



**EDMONTON
TRIBUNALS**

*Subdivision &
Development
Appeal Board*

*10019 – 103 Avenue NW
Edmonton, AB T5J 0G9
P: 780-496-6079 F: 780-577-
3537
sdab@edmonton.ca
edmontonsdab.ca*

August 29, 2018

18520 – Stony Plain Road NW
Edmonton, AB T5S 1A8

RE: SDAB-D-18-129/Project No. 278508526-001, to install (1) Minor Digital On-premises Off-premises Freestanding Sign (Edmonton Truck & Auto) at 14211 – Mark Messier Trail NW

The Subdivision and Development Appeal Board (the SDAB) made and passed the following motion on August 29, 2018:

“That SDAB-D-18-115 be **TABLED** to October 3 or 4, 2018, at the written request of legal counsel for the Appellant and with the consent of the Development Officer.”

Reasons For Decision:

1. Mr. R. Noce of Miller Thomson LLP has just been retained by the Appellant and is not available for a hearing on August 29, 2018. He also requires more time to prepare and file his arguments with the SDAB prior to the scheduled hearing date.
2. The Development Officer has consented to the hearing being postponed until October, 2018.

The time and location of the hearing will be provided in future correspondence.

Should you require further information in this regard, please contact the Subdivision & Development Appeal Board Office at 780-496-6079.

Mr. M. Young, Presiding Officer
Subdivision and Development Appeal Board

cc: Development and Zoning Services – Attn: K. Mercier / H. Luke
Mr. R. Noce, Miller Thomson LLP



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Date: September 7, 2018
Project Number: 280570374-001
File Number: SDAB-D-18-130

Notice of Decision

- [1] On August 29, 2018, the Subdivision and Development Appeal Board (the “Board”) heard an appeal that was filed on August 1, 2018. The appeal concerned the decision of the Development Authority, issued July 30, 2018 to refuse the following development:

To construct a Single Detached House with veranda, attached Garage (vehicle access to 111 Avenue), balcony, fireplace, Basement development (NOT to be used as an additional Dwelling), and to demolish a Single Detached House

- [2] The subject property is on Plan 2282AN Blk 1 Lot 13, located at 7706 - Jasper Avenue NW, within the DC1 Direct Development Control Provision.
- [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 refused Development Permit;
 - The Development Officer’s written submissions;
 - Revised plans submitted by the Appellant when the appeal was filed;
 - Written submissions from Legal Counsel for the Appellant; and
 - Online email in support of the proposed development.

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*”).

- [7] The Presiding Officer referenced section 685(4)(b) of the *Municipal Government Act* which states:

That despite subsections (1), (2) and (3), if a decision with respect to a development permit application in respect of a direct control district is made by a development authority, the appeal is limited to whether the development authority followed the directions of council, and if the subdivision and development appeal board finds that the development authority did not follow the directions it may, in accordance with the directions, substitute its decision for the development authority's decision

- [8] Therefore, the Board must determine whether or not the Development Authority followed the directions of Council in refusing this development permit application. The Presiding Officer asked the Appellant to address this matter in his preliminary remarks.

Summary of Hearing

- i) *Position of the Appellant, the property owners, Mr. and Mrs. Johnston and their Legal Counsel, Mr. K. Haldane, Ogilvie LLP:*

- [9] Mr. Haldane referenced page two of the written submission provided by the Development Officer, specifically the opinion that there was no unnecessary hardship or practical difficulty peculiar to the site because of the size and orientation of the lot.

- [10] It was his opinion that the Development Officer considered the general variance power provided in section 11 of the *Edmonton Zoning Bylaw* instead of the specific variance power provided in the Direct Development Control Provision and therefore did not follow the direction of Council.

- [11] Section 11.17.4.11 of the Stadium Station Area Redevelopment Plan states:

The minimum site and yard requirements shall be in accordance with the provisions of Section 140.4, Clauses (6) to (8), of the Land Use Bylaw. Notwithstanding this, the Development Officer may, at his discretion, reduce the minimum yard requirements further where one or more adjacent properties exhibit similar variations from the RF3 District regulations (Section 140, Land Use Bylaw), providing this creates no adverse impact on these properties, in accordance with Section 51.2 of the Land Use Bylaw.

