

SUBDIVISION
AND
DEVELOPMENT APPEAL BOARD
AGENDA

Tuesday, 9:00 A.M.
August 17, 2021

SUBDIVISION AND DEVELOPMENT APPEAL BOARD

I 9:00 A.M. SDAB-D-21-137

To construct a Single Detached House with an Unenclosed Front Porch, rear attached Garage, balcony, rear uncovered deck (7.57 metres by 5.38 metres), side uncovered deck (4.27 metres by 8.84 metres), fireplace and Basement development (NOT to be used as an additional Dwelling)

9302 - 75 Avenue NW
Project No.: 385995938-002

NOTE: *Unless otherwise stated, all references to "Section numbers" in this Agenda refer to the authority under the Edmonton Zoning Bylaw 12800.*

ITEM I: 9:00 A.M.

FILE: SDAB-D-21-137

AN APPEAL FROM THE DECISION OF THE DEVELOPMENT OFFICER

APPELLANT:

APPLICATION NO.: 385995938-002

APPLICATION TO: Construct a Single Detached House with an Unenclosed Front Porch, rear attached Garage, balcony, rear uncovered deck (7.57 metres by 5.38 metres), side uncovered deck (4.27 metres by 8.84 metres), fireplace and Basement development (NOT to be used as an additional Dwelling)

DECISION OF THE DEVELOPMENT AUTHORITY: Refused

DECISION DATE: July 19, 2021

DATE OF APPEAL: July 20, 2021

MUNICIPAL DESCRIPTION OF SUBJECT PROPERTY: 9302 - 75 Avenue NW

LEGAL DESCRIPTION: Plan 2022338 Blk 16 Lot 28

ZONE: (RF3) Small Scale Infill Development Zone

OVERLAY: Mature Neighbourhood Overlay

STATUTORY PLAN: N/A

Grounds for Appeal

The Appellant provided the following reasons for appealing the decision of the Development Authority:

The proposed house is over-height and has an attached garage. Based on the location, and the design we feel this development should be considered.

General Matters

Appeal Information:

The *Municipal Government Act*, RSA 2000, c M-26 states the following:

Grounds for Appeal

685(1) If a development authority

- (a) fails or refuses to issue a development permit to a person,
- (b) issues a development permit subject to conditions, or
- (c) issues an order under section 645,

the person applying for the permit or affected by the order under section 645 may appeal to the subdivision and development appeal board.

...

(2) In addition to an applicant under subsection (1), any person affected by an order, decision or development permit made or issued by a development authority may appeal the decision in accordance with subsection (2.1).

Appeals

686(1) A development appeal to a subdivision and development appeal board is commenced by filing a notice of the appeal, containing reasons, with the board,

- (a) in the case of an appeal made by a person referred to in section 685(1)
 - (i) with respect to an application for a development permit,
 - (A) within 21 days after the date on which the written decision is given under section 642, or
 - (B) if no decision is made with respect to the application within the 40-day period, or within any extension of that period under section 684, within 21 days after the date the period or extension expires,

or

- (ii) with respect to an order under section 645, within 21 days after the date on which the order is made, or
- (b) in the case of an appeal made by a person referred to in section 685(2), within 21 days after the date on which the notice of the issuance of the permit was given in accordance with the land use bylaw.

Hearing and Decision

687(3) In determining an appeal, the board hearing the appeal referred to in subsection (1)

...

- (a.1) must comply with the land use policies;
- (a.2) subject to section 638, must comply with any applicable statutory plans;
- (a.3) subject to clause (a.4) and (d), must comply with any land use bylaw in effect;
- (a.4) must comply with the applicable requirements of the regulations under the *Gaming, Liquor and Cannabis Act* respecting the location of premises described in a cannabis licence and distances between those premises and other premises;

...

- (c) may confirm, revoke or vary the order, decision or development permit or any condition attached to any of them or make or substitute an order, decision or permit of its own;
- (d) may make an order or decision or issue or confirm the issue of a development permit even though the proposed development does not comply with the land use bylaw if, in its opinion,
 - (i) the proposed development would not
 - (A) unduly interfere with the amenities of the neighbourhood, or
 - (B) materially interfere with or affect the use, enjoyment or value of neighbouring parcels of land,

and

- (ii) the proposed development conforms with the use prescribed for that land or building in the land use bylaw.

