Decision

[8] The appeal was filed on time, in accordance with Section 686 of the *Municipal Government Act*.

Reasons for Decision

[9] Section 686(1)(b) of the *Municipal Government Act*, states (in part) that a development appeal to a subdivision and development appeal board is commenced by filing a notice of the appeal, containing reasons, with the board within 14 days, after the date on which the notice of the issuance of the permit was given in accordance with the land use bylaw.

[10] Section 23(1)(a) of the *Interpretation Act*, RSA 2000, c. I-8 (“*Interpretation Act*”), states that if an enactment authorizes or requires a document to be sent, given or served by mail and the document is properly addressed and sent by prepaid mail other than double registered or certified mail, unless the contrary is proved the service shall be presumed to be effected 7 days from the date of mailing if the document is mailed in Alberta to an address in Alberta.

[11] The Board accepts the evidence of the Development Officer that he mailed out the Notice of Development Permit on March 11, 2016. As per the *Interpretation Act*, service is presumed to be effected on March 18, 2016. The appeal was filed on March 31, 2016 and thus within the allowable 14 days.

Summary of Hearing

i) Position of the Appellants, Tim and Trish Moffat

[12] The Appellants filed this appeal because they had concerns regarding an increase in traffic, the type of equipment being utilized and the number of employees working on site. There are several children living in this neighbourhood and they wanted to ensure their safety and well-being. However, immediately prior to the commencement of this hearing, the Appellants received more information from the Respondent regarding the proposed Major

Home Based Business and their concerns have been satisfied. They wanted to stress the importance that the business activities not escalate nor were any chemicals stored on-site.

[13] The Presiding Officer noted that the concerns of the Appellants are also addressed by the conditions imposed by the Development Officer on the Development Permit. If the conditions are not being met by the Respondent, the Appellants do have a right of recourse through Bylaw Enforcement.

ii) Position of the Development Officer, George Robinson

[14] The Development Officer reviewed his written submission provided. He reinforced that the conditions imposed address many of the Appellants' concerns. He did not conduct a Site inspection as it was his belief that there was nothing in this application to warrant one. The Development Officer noted the subject site is a corner lot and there are 4 parking spaces provided, which is ample parking for the proposed development.

iii) Position of the Respondent, Jose Bolanos

[15] The Respondent confirmed that the subject site will only be used as an Administration Office. He has 5 employees. Only one comes to the subject site and the rest are met on the work site. His company makes concrete forms for floors and sidewalks. This task requires a large area and that is the reason why primarily it is done on the work site. No chemical is used. He has lived at the subject site for 3 months.

[16] The Respondent inquired whether in a few months he could park a trailer on site. The Presiding Officer reviewed Condition #11 which provides that a trailer shall be parked at an approved storage facility. The Presiding Officer asked the Development Officer to address the trailer issue.

iv) Position of the Development Officer, George Robinson

[17] The Development Officer confirmed that if the Respondent does plan to store a trailer on site in the future, a new permit is required.

v) Rebuttal of the Appellants, Tim and Trish Moffat

[18] The Appellants had nothing further to add. They are satisfied that the conditions imposed will minimize any potential impact on their neighbourhood.

Decision

[19] The appeal is DENIED and the decision of the Development Authority is CONFIRMED. The development is GRANTED as applied for to the Development Authority, subject to the following CONDITIONS:

