

Edmonton Subdivision and Development Appeal Board

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File Number: SDAB-S-15-008

Notice of Decision

This appeal dated July 30, 2015, from the decision of the Subdivision Authority for permission to:

Create separate titles for a Semi-detached Dwelling

On Plan 467KS Blk 8 Lot 28, located at 15811 - 106 Avenue NW, was heard by the Subdivision and Development Appeal Board on August 26, 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 (“MGA”).

The Board heard an appeal of the decision of the Subdivision Authority to refuse an application to create separate titles for a Semi-detached Dwelling, located at 15811 – 106 Avenue NW. The subject Site is zoned RF4 Semi-detached Residential Zone. The subdivision application was refused because it 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:

- A copy of the Subdivision Authority’s file from the Subdivision Authority

The Board heard from Mr. Fredrick Laux, Legal Counsel for the property owner, Anthony Li, who was also in attendance. Mr. Laux provided a written submission (Exhibit “A”), and made the following points in support of the appeal:

1. The purpose of the proposed subdivision is to provide the owner with the option of allowing both of the existing Dwelling units to be owner occupied instead of having both units on one title and using each unit as a rental property.
2. It is easier to sell the Dwelling units if they are on separate title.
3. Semi-detached Housing is a Permitted Use in the RF4 Semi-detached Residential Zone.

4. Mr. Laux provided a copy of the approved development permit for the Semi-detached Dwellings (Exhibit “B”), and reviewed the variances that were granted by the Development Officer.
5. The development permit has been acted upon and both of the Dwelling units have been built.
6. He referenced photographs of the completed development from several different street views to illustrate that the Semi-detached House is aligned with other houses on the block face (Exhibit “C”).
7. The Semi-detached House was constructed in accordance with the approved plans and an Occupancy Permit has been issued (Exhibit “D”).
8. Mr. Laux referenced a copy of the Plot Plan to illustrate that the existing 9.06 metres rear setback was approved when the development permit was issued (Exhibit “E”).
9. At the time of approval, the Development Officer determined that the rear of the lot abutted the lane and the front of the lot abutted the street.
10. According to the requirements of the *Edmonton Zoning Bylaw*, Site depth, not Lot depth has to be considered.
11. The Site depth as shown on the Plot Plan is 45.65 metres. The site includes both of the proposed lots under the proposed subdivision.
12. The Site depth will not change as a result of the subdivision because the site consists of two lots.
13. Mr. Laux referenced two previous decisions of the Board on related matters (Exhibit “E” and “F”).
14. The Board heard an appeal of a subdivision in August 2014. The Subdivision Authority had denied the application because the proposed lots were only 14.8 metres wide.
15. The Board granted the appeal and determined that the Subdivision Authority had improperly used the definition of “lot” and instead of the definition of “site”.
16. A site can include more than one abutting lot. When a site is going to be subdivided it is considered to be one lot and one site prior to the subdivision. The subdivision creates two lots on one site because the lots abut each other.
17. In a 2015 decision, the Board came to a similar conclusion regarding the interpretation of the definition of site and lot. While some zones regulate lot size, some regulate site size.
18. The RF4 Zone regulates Site depth and not Lot depth.
19. In this case, the Site depth of the subject site is 45.65 metres, which exceeds the minimum required Site depth of 30 metres and the Subdivision Authority erred by citing a deficiency. A variance is not required and for that reason alone, the appeal should be upheld.
20. The Subdivision Authority also denied the subdivision application on the basis that it would result in uncharacteristically small lot sizes.
21. In this case, the Site area exceeds the minimum required.
22. This site does fall within the Mature Neighbourhood Overlay but the requirements of the Overlay apply to developments and not subdivisions.
23. In its August 2014 decision, the Board stated that it is inappropriate for the Subdivision Authority to consider development regulations for a proposed subdivision of the same property.
24. Suitability and the impact on neighbouring property owners was considered by the Development Officer who approved and issued the development permit for this site.
25. In this case the Board is being asked to create separate land titles by drawing a line on a map between the two existing Dwelling units. If a variance is required it should be granted

because there would be no impact on neighbouring property owners as a result of the subdivision.

Mr. Laux and Mr. Li provided the following responses to questions:

1. Mr. Li confirmed that application for the subdivision was made in March 2015, after construction was complete.
2. Mr. Li indicated that this was the first Semi-detached Dwelling he has built and there are many steps in the process.
3. In both of the previous decisions submitted to the Board, the subdivision applications were made after the development permit was issued.
4. Separate servicing has been provided for each Dwelling unit through the development process.
5. The property owner does not object to the imposition of a condition regarding the provision of municipal services.
6. Easement agreements will not be required.

