

SUBDIVISION

AND

DEVELOPMENT APPEAL BOARD

AGENDA

Wednesday, 9:00 A.M.
February 10, 2021

Hearing Room No. 3
Churchill Building, 10019 - 103 Avenue NW, Edmonton,
AB

**SUBDIVISION AND DEVELOPMENT APPEAL BOARD
HEARING ROOM NO. 3**

I 9:00 A.M. SDAB-D-21-009

Construct exterior alterations and an addition to a Single Detached House (remove metal cladding, install/repair brick facade, addition of a sun room on the west and south facade of the 3rd floor, remove existing staircase and concrete on south facade and fill in all existing doorways on the south facade)

9712 - 111 STREET NW
Project No.: 365666428-002

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

ITEM I: 9:00 A.M.

FILE: SDAB-D-21-009

AN APPEAL FROM THE DECISION OF THE DEVELOPMENT OFFICER

APPELLANT:

APPLICATION NO.: 365666428-002

APPLICATION TO: Construct exterior alterations and an addition to a Single Detached House (remove metal cladding, install/repair brick facade, addition of a sun room on the west and south facade of the 3rd floor, remove existing staircase and concrete on south facade and fill in all existing doorways on the south facade)

DECISION OF THE DEVELOPMENT AUTHORITY: Approved with conditions

DECISION DATE: November 9, 2020

DATE OF APPEAL: December 7, 2020

NOTIFICATION PERIOD: November 17, 2020 through December 8, 2020

RESPONDENT:

MUNICIPAL DESCRIPTION OF SUBJECT PROPERTY: 9712 - 111 Street NW

LEGAL DESCRIPTION: Plan NB Blk 11 Lot 84

ZONE: (DC1) Direct Development Control Provision (Sub Area 6 - Area 2 of the Oliver Area Redevelopment Plan)

OVERLAY: N/A

STATUTORY PLAN: Oliver Area Redevelopment Plan

<i>Grounds for Appeal</i>

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

Reasons for Appeal:

I am the owner of the property located at 9716 111 Street NW in Edmonton, AB. The property located at 9712 111 Street NW is immediately adjacent to my property. Pursuant to the Development Permit Notice that I received on November 17, 2020, I am appealing the Class B Development Permit approved for the 9712 111 Street NW property. My reasons include but are not limited to the following:

1. The proposed exterior alterations and addition to the Single Detached House will require or constitute encroachment onto my 9716 111 Street NW property, including but not limited to:
 - a. any and all exterior alterations to the wall, roof, eaves, and other structures of the 9712 111 Street NW property which currently encroach upon and are located within the boundary of my 9716 111 Street NW property;
 - b. any and all additions, including the proposed sun room on the west and south faade of the 3rd floor (incorrectly denoted as 3rd floor vs. actual 9712 2nd floor) that will upon completion encroach upon and are located within the boundary of my 9716 111 Street NW property; and
 - c. any and all removal of metal cladding which currently encroaches upon and is located within the boundary of my 9716 111 Street NW property.
2. There is no encroachment agreement currently in place between myself and the owner of the 9712 111 Street NW property.
3. On January 16, 2003, pursuant to the December 14-15,1998 Trial decision (1999 ABQB 84 (CanLII) an Order of the Justice V.W.M. Smith, reviewed by then Chief Justice Allan H.J. Wachowich, a lien was registered on title to the 9712 111 Street NW property and on title to my 9716 111 Street NW property. The lien prevents the owner of either property from unilaterally removing the portions of the 9712 111 Street NW property which encroach upon and are located within the boundary of my 9716 111 Street NW property. The lien remains in place and on title to both properties.
4. To date, I have made several requests to the City of Edmonton for further information, including FOIP requests and requests to the Citys Geo-Tech Engineering Department and Planning Department (September 16, 2020; FOIP extension due date from October 16, 2020 to November 16, 2020 due date; FOIP November 16, 2020 due date again extended to December 21, 2020). These requests remain unanswered, excepting for the occasional notice

advising me that the City has extended its time for providing me with a response.