- [12] The variance power provided to the Development Authority pursuant to this section does not require proof of hardship to exercise discretion to vary regulations. Therefore, it is clear that the Development Officer erred by considering the general variance power provided in the *Edmonton Zoning Bylaw* instead of the specific variance power provided in the DC1.

- [13] The Court of Appeal in *Garneau Community League v Edmonton (City)*, 2017 ABCA 374 was referenced. This decision determined that the Board is limited to the variance power provided to the Development Authority and not the general variance power provided in section 687 of the *Municipal Government Act*. Therefore, in this appeal, the Board is limited to the variance power provided to the Development Authority in Section 11.17.4.11 of the Stadium Station Area Redevelopment Plan.
- [14] In this case, one or more adjacent properties have reduced minimum yard requirements and exhibit similar variations from the RF3 District and there is no adverse impact on these properties.
- [15] “Abutting” is a defined term in the *Edmonton Zoning Bylaw* but “adjacent” is not defined. It was his opinion that “adjacent properties” is a broader term that relates to the neighbourhood as a whole. The abutting lots are the lots on either side of the subject site. Therefore, if Council only wanted to consider the lots on either side of a site, Section 11.17.4.11 would have included “abutting” rather than “adjacent”.
- [16] Photographs were referenced to illustrate the houses on the immediately adjacent lots located east and west of the subject site. The house on the lot to the west is less than 7.5 metres high and does not require a 2.0 metre setback. It was his estimation that the side setback complies with the RF3 regulation. The house existing on the lot to the east is more than 7.5 metres high and requires a 2.0 metre setback. It was his opinion that the side setback has not been met but he could not confirm if the variance was granted by the Development Authority or the Board.
- [17] An aerial photograph of the entire neighbourhood was referenced to illustrate that eight houses exceed 7.5 metres in height and therefore do not comply with the side setback requirements.
- [18] The Development Officer may reduce the minimum yard requirements further where one or more adjacent properties exhibit similar variations from the RF3 District regulations providing this creates no adverse impact. The property owner located immediately west of the subject site has provided written support and the neighbour to the east does not oppose the development as long as the site is kept tidy during the construction process. There was no opposition received and no one attended the hearing in objection.
- [19] Mr. Haldane provided the following information in response to questions from the Board:
- a) The initial drawings were revised to reduce the pitch of the roof from 5/12 to 3/12 in an attempt to reduce the overall height. However, even with the revision, the height could not be reduced below 7.5 metres.
 - b) The drawings that were reviewed and stamped refused by the Development Officer are before the Board today.

ii) *Position of Development Officer, Mr. K. Yeung:*

[20] The Development Officer did not attend the hearing but provided a written submission that was considered by the Board.

Decision

[21] 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 **CONDIITONS**:

1. The development shall be constructed in accordance with the stamped and approved drawings.

ADVISEMENTS:

- i) Lot grades must comply with the Edmonton Drainage Bylaw 16200. Contact Drainage Planning and Engineering at 780-496-5576 or lot.grading@edmonton.ca for lot grading inspection and inquiries.
- ii) Any future deck development greater than 0.6 metres (2 feet) in height will require development and building permit approvals.
- iii) Any future deck enclosure or cover requires a separate development and building permit approval.
- iv) The driveway access must maintain a minimum clearance of 1.5 metres from all surface utilities.
- v) 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 OSAM online at: https://ww.edmonton.ca/business_economy/licences_permits/oscam-permit-requestst.aspx
- vi) 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.

[22] In granting the development, the following variances are allowed:

1. The minimum allowable (west) Side Yard of 2.0 metres as per section 140.4(8)(a) of the *Land Use Bylaw* is varied to allow a deficiency of 0.5 metres, thereby decreasing the minimum allowed (west) Side Yard to 1.5 metres.

2. The minimum allowable (east) Side Yard of 2.0 metres as per section 140.4(8)(a) of the *Land Use Bylaw* is varied to allow a deficiency of 0.5 metres, thereby decreasing the minimum allowed (east) Side Yard to 1.5 metres.

