



**EDMONTON  
TRIBUNALS**

*Subdivision &  
Development  
Appeal Board*

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Date: December 15, 2016  
Project Number: 128010578-001  
File Number: SDAB-D-16-258

**Notice of Decision**

- [1] The Subdivision and Development Appeal Board (the “Board”) at a hearing on October 6, 2016, made and passed the following motion:

That the appeal hearing be tabled to December 7 or 8, 2016.

- [2] On December 7, 2016, the Board made and passed the following motion:

That SDAB-D-16-258 be raised from the table.

- [3] On December 7, 2016, the Board heard an appeal that was filed on **September 22, 2016**. The appeal concerned the decision of the Development Authority, issued on October 24, 2012, to approve the following development:

**Erect a Privacy Screen 8 feet in height along the Southwest portion of the property, along a Required Side Yard**

- [4] The subject property is on Plan 5109HW Blk 84 Lot 21, located at 9839 - 147 Street NW, within the RF1 Single Detached Residential Zone. The Mature Neighbourhood Overlay applies to the subject property.

- [5] 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 Respondent’s written submissions;
- The Appellant’s written submissions; and
- Online response.

### **Preliminary Matters**

- [6] 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.
- [7] The Presiding Officer outlined how the hearing would be conducted, including the order of appearance of parties, and no opposition was noted.
- [8] The Presiding Officer explained the Board will hear the entirety of submissions from all parties, notwithstanding that they will then first determine if they have jurisdiction to hear the appeal pursuant to Section 686 of the *Municipal Government Act*, R.S.A 2000, c. M-26 (the "*Municipal Government Act*").

### **Summary of Hearing**

*i) Position of the Appellants, J. Jirsch and K. Maximova*

- [9] The Appellants reviewed their written submission.
- [10] They have been the registered property owners of 14611 - 99 Avenue since June 25, 2012. Their property is directly adjacent and northeast of the Respondents' property.
- [11] On August 8, 2012, the Respondents made an application for a Minor Development Permit for a fence to be erected on their land, 1 metre from their property line, at a height of 3.7 metres (approximately 12 feet).
- [12] On October 24, 2012, the City of Edmonton did not grant a permit for a 12 foot fence, but instead granted a permit variance to Anna Bashir "To erect a Privacy Screen 8 feet in height along the Southwest portion of the property, along a Required Side Yard."
- [13] On October 26, 2012, the City of Edmonton sent a notice to property owners near the proposed development: "To erect a Privacy Screen 8 feet in height along the Southwest portion of the property, along a required side yard." The notification appeal period was October 30, 2012 until November 12, 2012.
- [14] No appeals to the proposed development along the Southwest portion of the Respondents' property were received by the City of Edmonton during the notification period of October 30, 2012 until November 12, 2012. The Appellants did not appeal the Permit believing that the fence construction on the Southwest portion of the Respondents' property was not close to their property, and therefore would not directly interfere with the enjoyment or value of their own property. They felt that an 8 foot high privacy screen construction was not neighbourly behaviour, but being new to the neighbourhood, did not want to start a conflict with the Respondents.

- [15] On August 14, 2016 they arrived home from vacation to find that the Respondents had erected 8 feet high fence posts and joining beams 53 feet (16 metres) in total length along the Northeast portion of their property, approximately 1 metre from their shared property line. The Appellants' largest house window is only 3 metres from this property line (and therefore 4 metres from the Respondents' fence construction).
- [16] As of December 2016, this structure appears to have been halted with electrical wires emanating from the posts but appears largely finished otherwise.
- [17] At no point between June 25, 2012 and the present has a representative of the City of Edmonton inspected the Appellants' backyard to determine whether the fence permit (project number 128010578-001) materially interferes with or affects the use, enjoyment, or value of their property.
- [18] The approved Development Permit is for the Southwest portion of the Respondents' property according to the written Permit granted in October 2012. The Appellants have not been provided with notice, either by the City of Edmonton or by the Respondents, of fence construction along the Northeast portion of the Respondents' property prior to its construction starting in August 2016. Had they been properly notified of an 8 foot high fence permit along the Northeast portion of the Respondents' property, an appeal would have been filed earlier. Section 13.1.5 of the *Edmonton Zoning Bylaw* states that "In the event of a discrepancy between any written description and the drawings, the written description shall prevail."
- [19] The Respondents' fence construction began in August 2016, significantly more than two calendar years from the date of approval of the permit 128010578-001 in October 2012.
- [20] No valid permit for construction of a fence along the Northeast side of 9839-147 Street existed at the time of fence construction in August 2016 because:
- a. The City of Edmonton did not grant a permit in writing along the Northeast side of the Respondents' property.
  - b. The City of Edmonton did not notify (and still has not notified) surrounding property owners of a permit for fence construction along the Northeast side of the property.
  - c. The Respondents did not begin construction of the proposed fence until over three years after obtaining a fence permit for their property.
- [21] An 8 foot fence on the Respondents' property is unneighbourly and unnecessarily divisive thereby interfering with the amenities of the neighbourhood.
- [22] An 8 foot fence on the Northeastern portion of the Respondents' property significantly reduces the enjoyment and value of the Appellants' property by reducing sunlight into their home, obstructing views of the wider neighbourhood from their home, and creating an unpleasant view of a large and long wall a short distance away from the main window of their home.

