EDMONTON
**TRIBUNALS**
*Subdivision & Development Appeal Board*

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Date: December 21, 2018
Project Number: 289466967-002
File Number: SDAB-D-18-206

# Notice of Decision

[1] On December 11, 2018, the Subdivision and Development Appeal Board (the "Board") heard an appeal that was filed on **November 27, 2018**. The appeal concerned the decision of the Development Authority, issued on November 21, 2018, to refuse the following development:

> **Construct exterior alterations (Driveway extension, 2.40 metres by 6.46 metres) to a Single Detached House, existing without permits**

[2] The subject property is on Plan 7721448 Blk 31 Lot 65R, located at 18535 - 70 Avenue NW, within the (RF1) Single Detached Residential Zone.

[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 submissions;
- The Appellant's written submissions; and
- One Online response of neutral.

## Preliminary Matters

[4] The Appellant did not appear. The Appellant was telephoned by SDAB administration and he requested that the Board proceed based on his written submission.

[5] The appeal was filed on time, in accordance with Section 686 of the *Municipal Government Act*, RSA 2000, c M-26 (the "*MGA*").

## Summary of Hearing

*i) Position of the Appellant, S. Bessette*

[6] Mr. Bessette stated in his written submission that the area in question is constructed of interlock bricks and was intended to be used as a sidewalk.

[7] He has spoken to his neighbours and they have no objections.

*ii) Position of the Development Officer, J. Folkman*

[8] The Development Authority did not appear and the Board relied on Mr. Folkman's written submission.

**Decision**

[9] The appeal is **ALLOWED IN PART** and the decision of the Development Authority is **VARIED**. The development is **GRANTED as a Walkway**, subject to the following **CONDITION**:

1. Absolutely no parking is allowed on the Walkway extension (2.40 metres by 6.46 metres) as per the attached stamped plan.

**Reasons for Decision**

[10] The proposed development, to construct exterior alterations to a Single Detached House (Driveway extension), is Accessory to a Permitted Use in the (RF1) Single Detached Residential Zone.

[11] The Board is tasked with deciding, based on the evidence provided, whether the proposed Driveway extension would or would not unduly interfere with the amenities of the neighbourhood, or materially interfere with or affect the use, enjoyment or value of neighbouring parcels of land.

[12] The Board notes it received little information from either the Appellant or the Development Officer on which to base their decision. The permit application is listed as a brick driveway extension existing without permits, which is in contravention of the current development regulations.

[13] The Appellant did not appear at the hearing, but stated in his written application for appeal that he wanted to use this extended area as a walkway to traverse to his backyard.

[14] The Development Officer provided photographic evidence showing the hardsurfaced extension abutting the west side of the concrete Driveway on the subject property and abutting the east side of the adjacent neighbours' property.

[15] The Boards notes that, based on that evidence, it appears the adjacent neighbour has hard decorative surfacing on a portion of their property abutting the proposed development.

[16] The Board finds that if this development was granted as a Driveway on which parking would be allowed, it would have a negative visual impact on the community by greatly increasing the amount of hardsurfaced area available for parking rather than green space or open Walkway area on the front of the subject property.

[17] The Board determines that if the Driveway extension was granted between the subject property and property to the west, it would enable six side by side parking spaces between the two properties, further exacerbating the undesirable impact on the neighbourhood.

[18] The Board notes that one neutral response was provided by an affected property owner.

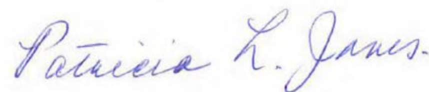
[19] The hardsurfaced area as it currently exists has the potential to function not only as an extended driveway but also as a driveway with an adjacent Walkway.

[20] As per section 6.1 of the *Edmonton Zoning* Bylaw, a Walkway is defined as a "path for pedestrian circulation that cannot be used for vehicular parking".

[21] Section 54.2(2)(e)(i) of the *Edmonton Zoning Bylaw* states that parking spaces shall not be located within a Front Yard in a Residential Zone. Evidence before the Board reveals that the hardsurfaced area is being used as a Driveway. As noted above, the Board accepts the Appellant's written statement that he intended to use this as a Walkway to access his backyard. Accordingly, the Board approves the development for the Accessory Use, Walkway only and has imposed Condition 1 (See above).

