



**EDMONTON
TRIBUNALS**

*Subdivision &
Development
Appeal Board*

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Date: August 30, 2019
Project Number: 310393675-001
File Number: SDAB-D-19-129

Notice of Decision

- [1] On August 21, 2019, the Subdivision and Development Appeal Board (the “Board”) heard an appeal that was filed on **July 28, 2019**. The appeal concerned the decision of the Development Authority, issued on July 18, 2019, to refuse the following development:

Construct exterior alterations to a Single Detached House, existing without permits (gazebo with deck atop and 2nd storey connection to the House).

- [2] The subject property is on Plan 2725Q Blk 6 Lot 4, located at 9520 - 95 Avenue NW, within the (RF1) Single Detached Residential Zone. The Mature Neighbourhood Overlay applies to the subject property.
- [3] The following documents were received prior to the hearing and form part of the record:
- A copy of the proposed plans and the refused Development Permit;
 - The Development Officer’s written submission; and
 - The Appellant’s written submissions.
- [4] The following exhibit was presented during the hearing and forms part of the record:
- Exhibit A – Signatures in support from neighbouring property owners, submitted by the Appellant.

Preliminary Matters

- [5] At the outset of the appeal hearing, the Presiding Officer confirmed with the parties in attendance that there was no opposition to the composition of the panel.
- [6] The Presiding Officer outlined how the hearing would be conducted, including the order of appearance of parties, and no opposition was noted.

[7] The appeal was filed on time, in accordance with section 686 of the *Municipal Government Act*, RSA 2000, c M-26.

Summary of Hearing

i) *Position of the Appellant, Mr. L. Liew, representing ID Home Design Ltd., who was accompanied by Mr. Q. Liew, the property owner*

[8] The east adjacent neighbour extended their deck which now looks directly into the washroom of the subject site.

[9] They are willing to install a privacy screen to address the privacy variance.

[10] Mr. L. Liew provided the following information in response to questions by the Board:

a. He has support from all of the neighbouring property owners for the gazebo except the east adjacent neighbour.

b. He outlined on the City of Edmonton Slim Map which properties are in support of the proposed development and provided copies of the signatures to the Board, marked *Exhibit A*.

c. Mr. Q. Liew purchased the property with the gazebo existing as it is.

d. The gazebo is used for storage in the summer and the winter.

e. The gazebo was connected to the house in 2015.

f. The connection was built to access the gazebo from the bedroom.

ii) *Position of Mr. C. and Mrs. C. Taylor, affected property owners in opposition of the Appellant*

[11] The gazebo existed on the subject site when they purchased the property in 2005.

[12] Although the Appellant consulted the neighbours, the gazebo only impacts their property immediately east.

[13] The retaining wall behind the gazebo is cracking and weathering which has caused water to drain into their property.

[14] The retaining wall is starting to lean toward their front yard and there is a mature tree against the gazebo that is holding up the retaining wall. If the retaining wall collapses, the gazebo will fall into their yard.

- [15] The subject site and their property are unique as they both have a view of the river valley. In their opinion, if a privacy screen is required, it will impact the view of their property and the value of their property.
- [16] When they built their deck, their contractor provided the necessary documents when applying for a development permit. In their opinion, the Appellant should have to follow the regulations of the *Edmonton Zoning Bylaw*.
- [17] With respect to the setback variances, they indicated that the Appellant should follow the regulations of the *Edmonton Zoning Bylaw*.
- [18] It is their opinion that the retaining wall and gazebo should be removed and built properly.
- [19] When they were issued a development permit for their deck in 2017, there was no condition to install privacy screening.
- [20] Mr. and Mrs. Taylor provided the following information in response to questions by the Board:
- a. The retaining wall is on the subject site and is leaning toward their property.
 - b. The grade of the subject site is approximately two to three feet higher than their property.
 - c. Mature trees on the subject site will need to be removed if the retaining wall is replaced.
 - d. They confirmed that there was always a balcony on their house before the current deck was extended which overlooks the property of the subject site.
 - e. In their opinion, the retaining wall should be removed and built properly.

iii) Position of the Development Officer, Mr. A. Seltz

- [21] The Development Authority did not appear at the hearing and the Board relied on Mr. Seltz's written submission.

iv) Rebuttal of the Appellant, Mr. L. Liew

- [22] Privacy Screening can be added to the gazebo if it is required.

