

Edmonton Subdivision and Development Appeal Board

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Date: December 24, 2015
Project Number: 179568960-001
File Number: SDAB-D-15-301

Notice of Decision

This appeal dated November 23, 2015, from the decision of the Development Authority for permission to construct a two-storey Accessory Building (detached Garage) and to demolish the existing rear detached Garage.

The development permit was refused because the proposed detached Garage is over-Height.

The subject site is located on Plan 1875R Blk 2 Lot 9, located at 7840 - Jasper Avenue. The subject Site is zoned DC1 Direct Development Control Provision.

The appeal was filed on time, in accordance with Section 686 of the *Municipal Government Act*, R.S.A 2000, c. M-26.

The appeal was heard on December 11, 2015.

Summary of Hearing:

1. 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.
2. The following documentation was provided to the Board and referenced during the hearing, copies of which are on file:
 - Written submissions from the Appellant, including previous SDAB decisions and photographs;
 - A letter from affected property owners at 7839 - 111 Avenue and 7843 - 111 Avenue;
 - Written submissions from the Development Officer including a technical review and an email from the City's Principal Heritage Planner; and
 - A petition in support of the development signed by seven neighbouring property owners, submitted by the Appellant

Position of the Appellant

3. The Board heard from the Appellant, Karren Nelson. Ms. Nelson was joined by John Hachey.
4. Ms. Nelson addressed the provisions of the DC1 Viewpoint Direct Development Control District. She also referred to two previous SDAB decisions interpreting the directions of Council with respect to accessory building Height in this DC1 zone. In particular, in the decision on SDAB-D-14-246, the Board found that the Development Officer failed to follow the directions of City Council and assumed jurisdiction to hear the matter. She submitted that the present case is similar to the circumstances in SDAB-D-14-246. In both cases, the Development Officer erred because he was following the general provisions of Land Use Bylaw 5996 and not the DC1 guidelines.
5. Ms. Nelson further submitted that the decision on what is an appropriate development in this DC1 zone should be based primarily on the opinion of the City's Chief Heritage Planner. That is, the Development Officer should seek the opinion of the Heritage Officer and follow his advice. This is the case because DC1 guidelines are silent with respect to Height.
6. Ms. Nelson presented photos of other houses and accessory buildings in the Viewpoint DC1 zone and described their similarities to her proposed development. She described a prevalence of two storey houses in the neighbourhood. She also said that there are four 1.5 storey garages in her neighbourhood. In answer to a question from the Board, she admitted that there were other smaller garages in the neighbourhood that were not included in the pictures she presented.
7. Ms. Nelson has an interest in architecture and has been studying architecture while she worked on the restoration of her house. Her house was built in 1933 and she has worked hard to maintain its character. She has maintained the original windows and fixtures. She wants to design a garage that would appear as if it was built by the original property owner. She contacted a City Heritage Officer before going through the work of designing her garage. The Heritage Planner said the plan looked good but he could not make a decision with regard to approving it.
8. The garage plan matches the house and would enhance the neighborhood. The gable on the garage is of the same proportion as that of the house. The pitch of the roof on the garage is the same as the house.
9. Ms. Nelson said that all houses surrounding hers are two storeys while hers is one and a half storeys. She said that the garage would not be visible above the neighbouring houses. She used a laser devise to measure and found that, taking account of grade, the garage would be one foot lower than house. She plans to plant trees to minimize the impact on surrounding properties.

10. Ms. Nelson said that her household needs the extra space in the garage because they have minimum storage space available in their older heritage house. She emphasized that the garage is not to be used as a secondary suite nor as a business.
11. She circulated information to her neighbours and included her phone number and email address. She received only positive replies. She gathered seven signatures of seven neighbours who approve of the development. The only neighbour who had a concern about the Height was Mrs. Giroux, who is at this hearing.