[22] Based on the above including the Appellants admission of their intended use of the hardsurfaced area, the Board denies the Driveway extension, preventing excessive parking in the Front Yard. The Appellant's use of the additional area as a Walkway is appropriate.

[23] For the above reasons, the Board is denying the extension to the existing Driveway and instead approving a Walkway for pedestrian access as that Use 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.



Patricia Jones, Presiding Officer
Subdivision and Development Appeal Board

<u>Board Members in Attendance:</u>
Ms. K. Cherniawsky, Mr. A. Peterson, Ms. E. Solez, Ms. K. Thind

cc: Development & Zoning Services – J. Folkman / A. Wen

**Important Information for the Applicant**

1. This is not a Building Permit. A Building Permit must be obtained separately from the Sustainable Development Department, located on the 2nd Floor, Edmonton Tower, 10111 – 104 Avenue NW, Edmonton, AB T5J 0J4.

2. Obtaining a Development Permit does not relieve you from complying with:

   a) the requirements of the *Edmonton Zoning Bylaw*, insofar as those requirements have not been relaxed or varied by a decision of the Subdivision and Development Appeal Board,
   b) the requirements of the *Alberta Safety Codes Act*,
   c) the *Alberta Regulation 204/207 – Safety Codes Act – Permit Regulation*,
   d) the requirements of any other appropriate federal, provincial or municipal legislation,
   e) the conditions of any caveat, covenant, easement or other instrument affecting a building or land.

3. When an application for a Development Permit has been approved by the Subdivision and Development Appeal Board, it shall not be valid unless and until any conditions of approval, save those of a continuing nature, have been fulfilled.

4. A Development Permit will expire in accordance to the provisions of Section 22 of the *Edmonton Zoning Bylaw, Bylaw 12800*, as amended.

5. This decision may be appealed to the Alberta Court of Appeal on a question of law or jurisdiction under Section 688 of the *Municipal Government Act*, RSA 2000, c M-26. If the Subdivision and Development Appeal Board is served with notice of an application for leave to appeal its decision, such notice shall operate to suspend the Development Permit.

6. When a decision on a Development Permit application has been rendered by the Subdivision and Development Appeal Board, the enforcement of that decision is carried out by the Sustainable Development Department, located on the 2nd Floor, Edmonton Tower, 10111 – 104 Avenue NW, Edmonton, AB T5J 0J4.

*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: December 21, 2018
Project Number: 111525049-002
File Number: SDAB-D-18-207

## Notice of Decision

[1] On December 11, 2018, the Subdivision and Development Appeal Board (the "Board") heard an appeal that was filed on **November 23, 2018**. The appeal concerned the decision of the Development Authority, issued on November 13, 2018, to approve the following development:

**Leave as built a Garden Suite.**

[2] The subject property is on Plan 2938HW Blk 13 Lot 73, located at 11506 - 71 Avenue NW, within the (RF1) Single Detached Residential Zone. The Mature Neighbourhood Overlay and McKernan / Belgravia Station 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, stamped plans, and the approved Development Permit;
- The Development Officer's written submission;
- The Appellant's written submission; and
- The Respondent's written submission.

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

- Exhibit A – Original approved plot plan

### 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 (the "*MGA*").

**Summary of Hearing**

*i) Position of the Appellant, R. Ramachandran*

[8] The Appellant was not present and the Board reviewed the written submissions received from R. Ramachandran prior to the hearing.

*ii) Position of the Development Officer, J. Xie*

[9] Mr. J. Xie, the Development Officer, was accompanied by Mr. A. Jabs with Development Compliance.

