



**EDMONTON  
TRIBUNALS**

*Subdivision &  
Development  
Appeal Board*

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Date: September 8, 2016  
Project Number: 181519731-007  
File Number: SDAB-D-16-197

**Notice of Decision**

- [1] On August 24, 2016, the Subdivision and Development Appeal Board heard an appeal that was filed on **July 28, 2016**. The appeal concerned the decision of the Development Authority, issued on July 20, 2016, to refuse the following development:

**construct a Single Detached House with front veranda, fireplace, rear uncovered deck (2.44m x 5.18m) and Basement development (NOT to be used as an additional Dwelling).**

- [2] The subject property is on Plan 1621085 Blk 60A Lot 2A, located at 13308 - 106A Avenue NW, within the RF2 Low Density Infill Zone. The Mature Neighbourhood Overlay applies to the subject property.
- [3] The following documents were received and form part of the record:
- A Development Permit Application, including the plans of the proposed Development;
  - The refused Development Permit;
  - The Development Officer's written decision;
  - An on-line response from an affected property owner; and
  - The Appellant's submission that included a Shade Impact Assessment.
- [4] The following exhibits were presented during the hearing and form part of the record:
- Exhibit A – A written submission from the affected property owner who provided the on-line response;
  - Exhibit B – A list of property listings provided by the Appellant's Realtor; and
  - Exhibit C – A copy of the Appellant's Community Consultation letter that was sent to the property owner who provided Exhibit A.

**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 Board determined the appeal was filed on time, in accordance with section 686 of the *Municipal Government Act*, RSA 2000, c M-26.
- [8] The Presiding Officer confirmed that the proposed Accessory Building does not form part of this Appeal.

**Summary of Hearing***i) Position of the Appellant, Mr. R. Nault (UrbanAge Homes)*

- [9] Mr. Nault referred to the Plot Plan in his submission and indicated that the rear building envelope of the proposed development aligns with the rear building envelope of the existing House to the east (Lot 1).
- [10] Mr. Nault introduced Mr. Frentz of Generate Energy who was retained by UrbanAge Homes to conduct a Shade Impact Assessment of the subject site and Lot 1.
- [11] Mr. Frentz referred to the Shade Impact Assessment that was provided to the Board prior to the hearing and explained how it was conducted.
- [12] Based on the results of the Assessment, it was his opinion that the shading impact difference between the two variances and compliance with those regulations of the *Edmonton Zoning Bylaw* were relatively small.
- [13] He indicated that existing structures on Lot 1, such as the detached Garage and the large rear tree overlap the shade.
- [14] It was Mr. Nault's opinion, that reducing the Site Coverage and the Rear Setback would not allow him to design a 3-bedroom House above grade. It was his opinion, a 2-bedroom House would not be market friendly, it would not fit in with the context of the neighbourhood and it would not be as family oriented as a 3-bedroom House would be.
- [15] Mr. Nault introduced Mr. Elwenni, a Realtor for UrbanAge Homes.
- [16] Mr. Elwenni referred to *Exhibit B* and reviewed the real estate listings of 2-bedroom and 3-bedroom infill homes in Mature Neighbourhoods of the city.

- [17] It was his opinion, investing in selling 2-storey, 2-bedroom infill housing is risky and this type of housing does not sell and does not attract families who want to live in the core neighbourhoods.
- [18] Mr. Nault indicated that he has tried to appease the situation and find common ground with the property owner of Lot 1.
- [19] He referred to a photograph of a large tree on the southeast corner of his Front Yard. Instead of cutting it down to allow more room to develop the Front Yard and replace it with three new large trees, they will leave it because it provides shade and amenities for the family of Lot 1.
- [20] He indicated that he offered to make the main floor area smaller to reduce the massing effect even though it would not change the Site Coverage.
- [21] He referenced his elevation drawings and clarified that their original plan was to create a monolithic roof pitch. To alleviate the massing concerns from the property owner of Lot 1, they redrafted the design to create a lower roof pitch and resubmitted their application to the City. It was his opinion, that it was a good compromise for his neighbour.
- [22] They considered moving their development further into the Rear Yard to appease the concerns of the property owner of Lot 1, but they determined it would hurt their property more than Lot 1.
- [23] With regard to the Community Consultation, they created letters with renderings and canvassed the neighbourhood so adjacent property owners could visually see what they were proposing. They did this process a second time after they redesigned their roof pitch to alleviate massing concerns.
- [24] Mr. Nault indicated that every neighbor they spoke with was in support of their proposed Single Family House. He indicated most neighbours preferred single family homes over duplexes (Semi-detached Housing). It was his opinion, this development will enhance the neighbourhood.
- [25] With regard to the program used to conduct the Shade Impact Assessment and its results, Mr. Frenz indicated they used SketchUp, a program in Google Earth.
- [26] The Presiding Officer clarified to the Appellant that the Board considers Planning issues and does not consider market demand and value.
- [27] With regard to a question from the Board, Mr. Nault confirmed that designing a 3-bedroom House above Grade within the allowable Site Coverage could be possible.