Position of the Development Authority

12. The Development Officer, Trevor Illingworth, appeared at the hearing to provide an overview of his decision and to answer the Board's questions.
13. He reviewed his analysis of the bylaw provisions by which he is governed. His starting point is section 2.7 of the *Edmonton Zoning Bylaw* 12800, which directs that references to a zoning bylaw in a Direct Control Provision are to the zoning bylaw in effect at the time of the creation of the Direct Control Provision, unless there is an explicit statement to the contrary. This means that references in this DC1 zone to the zoning bylaw are to the old *Land Use Bylaw* 5996.
14. He submitted that silence on a particular matter in a DC zone means that the gaps should be filled by the applicable land use bylaw. Council would not have put arbitrary authority with respect to building Height in the hands of the Heritage Planner. Therefore, restrictions on approving Height variances come from the *Edmonton Zoning Bylaw* 12800.
15. With respect to section 710(4)(3) of the *Land Use Bylaw* 5996 (the DC1 provisions), he noted that it states that a development "may" be evaluated with respect to its compliance with the general provisions of the Land Use Bylaw. He noted that he interpreted the word "may" as giving him permission, but also admitted that he did not consider the option of not doing so.
16. Based on the General Provisions for Accessory Buildings in Residential Districts in section 61.3 of the *Land Use Bylaw* 5996, which state that Height must not exceed 3.7 metres nor one storey in Height, Mr. Illingworth denied the application. In doing so, he is satisfied that he followed the directions of City Council.
17. With respect to his measurements of the Height of the proposed development, Mr. Illingworth noted that there are two potential outcomes depending on whether the dormer is considered in the calculation. The dormer is unusual because it runs the entire length of the roof. Therefore, it is his opinion that the building is two storeys rather than one and a half storeys. If the dormer is ignored, the Height based only on the main roof profile is over 5 metres. Regardless of how Height is measured, it is over the allowable 3.7 metres.

18. In answer to question from the Board, Mr. Illingworth said that over-height garages have a negative effect on the neighbours by impinging on sunlight penetration and privacy. The fact that there may be other examples of over-height garages does not lessen the impact of this proposed development.
19. In answer to a question from the Board about the role of the Heritage Planner, Mr. Illingworth said that the final authority to approve a development rests with the Development Officer, not with the Heritage Planner. The Development Officer solicits an expert opinion from Heritage Planner to be used as one of many factors under consideration in a development application.
20. In answer to a question from the Board, Mr. Illingworth said that it is possible that an accessory building could be larger than the principal dwelling. In this case the principal building is slightly bigger.
21. When asked by the Board if he would vary the Height if he had authority to do so, he noted that variance required in this case is quite large and the Height of the roof ridgeline would exceed what is allowed by the bylaw regulations by two meters. He indicated that if the decision were his to make, he would engage the Heritage Planner a little more before doing so.

Position of Affected Neighbours

22. The Board heard from Mrs. Elizabeth Giroux who lives four sites to the east of the subject site.
23. Mrs. Giroux said that Cromdale Viewpoint is a unique area. The Direct Control zoning was put in place in the 1970s to protect the unique features of the area, including large front lawns. Because of the DC1 zoning, her neighbourhood has been able to keep oversized houses and apartment buildings out. Since the DC1 zoning was passed, other plans came into effect causing confusion over setback and Height. Development applications have been the source of debate in the area for the past 10 to 15 years.
24. Mrs. Giroux said that the Appellant has been a good neighbor. She understands the need for more storage, but allowing an over-height garage would set a bad precedent. There are other development options available, including constructing a loft above the garage.
25. With respect to two other garages in the neighbourhood with dormers, she said those are different than the proposed development because the windows either face the street or a playground.
26. The Board heard from Mr. McGowan, who lives outside 60 metre notification radius. He explained that he is an affected neighbor because he lives in the same DC1 zone, and this development could set a precedent for the types of developments allowed in this DC1 zone. The Board accepted that he is an affected property owner.

27. Mr. McGowan is concerned about the Height and the overall scale and size of the proposed development. He said that the mass of the garage appears to be bigger than the house. The garage is out of scale with existing garages and out of character with the community
28. Mr. McGowan commented on the petition in support of the development signed by six affected neighbours. He questioned whether all the affected property owners were properly notified.

Rebuttal

29. In rebuttal, Ms. Nelson reiterated the fact that she had broad support from the neighbourhood. The neighbours on both sides are in support. She sent out her information package to all people in the 60 metre radius. With regard to Mr. McGowan, she noted that he is outside 60 metre zone and was of the opinion that her proposed development does not affect him.
30. Ms. Nelson confirmed that the house is bigger than the garage when the footprint of its veranda is included in calculating the size.
31. With respect to section 710.4(3) of the *Land Use Bylaw* 5996, Mr. Nelson reiterated the importance of the word “may”. This section does not make the general provisions with respect to Height mandatory. The Development Officer erred by misunderstanding the meaning of “may” and applying the Height regulations rigidly.