[10] Mr. Xie reviewed the permit history of this site:

a) January, 2009: A Development Permit application (083694086-001) was approved for a Garage Suite based on the submitted plot plan which showed the east Side Setback as 1.2 metres.

b) August, 2009: A Compliance Certification application (0890938264-001) was reviewed against an August 17, 2009, Real Property Report. At this time it was found that the Garage Suite's footprint was not located within the required rear 12.8 metres of the site and therefore not in compliance with the January, 2009, Development Permit application.

c) July, 2010: A new Development Permit (089038264-003) was issued approving a variance to leave-as built the Garage Suite within the rear 13.4 metres of the Site instead of the maximum rear 12.8 metres. The deficiency in the east Side Setback had not been identified in the Compliance Certificate letter and was, therefore, not included as a variance in the July, 2010 Development Permit.

d) February, 2011: Compliance Certification application (107259855-001) was reviewed and stamped on an August 16, 2009 Real Property Report. This Certificate stated that all the structures (except for the veranda and Garage "foundation only") complied with the Zoning Bylaw and had permits.

e) June, 2011: Compliance Certification application (111525049-001) reviewed a May 26, 2011 Real Property Report. The City stated in a letter that the Garage Suite was in accordance with Development Permit #089038264-003 from July, 2010.

f) November, 2018: The subject Development Permit under appeal addresses the east Side Setback deficiency of 0.18 metres. This approved permit is to grant the required variance.

[11] Mr. Xie clarified to the Board that the proposed development was reviewed by the City as a Garage Suite (now "Garden Suite") from the inception of the development. The plans submitted with the original application showed the east Side Setback as 1.2 metres, which was compliant with the regulations at that time. However, the structure was actually built 0.18 metres closer to the property line and this deficiency was not discovered until recently.

[12] Mr. Jabs clarified to the Board that the February 2011 Compliance Certificate did not identify the deficiency in the east Side Setback, and that a compliance certificate in itself does not approve a development; therefore, the required variance was not granted implicitly.

The definition of Compliance Certificate contained within section 6.1 of the Edmonton Zoning Bylaw was reviewed:

> **Zoning Bylaw Compliance Certificate** ("Compliance Certificate") means a document which may be issued by a Development Officer, upon request and upon payment of the required fees, indicating that a building or buildings on a Site are located in accordance with the Setback regulations of this Bylaw or the Setbacks specified in Development Permits which may have been issued for the Site.
>
> A Compliance Certificate shall not operate as a Development Permit nor shall it approve any variance to the Setback regulations of this Bylaw not previously approved.

[13] Mr. Jabs explained the Compliance process. A Compliance Certificate application includes a Real Property Report. It is a review done based on a Real Property Report. At the time of the July 2010 Development Permit application (089038264-003), no updated site plan or Real Property Report had been submitted and the Development Officer relied on the originally submitted Plot Plan that was subsequently found to be incorrect.

[14] Mr. Xie explained the history further by noting that the original Development Permit for the subject site was issued for a 'garage' with an east Setback of 1.2 metres, despite the application being for a Garden Suite. The most recent Compliance Certificate identified the east Setback was actually 1.02 metres, which is a deficiency of 0.18 metres. In discovering this deficiency, the City requested a new application be made to ensure that the building on-site had a valid Development Permit.

*iii) Position of the Respondents, G. Tkachuk and J. Tkachuk*

[15] Mr. and Mrs. Tkachuk explained that they hired a builder to construct a garage with a Suite above it, paying for the development with a grant obtained through “Cornerstones”, a secondary suite grant program created by the City of Edmonton.

[16] Mr. Tkachuk stated that inspections were conducted several times on the site during the building process. He noted that everything was approved and they received the grant money. They had relied on the builder and the City, thinking everything was in compliance.

[17] The Respondent explained that they are now before the SDAB due to a recent complaint from an adjoining neighbour, causing the City to come out to the property in December, 2017 and conducting an inspection. As a result of this inspection, the City contacted them and asked them to submit a new Development Permit application. This was the first time they were informed about the deficiency in the east Side Setback. The complaint was part of a larger issue between them and their adjoining neighbour.

[18] The prior owner of 11502 – 71 Avenue NW had no issue with the Garage Suite and the Respondent provided a letter of support from that individual. No one else complained.

[19] The suite is rented out to students and lower income people in accordance with the grant requirements. There have been no rent increases from 2009 to now.

