



**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](mailto:sdab@edmonton.ca)  
[edmontonsdab.ca](http://edmontonsdab.ca)

Date: May 13, 2016  
Project Number: 171292408-003  
File Number: SDAB-D-16-109

**Notice of Decision**

- [1] On April 28, 2016, the Subdivision and Development Appeal Board heard an appeal that was filed on **March 30, 2016**. The appeal concerned the decision of the Development Authority, issued on **March 23, 2016**, to refuse the following development:

**construct an addition to a Single Detached House (irregular shape, 9.75m x 2.45m, attached storage space next to an existing rear attached Garage), existing without permits**

- [2] The subject property is on Plan 6143NY Blk 32 Lot 31, located at 6904 - 149 AVENUE NW, within the RF1 Single Detached Residential Zone. The Mature Neighbourhood Overlay applies to the subject property.
- [3] The following documents, which were received prior to the hearing and are on file, were read into the record:
- The Appellant's reasons for appeal with attached Site drawings;
  - A Canada Post notification receipt;
  - A Minor Development Permit Application;
  - The Refused Development Permit; and
  - A set of Site Plans.

**Summary of Hearing**

- [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.

*i) Position of the Appellant, Mr. T. Ho*

- [6] The Appellant reiterated the Grounds for Appeal included in the Notice of Appeal.
- [7] He constructed the proposed development, an addition to a Single Detached House, in 2010. He uses it to store his bike and some windows he plans to install on his home. The roof of the addition is made of metal, and the rest of the addition is made of plywood. The remainder of the home is finished with stucco, and the roof has asphalt shingles.
- [8] His son performed all measurements that appear on the submitted plans. He believed that his son measured the Side Setback of the addition from the existing brick fence.
- [9] He was unaware that he required a development permit until he received a letter from the City in 2014. There had been no mention of any deficiencies prior to that letter. He then spoke directly to the Development Officer who told him to submit drawings of the proposed development together with an engineer's report of the subject Site. He paid the necessary fees and completed the permit application process. Subsequently, he learned that the proposed development had been refused.
- [10] He has just one neighbour beside him on the adjacent property. He consulted both the current and previous owners of that property, and neither took any issue with the proposed development.
- [11] He was frustrated with the process. Had the City told him from the beginning that there was a problem with the proposed development and given him a reasonable amount of time to take it down, he would have done so.

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

- [12] The City received a complaint about the property in April, 2015. As a result, a permit was required. A development compliance inspection occurred in November, 2015, during which re-measurements were performed and a discrepancy was discovered between the plans submitted for approval by the Appellant and what was actually built.
- [13] According to the City inspector who attended the Site, the rear of the proposed development extended 2.0 metres from the edge of the existing, principal Dwelling towards the Side Lot Line, as opposed to the 1.5 metres indicated on the Appellant's drawings.

- [14] As indicated on the refused plans, the Development Officer's calculations of the Side Setback and resultant eave encroachment were based on both the measurements contained on a survey of the subject Site and the measurements of the width of the addition obtained by the City inspector during the Site inspection visit.
- [15] When looking at the cross-section drawings submitted by the Appellant, he noticed that there was excessive eave projection into the required Side Setback and over the Side Lot Line into the neighbour's property. This was corroborated by the City inspector's photographs of the subject Site. He concluded that the existing eave significantly exceeded the 0.6-metre projection allowed into the required 1.2-metre Side Setback and also exceeded the 0.06-metre actual setback of the addition and therefore encroached on the neighbouring property. The survey also showed that the fence underneath the eave is actually on the neighbour's property as well.
- [16] He confirmed that the principal Dwelling is legally non-conforming. The *Zoning Bylaw* prohibits further non-conformance that may be caused by any addition or modification to a structure. As a Development Officer, he can grant approval in such situations, but he has to be able to prove that a proposed change will not negatively impact neighbouring properties. He could not say that with respect to the addition.

*iii) Rebuttal of the Appellant*

- [17] In rebuttal, the Appellant reiterated that he did not know he was required to obtain a permit for the proposed development. He would like to keep using it, but if he has to take it down, he will do so.