Decision:

The Board CONFIRMS the decision of the Development Officer to REFUSE the permit.

Reasons for Decision:

1. This proposed development is located in a Direct Control District and, pursuant to section 641(4)(b) of the *Municipal Government Act*, when considering a development in a Direct Control District, the Board is confined to substituting its decision for that of the Development Authority only if it first determines that the Development Authority has failed to follow the directions of Council.
2. This specific development falls within Area 3 – Viewpoint Direct Development Control District of the Stadium Station Area Redevelopment Plan. The development regulations for this Direct Control District are contained in Section 11.17 of the Stadium Station Area Redevelopment Plan.
3. The Board is also required, as per Section 687 (3)(a.1) of the *Municipal Government Act*, to follow any statutory plans in effect at the time of application for a development permit. Within Section 11.17.4 of the Stadium Station Area Redevelopment Plan it states “The

following development criteria shall apply to the prescribed uses pursuant to Section 710.4 of the Land Use Bylaw” that being Land Use Bylaw 5996.

4. The Court of Appeal’s decision in *Parkdale-Cromdale Community League v. Edmonton (City)*, 2007 ABCA 309 confirms that this Board will apply Section 710.4 of the Land Use Bylaw that was in force at the time the Direct Control provisions were passed.
5. The Board notes that this development meets all of the regulations that are contained within Section 11.17 of the Stadium Station Area Redevelopment Plan. However there is no specific regulation for Height or for the number of Storeys contained within this Section.
6. Given this omission of specific regulations the Board has concluded that the Development Officer cannot follow Councils instructions because none were provided. Therefore the Board has made a finding that the Development Officer did not follow Council’s instructions. Given this finding, the Board then considered the development and the variances against its test in evaluating a development pursuant to Section 687(3)(d) of the *Municipal Government Act*.
7. With respect to Height the Board accepts the calculation of the Development Officer of 6.35 metres. The Board further notes that pursuant to 11.4.2 of the Edmonton Zoning Bylaw the Development Officer does not have the authority to vary Height.
8. When considering the maximum Height the Board must consider the regulations contained within Section 61 of the Land Use Bylaw 5996. The maximum Height permitted for an accessory structure is 3.7 m and therefore the proposed accessory structure is 2.65 m over the maximum Height allowed.
9. In reviewing the building plans the Board has determined that the south wall of the second floor of the Garage spans the entire length and supports the determination made by the Development Officer that the second floor area is a full storey. Section 61 of Land Use Bylaw 5996 states the maximum amount of storeys for an accessory structure is one. Therefore it is one storey over the maximum allowed.
10. Further to Height and Storey, the Heritage Officer indicates a more thorough review of Height must be done to determine its compatibility within this Direct Control District.
11. The Board notes that even if it is wrong in its finding that the Development Officer failed to follow Council’s directions, the outcome is the same. Either the Development Officer did follow Council’s directions and his decision stands or the Development Officer did not follow Council’s directions and the Board substitutes its own reasons to refuse the application.
12. Based on the evidence before it, the Board has determined that these variances to allow for an over-height structure with an extra storey would have a negative effect on the

neighbourhood as a whole. This determination has been made notwithstanding the support of the adjacent property owners to the east and the west.

13. The Board acknowledges the opposition of four affected neighbours who provided letters to the Board or appeared in person at the hearing. The Board also received a petition in support of the development signed by seven individuals residing at six affected neighbouring properties.
14. Based on the above, it is the opinion of the Board that the proposed development will unduly interfere with the amenities of the neighbourhood, and materially interfere with or affect the use, enjoyment or value of neighbouring parcels of land.

Important Information for 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*, R.S.A. 2000, c. M-26. If the Subdivision and Development Appeal Board is served with notice of an application for leave to appeal its decision, such notice shall operate to suspend the Development Permit.
2. When a decision on a Development Permit application has been rendered by the Subdivision and Development Appeal Board, the enforcement of that decision is carried out by the Sustainable Development Department, located on the 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.

