



**EDMONTON
TRIBUNALS**

*Subdivision &
Development
Appeal Board*

10019 – 103 Avenue NW
Edmonton, AB T5J 0G9
P: 780-496-6079 F: 780-577-
3537
sdab@edmonton.ca
edmontonsdab.ca

Date: December 21, 2017
Project Number: 256534906-001
File Number: SDAB-D-17-242

Notice of Decision

- [1] On December 14, 2017, the Subdivision and Development Appeal Board (the “Board”) heard an appeal that was filed on **November 27, 2017**. The appeal concerned the decision of the Development Authority, issued on November 17, 2017, to refuse the following development:

Construct a Semi-detached House with front uncovered decks, Rooftop Terraces, Basement developments (NOT to be used as an additional Dwelling), Fireplaces, and rear uncovered decks (Unit 1: 3.66 metres by 5.69 metres, Unit 2: 3.66 metres by 5.89 metres), and to demolish an existing Single Detached House.

- [2] The subject property is on Plan 3543HW Blk 4 Lot 7, located at 10507 - 69 Avenue NW, within the RF3 Small Scale Infill Development 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; and
- The Appellant’s written submissions

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

- Exhibit A – Regulation 14 of the Mature Neighbourhood Overlay
- Exhibit B – Google Street View of the front street
- Exhibit C – Signatures of support from four adjacent property owners
- Exhibit D – Map identifying infill projects in the vicinity
- Exhibit E – Photograph of the backyard of the subject property

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 "*Municipal Government Act*").

Summary of Hearing

i) Position of the Appellant, Baum & Woolger Homes

- [8] Mr. D. Baum and Mr. B. Woolger appeared on behalf of Baum & Woolger Homes.
- [9] They submitted information from the City website which states that the height of a house cannot exceed 10 metres or 2.5 storeys. They are within the maximum permitted height of 10 metres and the issue is in the way the Development Officer calculated the height. The Presiding Officer clarified that the Mature Neighbourhood Overlay applies to this zone; therefore, the maximum permitted height would be 8.9 metres.
- [10] The height of a building with a flat roof is calculated differently than a building with a pitched roof which severely skews the actual height of the building. The height of a flat roofed building is taken from the top of the roof but the height of a building with a pitched roof is taken from the mid-point of the highest roof truss. Their proposed development is essentially the same height as what would be permitted for a pitched roof building if their project were measured from the middle of the truss system. The overall height of the building does not change if it is two stories or two and one half stories. They referred the Board to drawings in their submission to clarify this point.
- [11] The Appellants submitted that the floor area of the upper half storey of a 2 ½ Storey building shall not exceed 50 percent of the structure's second storey floor area and provided a copy of Regulation 14 of the Mature Neighbourhood Overlay (stamped Exhibit A) in support of this contention. The half storey they are proposing is only 34 percent of the floor area and is situated in the middle of the house, reducing any massing effect.
- [12] The entire block across the street from the proposed development is occupied by older apartment buildings which are higher than the proposed development. Mature trees along both sides of the front street mitigate privacy issues when they are leafed out during the summer. Privacy is not an issue in the winter as the terraces would not be used. A Google street view was submitted to show the apartment buildings and mature trees (stamped Exhibit B).

- [13] The proposed development is situated such that it will not take away any sunlight from neighbours across the lane.
- [14] The Development Officer indicated to the Appellants that the required variances to the front, side and rear setbacks would most likely have been granted if no height variance was required.
- [15] The Appellants referred the Board to the orange highlighted sections on their drawings to clarify the location of the rooftop terraces and why the requested variances would not have any adverse effect on neighbouring property owners. Sight lines to neighbours are partially obscured by the roof system.
- [16] The Development Officer conducted community consultation within a 60 metre radius and did not receive any objections regarding the height or the setback deficiencies. While it was not a requirement, the Appellants obtained signatures of support from the two immediately adjacent neighbours as well as two neighbours directly across the lane from the proposed development (stamped Exhibit C).
- [17] Other than the height and required setbacks, the house complies with all other regulations. At the request of the Development Officer, they positioned windows to be offset from those of their neighbours, sunk the house to help mitigate the height, changed building materials, moved the house further back on the property and provided frosted privacy screening on the rooftop terrace.
- [18] Infills do not have much room in the backyard for entertaining and rooftop terraces are a desirable amenity area.
- [19] Unlike other mature neighbourhoods, Allendale does not yet have a redevelopment plan in place, but their proposed development fits in with the goals the City has set for future bylaw modernizations as per the material in Part 5 of their submission. The subject site is located near a main road to the University, Whyte Avenue and Calgary Trail which conforms to the City's goal to "proactively support residential infill through transit oriented development in existing and future high frequency transit areas".
- [20] Mr. Baum purchased the property about three years ago because he feels this is a vibrant up and coming neighbourhood close to the City core. A map was submitted which identified numerous infill projects within a few blocks of the subject site (stamped Exhibit D).
- [21] Mr. Baum read Section 814.1 of the *Edmonton Zoning Bylaw*

814.1 General Purpose

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

They have done their best to follow these requirements and feel they have developed a pedestrian oriented design.