Reasons for Decision

[23] Single Detached Housing is a listed Use, pursuant to section 11.17.3.1 of Direct Development Control Provision (DC1 – Bylaw 12800 and 6931).

[24] Section 685(4)(b) of the *Municipal Government Act* states:

That despite subsections (1), (2) and (3), if a decision with respect to a development permit application in respect of a direct control district is made by a development authority, the appeal is limited to whether the development authority followed the directions of council, and if the subdivision and development appeal board finds that the development authority did not follow the directions it may, in accordance with the directions, substitute its decision for the development authority's decision.

[25] Accordingly, the Board cannot interfere with the decision of the Development Authority unless it is satisfied that the Development Authority did not follow the directions of Council. The Development Authority refused this development permit application because the proposed site setbacks are 1.5 metres instead of 2.0 metres.

[26] Section 11.17.4.11 of the Direct Development Control Provision (DC1 – Bylaw 12800 and 6931) states:

The minimum site and yard requirements shall be in accordance with the provisions of Section 140.4, Clauses (6) to (8), of the Land Use Bylaw. Notwithstanding this, the Development Officer may, at his discretion, reduce the minimum yard requirements further where one or more adjacent properties exhibit similar variations from the RF3 District regulations (Section 140, Land Use Bylaw), providing this creates no adverse impact on these properties, in accordance with Section 51.2 of the Land Use Bylaw.

[27] Section 140.4(8)(a) of the Land Use Bylaw states:

Side Yards shall total at least 20 percent of the site width, but the requirement shall not be more than 6.0 metres (19.7 feet) with a minimum Side Yard of 1.2 metres (3.94 feet) except that the minimum Side Yard for buildings over 7.5 metres (24.6 feet) in Height shall be 2.0 metres (6.6 feet).

[28] The proposed house is over 7.5 metres in Height and therefore requires a 2.0 metres Side Yard. However, based on the written evidence provided by the Development Officer,

there was no indication that the special variance power provided in section 11.17.4.11 of Direct Development Control Provision (DC1 – Bylaw 12800 and 6931) was considered. Rather, evidence was provided that a variance was not granted because there was no unnecessary hardship or practical difficulty peculiar to the site.

- [29] Therefore, the Board finds that the Development Officer did not follow the directions of Council by not considering the variance power that was provided.
- [30] In accordance with Court of Appeal decision, *Garneau Community League v Edmonton (City)*, 2017 ABCA 374, the Board is limited to the variance power provided to the Development Authority and not the general variance power provided in section 687 of the *Municipal Government Act*. Therefore, the Board is limited to the variance power provided to the Development Authority in Section 11.17.4.11 of the Stadium Station Area Redevelopment Plan.
- [31] Section 11.17.4.11 provides variance power to reduce the minimum yard requirements further where one or more adjacent properties exhibit similar variations from the RF3 District regulations, providing this creates no adverse impact on these properties. The Board accepts the submission of the Appellant that “adjacent” has a broader meaning than “abutting”.
- [32] Based on a review of the photographic evidence provided, there are several houses that exceed 7.5 metres in Height with side setbacks of less than 2.0 metres located within the area delineated by the Direct Development Control Provision. Therefore, allowing the reduced side setbacks will not create an adverse impact on neighbouring properties. The property owners who reside on the abutting lots located east and west of the subject site are not opposed to the variance required in the side setbacks. The Board also notes that there were no letters of objection received and no one attended in opposition to the proposed development.
- [33] For all of these reasons, the appeal is allowed and the development is granted.



For: Mr. M. Young, Presiding Officer
Subdivision and Development Appeal Board

Board members in attendance:

Mr. B. Gibson, Ms. G. Harris, Mr. A. Peterson, Mr. L. Pratt

c.c. Ogilvie LLP, Attn: Mr. K. Haldane
SPAN Architecture Inc.
City of Edmonton, Development & Zoning Services, Attn: Mr. G. Robinson/Mr. A. Wen

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.