Mr. V. Laberge, Presiding Officer
Subdivision and Development Appeal Board

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Date: December 24, 2015
Project Number: 168274427-001
File Number: SDAB-D-15-302

Notice of Decision

This appeal dated November 18, 2015, from the decision of the Development Authority for permission to construct 4 Dwellings of Row Housing with verandas and a mutual rear detached Garage (6.10m x 11.58m), and to demolish an existing Single Detached House and Accessory Building (rear detached Garage).

The development was approved with a variance granted in the minimum required Front Setback; the minimum required Rear Setback; the minimum required Side Setback; the Amenity Space; and the distance from the rear Detached garage to the property line, subject to conditions. The approved permit was subsequently appealed by an adjacent property owner.

The subject site is located on Plan 2111HW Blk 53 Lot 9, located at 15003 - 108 Avenue NW, is zoned RF3 Small Scale Infill Development Zone and is located within the Mature Neighbourhood Overlay.

The appeal was filed on time, in accordance with Section 686 of the *Municipal Government Act*, R.S.A 2000, c. M-26.

The appeal was heard on December 11, 2015.

Summary of Hearing:

1. 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.
2. Given the fact that that this appeal involves similar properties, similar applications, similar variances and the same parties, the Board asked the parties if there was any objection from those in attendance to hearing this appeal together with SDAB-D-15-303. There was no objection.

Position of the Appellant

3. The Appellant did not appear at the hearing. Board administration attempted to contact the Appellant by phone one hour before starting the hearing. The Board, satisfied that proper notification of the hearing date and time was provided to the Appellant, opened the hearing one hour after the scheduled time.

4. In the Appellant's absence the Board reviewed the documentation submitted with his appeal. The Appellant's concerns, as outlined in a letter attached to his appeal document, include: the overall suitability of "fourplex" development in the neighbourhood; the overall number of variances to the zoning regulations that are required for the subject developments; obstructions to traffic sightlines and view that would be created; privacy concerns related to windows in the new developments overlooking neighboring yards; shading or sun shadowing; that the developments would be used as rental premises and related problems with rental premises; and increase in neighbourhood traffic.

Position of Affected Property Owners

5. The Board heard from Mr. Jack Strangmann, an affected property owner living across the alley and to the south west of the subject site. Mr. Strangmann referenced many of the problems outlined in the letter from the Appellant. In particular, he noted that the developments would create problems associated with privacy, sun shading, vehicle congestion and parking.
6. The Board heard from Fay Pozdin, an affected property owner living across the alley and to the south west of the subject site. She read from a letter from Mr. Moe Chaaban, an agent of the Appellant, outlining Mr. Chaaban's experience with the neighbourhood consultation process. Mr. Chaaban's letter indicates that the community consultation was generally successful. Ms. Pozdin took issue with this assessment and emphasized the point that when the consultation was done "nobody was home".
7. Ms. Pozdin suggested that, in fact the community consultation was not conducted properly and the overall feedback that was received was negative. She noted that a spokesperson from the community league told her that there was insufficient community consultation.
8. Ms. Pozdin said that she and her neighbours have been fighting this development for 18 months. She noted the stress and discontent that the process has generated. She said that she likes the idea of infill housing but is against overdevelopment. She characterized the subject application as being far too large; it is aimed at squeezing every inch possible from the lot and leaving no amenity space for children to play.
9. Ms. Pozdin noted that she spoke with personnel at the City and was told that when variances are granted for infill projects, it should be inches that are granted, not metres.

Position of the Development Authority

10. The Development Officer, Mr. Trevor Illingworth, appeared at the hearing to provide the Board an overview of the subject application and to answer questions from the Board.