- [23] They did not have a concern when the east adjacent neighbours built their deck in 2017. In his opinion, there is a loss of privacy on the subject site from the adjacent deck.
- [24] The east adjacent deck is approximately the same height as the existing gazebo.

Decision

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

Reasons for Decision

- [26] The proposed development is an addition to a Permitted Use in the (RF1) Single Detached Residential Zone.
- [27] The existing structure is in contravention of the regulations of the *Edmonton Zoning Bylaw*, regarding the Rear Setback, Side Setback and Privacy Screening.
- [28] The Board finds that the proposed development will negatively impact the immediately adjacent property to the east for the following reasons:
- a. By connecting the existing gazebo to the main structure of the house and adding a Platform Structure (deck) on top of the gazebo these unapproved changes have increased the intensity of the structure's use.
 - b. The gazebo was constructed as an Accessory Building and not an enclosed structure with a deck on top of the gazebo.
 - c. By adding the deck and connecting it to the House it has created an increased visual impact for the most directly affected neighbour to the east.
 - d. The Board was presented with information by the affected neighbour to the east that the gazebo was having an impact on drainage, the retaining wall, and grading. However, the Board was not provided with Real Property Reports and cannot conclude this development has an impact on these items. Further, these safety concerns are outside the Board's purview and are related to Building Safety Codes.
 - e. Notwithstanding, the Board received written support from neighbouring property owners within the 60-metre radius notification radius. It is important to note that the regulations of the Mature Neighbourhood Overlay requires notices to be sent to only the properties on each side of the subject site, one of which supported the development and the most affected property to the east did not. The Board finds

that the neighbours in support are not affected by the proposed development in any way.

- [29] The Board notes that if the appeal was allowed and the structure to remain as it is, the development would have required privacy screening to be installed pursuant to the Mature Neighbourhood Overlay. The Board finds that installing privacy screening would have more of an impact on the adjacent property to the east if it was installed.
- [30] Based on the above, it is the opinion of the Board that the proposed development will materially interfere with or affect the use, enjoyment or value of neighbouring parcels of land.

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

SDAB Board Members in Attendance: Ms. S. LaPerle; Mr. B. Gibson; Mr. R. Hobson, Mr. L. Pratt

Important Information for the Applicant/Appellant

1. This decision may be appealed to the Alberta Court of Appeal on a question of law or jurisdiction under section 688 of the *Municipal Government Act*, RSA 2000, c M-26.
2. When a decision on a Development Permit application has been rendered by the Subdivision and Development Appeal Board, the enforcement of that decision is carried out by Development & Zoning Services, located on the 2nd Floor, Edmonton Tower, 10111 – 104 Avenue NW, Edmonton, AB T5J 0J4.

NOTE: The City of Edmonton does not conduct independent environmental checks of land within the City. If you are concerned about the stability of this property for any purpose, you should conduct your own tests and reviews. The City of Edmonton, when issuing a development permit, makes no representations and offers no warranties as to the suitability of the property for any purpose or as to the presence or absence of any environmental contaminants on the property.



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Date: August 30, 2019
Project Number: 312622832-002
File Number: SDAB-D-19-130

Notice of Decision

- [1] On August 21, 2019, the Subdivision and Development Appeal Board (the “Board”) heard an appeal that was filed on **July 29, 2019**. The appeal concerned the decision of the Development Authority, issued on July 2, 2019, to approve the following development:

Leave as built an Accessory building (detached Garage, 9.23m x 6.79m).

