

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

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**SDAB-D-15-195**

Application No. 167396237-002

An appeal by Romana Latenko VS Highstreet Crystallina Apartments Ltd. to construct 3 Apartment Housing buildings (184 Dwellings) with underground parkades and an Accessory Building (amenity building) Plan 1224595 Blk 4 Lot 1, located at 17904 – 78 Street NW, was **TABLED TO SEPTEMBER 23 OR 24, 2015.**

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Date: September 9, 2015  
Project Number: 175733121-001  
File Number: SDAB-D-15-196

## **Notice of Decision**

This appeal dated August 2, 2015, from the decision of the Development Authority for permission to:

Construct an over height fence (2.44m in Height) on the interior side yard

on Plan 8022148 Blk 3 Lot 12, located at 17131 - 96 Street NW, was heard by the Subdivision and Development Appeal Board on August 27, 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 686 of the *Municipal Government Act*, R.S.A 2000, c. M-26.

The Board heard an appeal of the decision of the Development Authority to refuse an application to construct an over height fence (2.44m in Height) on the interior side yard, located at 17131 - 96 Street NW. The subject Site is zoned RPL Planned Lot Residential Zone.

The development permit was refused due to an excess in the maximum allowable fence Height in a Residential Zone not extending beyond the foremost portion of the principal building abutting the Front Yard; and the fence is not located along a public roadway nor an incompatible adjacent land use. It is the opinion of the Development Authority that the proposed fence Height is not characteristic of the neighbourhood.

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

- A written submission received from Sustainable Development on August 27, 2015; and
- Two on-line responses; one indicating a neutral position to the proposed development and one in opposition to the proposed development.

The Board heard from Ms. Langevin and Mr. Langevin, the Appellants, who made the following points:

1. They would like to construct a fence to keep the dog next door out of their property.
2. They are concerned that the dog will jump over the fence and a higher fence will eliminate this concern.
3. They provided the Board with photographs showing of the existing fence, the shed on their property, and the neighbouring shed, marked "Exhibit A".
4. They would like to construct a chain link fence rather than a wood fence.
5. In their opinion, an eight-foot fence is no different than the neighbours shed, which is eight feet high.
6. They do not want an eight-foot high fence in the Front Yard.
7. An eight-foot high fence will address their safety concerns.

In response to questions by the Board, Ms. Langevin and Mr. Langevin provided the following information:

1. They have lived in this house for 11 years.
2. They confirmed that the eight-foot high fence will stop at the back of the lean-to on the subject Site.
3. They are willing to install privacy slats on the chain link fence to address privacy concerns.

The Board then heard from Ms. Honcharik, representing Sustainable Development, who answered questions by the Board. Ms. Honcharik provided the following information:

1. She could not confirm if the eight-foot high shed on the neighbouring property had a development permit.
2. In her opinion, an eight-foot high fence is not characteristic of the neighbourhood.
3. She refused the proposed development based on the regulations of the Edmonton Zoning Bylaw.
4. Safety concerns need to be dealt with by Community Standards.
5. She referred to the Site Plan, marked "Exhibit B", and clarified that the two feet difference in Height is only to the back of the lean-to.
6. She stated that the shed on the neighbouring property is not an issue before the Board.
7. The Appellants could install two feet of lattice or plexi-glass on the top of the fence.
8. Even if the proposed development included two feet of lattice or plexi-glass, she would have refused the proposed development.
9. If the Board approves the proposed development, a condition could be imposed that the Appellant will add two feet of lattice on the top of the fence.

In rebuttal, Ms. Langevin and Mr. Langevin made the following points:

1. The Site Plan marked as "Exhibit B" is not correct. They confirmed that the eight-foot fence will not go farther than the back of the lean-to.

2. They would prefer to have an eight-foot chain link or wood fence rather than adding lattice to the top of the fence.

**Decision:**

The appeal is ALLOWED IN PART and the decision of the Development Authority is VARIED. The development is GRANTED with the following changes:

The development is subject to the following conditions:

1. The location of the eight foot portion of the fence shall begin at the east rear property corner for approximately 65 feet west to the back of the existing lean-to on the subject Site.
2. The eight foot high fence shall be constructed of solid wood, which is typical of other fences in the neighbourhood.

In granting the development, the following variances to the *Edmonton Zoning Bylaw 12800* are allowed:

1. Section 49(3) states the following:

A fence, wall, or gate on a Site in a Residential Zone shall be less than or equal to 1.85 m in Height, measured from the general ground level 0.5 m back of the property line of the Site on which the fence, wall, or gate is to be constructed, for the portion of the fence, wall, or gate that does not extend beyond the foremost portion of the principal building abutting:

- a. the Front Yard, or
- b. Side Yard abutting a public roadway other than a Lane.

The proposed fence is 2.44 metres in Height, which is 0.59 metres taller than the maximum allowable fence Height in a Residential Zone not extending beyond the foremost portion of the principal building abutting the Front Yard. A relaxation of 0.59 metres of the maximum allowable Height is granted.

**Reasons for Decision:**

The Board finds the following:

1. The proposed development is Accessory to a Permitted Use in the RPL Planned Lot Residential Zone.
2. The Board accepts the submission of the Appellant that there may be safety issues if a six foot fence was constructed.
3. Based on the evidence submitted, the Board finds that the safety concerns of the Appellant are planning related concerns.
4. Based on photographs submitted in “Exhibit A”, there are Accessory structures located on the most affected neighbouring property to the north that are in close proximity to the fence line on the subject Site. The Accessory structures appear to be higher than the existing six foot high fence.
5. Based on the photograph evidence, the condition of the current fence is in need of repair.
6. The Board was not provided with sufficient evidence by the Development Authority about how the incremental increase in Height of 0.59 metres would materially or adversely affect neighbouring properties.
7. The Board finds that by restricting the length of the eight-foot high fence, the variance of 0.59 metres in Height will be mitigated by the existing shed(s) on the neighbouring property.
8. The excess in fence height will be mitigated by the requirement that the fence be constructed of solid wood, making it compatible with existing fencing in the area.
9. 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 will it materially interfere with or affect the use, enjoyment or value of neighbouring parcels of land.

**Important Information for 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*, RSA 2000, c S-1;
  - c) the requirements of the *Permit Regulation*, Alta Reg 204/2007;
  - d) the requirements of any other appropriate federal, provincial or municipal legislation; and
  - 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 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.*

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

CC: