

Edmonton Subdivision and Development Appeal Board

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Date: August 21, 2015
Project Number: 171024632-001
File Number: SDAB-D-15-174

Notice of Decision

This appeal dated July 13, 2015, from the decision of the Development Authority for permission to:

Construct a Semi-detached House with attached garages, front verandas, and fireplaces and to demolish an existing Single Detached House

On Plan 7922359 Blk 17 Lot 59, located at 4718 - 37A Avenue NW, was heard by the Subdivision and Development Appeal Board on August 6, 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 s 686 of the *Municipal Government Act* ("MGA"), RSA 2000, c M-26

The Board heard an appeal of the decision of the Development Authority to approve an application to construct a Semi-detached House with attached garages, front verandas, and fireplaces and to demolish an existing Single Detached House located at 4718 – 37A Avenue NW. The subject site is zoned RF1 Single Detached Residential Zone.

The development permit application was approved, subject to conditions, with a variance granted in the required Site Width on a corner lot 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 Development Officer received on July 29, 2015
- A written submission from the Appellant, received on July 29, 2015
- A memorandum from the City of Edmonton Transportation Services Department dated June 2, 2015.
- E-mail of opposition from an affected property owner within the 60 metre notification radius.

The Board heard from the Appellant, Mr. K. Argent, who provided the following information:

1. He referred to the City's Spatial Land Inventory Management ("SLIM") map identifying the property owners within the 60 metre notification area, marked ("Exhibit A"). Many of those within the 60 metre radius are not in any way directly affected by the proposed development. The people most affected are those along 37A Avenue (who did not receive notification). They are affected due to the extreme parking difficulty in the area.
2. These parking difficulties are partly related to the cul-de-sac off of 37A Avenue which provides for only two on-street angle parking spaces which serve eight different properties. When the residents of the cul-de-sac have visitors they often have to park along 37A Avenue.
3. His two main concerns related to the adverse effect of the proposed development on the surrounding properties and the negative impact on the traffic congestion in the area.
4. Illegal parking in the area is common because of the lack of parking. Increasing the number of Dwelling on a property from one to two would exacerbate the difficulty.
5. He referred to his written submission which included 13 signatures in opposition to the proposed development.
6. If the proposed development is approved the lot to the east across the cul-de-sac would probably want to do the same type of development, further exacerbating the problem.
7. Many of the properties in the area are rented and not well maintained. Landlords do not properly care for the properties they own and he would appreciate knowing whether the proposed development would be sold or rented and if sold whether the units would subsequently be rented.

Mr. K. Argent provided the following responses to questions:

1. The existing single detached house on the subject property had been reasonably well kept by the previous owner who had sold it approximately one year ago.
2. He acknowledged that if the proposed development were sold and occupied by the purchasers many of his concerns would be eliminated.

The Board heard from Ms. K. Heimdahl, representing the City of Edmonton Sustainable Development Department who provided the following responses to questions:

1. To her knowledge the right elevation of the proposed development will be finished with siding similar to the (south) front elevation and complies with the bylaw requirements.
2. While there are windows on the north elevation of the proposed development, which would provide oversight onto properties to the north, this was not a matter addressed in the bylaw because the proposed development is not within the Mature Neighbourhood Overlay.

The Board heard from the Respondent, Mr. S. Mann, who provided the following information:

1. He had owned this property for about a year and in his opinion the property had been relatively well maintained.

2. At this point he could not determine whether the proposed semi-detached dwellings would be sold or rented. He intends to sell the properties, if feasible. If not, they would be rented.
3. He provided the Board with a drawing, marked (“Exhibit B”) and acknowledged that the proposed development is in close proximity to the north property line (4 feet, 4 inches), which provides only a little useable amenity area to the north of the building. Other amenity areas would have to be found either to the west of the building or to the south and east which are exposed to public roadways.

Mr. Mann provided the following responses to questions:

1. Most of the exterior of the building will be finished in vinyl siding. Some areas would also be finished with crezone, a plastic coated plywood which is much more expensive than siding.
2. He acknowledged that the space to the north of the proposed development, which might also be used for barbequing, was restricted but crowding is common in developments when the City is attempting to increase densification.

