



**EDMONTON  
TRIBUNALS**

*Subdivision &  
Development  
Appeal Board*

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Date: August 21, 2018  
Project Number: 281752371-001  
File Number: SDAB-D-18-117

**Notice of Decision**

- [1] On August 8, 2018, the Subdivision and Development Appeal Board (the “Board”) heard an appeal that was filed on **July 11, 2018**. The appeal concerned the decision of the Development Authority, issued on July 5, 2018, to refuse the following development:

**Construct a Limited Group Home (6 residents)**

- [2] The subject property is on Plan 3067HW Blk 20 Lot 8, located at 10335 - 162 Street NW, within the RF4 Semi-Detached Residential Zone. The Mature Neighbourhood Overlay and the Jasper Place Area Redevelopment 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 written submissions; and
  - One Online response.

**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.( “*Municipal Government Act*”)

**Summary of Hearing**

- i) *Position of Mr. R. Colistro, Legal Counsel for the Appellant, People Support Services Inc.*

- [7] Mr. Colistro noted that the proposed development is a Permitted Use in the RF4 Semi-Detached Residential Zone and that it complies with all other requirements of the *Edmonton Zoning Bylaw*. He conceded that a Limited Group Home is a unique development in a residential area.
- [8] The Limited Group Home will be required to maintain the residential nature of the neighbourhood. To ensure this, the proposed development is a single storey design which is characteristic of the neighbourhood.
- [9] Community Consultation was completed at the permit level stage with the immediate adjacent neighbours and the neighbours abutting the rear lane.
- [10] The proposed development is designed to blend in with the neighbourhood which will not create an excess of vehicles parking in the front of the subject Site.
- [11] As to the issue of parking, Mr. Colistro explained that there are two parking spaces available in the attached garage and on the parking pad in front of the garage. The attached garage will accommodate residents who are in wheelchairs to easily access the dwelling as there is planned an exterior ramp on the side of the garage to accommodate wheelchairs.
- [12] The subject lot is large and there will be sufficient front and rear amenity space with an attached garage.
- [13] The attached garage is well suited for a Group Home as most of the employees will take public transportation to the subject Site.
- [14] He referred to the elevation drawing submitted to the Board showing that the proposed development is a single storey structure. The roof of the attached garage will have a lower pitch than the house, mitigating any negative impact on adjacent properties.
- [15] Mr. Colistro noted that the overall Site Coverage will be less than the allowable with the rear attached garage.
- [16] He further pointed out that there is a window on the side of the garage which will break up the look of a large wall for the attached garage.
- [17] He referred to photographs submitted to the Board showing the street view of the area that consists of single storey dwellings in the area which is consistent with the proposed development.
- [18] He referred to the Site Plan showing that the garage is setback farther on the side lot line which is more than the requirement of the *Edmonton Zoning Bylaw*.
- [19] With regards to landscaping, he noted that there are trees proposed on the south and north side of the property that will provide additional privacy and mitigate any negative impact on adjacent properties.

- [20] He referred to photographs showing the area north of the subject Site that has mature vegetation on the property which will block the view of the proposed attached garage. The existing hedge in the front of the property will also provide additional privacy.
- [21] The existing trees on the adjacent properties will have more of a sun shadowing effect on neighbouring properties than the proposed development will.
- [22] The proposed landscaping plan shows the location of the proposed trees which complies with the General Purpose of the *Edmonton Zoning Bylaw*.
- [23] He is agreeable to any landscaping conditions.
- [24] He referred to a Google map submitted to the Board showing that there are front and rear driveways.
- [25] With regard to the online response and the concerns of the neighbour across the rear lane it was Mr. Colistro's opinion that the rear attached garage will not negatively impact properties across the rear lane. The concerns centered on the Group Home itself and not the required variances.
- [26] In Mr. Colistro's opinion, Rear Setback variances are common to accommodate block face standards.
- [27] Mr. Colistro provided the following information in response to questions by the Board:
- a) He could not confirm if the roots of the existing trees will become an issue with the gas line. However, this was not a concern outlined by the Development Officer.
  - b) His client is agreeable to the planting requirements as outlined in the Agenda.
  - c) There is sufficient Amenity Space in the front and rear of the subject Site. There will be a ramp on the side of the garage that leads to the Amenity Areas.
  - d) A patio will be developed at the rear of the property to accommodate Amenity Space.
- ii) *Position of the Development Officer, Mr. Angeles*
- [28] The Development Authority did not appear at the hearing and the Board relied on Mr. Angeles' written submission.