**Decision**

- [18] The appeal is DENIED and the decision of the Development Authority is CONFIRMED. The development is DENIED.

**Reasons for Decision**

- [19] The proposed development is an addition to Single Detached Housing, a Permitted Use in the RF1 Single Detached Residential Zone.
- [20] The Board accepts the Development Officer's assessment that the principal Dwelling is a legally non-conforming structure and that the addition does not increase its non-conformity.

- [21] The Board received conflicting dimensions for the proposed development and its location. The plans submitted by the Appellant contained measurements that were determined by his son, which disagree with the measurements determined by a City inspector during a Site visit in November, 2015. The Appellant believed the Setback measurements were taken from the fence, which was constructed before he purchased his property. He was unsure about the exact location of the Side Lot Line. The Development Officer calculated the location of the addition, including the eaves, based on the surveyed plot plan and the City inspector's on-Site measurements made in November, 2015. The Board notes that, according to the surveyed plot plan submitted by the Appellant, the fence used as a reference by the Appellant's son is located on the adjacent property and is not located on the Side Lot Line.
- [22] Therefore, the Board accepts the Development Officer's measurements and finds that the proposed development is located 0.06 metres from the Side Lot Line and that the eave encroaches onto the adjoining property.
- [23] The Board cannot authorize encroachment. Therefore, a variance for the eave cannot be allowed.
- [24] According to the evidence, the addition is 9.75 metres in length and 2.0 metres in width at its narrowest. Given its size and proximity to the Side Lot Line (0.06 metres) and the fact that the roof slopes downward toward the adjacent property, the Board is not satisfied that rain shed from the addition will not fall on the adjacent lot if the eaves are removed. This adversely impacts the adjoining property.
- [25] Based on the photographic evidence and submissions of the Appellant, the Board notes that the addition is finished with a metal roof and plywood sheeting that slopes downward toward the adjacent property and walls of plywood sheeting. This exterior is significantly inconsistent with, and markedly inferior to, the rest of the principal Dwelling and to the character of the surrounding neighbourhood, which adds to its adverse impact.
- [26] While the Appellant indicated that the addition was complete in 2010 and that the both the former and current adjacent property owners had verbally indicated that they did not take issue with the proposed development, the impetus of the development application was a complaint.

[27] For the reasons above, the Board finds that allowing the proposed development would unduly interfere with the amenities of the neighbourhood and would materially affect the use, enjoyment or value of neighbouring parcels of land.

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

**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*, 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.
  
2. When a decision on a Development Permit application has been rendered by the Subdivision and Development Appeal Board, the enforcement of that decision is carried out by the Sustainable Development Department, located on the 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.*



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[sdab@edmonton.ca](mailto:sdab@edmonton.ca)  
[edmontonsdab.ca](http://edmontonsdab.ca)*

Date: May 13, 2016  
Project Number: 176696883-001  
File Number: SDAB-D-16-094

**Notice of Decision**

- [1] On April 28, 2016, the Subdivision and Development Appeal Board heard an appeal that was filed on **March 18, 2016**. The appeal concerned the decision of the Development Authority, issued on **March 1, 2016**, to approve the following development:

**operate a Major Home Based Business (Auction to Auction - SAIHAJ  
ENTERPRISES LTD - Expiry Mar 1, 2021)**

- [2] The subject property is on Plan 1027143 Blk 3 Lot 2, located at 210 - 75 STREET SW, within the RR Rural Residential Zone. The Ellerslie Area Structure Plan applies to the subject property.
- [3] The following documents, which were received prior to the hearing and are on file, were read into the record:
- The reasons for appeal with attached photos;
  - The approved development permit;
  - A Home Based Business application form;
  - A vehicle licence plate information printout;
  - The Development Officer's written submissions;
  - Two letters in opposition to the development with photos attached; and
  - The Ellerslie Area Structure Plan.
- [4] The following documents, which were received during the hearing and are on file, were marked as exhibits and form part of the record:
- Exhibit A – Additional photographs of the Site submitted by the Appellants; and
  - Exhibit B - Administrative letter sent to the Appellant containing the Appellant's handwritten notes.