As a result, I do not yet have access to information that I expect will be relevant and material to this appeal, including but not limited to copies of any and all permits, certificates, plans, drawings, titles, building reports, engineering reports, real property reports, fire and liability insurance documents, agreements, court orders, Compliance & Non-Compliance City of Edmonton Certificates, Real Property Reports and other relevant and material records pertaining to:

- a. the 9712 111 Street NW property;
- b. my 9716 111 Street NW property; and
- c. the boundary line between the 9712 111 Street NW property and my 9716 111 Street NW property.
- d. Non-Conforming (9712) Building This Single Detached House no longer conforms to current zoning rules, which may have changed since it was originally constructed (Section 11.3.3). Material records indicate 9712 was constructed in ~ 1908 vs. 1952 & the City Director of Planning & Zoning advised No Section 11.3.3, per the November 12, 2020 Development Permit Notice bylaw, exists.

<i>General Matters</i>

The Subdivision and Development Appeal Board at a hearing on December 9, 2020, made and passed the following motion:

“The hearing will be scheduled on January 8, 2021.”

The Subdivision and Development Appeal Board at a hearing on January 8, 2020, made and passed the following motion (decision dated January 12, 2021):

“The hearing will be scheduled on February 10, 2021.”

Appeal Information:

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

Definitions

616 In this Part

“non-conforming building” means a building

(i) that is lawfully constructed or lawfully under construction at the date a land use bylaw affecting the building or the land on which the building is situated becomes effective, and

(ii) that on the date the land use bylaw becomes effective does not, or when constructed will not, comply with the land use bylaw;

Non-conforming use and non-conforming buildings

643(1) If a development permit has been issued on or before the day on which a land use bylaw or a land use amendment bylaw comes into force in a municipality and the bylaw would make the development in respect of which the permit was issued a non-conforming use or non-conforming building, the development permit continues in effect in spite of the coming into force of the bylaw.

(2) A non-conforming use of land or a building may be continued but if that use is discontinued for a period of 6 consecutive months or more, any future use of the land or building must conform with the land use bylaw then in effect.

(3) A non-conforming use of part of a building may be extended throughout the building but the building, whether or not it is a non-conforming building, may not be enlarged or added to and no structural alterations may be made to it or in it.

(4) A non-conforming use of part of a lot may not be extended or transferred in whole or in part to any other part of the lot and no additional buildings may be constructed on the lot while the non-conforming use continues.

(5) A non-conforming building may continue to be used but the building may not be enlarged, added to, rebuilt or structurally altered except

(a) to make it a conforming building,

(b) for routine maintenance of the building, if the development authority considers it necessary, or

(c) in accordance with a land use bylaw that provides minor variance powers to the development authority for the purposes of this section.

(6) If a non-conforming building is damaged or destroyed to the extent of more than 75% of the value of the building above its foundation, the building may not be repaired or rebuilt except in accordance with the land use bylaw.

(7) The land use or the use of a building is not affected by a change of ownership or tenancy of the land or building.

Grounds for Appeal

685(1) If a development authority

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

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

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

Appeals

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

- (a) in the case of an appeal made by a person referred to in section 685(1)
 - (i) with respect to an application for a development permit,
 - (A) within 21 days after the date on which the written decision is given under section 642, or
 - (B) if no decision is made with respect to the application within the 40-day period, or within any extension of that period under section 684, within 21 days after the date the period or extension expires,
 - or
 - (ii) with respect to an order under section 645, within 21 days after the date on which the order is made, or
- (b) in the case of an appeal made by a person referred to in section 685(2), within 21 days after the date on which the notice of the

issuance of the permit was given in accordance with the land use bylaw.

685(4) Despite subsections (1), (2) and (3), if a decision with respect to a development permit application in respect of a direct control district

(a) ...