- [28] Mr. Nault clarified that their business pre-design campaigns are more challenging than pre-construction campaigns because the Mature Neighbourhood Overlay is always changing. He confirmed they purchased the lot first before determining if their proposed design would comply with the *Edmonton Zoning Bylaw*.
- [29] He clarified that he knew their permit application would be a Class B Development when they purchased the lot.
- [30] With regard to the Rear Setback variance, it was his opinion that the adjacent Schoolyard would provide Amenity space that was taken from the variance.
- [31] He confirmed the subject site backs onto 107 Avenue and there are no neighbours directly behind.
- [32] He confirmed that the existing tree on the southeast corner of his lot prevents the house from moving forward to comply with the Rear Setback, given the current design.
- [33] He clarified that the Plot Plan of the subject site in his submission is the same as the Development Officer's stamped Refusal. However, the outline of the House on Lot 1 was made in error by the Surveyor and the revised Plot Plan now accurately shows the footprint of that house.

ii) *Position of the Development Officer, Mr. G. Robinson*

- [34] He reviewed his written submission and it was his opinion, there was no hardship to comply with the *Edmonton Zoning Bylaw*.
- [35] He confirmed that the Community Consultation provided by the Appellant was conducted April 15 to May 6. There was an error from the Surveyor of the block face average and a second Community Consultation was conducted May 13 to June 3.
- [36] It was his opinion, the Appellant complied with the Community Consultation requirements as per section 814.3(24).
- [37] He clarified that the conditions of approval in his written submission are *Edmonton Zoning Bylaw* regulations. He also clarified that Advisement (V) is a Transportation Services regulation.
- [38] The Presiding Officer confirmed with the parties in attendance that there was no objection to these conditions if approved.
- [39] With regard to questions from the Board, Mr. Robinson confirmed that the proposed Front Setback complies with the *Edmonton Zoning Bylaw*.

- [40] He confirmed that a proposed Semi-detached House on the subject site would not meet any of the locational requirements as per section 120.4(4) of the *Edmonton Zoning Bylaw*.
- [41] With regard to existing trees on the subject site, he clarified that conserving trees is not in the *Edmonton Zoning Bylaw* and therefore the existing tree in the Front Yard would not be considered a hardship in complying with the Rear Setback regulation. However, property owners are encouraged to preserve mature trees.
- [42] With regard to the Rear Setback, it was his opinion that if the large blank wall of the side elevation was smaller, it would reduce the massing effect.
- [43] He confirmed that the Appellant did change the roof design to reduce the massing effect.
- [44] With regard to the Shadow Impact Assessment, he confirmed that he received the document yesterday and did not get a chance to review the technical veracity of the report.
- [45] It was his opinion that this type of study is usually conducted by a professional Engineering firm. He did not see an Engineer's stamp on this Assessment.
- [46] He clarified that he considers both Privacy issues and Massing when reviewing side elevations.
- [47] He clarified he considers existing trees, landscaping, fencing, architectural details, roofline design, and the break-up of the Principal and Accessory Building on the subject site when reviewing the massing of a proposed development and can add conditions to mitigate concerns. However, he does not consider these items on adjacent sites, as they are not part of the application.