**Summary of Hearing**

- [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.
- [7] The Board made and passed the following motion:
- i) That the hearing for SDAB-D-18-094 be raised.
  - ii) *Position of the Appellants, Mr. B. Rich & Mrs. M. Rich*
- [8] The Appellants reiterated the Grounds for Appeal included in the Notice of Appeal.
- [9] The Applicant does not live at the subject Site. He has never lived there. He resides at another address with his family. The Appellants know this because they are the ones who sold the subject property to him. They live next door. Also, the Development Authority's investigation identified vehicles on the subject Site that were registered to 2534 33A Street, the property where the Applicant actually resides.
- [10] This is a commercial business on residential land. For safety reasons, it is not appropriate to have commercial vehicles on the neighbourhood's narrow roads, which are only 18 feet wide with no street lights. There are children who walk along those roads to get to school. They walk right past the subject Site, and there is no sidewalk for them to walk on. They have to walk on the road.
- [11] The diesel fumes being produced by the subject Site are also an issue. The Appellants live on the adjacent property and have been subjected to the exhaust from large trucks while sitting on their deck. This has a negative impact on their enjoyment of their property and violates the condition in the approved permit pertaining to the production of odours.
- [12] The Appellants did not pay much attention to the Applicant's property until mid-February, 2016 when they observed that tarps had been put up to block neighbours' views of the subject Site. They decided to investigate and took photographs of the subject Site from over their back fence. The photographs show the subject Site on various days over the months of March and April. There are large trucks parked on Site in every picture taken over that period of time. The vehicles parked on Site include cube vans, a gravel truck, a dump truck and a semi-tractor. They observed up to 15 vehicles on Site on any given day. There is also a lot of vehicle traffic coming and going from the Site caused by people renting trucks from the Applicant and dropping off their own personal vehicles on Site. They estimate that six vehicles are used this way.



This violates the conditions in the approved development permit stating that no vehicles are to be stored outdoors and that no more than one business-related vehicle should be on Site at a time.

- [13] Two of the vehicles observed on Site were found to be overweight by the Development Authority's inspection. The overweight vehicles are being parked there for long periods of time. It is not merely a loading and unloading situation. The cab of a large truck shown in several pictures is tilted over in several of the photos indicating that it is being worked on outside over the span of a few days.
- [14] Bringing these trucks into the neighbourhood will decrease the value of everyone's properties. People choose to live in the area to benefit from the peace and quiet. The proposed development disrupts the character of the neighbourhood.

*ii) Position of the Development Officer, Ms. K. Bauer*

- [15] The Development Officer stated that she had several phone conversations with the Applicant regarding the conditions of the development permit. He actually wanted to apply for a transportation services business, which would allow for the parking and moving of vehicles on Site, but she told him she could not approve that. However, she told him she could approve an auction to auction permit, but only as long as no vehicles turned up on Site. Further, the Applicant would need to live at the Site, and the Appellant indicated that the Applicant does not in fact live there.
- [16] She asked the Board to confirm where the Applicant lives. A major condition of the permit is that he reside on Site, and, although he said that he lives there, it appears that he may not.
- [17] If he does live at the Site, one of the conditions associated with the proposed development is that he not conduct outdoor storage, and it appears he is storing vehicles and equipment outdoors.
- [18] In addition, under the approved development permit, he is not permitted to bring vehicles home, and there are to be no repairs conducted on Site either. The Site should appear to be a single family home. No work should be done on Site.
- [19] Based on verification visits to the Site by Enforcement Officers, there are indications that the conditions of the approved development permit are not being met.