1. The business owner must live at the site. 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 (Section 7.3(7)).
2. There shall be no exterior display or advertisement other than an identification plaque or sign a maximum of 20 centimetres (8 inches) x 30.5 centimetres (12 inches) in size located on the dwelling (Section 75.1).
3. 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 (Section 75.3).
4. The site shall not be used as a daily rendezvous for employees or business partners.
5. The site shall not be used by employees or business partners as a parking or storage location.
6. There shall be no outdoor business activities, or outdoor storage of material or equipment associated with the business (Section 75.5).
7. No offensive noise, odour, vibration, smoke, litter, heat or other objectionable effect shall be produced.
8. Fabrications of business related materials are prohibited.
9. All commercial and industrial equipment, including but not limited to Bobcats, are not permitted at the site. The equipment shall be stored at an approved storage facility.
10. All commercial, industrial and overweight vehicles shall be parked at an approved storage facility. The Development Permit may be revoked if any commercial, industrial and overweight vehicles are parked or stored at the residential site.
11. One or more enclosed or empty non-enclosed trailer with less than 4500 kilograms gross vehicle weight shall be parked at an approved storage facility, unless a variance has been granted for an enclosed or empty non-enclosed trailer for this Major Home Based Business.
12. All parking for the Dwelling and Home Based Business must be accommodated on site, unless a parking variance has been granted for this Major Home Based Business.
13. This Development Permit may be cancelled at any time if the Home Based Business as stated in the Permit Details changes (Section 17.2).
14. This approval is for a 5 year period from the date of this decision. A new Development Permit must be obtained to continue to operate the business from this location. This Development Permit expires on March 10, 2021.

Notes:

1. An approved Development Permit means that the proposed development has been reviewed against the provisions of this bylaw. It does not remove obligations to conform with other legislation, bylaws or land title instruments such as the *Municipal Government Act*, the Edmonton Building Permit Bylaw or any caveats, covenants or easements that might be attached to the Site (Section 5.2).
2. This Development Permit is not a Business License.

Unless otherwise stated, all references to "section numbers" refer to the authority under the Edmonton Zoning Bylaw #12800, as amended.

Reasons for Decision

[20] A Major Home Based Business is a Discretionary Use in the RF1 Single Detached Residential Zone.

[21] The Board finds, based on the evidence submitted, the proposed development would not unduly interfere with the amenities of the neighbourhood, nor materially interfere with or affect the use, enjoyment or value of neighbouring parcels of land, because:

- i) The proposed Development is for an administration office only and work is performed primarily off-site.
- ii) Employees are primarily met off-site.
- iii) Traffic does not exceed normal residential use.
- iv) The subject site is a corner lot and four parking stalls are provided on site.

[22] Further, the Board is satisfied that the conditions imposed will mitigate any potential adverse effect from the proposed development.



Mr. W. Tuttle, Presiding Officer
Subdivision and Development Appeal Board

Board Members: Ms. P. Jones, Mr. L. Pratt, Ms. K. Cherniawsky, Mr. R. Hachigian

Important Information for the Applicant/Appellant

1. This is not a Building Permit. A Building Permit must be obtained separately from the Sustainable Development Department, located on the 5th Floor, 10250 – 101 Street, Edmonton.
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*, R.S.A. 2000, c. M-26. If the Subdivision and Development Appeal Board is served with notice of an application for leave to appeal its decision, such notice shall operate to suspend the Development Permit.
6. When a decision on a Development Permit application has been rendered by the Subdivision and Development Appeal Board, the enforcement of that decision is carried out by the Sustainable Development Department, located on the 5th Floor, 10250 – 101 Street, Edmonton.

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.



**EDMONTON
TRIBUNALS**

*Subdivision &
Development
Appeal Board*

10019 - 103 Avenue NW
Edmonton, AB T5J 0G9
P: 780-496-6079 F: 780-577-3537
sdab@edmonton.ca
edmontonsdab.ca

Date: May 12, 2016
Project Number: 187539544-001
File Number: SDAB-D-16-104

Notice of Decision

[1] On April 27, 2016, the Subdivision and Development Appeal Board heard an appeal that was filed on **April 4, 2016**. The appeal concerned the decision of the Development Authority, issued on April 4, 2016, to refuse the following development:

To construct a Single Detached House with front veranda, front second floor balcony, fireplace, rear uncovered deck (3.05 metres by 7.32 metres), Rooftop Terrace, and Basement development (NOT to be used as an additional Dwelling)

[2] The subject property is on Plan Q Blk 4 Lot 13, located at 9641 - 101 Street NW, within the RF3 Small Scale Infill Development Zone. The Mature Neighbourhood Overlay and the Rosedale Area Redevelopment Plan apply to the subject property.