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Date: September 7, 2018
Project Number: 278348922-001
File Number: SDAB-S-18-008

Notice of Decision

- [1] On August 29, 2018, the Subdivision and Development Appeal Board (the “Board”) heard an appeal that was filed on **August 2, 2018**. The appeal concerned the decision of the Subdivision Authority, issued on July 12, 2018 to refuse the following subdivision:

To create two (2) additional single detached residential lots

- [2] The subject property is on Plan 2058HW Blk 25 Lot 7, located at 3645 - 106 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:
- Copy of the refusal of the Subdivision Authority and the tentative plan of subdivision;
 - The Subdivision Authority’s written submissions;
 - The Appellant’s written submissions; and
 - Online responses.

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 the *Municipal Government Act*, RSA 2000, c M-26 (the “*Municipal Government Act*”).

Summary of Hearing*i) Position of the Appellant, Vida Nova Homes*

- [7] Mr. T. Fernandes appeared on behalf of Vida Nova Homes. He was accompanied by Mr. J. Seitz of Remax Elite.
- [8] This is the only 75 foot wide lot on the block. The rest are all 50 foot wide lots which could potentially be split into two 25 foot wide lots. Mr. Fernandes does not understand how splitting a 75 foot wide lot into three 25 foot lots is any different than splitting a 50 foot wide lot into two 25 foot lots.
- [9] Mr. Fernandes feels he was given poor advice when he applied for re-zoning. His end goal was always to create three lots.
- [10] Mr. Seitz reviewed their PowerPoint presentation:
- (1) He referred to comparable 75 foot wide lots in the vicinity which were divided into three 25 foot lots. One of the lots was zoned RF1 Single Detached Residential Zone when subdivided (3810 – 111 Avenue NW) and the other was rezoned from RF1 Single Detached Residential Zone to RF3 Small Scale Infill Development Zone (11439 – 44 Street NW).
 - (2) There are three existing 25 foot wide developments just north-west of 3810 – 111 Avenue. Photos of these homes were shown.
 - (3) The subdivisions result in an increase in property value.
 - (4) An illustration was provided to show that splitting a 75 foot lot into three is exactly the same as splitting a 50 foot lot into two.
 - (5) Vida Nova Homes is bringing new life to mature neighbourhoods by building affordable single family homes. They are also offering an opportunity to baby boomers who are looking to sell their homes which are in need of restoration, upkeep and maintenance.
- [11] The Appellant now feels that applying for re-zoning from RF1 Single Detached Residential Zone to RF3 Small Scale Infill Development Zone was the wrong approach and agrees that an RF3 designation could allow developments that would not fit into the community. He is here today to simply request that the lot be divided into three lots with the RF1 designation remaining.
- [12] Many 50 wide lots in mature neighbourhoods throughout the City are currently being subdivided and redeveloped. The neighbour to the east has indicated he also wishes to subdivide and redevelop and another person on the block recently contacted Mr. Fernandes and offered to sell his property to him.

[13] The Applicant outlined the possibilities for the subject lot:

- (1) The lot could be split in two and two wider homes could be built. These would have the same combined square footage, same number of bedrooms, same number of parking stalls and be of the exact same height as his proposed three skinny homes. This option is not feasible as he would have to list each home for \$35,000 more than a person who decides to build a skinny home right next to him.
- (2) Two raised bungalows with legal basement suites could be built. This would result in 4 families moving in rather than 3, 12 bedrooms versus 9 and 4 to 8 cars versus 3 to 6 cars. This option would attract renters rather than owners.
- (3) The best option is to build three skinny homes on three 25 foot lots. This would fit in with his vision for the land – three affordable homes that would attract young families to a less popular area of the City.

[14] His intention is to make a community better and he showed photos of the type of high quality homes they build.

[15] Mr. Seitz confirmed that this area does not have the best reputation and it is a challenge to sell properties here. Dividing the lot into three would allow them to offer a less expensive property in order to entice people to move into the neighbourhood.