*iii) Position of the Respondent, Mr. J. Khalon*

- [20] The Respondent recently lost clients for his courier business. He used to park the commercial courier vehicles elsewhere, but he lost the contract allowing him to do that and has since had to park those vehicles on the subject Site. The vehicles were parked there for one or two months while he was looking for another place to park them. The Development Officer has told him that he must move the vehicles.
- [21] There is one vehicle parked in each corner of the photographs shown by the Appellant. One of them is a snow plow that he uses to move the snow in his yard. He has moved all the other vehicles elsewhere. There is one vehicle that does not start. He is working on it so that he can move it. The semi-tractor shown in the photos belonged to one of his friends. It was parked there for three or four days while he was out of town.
- [22] It is not a situation where people pick up commercial vehicles to rent and leave their own personal vehicles on Site. His friends are bringing vehicles to park on the subject Site without his knowledge, and he does not know who is parking there. He told all of his friends to move their vehicles from the Site. He is not sure why his friends have been parking there. He supposes that they have kept parking there because he has never objected to them doing so, but now he keeps a lock on the entrance to his yard.
- [23] With respect to his residence, he got his driver's licence renewed this month (April, 2016) to show his address as the subject Site. His vehicles are still registered to 2534 33A Street, the property where his wife and children reside, but he will be moving some things over to the subject Site. He does paperwork on the Site and sleeps there three or four nights a week. The information in his Home Based Business application has not changed. He lives there, and he is seeking allowance for an administration office and one vehicle on Site. He is not conducting repairs on Site. He merely opened the hood on one vehicle to see what was wrong with it. Nor is he conducting outdoor storage of vehicles related to the business. The vehicles on Site are associated with an unrelated courier business.
- [24] The Board reviewed the information the Applicant had provided on his development permit application, line by line, for clarification of the current facts and the nature of the proposed on-Site activities.
- [25] He acknowledged that the mailing address listed on the development permit application is his other address and not the subject Site. This was because his cousin receives mail at the subject Site, and he did not want to cause confusion. He further acknowledged that his spouse and children live at his other address full time. They do not live or sleep at the subject Site.

- [26] With respect to business activity on Site, he acknowledged that he does not have an actual employee that resides on Site. The closest thing to an employee would be his wife, who gives him rides to the subject Site. His cousin lives on Site full time and sometimes helps with the business.
- [27] He also acknowledged that, although he stated that the vehicles on Site are not related to the auction-to-auction business, he sometimes has clients come to the subject Site to see if they want to buy vehicles associated with the auction-to-auction business. These clients only come to the Site to view and inspect the vehicles. No purchases take place on Site.
- [28] He initially stated that he has eight vehicles registered to the property that were all personal vehicles. He then acknowledged that five of those vehicles are actually used for the auction-to-auction business, and that the approved development permit only allowed for one business-related vehicle on Site. The snow plow on Site is registered to 2534 33A Street, the same address where his family resides. This snow plow is for his personal use exclusively. Specifically, he uses it only to move snow around on the subject Site. It is not used for snow removal elsewhere.
- [29] In response to further questions from the Board pertaining to his residence, he admitted that he lives predominantly with his wife and children, off Site, at the other address and that it would be fair to classify that as his primary residence. His wife and children never sleep at the subject Site.
- [30] He wants to run the business at the subject Site because it is a rural location where he can very occasionally take vehicles to perform cleaning and minor repairs. The subject Site has a much larger Garage than the one associated with his principal residence and is suited for cleaning.

*iv) Clarification of the Development Officer*

- [31] At the end of the Applicant's submissions, the Board called upon the Development Officer for clarification regarding the effect the Applicant's submissions before the Board would have on the application. She stated that the approved auction-to-auction business is not compatible with what the Applicant is doing on Site. He was not approved for storage and outdoor activity. Bringing any vehicles on Site for cleaning or minor repairs is not permissible under the approved development permit. She suggested a separate Site inspection to determine whether or not the Applicant's submissions were accurate.