[20] The Respondents provided the following responses to questions from the Board:

a) The City informed them that there was no alternative other than to submit a new Development Permit application and start again. The most recent survey was stamped October 26, 2018, and was obtained to support the current Development Permit application.

b) They had no idea there was a deficiency as their builder and the City were involved throughout the entire construction period. They always thought that there had been compliance with all regulations.

c) The Garden Suite was designed to respect the privacy of their neighbours as well as their own privacy. Tenants of the Garden Suite are not able to look into the windows of the Appellant’s home. The Respondents referred to the photo in their submission which shows the limited view from the kitchen window of the Garden Suite towards the Appellant’s property. The Appellant could not possibly have taken pictures from the Garden Suite to show the view.

*iv) Clarification from the Development Officers*

[21] Mr. Xie explained that several amendments had been made to the survey from its initial submission to the City. They referred the Board to the “Amended” stamps on the survey

at the top left of the page – the first showing the signed date as May 30, 2011, and the second showing the signed date as October 2, 2018. The east Side Setback is clearly shown as 1.02 metres on the latest survey.

[22] The original Real Property Report from 2009 spoke only to the state of the construction at that time which was the foundation. In 2011, once the structure was complete, the wording was changed from "foundation only" to "Garage with Suite".

[23] Mr. Xie confirmed that if the building was purely a garage it would have only required a setback of 0.9 metres in 2009; however, it was always known that the application was for a Garden Suite.

[24] He could not confirm if the surveyor had taken the setback measurement from the foundation or from the outside of the siding.

[25] The Development Officer and Compliance Officer submitted a copy of the approved Plot Plan (Exhibit A) which was reviewed with the original Development Permit application. This shows that the Garden Suite would have an east Side Setback of 1.2 metres. The latest Real Property Report shows this Side Setback as 1.02 metres.

[26] Mr. Xie confirmed that the eaves on the Garden Suite are 0.6 metres from the east property line and are therefore in compliance with the *Bylaw*.

[27] He believed that the present situation was simply a matter of an error made during construction which was not picked up by the City until late 2017.

**Decision**

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

[29] In granting the development, the following variance to the *Edmonton Zoning Bylaw* is allowed:

1. The minimum allowed Side Setback of 1.2 metres from the Garden Suite to the property line shared with 11502 – 71 Avenue NW (side lot line) as per Section 87.10 and Section 110.4(10)(a) is varied to allow a deficiency of 0.18 metres, thereby decreasing the minimum allowed Setback to 1.02 metres.

**Reasons for Decision**

[30] The Development, a Garden Suite, is a Permitted Use in the (RF1) Single Detached Residential Zone.

[31] The Appellant raised several items in his written submission which he would like the Board to consider. However, at issue before the Board today is the sole variance of 0.18 metres on the east Side Setback of a Garden Suite and whether granting this variance would or would not unduly interfere with the amenities of the neighbourhood, or materially interfere with or affect the use, enjoyment or value of neighbouring parcels of land.

[32] The Board heard lengthy evidence regarding the history of the development. The Respondents had received a variance to leave-as-built the Garden Suite within the rear 13.4 metres of the Site instead of the maximum rear 12.8 metres. At the time the City conducted their second review, the east Side Setback deficiency was missed, and is now before the Board.

[33] The Board heard from the Development Officer that the original Plot Plan showed that the Garden Suite was to be located 1.2 metres from the property line; however, the Real Property Reports now confirm that the Garden Suite was actually constructed 0.18 metre closer to the Side Lot Line than regulations allowed.

[34] The Board heard verbal evidence that the Respondents had always intended to develop a two storey Garden Suite at this site and were able to get a Cornerstone grant in order to do this. The Respondents were in possession of a Compliance Certificate that left them with the impression that they were in full compliance until late 2017. Due to a combination of errors, the deficiency in the Side Setback was not discovered until recently.

[35] The Board has taken the Appellant's written submission into consideration and notes his concerns about this development being closer to the Side Lot Line than regulations allow, which he submitted interferes with his privacy and with drainage onto his property.

[36] The Board notes that the Appellant did raise other concerns of developments on the property apart from the Garden Suite; however, the only variance currently before the Board is the east Side Setback of the Garden Suite.