- [2] The subject property is on Plan 1275HW Blk 3 Lot 10, located at 11542 - 75 Avenue NW, within the (RF1) Single Detached Residential Zone. The Mature Neighbourhood Overlay and the McKernan / Belgravia Station Area Redevelopment Plan apply to the subject property.
- [3] The following documents were received prior to the hearing and form part of the record:
- A copy of the Development Permit application with attachments, proposed plans, and the approved Development Permit;
 - The Development Officer’s written submission; and
 - The Appellant’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] The Presiding Officer outlined how the hearing would be conducted, including the order of appearance of parties, and no opposition was noted.
- [6] The appeal was filed on time, in accordance with section 686 of the *Municipal Government Act*, RSA 2000, c M-26.

Summary of Hearing

i) *Position of the Appellant, Mr. M. Huculak, representing the Belgravia Community League*

[7] Mr. Huculak is concerned about the conduct of the Applicant. Mr. Huculak referred to his written submission and indicated that at a 2016 hearing for a development on the same site, the SDAB-D-15-268 decision read:

“15. *In Dallinga v Calgary (City), 1975 ALTA SCAD 13 (affirmed by the Court of Appeal this year in the Leave to Appeal decision, Dennis McGinn Holdings Ltd. V Brazeau (County), 2016 ABCA 3), the Alberta Court of Appeal recognizes that this Board has the discretion to take the conduct of the Appellant into consideration in making its decision.*”

“20. *The Board approves the proposed development as shown in the approved plans with the same expectation that it applies in all cases, going forward the Appellant will comply with those approved plans during the remainder of construction of the house, and will not be returning to seek a further approval for another "leave as built permit" for any other variance for any element of the building which is not yet in fact built, including in particular overall Height.*”

[8] In his opinion, there is some authority for the Board to look at the conduct of the Respondent and the proposed development.

[9] He has received emails with concerns from residents in the Belgravia neighbourhood regarding how the Respondent is proceeding with the development on the subject site.

[10] There have been concerns with the Respondent’s developments in the past. He referred to his written submission and point No. 7.a that reads:

“The saga continues at 11542 75 avenue where Mr. Chen was observed by a neighbour...to be working out the foundational basis for a garage which looks to be another three car garage within the 400 m zone of the LRT with very little space left between the house he has been building on the lot. [The neighbour] measured the garage outline at 9.5m wide and 7.6m deep. [NOTE: Permit says 9.23m x 6.79m]”

[11] Mr. Huculak received an email from a resident that read:

“When I checked SLIM Maps to see what the building permit for an Accessory building specified, no permit is listed ... only Job No 157837120-011: To construct exterior alterations to an existing Single Detached

House (lowering the height of the second floor and the foundation); and, Job No 157837120-014 are listed.”

[12] He stated that the Respondent was already proceeding with the development without a development permit. Residents were not aware that the Respondent had ever applied for a development permit. Neighbours were concerned that the development was not built correctly.

[13] The Respondent has several properties in Belgravia and he is concerned that the houses he builds will be turned into rooming houses.

[14] Mr. Huculak provided the following information in response to questions by the Board:

- a. In his opinion, the variance required is affecting the use, enjoyment, and value of the neighbouring properties in Belgravia.
- b. In his opinion, a variance of 0.07 metres will have an impact on the neighbourhood. He could not provide any feedback from residents on how a variance of 0.07 metres will impact the neighbourhood.
- c. He reiterated that residents are concerned with the Respondent not following the regulations of the *Edmonton Zoning Bylaw*.
- d. He believes there is a grassed boulevard with trees along the side flank of the subject site.
- e. All of the neighbours he spoke to are within the 60-metre notification radius, except for one property owner that is outside the notification radius.
- f. In his opinion, the use and enjoyment of the adjacent neighbours is a planning reason to appeal the proposed development.
- g. He believes construction started before the development permit was approved.

ii) Position of the Development Officer, Ms. F. Hetherington

[15] The Development Authority did not appear at the hearing and the Board relied on Ms. Hetherington's written submission.

iii) Position of Mr. J. Murphy, Legal Counsel for the Respondent, Geodetic Surveys & Engineering Ltd.