*iv) Rebuttal of the Appellants*

- [32] The Appellants reiterated that the Applicant does not live at the subject Site and has never lived there. They suggested that the reason the Applicant had requested an adjournment of the hearing on a previous date was so that his new driver's licence, showing the subject Site as his address, could arrive in the mail prior to appearing before the Board.
- [33] A separate family, totaling five people, resides on the property. The Applicant lives with his family on another property. A father, two grandparents and two children live at the subject Site. They know this as they see those five individuals regularly. The grandfather accompanies the children daily as they walk to and from the neighbourhood school.
- [34] They doubt the Applicant's explanation for selecting the subject Site over his family residence because they owned the property and can attest that there is no running water in the Garage. Therefore, it would not be suited for vehicle cleaning and minor repairs.
- [35] Further, it does not seem likely that he could live on Site yet have no knowledge of all of the vehicles being parked in his own yard.
- [36] This is simply a situation where the Applicant bought a property and decided what he wanted to do with it without going through the proper channels. He is now running into problems.
- [37] His neighbours should be allowed to enjoy their properties too.

*v) Respondent's reply to new information of the Appellants*

- [38] The Applicant acknowledged that, in addition to his cousin, other individuals reside at the home. Those individuals are his cousin's parents and his cousin's two children for a total of five people. He affirmed that he resides on Site with this family.

*vi) Respondent's reply to new information of the Development Officer*

- [39] The Development Officer indicated that the fact that the parties now agree that a family of five lives on Site makes her less inclined to believe that the Applicant has met the residency requirement for a Major Home Based Business application.

**Decision**

- [40] The appeal is **ALLOWED** and the decision of the Development Authority is **REVOKED**. The Development is **DENIED**.

**Reasons for Decision**

- [41] The Respondent was approved for a Major Home Based Business (Auction-to-Auction), which is a Discretionary Use in the RR Rural Residential Zone.
- [42] During the hearing, the parties provided information about the nature of the proposed Major Home Based Business, the Applicant's residence and the outdoor, on-Site storage, repair and movement of more than 15 vehicles, including vehicles in excess of 4500 KG.
- [43] Based on photographic evidence of the state of the property collected over many days and on the submissions of all parties, the Board finds significant business activity involving outdoor storage, repair and use of vehicles has occurred on this Site. The Applicant did not seek approval for these activities in the permit application and indicated they have been stopped.
- [44] The Board finds that this outdoor storage, repair and use of vehicles is not an activity authorized in the approved Major Home Based Business development permit under appeal. It is an activity that is subject to a separate enforcement file.
- [45] The *Zoning Bylaw* defines a Major Home Based Business in Section 7.3(7). One essential criterion of this Residential Related Use Class is that the proposed development involve "the use of an approved Dwelling or Accessory building **by a resident of that Dwelling** for one or more businesses."
- [46] The Board is faced with conflicting evidence with respect to whether the Applicant is a resident of a Dwelling at the subject Site. The Board accepts the submissions of the Appellants on this issue.
- [47] The Appellants' assertion that the Applicant is not a resident of the principal Dwelling is corroborated by information provided by the Applicant on the development permit application and by registration records.
- [48] The Board finds the Applicant's submissions to be lacking in credibility for the following reasons:
- i) The Applicant's submissions before the Board were inconsistent with the information he provided on his initial application and with the information that appears on the issued permit.

- ii) His submissions at the hearing were internally inconsistent and altered through the course of the hearing in response to the submissions of other parties.
  - iii) With respect to his living arrangements, the Applicant first produced a newly issued driver's licence listing the subject Site as his address and stated without qualification that he was resident at the subject Site. Later, in response to questions from the Board, he stated he only sleeps at the subject Site on some evenings, but resides primarily at his other address of record with his wife and children (who have never resided at the Site). This other address was listed as the mailing address for the business in the development permit application and is the registered address for vehicles found at the Site during a Site inspection. Then, the Applicant indicated he shared the Dwelling with his cousin. Finally, he agreed that a family of five also lives full time in the Dwelling on the subject Site.
  - iv) The Applicant did not provide reasonable explanations for maintaining the secondary residence at the subject Site, for recently changing his driver's licence address or for choosing the subject Site over his principal family residence for the proposed Major Home Based Business, which involved an administrative office and indoor Garage space to occasionally clean and perform very minor cosmetic repairs to vehicles in transit between auction house locations.
  - v) While the Applicant stated he both worked daily and sometimes slept at the subject Site, he also stated he was unaware that his friends were repeatedly parking their commercial vehicles overnight during a two-month period at the subject Site. The Board finds it unlikely that a resident of the Dwelling would not be aware of the comings and goings of large commercial vehicles in his own back yard where he works, resides and plows snow.
- [49] Accordingly, the Board finds that the Applicant is not a resident of a Dwelling on the subject Site and, therefore, the Board determines that the proposed development does not meet the *Zoning Bylaw's* definition of Major Home Based Business (Section 7.3(7)).
- [50] Additionally, based on the submissions of the Applicant at the hearing, he is seeking to occasionally bring vehicles associated with the Auction-to-Auction business to the subject Site for minor repairs and cleaning. The Board notes that this sort of activity on Site is prohibited in the approved development permit, which limits the scope of the Home Based Business to an Administration Office only.

