

***Edmonton Subdivision and
Development Appeal Board***

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SDAB-D-15-181

Project No. 165191429-001

An appeal by Admax Media to construct (1) Freestanding Minor Digital On-premises Sign (Rogers Broadcasting) on Lot 4C, Block 80, Plan 0720014, located at 5913 Gateway Boulevard NW was **TABLED** to September 9, 2015

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Date: August 27, 2015
Project Number: 167663658-001
File Number: SDAB-S-15-007

Notice of Decision

This appeal dated July 15, 2015, from the decision of the Subdivision Authority for permission to:

Create two (2) semi-detached residential units from the north portion of Lots 1 and 2, Block 11, Plan 2064S located north of 77 Avenue and west of 112 Street; McKernan

on Plan 2064S Blk 11 Lots 1-2, located at 7716 - 112 Street NW, was heard by the Subdivision and Development Appeal Board on August 12, 2015.

Summary of Hearing:

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.

The appeal was filed on time, in accordance with section 678(2) of the *Municipal Government Act*, RSA 2000, c M-26.

The Board heard an appeal of the decision of the Subdivision Authority to refuse an application to create two (2) semi-detached residential units from the north portion of Lots 1 and 2, Block 11, Plan 2064 S located north of 77 Avenue and west of 112 Street; McKernan, located at 7716 – 112 Street NW. The subject Site is zoned RF3 Small Scale Infill Development Zone.

The proposed subdivision was refused because the proposed subdivision does not comply with the minimum Development Regulations identified in the Revised City of Edmonton, by-law 12800, *Edmonton Zoning Bylaw* (“*Edmonton Zoning Bylaw*”). The proposed development will result in Site Depths, and ultimately lot sizes, that are uncharacteristically small when compared to properties on the block face.

Prior to the hearing the following information was provided to the Board, copies of which are on file:

- The Subdivision Authority’s file
- A letter of opposition from the McKernan Community League dated August 11, 2015
- A previous decision of the SDAB (File No. SDAB-13-236)

The Board heard from Mr. Kiansha Dinahmadi, representing the Appellant, Kamp Homes and Contracting and the property owner, Mr. Pasha Dinahmadi, who provided the following information in support of the appeal:

1. They have applied for a bareland subdivision on their property.
2. Both of the lots are compliant with the Bylaw and building permit requirements.
3. A development permit to construct a Semi-detached house with front attached Garage, front veranda, fireplace (northern portions of Lots 1 and 2) was issued through appeal to the Subdivision and Development Appeal board on November 28, 2013.
4. At that appeal hearing the Site Area and Site Depth were discussed and variances were granted by the Board.
5. It was their opinion that the refusal of the Subdivision Authority is invalid because the Semi-detached Dwelling is now built and all of the building permit requirements have been met.
6. Mr. Dinahmadi referenced a number of similar sized lots located in close proximity to the subject site.
7. Three of the addresses referenced were located north of the subject site where single family houses have been built on the small lots.
8. The other two addresses were small lots located immediately south of their site.
9. Extra measures were taken during the construction process to ensure that both of the dwellings have separate utility services.
10. The dwelling on the southern portion of the site will require the installation of new sewer services.
11. Both of the lots located south of their site will also require new sewer lines and the owner is currently in negotiations with the City.
12. A utility easement that dates back to the 1940s is located across the northerly portion of the site.
13. A common easement will be located in the front 1.22 metres of the site to contain sewer access for the semi-detached dwelling on the southern portion of the site.
14. Water is a separate service accessed from 112 Street.
15. The immediately adjacent lots located south of their site are currently vacant and the old 1940s easement was to provide service to a house that has now been demolished.

The Board then heard from Ms. Gray, Secretary for the McKernan Community League, who provided the following information in opposition to the proposed subdivision:

1. The Community League is not opposed to infill development but is upset with this development, as are residents of this neighbourhood. The rules have been twisted to meet the demands of the developers.
2. Development of the Semi-detached Dwellings was refused by the Development Authority and opposed by the Community League in 2013.
3. The subject site is now completely filled by the building.
4. The Community League supports the opinion of the Subdivision Authority that the sizes of the lots are uncharacteristic of the neighbourhood.
5. It is the opinion of the Community League that development should fit the size of the lot.

6. The lots of a similar size that were referenced by the Appellants probably predate the adoption of the Mature Neighbourhood Overlay in 1994.
7. Ms. Grey was not aware of any problems arising as a result of the size of those lots.

The Board then heard from Mr. Murphy, an affected property owner who appeared in opposition to the proposed subdivision:

1. The small lots located north of the subject site referred to by the Appellant provide more parking spaces and have a small front yard.
2. The subject site does not have a front yard and is not suitable for the neighbourhood.