General Provisions from the *Edmonton Zoning Bylaw*:

Under section 140.2(8), **Single Detached Housing** is a **Permitted Use** in the **(RF3) Small Scale Infill Development Zone**.

Under section 7.2(8), **Single Detached Housing** means:

development consisting of a building containing one principal Dwelling which is separate from any other principal Dwelling or building. This Use includes Mobile Homes which conform to Section 78 of this Bylaw.

Section 140.1 states that the **General Purpose** of the **(RF3) Small Scale Infill Development Zone** is “to provide for a mix of small scale housing.”

Section 814.1 states that the **General Purpose** of the **Mature Neighbourhood Overlay** is:

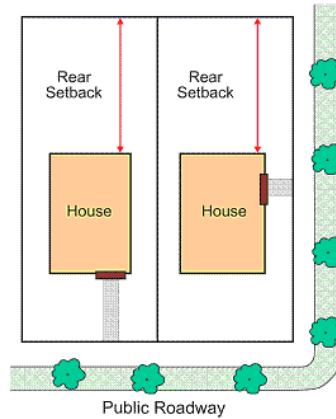
to regulate residential development in Edmonton’s mature residential neighbourhoods, while responding to the context of surrounding development, maintaining the pedestrian-oriented design of the streetscape, and to provide an opportunity for consultation by gathering input from affected parties on the impact of a proposed variance to the Overlay regulations.

Rear Setback

Section 814.3(4) states “The minimum Rear Setback shall be 40% of Site Depth, [...]”

Under section 6.1, **Rear Setback** means:

the distance that a development or a specified portion of it, must be set back from a Rear Lot Line. A Rear Setback is not a Rear Yard, Amenity Space or Separation Space.



Development Officer’s Determination

- Rear Setback -The minimum Rear Setback shall be 40% of Site Depth (Section 814.3.4). (Section 814.3.4)**
- Required: 16.1m (40% of Site Depth)**
- Proposed: 6.6m (16% of Site Depth)**
- Deficient by: 9.5m**

[unedited]

Height

Section 814.3(5) states “The maximum Height shall not exceed 10.0 m in the RF5 Zone and 8.9 m in all other Zones.”

Under section 6.1, **Height** means “a vertical distance between two points.”

Section 52.4(c) states:

The Development Officer shall determine Grade by selecting, from the methods listed below, the method that best ensures compatibility with surrounding development:

- c. the Development Officer may determine Grade by calculating the average elevation of the corners of the buildings on all properties Abutting the Site or separated from the Site by a Lane;

Development Officer’s Determination

- Building Height - The maximum Height to midpoint should not exceed 8.9m. (Section 814.3.5)**
- Proposed 10.5m,**
- Exceeded by 1.6m.**

NOTE: The average Grade was 1.02m, in which was determined by using the average elevation of the corners of the building on the Abutting Site. (Section 52.4.c)

[unedited]

Height and Grade

Section 52.2(c) states:

Where the maximum Height as determined by Section 52.1 is measured to the midpoint, the ridge line of the roof shall not extend more than 1.7 m above the maximum permitted building Height of the Zone or overlay, or in the case of a Garden Suite the maximum permitted building Height in accordance with Section 87 of this Bylaw.

Development Officer's Determination

Roof Ridge extension - The house roof ridge line shall not extend more than 1.7m above the permitted building Height of 8.9m (Section 52.2.c).

- Permitted maximum ridge Height: 10.6m (8.9m + 1.7m)
- Proposed 10.8m,
- Exceeded by 0.2m.

[unedited]

Rear Attached Garage

Section 814.3(19) states "Rear attached Garages shall not be allowed."

Development Officer's Determination

Rear Attached Garage - Rear attached Garages shall not be allowed (Section 814.3.19).

Proposed: The rear Garage is attached to the house.

[unedited]

Community Consultation

Section 814.5(1) states the following with respect to Proposed Variances:

When the Development Officer receives a Development Permit Application for a new principal building, or a new Garden Suite that does not comply with any regulation contained within this Overlay, or receives a Development Permit for alterations to an existing structure that require a variance to Section 814.3(1), 814.3(3), 814.3(5) and 814.3(9) of this Overlay:

- a. the Development Officer shall send notice, to the recipient parties specified in Table 814.5(2), to outline any requested variances to the Overlay and solicit comments directly related to the proposed variance;
- b. the Development Officer shall not render a decision on the Development Permit application until 21 days after notice has been sent, unless the Development Officer receives feedback from the specified affected parties in accordance with Table 814.5(2); and
- c. the Development Officer shall consider any comments directly related to the proposed variance when determining whether to approve the Development Permit Application in accordance with Sections 11.3 and 11.4.