(b) is made by a development authority, the appeal is limited to whether the development authority followed the directions of council, and if the subdivision and development appeal board finds that the development authority did not follow the directions it may, in accordance with the directions, substitute its decision for the development authority's decision.

Section 2 of the *Edmonton Zoning Bylaw* concerning Repeal, Enactment and Transition Procedures states the following:

2.4 Subject only to the provisions in the Municipal Government Act respecting legal non-conforming Uses and notwithstanding the effect it may have on rights, vested or otherwise, the provisions of this Bylaw govern from the Effective Date onward. In particular, no application for a Development Permit shall be evaluated under the procedural or substantive provisions of the previous Land Use Bylaw after the Effective Date, even if the application was received before the Effective Date.

...

2.6 Any Direct Control Districts that were in effect immediately prior to the Effective date are hereby deemed to continue in full force and effect and are hereby incorporated into Part IV of this Bylaw.

2.7 Unless there is an explicit statement to the contrary in a Direct Control District or Provision, any reference in a Direct Control District or Direct Control Provision to a land use bylaw shall be deemed to be a reference to the land use bylaw that was in effect at the time of the creation of the Direct Control District or Provision.

At the time of the creation of the subject Direct Control Site, the *City of Edmonton Land Use Bylaw 5996* was in effect. An Alberta Court of Appeal decision in *Parkdale-Cromdale Community League Association v. Edmonton (City)*, 2007 ABCA 309 concluded that section 2.7 of the *Edmonton Zoning Bylaw* only applies if there is an express cross-reference in a Direct Control Bylaw passed before 2001

to a provision of the old *Land Use Bylaw*. In the absence of an express reference in the Direct Control Bylaw to the *Land Use Bylaw 5996*, it does not prevail over section 2.4 of the *Edmonton Zoning Bylaw*.

General Provisions from the (DC1) Direct Development Control Provision (Sub Area 6 - Area 2 of the Oliver Area Redevelopment Plan (“DC1”)):

Under section 15.3.3(xxii), **Single Detached Housing** is a **Listed Use** in the **DC1**.

Section 15.3.2 states that the **Rationale** of the **DC1** is:

To provide for an area that encourages the retention and reuse of existing older residential structures, where such structures are isolated on one or two lots between apartment buildings or non-residential uses. The regulations of this area are intended to provide opportunity for conversion to low intensity commercial uses and to limit the Height of new residential development in order to maximize sunlight penetration and existing sight lines of the river valley.

Non-conforming

General Provisions from the *Edmonton Zoning Bylaw*:

Section 11.3(2) states The Development Officer may approve, with or without conditions as a Class B Discretionary Development, an enlargement, alteration or addition to a non-conforming building if the non-conforming building complies with the Uses prescribed for that land in this Bylaw and the proposed development would not, in their opinion:

1. unduly interfere with the amenities of the neighbourhood; or
2. materially interfere with or affect the use, enjoyment or value of neighbouring properties.


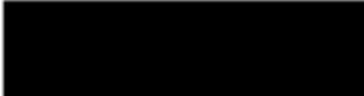
Development Officer’s Determination

Non-Conforming Building - This Single Detached House no longer conforms to current zoning rules, which may have changed since it was originally constructed (Section 11.3.3).

Note: No additional variances are required due to the proposed construction.