[37] Regarding the privacy concern, the Board notes that photographic evidence was presented showing a partial overlook of the rear of the Appellant's garage from a small kitchen window of the Garden Suite. Based on this evidence, the Board makes the determination that the Appellant's privacy has not been compromised as the window does not allow for a view into the Appellant's yard or house.

[38] In any event, the Board finds that there is no material connection between the Appellant's privacy concerns and the variance of 0.18 metres. Siting the Garden Suite back 0.18 metres from the Side Lot Line would not change the view from the Garden Suite's kitchen window of the Appellants' garage.

[39] With respect to the drainage concerns, the Development Officer confirmed that the eaves on the Garden Suite are 0.6 metres from the east Lot Line which complies with the regulations; therefore, the Board finds that there is no reason to believe that excess

drainage would fall onto the adjacent property rather than being contained on the site. Again, the Board finds that the variance of 0.18 metres is unlikely to have a material impact on the drainage in event.

[40] Therefore, the Board is in agreement with the Development Officer's determination in his written submission regarding this property.

[41] The Board received a letter of support for the Respondent from a former adjacent property owner, confirming they had never experienced the problems such as described by the Appellant.

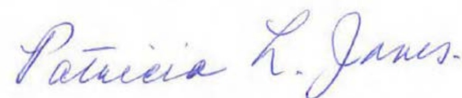
[42] No other individuals appeared to oppose the proposed development and no written opposition was received by the Board.

[43] The Board notes that the Garden Suite has been in existence for many years with no other issues or concerns.

[44] The Board determines based on the verbal, written, and photographic evidence taken together, that a variance of 0.18 metres in the Side Setback would be imperceptible to the eye and would have no material impact. Based on this, the Board finds that the impact of the variance is negligible.

[45] The Board acknowledges that based on the unusual history of the property where the Respondents have taken every action possible to ensure they have built their development in accordance with regulations, and further acknowledging that multiple mistakes were made during the review of the development, it would be manifestly unfair to deny this second leave-as-built Development Permit.

[46] For the above reasons, 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.



Patricia Jones, Presiding Officer
Subdivision and Development Appeal Board

<u>Board Members in Attendance:</u>
Ms. K. Cherniawsky, Mr. A. Peterson, Ms. E. Solez, Ms. K. Thind

cc: Rithwik Ramachandran
Development & Zoning Services – J. Xie / A. Wen

**Important Information for the Applicant/Appellant**

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3. When an application for a Development Permit has been approved by the Subdivision and Development Appeal Board, it shall not be valid unless and until any conditions of approval, save those of a continuing nature, have been fulfilled.

4. A Development Permit will expire in accordance to the provisions of Section 22 of the *Edmonton Zoning Bylaw, Bylaw 12800*, as amended.

5. This decision may be appealed to the Alberta Court of Appeal on a question of law or jurisdiction under Section 688 of the *Municipal Government Act*, RSA 2000, c M-26. If the Subdivision and Development Appeal Board is served with notice of an application for leave to appeal its decision, such notice shall operate to suspend the Development Permit.

6. When a decision on a Development Permit application has been rendered by the Subdivision and Development Appeal Board, the enforcement of that decision is carried out by the Sustainable Development Department, located on the 2nd Floor, Edmonton Tower, 10111 – 104 Avenue NW, Edmonton, AB T5J 0J4.

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Date: December 21, 2018
Project Number: 284207116-003
File Number: SDAB-D-18-210

# Notice of Decision

[1] On December 11, 2018, the Subdivision and Development Appeal Board (the "Board") heard an appeal that was filed on **November 27, 2018**. The appeal concerned the decision of the Development Authority, issued on November 8, 2018, to approve the following development:

**Erect a fence 1.83 metres in Height in the flanking Side Yard Abutting Prowse Road SW**

[2] The subject property is on Plan 1424774 Blk 8 Lot 1, located at 4203 - Prowse Way SW, within the (HVLD) Heritage Valley Low Density Zone.

[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 approved Development Permit;
- The Development Officer's written submissions;
- The Appellant's written submissions; and
- Online responses.