Section 814.5(2) states:

Tier #	Recipient Parties	Affected Parties	Regulation of this Overlay to be Varied
Tier 1	The municipal address and assessed owners of the land wholly or partially located within a distance of 60.0 m of the Site of the proposed development and the President of each Community League	The assessed owners of the land wholly or partially located within a distance of 60.0 m of the Site of the proposed development and the President of each Community League	814.3(5) – Height
Tier 2	The municipal address and assessed owners of the land Abutting the	The assessed owners of the land Abutting the Site and directly adjacent	814.3(4) - Rear Setback 814.3(19) –

	Site, directly adjacent across a Lane from the Site of the proposed development and the President of each Community League	across a Lane from the Site of the proposed development	Rear Attached
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Development Officer's Advisement

ADVISEMENT:

The proposed side deck complies with current Zoning regulations, however, it does not conform with the Utility Right of Way and Easement that registered to the land title.

The applicant/homeowner is advised to review his/her obligations pursuant to the Utility Right of Way and Easement #202228550, #202228551 & #202228552, that registered against the Title of the Property. This Development Permit does not imply consent for any structure that encroaches onto the easement that does not meet the requirements of the instrument registered against the legal title.

The applicant/homeowner is advised to contact EPCOR Distribution & Transmission Inc. at ecirc-power@epcor.ca, EPCOR Water Services Inc. and EPCOR Drainage Services at waterlandadmin@epcor.com for URW and Easement information.

[unedited]

Notice to Applicant/Appellant

Provincial legislation requires that the Subdivision and Development Appeal Board issue its official decision in writing within fifteen days of the conclusion of the hearing.

	Project Number: 385995938-002 Application Date: FEB 08, 2021 Printed: July 19, 2021 at 4:32 PM Page: 1 of 2			
<h2 style="margin: 0;">Application for Minor Development Permit</h2>				
This document is a Development Permit Decision for the development application described below.				
Applicant 	Property Address(es) and Legal Description(s) 9302 - 75 AVENUE NW Plan 2022338 Blk 16 Lot 28 Specific Address(es) Entryway: 9302 - 75 AVENUE NW Building: 9302 - 75 AVENUE NW			
Scope of Application To construct a Single Detached House with an Unenclosed Front Porch, rear attached Garage, balcony, rear uncovered deck (7.57m x 5.38m), side uncovered deck (4.27m x 8.84m), fireplace and Basement development (NOT to be used as an additional Dwelling).				
Permit Details <table border="0" style="width: 100%;"> <tr> <td style="width: 50%; vertical-align: top;"> # of Dwelling Units Add/Remove: 0 # of Secondary Suite Dwelling Units To Construct: Client File Reference Number: Minor Dev. Application Fee: Single Detached House Secondary Suite Included ? : N </td> <td style="width: 50%; vertical-align: top;"> # of Primary Dwelling Units To Construct: 1 Class of Permit: Lot Grading Needed?: Y New Sewer Service Required: N Stat. Plan Overlay/Annex Area: Mature Neighbourhood Overlay </td> </tr> </table>			# of Dwelling Units Add/Remove: 0 # of Secondary Suite Dwelling Units To Construct: Client File Reference Number: Minor Dev. Application Fee: Single Detached House Secondary Suite Included ? : N	# of Primary Dwelling Units To Construct: 1 Class of Permit: Lot Grading Needed?: Y New Sewer Service Required: N Stat. Plan Overlay/Annex Area: Mature Neighbourhood Overlay
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Development Application Decision Refused Issue Date: Jul 19, 2021 Development Authority: LAI, ECHO				
THIS IS NOT A PERMIT				



Project Number: **385995938-002**
 Application Date: FEB 08, 2021
 Printed: July 19, 2021 at 4:32 PM
 Page: 2 of 2

Application for Minor Development Permit

Reason for Refusal

Rear Setback -The minimum Rear Setback shall be 40% of Site Depth (Section 814.3.4). (Section 814.3.4)