*iii) Position of the affected property owner of Lot 1, Mr. R. Orchard*

- [48] He confirmed he received the first notice of this proposed development on April 15, 2016.
- [49] He clarified that he does not outright oppose everything infill and understands the benefits of infill development for the city and understands increased density comes with compromise.
- [50] He reviewed the letter he received about the proposed development by the Appellant. (*Exhibit C*).
- [51] He reviewed the photographs that were submitted and showed that the proposed development would be twice as tall as his House.

- [52] Based on his calculations, it was his opinion that based on the side wall renderings, the proposed development will be 3 times longer than his House, which will significantly affect the overall massing toward his property.
- [53] It is his opinion that the variances are not necessary and there are alternatives to what can be built on the subject site.
- [54] In his opinion, the 7 to 8 foot Rear Setback variance is not in scale to the rest of the neighbourhood and the proposed long and high wall will incur a negative hardship on his property.
- [55] It was his opinion, the proposed wall would dwarf his property and if it can be designed smaller, it should.
- [56] He clarified that his primary concern is the overall size of the side wall and the Massing effect. He clarified he is more concerned about the subject site providing more Front Setback space than Rear Setback space.
- [57] He clarified that his property abuts 107 Avenue and part of Groat Road which can make his backyard noisy; therefore the Front Yard is used primarily for their Amenity space.
- [58] It was his opinion, a fair compromise would be to move the building envelope further away from the Front Lot Line.
- [59] With regard to the Shade Impact Assessment, he indicated it was irrelevant to his concerns.
- [60] With regard to the existing mature tree that overhangs into his yard, he confirmed that it barely flows over into his property, it is very thick and healthy, and is at approximately half its life expectancy.
- [61] In closing, he wants to see a new family next door but the proposed development is out of scale with their House and too large for the lot size.
- [62] With regard to questions from the Board, he clarified that moving the building envelope further into the Rear Setback would not comply with the Mature Neighbourhood Overlay, but he determined it would be more beneficial for his property of the subject site had a larger Front Yard.
- [63] He clarified he would still like the rear of the proposed development to be reduced by 4 feet in length.

*iv) Rebuttal of the Appellant*

- [64] Mr. Nault confirmed that the July 8, 2016 Plot Plan that was stamped Refused by the Development Officer is the correct Plot Plan. He clarified that the August 22, 2016 Plot Plan that was referenced was the same Plot Plan as July 8, 2016, but it included a more accurate outline of the House on Lot 1.
- [65] He reiterated that he understood Mr. Orchard's concerns and the sensitivities of the community and they tried to find common ground and compromise certain aspects of the development.
- [66] He indicated that Mr. Orchard preferred that they undo the Subdivision and put one House or a duplex (Semi-detached House) on the previous site.
- [67] It was his opinion the Rear Setback was not abnormal compared to the rest of the neighbourhood.
- [68] He confirmed that he is willing to preserve existing landscaping and install further landscaping.
- [69] He reiterated that no other property owner in the area was opposed to their development but confirmed that Mr. Orchard is the most affected neighbour.
- [70] It was his opinion, that the Side Yard between both his property and Mr. Orchard's property would not be used as Amenity space.
- [71] With regard to the large blank wall, he indicated that they considered providing more cantilevers into the Side Yard, but it would create further variances.
- [72] It was his opinion, the lack of windows on the side wall increases Privacy for his neighbour.
- [73] The Presiding Officer clarified that the Board was not in the position to consider revised drawings or Site Plans and it would only consider the proposed development and the variances to the *Edmonton Zoning Bylaw*.

