



**EDMONTON
TRIBUNALS**

*Subdivision &
Development
Appeal Board*

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Date: March 2, 2017
Project Number: 234086647-001
File Number: SDAB-S-17-002

Notice of Decision

[1] On February 15, 2017, the Subdivision and Development Appeal Board (the “Board”) heard an appeal that was filed on **January 18, 2017**. The appeal concerned the decision of the Subdivision Authority, issued on January 12, 2017, to refuse the following development:

Create one (1) additional single detached residential lot

[2] The subject property is on Plan 2262S Blk 13 Lots 34-35, located at 9352 - 74 Avenue NW, within the RF3 Small Scale Infill Development Zone. The Mature Neighbourhood Overlay and the Ritchie Area Redevelopment Plan apply to the subject property.

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

- Copy of the refused Subdivision letter and proposed Subdivision plan

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

- Exhibit A – Letter from the Appellant.
- Exhibit B – Photograph from the Appellant.
- Exhibit C – Page of conditions from the Subdivision Authority.
- Exhibit D – Letter of Servicing Agreement from the Subdivision Authority.

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 678 of the *Municipal Government Act*, R.S.A 2000, c. M-26.

Summary of Hearing*i) Position of the Appellant, Mr. Kaprowy, representing Pals Geomatics Corp./Accent Infill*

- [8] The Appellant referenced his written letter, marked Exhibit A.
- [9] He is a resident of the Ritchie community and a member of the Community League.
- [10] He builds 20 developments a year. The majority of his business is infill development. He previously developed 5 subdivisions with a variance like the one proposed.
- [11] A policy was put in place in October, 2016 that the Subdivision Authority should not continue to approve subdivision of lots less than 7.6 metres in width.
- [12] In January 2017, a motion at City Council was passed to allow lot widths of 7.5 metres.
- [13] With this subdivision, he is asking for the proposed lot widths of 7.54 metres. His application to subdivide was processed during the “limbo” period.
- [14] The majority of lots in the Hazeldean and Ritchie area are between 49 and 50 feet wide. The community prefers narrow single detached houses over semi detached houses, but supports mixed developments.
- [15] If lots under 7.6 metres are denied, it would be detrimental to his business.
- [16] He designed developments on several lots that are 49.5 feet wide and they have no perceptible difference in effect on neighbours than a typical subdivision.
- [17] When a lot width is approved under 7.6 metres, he compensates for the narrower lot with the building design. The required side yard, front yard, and rear setbacks are maintained.
- [18] Upon questioning by the Board, Mr. Kaprowy stated that the photographs he submitted show a development on 74 Avenue on a similar lot.
- [19] The proposed development will not have the visual look of a narrow development and he intends to build on both sides of the subdivided property.
- [20] He confirmed that the houses shown in the photographs, marked Exhibit B, have similar variances as they were built before the lot width policy was changed.
- [21] He plans to apply for a Class A permit. The typical lot depth in Ritchie is 130 feet. This helps with Site Coverage. In this case, in an effort to apply for a Class A permit he can build a 19.5 feet wide by 20 feet deep garage which is not a great solution, but keeps the development within the maximum allowed 12 percent Site Coverage.

- [22] He does not have documentation from City Council regarding the reduction of the lot sizes and could not confirm if an amendment was made to the Bylaw.
- [23] He does not own the lots west of the subject Site. That site is comprised of one and a half lots and on a corner with a single house. The proposed subdivision of the lot will not have a negative impact on the adjacent lots. It is typical to have a variety of lot sizes in this area.
- [24] If the change in the Bylaw does not go through, a variance would be required for lot width, but the development he proposes would require no other variances and that is what he meant by a “Class A” development.

ii) *Position of the Subdivision Authority, Mr. McDowell*

- [25] As of 2003, the Subdivision Authority began to approve narrow lots in the RF2, RF3, and RF4 Zones. As of April 2015, this practice was extended to RF1 Zones.
- [26] Essentially the minimum lot width was reduced from 12.0 metres to 7.6 metres. This 7.6 number was chosen based on 50 foot lot widths. It was well received by developers and many in the community, but not in all neighbourhoods. One lingering problem was that there were many lots slightly under 50 feet in width.
- [27] There are several lots in the Ritchie that are 7.54 metres wide when they are subdivided. To approve a lot such as this, the Subdivision Authority has to exercise discretion which they get from the *Municipal Government Act*.
- [28] In the past, the Subdivision Authority exercised this discretion to allow small variances to accommodate the fact that there are thousands of lots between 49 and 50 feet in width. Over time Council was concerned that they were straying from the infill roadmap and put a hold on variances until the matter could be addressed.
- [29] A report was provided to the Urban Planning Committee and a recommendation was brought to City Council. They agreed to reduce the lot width to 7.5 metres and he believes the amendment to the Bylaw will pass in May, 2017. Knowing this, the Subdivision Authority feel they should act on this information with new applications. This application occurred in the interim prior to Council indicating its support for 7.5 metres. It was simply an issue of the timing of the application. The Subdivision Authority believes that the refused decision should be overturned and the Subdivision approved.
- [30] Upon questioning from the Board, he confirmed that the proposed subdivision will require a variance as the Bylaw has not yet changed.
- [31] They take their direction from the *Municipal Government Act* and could have approved the proposed subdivision, but refused it based on the direction from City Council in place at the time of the application.