- Required: 16.1m (40% of Site Depth)
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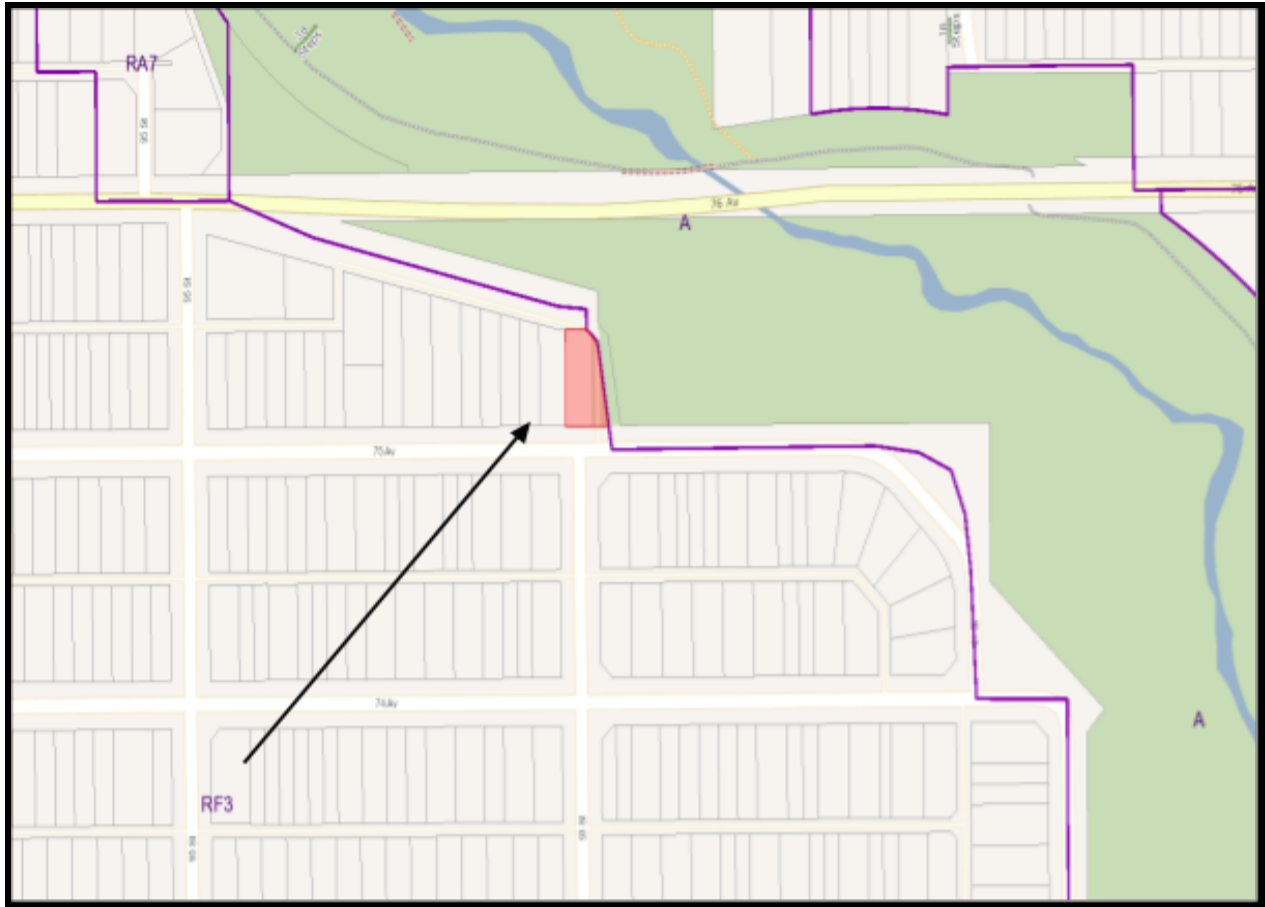
Rights of Appeal

The Applicant has the right of appeal to the Subdivision and Development Appeal Board (SDAB) within 21 days after the date on which the decision is made as outlined in Chapter M-26, Section 683 through 689 of the Municipal Government Act.

Fees

	Fee Amount	Amount Paid	Receipt #	Date Paid
Dev. Application Fee	\$502.00	\$502.00	058315045148001	Feb 09, 2021
Lot Grading Fee	\$148.00	\$148.00	058315045148001	Feb 09, 2021
Total GST Amount:	\$0.00			
Totals for Permit:	\$650.00	\$650.00		

THIS IS NOT A PERMIT



SURROUNDING LAND USE DISTRICTS

Site Location ←

▲
N

File: SDAB-D-21-137