In rebuttal Mr. Argent made the following points:

1. The proposed development seems to be crowded onto a relatively small site and there is an obvious lack of useable amenity space.
2. A critical issue for him is whether the proposed development would be owner occupied or rented. He understood that this was not within the jurisdiction of the Board.

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. Pursuant to section 110.4(3)(c), the minimum required Site Width on a Corner Site is 14.8 metres and a relaxation of 0.70 metres is granted to allow for a Site Width of 14.10 metres.

Reasons for Decision:

The Board finds the following:

1. Semi-detached Housing is a Discretionary Use in the RF1 Single Detached Residential Zone, Section 110.3(10).
2. Section 110.1 of the *Edmonton Zoning Bylaw* states that the purpose of the RF1 Single Detached Residential Zone is to provide primarily for Single Detached Housing while

allowing for other forms of small scale infill such as semi-detached housing under certain conditions.

3. The Board finds that the plans for this site comply with the intent of the purpose of the RF1 Single Detached Residential Zone.
4. Section 41.2(1) of the *Edmonton Zoning Bylaw* reads as follows:

The Development Officer shall not refuse an application ... a Semi-detached Housing on a Site with a Site area of at least 470 m² and a width of at least 13.5 m only for the reason that the Site does not meet the minimum area and dimension set out in this Bylaw, if:

 - a. the Site in question is a lot, which was created prior to October 2, 1961;
 - b. the Site in question is a lot approved by the Subdivision Authority; or
 - c. in the case of Single Detached Housing within RF4 Zone, the Site is within a Zone Outline Plan area or Area Structure Plan area and subdivision creating the Site was approved by the Municipal Planning Commission prior to the effective date of Bylaw 6934, that being June 14, 1982.

The Board finds the following:

- i. This site was approved by the Subdivision Authority prior to the house being built in 1980.
 - ii. The area of the site is 532.07 square metres which is greater than the required 470 square metres.
 - iii. The width of the site is 14.10 metres which is greater than the required 13.5 metres.
 - iv. The site depth is 39.51 metres which is greater than the required 30.0 metres.
5. The Board acknowledges that there are parking concerns in area; however the Site provides the minimum required parking within the one car attached Garage and Driveway for each of the two Dwellings.
 6. The Board heard a concern about the lack of outdoor amenity area at the rear of the semi-detached houses (along the north side-lot line). However, there are other green spaces to the east, south and west which allow it to comply with the *Edmonton Zoning Bylaw* which states that the private amenity area can be anywhere except in the Front Yard.
 7. The proposed development complies with Section 4.2.1.1 of “The Municipal Development Plan: The Way We Grow” which supports neighbourhood revitalization, redevelopment and residential infill that contributes to the livability and adaptability of established neighbourhoods.
 8. The Board notes that whether the proposed development is rented or owner-occupied is outside the purview of this Board.
 9. 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 5th 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 Revised City of Edmonton, by-law No 12800, *Edmonton Zoning Bylaw*.
5. This decision may be appealed to the Alberta Court of Appeal on a question of law or jurisdiction under s 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.

Patricia Jones
Subdivision and Development Appeal Board

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Date: August 21, 2015
Project Number: 171227092-001
File Number: SDAB-D-15-175

Notice of Decision

This appeal dated July 9, 2015, from the decision of the Development Authority for permission to:

Construct an addition (front attached Garage and second Storey, 6.68m x 14.88m) to an existing Single Detached House.

On Plan 1843KS Blk 48 Lot 26, located at 10736 - 65 Street NW, was heard by the Subdivision and Development Appeal Board on August 6, 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 s 686 of the *Municipal Government Act* (“MGA”), RSA 2000, c M-26.

The Board heard an appeal of the decision of the Development Authority to refuse an application to construct an addition (front attached Garage and second Storey, 6.68m x 14.88m) to an existing Single Detached House located at 10736 – 65 Street NW. The subject site is zoned RF1 Single Detached Residential Zone and is within the Mature Neighbourhood Overlay.

The development permit application was refused because the proposed addition requires variances in the Front and Side Setbacks that will add to the non-conformity of the existing building.