[16] A development permit was approved for an Accessory Building which is a Permitted Use in the RF1 Single Detached Residential Zone.

- [17] The property is for sale and the property owner applied for a compliance certificate for a variance in the flanking side setback which faces 116 Street.
- [18] The north site width is 13.40 metres and the south site width is 13.41 metres, so the deficiency could be less than 2.76 inches.
- [19] The Development Officer determined that the variance would not have an impact on the use and enjoyment of neighbouring properties.
- [20] Mr. Murphy referenced the Alberta Court of Appeal decision, *Newcastle Centre GP Ltd v Edmonton (City)*, 2014 ABCA 295, where the Court found there is a test for a variance. The test related to the use and enjoyment, value, and the amenities of the neighbouring properties and not the feelings of individuals who may feel concerned about a development.
- [21] The subject appeal is filed on a sense of concern that is outside the test of the Board.
- [22] When looking at the subject garage from the street level, it is not visible that there is a deficiency as the 0.07-metre difference on the flanking side yard is imperceptible.
- [23] The Board must consider whether the variance required satisfies the test in section 687(3)(d) of the *Municipal Government Act*. The variance does not impact the neighbouring properties.
- [24] Mr. Murphy stated that some municipalities have a tolerance for a variance written into their Bylaw.
- [25] Mr. Murphy provided the following information in response to questions by the Board:
- a. He confirmed there is a new five-foot high fence along the flanking side property line.
- v) *Rebuttal of the Appellant, Mr. M. Huculak*
- [26] With regard for the test for a variance, he stated that their concern is that test for the use of the variance and that the context does matter. The variance is a change in the setback and is a concern as they are not building according to the approved plans.
- [27] The Development Officer did not contact the neighbouring property owners. Therefore, the Development Officer could not determine if there was an impact on neighbours when making her decision.
- [28] With regard to a tolerance for a variance, he stated that there is no tolerance in the *Edmonton Zoning Bylaw* and there is no reason there should be if the rules are followed.

Decision

[29] 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. This Development Permit authorizes the development of a rear detached Garage (9.23m x 6.79m). The development shall be constructed in accordance with the stamped and approved drawings.
2. The driveway access must maintain a minimum clearance of 1.5m from the service pedestal and all other surface utilities.
3. An Accessory building or structure shall not exceed 4.3m in Height. (Reference Section 6.1 and 50.3(3)).
4. Eave projections shall not exceed 0.46m into required Setbacks or Separations spaces less than 1.2m. (Reference Section 44.1(c) (ii))

ADVISEMENTS:

1. Unless otherwise stated, all above references to section numbers refer to the authority under the Edmonton Zoning Bylaw 12800.
2. A Building Permit is required for any construction or change in use of a building. Please contact the 311 Call Centre for further information.

[30] In granting the development the following variance to the *Edmonton Zoning Bylaw* is allowed:

1. The minimum required (west) flanking Side Setback of 2.68 metres per section 50.3(5)(c) is varied to permit a deficiency of 0.07 metres, thereby decreasing the minimum Side Setback to 2.61 metres.

Reasons for Decision

[31] The proposed development is Accessory to a Permitted Use in the (RF1) Single Detached Residential Zone.

[32] Section 687(3)(d) of the *Municipal Government Act* states:

In determining an appeal, the subdivision and development appeal board

- (d) may make an order or decision or issue or confirm the issue of a development permit even though the proposed development does not comply with the land use bylaw if, in its opinion,
 - (i) the proposed development would not
 - (A) unduly interfere with the amenities of the neighbourhood, or
 - (B) materially interfere with or affect the use, enjoyment or value of neighbouring parcels of land,
 - and
 - (ii) the proposed development conforms with the use prescribed for that land or building in the land use bylaw.