[22] They strongly disagree with the Development Officer's opinion that "the proposed development would unduly interfere with the amenities of the neighbourhood or materially interfere with or affect the use, enjoyment or value of neighbouring properties, and would not be reasonably compatible with the surrounding developments". They feel they are proposing a desirable building which will add value and curb appeal to the neighbourhood. No neighbouring property owners expressed any objection; in fact, neighbours felt the development would add to their property values as well. It is compatible with the numerous infill projects throughout the neighbourhood, including duplexes on the same block.

[23] The Appellants provided the following responses to questions from the Board:

- a) They confirmed they had shown the neighbours their blue prints and pointed out the proposed rooftop terraces.
- b) Revising the plans to conform to the maximum permitted height would require major design changes.
- c) They intend to build a garage in the backyard and a large tree in the backyard of the neighbour across the lane completely blocks the view. A photo of the backyard was submitted (stamped Exhibit E).
- d) They showed the location of the midpoint of the parapet (Section 52.1(b) of the *Edmonton Zoning Bylaw*) on their drawings.
- e) They confirmed they are in agreement with the conditions recommended by the Development Officer should the development be permitted.

ii) *Position of the Development Officer, Ms. R. Lee*

[24] The Development Officer did not attend the hearing and the Board relied on her written submission.

Decision

[25] 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. This Development Permit authorizes the development of a Semi-detached House with front uncovered decks, Rooftop Terraces, Basement developments (NOT to be used as an additional Dwelling), Fireplaces, and rear uncovered decks (Unit 1: 3.66 metres by 5.69 metres, Unit 2: 3.66 metres by 5.89 metres), and to demolish an existing Single Detached House. The development shall be constructed in accordance with the stamped and approved drawings.

2. WITHIN 14 DAYS OF APPROVAL, prior to any demolition or construction activity, the applicant must post on-site a development permit notification sign (Section 20.5.2)
3. The area hard surfaced for a Driveway shall comply with Section 54.6 of the *Edmonton Zoning Bylaw 12800*.
4. Except for the hard surfacing 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 *Edmonton Zoning Bylaw 12800*.
5. Landscaping shall be provided on the Site within 18 months of the occupancy of the Semi-detached House. Trees and shrubs shall be maintained on the Site for a minimum of 42 months after the occupancy of the Semi-detached House (Reference Section 55.2.1).
6. One deciduous tree with a minimum Caliper of 50 mm, one coniferous tree with a minimum Height of 2.5 m and four shrubs shall be provided for each Dwelling (two Dwellings on site). 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).
7. 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).
8. Private Outdoor Amenity Area shall be designed for the occupants of a specific Dwelling, and shall be provided immediately adjacent to, and with direct access from, the Dwelling it is to serve. It shall be landscaped and surfaced for convenient use for outdoor activities. (Reference Section 47.2)

ADVISEMENTS:

1. Lot grades must comply with the *Edmonton Drainage Bylaw 16200*. Contact Drainage Planning and Engineering at 780-496-5576 or lot.grading@edmonton.ca for lot grading inspection inquiries.
2. Any future deck development greater than 0.6 metres (2 feet) in height will require development and building permit approvals
3. Any future deck enclosure or cover requires a separate development and building permit approval.

4. The driveway access must maintain a minimum clearance of 1.5 metres from the service pedestal and all other surface utilities.
5. Any hoarding of construction taking place on road right-of-way requires an OSCAM (On-Street Construction and Maintenance) permit. It should be noted that the hoarding must not damage boulevard trees. The owner or Prime Contractor must apply for an OSCAM online at:
www.edmonton.ca/transportation/on_your_streets/on-street-construction-maintenance-permit.aspx
6. Unless otherwise stated, all above references to "section numbers" refer to the authority under the *Edmonton Zoning Bylaw 12800*.
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.

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

1. The maximum allowable building Height of 8.9 metres as per Section 814.3(5) is varied to allow an excess of 0.75 metres, thereby increasing the maximum allowed Height to 9.65 metres.
2. The maximum allowable building Height of 9.3 metres (to the top of parapet) as per Section 52(1)(b) is varied to allow an excess of 0.5 metres, thereby increasing the maximum allowed to 9.8 metres.
3. The minimum required Stepback of 1.0 metres from any building Facade facing a Front Lot Line as per Section 61.1(a)(i) is varied to allow a deficiency of 0.4 metres, thereby decreasing the minimum required to 0.6 metres.
4. The minimum required Stepback of 2.0 metres from any building Facade facing a Rear Lot Line as per Section 61.1(a)(ii) is varied to allow a deficiency of 0.18 metres, thereby decreasing the minimum required to 1.82 metres.
5. The minimum required Stepback of 2.0 metres from any building Facade facing a Side Lot Line, where the Site Width is 10.0 metres or greater, as per Section 61.1(a)(iv) is varied to allow a deficiency of 0.63 metres, thereby decreasing the minimum required to 1.37 metres.

