

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

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**SDAB-D-15-184 / 185 / 186 / 187 / 188 / 189**

Application No. 174848500-(001 to 006)

The appeals regarding the Orders to Cease the operation of the ‘Non-accessory Parking’ and completely prohibit vehicular access to the sites with barricades on Plan I23A Block 166 Lots 6 to 11 located at 11120 / 22 / 24 / 32 – 86 Avenue NW have been WITHDRAWN

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Date: September 11, 2015  
Project Number: 174791338-001  
File Number: SDAB-D-15-194

### **Notice of Decision**

This appeal dated August 3, 2015, from the decision of the Development Authority for permission to:

Construct a 1.83 m tall fence in the flanking Side Yard (facing 154A Street NW) of an existing Single Detached House between the south Rear Lot Line and the detached Garage, and from the detached Garage to the Single Detached House

on Plan 264RS Blk 14A Lot 4, located at 15423 - 78 Avenue 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 Chair 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*, RSA 2000, c M-26.

The Board heard an appeal of the decision of the Development Authority to approve an application to construct a 1.83 m tall fence in the flanking Side Yard (facing 154A Street NW) of an existing Single Detached House between the south Rear Lot Line and the detached Garage, and from the detached Garage to the Single Detached House. The subject site is located at 15423 – 78 Avenue NW and is within the RF1 Single Detached Residential Zone and the Mature Neighbourhood Overlay.

The development permit application was approved subject to conditions and with a variance granted to the maximum allowable height of a fence as per section 49.4(b) of the *Edmonton Zoning Bylaw* and was subsequently appealed by an adjacent property owner.

Prior to the hearing the following information was provided to the Board:

- A written submission from the Appellant received on August 3, 2015
- A written submission from the Development Authority received on August 24, 2015
- A copy of the Development and Building Application information submitted through our on-line system

The Board heard from Ms. A. Cotton and Mr. D. Manning, Appellants, who provided the following information:

1. They have lived on this mature, quiet residential street for 9 years. Many people walk dogs and children ride bikes on the sidewalks.
2. They are primarily concerned about safety when backing out of their driveway. The proposed fence will extend beyond the front of their neighbour's garage, impeding the visibility of the sidewalk. They demonstrated their concerns by showing a set of photographs (Exhibit "A") showing the current driveway and how the proposed fence will affect their visibility.
3. Although there has never been a fence installed they understand the need for privacy. However, they request that the fence extending beyond the Applicant's garage not exceed the allowed height of 1.2 metres (4 feet).
4. There are no other fences built into the front yards of any other properties on the street.
5. Two neighbours across street also have concerns about the look of a 6 foot fence in the front yard.

They provided the following responses to questions:

1. They prefer that the proposed fence not extend beyond the front of the Applicant's garage; if it does they request that the portion extending beyond the garage be stepped down to 1.2 metres (4 feet).
2. Although the Development Officer's aerial photo shows clear sight lines they would feel safer if they could see down the street when backing up their vehicles.
3. One of their submitted photos illustrates the planting that goes to the end of the adjacent property to the south. Their view of the street is not impeded as they can see through the trees.
4. They are aware that a 6 foot tall fence is permitted to the end of the garage. They are concerned about the 6 foot tall portion that extends beyond the garage.

The Board heard from Mr. B. Liang, representing the City of Edmonton Sustainable Development Department, who provided the following responses to questions:

1. A Development Permit is required for any portion of the fence that extends beyond the side of a house and is above 1.2 metres (4 feet).
2. To grant a variance he would need to be satisfied that the fence would not unduly interfere with the amenities of the neighbourhood or materially interfere with or affect the use, enjoyment or value of neighbouring properties as per section 11.3 of the *Edmonton Zoning Bylaw*.
3. The Development Officer considered the following factors when granting the variance:
  - a. The subject property is a corner lot. It is very common for corner lots to have side yard fences to enhance the size of their private amenity area.
  - b. He considered the sight lines and visual triangles as per Attachment 2 of his submission. This consideration arises mostly with respect to residential streets.

