



**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**

Date: September 7, 2018
Project Number: 284417740-001
File Number: SDAB-D-18-131

Notice of Decision

- [1] On August 30, 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 on July 30, 2018 to refuse the following development:

Construct exterior alteration to an existing Semi-detached House on Lot 42 (Driveway extension, 2.44metres x 6.0metres).

- [2] The subject property is on Plan 1524653 Blk 4 Lot 42, located at 420 - Crystallina Nera Drive NW, within the RF4 Semi-Detached Residential Zone. The Crystallina Nera West Neighbourhood Structure Plan and Edmonton North Area Structure Plan apply to the subject property.

- [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 submission;
- The Appellant’s reasons for appeal, photos, written submission and signatures of support; and
- One online response in support of the development.

- [4] The following exhibit was presented during the hearing and forms part of the record:

- Exhibit A – Photos of Surrounding Neighbourhood

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 appeal was filed on time, in accordance with Section 686 of the Municipal Government Act, RSA 2000, c M-26. "*Municipal Government Act*"

Summary of Hearing

i) Position of the Appellant, K. Moore

[8] The Appellant is proposing to expand her driveway in order to park multiple vehicles. Her household has three vehicles, one of which is too large to fit into the garage. They currently have to shuffle vehicles in the morning to get in and out of their driveway and would like to avoid this.

[9] Several of her current neighbours also have multiple vehicles and use the limited street parking. A neighbour's vehicle is always parked in front of her house.

[10] This area is currently under construction and as a result there are often large construction vehicles parked directly in front of her home. The construction began three or four months ago and it is expected to continue for an extended period of time.

[11] The Appellant noted that the road in front of their home is a future bus route which will decrease on-street parking opportunities once buses start running. She was not certain where the bus stops would be located.

[12] The Appellant suggested that the proposed driveway extension would minimize the number of vehicles parked on the road and this would help with street cleaning and snow removal.

[13] The Appellant also suggested that fewer vehicles parked on the street would make it safer for crossing pedestrians.

[14] The Appellant reviewed the photos she had e-mailed just prior to the hearing (marked Exhibit A). The photos provided an overview of the neighbourhood and included:

- a) her home and the current driveway;
- b) the immediately surrounding properties;
- c) vehicles parked on the road;
- d) properties currently under construction like show homes and homes for sale; and,
- e) The temporary no parking signs along the street, which have been there for approximately a week.

[15] The Appellant provided the following responses to questions from the Board:

- a) She acknowledged that the proposed development would remove one on-street parking spot.

- b) She believed there would be sufficient room to place snow on the green space between the suggested driveway extension and the property line. She acknowledged that the proposed development and reduced green area would reduce the curb appeal.
- c) She confirmed that there is not a separate walkway to the front door and they are currently using the driveway as the walkway.
- d) This is a brand new construction and the Appellant took possession on December 28, 2017. The Appellants only had two vehicles at the time of possession.
- e) Although she spoke with the owner of the immediately adjacent property, she was not able to obtain his signature of support. The home is occupied by renters.
- f) The adjoining unit to the left has concrete poured to the left of the driveway leading to front steps. She is not aware if there are currently any other such extensions in the neighbourhood.
- g) She believes there is a park planned further west along the block at 454 Crystallina Nera Drive NW.

ii) Position of the Development Officer, E. Lai

[16] The Development Authority did not attend the hearing and the Board relied on Ms. Lai's written submission.

Decision

[17] The appeal is **DENIED** and the decision of the Development Authority is **CONFIRMED**. The development is **REFUSED**.

Reasons for Decision

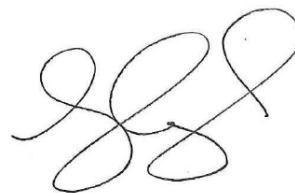
[18] The proposed development is located within the (RF4) Semi-detached Residential Zone.

[19] The Board supports the conclusions reached by the Development Authority through their review of this application.