[51] Accordingly, the Appeal is allowed, the decision of the Development Officer is revoked and the development is denied.

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

**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*, 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.
2. When a decision on a Development Permit application has been rendered by the Subdivision and Development Appeal Board, the enforcement of that decision is carried out by the Sustainable Development Department, located on the 5th Floor, 10250 – 101 Street, Edmonton.

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[edmontonsdab.ca](http://edmontonsdab.ca)

Date: May 13, 2016  
Project Number: 180912276-001  
File Number: SDAB-D-16-084

**Notice of Decision**

[1] On **April 28, 2016**, the Subdivision and Development Appeal Board heard an appeal that was filed on **March 4, 2016** and adjourned from **March 31, 2016**. The appeal concerned the decision of the Development Authority, issued on February 23, 2016 to refuse the following development:

**construct an addition and exterior alterations, and a rear covered deck (3.05m x 6.25m) to a Single Detached House**

[2] The subject property is on Plan 7239AH Blk 6 Lot 17, located at 11117 - 127 STREET NW, within the RF3 Small Scale Infill Development Zone. The Mature Neighbourhood Overlay and the West Ingle 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:

- From the initial hearing of March 31, 2016:
  - The Appellants' submissions and original plans;
  - The Development Officer's original written submissions;
  - The initial Site plans;
  - The refused development permit;
  - The Addition Permit Application;
  - Canada Post notification of delivery; and
  - The West Ingle Area Structure Plan.
  
- From the hearing of April 28, 2016:
  - The revised plans (marked as Exhibit A);
  - Revised plans of the Garage; and
  - The Development Officer's updated revised written submissions.

**Summary of March 31, 2016 Hearing:**

- [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.
- i) *Position of the Appellants, Mr. O. Malana & Mr. M. Hammond*
- [6] Prior to the hearing, the Appellants canvassed the neighbourhood for feedback regarding the proposed development. They left packages at the neighbours' homes containing explanations of the reasons for refusal and Site plans. They received feedback from several neighbours within the 60-metre notification zone, and some beyond it, that took no issue with the proposed development. They attempted to approach the owners of other neighbouring properties but were only able to reach tenants residing in those homes.
- [7] The Appellants then addressed the Development Authority's reasons for refusal.
- [8] The rear covered deck mentioned in the refusal should not be taken into account when calculating Site Coverage. There is not a covered deck in the revised plans. At some point the deck Height may have been misrepresented by the designer. The deck should have been represented as being 0.91 metres in Height, meaning it should not be a factor in calculating Site Coverage. Without the deck, the proposed development would cover 35.67% of the subject Site. This is less than the allowable 40% imposed by the *Zoning Bylaw*. The plans will be changed accordingly.
- [9] With respect to the Side Setbacks, they stated that the house has been in place for years, and they would like to maintain the same sightlines as the existing house when they construct the proposed additions.
- [10] Although they had not provided privacy screening in the original plans, their revised plans would include privacy screening on the upstairs balconies consisting of smoked glass at a Height of six feet and six inches tall. The second-storey balcony at the rear of this house will be removed altogether.
- [11] In response to questions regarding whether or not the proposed development would comply with recent revisions to Section 140.4(17) of the *Zoning Bylaw*, the Appellants stated that they only became aware of these issues at the beginning of the hearing. As a result, they requested an adjournment in order to gather materials that would allow them to make accurate submissions to the Board and submit revised plans to the Development Authority.