11. Mr. Illingworth provided some background on the two subject sites which included a recent rezoning to RF3 by City Council in early 2015. Part of the discussion at the rezoning hearing revolved around the flanking side yard and the interior side yard. Counsel suggested that a lesser flanking side yard would be better than a reduced interior side yard - to provide for a fuller amenity space. This was not a direction from Council but a suggestion that he took seriously. Ultimately the final discretion in approving variances rests with him as the assigned Development Officer. He noted that he does agree with the principle behind the suggestion from Council.
12. Mr. Illingworth was not at the council hearings for rezoning, but he understood that part of the rationale was a desire to revitalize the community with family oriented housing.
13. Mr. Illingworth reviewed the findings of the community consultation that was conducted. He recognized that there was significant negative feedback to this proposed development from neighbouring property owners. Therefore, in working with the developer, he was trying to balance council's intention and the feedback from the community. He attempted to strike a balance by having the developer redesign the development.
14. With respect to the variance to the rear setback, the rear of the building lines up with the garage to the north. The impact is not any greater than on the abutting property. Furthermore, it is rare to get full four metres setback on a rowhouse.
15. With respect to variances to the setback on flanking side yard, there is no impact on the community. The result is just that the development is closer to the road. This mitigates the impact on the neighbours and is in line with a suggestion from a member of City Council.
16. With respect to the front yard setback variance, Mr. Illingworth noted that the setback is within 1.5 metres of the setback on the adjacent property. However, the proposed setback does not meet the block face average requirement.
17. With respect to the two variances related to private outdoor amenity space, Mr. Illingworth explained that he could have avoided designating the amenity space in the front yard, but he would rather see a full size amenity space in the front yard than put a smaller amenity space in the rear yard. He also noted that the shared walkway took up space that might have been used for amenity space, but that choice was necessary so as to not impact the boulevard trees.

Position of the Respondent

18. The Board heard jointly from Mr. Abdulla Elmaikkwa and Mr. Moe Chaaban on behalf of the Respondent.
19. They said that the Development Officer had addressed the most important points. They also noted that the community consultation was properly conducted and that they were successful in soliciting feedback from the majority of neighbours.

20. With respect to concerns about sun shading, they opined that the proposed developments would be situated such that they do not block sunshine from neighbouring properties.
21. In response to a question from the Board, they agreed that these proposed developments are in keeping with the spirit of what council had in mind when the rezoning was approved.

Decision:

The Appeal is DENIED and the decision of the Development Authority to APPROVE the development application is CONFIRMED.

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

- 1) Reduced Front Setback - The distance from the house to the property line along 150 Street (front lot line) is 6.9m. This setback is within 3.0m of the average front setback of the blockface, instead of within 1.5m (Section 814.3.1). Variance granted 1.5 meters.
- 2) Reduced Rear Setback - The distance from the house to the rear property line is 16.0 m (35% of site depth) instead of 18.1 m (40% of site depth) (Section 814.3.5). Variance granted 2.1 meters.
- 3) Reduced Side Setback - The distance from the house to the property line along 108 Avenue (flanking side lot line) is 2.0 m instead of 2.5 m (Section 140.4.13.d). Variance granted 0.5 meters.
- 4) Amenity space - Amenity space for Unit D is located in the front yard, along 150 Street (Section 47.4). This requirement is waived.
- 5) Amenity space - The amenity spaces for Units A through C are 2.9m deep, instead of 4.0m (Section 47.5). Variance granted of 1.1 meters.
- 6) Accessory Building Setback - The distance from the rear detached garage to the property line along 108 Avenue (flanking side lot line) is 2.1 m instead of 2.5 m (Section 50.3.5.b). Variance granted 0.4 meters

Reasons for Decision:

1. Row Housing is a Permitted Use in the RF3 Small Scale Infill Development Zone.
2. The Board accepts the detailed analysis of the Development Officer and the background of the recent rezoning by City Council which supports the desire of Council to provide housing choice and affordability in mature neighbourhoods pursuant to the principles outlined in the Municipal Development Plan "The Way We Grow".
3. The Board accepts the submission of the Development Officer that by increasing the interior side setback to provide for sufficient private amenity space and help mitigate

privacy concerns with adjacent lots that a 0.5 metre reduction on the side setback on the flanking side lot line is reasonable.