**Decision**

- [29] 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 CONDITIONS:
1. The Applicant must comply with the General Planting Requirements under Section 55.3(1)(c) of the *Edmonton Zoning Bylaw*.
  2. PRIOR TO THE RELEASE OF DRAWINGS FOR BUILDING PERMIT REVIEW, the applicant or property owner shall pay a Sanitary Sewer Trunk Charge fee of \$697.00. The SSTC charge is quoted at year 2018 rate. However, the final SSTC is based on the prevailing rate at the time the applicant/owner makes payment at the 2nd Floor, Edmonton Tower, 10111 104 Avenue NW, Edmonton AB T5J 0J4.
  3. The Development Permit Notification Sign must be posted on-site prior to any construction activity and within 14 days of approval.
  4. Minimum parking dimension shall be 2.6 metres x 5.5 metres for each vehicle. (Reference Section 54.2(4)(a)(i))
  5. The applicant must provide all billable quantities (landscaping) for completion of the landscape plan. It can be within the legend or other easily referenced form on the landscape plan. This includes (but is not limited to) site furniture, m2 of sod/planting bed construction/other surface area treatments, etc.
  6. Signs require separate Development Applications.
- [30] In granting the development the following variances to the *Edmonton Zoning Bylaw* are allowed:
1. The minimum allowable Rear Setback of 40% Site Depth as per Section 814.3(4) is waived to allow 24.7% of Site Depth at this location.
  2. The requirement that Rear attached Garages shall not be allowed as per Section 814.3(19) is waived to allow a Rear attached Garage at this location.

**Reasons for Decision**

- [31] The proposed development is a Permitted Use in the (RF4) Semi-Detached Residential Zone.
- [32] The proposed development has the necessary three on-site parking spaces, fulfilling the parking requirements set out in the *Edmonton Zoning Bylaw* as per Section 54.2 Schedule 1(A)(6).

- [33] The Board notes that one online submission of opposition for the development was provided voicing a concern over parking; however, as outlined the proposed development meets the requirements of the *Edmonton Zoning Bylaw*.
- [34] The Board accepts that community consultation was completed, and that no one appeared at the hearing in opposition to the proposed development.
- [35] The proposed development is a single storey development, and is characteristic of the neighbourhood.
- [36] The Board accepts the evidence provided that necessary steps have been taken to ensure a reduction in the massing effect on the north and south neighbouring properties, specifically window and shrubbery placement as well as the overall design of the roof line.
- [37] The Board heard evidence that the proposed development will not have any sun shadowing impact on the adjacent properties. What is more, the properties to the south and north have mature vegetation on those properties that already creates a sun shadowing effect.
- [38] In refusing the application, the Development Officer indicated that, pursuant to Section 50 of the *Edmonton Zoning Bylaw*, more information was required with respect to Landscaping. The Board is of the opinion that the information submitted regarding the Appellant's Landscaping plan, plus the condition the Board has placed with respect to Landscaping, will ensure that the objectives of Section 50 are fulfilled. The Board notes that the Appellant is agreeable to the Landscaping condition.
- [39] The Board accepts the evidence provided that a sufficient Amenity area will be provided for the future residents of the proposed development.
- [40] Based on the above, it is the opinion of the Board that the proposed development will not unduly interfere with the amenities of the neighbourhood nor materially interfere with or affect the use, enjoyment or value of neighbouring parcels of land.



Mr. B. Gibson, Presiding Officer  
Subdivision and Development Appeal Board

Board Members in Attendance: Mr. M. Young; Ms. E. Solez; Ms. K. Thind, Mr. A. Peterson

**Important Information for the Applicant/Appellant**

1. This is not a Building Permit. A Building Permit must be obtained separately from Development & Zoning Services, 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 Development & Zoning Services, 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: August 17, 2018  
Project Number: 274185671-001  
File Number: SDAB-D-18-078

**Notice of Decision**

**May 31, 2018 Hearing:**

[1] Motion:

“That SDAB-D-18-078 be **TABLED** to June 14, 2018, at the written request of the Appellant.”

[2] Reasons for Decision:

1. The Appellant was out of the country on the original scheduled hearing date.
2. This is the first postponement request made by the Appellant.

**June 14, 2018 Hearing:**

[3] Motion:

“That SDAB-D-18-078 be **TABLED** to August 8 or 9, 2018, at the verbal request of the Appellant.”

[4] Reasons for Decision:

1. The Appellant asked that the hearing be postponed in order to retain legal counsel.

**August 8, 2018 Hearing:**

[5] Motion:

“That SDAB-D-18-078 be raised from the table.”

[6] On August 8, 2018, the Subdivision and Development Appeal Board (the “Board”) heard an appeal that was filed on **May 2, 2018**. The appeal concerned the decision of the Development Authority, issued on April 27, 2018, to refuse the following development:

**Change use from Single Detached House to Lodging House (7 sleeping units).**

[7] The subject property is on Plan I23A Blk 161 Lot 32, located at 11003 - 85 Avenue NW, within the DC1 (Garneau Area Redevelopment Plan) Direct Development Control Provision. The Garneau Area Redevelopment Plan applies to the subject property.

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

- A copy of the Development Permit application with attachments, proposed plans, and the refused Development Permit;
- The Development Officer’s written submission; and
- On-line responses.

### **Preliminary Matters**

[9] At the outset of the appeal hearing, the Presiding Officer noted that the Appellant was not in attendance. The Meeting Coordinator attempted to contact the Appellant by telephone without success. It was noted that the appeal hearing had been tabled on two previous occasions at the request of the Appellant. Therefore, the Board decided to proceed with the hearing based on the written submission of the Appellant that was provided when the appeal was filed on May 2, 2018.

[10] The appeal was filed on time, in accordance with section 686 of the *Municipal Government Act*, RSA 2000, c M-26.