[16] Section 41.1(3) created by Bylaw 17116 dated April 13, 2015, was displayed:

3. The Subdivision Authority may not approve the subdivision of a Lot zoned RF1, as it existed on March 16, 2015 into more than two lots, notwithstanding the Site Width in the RF1 Zone. Subdivision into more than two Lots may only be approved where the proposed subdivision:
 - a. is supported by one or more City Council approved Statutory Plans or City Council approved Policies; or
 - b. has a Site Width deemed by the Subdivision Authority to be in character with Lots on the same block.

The Appellants stated they were not aware of this bylaw amendment and confirmed that the properties shown in their PowerPoint presentation may have been subdivided prior to this change in legislation.

[17] Mr. Fernandes maintains that despite Section 41.1(3) there is mathematically no difference between what he is proposing and splitting a 50 foot lot into two 25 foot wide lots. He referred the Board to Slide 7 of their presentation to show a hypothetical situation if the neighboring lots were divided into two. The houses to the left and right of the subject lot would look exactly the same as their proposed 3 skinny homes.

[18] The Appellants provided the following responses to questions from the Board:

- (1) There are already similar developments existing in the community and three skinny houses would not negatively impact the community. Subdividing rather than re-zoning is the better option for the community.
- (2) The subject lots would have alley access.
- (3) They confirmed that there was neighbourhood opposition to their re-zoning application before City Council.
- (4) A power pole and anchor are located behind the middle of the three lots but they have not addressed possible solutions at this time.
- (5) No other lots have been subdivided on this block yet; however, the Appellant has received an expression of interest from an immediately adjacent neighbour and another neighbour has contacted the Appellant to see if he is interested in buying his property. Subdivision of these large lots will be the future trend.
- (6) He now believes that re-zoning could be an issue as it could potentially allow a fourplex or row houses to be built.

ii) Position of the Subdivision Authority, M. Beraldo / K Witiw

- [19] Mr. Beraldo clarified that the property referred to by the Appellants located at 3810 – 111 Avenue was rezoned to RF2 Low Density Infill Zone on April 27, 2015, and the subdivision of the three lots was approved on July 3, 2015. Permission was first obtained to rezone and then the subdivision was approved.
- [20] The lots on this block were originally subdivided in 1950. This particular lot is 75 feet wide and the rest of the lots on the block are 50 feet wide.
- [21] They reviewed their PowerPoint presentation which included:
- (1) An aerial photo of the subject site and surrounding RF1 properties.
 - (2) A map showing the dimensions of the subject site and those of the surrounding properties.
 - (3) Photos of the subject site and a view of adjacent properties to the east.
 - (4) The Applicant's tentative plan of subdivision.
- [22] The proposed subdivision was refused as the Subdivision Authority may not approve the subdivision of a Lot zoned RF1 as it existed on March 16, 2015, into more than two lots, notwithstanding the Site Width in the RF1 Zone as per Section 41.1(3) of the Edmonton Zoning Bylaw. The Appellants are proposing to create three lots.

- [23] There are no existing statutory plans or policies for Beverly Heights; however, creating three lots would result in lots that are out of character with the remaining lots on the same block. The proposed subdivision goes against Council's commitment to limit RF1 properties to one division.
- [24] At the public hearing on May 28, 2018, where the rezoning application was presented, City Council expressed that this subdivision rezoning was an attempt to circumvent Section 41.3 of the *Edmonton Zoning Bylaw*.
- [25] Should the Board grant the subdivision, the Subdivision Authority requests that conditions be added to the approval requiring the owner to dedicate a 3 metre by 3 metre corner cut as per the "Conditions of Approval" map, Enclosure II, and that all outstanding property taxes be paid. They also request that the Transportation advisements outlined in their PowerPoint presentation be included.
- [26] The Subdivision Authority provided the following responses to questions from the Board:
- a) They confirmed that any of the 50 foot lots on the block could potentially be subdivided into 25 foot lots. However, they have to consider the existing state of the block and cannot presume that subdivision will occur.
 - b) It was Council's decision not to allow the rezoning because it felt it would interfere with the enjoyment of the neighbourhood. They feel they are being consistent with Council's decision by refusing the subdivision application.
 - c) Council's commitment to limit subdivisions to one additional lot came into effect on March 16, 2015 to address concerns that citizens had about lot splitting and to allow City Council to provide direction to administration. RF1 Single Detached Residential Zones are intended to be low density development.
 - d) The Appellant did everything correctly by applying for re-zoning. City Council decided it was not an appropriate development for this location.