[33] The Board was not presented with any planning reasons that by granting the variance of 0.07 metres to the flanking Side Setback, the proposed development would unduly interfere with the amenities of the neighbourhood, or materially interfere with or affect the use, enjoyment or value of neighbouring parcels of land.

[34] The variance is 0.07 metres and given that the property is fenced and has a sidewalk and boulevard, the Board finds that there is no neighbouring property directly to the west that is impacted as this variance would be virtually indistinguishable for any one passing the subject site.

[35] The Board was provided with a reference to an Alberta Court of Appeal decision, *Dallinga v. Calgary (City)*, 1975 AltaSCAD 13, which dealt with the fact that the SDAB can consider the conduct of an Applicant when making its decision.

The Board has considered the conduct of the Respondent with respect to this specific application and pursuant to an earlier Court of Appeal decision has determined that the conduct of the Applicant in this specific application appears to have not been done on purpose or to circumvent any regulations, it was simply, what appears to be a site measurement issue during the construction phase of the detached garage. The Board notes that save for this incorrect placement of the garage pad the balance of the development fully complied with the regulations of the *Edmonton Zoning Bylaw*.

[36] During the presentation of Legal Counsel for the Respondent, there was some indication that other municipalities have a tolerance for a variance in their Bylaw. The Board notes that variances are dealt with by the Development Authority under section 11 of the *Edmonton Zoning Bylaw* and the Board's test is set out under section 687(3)(d) of the *Municipal Government Act*.

[37] Based on the above, it is the opinion of the Board that the proposed development will not unduly interfere with the amenities of the neighbourhood, nor materially interfere with or affect the use, enjoyment or value of neighbouring parcels of land.

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

SDAB Board Members in Attendance:

Ms. S. LaPerle; Mr. B. Gibson; Mr. R. Hobson, Mr. L. Pratt

Important Information for the Applicant/Appellant

1. This is not a Building Permit. A Building Permit must be obtained separately from Development & Zoning Services, located on the 2nd Floor, Edmonton Tower, 10111 – 104 Avenue NW, Edmonton, AB T5J 0J4.
2. Obtaining a Development Permit does not relieve you from complying with:
 - a) the requirements of the *Edmonton Zoning Bylaw*, insofar as those requirements have not been relaxed or varied by a decision of the Subdivision and Development Appeal Board,
 - b) the requirements of the *Alberta Safety Codes Act*,
 - c) the *Alberta Regulation 204/207 – Safety Codes Act – Permit Regulation*,
 - d) the requirements of any other appropriate federal, provincial or municipal legislation,
 - e) the conditions of any caveat, covenant, easement or other instrument affecting a building or land.
3. When an application for a Development Permit has been approved by the Subdivision and Development Appeal Board, it shall not be valid unless and until any conditions of approval, save those of a continuing nature, have been fulfilled.
4. A Development Permit will expire in accordance to the provisions of section 22 of the *Edmonton Zoning Bylaw, Bylaw 12800*, as amended.
5. This decision may be appealed to the Alberta Court of Appeal on a question of law or jurisdiction under section 688 of the *Municipal Government Act*, RSA 2000, c M-26. If the Subdivision and Development Appeal Board is served with notice of an application for leave to appeal its decision, such notice shall operate to suspend the Development Permit.
6. When a decision on a Development Permit application has been rendered by the Subdivision and Development Appeal Board, the enforcement of that decision is carried out by Development & Zoning Services, located on the 2nd Floor, Edmonton Tower, 10111 – 104 Avenue NW, Edmonton, AB T5J 0J4.

NOTE: The City of Edmonton does not conduct independent environmental checks of land within the City. If you are concerned about the stability of this property for any purpose, you should conduct your own tests and reviews. The City of Edmonton, when issuing a development permit, makes no representations and offers no warranties as to the suitability of the property for any purpose or as to the presence or absence of any environmental contaminants on the property.