### **Summary of Hearing**

*i) Position of the Appellant, Ms. S. Hawkins, representing Parley Consulting from the written reasons for appeal submitted on May 2, 2018:*

[11] The Board read the submission of the Appellant which stated:

This permit was declined due to the fact that there were 7 bedrooms in the house rather than 4 (as it was explained afterward to me not at the time of the application). Due to the size of the house and the large footprint of the house, I am asking for an exception to this ruling. There is plenty of square footage to accommodate the request. Four rooms are above ground and three are in the basement. I do not fully understand this as I was originally told 8 would be permitted for this house or I may not have applied in the first place. I depend on the city of provide accurate information at one of the three previous meetings I had with the city before submitting the application.



This application will not affect the neighbourhood in any negative way nor will it change anything structurally to the house. It is truly the fairest single best use for this home.

ii) *Position of the Development Officer, Mr. B. Langille:*

[12] Mr. Langille did not attend the hearing but provided a written submission that was considered by the Board.

**Decision**

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

**Reasons for Decision**

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

Despite subsections (1), (2), and (3), if a decision with respect to a development permit application in respect of a direct control district

(b) 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.

[15] Pursuant to section 3(12) of the DC1 (Garneau Area Redevelopment Plan) Direct Development Control Provision (the "DC1"), a Boarding and Lodging House is a listed Use.

[16] Section 4 of the DC1 provides the following with respect to Development Criteria per section 710.4(2) of the Land Use Bylaw states:

Development Criteria

The following development criteria shall apply to developments within this District pursuant to Section 710.4 of the Land Use Bylaw.

- 1) The General Regulations and Special Land Use Provisions of the Land Use Bylaw.
- 2) The development regulations of the RF3 (Low Density Redevelopment) District, provided that the Development Officer may relax these regulations for individual applications, where such relaxations would assist in the achievement of the development criteria in Clauses 3, 4 and 5 below.

- 3) New developments or additions to existing buildings shall be compatible with the scale, massing and siting of adjacent buildings along the same street frontage.
- 4) The rehabilitation and renovation of existing buildings shall retain the original details of rooflines, doors and windows, trim, exterior finishing materials and similar architectural features to the greatest extent practical.
- 5) The design and appearance of new developments shall incorporate building details and finishing materials which are common to the domestic architecture of the turn of the century and early 1920's detached housing in the area.
- 6) Existing trees and vegetation shall be retained wherever possible and where removal for new construction is required, mature trees shall be planted to maintain the appearance of the streetscape.

[17] Section 140.4(25) of the (RF3) Small Scale Infill Development Zone states, for Lodging Houses:

- a) No more than four Sleeping Units may be developed, whether or not in combination with a dwelling;
- b) The minimum Site area shall be 360 square metres in all cases and the Site area shall be comprised of the aggregate of 200 square metres for each Sleeping Unit, or for each of the Dwelling and each Sleeping Unit when they are in combination; and
- c) The Development Officer shall exercise discretion with respect to the number of Sleeping Units developed, having regard to the character and density of existing Residential Units.

[18] The proposed development is for a seven Sleeping Unit Lodging House (rather than the four allowed by section 140.4(25)(a)) with a Site area of 619.92 square metres (rather than the 1400 square metres required by section 140.4(25)(b)). In her reasons for appeal, the Appellant noted that the proposed development would not change the House structurally.

[19] Section 140.4(25)(c) gives the Development Officer a general discretion with respect to varying the number of Sleeping Units having regard to the character and density of existing Residential Units. However, section 4(2) of the DC1 contains a specific variance power allowing the Development Officer to relax these regulations only where such relaxations would assist in the achievement of the development criteria in Clauses 3, 4 and 5 of section 4.

[20] It is the specific variance power in section 4(2) that the Development Officer considered when determining how to implement the directions of Council. The Board agrees that this is the correct variance power to use when deciding whether to grant variances for developments in the DC1.

- [21] The Development Officer noted that Clauses 3, 4 and 5 deal with maintaining a built form that is consistent with other buildings in the neighbourhood. He concluded that the required variances did nothing that would assist in the development criteria in those clauses, rather they related to an intensification of development. Accordingly, he declined to grant the variances. The Board agrees with the Development Officer's rationale. The Board also notes that the Appellant stated in her reasons for appeal that the proposed development would not result in any structural changes, which confirms that the built form would not change.
- [22] The Board also notes that the Appellant did not appear at the hearing and failed to provide any evidence in its written submission regarding how the Development Officer failed to follow the directions of Council by not granting the required variances and refusing this development permit application.
- [23] Based on the above, the Board concludes that the Development Officer followed the directions of Council and that it does not have the authority to interfere with his decision to refuse to issue a development permit.



Mr. B. Gibson, Presiding Officer  
Subdivision and Development Appeal Board

Board Members in Attendance: Mr. M. Young, Ms. E. Solez; Ms. K. Thind, Mr. A. Peterson

**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.
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.



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Date: August 17, 2018  
Project Number: 142981618-005  
File Number: SDAB-D-18-118

**Notice of Decision**

- [1] On August 8, 2018, the Subdivision and Development Appeal Board (the “Board”) heard an appeal that was filed on **July 16, 2018**. The appeal concerned the decision of the Development Authority, issued on June 25, 2018, to approve the following development:

**Construct a side, rear and front uncovered deck (rear deck is irregular shape, 9.5 metres by 6.7 metres, attached front and side deck is irregular shape, 18.5 metres long) with a maximum Height of 1.2 metres above the ground, with Privacy Screening (1.82 metres tall above the deck floor), pergola (Pergola is irregular shape, 5.9 metres by 3.1 metre) and over height gate in the west side yard, and to install a Hot Tub, existing without permits.**

- [2] The subject property is on Plan 0223933 Blk 162 Lot 1, located at 976 – Hollingsworth Bend NW, within the (RF1) Single Detached Residential Zone. The Hodgson Neighbourhood Structure Plan applies to the subject property.