iii) Position of Subdivision Planning – Transportation Review, T. Hinse

- [27] Ms. Hinse felt that it would be possible to design a permitted driveway for the middle lot despite the location of the power pole as this lot has access to two lanes.
- [28] A 3 metre by 3 metre corner is a requested condition for the middle lot to allow room for waste management vehicles to maneuver.

iv) Position of Affected Property Owners in favour of the Subdivision, C. Brooker and C. Keeler

- [29] They live almost directly across the street and one house down. They would be able to see the proposed developments from their front door.

C. Brooker

- [30] While she would like to see one Single Detached House built, she recognizes this is not realistic. She also realizes the developer needs to make a profit; therefore, two single family homes would likely contain basement suites. This would result in four residences; having three skinny homes with three families is a better option and she therefore gives her reluctant support.
- [31] Ms. Brooker withdrew her support when it was pointed out that basement suites could potentially be permitted in each of the 3 skinny homes.
- [32] She would prefer to see owner occupied buildings as there have been past problems in the neighbourhood with renters. Basement suites are generally tenant occupied.
- [33] The number of residences and density is her concern. Right now there is a mixture of on-street and driveway parking; everyone who wants to park on the street is able to find a spot even though it is a bus route. Adding six families into 75 feet could be a concern.

Chris Keeler

- [34] Mr. Keeler is the Civic Affairs Director with the Beverly Community Heights Board and was at the re-zoning hearing and representing the community in opposition to the re-zoning to RF3.
- [35] He is here today speaking strictly on his own behalf and is in support of the proposal to split the subject lot into three lots and build the skinny homes. While he was originally opposed to the idea of lot splitting, the reality is that the neighbourhood is already changing in character.
- [36] He referred to the property on 111 Avenue that has been split into three skinny homes and is aware of a 50 foot lot across the street that is also being split. He has also spoken to the neighbour next to the subject site who intends to split his lot in two as already mentioned by the Appellant.
- [37] Mr. Keeler is heavily involved in the Beverly Heights community revitalization with the goal of bringing new life to the community. While the neighbourhood is stigmatized to some degree making properties more difficult to sell, 25 foot single family homes can be made very attractive to young working families. Ultimately this will be positive for the neighbourhood.
- [38] The City is evolving and has developed the Infill 2018 roadmap to allow higher densification which is the way of the future.

v) *Position of Affected Property Owners opposed to the Subdivision*

R. Haythorne

- [39] Ms. Haythorne lives directly across from the subject property. She is here speaking on behalf of herself and nine neighbours; the majority of these reside within the 60 metre notification area.
- [40] While they are in favour of redevelopment and revitalization, they dislike the skinny homes and would like to see two homes built on that lot.
- [41] The availability of on-street parking and mature trees makes this neighbourhood appealing. If the lot is divided into three, the mature trees will have to be replaced with vertical trees. They were all saddened when a very dense spruce grove that was on that lot was cut down.
- [42] The neighbourhood has drawn in many young families with children in recent years. Most of them are renovating the existing single detached homes.
- [43] The few skinny homes that have already been built in the neighbourhood do not fit in and stick out like a sore thumb. It is impossible to landscape them to blend in with the existing homes.
- [44] The subject site is on a bus route and buses cannot pass each other when cars are parked on both sides of the street. Adding three homes will increase the demand for parking and will cause more disruption and congestion for buses.
- [45] While she is open to redevelopment and understands the developer needs to make a profit any development should be limited to fit in with existing properties.
- [46] She confirmed that the house next door to hers is a duplex.
- [47] Having three two storey homes looking down across her property will create a negative visual impact and will feel invasive.
- [48] She went door to door and spoke with many people besides the nine property owners she is representing. Nobody she spoke to was in favour of three skinny homes being built on the subject lot.