[23] The Appellants request that the Board require the Respondents to deconstruct the 8 feet fence on the Northeast portion of their property.

[24] The six attachments to the Appellants' written submission were reviewed:

- a. A map indicating that the Appellants' property is northeast of the Respondents' property Line.
- b. A copy of the Notice from City of Edmonton Sustainable Development dated October 26, 2012, which describes the proposed development as being along the Southwest portion of the property, not close to the Appellants' home.
- c. A satellite image from Google dated July, 2014, showing there is no sign of development or excavation along the current fence line.
- d. A photograph marked August 16, 2016, which was taken one day after they returned from vacation showing fence construction in progress. This was the first they heard of or were notified of a fence being constructed along the property.
- e. A photograph taken on September 30, 2016, showing the view of the Respondent's fence from their living room window. He was standing up when this photo was taken.
- f. A photo dated November 13, 2016, of the substantially completed fence.

[25] Mr. Jirsch did not file the appeal until September 22, 2016, as he first contacted the City of Edmonton to get clarification regarding what the law is in Edmonton. He spoke with N. Swain who did not come to investigate until August 24, 2016, as per the date on the photos included with the Development Authority's report. It took N. Swain another week to call him after the date of the photos at which point he was informed she was in contact with lawyers. It was not reasonable that he would immediately file an appeal on August 16 and feels he has been misguided.

[26] The Appellants feel that the photographs depicting trenching, excavation, and berming in the Respondents' submission seem to be gardening activities rather than fence construction.

ii) *Position of the Development Officer, G. Robinson*

[27] A copy of the *Edmonton Zoning Bylaw*, which was in place at the time the decision was made in 2012, was attached to his report. This section has since been amended – the numbering has been revised for clarity and Section 49.2 regarding privacy screening has been added. The original application would have been reviewed as a fence. Under the new section, privacy screening can increase to 3.05 metres in height.

[28] In August 2012, an application was received for a fence higher than 8 feet which was refused and then an approved permit was issued for a Privacy Screen 8 feet in height. A compliance inspection was conducted in August 2016, and photos taken during this inspection are attached to his report.

- [29] He feels that the Development Officer who granted the approval would have based it on the setbacks in relation to the Appellant's property, the fact that the yard of the Respondent is very exposed and would have felt that the development would 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.
- [30] He confirmed that Section 22 of the *Edmonton Zoning Bylaw* requires construction of the privacy screening to start within one year of the approval. This requirement is also indicated on the back page of the permit.
- [31] He agrees the reference to "southwest" portion was an error and the stamped, approved plan clearly indicates that the proposed development was on the north side of the site. He displayed a map and showed how the Development Officer could have erred because the arrow pointing to north does not point to the top of the page as it often does.
- [32] When the original Notice was sent out, the drawings were not attached and the recipients would have relied on the written description contained in the notice. However he believes that Section 13.1.5 of the *Edmonton Zoning Bylaw* refers to a discrepancy between any written descriptions on the actual drawings and the scaling of the drawings. The intent of this section is to avoid having to use a scale to determine dimensions on plans.
- [33] The permit was only for the construction of the fence itself and made no reference to berming, drainage, excavation, etc. Upon reviewing the photos submitted by the Respondent, the Development Officer felt they show some initial grading and the planting of some trees and the location of the trees in reference to the fence and do not show a direct correlation to fence work. If he saw holes dug for fence posts this would be a clear indicator.
- [34] A permit that required construction to start within one year would automatically expire after that time and a new permit would be required. The one year period starts from the date of approval, not the end of the notification period.
- [35] The height of a fence is calculated from the ground level one-half a metre back from the fence line as many properties slope towards the property line to allow for drainage. Taking the measurement one-half metre back provides a more accurate idea of how the fence will be viewed from adjacent properties.
- [36] He would not comment on whether a proper Development Permit was in place when this fence was built, leaving that for the Board to determine. He did confirm there was an error made on the permit in the description of the scope where it referred to the southwest portion of the lot, although the stamped drawings showed the proper location.