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

- A copy of the Development Permit application with attachments, proposed plans, and the approved Development Permit; and
- The Development Officer’s written submission.

- [4] The following exhibits were presented during the hearing and form part of the record:

- Exhibit A – Written submission and signatures of support from the Appellant;
- Exhibit B – Photographs submitted by the Appellant, stamped Exhibit B1-B-20;
- Exhibit C – City of Edmonton photographs submitted by the Appellant, stamped C1, C2 and C3;
- Exhibit D – Diagram showing the location of the required variances submitted by the Development Officer;

- Exhibit E – Plot Plan showing the location of the Utility Right of Way submitted by the Development Officer;
- Exhibit F – Cross section diagram illustrating the approved and permitted Platform Structure and Privacy Screening submitted by the Development Officer;
- Exhibit G – Photographs submitted by the Respondent, stamped G1 and G2; and
- Exhibit H – Photographs of existing pergolas submitted by the Respondent, stamped H1 to H6.

### **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.

### **Summary of Hearing**

*i) Position of the Appellant, Ms. E. Tack:*

- [8] The existing development and the required variances as well as their reasons for filing an appeal were discussed with several other neighbours. A petition containing the signatures of three neighbours who support the appeal is contained in the written submission (*Exhibit A*). She and her neighbours are concerned about the number of variances that are required for the existing structures.
- [9] The first variance is for a deficiency in the required setback for a 1.5 metre portion of the side uncovered deck to the (east) side property line shared with her property. The minimum required setback of 0.6 metres and a variance to allow no setback was granted, a variance of 100 percent.
- [10] The second variance is a 58 percent increase to section 44.3(b) of the *Edmonton Zoning Bylaw* (the *Bylaw*); the minimum required setback from the rear uncovered deck to the (south) rear property line.
- [11] The third variance is a 12 percent variance to section 49.1(d)(ii) for the maximum allowable height of the gate that is located in the side yard abutting her property.

- [12] The fourth and fifth variances are 52 percent variances to section 49.2(c), an excess in the maximum allowable height of the privacy screen.
- [13] The sixth variance is a 33 percent variance to section 50(3)(5)(b) to allow a deficiency in the minimum required setback of the pergola from the (east) side property line.
- [14] The seventh variance is a 44 percent variance to section 50(3)(5)(c), a deficiency in the minimum required setback between the pergola and the principal building.
- [15] The magnitude of the required variances is significant. This matter has been ongoing since 2013 when the first structures were built on the subject site with no permit. She and her neighbours cannot understand why Bylaw Enforcement has never enforced the development regulations over the past five years.
- [16] Three previous development permit applications were refused by Development & Zoning Services. She questioned what had changed and why this development permit application was approved.
- [17] Ms. Tack noted that the Development Officer stated in his written submission that it was the opinion of the Development Officer that each individual variance required for the privacy screen, upper and lower decks, pergola and gate do not unduly interfere with the amenities of the neighbourhood or materially interfere with or affect the use, enjoyment or value of neighbouring properties. This opinion is the complete opposite from the three previous decisions for similar development permit applications when the development was refused because it was the opinion of the Development Officer that these structures would unduly interfere with the amenities of the neighbourhood and materially interfere with an affect the use, enjoyment and value of neighbouring properties. She questioned why their opinion has suddenly changed when nothing has changed significantly on the subject site.
- [18] A series of photographs were referenced to illustrate the impact that the structures have had on their view of the wetlands located southwest of their house from the kitchen window located at the rear of the house. She acknowledged that the view was not perfect before development occurred on the subject site but it is much more limited now.
- [19] Her mother lives with her and because of some health concerns is not able to walk in the ravine. She was able to sit in the breakfast nook and have a view of the wetlands before that view was obstructed by the structures on her neighbour's property.
- [20] A photograph was referenced to illustrate that a wooden walkway has been built to the (east) property line. She questioned the necessity of the walkway and is concerned about a potential fire hazard. Several calls have been made to the City regarding this matter but no one has ever addressed her concerns.