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

- A written submission from the Development officer received on July 29, 2015.
- Four letters in opposition to the proposed development, one from outside of the 60 metre notification radius.
- Twelve signatures in support of the proposed development submitted by the Appellant on August 4, 2015.

The Board heard from the Appellants Mr. B. Bilyk and Mrs. D. Bilyk, who provided the following information:

1. They purchased the property seven years ago and knew it was a non-conforming building at that time.
2. They had originally wanted to build a rear detached Garage but an existing gas line and mature trees restricted the placement of the rear detached Garage. Therefore, they would like to build an addition, which includes a Garage and a second Storey, even though variances would be required.
3. The Site Width is 18.6 metres and the width of the rear property line is 18.0 metres.
4. They need a larger Garage to park their two vehicles and are therefore requesting the Side Yard variance be reduced from 1.62 metres to 1.23 metres. They both require larger vehicles as he is in construction and she works with disabled individuals who require wheel chair access.
5. He plans to remove the cantilever above the garage along the north property line which is depicted in the current refused development plans. It was originally there to accommodate a stairwell from the interior of the dwelling going to second floor; however, there are building permit issues with this cantilever of which the architect was not aware.
6. He can comply with the minimum Front Setback for the Garage if required.
7. There is a discrepancy in the lot width because even though it is 18.6 metres measured at 6 metres from the front lot line, the horizontal width of the rear lot line is 18.0 metres. They presented photographs of other developments in the area which show large dwellings next door, across the alley and across the street. Most have been constructed in the past 10 years. ("Exhibit A")
8. The adjacent neighbour has a front attached Garage.
9. The wall of the neighbour's house is approximately 5 metres from his current house. He is of the opinion that the addition will have a minimal impact on that dwelling.
10. He is willing to re-locate the rear deck towards the middle of the rear elevation to minimize the impact on the adjacent neighbour to the north.

Mr. and Mrs. Bilyk provided the following responses to questions:

1. He does not feel that requesting a variance will increase the non-conformity of the building. Other houses in the neighbourhood must have had variances granted as well.
2. The 3 feet on either side of the 16 foot Garage door is to accommodate the two large vehicles they drive.
3. There are no windows on the north side of the dwelling as they did not want to impose on the privacy of the adjacent neighbours. He could put a cantilever into that area to minimize the massing effect of a wall stretching the length of the dwelling with no break in it.
4. There are other developments in the area that are similar in design to the proposed development.

The Board heard from Ms. K. Heimdahl, representing the City of Edmonton Sustainable Development Department who provided the following information:

1. She missed the encroachment of the cantilevered section on the submitted plans which was brought to her attention by an affected property owner, Ms. Archer. This was an oversight on her part.
2. A front access Garage is allowed because there is no treed, landscaped boulevard, the lot width is greater than 15.5 metres and more than 50 percent of the Dwellings on the block have front or flanking access. She submitted a map marked "Exhibit B" to illustrate this.
3. She determined the Site Width by measuring the horizontal width between the two Side Lot Lines at 6 metres from the Front Lot Line.
4. For a lot less than 18.3 metres in width, the minimum requirement for side yards is 20 percent of the Site Width with a minimum of 1.2 metres.
5. She referred to Section 11.3(3) of the *Edmonton Zoning Bylaw* which prohibits a Development Officer from granting a variance to increase the non-conformity of a building, even though it is a listed Use.
6. Any development must comply with the regulations of the Mature Neighbourhood Overlay in this RF1 Single Detached Residential Zone.

Ms. Heimdahl provided the following responses to questions:

1. The Front Setback variance could be eliminated if the applicant reduced the projection of the Garage into the front yard.
2. The windows on the north side of the building were removed by the Appellant at the request of the Development Officer.
3. There is no requirement for landscaping along the 1.2 metre north side yard of the dwelling.

The Board heard from Ms. Victoria Archer, an affected property owner, who provided the following information in opposition to the proposed development.