*iii) Position of the Respondent, A. Bashir, represented by N. Bashir*

- [37] The Respondents believe they followed all the required procedures by applying for the permit and providing drawings which clearly showed where the fence was to be constructed. He showed a copy of the Real Property Report which was marked up by the City of Edmonton in yellow to show the location of the fence.
- [38] They intentionally stayed 1 metre inside their property line to provide more separation, thereby being good neighbours. The fence was built precisely as it was shown on the drawings.
- [39] The elevation drawing shows the originally requested height which was reduced by the City of Edmonton to 2.44 metres, which they complied with.
- [40] Although he thought he had two years to begin construction he confirms that the work was started within one year.
- [41] The Development Permit shows finished results, not what is done to prepare for construction, such as moving dirt, etc. Berming and site work excavation was necessary to prepare for the pile caps. A piling contractor was hired to put screw piles in to a depth of 10 feet at a substantial cost. The pile caps were set out of the ground so the bottom of the timbers would not be subject to moisture (installed in August of 2016). The original drawings showed concrete but this was changed to screw piles for durability.
- [42] They followed the required processes all the way through and were not a party to the error made on the permit. As an engineer, Mr. Nazeem knows that words and drawings go together in construction law and both have to be looked at in order to fully understand the intent of the development. He had no idea that the drawings were not being circulated along with the notice to neighbours.
- [43] The Appellant's house situated at the corner looks into their backyard and that is the reason for the privacy screening. The screening was built to be attractive and durable at a cost in excess of \$5,000.00. They are willing to plant vegetation to soften the look of the screening.
- [44] The trenching done in 2013 was to allow a drainage pipe to be installed so the privacy screen would not cause water to pond on their property or that of their neighbours.
- [45] They did not have any formal communication with the Appellants although they tried to open a conversation on several occasions. They spoke with some of the other neighbours as they passed by and the neighbour across the alley offered tools.

*iv) Rebuttal of the Appellants*

- [46] At no time were they ever been notified by Respondents of the fence that was to be constructed.
- [47] They did not approach the Respondents when they returned from vacation in August 2016, as the majority of the fence had already been constructed.

**Decision**

- [48] The Board does not have jurisdiction to hear the appeal. The Appeal is denied and decision of Development Authority is confirmed.

**Reasons for Decision**

- [49] Based on the evidence, the Board finds the following:
- a) On October 24, 2012, the Development Authority granted a development permit to the Respondents. The Scope of Permit section of the permit stated: "To erect a Privacy Screen 8ft in height along the Southwest portion of the property, along a Required Side Yard." The site plan attached to the permit clearly showed that the Privacy Screen was located along the northeast edge of the lot between the Respondents' and the Appellants' properties.
  - b) In compliance with Section 20.1 of the *Edmonton Zoning Bylaw*, the Development Authority took the following steps regarding notification of the issuance of the development permit:
    - i. On October 26, 2012, a notice was sent by mail to assessed property owners within 60 metres of the Site. That notice stated the proposed development was: "To erect a Privacy Screen 8ft in height along the Southwest portion of the property, along a Required Side Yard."
    - ii. On October 30, 2012, a notice was published in a newspaper with respect to the approved development permit.
  - c) The Respondents began site preparation for the Privacy Screen construction in August 2013 that included, among other things, trenching for a drainage pipe to ensure the Privacy Screen would not cause water ponding and berm construction to elevate the pile caps for the Privacy Screen posts.
  - d) Further construction on the Privacy Screen did not begin until August 2016.

- e) On August 14, 2016 the Appellants arrived home from vacation to find that the Respondents had erected 8 feet high fence posts and joining beams 53 feet (16 metres) in total length along the Northeast portion of their property, approximately 1 metre from their shared property line. They contacted City staff about the construction but there was some delay in getting a response.
- f) The Appellants filed an appeal with respect to the development permit on September 22, 2016.
- [50] The Board must determine if the appeal was filed on time. If it was not, the Board does not have jurisdiction to hear the appeal.
- [51] Section 686(1)(b) of the *Municipal Government Act* states that a development appeal to the Board by a person affected by Development Permit issued by a Development Authority is commenced by filing a notice of the appeal, containing reasons, with the Board within 14 days after the date on which the notice of the issuance of the permit was given in accordance with the land use bylaw.
- [52] Section 20.1 of the *Edmonton Zoning Bylaw* requires notice of Class B development permits to be given by mail to property owners within 60 metres of the proposed development. It also requires notice to be published in a newspaper. Both these steps were completed by the Development Authority, with the newspaper notice being published on October 30, 2012. In the normal course of events, that would mean that the 14-day appeal period would expire on November 13, 2012.
- [53] However, both the Scope of Permit section of the development permit and the notice stated that the Privacy Screen was to be constructed along the Southwest portion of the property. This was an error. As the Site plan attached to the development permit showed, the Privacy Screen was to be located along the northeast portion of the property.
- [54] The Board finds that, notwithstanding the error on the development permit describing the location of the Privacy Screen, the permit was validly issued because the attached Site plan showed the correct location. Although Section 13.1(5) of the *Edmonton Zoning Bylaw* states that "In the event of a discrepancy between any written description and the drawings, the written description shall prevail", the Board finds that this section is meant to address situations where drawings submitted by an applicant contain discrepancies between written dimensions and scaled dimensions. This is not the case here. The error on the development permit regarding the location of the Privacy Screen was made by the Development Authority. Neither the Development Authority nor the applicants/Respondents were in any doubt about where the Privacy would be located.
- [55] However, although the development permit is valid, the notice to affected property owners was defective. This notice did not include the Site plan showing the correct location of the Privacy Screen. In particular, the Appellants who would be most affected by the proposed development, were misled by the notice. Accordingly, the 14-day notice period did not commence on October 30, 2012 when the newspaper notice was published.