[3] The following documents, which were received prior to the hearing and are on file, were read into the record:

- A Development Permit Application, including the plans of the proposed Development;
- The refused Development Permit;
- The Development Officer's written submissions;
- The Appellant's written submission and community consultation; and
- A letter in opposition to the proposed development.

Preliminary Matters

[4] 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.

[5] The appeal was filed on time, in accordance with Section 686 of *the Municipal Government Act*, R.S.A 2000, c. M-26.

Summary of Hearing*i) Position of the Appellant, Johnny Rodas on behalf of Platinum Living Homes Ltd.*

- [6] The Appellant stated, in regards to total Site Coverage, the Rossdale Area Redevelopment Plan allows a maximum of 45 percent. In his opinion, this is because in the Rossdale area, the lots are small. The total Site Coverage of the proposed development, including a proposed garage (not included in this application), is under 45 percent.
- [7] The Appellant applied for his Development Permit on February 22, 2016. However, on March 14, 2016, changes were made to the sections in the *Edmonton Zoning Bylaw* applicable to Rooftop Terraces. So there was no opportunity for his plans to comply. However, the terrace only faces front onto a tree-lined street and park and there is no oversight into his neighbours' yards. Neither of his immediate adjacent neighbours had any concern about the terrace. The back roof top space is not accessible.
- [8] The Appellant submitted that his architect calculated height differently than the Development Officer and argued there was a technicality with flat roof as compared to a traditional roof. His architect had calculated a Height of 7.65 metres from the top of second floor to the parapet. The overall Height under is still under 10 metres and in-line with his neighbours. The window on the top of his stairway will be frosted and there are no habitable room windows on the top floor.
- [9] He provided several examples of comparable properties from Strathcona, Cloverdale and Rossdale.
- [10] He performed an extensive community consultation. When he went around to his neighbours in the 60 metres notification radius, he explained the three variances; specifically that the Rossdale Area Redevelopment Plan allows a 45 percent total Site Coverage; the change in the regulations regarding terraces; and the technicality of the parapet, the architect's calculation of height, and the difference between a traditional peak versus flat roof.
- [11] Of the individuals he spoke to, twenty two (22) neighbours were in favour, three (3) neighbours choose not to sign, and one (1) of those neighbours sent in some opposition comments. In his opinion, that neighbor will not be able to see the proposed development. He reiterated that neither of his immediate adjacent neighbours had any concern.
- [12] The Appellant is one of 7-8 properties not directly in the Floodplain. He is aware, however, of all the risks imposed and willing to abide by the City's policies in this regard.
- [13] The Appellant is the builder and is also moving into proposed development with his family.
- [14] He has built another house in the area with a total Site Coverage of 45 percent.
- [15] Most houses in the area are the traditional 2 ½ stories and have balconies at the back.

ii) Position of the Development Officer, George Robinson

- [16] The Development Officer reviewed his written submission provided.
- [17] The Rosedale Area Redevelopment Plan provides development guidelines that can be considered, including that total Site Coverage not exceed 45 percent, Site Coverage for a Principal Building not exceed 35 percent, and the Site Coverage for an Accessory Building not exceed 15 percent.
- [18] The Development Officer confirmed that the Appellant applied for his Development Permit on February 22, 2016. However, on March 14, 2016, changes were made to the sections applicable to Rooftop Terraces. He clarified that a variance is required for both the Stepback facing the Side Lot Line and Front Lot Line.
- [19] The Development Officer does not agree with the Height calculation provided by the Appellant's architect. City Council recently amended the Height regulation and the proposed development falls squarely within those regulations. Further, he found no hardship to justify any variance to Height, even if he could vary Height.
- [20] The Development Officer indicated that the proposed Accessory Building, which is under a separate application, cannot be approved until the proposed Principal Building is approved. The Accessory Building can be approved with no variances, if the excess in maximum allowable Total Site Coverage is granted under this application. However, the Presiding Officer explained that the Board has no authority to approve an excess in maximum allowable Total Site Coverage as the proposed Accessory Building has not been properly appealed to the Board. Thus, the Development Officer would need to grant the excess in maximum allowable Total Site Coverage when finalizing the Accessory Building Development Permit. This is something he would consider with continued support from neighbours.
- [21] There is no issue with the Front Setback as the proposed Setback is consistent within 1.5 metres of the Front Setback on Abutting Lots and with the general context of the blockface as per Section 814.3(1) of the Mature Neighbourhood Overlay.
- [22] He strongly recommended that the Board review and impose his recommended conditions, especially the geotechnical advisements.
- [23] He concluded that given the Rosedale Area Redevelopment Plan and extensive community consultation, he would be more inclined to approve the proposed development.