- [21] A photograph of existing foundational posts was referenced to support her contention that the platform structure is not located 0.6 metres from the (east) property line.
- [22] In response to a question from the Board, Ms. Tack confirmed that there are only two small windows located on the side of her house that overlook the subject site.
- [23] Photographs of the existing over-height gate were referenced. It was her opinion that the gate is highly irregular and not characteristic of the neighbourhood. The height is not aesthetically pleasing and will negatively impact the value of her property. It was her opinion that the over height gate has rendered her gate inoperable but this has not been confirmed by Bylaw Enforcement. A photograph of the existing gates on the west of her side yard and her neighbour was referenced to illustrate that it is the same height as the gate on her (east) side yard and this height is characteristic of the neighbourhood.
- [24] A photograph of the pergola, privacy screen and deck from the window in the breakfast nook was referenced to illustrate that these structures block the view from the rear of her house and reduce sunlight penetration into her garden. Another photograph was referenced to illustrate that the pergola is visible from the front street. It was her opinion that the view of the privacy screen and pergola from her property is intrusive.
- [25] Photographs obtained from the City were referenced to illustrate that water flows from the subject site under the fence onto her property because of the grading of the subject site.
- [26] An aerial photograph of her property and the subject property was referenced to illustrate that the pergola encroaches into her side yard.
- [27] This situation has been ongoing for the past five years and has prevented the use and enjoyment of their rear yard in addition to lowering the value of their property.
- [28] The initial development included the deck, hot tub and pergola. When problems began to arise and they became aware that permits had not been obtained, Ms. Tack was assured by the City that the development regulations would be enforced. The Respondent was advised by the City to stop construction but they proceeded to continue to build structures without the required permits. Now that all of the structures have been completed, seeking an approval of a development permit with numerous significant variances is unjust.
- [29] Ms. Tack provided the following information in response to questions from the Board:
- a) She did not speak to the neighbour who resides south of the subject site because they provided support to the Respondent.



- b) She acknowledged that the maximum height of a privacy screen per the *Bylaw* is only slightly lower than what currently exists but it would still have an impact on the view and the use, enjoyment and value of her property and she would still be opposed to the development.
- c) A house with a deck existed on the subject site when she purchased her property.
- d) If the privacy screen was 1.2 metres high instead of 1.8 metres high she would have a partial view of the wetlands to the south.
- e) A professional opinion has not been sought regarding the impact of the development on the value of her property.

ii) *Position of the Development Officer, Mr. B. Liang:*

- [30] Three previous applications for this development have been made and it has existed without permits since the first application. The first application was for an uncovered deck with an attached pergola and hot tub. It was refused by the Development Authority in November 2013 and by the Subdivision and Development Appeal Board in December 2013. The second application was refused by the Development Authority in February 2015. The third application introduced a privacy screen, an elevated walkway and the gate. This application was refused in August 2016 and on appeal the Subdivision and Development Appeal Board determined that the appeal was filed late. This is the fourth application and no modifications have been made since the third application.
- [31] A diagram illustrating the location of the requested variances was submitted and marked *Exhibit D*.
- [32] The deck requires a variance for the projection of the rear uncovered deck to the rear property line. The rear yard of the subject site backs onto the side yard of the neighbour to the south. There are no windows on that portion of the house and there is no amenity space in that portion of the lot. The owner of the abutting property to the south has provided written support for the proposed development. The height of the deck lowers to 0.7 metres which reduces any overlook concerns into the Appellant's property. There is no discernible impact of the rear setback variance on the street, as the deck is constructed of high quality materials and has a high standard of design.

- [33] The Respondent provided new information about the property since the previous development permit application in 2016. A plot plan that was approved when the house was constructed, marked *Exhibit E*, was referenced to illustrate the existence of a Utility Right of Way located on the west side property line which prohibits the installation of fencing on the (west) property line. A fence constructed within the subject property off the Utility Right of Way will significantly reduce the area of usable amenity space. The property owners did not expand the deck towards the west portion of the site because a fence cannot be constructed to provide privacy along that side of the rear yard along the public roadway. Instead they opted to develop the east portion of the rear yard and the deck was expanded to the south. The presence of the Utility Right of Way is a practical hardship that is peculiar to this lot and was considered as a reason to grant the required variance.
- [34] The pergola requires two variances to the accessory building because of deficiencies in the minimum required distance from the house and the side property line. Although the pergola is a standalone structure, it is built adjacent to the rear uncovered deck and acts like an extension of the partially covered rear deck. Section 44.1 states that a covered veranda can be within 0.6 metres of a side lot line and this pergola is 0.6 metres from the side property line. It was his conclusion that these variances would not unduly interfere with neighbourhood amenities or materially interfere with the enjoyment of neighbouring properties.
- [35] Mr. Liang acknowledged that there appeared to be an overhang of the pergola in the photographs submitted by the Appellant that did not appear on the drawings that he reviewed. If it is determined that the pergola encroaches onto the neighbouring property, the overhang will have to be removed.
- [36] The elevated walkway running from the rear deck to the front driveway is considered a platform structure. The height of the elevated walkway ranges from 0.28 metres to 0.43 metres above the ground. The range in height is due to the lot grading within the interior side yard. Section 44.3(a) states that a platform structure that is less than 0.6 metres in height may be constructed to the property line abutting an interior side yard. The elevated walkway does not require a variance. Section 44.3(d) states that a platform structure can project up to 2.5 metres into the front setback. The elevated walkway only projects 1.3 metres into the front setback.
- [37] The gate on the elevated walkway is 2.08 metres high when measured from the ground. A variance to section 49.1(d)(ii) is required to allow the height of the gate to be increased from 1.85 metres to 2.08 metres. The additional height of the gate is required because of its placement on the elevated walkway. The gate itself is only 1.8 metres high, when measured from the surface to the elevated walkway. A standard fence gate is 1.8 metres high, therefore the gate on the elevated walkway is not unusually high for a typical fence gate.