4. The minimum width and length of a Private Outdoor Amenity Area pursuant to Section 47.5 of the *Edmonton Zoning Bylaw* is 4 metres for a total minimum of 16 square metres. In reviewing the submitted site plan units A, B and C have amenity space of 2.5 metres by 5.94 metres which results in a 17.2 square metres. This Private Amenity Space is further separated from the abutting property to the south by a walkway from each unit to the rear garages thus providing an additional buffer. With respect to units A, B and C the Board has determined that the different configuration of the Private Amenity Space is sufficient and therefore has waived the 4.0 meter minimum width requirement. With respect to amenity space for unit D, the Board accepts the conclusion of the Development Officer that the front yard provides some amenity space. In addition with respect to unit D the Board notes a further Private Amenity Space exists to the south of the unit which is of at least the same size as units A, B and C.
5. In granting the variance for the reduced rear setback the Board concluded that the given development met all parking requirements, the setback between the house and the garage and amenity space requirement, the variance of 2.1 metres has not negatively impacted nor increased the number or size of other variances.
6. The Board accepts the Development Officer's conclusion that in granting the variance for the front setback of 1.5 metres that it is still within 1.5 metres of the adjacent property and this is more important than meeting the blockface average.
7. The setback of the accessory building is similar to the Principal Dwelling and is therefore not out of character. Furthermore, the Transportation Department did not indicate any problem with respect to sight lines and safety, and does not oppose the reduction.
8. The Board acknowledges the concerns raised by parties opposed to the developments. Many of these concerns, such as traffic congestion and potential renter behavior, are beyond the Board's jurisdiction. Both developments are Permitted Uses in the RF3 zone and the Board's review is limited to the powers granted it under s. 687(3)(d) of the *Municipal Government Act*.
9. 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, and materially interfere with or affect the use, enjoyment or value of neighbouring parcels of land.

Important Information for 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 *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*, R.S.A. 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.

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The development was approved with conditions with a variance granted in the minimum required Rear Setback; the minimum required Side Setback; and the distance from the rear detached Garage, subject to conditions. The approved permit was subsequently appealed by an adjacent property owner.

The subject site is on Plan 704KS Blk 68 Lot 1, located at 14912 - 108 Avenue NW. The subject site is zoned Small Scale Infill Development Zone and is located within the Mature Neighbourhood Overlay.

The appeal was filed on time, in accordance with Section 686 of the *Municipal Government Act*, R.S.A 2000, c. M-26.

The appeal was heard on December 11, 2015.

Summary of Hearing:

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2. Given the fact that that this appeal involves similar properties, similar applications, similar variances and the same parties, the Board asked the parties if there was any objection from those in attendance to hearing this appeal together with SDAB-D-15-302. There was no objection.

Position of the Appellant

3. The Appellant did not appear at the hearing. Board administration attempted to contact the Appellant by phone one hour before starting the hearing. The Board, satisfied that proper notification of the hearing date and time was provided to the Appellant, opened the hearing one hour after the scheduled time.

4. In the Appellant's absence the Board reviewed the documentation submitted with his appeal. The Appellant's concerns, as outlined in a letter attached to his appeal document, include: the overall suitability of "fourplex" development in the neighbourhood; the overall number of variances to the zoning regulations that are required for the subject developments; obstructions to traffic sightlines and view that would be created; privacy concerns related to windows in the new developments overlooking neighboring yards; shading or sun shadowing; that the developments would be used as rental premises and related problems with rental premises; and increase in neighbourhood traffic.

Position of Affected Property Owners

5. The Board heard from Mr. Jack Strangmann, a neighbouring property owner living to the south west of the subject site and just outside the 60 metre notification radius. Mr. Strangmann referenced many of the problems outlined in the letter from the Appellant. In particular, he noted that the developments would create problems associated with privacy, sun shading, vehicle congestion and parking.
6. The Board heard from Fay Pozdin, a neighbouring property owner living to the south of the subject site and just outside the 60 metre notification radius. She read from a letter from Mr. Moe Chaaban, an agent of the Appellant, outlining Mr. Chaaban's experience with the neighbourhood consultation process. Mr. Chaaban's letter indicates that the community consultation was generally successful. Ms. Pozdin took issue with this assessment and emphasized the point that when the consultation was done "nobody was home".
7. Ms. Pozdin suggested that, in fact the community consultation was not conducted properly and the overall feedback that was received was negative. She noted that a spokesperson from the community league told her that there was insufficient community consultation.
8. Ms. Pozdin said that she and her neighbours have been fighting this development for 18 months. She noted the stress and discontent that the process has generated. She said that she likes the idea of infill housing but is against overdevelopment. She characterized the subject application as being far too large; it is aimed at squeezing every inch possible from the lot and leaving no amenity space for children to play.
9. Ms. Pozdin noted that she spoke with personnel at the City and was told that when variances are granted for infill projects, it should be inches that are granted, not metres.

Position of the Development Authority

10. The Development Officer, Mr. Trevor Illingworth, appeared at the hearing to provide the Board an overview of the subject application and to answer questions from the Board.