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:

- a) Municipal services (water and sewer) must enter each lot in the proposed subdivision through a separate meter.
- b) Any outstanding property taxes must be paid.

Reasons for Decision:

The Board finds the following:

1. The subject Site is located on the southwest corner of 106 Avenue and 158 Street and is to be subdivided into a west lot and an east lot, resulting in two lots.
2. The subject Site was granted a Development Permit by the Development Authority for a Semi-detached House on June 5, 2014.
3. Since then, the development has been constructed and, according to the Appellant, it fully complies with the Development Permit.
4. The Board finds the approved Use, Semi-detached Housing, is a Permitted Use under section 150.2(5) of the *Edmonton Zoning Bylaw* and therefore conforms to the listed Uses in the RF4 Semi-detached Residential Zone as required for subdivision approval under section 680(2)(b) of the *MGA*.
5. The Subdivision Authority refused this application for non-compliance with section 150 of the *Edmonton Zoning Bylaw* and determined it will result in Site depths and lot sizes that are uncharacteristically small when compared to other properties on the blockface.

6. The Board disagrees with the first conclusion of the Subdivision Authority that the proposed subdivision is not in compliance with section 150.4(2) of the *Edmonton Zoning Bylaw* for the following reasons:
 - a. Site and Lot are not interchangeable terms:
 - i. Section 6.1(92) of the *Edmonton Zoning Bylaw* provides “**Site** means an area of land consisting of one or more abutting Lots.”
 - ii. Section 6.1(58) of the *Edmonton Zoning Bylaw* provides “**Lot** means a ‘lot’ as defined under part 17 of the *Municipal Government Act*.”
 - iii. Section 616(m) of the *MGA* provides in part a “lot” means “(v) a part of a parcel of land described in a certificate of title if the boundaries of the part are described in a certificate of title by reference to a plan of subdivision”
 - b. Some Zones regulate Site dimensions while others regulate Lot dimensions for Semi-detached Housing.
 - c. In the RF4 Semi-detached Residential Zone, section 150.4(2) of the *Edmonton Zoning Bylaw* requires a minimum Site depth of 30.0 metres for Semi-detached Housing.
 - d. Here the Site for the Semi-detached Residential units encompasses the entire original Lot, which will become the new subdivided abutting Lots. Therefore, while the subdivision may ultimately result in smaller Lots, the Site complies with all of the regulations listed in section 150.4(2)(a) through (d) of the *Edmonton Zoning Bylaw*.
7. The Board accepts the submission of the Appellant respecting Site depth. Namely, the Site depth of the subject Site is 45.65 metres, which exceeds the minimum required Site depth of 30 metres and the Subdivision Authority erred by citing a deficiency.
8. The Board also finds that while this type of subdivision on Corner Lots while not characteristic of the blockface, is characteristic of other Corner Lots in the area and more generally in the City of Edmonton.
9. If the Board is incorrect with respect to the first decision of the Subdivision Authority and the proposed subdivision is not in compliance with section 150.4(2) of the *Edmonton Zoning Bylaw*, then the Board would nonetheless approve the subdivision for the following reasons:
 - a. This is an appeal under section 678 of the *MGA*.
 - b. Accordingly, the Board’s authority is set out in section 680(2) of the *MGA* which provides in part “the Board hearing the appeal (b) must conform with the uses of land referred to in a land use bylaw... and... (f) may, in addition to other powers it has, exercise the same power as a subdivision authority is permitted to exercise pursuant to this Part or the regulations or bylaws under this Part.”
 - c. 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: the proposed subdivision would 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; and, the proposed subdivision conforms with the use prescribed for that land in the land use bylaw.
 - d. The Board finds that the proposed subdivision meets the test in section 654(2) of the *MGA* for the following reasons:

- i. The proposed subdivision will not unduly interfere with the amenities of the neighbourhood; and
 - ii. Given that Semi-detached Housing is a Permitted Use in the RF4 Zone, the proposed subdivision conforms with the use prescribed for that land in the land use bylaw.
 - iii. Subdividing the Site into two separate Lots, given that the Semi-detached Housing Permitted Use has been approved and constructed, will have no impact on the neighbourhood.
5. Based on his own admission, the Board finds that the Appellant is very aware of and agreeable to the imposition of conditions above and has confirmed they are met.
6. The Board notes that there was no neighbourhood opposition to this Appeal.
7. Based on the above, the Board finds that the proposed subdivision would 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.
8. Notwithstanding the foregoing, the Board notes that the Appellant constructed the proposed development without having first sought subdivision of the Lands on which the proposed development was to be constructed. This Board states that it would not be estopped from denying an appeal in the future should a similar situation arise with facts which did have a material impact upon an affected party.

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.



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