- [32] There will be conditions added to the subdivision if it is approved along with a servicing agreement. He believes that Mr. Kaprowy is aware of those requirements. He provided samples marked Exhibit C and Exhibit D.
- [33] The City has received no complaints concerning Mr. Kaprowy's previous developments in the Ritchie area.
- [34] Notices regarding the proposed subdivision were sent to the immediate adjacent property owners; however, the notices usually get passed on to other neighbours in the area.

iii) Rebuttal of the Appellant, Mr. Kaprowy

- [35] He is aware of the conditions suggested by the Subdivision Authority and is agreeable to them.

Decision

- [36] The appeal is ALLOWED and the decision of the Subdivision Authority is REVOKED. The Subdivision is GRANTED as applied for to the Subdivision Authority, subject to the following CONDITIONS:
1. That the owner enter into a Servicing Agreement with the City of Edmonton for the payment of the applicable Permanent Area Contributions, pursuant to Section 655 of the *Municipal Government Act* (contact Susana Maki at 780-423-6889); and
 2. That the owner pay all outstanding property taxes prior to the endorsement of the plan of survey.
- [37] In granting the Subdivision the following variances to the *Edmonton Zoning Bylaw* are allowed:
1. The minimum allowable Site Width of 7.6 metres as per Section 140.4(1)(b) is varied to allow a deficiency of 0.06 metres, thereby decreasing the minimum allowed to 7.54 metres for each lot.

Reasons for Decision

- [38] The Appellant is proposing to create one (1) additional single detached residential lot. Section 140.4(1)(b) of the Bylaw states that the minimum Site Width for a lot in the RF3 Small Scale Infill Development Zone shall be 7.6 metres. The proposed subdivision will result in two lots, each 7.54 metres in Site Width, therefore, a variance of 0.06 metres is required for each lot.

- [39] The Board approves the subdivision and grants the variance pursuant to Section 654(2) of the *Municipal Government Act* for the following reasons.
- a. Based on the evidence submitted, the Board finds that the 0.06 metres variance required under the current Bylaw will be imperceptible from the street and will not have a negative impact on the neighbouring properties.
 - b. The Board accepts the parties' submissions that City Council has been reviewing the Site Width for this type of subdivision and is expected to approve an amendment to the applicable development regulation allowing the reduction of the minimum allowed Site Width to 7.5 metres.
 - c. The Subdivision Authority advised that this amendment is imminent. It is expected to pass in May, 2017. With this amendment, the proposed lots will be fully compliant with the Bylaw.
 - d. But for the current development regulation pertaining to Site Width, a full compliant Class A Single Detached House is feasible for each lot. This also indicates that the proposed lots are suitable for the intended use and conform to the use prescribed in the Bylaw.
- [40] The Subdivision Authority supports the subdivision.
- [41] No letters were received in opposition for the proposed subdivision and no one appeared in opposition at the hearing.
- [42] The Board concludes that the proposed subdivision, with the imposed conditions and the required variance, 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.

Ms. K. Cherniawsky, Presiding Officer
Subdivision and Development Appeal Board

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 decision.

ADVISEMENTS

1. The owner is required to make satisfactory arrangements for, and pay all costs associated with separate servicing to each lot, as well as the modification, relocation and/or removal of existing services. For further information, please contact: EPCOR Distribution & Transmission Inc. (780-4124000), TELUS Communications (Edmonton) Inc. (Residential and Business 780-4232500), ATCO Gas (780-4245222) and Drainage Planning and Engineering (water and sewer 780-4965444).
2. The existing services (water and sanitary) enter the proposed subdivision approximately 11.3 metres west of the east property line of Lot 34. As per the Sewers and Waterworks Bylaws, these services cannot cross the proposed property line.
3. If power service crosses the proposed property line the owner may be required to provide a blanket easement in favour of EPCOR Distribution & Transmission Inc. If required, said easement shall be registered prior to or concurrent with the final plan (contact EPCOR Land and Administration Group at 780-412-3252);
4. The owner shall ensure that any change in property boundaries does not cause any structures on site to become non-compliant with the *Safety Codes Act* and *Alberta Building Code*. Permits may be required for such changes. Please contact 311 for more information;
5. The next step in the subdivision process is to have a legal instrument prepared (ie. Plan of Survey) in order to register the approved subdivision. The legal instrument is then forwarded to the City for endorsement along with the endorsement fee (\$649.00) and subsequently released to the applicant for registration at the Land Titles Office; and
6. The approval is valid for one (1) year from the date on which the subdivision approval is given to the application. An extension beyond that time may be granted by the City of 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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SDAB-D-17-034

Application No. 233886278-001

An appeal by Doaa Alnajjar (Little Angels Child Care Centre) to change the use of part of the main floor (General Retail) of a building and entire 2nd floor (Commercial Uses) to a Child Care Service and construct interior and exterior alterations. (Little Angels Daycare) was **TABLED TO MARCH 23, 2017.**