- [38] Safety concerns regarding the wooden walkway raised by the Appellant were acknowledged. Mr. Liang advised that these concerns have not yet been addressed because a building permit has not been issued for the structure. If the Board denies the appeal and the development permit is approved, a building permit will be required and any safety concerns regarding the walkway will be addressed at that time.
- [39] The upper deck requires a variance to section 44.3(c), the distance from a 1.5 metre long portion of the side uncovered deck to the shared property line with 974 Hollingsworth Bend is zero metres instead of 0.6 metres.
- [40] The upper deck minimizes the amount of deck touching the property line to 1.5 metres, which is necessary to accommodate a landing for the stairs from the elevated walkway to the upper deck. There are no large windows on the west façade of the Appellant's house that would create a privacy concern and this portion of the upper deck is not visible from the street.
- [41] The privacy screen installed on the upper and lower deck requires two variances. Concerns can arise when trying to find the balance between privacy and potential massing and the loss of sunlight onto adjacent properties. Section 49.2(i) allows the Development Authority to grant a variance to increase the height of privacy screening where the additional privacy afforded by a taller privacy screen is beneficial for all affected property owners. A cross-section diagram (*Exhibit F*) was used to illustrate the elevations of the main floor of the house and the decks. It was noted that there is a significant difference between the grade of the site at the side property line and the main floor of the house.

The lot grading significantly affects the apparent height of the deck and the privacy screen when viewed from the Appellant's east abutting property. Drainage Planning and Engineering inspected the property in June 2018 and received Final Lot Grading approval.

- [42] Section 44.3(d) allows a deck to be constructed up to 0.6 metres away from an interior side property line regardless of height above the ground. A hypothetical deck constructed at the elevation of the main floor of the house would appear to be 1.6 metres in height from the (east) side property line when it is constructed up to 0.6 metres from the (east) side property line, and such a deck would comply with the *Bylaw*. Such a deck would also be permitted a 1.2 metres tall privacy screen, but this privacy screen would be inadequate to provide any privacy for the east abutting property.

Since the elevation of the main floor of the house on the subject site is 1.7 metres above the elevation of the (east) side property line, any rear deck will appear very tall from the Appellant's property. The approved deck mitigates the apparent height of the deck by lowering the deck 0.34 metres below the main floor of the house, thereby reducing the overall height of the deck. This is a practical hardship that exists at this property.

[43] A hypothetical deck constructed at the elevation of the main floor of the house built 1.2 metres away from the (east) property line is permitted to have a 1.85 metre privacy screen and the top of the screen would appear to be 3.55 metres above the ground at the (east) side property line. The approved deck was built 0.34 metres below the main floor elevation and the approved privacy screen is 0.3 metres lower in height (but 0.6 metres closer to the (east) side property line) than a permitted 1.85 metres tall privacy screen built 1.2 metres away from the side property line.

The massing and sunlight penetration concerns are somewhat mitigated by dropping the upper deck 0.34 metres below the main floor elevation of the house. The lower deck is stepped down an additional 0.7 metres. The privacy screens are designed to provide privacy between the deck users and the adjacent property owners. Mr. Liang used a ruler to demonstrate sun shadowing and concluded that there is a point where the height of a permitted deck would generate more sun shadowing than the approved deck.

[44] Privacy concerns had to be balanced with sunlight penetration and massing and it was his opinion that these concerns have been adequately addressed. It is ideal when both parties agree on privacy screening but unfortunately an agreement could not be reached in this case.

[45] Mr. Liang provided the following information in response to questions from the Board:

- a) The maximum allowable height for a fence is 1.85 metres. He acknowledged that the construction of an over height fence and the proposed privacy screen can create massing concerns.
- b) He could not confirm the distance between the support structure shown in the Appellant's photographs and the (east) side property line.
- c) The *Bylaw* does not contain any development regulations regarding the preservation of view.
- d) The development permit application was refused in 2016 because the Development Officer determined that, since an affected property owner had major concerns regarding the visual impact of the privacy screen, it was not mutually beneficial to all affected property owners. In 2013, the deck was constructed to the property line but was subsequently cut back 0.6 metres to comply with the *Bylaw* regulations.
- e) Cutting back the deck and installing a privacy screen significantly changed the proposed development. Prior to 2016, the *Bylaw* provided very little guidance on the evaluation of a privacy screen. Privacy screen regulations were adopted in 2016 and the development permit application was approved despite the massing and privacy concerns of the adjacent neighbour and the interests of both parties could not be met.

- f) The new development permit application included information regarding the grading of the site and how it impacted the development. He acknowledged that the grading of the subject site has not changed since 2013 but more specific information has been provided to justify the requested variances based on the significant elevation differences between the subject site and the Appellant's property.