1. She owns the house directly adjacent to the subject property. It was built in 1957 and additions were constructed in 2003. It had an existing front access Garage.
2. She feels she will be significantly affected by this proposed development. The house is too wide and extends too far forward into the front yard.
3. Newer houses in this area have complied with the regulations of the *Edmonton Zoning Bylaw*.
4. Her lot width is 92 feet and the width of the subject site is 61 feet.
5. The house across the street is larger.
6. She showed a photo of the existing side yard of the subject Site, marked "Exhibit C". By her calculations, the measurement of the right Side Setback is 1.5 metres, not 1.62 metres as shown on the survey.
7. She is opposed to the cantilever and eave overhang on the north side of the dwelling and believes it encroaches on to her lot even though it 0.13 metres from the property line.
8. She spoke with Ms. Fiona Heatherington of the City of Edmonton Sustainable Development Department about this type of development in mature neighbourhoods.
9. The lot in question is basically rectangular.

10. She objects to the proximity of the proposed development to her property line and believes it sets a precedent for future development.
11. The Front Setback was not determined properly by the Development Officer and she believes the extension into the Front Yard is greater than that allowed by the *Edmonton Zoning Bylaw*.
12. The garage would increase the Front Setback deficiency even further and she feels it will sit too close to the street.
13. One of the houses used in determining the average Front Setback has a front porch, which should not be taken into consideration when determining the blockface. The measurement should be taken to the front wall of the structure and not the open veranda. This would make the Front Setbacks greater than 8 metres for the rest of the developments on the same blockface.
14. This development will affect the blockface of other dwellings in the neighbourhood by projecting further than the existing ones.
15. She referred to her submission which showed alternative calculations to determine what the blockface is on the street. Her calculations show that the Setback is not within the 1.5 metres of the average blockface on the street and reiterated that this development will change the character of the street.
16. She would have no objection to a 1.2 metre Side Yard if the lot in question was less than 18.3 metres because then a 1.2 metre Setback would be allowed.
17. This lot has no unique characteristics which would allow a variance to be granted.
18. Although all the gas lines in the area run from the rear alley most of the lots in the area have double garages in the rear.

The Board heard from Ms. Virginia Archer, an affected property owner, who provided the following information in opposition to the proposed development.

1. She owns the house directly across the street and grew up in the neighbourhood. She has historical concerns about what a development like this might pose.
2. She supports new development but bylaws are there to protect those who already live in the neighbourhood.
3. She is concerned a precedent could be set if the proposed development is allowed.
4. The spaciousness of this block is a characteristic of the neighbourhood and could be affected by the overcrowding of houses on the street. Other blocks are not as attractive as 65 Street.
5. Other developments in the neighborhood have resulted in people not being able to enjoy their properties as much.
6. Damage could occur to homes as a result of new construction and new additions being built in this neighbourhood. The onus is on the victims to seek remuneration for damage.
7. Bylaws are in place to protect the community and neighbouring properties.
8. There is no reason to grant variances for this Garage.
9. Neighbours who originally supported this development now do not support it including a neighbour two doors down who was not aware of the requested variance. She did not obtain signatures or written submissions from those opposed and not all of them sent in written opposition to the Board.

In rebuttal Mr. Bilyk made the following points:

1. The existing Garage on the property is in line with the Garage of the property to the north.
2. The adjacent neighbour's house is the largest on the street and not in keeping with the character of other residences in the neighbourhood.
3. His proposal for a 1.2 metre Side Setback is based on the fact that there is currently a 5 metre separation between his property and the neighbour's property to the north.
4. When he canvassed the neighbourhood he showed plans and photos of the proposed development and was of the opinion that most people in the neighbourhood supported the proposed development.

Decision:

The appeal is **ALLOWED IN PART** and the decision of the Development Authority is **REVOKED**. The development is **GRANTED** subject to the following **CONDITIONS**:

1. Revised plans must be submitted to the Board by September 15, 2015, showing the removal of the cantilever on the north side of the second floor.

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

1. Pursuant to section 814.3(1), "The Front Setback shall be consistent within the 1.5 m of the Front Setback on Abutting Lots and with the general context of the blockface. However, the Front Setback shall not be less than 3.0 m. Separation Space and Privacy Zone shall be reduced to accommodate the Front Setback requirement where a Principal Living Room Window faces directly onto a local public roadway, other than a Lane."

The Average Front Setback along the Block face is 8.35 metres. The allowable Setback is (8.35m (+/- 1.5m. = 6.85m. to 9.45m.)