**Decision**

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

1. The Height of the principal building shall not exceed 8.6 m (Reference Sections 6.1(49) and 52).
2. The proposed Basement development(s) shall NOT be used as an additional Dwelling. A Secondary Suite shall require a new development permit application.
3. The area hard surfaced for a driveway, not including the area used for a walkway, shall comply with Section 54.6 of the Zoning Bylaw 12800.
4. Except for the hard surfacing of driveways and/or parking areas approved on the site plan for this application, the remainder of the site shall be landscaped in accordance with the regulations set out in Section 55 of the Zoning Bylaw 12800.
5. Landscaping shall be provided on a Site within 18 months of the occupancy of the Single Detached House. Trees and shrubs shall be maintained on a Site for a minimum of 42 months after the occupancy of the Single Detached House (Reference Section 55.2.1).
6. One (1) deciduous tree with a minimum Caliper of 50 mm, Two (2) coniferous trees with a minimum Height of 2.5 m and four (4) shrubs shall be provided on the property. Deciduous shrubs shall have a minimum Height of 300 mm and coniferous shrubs shall have a minimum spread of 450 mm (Reference Section 55.2.1).
7. All Yards visible from a public roadway, other than a Lane, shall be seeded or sodded. Seeding or sodding may be substituted with alternate forms of ground cover, including hard decorative pavers, washed rock, shale or similar treatments, perennials, or artificial turf, provided that all areas of exposed earth are designed as either flower beds or cultivated gardens (Reference Section 55.2.1).
8. All access locations and curb crossings shall have the approval of the City Transportation prior to the start of construction (Reference Section 53(1)). - Rear lane access only.
9. Any component of a stationary mechanical system that emits noise or is designed to emit noise outside of a building that is audible on any Abutting Site in a residential Zone shall be located in a Rear Yard (Reference Section 45.8).
10. Prior to any demolition or construction activity, the applicant must post on-site a development permit notification sign (Section 20.2)



## ADVISEMENTS:

- i.) The applicant is advised that there may be complications in obtaining a Development Permit for a future covered or uncovered deck because of excess in Site Coverage.
  - ii.) Lot grades must comply with the Edmonton Drainage Bylaw 16200. Contact Drainage Planning and Engineering at 780-496-5576 or [lot.grading@edmonton.ca](mailto:lot.grading@edmonton.ca) for lot grading inspection inquiries.
  - iii.) Any future deck development greater than 0.6m (2ft) in height will require development and building permit approvals
  - iv.) Any future deck enclosure or cover requires a separate development and building permit approval.
  - v.) The driveway access must maintain a minimum clearance of 1.5m from the service pedestal and all other surface utilities.
  - vi.) Any hoarding or construction taking place on road right-of-way requires an OSCAM (On-Street Construction and Maintenance) permit. It should be noted that the hoarding must not damage boulevard trees. The owner or Prime Contractor must apply for an OSCAM online at:  
[http://www.edmonton.ca/bylaws\\_licences/licences\\_permits/oscam-permit-request.aspx](http://www.edmonton.ca/bylaws_licences/licences_permits/oscam-permit-request.aspx)
  - vii.) Unless otherwise stated, all above references to "section numbers" refer to the authority under the Edmonton Zoning Bylaw 12800.
  - viii.) An approved Development Permit means that the proposed development has been reviewed against the provisions of this bylaw. It does not remove obligations to conform with other legislation, bylaws or land title instruments including, but not limited to, the Municipal Government Act, the Safety Codes Act or any caveats, restrictive covenants or easements that might be attached to the Site.
- [75] In granting the development, the following variances to the *Edmonton Zoning Bylaw* are allowed:
1. The maximum allowable Site Coverage for a Principal Building of 28 percent (78.32 square metres) as per section 120.4(7)(b) is varied to allow an excess of 4.01 square metres, thereby increasing the maximum allowable Site Coverage for a Principal Building to 30 percent.

2. The minimum required Rear Setback of 14.66 metres as per section 814.3(5) is varied to allow a deficiency of 2.43 metres, thereby decreasing the minimum required Rear Setback to 12.23 metres.