iii) Rebuttal of the Appellant, Johnny Rodas on behalf of Platinum Living Homes Ltd.

- [24] The Appellant agreed with all conditions, including the frosted glass treatment on the windows, suggested by the Development Officer.

Decision

[25] The appeal is ALLOWED and the decision of the Development Authority is REVOKED. The development is GRANTED as applied for to the Development Authority, subject to the following CONDITIONS:

This Development Permit authorizes the development of a Single Detached House with front veranda, front second floor balcony, fireplace, rear uncovered deck (3.05 metres by 7.32 metres), Rooftop Terrace, and Basement development (NOT to be used as an additional Dwelling). The development shall be constructed in accordance with the stamped and approved drawings.

1. The proposed Basement development(s) shall NOT be used as an additional Dwelling. Proposed wet bar shall only be used by the household which uses the principal kitchen on the main floor. A Secondary Suite shall require a new development permit application.
2. Frosted or opaque glass treatment shall be used on windows as indicated on the left elevation to minimize overlook into adjacent properties (Reference Section 814.3(4)).
3. 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(4)(b).
4. The area hard surfaced for a driveway, not including the area used for a walkway, shall comply with Section 54.6 of the Zoning Bylaw 12800.
5. Except for the hard surfacing of driveways and/or parking areas approved on the site plan for this application, the remainder of the site shall be landscaped in accordance with the regulations set out in Section 55 of the Zoning Bylaw 12800.
6. In addition to the Landscaping regulations of Section 55 of this Bylaw, where new development consists of replacement or infill within areas of existing housing, Landscaping shall be implemented as a component of such new development in order to replace vegetation removed during construction. A new tree shall be planted in accordance with the approved plot plan (Section 140.4.19).

GEOTECHNICAL ADVISEMENTS:

The developer and owner should be aware that this property is located within the flood plain or alluvial terrace of the North Saskatchewan River Valley. Based on a review of flood risk mapping studies, this site appears to be situated near the 100 year return period flood line and below the elevation for a historical flood of record. The developer and owner should therefore be aware of the potential flood related risks to the proposed development. Sustainable Development should therefore confirm the receipt of appropriate information from the applicant in accordance with Section 14.4 of the Zoning Bylaw, as well as any requirements under the Flood Plain

Protection Overlay in Rossdale, where applicable. Such information may include an acceptance of the inherent risks of development within the flood plain and confirmation of the incorporation of some basic flood proofing measures into the design of this development.

Based on review of the Atlas of Coal Mine Workings of the Edmonton Area by Richard Spence Taylor (1971), there appears to be no record of coal mine workings in the vicinity of this site.

The lot is setback behind 100 Street more than 100 metres away from an apparently shallow sloped area above the immediate river bank slopes. Based on a review of the site location, I would not recommend that a slope stability assessment be required in order to approve this development application in accordance with Section 14.1 and 811 of the Zoning Bylaw.

The developer and owner should be aware that site-specific geotechnical investigation and inspections by qualified geotechnical personnel would reduce uncertainty and risk relative to the proposed development and the design and construction of the foundations for the proposed structures.

Should development be approved to proceed, the applicant must be aware that they are fully responsible to mitigate all geotechnical risks to the development and surrounding properties and structures. Notably, all design and construction measures must suitably protect neighbouring properties and structures from any adverse impacts, both during and after construction.