[20] There are four variances that would be necessary for this application and the Board cannot support granting those variances. The Board has concluded that should this development proceed it would have a material impact on the neighbourhood for the reasons that follow.

[21] A review of the Appellant's photographic evidence shows that most other addresses in the area do not have driveway extensions such as the one proposed and as such, this development would not be characteristic of the neighbourhood.

- [22] The Board notes that this style of Semi-detached housing development within this Zone already diminishes front landscaping to a minimum standard. Further encroachment within that space as suggested by the proposed development would impact the visual appeal of this property.
- [23] The Board also finds that by increasing the width of the concrete and the parking area, the walkability of this particular street would also be diminished. Based on the evidence provided, there are parks planned within close proximity that will have pedestrian traffic accessing the sidewalk in front of the subject property, and such an extension would have a material impact on the pedestrians in the neighbourhood.
- [24] The Board finds that the Appellant's evidence suggests that one on-street parking space would be removed, or at the least greatly reduced, if such development were approved. This would affect the availability of the surrounding community's access to parking.
- [25] The Board considered that approving such a development may entice neighbours in the community to also develop such extensions to their driveways, which would result in a compounded negative impact on on-street parking within this community.
- [26] Evidence was provided to the Board indicating that the subject site is located on a future bus route, and although specific drop-off and pick-up stops have not been identified, such circumstances would result in even more stress and impact on on-street parking.
- [27] The Board notes that the Appellant indicated significant construction activity exists in the area, but provided verbal evidence that such construction will be temporary in nature; therefore, the Board did not consider this fact as impactful.
- [28] Despite the Appellant providing evidence of considerable neighbourhood support to allow this extension, the Board determined that, notwithstanding those in support were in the notification zone, the majority of those individuals would not be significantly impacted by this development.
- [29] For all the above reasons, the Board finds that the proposed development will unduly interfere with the amenities of the neighbourhood and materially interfere with and affect the use, enjoyment or value of neighbouring parcels of land.



Vincent Laberge, Presiding Officer
Subdivision and Development Appeal Board

Board Members in Attendance:

Ms. P. Jones; Ms. S. McCarney; Mr. A. Nagy; Ms. D. Kronewitt-Martin

cc: Development & Zoning Services – E. Lai / A. Wen

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. 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.
2. 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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P: 780-496-6079 F: 780-577-
3537
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edmontonsdab.ca

Date: September 7, 2018
Project Number: 275438152-001
File Number: SDAB-D-18-132

Notice of Decision

- [1] The Subdivision and Development Appeal Board (the “Board”) at a hearing on August 1, 2018, made and passed the following Motion:

"That the appeal hearing regarding **275438152-001** be **TABLED** to August 30, 2018."

- [2] On August 30, 2018, the Board made and passed the following motion:

“That SDAB-D-18-132 be raised from the table.”

- [3] On August 30, 2018, the Board heard an appeal that was filed on **July 22, 2018**. The appeal concerned the decision of the Development Authority, issued on July 12, 2018, to approve the following development:

Erect a fence 1.5metres in Height in the front Yard (along north property line) and a fence 2.4metres in Height (within the south side yard)

- [4] The subject property is on Plan 777HW Blk 15 Lot 3, located at 12410 - 93 Street NW, within the (RF3) Small Scale Infill Development Zone. The Mature Neighbourhood Overlay applies to the subject property.

- [5] The following documents were received prior to the hearing and form part of the record:

- Copy of the Development Permit application with attachments, approved site plan, and the approved Development Permit;
- The Development Officer’s written submission;
- The Appellant’s written submissions;
- The Respondent’s written submission; and
- Online responses.