- [56] To determine when the 14-day appeal period commenced, the Board must determine when the Appellants had constructive notice of the proposed development.
- [57] The Respondents did some preparatory work on the site in August 2013 that included, among other things, trenching for a drainage pipe to ensure the Privacy Screen would not cause water ponding and berm construction to elevate the pile caps for the Privacy Screen posts.
- [58] Section 22.4(a)(i) of the Zoning Bylaw states that, for development permits related to, among other things, Single Detached Housing, development must commence within one calendar year of approval of the development permit. Section 22.4(b) states that development commences when excavation or Site preparation in anticipation of construction for the approved Development Permit occurs.
- [59] The Board is satisfied that the work done by the Respondents in August 2013 was Site preparation in anticipation of construction for the approved development permit. Accordingly, development did commence within one year of approval of the development permit. However, the Board finds that this work was not sufficient to give the Appellants constructive notice that a development permit had been issued to allow the Privacy Screen to be constructed at that location. The work done at that time could have been mistaken for landscaping.
- [60] The Appellants gave evidence that on August 14, 2016 they arrived home from vacation to find that the Respondents had erected 8 feet high fence posts and joining beams 53 feet (16 metres) in total length along the Northeast portion of their property, approximately 1 metre from their shared property line.
- [61] The Alberta Court of Appeal in *Coventry Homes Inc. v. Beaumont (Town of) Subdivision and Development Appeal Board*, 2001 ABCA 49, has commented on Section 686(1)(b) as follows:
- [28] In our view, the object of s. 640(2)(d) and s. 686(1)(b) is to provide a mechanism to balance two somewhat competing interests: the interest of the developer to proceed with the development once approved and the interest of an affected party to contest an approved development.
- [29] The balance is achieved by recognizing that an interested party should know of the development yet should have a limited window within which to contest it.
- [30] Given that broad purpose, it is clear that the legislature could not have intended an unlimited time for appeal.
- ...
- [32] Therefore, an unlimited appeal time would inject incalculable uncertainty into a planning process otherwise designed to achieve both certainty and finality.

...

[36] Whether or not an affected party has sufficient notice to trigger the appeal period will depend on the facts of each case. ...

...

[39] The Dictionary of Canadian Law (2d ed.) contains the following definition of actual and constructive notice:

ACTUAL NOTICE. “. . . [A]ctual knowledge of the very fact required to be established, whereas constructive notice means knowledge of other facts which put a person on inquiry to discover the fact required to be established. The classic distinction, . . . , is that of Strong J. in *Rose v. Peterkin* (1885), 13 S.C.R. 677 at 694: ‘What such actual and direct notice is may well be ascertained very shortly by defining constructive notice, and then taking actual notice to be knowledge, not presumed as in the case of constructive notice, but shown to be actually brought home to the party to be charged with it, either by proof of his own admission or by the evidence of witnesses who are able to establish that the very fact, of which notice is to be established, not something which would have led to the discovery of the fact if an inquiry had been pursued, was brought to his knowledge.’” *Stoimenov v. Stoimenov* (1985), 1985 CanLII 2166 (ON CA), 35 R.P.R. 150 at 158, 44 R.F.L. (2d) 14, 7 O.A.C. 220 (C.A.).

[62] On the facts of this case, the Board finds that on August 14, 2016 the Appellants, and surrounding neighbours, had constructive notice of the location and dimensions of the Privacy Screen and that construction was ongoing. Although the Appellants requested information from City officials, they did not take steps to file an appeal until September 22, 2016.

[63] Having determined the Appellants had constructive notice on August 14, 2016, but did not file an appeal until September 22, 2016, the Board finds that the appeal was filed outside of the required 14-day appeal period and it does not have jurisdiction to hear the appeal.

[64] In the alternative, if the Board is incorrect in its findings regarding whether the appeal was filed on time, the Board would dismiss the appeal because it is of the view 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 for the following reasons:

- i) There is an existing fence over 5 feet high on the Appellants’ property and the Respondents’ privacy screen does not significantly add to the obstruction of the Appellants’ view.

- ii) The Board also heard evidence that the Respondent intends to plant vegetation in front of privacy screen which would soften any potential impacts.
- iii) No other immediate neighbours have voiced a concern about the screen with the exception of one neighbour who lives a considerable distance away and will not be personally impacted.
- iv) In the Board's opinion, the Privacy Screen is attractive and fits in well with the design of the Respondents' house.
- v) The Privacy Screen will enhance the amenity areas of both the Respondents' and the Appellants' properties. The orientation of the houses on the lots creates a privacy concern on the Respondents' property in particular and the Privacy Screen addresses that without a significant impact on the Appellants or the neighbourhood.