Reasons for Decision

- [27] Semi-detached Housing is a Permitted Use in the RF3 Small Scale Infill Development Zone.
- [28] With respect to Height, the Appellant provided evidence that he could have built the third half story to cover fifty percent of the Floor Area. However, the provision he cited from the Mature Neighbourhood Overlay in support of this contention is no longer in force, having been repealed by Bylaw 18013, which was passed May 29, 2017 and became effective September 2, 2017. Pursuant to section 687(3)(a.3) of the *Municipal Government Act*, the Board applies the version of the *Edmonton Zoning Bylaw* in effect as of the date of the hearing, which in this case occurred on December 14, 2017. Notwithstanding that the regulation cited by the Appellant is no longer in force, the fact remains that his third story only covers thirty four percent of the Floor Area, thereby mitigating any massing effect on nearby neighbours.
- [29] The Height exceeds the limit in the Mature Neighbourhood Overlay; therefore, the Development Officer carried out a community consultation with all of the property owners within a 60 metre radius in accordance with Section 814.5 of the *Edmonton Zoning Bylaw*. The Development Officer provided evidence that there was no opposition lodged as a result of this consultation and the Board finds the community consultation provisions have been complied with. Additionally, no opposition was voiced at the Board hearing or as a result of the 60 metre notification process carried out by the Board in advance of its hearing.
- [30] The Appellant also provided evidence that the proposed development is located across the street from a number of apartment buildings and he gave evidence that those apartment buildings are higher than what he is seeking to build. His house is not out of character with the Height of buildings on this street.
- [31] The Appellant provided evidence with respect to the front Stepback. Any potential overlook issue is mitigated by mature trees on this street and any overlook would be into the apartments across the street. Further mitigating any impact is a frame-like extension built onto the front of the proposed development.
- [32] The deficiency in the side Stepback is mitigated by the sloping roof lines that obscure sight lines from the roof top patios into neighbouring yards.
- [33] With respect to the overlook in the rear, the Appellant indicated an intention to build a garage and his neighbour directly across the lane has a large tree obscuring any overlook into their yard.
- [34] Additionally, the Appellant provided evidence he had consulted with the adjacent neighbour on either side as well as the two neighbours directly behind the proposed development. He had provided these neighbours with his building plans. These

neighbours supported his development application and he provided a written petition with their signatures.

- [35] The Appellant provided the Board with evidence that this is a neighbourhood in transition. A number of similar projects have been built within a two block radius of the proposed development.
- [36] Having regard for all of the preceding reasons, the Board is satisfied that granting the required variances 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.



Anna Lund, Presiding Officer
Subdivision and Development Appeal Board

Board Members Present:

Ms. T. Jones, Mr. A. Bolstad, Mr. R. Handa, Mr. R. Hobson

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.



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December 20, 2017

RE: Project No. 267413235-001 / SDAB-D-17-243, an Order to Cease the Cannabis Retail Sales Use immediately and remove all related materials from the property by December 3, 2017 - 7809 – 109 Street NW

Summary of the Hearing on the Preliminary Matter:

- [1] The Presiding Officer outlined how the hearing would be conducted and confirmed with the parties in attendance that there was no opposition to the composition of the panel.
- [2] Legal counsel for the Appellant, Ms. J. Buhler, and legal counsel for the City of Edmonton, Mr. M. Gunther, City of Edmonton, jointly submitted their request to postpone the hearing of this matter to February 28, 2018.
- [3] The postponement would provide the Appellant the opportunity to apply for a Development Permit which complies with the Edmonton Zoning Bylaw, potentially rendering the Stop Order unnecessary and the hearing of this appeal moot.
- [4] Upon questioning by the Board, Mr. Gunther explained that the Appellant may pursue a development application for a Health Services Use, which is a Permitted Use in the subject zone.
- [5] Mr. A. Schiewe of Heart Kitchen, a neighbouring business owner in attendance, felt the proposed development would still have a negative impact even if was approved as a different Use. The Presiding Officer clarified that the issue before the Board at the moment is the Postponement Request and not the merits of the Appeal.

Decision on the Preliminary Matter:

- [6] The Board passed the following motion:

“That the hearing for SDAB-D-17-243 be tabled to February 28, 2018, at the joint request of the Appellant and the City of Edmonton.”

Reasons for Decision on the Preliminary Matter

- [7] The Board heard a joint application from the City and the Appellant that they would like a two month adjournment to allow the Appellant time to make a Development Permit application that may bring this development into compliance with the Edmonton Zoning Bylaw.
- [8] This is the first request for an adjournment.
- [9] The Board heard from a neighbouring property owner who expressed concerns with the merits of this Development, but he did not provide any reasons that would justify not granting this first adjournment request.

The exact time and location of the hearing will be provided in future correspondence.

Should you require further information in this regard, please contact the Subdivision and Development Appeal Board Office at 780-496-6079.



Ms. Anna Lund, Presiding Officer
Subdivision and Development Appeal Board

Board Members Present:

Ms. P. Jones, Mr. A. Bolstad, Mr. R. Handa, Mr. R. Hobson