Notice to Applicant/Appellant

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

	<p>Project Number: 365666428-002 Application Date: JUN 22, 2020 Printed: November 9, 2020 at 10:56 AM Page: 1 of 3</p>		
<h2>Alterations Permit</h2>			
<p>This document is a record of a Development Permit application, and a record of the decision for the undertaking described below, subject to the limitations and conditions of this permit, of the Edmonton Zoning Bylaw 12800 as amended.</p>			
<p>Applicant</p> 	<p>Property Address(es) and Legal Description(s) 9712 - 111 STREET NW Plan NB Blk 11 Lot 84</p> <hr/> <p>Location(s) of Work Suite: 9712 - 111 STREET NW Entryway: 9712 - 111 STREET NW Building: 9712 - 111 STREET NW</p>		
<p>Scope of Permit To construct exterior alterations and an addition to a Single Detached House (remove metal cladding, install/repair brick facade, addition of a sun room on the west and south facade of the 3rd floor, remove existing staircase and concrete on south facade and fill in all existing doorways on the south facade).</p>			
<p>Permit Details</p> <table border="1" style="width: 100%;"> <tr> <td data-bbox="245 915 841 999"> Class Of Permit: Class B Stat. Plan Overlay/Annex Area: Mature Neighbourhood Overlay </td> <td data-bbox="841 915 1437 999"> Site Area (sq. m.): 469.77 </td> </tr> </table>		Class Of Permit: Class B Stat. Plan Overlay/Annex Area: Mature Neighbourhood Overlay	Site Area (sq. m.): 469.77
Class Of Permit: Class B Stat. Plan Overlay/Annex Area: Mature Neighbourhood Overlay	Site Area (sq. m.): 469.77		
<p>Development Permit Decision Approved Issue Date: Nov 09, 2020 Development Authority: LANGILLE, BRANDON</p>			



Project Number: **365666428-002**
Application Date: JUN 22, 2020
Printed: November 9, 2020 at 10:56 AM
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Alterations Permit

Subject to the Following Conditions

This Development Permit is NOT valid until the Notification Period expires in accordance to Section 21 (Section 17.1).

This Development Permit authorizes the development of exterior alterations and an addition to a Single Detached House (remove metal cladding, install/repair brick facade, addition of a sun room on the west and south facade of the 3rd floor, remove existing staircase and concrete on south facade and fill in all existing doorways on the south facade).

The development shall be constructed in accordance with the stamped and approved drawings.

Immediately upon completion of the exterior alterations, the site shall be cleared of all debris.

As far as reasonably practicable, the design and use of exterior finishing materials used shall be similar to, or better than, the standard of surrounding development (Section 57.3.1).

The existing staircase on the south facade shall be removed.

The existing doorways on the south facade of the structure shall be removed and filled-in in accordance with the stamped and approved drawings.

Any future development that will encroach on City land will require a separate permit and shall be circulated to City Administration for review.

DEVELOPMENT ADVISEMENTS:

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 (Section 5.2).

Any proposed change from the original approved drawings is subject to a revision/re-examination fee. The fee will be determined by the reviewing officer based on the scope of the request and in accordance with current fee schedules. A review fee may be collected for each change request.

Unless otherwise stated, all above references to section numbers refer to the authority under the Edmonton Zoning Bylaw 12800.

OPEN SPACE STRATEGY / PARKS ADVISEMENTS:

The existing encroachment agreement to accommodate a 0.66 feet encroachment on parkland will remain valid until such time as this property is redeveloped. Should parkland be required to access the property in support of future maintenance or construction activities, the property owner will be required to apply for a Right of Entry Agreement prior to entering City land.

Variances

Non-Conforming Building - This Single Detached House no longer conforms to current zoning rules, which may have changed since it was originally constructed (Section 11.3.3).

Note: No additional variances are required due to the proposed construction.

Rights of Appeal

This approval is subject to the right of appeal as outlined in Chapter 24, Section 683 through 689 of the Municipal Government Amendment Act.

Building Permit Decision

No decision has yet been made.