4. When backing out of a garage it is standard practice to stop and shoulder check prior to crossing the sidewalk. He feels there would be a clear view of the street from the end of the Appellant's driveway.
5. Under section 49 of the *Edmonton Zoning Bylaw*, the applicant could build a 1.2 metre (4 foot) high fence to the east side lot line along the south rear lot line. They are not building out that far.

The Board heard from Ms. L. Dennie and Mr. B. Dennie, Respondents, who provided the following information:

1. Their initial landscaping design proposed putting a 6 foot fence much closer to the east side lot line. They chose to reduce the length of the fence to accommodate their neighbour's sight lines from their driveway.
2. They are seeking to maximize their back yard private space.
3. They agreed with the Development Officer's statements about the need to shoulder check when backing out of a driveway.
4. They submitted a set of photos (Exhibit "B") which illustrate the following:
  - a. A 6 foot fence next to a driveway further down the block and the view to the street from that driveway.
  - b. Both Appellant's vehicles parked on their driveway; the vehicle parked on the north side of the driveway would block the sight lines of the second vehicle.
  - c. The proposed fence showing spaces between the boards which provide some visibility through the fence.
  - d. The sight lines of a mock fence in relation to the stick in the ground showing the stick at the end of the proposed fence. The Appellant's photo shows the stick at the centre of the mock fence; therefore a portion of the mock fence is shown as going beyond where the actual fence would end.
5. There were previously two 50 to 60 foot high evergreens along the south rear lot line that would have blocked the view from the Appellant's driveway.
6. The proposed fence would aesthetically fit into the rest of the neighbourhood as there is a range of fence styles in the area.
7. They provided an unsolicited letter of support from a neighbour across the street. (Exhibit "C")

In rebuttal Ms. Cotton and Mr. Manning made the following points.

1. They agree with the sight lines on the Development Officer's aerial photo and that a driver would have to shoulder check prior to crossing the sidewalk. However, they feel their van would have to be backed onto the sidewalk before they could properly see down the street.
2. When the trees were there they had been able to see through them. They will not be able to see through a fence.
3. While they sometimes park their vehicles on the driveway they are always parked in the garage during the winter.

4. The fences in the pictures submitted by the Respondents impeded the visibility of the property owners, not that of their neighbours. Also the fences displayed are in the rear yards.

**Decision:**

The appeal is DENIED and the decision of the Development Authority is CONFIRMED. The development is GRANTED as approved by the Development Authority

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

1. Section 49.4(b) is varied to permit a fence 1.83 metres in height that extends beyond the House into the Side Yard abutting a public roadway (facing 154A Street NW) as shown in the site plan.

**Reasons for Decision:**

The Board finds the following:

1. A fence is Accessory to a Single Detached House which is a Permitted Use in the RF1 Single Detached Residential Zone, section 110.2(4) of the *Edmonton Zoning Bylaw*.
2. Section 49.4(b) of the *Edmonton Zoning Bylaw* allows a Development Officer to grant a permit for a fence up to 1.85 metres for a fence which extends into a Side Yard that abuts a public roadway.
3. The Board is in agreement with the Development Officer's reasons for granting this variance for the following reasons:
  - a. Photographic evidence presented to the Board demonstrated that the proposed location and height of the fence will not significantly impact driving sightlines from the Driveway of the Appellant's property.
  - b. As this is a Corner Lot, the additional height of the fence along a portion of the flanking Side Yard to 1.83 metres will allow the subject site to have a private amenity area. The existence of only a 1.2 metre high fence along the sidewalk that faces 154A Street would create a significant oversight from pedestrians into the private amenity area.
  - c. The impact of the 1.83 metre high fence on the Appellant's property has been significantly mitigated by the fact that the Respondents have set back the fence from the (north) Side Lot Line.
4. The Board finds 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.

**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.*

Ian Wachowicz, Chair  
Subdivision and Development Appeal Board