ADVISEMENTS:

- i.) The applicant is advised that there may be complications in obtaining a Development Permit for a future covered or uncovered deck because of excess in Site Coverage.
- ii.) Lot grades must comply with the Edmonton Drainage Bylaw 16200. Contact Drainage Planning and Engineering at 780-496-5576 or lot.grading@edmonton.ca for lot grading inspection inquiries.
- iii.) Any future deck development greater than 0.6 metres (2 feet) in height will require development and building permit approvals
- iv.) Any future deck enclosure or cover requires a separate development and building permit approval.
- v.) The driveway access must maintain a minimum clearance of 1.5 metre from the power pole and all other surface utilities.
- vi.) 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

- vii.) Unless otherwise stated, all above references to "section numbers" refer to the authority under the Edmonton Zoning Bylaw 12800.
- viii.) An approved Development Permit means that the proposed development has been reviewed against the provisions of this bylaw. It does not remove obligations to conform with other legislation, bylaws or land title instruments including, but not limited to, the *Municipal Government Act*, the *Safety Codes Act* or any caveats, restrictive covenants or easements that might be attached to the Site.

In granting the development the following variances to the *Zoning Bylaw* are allowed:

1. The excess of 1.02 metres to the midpoint of the highest parapet and 0.72 metres to the top of parapet in the maximum allowable Height;
2. The excess of 17.19 square metres in maximum allowable Site Coverage for a Principal Building;
3. The deficiency of 2.0 metres in the minimum required Stepback from any building Façade facing a Side Lot Line, where the Site Width is 10.0 metres or greater; and
4. The deficiency of 1.0 metres in the minimum required Stepback from any building Façade facing a Front Lot Line.

Reasons for Decision

[26] Section 140.2(9) of the Edmonton Zoning Bylaw provides that a Single Detached House is a Permitted Use in the RF3 Small Scale Infill Development Zone.

[27] The Board finds, based on the evidence submitted, the proposed development would not unduly interfere with the amenities of the neighbourhood, nor materially interfere with or affect the use, enjoyment or value of neighbouring parcels of land, because:

- i)* The proposed Development does not exceed the 45 percent maximum allowable Total Site Coverage provided for under the Rosssdale Area Redevelopment Plan, which is a development guideline that is specific to this area which was developed in part due to the unusually small lot sizes in this area.
- ii)* The proposed terrace only faces front onto a tree-lined street and park and there is no oversight onto to the rear yards of the adjacent neighbours.
- iii)* Based on the pictorial evidence submitted, the proposed development is characteristic of the neighbourhood and not materially higher than surrounding structures.
- iv)* Further there are no habitable room windows on the top level.
- v)* The Appellant has submitted overwhelming community support for the proposed development, including the two immediate adjacent neighbours.

- [28] Further, the Board is satisfied that the conditions imposed will mitigate any potential adverse effect from the proposed development.
- [29] The Board accepts the Development Officer's submission that an additional variance is required for the deficiency in the minimum allowable Stepback from any building Façade facing a Front Lot Line.
- [30] The Board has no authority to approve an excess in maximum allowable Total Site Coverage as the proposed Accessory Building is not before the Board.



Mr. W. Tuttle, Presiding Officer
Subdivision and Development Appeal Board

Board Members: Ms. P. Jones, Mr. L. Pratt, Ms. K. Cherniawsky, Mr. R. Hachigian

Important Information for the Applicant/Appellant

1. This is not a Building Permit. A Building Permit must be obtained separately from the Sustainable Development Department, located on the 5th Floor, 10250 – 101 Street, Edmonton.
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*, R.S.A. 2000, c. M-26. If the Subdivision and Development Appeal Board is served with notice of an application for leave to appeal its decision, such notice shall operate to suspend the Development Permit.
6. When a decision on a Development Permit application has been rendered by the Subdivision and Development Appeal Board, the enforcement of that decision is carried out by the Sustainable Development Department, located on the 5th Floor, 10250 – 101 Street, Edmonton.

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.