Brian Gibson, Presiding Officer  
Subdivision and Development Appeal Board

Board Members Present:

Mr. M. Young; Mr. A. Nagy; Mr. L. Pratt; Ms. D. Kronewitt Martin

**Important Information for the Applicant/Appellant**

1. This decision may be appealed to the Alberta Court of Appeal on a question of law or jurisdiction under Section 688 of the *Municipal Government Act*, RSA 2000, c M-26. 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.*



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Date: December 15, 2016  
Project Number: 230778417-001  
File Number: SDAB-D-16-312

**Notice of Decision**

- [1] On December 7, 2016, the Subdivision and Development Appeal Board (the “Board”) heard an appeal that was filed on **November 24, 2016**. The appeal concerned the decision of the Development Authority, issued on November 23, 2016, to refuse the following development:

**Construct a Semi-detached House with a front veranda, rooftop terraces (each 1.8 metres by 3.5 metres) and to demolish a Single Detached House and a rear detached Garage**

- [2] The subject property is on Plan 4014HW Blk 4 Lot 14, located at 8628 - 79 Street NW, within the RF1 Single Detached Residential Zone. The Mature Neighbourhood Overlay applies to the subject property.
- [3] The following documents were received prior to the hearing and form part of the record:
- Copy of the Development Permit application with attachments, proposed plans, and the refused Development Permit;
  - The Development Officer’s written submissions;
  - The Appellant’s written submissions; and
  - Online submissions.

**Preliminary Matters**

- [4] At the outset of the appeal hearing, the Presiding Officer confirmed with the parties in attendance that there was no opposition to the composition of the panel.
- [5] The Presiding Officer outlined how the hearing would be conducted, including the order of appearance of parties, and no opposition was noted.
- [6] The appeal was filed on time, in accordance with Section 686 of the *Municipal Government Act*, R.S.A 2000, c. M-26.

## Summary of Hearing

### *i) Position of the Appellants, V. Urkow and N. Stack*

- [7] The Appellants would like to build a “side by side duplex” on the subject property and plan to reside and raise a family in one half.
- [8] They were aware that the location does not meet the requirements of the RF1 Single Detached Residential Zone so they personally went door to door to all of the neighbours within a 60 metre radius to solicit their opinions. They chose to do this solicitation on Friday, October 21 between 5:00 p.m. and 6:30 p.m. because they felt that was the best time to find people at home. Copies of the documents that were either personally handed out or left in mailboxes and the responses received have been provided to the Board.
- [9] They received four letters in support plus a letter from the Community League president. They did not personally receive any letter of opposition although one was submitted directly to the Board.
- [10] Before submitting their permit application, they approached the two most directly affected neighbours to the north and south and have received their written approval. One of these neighbours had concerns regarding privacy screening on the second floor terrace which has been addressed.
- [11] Although the property does not abut an arterial road, 79 Street is a transit road and is much wider than a residential road. There are sometimes parking bans in place due to snow removal.
- [12] They spoke with a city planner and discussed reasons why it would be reasonable to allow a “side by side duplex” to be built on this property. They attached maps to their written submission to show that the property is close to a Transit Oriented Development Area.
1. The property is just outside of the 400 metre radius to promote higher density homes in proximity to the new LRT line that will be built.
  2. It will take 9 minutes to walk to the new Bonnie Doon LRT station and 13 minutes to walk to the new Holyrood LRT station when the new Valley Line LRT is completed.
- [13] There is a “side by side duplex” across the street from their property (to the north) which is on a corner lot. Their development would not look out of place because of its proximity to the existing duplex. The block just to the south of them is zoned RF4 Semi-Detached Residential Zone and contains “side by side duplexes”. The city planner felt that a request to have their property re-zoned would likely be approved but would take a lot longer and be more costly. They decided to try to seek the required locational variance instead.

- [14] There is a high density development planned 900 metres from the property consisting of apartment towers and townhouses and there are currently two skinny houses being built across the back lane. They could have built a two story family dwelling with a legal basement suite with no variances required. The existing home is currently a rental with both the upstairs and downstairs rented separately. For these reasons, the proposed “side by side duplex” will not adversely affect density.
- [15] They wish to build a Semi-detached House because it is more conducive to renters. They will be living right next door to the rental property and will have tight control over the tenants.
- [16] The main concern of the one person who had written a letter of opposition seems to be that a different plan was being submitted to the City than what he saw. They confirmed this is not the case.
- [17] By building a “side by side duplex” in a mature neighbourhood, they are meeting the City’s infill goals that promote using existing infrastructure such as roads and schools. They are also on a bus route which promotes the use of transit. The proposed development would result in increased tax revenue to the City. There is enough amenity space in the neighbourhood and they are located next to a large park and green space.
- [18] A veranda has been included to add character; they want the home to look more attractive and feel the required variance is reasonable. They also plan to keep as many of the mature trees as possible.
- [19] They have chosen a high quality builder who has a reputation for adhering to the rules and who keeps the site and sidewalks free of garbage and dirt. The builder tries to keep the impact to the neighbours to a minimum.
- [20] They have seen the same floorplan as theirs used in Ritchie and Forest Heights and feel it will fit in well into their neighbourhood as well. It has a more traditional look and the two units are identical although each half is a different colour (one is blue and the other green). They are willing to make alterations to the exterior if required be to make the two units look more distinct. The footprint of the new building is similar to the existing home with the exception of the verandas and garages.
- [21] They are not planning a front drive garage and after consulting with the Development Officer have moved the proposed home a little closer to the front to conform better with existing homes on the block. The existing home is set back quite a bit further than the other homes on the block.