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Date: August 30, 2019
Project Number: 311812309-001
File Number: SDAB-D-19-131

Notice of Decision

- [1] On August 21, 2019, the Subdivision and Development Appeal Board (the “Board”) heard an appeal that was filed on July 25, 2019. The appeal concerned the decision of the Development Authority, issued on July 4, 2019, to refuse the following development:

To construct a Single Detached House with an Unenclosed Front Porch, front attached Garage, fireplace and rear uncovered deck (3.66 metres by 3.66 metres)

- [2] The subject property is on Plan 1721535 Blk 3 Lot 22A, located at 7606B - 149 Street NW, within the RF1 Single Detached Residential Zone. The Mature Neighbourhood Overlay applies to the subject property.
- [3] The following documents were received prior to the hearing and form part of the record:
- Copy of the Development Permit application with attachments, proposed plans, and the approved Development Permit;
 - The Development Officer’s written submissions; and
 - The Appellant’s reasons for appeal and written submission; and
 - The Respondent’s written submission.

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 Presiding Officer outlined how the hearing would be conducted, including the order of appearance of parties, and no opposition was noted.
- [6] The appeal was filed on time, in accordance with Section 686 of the *Municipal Government Act*, RSA 2000, c M-26 (the “*Municipal Government Act*”).

Summary of Hearing*i) Position of the Appellant, Mr. P. Rivard:*

- [7] Mr. Rivard's home is located directly across the street from the subject site. He and his wife oppose the variances that have been granted for this development because they are contrary to the traditional character of the neighbourhood and the standard of use, enjoyment and value established by the Mature Neighbourhood Overlay rules.
- [8] The development of larger houses that are sited closer to the street reduces the amount of green space provided in front yards.
- [9] As a homeowner and tax payer, he supports densification and infill as well as the diversity that is a direct result of those changes. However, these developments must be completed in a manner that is respectful of both the current residents and the rules and development regulations adopted by the city.
- [10] It was acknowledged that the views of existing homeowners will differ from those of developers and that is a challenge in determining whether or not a proposed development interferes with the use, enjoyment or value of neighbouring parcels of land. Fortunately, the City engaged in a huge undertaking to establish a proper balance between those views when the development regulations contained in the Mature Neighbourhood Overlay were revisited.
- [11] The City spent hours trying to reach a compromise between developers and residents with the intent to avoid situations like this where new developments require many variances and pit neighbour against neighbour.
- [12] This development permit application is misaligned with the rules of the Mature Neighbourhood Overlay and was submitted seemingly without regard for the Overlay process and without consideration of current residents which forces the current residents into an adversarial process to enforce the protections established for them in the Mature Neighbourhood Overlay.
- [13] It is clear from the developer's request for four variances that there was no attempt to adhere to the development regulations or consider the impact on neighbouring residents.
- [14] The Applicant purchased a vacant lot with clear knowledge that the development regulations contained in the Mature Neighbourhood Overlay applied. They should have ensured that the lot size supported the type of house they wanted to build instead of manipulating the process to meet their own needs.
- [15] He did file an appeal against the development permit that was issued for the house that was built at 7606A – 149 Street which required three variances. However, he withdrew his appeal when a compromise was reached with the developer.