*ii) Position of the Development Officer, Ms. K. Heimdahl*

- [12] The Development Officer confirmed that the current structure on the subject Site is legal non-conforming. The proposed extensions would follow the same setback currently in place.
- [13] She was not opposed to the Appellant's adjournment request and confirmed that she would review revised plans if the Appellants presented them to her.

**Decision**

- [14] The Subdivision and Development Appeal Board at a hearing on March 31, 2016, made and passed the following motion:

That the hearing for SDAB-D-16-084 be tabled to April 28, 2016.

**Reasons:**

- [15] The Appellants requested an adjournment. The Development Officer was in favour of the adjournment and confirmed that she would welcome the opportunity to review revised plans and consult with the Appellants.
- [16] During the hearing, discrepancies and gaps were revealed in the revised plans. The Appellants requested time to prepare further revised plans and a new plot plan for the Board.
- [17] The Appellants were unaware of the March 14, 2016 changes to the *Zoning Bylaw* that impacted the compliance of the proposed development.

**Summary of April 28, 2016 Hearing**

- [18] The Subdivision and Development Appeal Board, at a hearing on April 28, 2016, made and passed the following motion:

i) That the hearing for SDAB-D-18-084 be raised.

*i) Position of the Appellant, Mr. M. Hammond & Mr. D. Woolger*

- [19] As a result of revisions made to the plans, the proposed development is now fully compliant with the *Zoning Bylaw*. The setback has been adjusted, the second-storey balconies have been removed and the deck has been lowered.

[20] They have been in consultation with the Development Officer throughout the revision process.

*ii) Position of the Development Officer, Ms. K. Heimdahl*

[21] The Development Officer advised the Board that her written submissions should read that the permit proposes a rear addition that does **not** increase the non-conformity of the building.

[22] In her opinion, with the latest revisions, the proposed development would not unduly interfere with the amenities of the neighbourhood or materially interfere with or affect the use, enjoyment or value of the neighbouring properties.

[23] With respect to Grade, she has not visited the Site, but, from all indications, the Site is flat. She accepts the measurement of the deck as being less than one metre in Height. In any event, she would not ask for those elevations unless the Appellants were increasing the Height of the house, and they are not proposing to do that.

*vii) Rebuttal of the Appellant*

[24] The Appellants confirmed that they would have no difficulty complying with a condition that the deck not exceed one metre in Height. The Site is flat so Grade will not be an issue.

**Decision**

[25] The appeal is **ALLOWED** and the decision of the Development Authority is **REVOKED**. The development is **GRANTED** in accordance with the revised plans, which are attached as Exhibit A, with the following condition:

*i)* The rear deck shall not exceed one metre in Height.

**Reasons for Decision**

[26] The proposed development is an addition to a Permitted Use in the RF3 Small Scale Infill Development Zone. The Board notes that this addition is being made to a non-conforming building.

[27] At the initial hearing of March 31, 2016, discrepancies and gaps were revealed in the Appellants' plans. They requested an adjournment to April 28, 2016, to allow them time to prepare revised plans and a new plot plan for the Board.

- [28] On their return, the Appellants provided revised drawings, which had been reviewed by the Development Officer prior to the hearing. All parties agreed that the proposed development, as shown in the revised plans, is now fully compliant with the *Zoning Bylaw*.
- [29] Accordingly, the Development Officer revised her opinion in her revised written submission. It is now her opinion that the proposed development would not increase the non-conformity of the existing building and would not unduly interfere with the amenities of the neighbourhood or materially interfere with or affect the use, enjoyment or value of the neighbouring properties.
- [30] All parties agreed to a condition that the deck will not exceed one metre in Height and therefore will not be included in the calculations of Site Coverage.
- [31] Based on the above, the Board is satisfied that the proposed development will not unduly interfere with the amenities of the neighbourhood or materially interfere with or affect the use, enjoyment or value of neighbouring parcels of land.

Kathy Cherniawsky, Presiding Officer  
Subdivision and Development Appeal Board

**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 5<sup>th</sup> 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.*