**EDMONTON
TRIBUNALS**

*Subdivision &
Development
Appeal Board*

*10019 - 103 Avenue NW
Edmonton, AB T5J 0G9
P: 780-496-6079 F: 780-577-3537
sdab@edmonton.ca
edmontonsdab.ca*

Date: May 12, 2016
Project Number: 182643357-001
File Number: SDAB-D-16-105

Notice of Decision

[1] On April 27, 2016, the Subdivision and Development Appeal Board heard an appeal that was filed on **March 31, 2016**. The appeal concerned the decision of the Development Authority, issued on March 18, 2016, to refuse the following development:

To construct a Semi-detached House with front verandas, fireplaces, rear uncovered decks (3.05 metres by 5.18 metres) and to demolish an existing Single Detached House

[2] The subject property is on Plan 426HW Blk 20 Lot O, located at 9510 - 72 Avenue NW, within the RF3 Small Scale Infill Development Zone. The Mature Neighbourhood Overlay and the Ritchie Area Redevelopment Plan apply to the subject property.

[3] The following documents, which were received prior to the hearing and are on file, were read into the record:

- A Development Permit Application, including the plans of the proposed Development;
- The refused Development Permit;
- The Development Officer's written submissions, including a letter in opposition to the proposed development; and
- The Appellant's written submission

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

- Exhibit A – The Appellant's written submission; and
- Exhibit B – Community Consultation

Preliminary Matter

- [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 appeal was filed on time, in accordance with Section 686 of the *Municipal Government Act*, R.S.A 2000, c. M-26.

Summary of Hearing*i) Position of the Appellants, Graeme Bell and Jeremy Walter*

- [7] The Appellants submitted the property owner is building this semi-detached house for himself and his sister. Unfortunately, the lot was deficient in Site Width. Further, the Appellant wanted front dormers to remind him of his childhood home, which slightly exceed the maximum allowable width. The Appellants applied for his Development Permit well before changes were made to the sections applicable to Rooftop Terraces. So there was no opportunity for his plans to comply. However, the front terraces do face the front street.
- [8] The Appellants undertook an extensive community consultation. Of the 28 properties, only 6 were missed and one community member was opposed to the proposed development. They suggested this immediate neighbour was more opposed to the use of the lot for a semi-detached home, which is clearly contemplated under the RF3 Zone.
- [9] The Appellants did submit revised plans late in the process which would remove all variances, except that required for the minimum required Site Width. Unfortunately, the Appellants were not able to consult their client until shortly before the hearing to agree to the revised plans. Their client is willing to drop all other variance in an effort to compromise. The side entrances have already been removed. Further, the Height was dropped to ensure compliance with the bylaw requirements.
- [10] There are a couple of other semi-detached houses being built in the neighbourhood which have the same lot dimensions as the subject site. The street is being densified (Reference Exhibit A).
- [11] The Appellants suggested that a Single Detached House with Secondary Suite could be proposed with no variances required. But it would still create the same density. A duplex could also be built with no variances because a duplex has a different site width requirement.
- [12] The Appellant agree with all conditions suggested by the Development Officer.

ii) Position of the Development Officer, Brandon Langille

- [13] The Development Officer did receive a copy and did a cursory review of the revised drawings. His preference is that the Board considers the original plans that were properly vetted and reviewed during the community consultation.
- [14] The Development Officer stated if a Duplex is proposed, the occupants will share one yard and a Secondary suite is not factored into density.
- [15] The Development Officer is satisfied with the community consultation conducted (Reference Exhibit B).

iii) Rebuttal of the Appellants, Graeme Bell and Jeremy Walter

- [16] The Appellants stated the homeowner would prefer the original plans but is willing to make changes to satisfy the Board. The confirmed the width of the dormers from the original plans to the revised plans. They reiterated this RF3 lot is non-conforming.