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

- Exhibit A – Photos showing subject fence and other fences in surrounding area
- Exhibit B – Paisley Community Map and Google Overhead Photograph

## 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 (the "*MGA*").

**Summary of Hearing**

*i) Position of the Appellant, N. Lyall*

[8] Mr. Lyall submitted a complaint to 311 earlier this year because the height of the subject fence impacts visibility. This complaint subsequently passed through numerous City departments. Today's hearing is a result of the Respondent applying for a variance to Section 49.4 of the *Edmonton Zoning Bylaw* to permit the over height fence to remain.

[9] Mr. Lyall submits that when one exits the alley onto Prowse Way at the permitted speed of 20 kilometers per hour (as per *Bylaw 6894*) one cannot see either the sidewalk or any oncoming southbound traffic on Prowse Way. Mr. Lyall has been in contact with several neighbours in the vicinity and they all have voiced similar concerns through letters, which have been provided to the Board.

[10] The Transportation Department does not consider the fence to be an issue due to the low speeds; however, Mr. Lyall disagrees. This is a young neighbourhood with many children and pets and he has had several near misses with other vehicles or pedestrians due to the fence.

[11] He understands the Respondent's desire for privacy but the portion of fence in question only creates privacy to the apron of the garage, not to the rear yard.

[12] The Appellant played several videos of children playing on the rear apron of the subject property. He noted that a driver has limited time to come to an immediate stop before seriously injuring a child that runs into the alley due to the lack of visibility. For example, he has almost hit the respondent's child a number of times when the child ran into the alley while playing on the garage apron beside the fence. As a parent himself he would never allow his child to play on a rear apron with such a sightline obstruction.

[13] The Appellant submits that if the last panel were lowered to the correct height of 1.2 metres sufficient sightlines would be provided.

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

i) Even if you come to a complete stop prior to exiting the alley you still are not able to see southbound traffic on Prowse Way.

ii) There is a curve in the alley that exacerbates the issue with sightlines.

iii) He was advised by the Development Officer that the Transportation Department provided a review of the fence but did not come out to inspect the location.

iv) He was not certain of the distance from the fence to the sidewalk but after looking at photos agreed that it was approximately 2 metres.

v) All other similar fences he has seen next to alleys in the Paisley neighbourhood either do not go so far out towards the alley or are stepped down.

vi) He is seeking to have the last portion of the fence removed completely or to have it stepped down to 1.2 metres in order to provide better sightlines.

vii) He confirmed that he also has concerns with the height of the fence located at the property across the alley at 4304 Prowse Link SW. His original 311 complaint included that property as well but for some reason that part of the complaint was dropped.

viii) He is of the understanding that the fence at 4304 Prowse Link SW was built by the developer (Brookfield). He believed the fence on the subject site was built by the Respondent but he is not sure which fence was built first.

*ii) Position of the Development Officer, J. Folkman*

[15] The Development Authority did not appear and the Board relied on Mr. Folkman's written submission.

*iii) Position of the Respondent, J. Bleackley*

[16] Mr. Bleackley built the fence to match the developer's fence across the alley for aesthetic purposes and to maximize his yard as well as his privacy. He did not know that the fence had to be shorter on a corner lot and he did not get a building permit.

[17] After a Peace Officer advised him that he would need to change the fence he proceeded to do so but stopped when the neighbour across the alley told him there was no need to change it as the fence created no sightline issues. He was also subsequently advised by the Peace Officer that there were no issues and the fence could remain.

[18] He recently received an e-mail advising that a Development Permit was required for the fence. He took the necessary steps to apply for one, which was approved, and is the subject of today's appeal.

[19] Mr. Bleackley showed a video and pictures to the Board in order to provide evidence that there are no sightlines issues. The video simulates a vehicle approaching the end of the alley, stopping to allow the driver to look in both directions and then proceeding.

[20] He has no problem with his son playing on the garage apron as his son is responsible and knows not to run into the alley in front of oncoming traffic.

[21] He has rocks on the side of the driveway by the fence. Even with rock present, vehicles drive so close to the fence they are driving on the rocks. He suggests that if the fence were not there, those vehicles would be driving on his lawn and possibly the apron of his garage.

[22] Referring to a photograph, he noted that a plumbing service van parks on Prowse Way every night and creates more of a sightline issue than his fence does.