*ii) Position of the Development Officer, K. Pihooja*

- [22] Throughout process, the Appellant has been very diligent in trying meet the requirements of the Mature Neighbourhood Overlay and was very open to any revisions suggested by the Development Officer such as pushing the house more forward to accommodate the required rear yard.
- [23] The Mature Neighbourhood Overlay does not provide specific criteria regarding how the two sides of a Semi-detached House should be differentiated and is currently being reviewed to define this more explicitly. She feels that having each side a different colour would meet the current requirement.
- [24] She did not have any information regarding the skinny houses being built across the lane as she focused more on 79 Street. The subject lot would have been slightly deficient in site width for two skinny lots.
- [25] There is no definition of an arterial road in the *Edmonton Zoning Bylaw*. The Development Officer showed the map of the area and identified which roads were considered to be the Arterial Roads. The Development Authority considers 79 Street to be a collector road.
- [26] She feels the proposed development does fit the character of the neighbourhood and she would have approved the development if the locational criteria were met. The only other variance required was to allow for the front verandas.
- [27] Although the neighbours are all either in support or not opposed other than the one voice of opposition she felt this was not sufficient to grant a variance to the locational requirements. In her opinion rezoning, which could be site specific, would be more appropriate. Her variance power is limited as she feels the proposed development does not meet the general purpose.
- [28] The nearby Semi-detached Houses have been there since the 1980 or 1990's.
- [29] She does agree that this area is in transition, especially with the development of the LRT.

*iii) Rebuttal of the Appellants*

- [30] The decision to build a "side by side duplex" as opposed to two skinny homes was made after neighbourhood consultation. The community does not like the two skinny homes currently being built and is very appreciative that they are not building this type of development. They confirmed that their lot is slightly less than the required 50 feet wide for two skinny homes.



- [31] They could build a Single Family Detached House of the same size as the “side by side duplex” they are proposing with no variances required.
- [32] The “side by side duplex” across the street to the north is brand new and was just built last year.
- [33] They have no issues with any of the conditions suggested by the Development Officer should this permit be approved.

### **Decision**

- [34] The appeal is ALLOWED and the decision of the Development Authority is REVOKED. The development is GRANTED as applied for to the Development Authority, subject to the following CONDITIONS:
1. WITHIN 14 DAYS OF APPROVAL, prior to any demolition or construction activity, the applicant must post on-site a development permit notification sign (Section 20.2)
  2. The proposed Basement development(s) shall NOT be used as an additional Dwelling. This Development Permit shall be revoked if the conditions of this permit are not met.
  3. The maximum Height shall not exceed 8.6 metres, in accordance with Section 52 of the *Edmonton Zoning Bylaw 12800*.
  4. Privacy Screening, excluding vegetative screening, constructed on a Rooftop Terrace shall not exceed 1.5 metres in Height, when measured from the surface of a Rooftop Terrace. (Reference Section 49.2)
  5. Semi-detached housing requires 2 parking spaces per dwelling; parking may be in tandem as defined in Section 6.1(104) (Reference Schedule 1 of Section 54.2).
  6. The driveways and outdoor parking spaces shall be hardsurfaced in accordance with Section 54.6.
  7. Except for the hardsurfacing of driveways and/or parking areas approved on the site plan for this application, the remainder of the site shall be landscaped in accordance with the regulations set out in Section 55 of the Zoning Bylaw.
  8. Landscaping shall be provided on a Site within 18 months of the occupancy of the Semi-detached House. Trees and shrubs shall be maintained on a Site for a minimum of 42 months after the occupancy of the Semi-detached House (Reference Section 55.2.1).

9. One (1) deciduous trees with a minimum Caliper of 50 mm, one (1) coniferous trees with a minimum Height of 2.5 metres and six (6) shrubs shall be provided per dwelling in accordance with the approved site plan. Deciduous shrubs shall have a minimum Height of 300 mm and coniferous shrubs shall have a minimum spread of 450 mm (Reference Section 55.2.1).
10. The location of trees and shrubs shall be in accordance with the approved landscape plan.
11. All Yards visible from a public roadway, other than a Lane, shall be seeded or sodded. Seeding or sodding may be substituted with alternate forms of ground cover, including hard decorative pavers, washed rock, shale or similar treatments, perennials, or artificial turf, provided that all areas of exposed earth are designed as either flower beds or cultivated gardens (Reference Section 55.2.1).
12. Private Outdoor Amenity Area shall be provided on Site in accordance with Section 47 of the *Edmonton Zoning Bylaw*. (Reference Section 110.4.12)