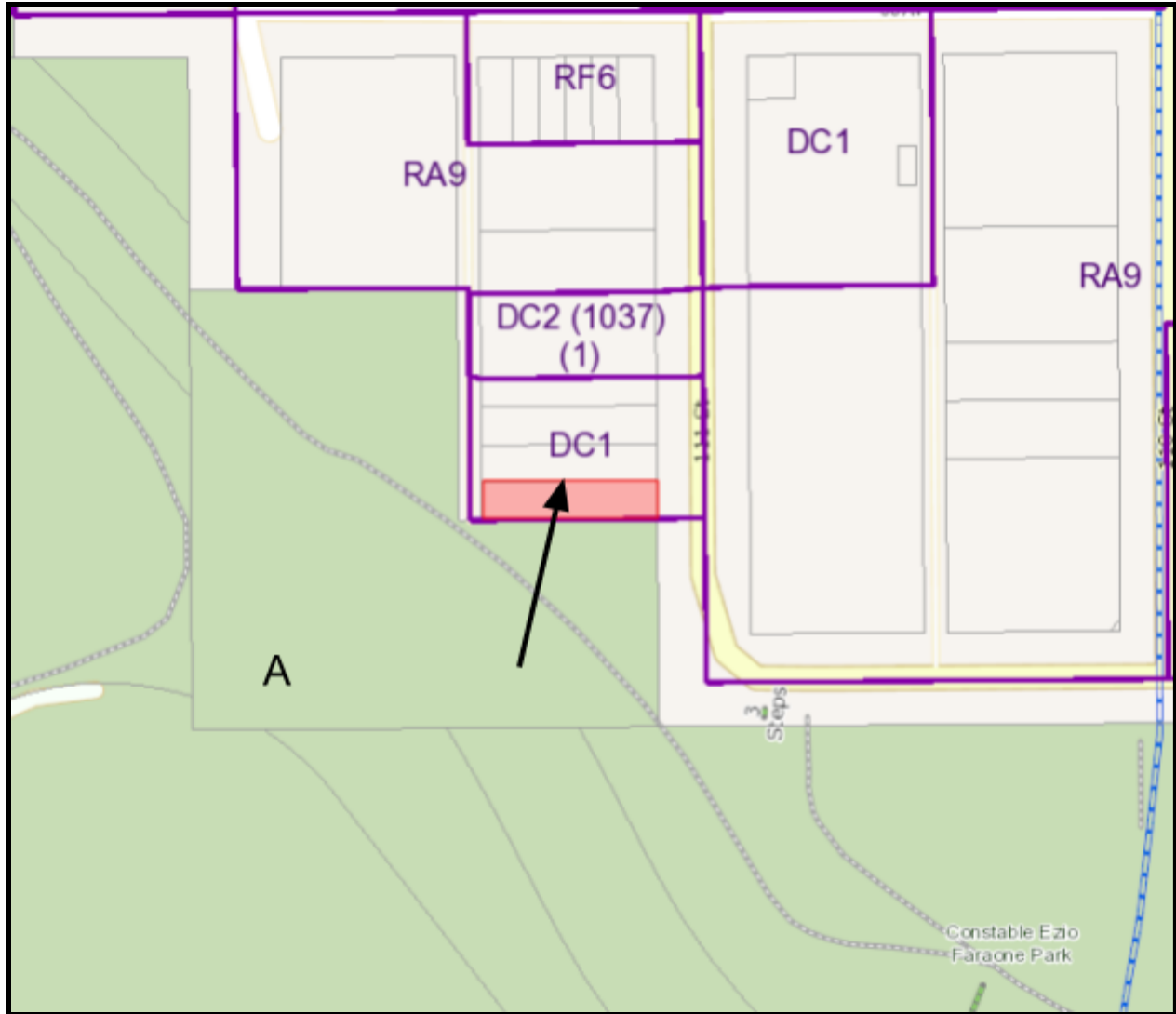


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Alterations Permit

Fees

	Fee Amount	Amount Paid	Receipt #	Date Paid
Safety Codes Fee	\$11.04	\$11.04	96988803341G001	Jun 22, 2020
Development Application Fee	\$176.00	\$176.00	96988803341G001	Jun 22, 2020
Building Permit Fee (Construction Value)	\$276.00	\$276.00	96988803341G001	Jun 22, 2020
Total GST Amount:	\$0.00			
Totals for Permit:	\$463.04	\$463.04		



SURROUNDING LAND USE DISTRICTS

Site Location ←

▲
N

File: SDAB-D-21-009