[23] Mr. Bleackley provided the following responses to questions from the Board:

a) There is a house on the property across the alley from him.

b) He would prefer to leave the last panel of fence in place as it provides privacy for his son playing on the garage apron and keeps balls from rolling out into the main street. In this regard, he believed that the fence fosters safety.

*iv) Rebuttal of the Appellant*

[24] Mr. Lyall disagreed with the Respondent's comments that Mr. Bleackley's son is responsible and will not run out into the alley. Mr. Lyall noted that he has had at least three near misses due to the boy running out into the alley.

[25] He questioned the credentials of the neighbours who advised the Respondent not to tear down the fence due to there being no sightline issue.

[26] The Respondent's video was taken while walking and does not accurately show the view from a vehicle because it does not take into account the hood of the vehicle.

[27] The Respondent says the last panel of the fence is required to keep balls from running into the street. Mr. Lyall questioned why the Respondent's son plays on the apron and in an alleyway that is primarily for traffic instead of in the backyard.

[28] A series of photos were submitted to the Board (Exhibit A) which show other alleys in the surrounding area that have fences that are either stepped down or set back from the garage aprons. Photos of the subject fence were also provided to show the impact on visibility.

[29] A developer's diagram of the Paisley community and a Google overhead photograph were submitted (Exhibit B). Both of these documents show that the alley has more of a curve than other alleys in the area, adding to the sightline issue.

[30] He questioned if the developer's fence across the alley was correctly built to code. He is not sure if that fence has a permit and if a variance was granted for it to be over height. *Bylaw 5590* requires that no fence, shrubs or anything close to an intersection or highway should impede visibility.

[31] He is asking the Respondent to consider that he is not the only one in the community with children and would like to see the last section of the fence removed to provide greater visibility. He does not want to see any child hurt.

[32] To questions from the Board, the Appellant indicated that he could not provide a photo or video taken from within a vehicle at the exit from the alley to Prowse Way because it would not be safe to stop and take such a video.

*v) Rebuttal of Respondent*

[33] Mr. Bleackley was provided with the opportunity to respond to new information brought forward by the Appellant listed as Exhibit A and Exhibit B.

[34] One of the photos submitted by the Appellant was taken from the middle of a person's driveway. The Appellant was standing so far to the right he created his own sightline issues.

[35] The Respondent submitted that if his vehicle was parked on the driveway, it would create more of a sight line issue than that which is created by the fence because it is taller than the fence.

[36] Mr. Bleackley does not feel that he needs to change his fence and does not believe it creates sightline issues or safety concerns.

*vi) Final Rebuttal of the Appellant*

[37] Mr. Lyall agreed that he may have created some sightline issues in a few of the photos but he did not feel it was safe to be standing in the middle of an alleyway in order to prove his case.

[38] He submitted that if a vehicle was parked on the driveway, there would still be greater visibility and improved sightlines if the fence were removed. A larger vehicle 6 to 7 feet high parked on side of road still allows you to see to the left and right and a driver would have sufficient warning to see other vehicles or pedestrians.

**Decision**

[39] 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**

[40] A Fence is Accessory to a Permitted Use in the (HVLD) Heritage Valley Low Density Zone.

[41] Presently before the Board is whether the Height of the fence in question unduly interferes with the amenities of neighbourhood or materially interferes with or affects the use, enjoyment or value of neighbouring parcels of land.

[42] The Board heard evidence that the Respondent built the fence to match the one across the alley that the developer, Brookfield, had erected in order to be aesthetically pleasing to the neighbourhood. The fence runs along Prowse Way past the edge of the subject site garage and covers part of the apron of said garage.

[43] The Board saw photographic evidence that the subject alley is long with two entrances and exits. There are numerous houses that have garages backing onto this alley on both sides. The alley is slightly curved so one cannot see the total length of the block.

[44] The Board heard evidence from the Appellant that the foremost concern of he and his neighbours is that of the obstruction of sightlines on entering and exiting the alley due to the subject development, which he believes creates a safety concern.