#### NOTES:

1. Any future deck enclosure or cover requires a separate development and building permit approval.
2. Any future Platform Structures 0.6 metres or greater above Grade shall require a separate development permit and shall provide privacy screening if 1.0m or greater above Grade to prevent visual intrusion into adjacent properties. (Reference Section 814.3(8))
3. Any future additional dwelling(s) shall require a separate development permit application.
4. Dwelling means a self-contained unit comprised of one or more rooms accommodating sitting, sleeping, sanitary facilities, and a principal kitchen for food preparation, cooking, and serving. A Dwelling is used permanently or semi-permanently as a residence for a single Household.
5. The driveway access must maintain a minimum clearance of 1.5 metres from all surface utilities.
6. Lot grades must comply with the *Edmonton Drainage Bylaw 16200*. Contact Drainage Planning and Engineering at 780-496-5576 or [lot.grading@edmonton.ca](mailto:lot.grading@edmonton.ca) for lot grading inspection inquiries.

7. An approved Development Permit means that the proposed development has been reviewed against the provisions of this bylaw. It does not remove obligations to conform with other legislation, bylaws or land title instruments including, but not limited to, the *Municipal Government Act*, the *Safety Codes Act* or any caveats, restrictive covenants or easements that might be attached to the Site. (Reference Section 5.2)

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

1. The locational requirements for a Semi-Detached House in the RF1 Single Detached Residential Zone as per Section 110.4(4) are waived to allow the proposed development.
2. The maximum allowable projection of the veranda and eaves from the east front elevation of the proposed development as per Section 44.1(a) is waived.

### **Reasons for Decision**

[36] Semi-detached Housing is a Discretionary Use in the RF1 Single Detached Residential Zone.

[37] The development meets all of the setbacks other than variance required for the projection.

[38] The Board finds that the development has a characteristic similar to a single family development that could be allowed on this site. It will maintain the single family character of the community in the built form with respect to the side setbacks, frontage, height, scale, and roof line.

[38] Both adjacent neighbours have provided written support for the development.

[39] This will provide compatible family oriented housing in this district.

[40] The proposed development fulfils the City's intention to promote infill development to increase density and utilize existing infrastructure such as utilities, schools, public transit and community services. The Board notes that this development is on a transit route and will be in close proximity to future Valley Line LRT.

[41] This neighbourhood is in transition with new developments closely adjacent to theirs including two skinny houses as well as another Semi-detached House within the notification zone.

[42] A Single Detached House could be built on this Site with the same dimensions as the proposed development with a Secondary Suite in the basement without variances. Such a development would have essentially an identical impact as the proposed development.

[43] 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.

Brian Gibson, Presiding Officer  
Subdivision and Development Appeal Board

Board Members Present:

Mr. M. Young; Mr. A. Nagy; Mr. L. Pratt; Ms. D. Kronewitt Martin

**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 5<sup>th</sup> 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*, RSA 2000, c M-26. If the Subdivision and Development Appeal Board is served with notice of an application for leave to appeal its decision, such notice shall operate to suspend the Development Permit.
6. When a decision on a Development Permit application has been rendered by the Subdivision and Development Appeal Board, the enforcement of that decision is carried out by the Sustainable Development Department, located on the 5th Floor, 10250 – 101 Street, Edmonton.

*NOTE: The City of Edmonton does not conduct independent environmental checks of land within the City. If you are concerned about the stability of this property for any purpose, you should conduct your own tests and reviews. The City of Edmonton, when issuing a development permit, makes no representations and offers no warranties as to the suitability of the property for any purpose or as to the presence or absence of any environmental contaminants on the property.*



**EDMONTON  
TRIBUNALS**

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Date: December 15, 2016  
Project Number: 231989250-001  
File Number: SDAB-D-16-313

**Notice of Decision**

- [2] On December 7, 2016, the Subdivision and Development Appeal Board heard an appeal that was filed on November 22, 2016. The appeal concerned the decision of the Development Authority, issued on November 3, 2016 to approve the following development:

Operate a Major Home Based Business. (Health Enhancement Centre - Trinity Rejuvenation & Wellness Ltd - expiry November 3, 2018)

- [3] The subject property is on Plan 6144AH Blk 3C Lot 5, located at 16010 - 100 Avenue NW, within the RF1 Single Detached Residential Zone. The Mature Neighbourhood Overlay and Jasper Place Area Redevelopment Plan apply to the subject property.

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

- Copy of the Development Permit application and approved Development Permit decision; and
- Development Officer's written submissions, dated November 23, 2016.

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

- Exhibit A – Photograph of pre-existing signage, submitted by Appellant;
- Exhibit B – Photograph of renovation work, submitted by Respondent.

**Preliminary Matters**

- [6] 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.
- [7] The Presiding Officer outlined how the hearing would be conducted, including the order of appearance of parties, and no opposition was noted.

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

### **Summary of Hearing**

#### *i) Position of the Appellant, Mr. S. Nagorski*

[9] Mr. Nagorski stated that his primary concern is with the ongoing impact of having a Major Home Based Business located in this area, which could impact property values in the long term.