*iii) Position of the Respondents, Mr. J. Toy and Ms. K. Hartson, property owners and Mr. G. Hilbrecht, builder:*

- [46] Mr. Hilbrecht indicated that this project was started as a deck replacement in 2013. It was his assumption that a development permit was not required because the small builder's deck was being replaced with a lower deck to address overlook and privacy concerns into the neighbour's rear yard.
- [47] Because of the Utility Right of Way on the west side of the subject site a fence could not be built. Privacy was a concern for the property owners because the property abuts the main road into the neighbourhood. Based on these constraints it was the decision of the property owner to build a deck as close to the (east) property line as possible.
- [48] The elevation of this site drops approximately one metre from the centre of the lot to the fence line. Weeping tiles were installed when the deck was built in an attempt to address problems with run off and soil erosion.
- [49] A photograph submitted by the Appellant, marked *Exhibit B14*, was referenced to address her concerns regarding her gate sticking. It was his opinion that the Appellant's concern with her gate is related to the fact that her gate is hinged onto the centre post. The weight of the gate has caused the post to lean and that is why it is sticking. This has nothing to do with the Respondent's gate on the subject site.
- [50] The wooden walkway was constructed to allow access to the rear door of the house. Without the walkway, the ground is too sloped to allow access to the rear yard.
- [51] It was his opinion that, because of the existing six-foot fence between the properties, the Appellant would not have been able to see even the tops of the trees in the Google photograph she submitted showing what her view was like before the privacy screening was installed.
- [52] The Respondents have been trying to resolve the issues and obtain a development permit for five years. The Appellant objected to any attempts that were made to resolve the problems. The Respondents decided to install a privacy screen in 2016 to address privacy concerns but privacy screens were not regulated at the time.

They worked with a Development Officer and Bylaw Enforcement but were never able to discuss the privacy screen with the Appellant.

- [53] The deck was built so that the property owners could enjoy their rear yard. They never wanted to impede their neighbour and tried to build something that was appealing to the neighbourhood. Many neighbours have complimented the deck development.
- [54] Ms. Hartson advised that they have worked closely with the City to try to find a solution and have done everything required by the City including cutting back the deck, improving the grading of the lot to address drainage problems, and the use of high quality materials.
- [55] Mr. Toy referenced a Google earth photograph to illustrate the original house and the builder's deck as well as the grade differential of the lot before any of the deck development occurred.
- [56] Photographs of other existing pergola structures on properties located within 200 metres of their house were referenced to illustrate that they are characteristic of the neighbourhood.

*iv) Rebuttal of the Appellant, Ms. E. Tack*

- [57] It was her opinion that the contractor should have known that a development permit was required when construction of the development began.
- [58] The Bylaw Enforcement Officer advised her not to discuss the development with the Respondents.
- [59] It was her opinion that alterations were made to the development only because they were forced to do so by the City. Construction continued even after the development permit application was refused by the Subdivision and Development Appeal Board in 2013.
- [60] She reiterated that the view from the kitchen window at the rear of their house has been reduced by the structures that have been built on her neighbour's property.
- [61] The pergolas from other properties illustrated in the photographs submitted by the Respondent are not the same as the pergola that exists on the subject site. The pergolas illustrated in the photographs are centered at the back of the house and do not obstruct the views of neighbouring property owners.
- [62] In an attempt for the Respondents to preserve their privacy, the deck and supporting structures were built too close to the property line, which impacts her privacy and the use and enjoyment of her rear yard.

## Decision

[63] 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

[64] The Proposed development is an addition and Accessory to a Permitted Use in the (RF1) Single Detached Residential Zone that requires seven variances.

[65] The Board notes that Drainage Planning and Engineering inspected the subject Site in June 2018 and provided an approved Lot Grading Plan. The Lot Grading Plan indicates that the grade elevation drops 0.39 metres from the rear of the Principal Building to the (east) Side Lot Line. The Board further notes that the main floor elevation of the Principal Building is 1.7 metres above the (east) Side Lot Line elevation.

[66] The Board further notes that there is a Utility Right of Way with a width of 2.0 metres that extends from the (east) Side Lot Line in the (north) Front Yard along the entire Front Lot Line and (west) flanking Side Lot Line property line to the (south) Rear Yard, which reduces the useable amenity space in the Rear Yard.

[67] The Board finds that the surface elevation irregularity to the situation of land and the Utility Right of Way both create a hardship peculiar to the subject Site and the Board grants the seven variances for the reasons which follow.

[68] The Board agrees with the variances granted by the Development Officer for the following reasons:

- a) A 1.5-metre long portion of the upper Platform Structure is located 0.0 metres from the Appellant's Side Lot Line rather than the required 0.6 metres. This portion of the upper Platform Structure is the landing located at the top of the stairs leading from the wooden Walkway along the Side Lot Line. This landing is the minimum width allowed for a landing. The remainder of the upper Platform Structure used to be as close as the landing to the Appellant's property line but the Respondents cut it back by 0.6 metres so that no variance is required for that portion. Based on the photographic evidence, the Board finds that the 0.6-metre variance for the 1.5-metre long landing will have minimal impact on the Appellant as there are only two small windows on the east side elevation of the Appellant's house. Further, there will be no impact on the neighbourhood because the landing is not visible from the roadway.