11. Mr. Illingworth provided some background on the two subject sites which included a recent rezoning to RF3 by City Council in early 2015. Part of the discussion at the rezoning hearing revolved around the flanking side yard and the interior side yard. Counsel suggested that a lesser flanking side yard would be better than a reduced interior side yard - to provide for a fuller amenity space. This was not a direction from Council but a suggestion that he took seriously. Ultimately the final discretion in approving variances rests with him as the assigned Development Officer. He noted that he does agree with the principle behind the suggestion from Council.
12. Mr. Illingworth was not at the council hearings for rezoning, but he understood that part of the rationale was a desire to revitalize the community with family oriented housing.
13. Mr. Illingworth reviewed the findings of the community consultation that was conducted. He recognized that there was significant negative feedback to this proposed development from neighbouring property owners. Therefore, in working with the developer, he was trying to balance council's intention and the feedback from the community. He attempted to strike a balance by having the developer redesign the development.
14. With respect to the variance to the rear setback, the rear of the building lines up with the garage to the north. The impact is not any greater than on the abutting property. Furthermore, it is rare to get full four metres setback on a rowhouse.
15. With respect to variances to the setback on flanking side yard, there is no impact on the community. The result is just that the development is closer to the road. This mitigates the impact on the adjacent neighbours and is in line with a suggestion from a member of City Council.

Position of the Respondent

16. The Board heard jointly from Mr. Abdulla Elmaikkwa and Mr. Moe Chaaban on behalf of the Respondent.
17. They said that the Development Officer had addressed the most important points. They also noted that the community consultation was properly conducted and that they were successful in soliciting feedback from the majority of neighbours.
18. With respect to concerns about sun shading, they opined that the proposed developments would be situated such that they do not block sunshine from neighbouring properties.
19. In response to a question from the Board, they agreed that these proposed developments are in keeping with the spirit of what council had in mind when the rezoning was approved.

Decision:

The Appeal is DENIED and the decision of the Development Authority to APPROVE the development application is CONFIRMED.

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

- 1) Reduced Rear Setback - The distance from the house to the rear property line is 15.1 m (34% of site depth) instead of 17.9 m (40% of site depth) (Section 814.3.5). Variance granted 2.8 meters.
- 2) Reduced Side Setback - The distance from the house to the property line along 108 Avenue (flanking side lot line) is 2.0 m instead of 2.5 m (Section 140.4.13.d). Variance granted 0.5 meters.
- 3) Accessory Building Setback - The distance from the rear detached garage to the property line along 108 Avenue (flanking side lot line) is 2.1 m instead of 2.5 m (Section 50.3.5.b). Variance granted 0.4 meters.

Reasons for Decision:

1. Row Housing is a Permitted Use in the RF3 Small Scale Infill Development Zone.
2. The Board accepts the detailed analysis of the Development Officer and the background of the recent rezoning by City Council which supports the desire of Council to provide housing choice and affordability in mature neighbourhoods pursuant to the principles outlined in the Municipal Development Plan "The Way We Grow".
3. The Board accepts the submission of the Development Officer that by increasing the interior side setback to provide for sufficient private amenity space and help mitigate privacy concerns with adjacent lots that a 0.5 metre reduction on the side setback on the flanking side lot line is reasonable.
4. In granting the variance for the reduced rear setback the Board concluded that the given development met all parking requirements, the setback between the house and the garage and amenity space requirement, the variance of 2.8 metres has not negatively impacted nor increased the number or size of other variances.
5. The setback of the accessory building is similar to the Principal Dwelling and is therefore not out of character. Furthermore, the Transportation Department did not indicate any problem with respect to sight lines and safety, and does not oppose the reduction.
6. The Board acknowledges the concerns raised by parties opposed to the developments. Many of these concerns, such as traffic congestion and potential renter behavior, are beyond the Board's jurisdiction. Both developments are Permitted Uses in the RF3 zone and the Board's review is limited to the powers granted it under s. 687(3)(d) of the *Municipal Government Act*.

7. 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, and materially interfere with or affect the use, enjoyment or value of neighbouring parcels of land.

Important Information for 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 *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*, R.S.A. 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.

Mr. V. Laberge, Presiding Officer
Subdivision and Development Appeal Board