- [16] However, in this case, the Respondent did not have an appetite to contemplate any of his suggested revisions and was only prepared to justify the required variances during their discussions.
- [17] It was his opinion that Applicant is responsible for the construction delays and the loss of the summer building season.
- [18] Street parking will be reduced after this lot is developed.
- [19] The Respondent's written submission was referenced, specifically the statement that "knowing the rules for mature neighbourhoods is irrelevant when you buy vacant land". This statement clearly reflects the fact that the Applicant did not make any attempt to respect the development regulations which has to be considered by the Board.
- [20] It was not the intent of the City to reopen a discussion of the development regulations contained in the Mature Neighbourhood Overlay every time an appeal is filed and variances should only be considered under special circumstances.
- [21] Mr. Rivard provided the following information in response to questions from the Board:
- a) It was his opinion that there is no true hardship to the Applicant in this case. The Applicant created his own hardship by not designing the house according to the lot size.
 - b) The variance required in the minimum rear setback does not impact the use, enjoyment or value of his property. However, he is concerned that if this type of variance is granted, it can be used as a precedence to grant similar variances for future developments.
 - c) Most of the houses along 149 Street are bungalows. There is a treed boulevard located on the west side of 149 Street.
 - d) He acknowledged that the proposed development does not exceed the maximum allowable site coverage but questioned how the site coverage could be increased without requiring larger variances.
 - e) The house on the southern portion of the subdivided lot is fully constructed but the landscaping has not yet been completed.
 - f) The developer of the lot to the south revised the proposed plans to eliminate one of the required variances in response to his concerns and he subsequently withdrew his appeal.
 - g) It is his preference to have the house sited as far back on the lot as possible because of the height.

- h) His primary concern is that developers completely ignore the development regulations without considering the impact on neighbouring residents and abuse and manipulate the process to meet their own needs.

ii) Position of the Development Officer, Ms. E. Lai:

- [22] Ms. Lai did not attend the hearing but provided a written submission that was considered by the Board.

iii) Position of the Respondents, Mr. S. Sandhu and Mr. M. Sandhu:

- [23] The lot was not purchased with the intent of building a house that would destroy the neighbourhood.
- [24] One variance is no longer required because the height of the deck has been reduced to less than two feet.
- [25] The variance required for the front eave projection will match the front eave projection on the house that was built on the adjacent lot to the south and will preserve the streetscape to be maintained.
- [26] The original plan was to build a house that was 2362 square feet in size but the house has been reduced to 2182 square feet by removing an office on the main floor and a bathroom on the second floor. The slope of the roof has been decreased from 9/12 to 6/12 even though the house with a 9/12 pitch complied with the maximum allowable height requirement. The proposed bedroom on top of the garage has been moved forward in order to make the garage less visible. The house has been sited as far forward on the lot as possible.
- [27] The Appellant lives across the street from the subject site and will not be affected by the variance required in the rear setback. The majority of infill houses in this neighbourhood are being constructed with 10 feet ceilings on each storey. The height of the ceilings and the roof pitch has been reduced for this house in consideration of the neighbours and to compromise for the variance required in the rear setback. Building a house with 10 feet ceilings could have been done without a variance and would have had a much more drastic impact on the Appellant.
- [28] The Appellant did not contact him regarding the variances or setbacks during the 21 day community consultation period even though his contact information was included on the letter mailed to affected neighbours by the City or during the four week appeal period. He contacted the Appellant shortly after the appeal was filed in an attempt to set up a meeting to review the proposed plans. He was advised by the Appellant that he would prefer to go to the City to view them.

- [29] The house that has been developed on the immediately adjacent lot to the south received similar variances.
- [30] The requested variances do not unduly interfere with the amenities of the neighbourhood or affect the use, enjoyment or value of neighbouring parcels of land. In addition, they will not impact the existing streetscape or parking.
- [31] Mr. Sandhu provided the following information in response to questions from the Board:
- a) None of the other neighbours have expressed any concern about the proposed development.
 - b) It was challenging to design a house that did not exceed the maximum allowable site coverage requirement.

iv) Rebuttal of the Appellant:

- [32] Mr. Rivard did not have anything to add in rebuttal.

Decision

- [33] The appeal is **DENIED** and the decision of the Development Authority is **CONFIRMED**. The development is **GRANTED** as approved by the Development Authority.