The Average Front Setback of abutting lots is 8.35 metres. The allowable Setback is (8.35m (+/- 1.5m. = 6.85m. to 9.45m.)

The variance granted is 0.16 m.

2. Pursuant to section 814.3(3), "Where the Site Width is 18.3 m or greater:
 - a. Side Setbacks shall total 20% of the Site Width but shall not be required to exceed 6.0 m in total;
 - b. The minimum interior Side Setback shall be 2.0 m; and
 - c. ...

The total required Side Setback is 3.72 metres and a variance of 0.01 metres is granted.

The minimum required Side Setback is 2 and a variance of 0.77 metres is granted for the (north) Side Setback.

Reasons for Decision:

The Board finds the following:

1. Single Detached Housing is a Permitted Use in the RF1 Single Detached Residential Zone, section 110.2(4).
2. Section 6.1(94) of the *Edmonton Zoning Bylaw* states, “Site Width means the horizontal distance between the side boundaries of the Site measured at a distance from the Front Lot Line equal to the required Front Setback for the Zone.” The Site Width was determined to be 18.6 metres; therefore a 2 metre Side Setback is required. The Board finds that the subject lot is not a rectangular lot in that the horizontal width of the rear lot line is 18.02 metres, which is narrower than the Front Lot Line. Therefore, the lot is slightly over the threshold as stipulated in section 814.3(3) which requires a larger minimum Setback requirement of 2.0 metres. A Side Setback of 1.2 metres would be allowed if the Site Width was less than 18.3 metres. The Board finds that allowing the additional intrusion into the Side Yard will have no significant impact.
3. The Board notes that the south Side Setback is 2.48 metres and the proposed north Side Setback is 1.23 metres. The proposed total Side Setbacks will be 3.71 metres which is 0.01 metres from compliance with the minimum required total Side Setback as stipulated in section 814.3(3)(a). The Board finds 0.01 metres to be negligible.
4. Removing the cantilever which originally was proposed to run length of the building on the second floor this will lessen the intrusion into the Side Setback.
5. The Board accepts the calculations of the Board Officer in regards to the blockface average and the average of the two adjacent houses as appropriate points of reference in calculating the Front Setback distances.
6. Although the appellant claimed that the proposed front of his Garage would be in line with the Garage to the north, the Board does not agree. However, the Board does find that the protrusion of 0.16 metres into the required allowable Front Setback is minimal and acceptable.
7. The Board also finds that the Appellants have removed the windows along the north side of the building, particularly on the second floor at the suggestion of the Development Officer to increase the adjacent neighbour’s privacy.
8. Pursuant to Section 814 of the *Edmonton Zoning Bylaw*, one of the purposes of the Mature Neighbourhood Overlay “is to ensure that new low density development in Edmonton’s mature residential neighbourhoods is sensitive in scale to existing development.” The Board finds that the proposed development complies with this as per the photos of houses (“Exhibit A”) in the area submitted by the appellants.

9. The Board notes that Section 643(5)(c) of the *MGA* states “A non-conforming building may continue to be used but the building may not be enlarged, added to, rebuilt or structurally altered except ... in accordance with a land use bylaw that provides minor variance powers to the development authority for the purposes of this section.” Section 11.3(2) of the *Edmonton Zoning Bylaw* states that “the Development Officer may approve, with or without conditions as a Class B Development, an application for development that does not comply with Bylaw where... the proposed development would, in his opinion, conform with the use prescribed for that land or building in this Bylaw...” The Board finds the proposed development is for the continued use of a Single Family Dwelling which is listed as a Permitted Use in the RF1 Single Detached Residential Zone.
10. 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

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 - i) the requirements of any other appropriate federal, provincial or municipal legislation,
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4. A Development Permit will expire in accordance to the provisions of section 22 of the Revised City of Edmonton, by-law No 12800 *Edmonton Zoning Bylaw*.
5. This decision may be appealed to the Alberta Court of Appeal on a question of law or jurisdiction under s 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.

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SDAB-D-15-176

Application No. 171988084-001

An appeal to construct a two Storey Accessory Building (Garage Suite on second storey, Garage on main floor, 9.75m x 7.62m) On Plan 1275HW Block 4 Lot 5, located at 11520 - 74 Avenue NW was WITHDRAWN