[45] Based on the photographic evidence received, the Board determines that sightlines for drivers entering the alley would not be obstructed for the following reasons:

a) Those drivers entering the alley by making a right hand turn from Prowse Way would be able to clearly see the garage apron on the left hand side of the alley, therefore, being able to notice and / or avoid anyone or anything in that part of the alley.

b) Those drivers making a left hand turn into the alley from Prowse Way would have equal opportunity to see anything in the alley before entering as they would have to slow down or stop for oncoming traffic.

[46] Based on written evidence, the Board determines that sightlines for drivers exiting the alley would not be obstructed for the following reasons:

a) While the Peace Officer noted a sightline issue, the Development Officer investigated further, seeking information from the appropriate authority, Transportation Services, who indicated that the position and height of the subject fence at this location on this side of the alley did not compromise sight lines.

b) The Transportation guidelines state that a maximum speed in an alley is 20 km / hr. and that on exiting from an alley one must come to a complete stop, looking both ways before advancing onto the highway. The Board finds that any individual driving at that speed and having to make a full stop would be given ample opportunity to see any hazards before them including oncoming vehicles or pedestrians.

c) A vehicle could be parked on the existing apron which would have a similar impact to visibility as the fence.

d) The subject property's garage could be situated closer to the alley as the regulation only requires the apron to be 1.2 metres, which would impede sightlines to a greater degree than the current fence.

e) Photographic evidence shows that there is a mail box outside the fence on the other side of the lane, but as it is on the boulevard, it does not impede sight lines.

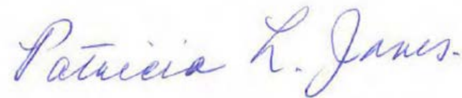
f) Trucks that are habitually parked on the street in close proximity to the entrance of this lane are not considered as hazards to exiting vehicles from the lane.

g) This is a long lane and although it has a curve to it, one can see for quite some distance along the alley.

h) One of the letters supporting the Appellant's position was within the 60 metre radius while the others were outside this distance.

[47] Based on the photographic evidence submitted, the Board notes that the aprons to the garages are fairly large leaving extra room on either side of the alley expanding sightlines.

[48] Based on the above, the Board determines that there are adequate sightlines for egress and access. Therefore, 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.



Patricia Jones, Presiding Officer
Subdivision and Development Appeal Board

Board Members in Attendance:
Ms. K. Cherniawsky, Mr. A. Peterson, Ms. E. Solez, Ms. K. Thind

cc: Nathan Lyall
Development & Zoning Services – J. Folkman / A. Wen

**Important Information for the Applicant/Appellant**

1. This is not a Building Permit. A Building Permit must be obtained separately from the Sustainable Development Department, located on the 2nd Floor, Edmonton Tower, 10111 – 104 Avenue NW, Edmonton, AB T5J 0J4.

2. Obtaining a Development Permit does not relieve you from complying with:

    a) the requirements of the *Edmonton Zoning Bylaw*, insofar as those requirements have not been relaxed or varied by a decision of the Subdivision and Development Appeal Board,
    b) the requirements of the *Alberta Safety Codes Act*,
    c) the *Alberta Regulation 204/207 – Safety Codes Act – Permit Regulation*,
    d) the requirements of any other appropriate federal, provincial or municipal legislation,
    e) the conditions of any caveat, covenant, easement or other instrument affecting a building or land.

3. When an application for a Development Permit has been approved by the Subdivision and Development Appeal Board, it shall not be valid unless and until any conditions of approval, save those of a continuing nature, have been fulfilled.

4. A Development Permit will expire in accordance to the provisions of Section 22 of the *Edmonton Zoning Bylaw, Bylaw 12800*, as amended.

5. This decision may be appealed to the Alberta Court of Appeal on a question of law or jurisdiction under Section 688 of the *Municipal Government Act*, RSA 2000, c M-26. If the Subdivision and Development Appeal Board is served with notice of an application for leave to appeal its decision, such notice shall operate to suspend the Development Permit.

6. When a decision on a Development Permit application has been rendered by the Subdivision and Development Appeal Board, the enforcement of that decision is carried out by the Sustainable Development Department, located on the 2nd Floor, Edmonton Tower, 10111 – 104 Avenue NW, Edmonton, AB T5J 0J4.

*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.*