### **Reasons for Decision**

- [76] The proposed development, a Single Detached House is a Permitted Use in the RF2 Low Density Infill Zone.
- [77] In granting the variance to the Rear Setback and Site Coverage, The Board finds these issues are interconnected and grants these variances for the following reasons:
- a. The Board was presented with physical evidence that the north (rear) elevation of the proposed development is almost in line with the existing rear face of the House on Lot 1 to the east. Therefore, the Board finds the projection of the required Rear Setback variance does not protrude significantly beyond the north (rear) wall of Lot 1 to the east.
  - b. The Board notes the proposed development backs north to a rear lane and 107 Avenue. Therefore, there are no property owners to the north that are affected by the proposed development.
  - c. The Board finds that in order to comply with the minimum required Front Setback of the Mature Neighbourhood Overlay, the proposed 9.16 metre Front Setback moves the proposed structure further into the Rear Yard, which lessens the building pocket of the new House.
  - d. The Board notes that if the proposed structure were to be moved further into the Front Yard to lessen the impact of the deficient Rear Yard, it would lead to the removal of the existing large mature tree, which would be detrimental to both the subject site and the property to the east on Lot 1.
  - e. With regard to the submitted Shade Impact Assessment, the Board heard from the affected property owner of Lot 1, who indicated the Assessment was irrelevant given he was more concerned with salvaging the Use of his Front Yard rather than his Rear Yard.
  - f. Based on the location of the subject Rear Yard abutting a public roadway and given two busy thoroughfares (107 Avenue and Groat Road) and based on the evidence that the Lot 1 property owner uses the Front Yard as their desired Amenity space, the Board finds that the proposed development provides 9.16 metres of Front Yard which complies with the Mature Neighbourhood Overlay.
  - g. The Lot 1 property owner indicated that the 2.43 metre deficiency in the Rear Setback increased the Massing Effect of the proposed development. However, the Board finds that the Lot 1 property owner's hope was to offset this affect by decreasing the

south (front) elevation further back, even though the proposed Front Setback complies with the *Edmonton Zoning Bylaw*.

- h. With respect to Massing, the Board considered the Lot 1 property owner's concerns. However, given the north (rear) wall of the proposed development aligns with the north (rear) wall of the existing House on Lot 1, the Board finds the existing window on the (west) side elevation of the House on Lot 1 would look into the same location of the blank wall of the proposed development, regardless whether the Rear Setback was 4 feet or 8 feet.
- i. Although the Lot 1 property owner did not provide any specific concerns to Privacy issues, The Board finds that the proposed development has only one second floor window that faces the existing House on Lot 1 and appears to look upon nothing but the roof of the House on Lot 1. The Board finds that this will help mitigate any future Privacy concerns that may arise.

[78] Section 814.1 of the Mature Neighbourhood Overlay states:

The purpose of this Overlay is to ensure that new low density development in Edmonton's mature residential neighbourhoods is sensitive in scale to existing development, maintains the traditional character and pedestrian-friendly design of the streetscape, ensures privacy and sunlight penetration on adjacent properties and provides opportunity for discussion between applicants and neighbouring affected parties when a development proposes to vary the Overlay regulations.

The Board is satisfied that this proposed development does not increase any Privacy and Sunlight concerns for the neighbourhood. The Board notes that a new 2-Storey development will always have a perceived impact adjacent to an existing 1-Storey House. The Board, when determining if any impact was material, dealt with only the impact of the variance and not the entire structure as the portion that would be fully compliant with any *Edmonton Zoning Bylaw* regulations would exist in any event.

[79] The Board finds that the Community Consultation process was completed and was in full compliance with the *Edmonton Zoning Bylaw*. The Appellant addressed the Massing concerns of the Lot 1 property owner by redesigning the plans and lowering the roofline to change the scale of the development.

[80] Based on the evidence, two rounds of Community Consultation were completed and the process met the requirements of section 814.3(24) of the *Edmonton Zoning Bylaw* as confirmed by the Development Officer. The Board further notes there was no other opposition to the proposed development from adjacent property owners.

[81] Section 120.1 of the (RF2) Low Density Infill Zone states:

The purpose of this Zone is to retain Single Detached Housing, while allowing infill on narrow lots, including Secondary Suites under certain conditions.

Based on the above reasons, the Board is satisfied that this proposed development meets the General Purpose of this Zone.

- [82] While the Board acknowledges there will be some impact on the adjacent property to the east (Lot 1), based on the evidence provided, the Board was satisfied that the portions of the development that required a variance would not have a material impact.
- [83] For the above reasons, 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. Vincent Laberge, Presiding Officer  
Subdivision and Development Appeal Board

Board members present: Mr. I. O'Donnell, Ms. N. Hack, Mr. K. Hample, Mr. A. Peterson

**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*, 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 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.*