Preliminary Matters

- [6] 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.
- [7] The Presiding Officer outlined how the hearing would be conducted, including the order of appearance of parties, and no opposition was noted.
- [8] The appeal was filed on time, in accordance with Section 686 of the *Municipal Government Act*, RSA 2000, c M-26. "*Municipal Government Act*"

Summary of Hearing*i) Position of the Appellant, C. Mawer*

- [9] Ms. Mawer was accompanied by Mr. Malanowski.
- [10] Ms. Mawer stated that the neighbourhood currently does not have any front fences that are five feet in height or any eight foot high side fences. In fact, she noted that there is not a single front fence of any size in their part of the neighbourhood.
- [11] The Appellants indicated that they would have no problem with a standard four foot fence but a five foot fence would impede their sight lines from their living room window of a very attractive street. Based on the look of the neighbourhood and feedback from neighbours, the Appellants believe that an over height fence would be out of character and would negatively impact the neighbourhood.
- [12] The Appellants stressed that they are concerned that the proposed development would send the wrong message to potential buyers and would have a negative impact on their property value. This is confirmed by the letter from a realtor contained in their submission.
- [13] In conclusion, Ms. Mawer wanted to point out that their address is incorrectly listed as 91 Street rather than 93 Street in the Agenda. To confirm, the Appellant's correct address is 12406 – 93 Street NW.
- [14] The Appellants provided the following responses to questions from the Board:
- a) They do not see why a five foot high fence would be more of a deterrent to children than a four foot high fence. Their objection is to the extra foot.
 - b) Regarding the north/south fence, after reading the Respondent's submission, the Appellants indicated that they understand that the reason Ms. Jasinowski wants the fence eight feet in height is for added privacy for her deck. They further acknowledged that the Respondent's deck is higher than a standard deck.

- c) Their preference would be for a standard six foot high fence as it is more in keeping with the neighbourhood. They do not believe that people from the street could see the Respondent on the deck with a six foot high fence.
- d) The Respondent cut down trees on her property which previously provided privacy. The Appellants believe that the Respondent now intends to cut down all the trees that are a natural divider between their two properties. The Chair of the Board clarified that the permit before the Board today does not include a full length fence between the Appellant's and the Respondent's property.
- e) They confirmed that three of the signatures on the submitted petition are property owners, the remainder are renters.
- f) The Respondent's house is a foot or two further ahead of the Appellant's house which increases the negative impact that an eight foot high fence would have. Such a high fence would be directly in their sight line from their living room window and would severely impede their view of the neighbourhood.
- g) They have provided different options to the Respondent such as using a lattice for the top two feet of the fence to make it less imposing.
- h) They confirmed there is a significant side yard between the two properties and the eight foot high fence would be eight to ten feet away.

ii) Position of the Development Officer, K. Bauer

[15] The Development Authority did not appear at the hearing and the Board relied on Ms. Bauer's written submission.

iii) Position of the Respondent, S. Jasinowski

[16] Ms. Jasinowski indicated she recently had to remove two giant spruce trees from her property that provided privacy. Unfortunately, these trees were damaged by a wind storm a few years ago and had to be removed which opened up her property to the street and reduced her privacy.

[17] She plans to construct the five foot high fence in the front yard to deter children from climbing over it and running through her yard. She believed that such a fence would also prevent balls from going over the fence into her yard.

[18] Ms. Jasinowski indicated that she plans to plant a row of junipers along this fence and feels the higher fence would protect the trees better. The junipers previously planted there were destroyed by children running through them.