Reasons for Decision

- [34] Single Detached Housing is a Permitted Use in the (RF1) Single Detached Residential Zone.
- [35] The Board considered the four variances required for the proposed development and granted by the Development Authority. Specifically, a deficiency in the minimum required distance from the House to the rear lot line, that being 40 percent of the Site Depth; an excess in the projection of the rear eaves of the house to the rear lot line; an excess in the projection of the front eaves to the front property line; and an excess in the maximum allowed projection of a Platform Structure into the rear yard.
- [36] The Board agrees with the decision and the reasons for the decision rendered by the Development Authority to approve the development and grant the required variances for the following reasons:

- a) The primary reason for appeal was that the proposed development with the required variances is inconsistent with the intent and essence of the Mature Neighbourhood Overlay. The appeal was filed because it was the Appellant's opinion that the proposed development does not respect the rules and regulations adopted by the City or neighbouring property owners.
 - b) Based on the evidence provided by the Appellant, who resides east of 149 Street, across the street from the subject site, he did not have any specific concerns about the requested variances. In particular, the variances in the Rear Setback requirements will not have any impact on the use, enjoyment or value of his property.
 - c) The Board agrees with the decision and reasons of the Development Authority that granting the variances is appropriate given that the subject site does not have lane access and front vehicular access is characteristic of the block. In this case, it is more important to maintain consistency of the blockface/streetscape when it is difficult to comply with both the Front and Rear Setback requirements at the same time. The Rear Setback deficiency subsequently triggers the rear eave Projection and Platform Structure deficiencies. Eaves are considered as an architectural feature that enhances the aesthetics appearance of the building and provides proper drainage function to the principal building.
 - d) The Board also notes that the subject site is not wide enough to support the development of a driveway for a rear detached garage.
 - e) No letters of objection were received from any of the other affected property owners and no one else attended the hearing in opposition to the proposed development.
 - f) Sufficient planning reasons were not provided to persuade the Board to reconsider the decision of the Development Authority.
- [37] Based on all of the above, it is the opinion of the Board, that the proposed development will not unduly interfere with the amenities of the neighbourhood nor materially interfere with or affect the use, enjoyment or value of neighbouring parcels of land.

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

SDAB Board Members in Attendance: Ms. S. LaPerle; Mr. B. Gibson; Mr. R. Hobson, Mr. L. Pratt

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 2nd Floor, Edmonton Tower, 10111 – 104 Avenue NW, Edmonton, AB T5J 0J4.
2. Obtaining a Development Permit does not relieve you from complying with:
 - a) the requirements of the *Edmonton Zoning Bylaw*, insofar as those requirements have not been relaxed or varied by a decision of the Subdivision and Development Appeal Board,
 - b) the requirements of the *Alberta Safety Codes Act*,
 - c) the *Alberta Regulation 204/207 – Safety Codes Act – Permit Regulation*,
 - d) the requirements of any other appropriate federal, provincial or municipal legislation,
 - e) the conditions of any caveat, covenant, easement or other instrument affecting a building or land.
3. When an application for a Development Permit has been approved by the Subdivision and Development Appeal Board, it shall not be valid unless and until any conditions of approval, save those of a continuing nature, have been fulfilled.
4. A Development Permit will expire in accordance to the provisions of Section 22 of the *Edmonton Zoning Bylaw, Bylaw 12800*, as amended.
5. This decision may be appealed to the Alberta Court of Appeal on a question of law or jurisdiction under Section 688 of the *Municipal Government Act*, RSA 2000, c M-26. If the Subdivision and Development Appeal Board is served with notice of an application for leave to appeal its decision, such notice shall operate to suspend the Development Permit.
6. When a decision on a Development Permit application has been rendered by the Subdivision and Development Appeal Board, the enforcement of that decision is carried out by the Sustainable Development Department, located on the 2nd Floor, Edmonton Tower, 10111 – 104 Avenue NW, Edmonton, AB T5J 0J4.

NOTE: The City of Edmonton does not conduct independent environmental checks of land within the City. If you are concerned about the stability of this property for any purpose, you should conduct your own tests and reviews. The City of Edmonton, when issuing a development permit, makes no representations and offers no warranties as to the suitability of the property for any purpose or as to the presence or absence of any environmental contaminants on the property.