W. Pisarchuk

- [49] He has personally lived in the community for 50 years and the family has 100 years of involvement in this location. His wife's father purchased a large tract of land in the 1920's and over the years sold portions of this land. Three of the properties are still in the family.

- [50] There are many opportunities available within the City for developers to build skinny homes. Beverly should be kept in the format that exists today so that there are future opportunities for developers who want a proper size lot. The neighbourhood will be less attractive if block after block of lots is split.
- [51] He often has to travel to newer parts of the City and can hardly get down the street in the winter when cars are parked. Beverly does not have this problem. It is well developed with wide streets, green foliage and 15 minutes from downtown. There are no traffic problems and no need for LRT. The number of lots being split should be reduced to protect this area.

vi) Rebuttal of the Appellant

- [52] If he builds two homes on the property they will look out of place in ten years when other neighbours have split 50 foot lots into two 25 foot lots. In the future, it will make little difference if there are 22 homes on the block versus 23.
- [53] He provides sufficient parking at the back of his developments so that street parking is not required.
- [54] He agrees that this area is a gem and it is his intention to attract people to this area. Everyone assumes that as a developer he does not care; however, his goal is to design homes to attract young families into the area.
- [55] He does his best to keep as many mature trees as possible.
- [56] As mentioned by Mr. Pisarchuk, this whole area has been subdivided over the past one hundred years. The area is continuing to evolve. There is only so much land available and people want to move closer to the core of the City.

Decision

- [57] The appeal is **ALLOWED** and the decision of the Development Authority is **REVOKED**. The subdivision is **GRANTED** as applied for to the Subdivision Authority, subject to the following conditions and advisements as proposed by the Subdivision Authority:
1. That the owner dedicate road right of way for a 3 metre by 3 metre corner cut to the satisfaction of Subdivision and Development Coordination, as shown on the “Conditions of Approval” map, Enclosure II; and
 2. That the owner pay all outstanding property taxes prior to the endorsement of the plan of survey.

Enclosure II is a map of the subdivision and identifies major conditions and advisements of this approval.

Advisements for the Subdivision Approval

Next Steps for Subdivision Approval

- The next step in the subdivision process is to have a legal instrument prepared (ie. Plan of Survey) in order to register the approved subdivision. The legal instrument is then forwarded to the City for endorsement along with the endorsement fee (\$662.00 - 2018 Fees Schedule) and subsequently released to the applicant for registration at the Land Titles Office.

Transportation

- There are existing boulevard trees adjacent to the site on 106 Avenue NW that must be protected during construction. For information about tree protection please refer to the City of Edmonton's web site (Trees and Construction).
- Access for future development must be to the adjacent alley in conformance with the Mature Neighbourhood Overlay Sec. 814.3(17) of the Zoning Bylaw #12800.
- There is an existing access to 106 Avenue NW. Upon redevelopment of proposed Lot 7B, the existing residential access to 106 Avenue NW must be removed. The owner/applicant will be required to obtain a Permit to remove the access, available from Development and Zoning Services, 2nd Floor, 10111 - 104 Avenue NW.

Building / Site

- The owner shall ensure that any change in property boundaries does not cause any structures on site to become non-compliant with the Safety Codes Act and Alberta Building Code. Permits may be required for such changes. Please contact 311 for more information.

Servicing

- The owner is required to make satisfactory arrangements for, and pay all costs associated with separate servicing to each lot, as well as the modification, relocation and/or removal of existing services. For further information, please contact: EPCOR Distribution & Transmission Inc. (780-412-4000), TELUS Communications (Edmonton) Inc. (Real Estate Division [Rights of Way] 780-508-2456), ATCO Gas (780-424-5222) and EPCOR Drainage Services (water and sewer servicing 780-496-5444).
- The existing services (water and sanitary) enter the proposed subdivision approximately 9.9 m east of the west property line of Lot 7 off 106 Avenue NW. As per the EPCOR Drainage Services Bylaw and the EPCOR Water Services and Wastewater Treatment Bylaw, these services cannot cross the proposed property line.
- There is a deficiency in on-street hydrant spacing adjacent to the property. The applicant/owner is advised to review on-site fire protection requirements to ensure adequate coverage (contact EPCOR Water at 780-412-3955).