- [19] A five foot high fence in the front will also provide extra privacy for her neighbours who have a front patio porch where all the children tend to congregate.
- [20] Ms. Jasinowski intends to put a garden in her front yard and a five foot fence would further allow her some privacy to do so while protecting the plants.
- [21] She would be open to adding some architectural detail to the top two feet of the fence but does not like lattice.
- [22] She has considered stepping down the fence in the front yard partially because of the natural slope of the land. The first part will be five feet high and will step down as it goes towards the sidewalk. The posts have already been installed and there is currently a nine inch difference in height between the first and last post.
- [23] Regarding the planned eight foot high fence between the houses, the Appellant noted that a six foot fence would only cover two feet up the deck and would not provide any privacy for the side yard and deck. An eight foot fence is ideal because it would come up to about the railing of the deck.
- [24] The Respondent provided the following responses to questions from the Board:
- a) The deck is raised an average of four feet from the ground. A six foot high fence would allow her to be seen from the street if she was at her patio doors. She referred the Board to Image 6 in her submission illustrating this.
 - b) She intends to plant junipers in front of the fence posts to break up the massing of the fence.
- iv) Rebuttal of the Appellant*
- [25] The Appellants believe that stepping down the five foot fence is a great idea but would like to have something definite spelled out rather than relying on the grade of the ground.
- [26] They are disappointed that the Respondent is unwilling to compromise on a slightly more open design for the top two feet of the fence. They realize lattice is not everyone's taste but do believe there are other options available.
- [27] They have been very impressed with the landscaping the Respondent has carried out in her yard; however, the style of the proposed fence looks more like a sound barrier and is not in keeping with the style of fences in the neighbourhood.
- [28] They confirmed that the fence posts are already in place for the five foot high fence and would estimate they are three to four feet apart. They would like the Board to condition that the last section of fence be only four feet high.

Decision

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

Reasons for Decision

[30] Fencing is a Permitted Use in the (RF3) Small Scale Infill Development Zone.

[31] The Board clarifies that the current application before it is for two fences approved in the application provided by the Development Authority and does not include a previously proposed fence between the Appellant's property and the Respondent's property.

[32] The Board dealt specifically with the incremental difference created by the granted variances:

- a) One fence section is proposed for a location that can already have a four foot high fence; the Respondent is asking for an additional one foot.
- b) The second fence section is proposed for a location that can already have a six foot high fence; the Respondent is requesting an additional two feet.

[33] Section 49.1(g) of the *Edmonton Zoning Bylaw* states:

In the case where the permitted Height of a Fence, wall, or gate is 1.85 metres, the Development Officer may vary the Height of the Fence, wall, or gate to a maximum of 2.44 metres, in order to provide additional screening from public roadways or incompatible adjacent Uses.

Based on the evidence provided, the Board finds that additional screening from the public roadway is the main reason for the proposed development.

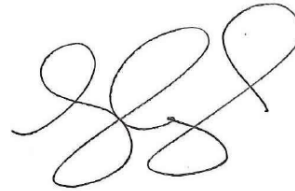
[34] Further, the Board supports the conclusion of the Development Authority that the raised deck is a hardship with respect to oversight and privacy. The Board, therefore, supports the justification used by the Development Authority to grant the variances.

[35] The Board acknowledges and accepts the evidence provided that the Respondent has plans to mitigate any perceived massing of this fence with landscaping. The Board finds further that due to the placement of the proposed development, it will not impact pedestrians or traffic. Therefore, the Board finds that the street view will not be materially impacted nor will the neighbourhood generally.

[36] Some mention was made by the Appellant regarding the potential for the fence to devalue neighbouring properties and while the Board does acknowledge the letter provided from

the Appellant's realtor, the Board notes that the letter fails to provide quantifiable support for the assertion that the fence will devalue the property.

- [37] While the Appellant indicated that their sight lines may be interrupted by the proposed development, the Board determines that granting these variances will not cause the obstruction of sight lines based on the evidence provided regarding the Appellant's house setback, window orientation and distance between the Appellant's home and the side lot line. Hence, the Board was unable to support the conclusions reached by the Appellant that this fence would have any impact on their sight lines.
- [38] The Board considered conditions with respect to how to build the portions of the fence contained within the variance but was not presented with confirmed and verifiable options to consider and, therefore, considered the original application only.
- [39] Based on the above, combined with a lack of material evidence presented to the Board to the contrary, 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.



Vincent Laberge, Presiding Officer
Subdivision and Development Appeal Board

Board Members in Attendance

Ms. P. Jones; Ms. S. McCartney; Mr. A. Nagy; Ms. D. Kronewitt-Martin

cc: C. Mawer
Development & Zoning Services – K. Bauer / A. Wenn

Important Information for the Applicant

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.

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