- b) Due to the elevation differential between the Respondent's house and the Side Lot Line, an elevated wooden Walkway was constructed to allow access to the Rear Yard. The Height of this Walkway is such that no variance is required.
- c) The lower Platform Structure extends south toward the Rear Lot Line and is 0.7 metres lower than the upper Platform Structure. The distance from the lower Platform Structure to the Rear Lot Line is 2.3 metres instead of the required 5.5 metres. The Board finds that the required variance will not have any material impact on the Appellant because the variance does not extend toward the Appellant's property. The Board also finds that the required variance will not have any material impact on the property owner to the south as that owner's house does not have windows on the side facing the Respondent's Lot, nor is there any amenity space on that side of the owner's house. Further, that property owner has no objection to this development. The placement of the lower Platform Structure on the Site is such that the variance will not have any impact on the neighbourhood.
- d) The gate on the elevated Walkway is 2.08 metres tall when measured from the ground rather than the 1.85 metres allowed. The additional Height of the gate is due to its placement on the elevated Walkway. The gate itself is 1.8 metres tall when measured from the surface of the elevated Walkway. A standard fence gate is 1.85 metres tall, thus the gate on the elevated Walkway is not unusually tall for typical fence gate. The Board finds that minor variance in Height of the gate will not have any significant impact on the neighbourhood or on neighbouring parcels of land. The Board further finds that the problems the Appellant is experiencing with her gate are not related to the Respondents' gate.
- e) The Development Officer treated the pergola as an Accessory Building. As such, it requires two variances. The pergola is 0.6 metres from the Side Lot Line instead of 0.9 metres and it is 0.5 metres from the Principal Dwelling instead of 0.9 metres. However, although the pergola is a standalone structure, the pergola is built adjacent to the rear veranda, acting like an extension of the partially covered rear veranda. In accordance with section 44.1, a covered veranda can be within 0.6 metres of a Side Lot Line, the same distance as the pergola. As well, the pergola is an open structure that is below the maximum Height restriction, so the pergola does not cast significant shadows onto adjacent properties. The pergola is located in the interior of the Lot, so the pergola does not have a negative impact when viewed from the roadway. Based on the above and on the photographic evidence, the Board is of the opinion that the minor variances required for the pergola will have minimal impact on the neighbourhood and on neighbouring parcels of land.



- f) The Privacy Screen constructed on the upper Platform Structure located within the required interior Side Setback abutting the Appellant's property is 1.82 metres in Height when measured from the surface of the deck, instead of 1.2 metres. According to the approved plot plan, the ground drops 0.39 metres from the back of the house to the east Side Lot Line. While a deck could be built 1.30 metres above the ground at the back of the house to align with the main floor of the house, the deck was built 0.34 metres below the main floor of the house to enhance privacy. The result is that the deck is actually only 0.96 metres above the ground at the back of the house. In accordance with section 44.3(d), decks can be constructed as close as 0.6 metres from an interior Side Lot Line regardless of Height above the ground. A hypothetical deck constructed at the Respondents' house's main floor elevation with 1.2-metre high Privacy Screening would comply with the *Edmonton Zoning Bylaw*. The Height of this Privacy Screening would be only 0.28 metres lower than the existing Privacy Screening. The Board is of the opinion that this minimal difference is not enough to significantly impact the neighbourhood or neighbouring parcels of land. Further, the maximum allowable Height of a Privacy Screen can be increased to 1.85 metres in order to prevent visual intrusion and provide additional screening from adjacent properties. Given the fact that the Respondent's lot is higher than the Appellant's, and based on the other evidence, including a cross section diagram provided by the Development Officer (*Exhibit F*), the Board is of the view that allowing the variance in the Height of the Privacy Screening is warranted to enhance privacy without creating undue massing and sun shadowing.
- g) The Privacy Screen constructed on the portion of the lower Platform Structure located within 2.5 metres of the Rear Lot Line abutting 721 Hollingsworth Green is 1.82 metres in Height when measured from the surface of the deck, instead of 1.2 metres. This neighbour does not object to the development and, as was noted previously, his house has no windows facing the deck and there is no amenity space on that side of his Lot. Given this and the interior location of the deck on the Respondents' Lot, the Board finds that the variance in Height of Privacy Screening on the lower Platform Structure will have no significant impact on the neighbourhood or on neighbouring parcels of land.
- [69] The Appellant presented a petition with three properties that are opposed to the proposed development. However, the Board notes that all three properties are across Hollingsworth Bend and Hollingsworth Green and the proposed development does not have any significant impact on these properties and will not affect the use, enjoyment or value of their land.
- [70] The Appellant indicated that the proposed development will lower the value of her property. However, no evidence was provided to demonstrate this impact.

- [71] The Board notes that based on photographic evidence, the top of the pergola may project into the Appellant's Lot. The Board does not approve any projection into the adjacent property. The pergola must be constructed according to the stamped plans.
- [72] The Board is not bound by precedent and must consider each case on its individual merits. The Board acknowledges the previous Board decision (SDAB-D-13-312). Although there are similarities between both applications, the Board notes that the current *Edmonton Zoning Bylaw* does not reflect the *Bylaw* that was in effect in 2013. The Board further notes that the previous decision was based on a variety of different factors including the scope of application, variances, and evidence.
- [73] For the reasons above, 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 so the appeal is denied.



Mr. B. Gibson, Presiding Officer  
Subdivision and Development Appeal Board

Board Members in Attendance: Mr. M. Young; Ms. E. Solez; Ms. K. Thind, Mr. A. Peterson

**Important Information for the Applicant/Appellant**

1. This is not a Building Permit. A Building Permit must be obtained separately from Development & Zoning Services, 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 Development & Zoning Services, 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.*