Decision

- [17] The appeal is **ALLOWED** and the decision of the Development Authority is **REVOKED**. The development is **GRANTED** as applied for to the Development Authority, subject to the following **CONDITIONS**:
1. The Height of the principal building shall not exceed 8.6 metres as per the Height definition of Section 6.1(49) of the Edmonton Zoning Bylaw 12800.
 2. A Secondary Suite is **NOT** authorized under this Development Permit. Therefore, cooking facilities shall not be developed in the basement unless a separate Development Permit has been approved to authorize a Secondary Suite.
 3. Platform Structures greater than 1.0 metres above Grade shall provide privacy screening to prevent visual intrusion into adjacent properties. (Reference Section 814.3(8))
 4. Any future basement development may require development and building permit approvals. A Secondary Suite shall require a new development permit application.
 5. 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(4)(b).
 6. Notwithstanding the Landscaping regulations of Section 55 of this Bylaw, where new development consists of replacement or infill within areas of existing housing, Landscaping shall be implemented as a component of such new development in order to replace vegetation removed during construction or to

reinforce an established Landscaping context in the area (Reference Section 140.4(16)).

7. The area hard surfaced for a driveway, not including the area used for a walkway, shall comply with Section 54.6 of the Zoning Bylaw 12800.

8. The Basement elevation of structures of two or more Storeys in Height shall be no more than 1.2 metres above Grade. The Basement elevation shall be measured as the distance between Grade level and the floor of the first Storey.

9. 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.

10. 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(4)(b).

11. Notwithstanding the Landscaping regulations of Section 55 of this Bylaw, where new development consists of replacement or infill within areas of existing housing, Landscaping shall be implemented as a component of such new development in order to replace vegetation removed during construction or to reinforce an established Landscaping context in the area.

12. Immediately upon demolition of the building, the site shall be cleared of all debris.

Advisements:

- i. Lot grades must comply with the Edmonton Drainage Bylaw 16200. Contact Drainage Services at 780496-5500 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.

vi. Unless otherwise stated, all above references to "section numbers" refer to the authority under the Edmonton Zoning Bylaw 12800.

vii. An approved Development Permit means that the proposed development has been reviewed only against the provisions of the Edmonton Zoning Bylaw. It does not remove obligations to conform with other legislation, bylaws or land title instruments such as the *Municipal Government Act*, the ERCB Directive 079, the *Edmonton Safety Codes* Permit Bylaw or any caveats, covenants or easements that might be attached to the Site.

In granting the development the following variances to the *Zoning Bylaw* are allowed:

1. The deficiency of 0.47 metres in the minimum allowable Site Width;
2. The excess in maximum allowable aggregate total width of more than one dormer; and
3. The deficiency of 0.09 metres in the minimum allowable Stepback from any building Façade facing a Front Lot Line.

Reasons for Decision

[18] Section 140.2(8) of the Edmonton Zoning Bylaw provides that a Semi-detached House is a Permitted Use in the RF3 Small Scale Infill Development Zone.

[19] The Board finds, based on the evidence submitted, the proposed development would not unduly interfere with the amenities of the neighbourhood, nor materially interfere with or affect the use, enjoyment or value of neighbouring parcels of land, because:

- i)* Although the Site Width is deficient, the total Site area is well in excess of the minimum required.
- ii)* The orientation of the dormers will not have an impact on the privacy of the neighbours.
- iii)* The proposed terrace only faces front and there is no oversight onto to the rear yards of the adjacent neighbours.
- iv)* Based on the pictorial evidence submitted, the proposed development is characteristic of the neighbourhood.
- v)* The Appellant has submitted community support for the proposed development.

[20] Further, the Board is satisfied that the conditions imposed will mitigate any potential adverse effect from the proposed development.



Mr. W. Tuttle, Presiding Officer
Subdivision and Development Appeal Board

Board Members: Ms. P. Jones, Mr. L. Pratt, Ms. K. Cherniawsky, Mr. R. Hachigian

Important Information for the Applicant/Appellant

1. This is not a Building Permit. A Building Permit must be obtained separately from the Sustainable Development Department, located on the 5th Floor, 10250 – 101 Street, Edmonton.
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*, R.S.A. 2000, c. M-26. If the Subdivision and Development Appeal Board is served with notice of an application for leave to appeal its decision, such notice shall operate to suspend the Development Permit.
6. When a decision on a Development Permit application has been rendered by the Subdivision and Development Appeal Board, the enforcement of that decision is carried out by the Sustainable Development Department, located on the 5th Floor, 10250 – 101 Street, Edmonton.

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.