[10] He was not opposed to an 8" x 12" placard located to the rear of the property, directing that clients park in designated spots. However, he was opposed to locating the signage at the front of the property, as it would attract pedestrian traffic from 100 Avenue. He would like to avoid situations wherein strangers will approach the subject property to enquire about the business and its services.

[11] Mr. Nagorski confirmed that he rents out the property located adjacent to the subject development, and his tenants have informed him that they have observed an increase in walkup traffic. Upon questioning by the Board, he submitted Exhibit "A", a photograph of the subject property facing onto 100 Avenue. The photograph was taken in September 2016, and showed that there were two signs that identified the business.

#### *ii) Position of the Development Authority*

[12] The Development Authority was represented by Ms. K. Bauer.

[13] Ms. Bauer stated that if traffic is a concern, it is possible to provide an additional condition to the permit, requiring a wait period in between client visits. It was her belief that while she might not have the authority to impose such a condition, it is within the Board's discretion to do so. However, upon further questioning by the Board, she acknowledged that she could have also imposed a condition requiring mandatory wait times in between client appointments.

[14] The Board referenced Exhibit "A", and noted that the signage appeared to be significantly larger than the 8" x 12" limitation. Ms. Bauer confirmed that should the sign dimensions be larger than 8" x 12", bylaw enforcement could become involved. Also, the allowance for a 8" x 12" plaque does not contemplate Digital Signs.

[15] Referring to the Development Officer's written submissions, the Board noted that the "Pictometry" image on page three shows that on-street parking appears to be utilized. Ms. Bauer noted that the property requires only two parking spaces, and one additional space for the Major Home Based Business itself. Four spaces are provided on-Site, so on-street parking usage should not be a concern.

*iii) Position of the Respondent, Mr. M. Bueno*

- [16] With respect to the foot traffic, Mr. Bueno explained that he volunteers with a group that provides food for the homeless, and they meet approximately every two to three weeks at his home.
- [17] Mr. Bueno explained that his business is not currently operating yet, as his basement is still under construction. In support, he submitted Exhibit “B”, a photograph of the incomplete basement, which he hopes will be completed in January 2017.
- [18] He explained that he is not currently the owner of the property, which is owned by a friend. However, once he moves in and begins operating the business, he anticipates a maximum of four client visits per day, though sometimes he may not receive any clients. He is unclear as to what the demand will be, but he has no concerns with the permit condition prohibiting overlapping visits.
- [19] Upon questioning by the Board, he confirmed that he incorporated the subject business in June 2016. However, he also operates a separate incorporated massage business at an off-Site clinic. As such, he estimates that 90% of his appointments will be conducted either at the clinic, or at his clients’ homes.
- [20] The Board noted that according to the proposed plans, on-site parking is provided at the rear of the property. The Board questioned whether it might be more appropriate to locate the business signage at the rear. Mr. Bueno stated that he will comply with the Board’s decision and the regulations governing signage. He noted that upon speaking with Mr. Nagorski and upon learning about the restrictions upon sign dimensions, he removed the offending signs shown in Exhibit “A”.
- [21] However, he would still prefer to have the business sign located at the front of the property, as it serves to identify the business and ensures that clients do not accidentally go to another property. He stated that he had no concerns with any of the conditions set out in the permit

**Decision**

- [49] The appeal is DENIED and the Development Authority’s decision is CONFIRMED. The development is GRANTED as approved by the Development Authority, subject to the CONDITIONS as set out in Permit Number 231989250-001, issued on November 3, 2016, with the following amendment:
- 1) Condition 12 is corrected to read as follows: “This approval is for a **two year period** from **November 3, 2016**. A new Development Permit must be obtained to continue to



operate the business from this location. This Development Permit expires on November 3, 2018.”

### **Reasons for Decision**

- [50] The proposed development is a Major Home Based Business, which is a Discretionary Use in the RF1 Single Detached Residential Zone.
- [51] The Development Authority indicated that this Major Home Based Business is reasonably compatible with the surrounding development, and that potential impacts have been appropriately mitigated by the conditions of the permit.
- [52] The Board has reviewed these conditions, and notes in particular that the business is limited to a maximum of four client visits per day and that visits must be by appointment. These restrictions, combined with the requirement that there be no overlap in appointments, will mitigate traffic concerns.
- [53] Though not specifically identified as a concern by the Appellant, the Board also notes that all parking requirements for the subject property and the proposed Major Home Based Business can be provided by on-site parking located at the rear of the property, removing the need to utilize on-street parking.
- [54] The Board is also satisfied that the two year limitation period for this permit will provide sufficient time for the business to begin operating. Upon expiry of the permit, the Applicant would need to reapply, at which time the application and any impacts from its operation over the prior two years may be more fully assessed by the Development Authority.
- [55] For the above reasons, and based on the information presented for this appeal, 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. The appeal is therefore denied.

Brian Gibson, Presiding Officer  
Subdivision and Development Appeal Board

### Board Members Present:

Mr. M. Young; Mr. A. Nagy; Mr. L. Pratt; Ms. D. Kronewitt Martin

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