- There is an existing power pole and guy wire that will interfere with access to the proposed Lots 7A and 7B. Subdivision Planning highly recommends that the applicant/owner initiate the relocation of the power pole/guy wire with EPCOR Distribution & Transmission as soon as possible as this pole will inhibit alley access to the site and will result in a delay with the issuance of the Development Permit. Contact Andy Balding (780-412-3520) of EPCOR Distribution & Transmission for more information.
- If power service crosses the proposed property line the owner may be required to provide a blanket easement in favour of EPCOR Distribution & Transmission Inc. If required, said easement shall be registered prior to or concurrent with the final plan of survey (contact EPCOR Land Administration Group at 780-412-3252).

[58] In granting the subdivision, the following variance to the *Edmonton Zoning Bylaw* is allowed:

1. Section 41.1(3) is waived to allow the subdivision of the subject site into more than two lots.

Reasons for Decision

[59] This is an application to subdivide a 75 foot wide lot into three 25 foot wide lots in the RF1 Single Detached Residential Zone.

[60] The Subdivision Authority refused the application because of the provisions of Section 41.1(3) of the *Edmonton Zoning Bylaw* which reads as follows:

3. The Subdivision Authority may not approve the subdivision of a Lot zoned RF1, as it existed on March 16, 2015 into more than two lots, notwithstanding the Site Width in the RF1 Zone. Subdivision into more than two Lots may only be approved where the proposed subdivision:
 - a. is supported by one or more City Council approved Statutory Plans or City Council approved Policies; or
 - b. has a Site Width deemed by the Subdivision Authority to be in character with Lots on the same block.

[61] The Board was advised that there are no City Council approved statutory plans or approved policies relating to this subdivision. The main reason for refusing the subdivision application was that all the other site widths on this block face are 50 feet wide or wider. The Subdivision Authority felt that the proposed Site Widths would not be in character with the lots on the block.

[62] The Board was also advised that this same site had been before City Council on a re-zoning application to re-zone it from RF1 Single Detached Residential Zone to RF3 Small Scale Infill Development Zone which would have allowed subdivision into three lots without any regulations prohibiting such subdivision.

- [63] When this matter was before City Council they were of the view that splitting the site into three lots would be out of character with lots on the same block and the proposal was counter to Council's commitment to limit subdivision to one additional lot per residential property zoned RF1 Single Detached Residential Zone.
- [64] The Subdivision Authority felt they could not go against the express wishes of City Council. This Board is not constrained by the particular wishes of City Council but must decide whether the proposed subdivision would unduly interfere with the amenities of neighbourhood or materially interfere with or affect the use, enjoyment or value of neighbouring parcels of land, pursuant to the *Municipal Government Act*.
- [65] The Board notes that although none of the fifty foot wide lots on this block face has yet been subdivided, given the fact that this is an older neighbourhood that will be undergoing renewal, there is a strong possibility that in the not too distant future there will be applications to subdivide those fifty foot lots and those applications will be approved. In fact, the Board heard that the land owner immediately to the east is considering subdividing his fifty foot lot.
- [66] In terms of the impact that subdividing this land into three 25 foot lots would have versus subdividing 50 foot lots into 25 foot lots, the Board cannot discern how those two situations would differ in their impact on the neighbourhood or on neighbouring parcels of land. The Board concludes that allowing these three 25 foot lots would not be materially different than allowing fifty foot lots to be subdivided.
- [67] Accordingly the Board cannot find any basis for refusing this subdivision.



For: Mr. M. Young, Presiding Officer
Subdivision and Development Appeal Board

Board members in attendance:

Mr. B. Gibson; Ms. G. Harris; Mr. A. Peterson; Mr. L. Pratt

c.c. City of Edmonton, Subdivision Authority, Attn: B. McDowell/ Beraldo/ K. Witiw
City of Edmonton, Law Branch, Attn: M. Gunther

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.