Mr. Pasha Dinahmadi provided the following information in rebuttal:

1. The concerns of the Community League and the neighbours were addressed at the initial hearing before this Board regarding the development permit in 2013.
2. The development as constructed complies with all of the requirements of the development permit granted by the Board.
3. The development supports Policy 5.2.1.1 of the (*"Municipal Development Plan: The Way We Grow"*) by providing development to fit with the existing and planned neighbourhood context.
4. The plans were revised numerous times to accommodate the concerns of interested parties in the area.
5. Concerns regarding the slope of the ramp to the underground garages were discussed at the hearing in 2013 and the slope was reduced from 18 percent to 14 percent at the request of the Board.
6. A curb crossing permit has been issued for the underground garages.
7. It was his opinion that adequate amenity space has been provided at the rear of the dwellings.
8. Any development on this small lot would have required variances.
9. A substantial amount of money has been spent to minimize any negative impacts on the neighbourhood.
10. It was his opinion that the development is a good addition to the neighbourhood.
11. They applied for a bareland subdivision in order to provide separate titles for the new owners.
12. Separate titles could also have been obtained by converting the building into condominium units but it was felt that this was not appropriate for a development with only two owners as it could lead to conflicts.
13. Some landscaping will be provided in the front yard.

Decision:

The appeal is **ALLOWED** and the decision of the Subdivision Authority is **REVOKED**. The subdivision is **GRANTED** as applied for to the Subdivision Authority, subject to the following conditions:

1. Municipal services (water and sewer) must enter the proposed subdivision through common property;
2. Any outstanding property taxes must be paid.

Reasons for Decision:

The Board finds the following:

1. On November 13, 2013, the Subdivision and Development Appeal Board heard an appeal of a refused development permit application to construct a Semi-detached House with front attached Garage, front veranda, fireplace (northern portions of Lots 1 and 2), on the site of the proposed subdivision. (Decision SDAB-D-13-236).
2. The Board allowed the appeal and granted the development permit after considering revised plans submitted by the Applicant.
3. One of the variances granted was the deficiency in the minimum required Site Depth. In granting this and the other variances, the Board concluded that the 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.
4. Since then, the development has been constructed and, according to the Appellant, it fully complies with the development permit.
5. This subdivision application is to allow the owners of each Semi-detached House to obtain a separate certificate of title.
6. The proposed subdivision was refused by the Subdivision Authority because it does not comply with the minimum Development Regulations identified in Section 140 of the *Edmonton Zoning Bylaw*. The minimum Site Depth identified in the RF3 Small Scale Infill Development Zone for Permitted and Discretionary Uses is 30.0 metres. The proposed Site Depth is 18.9 metres each and is therefore significantly deficient by 11.1 metres or 37 percent.
7. In short, the Subdivision Authority has used the same Development Regulation regarding minimum Site Depth to refuse the subdivision that was specifically considered by the Board when granting the development permit.
8. The purpose of Development Regulations is to ensure that proposed *development*, as opposed to subdivision, is compatible with surrounding development. Determining how proposed development will impact the neighbourhood can only be done by considering the particulars of the proposed development in the context of its Site. This is what the Board did when it granted the permit for this development after considering the plans.
9. Once the Board has allowed a development permit and granted a variance to a Development Regulation, such as minimum Site Depth, it is inappropriate for the Subdivision Authority to subsequently refuse to grant a subdivision application on the basis that it does not comply with that same Development Regulation. The Board, having considered the variance with the benefit of reference to specific development plans, is in the best position to determine how the development will impact the neighbourhood and neighbouring parcels of land.
10. The Board is of the view that subdividing the Site into two separate lots now that the development has been constructed will have no impact on the neighbourhood.

11. The Board acknowledges the concerns of the McKernan Community League and an affected neighbour but finds that these concerns relate to the built form of the development and not to the proposed subdivision. All of these concerns were addressed at the previous hearing of the Board when the development permit was granted.
12. Section 654(2) of the *MGA* authorizes a subdivision authority “to approve an application for a subdivision even though the proposed subdivision does not comply with land use bylaw if in its opinion, (a)(i) the proposed subdivision would not unduly interfere with the amenities of the neighbourhood, or (ii) materially interfere with or affect the use, enjoyment or value of neighbouring parcels of land, and, (b) the proposed subdivision conforms with the use prescribed for that land in the land use bylaw.”
13. Based on the above, the Board finds that the proposed subdivision 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.

Important Information for 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.

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.

Mr. M. Young, Presiding Officer
Subdivision and Development Appeal Board

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