# SUBDIVISION

# AND

# DEVELOPMENT APPEAL BOARD

# AGENDA

Thursday, 9:00 A.M. February 21, 2019

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

# SUBDIVISION AND DEVELOPMENT APPEAL BOARD HEARING ROOM NO. 3

II 10:30 A.M. SDAB-D-19-021	13404 - 96 Street NW Project No.: 284978069-001
II 10:30 A M SDAB-D-19-021	
	Construct a Single Detached House with rear attached Garage, Basement development (NOT to be used as an additional Dwelling), solar photovoltaic system, uncovered deck and veranda
	10611 - 146 Street NW Project No.: 295205432-001

<u>ITEM I: 9:00 A.M.</u>		FILE: SDAB-D-19-020		
AN APPEAL FROM THE DECISION		OF THE DEVELOPMENT OFFICER		
AP	PPLICATION NO.:	284978069-001		
APPLICATION TO:		Convert a recreation room and exercise room into 2 Dwellings (one Studio and one 1 Bedroom Dwelling; increase Dwellings from 70 to 72) to an Apartment House and construct interior alterations, existing without permits		
	ECISION OF THE EVELOPMENT AUTHORITY:	Refused		
DE	ECISION DATE:	January 18, 2019		
DA	ATE OF APPEAL:	January 28, 2019		
	UNICIPAL DESCRIPTION SUBJECT PROPERTY:	13404 - 96 Street NW		
LE	GAL DESCRIPTION:	Plan 518RS Blk 25 Lot 15A		
ZO	DNE:	RA7 Low Rise Apartment Zone		
OV	/ERLAY:	Medium Scale Residential Infill Overlay		
ST	ATUTORY PLAN:	N/A		

#### Grounds for Appeal

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

We are writing to appeal the refusal of the Development Permit application applied for by Elton Construction on June 13th, 2018 for the above property.

We understand this application is a refusal based on Height, F.A.R. and density - a Development Officer may not vary any of these three items per section 11.4(b).

# History of the Development

The information provided below has been collated from the City of Edmonton Bylaw information and information provided by our client, Elton Construction. The building was constructed in 1969 and consisted of 70 units with two amenity rooms on the main floor. We have, in our possession, some of the original construction drawings illustrating this application (copies of which are enclosed in the appeal documents).

Our client purchased the building over 20 years ago and the two units in question were converted prior to this time. Our client recently prepared for the sale of the property and during the due diligence stage, noted that the two amenity spaces on the ground floor had been converted to suites without a development notice or City of Edmonton approval.

#### Development Permit Application

Elton Construction applied to the City of Edmonton for a Development Permit to ensure the compliance of the two units in question. Bennett Architect Inc. were then approached by Elton Construction to submit drawings and other information requested by the Development Officer. During this time, a review of the Bylaw was under taken, which highlighted that the Density, Height and FAR exceeded the current zoning bylaw for the site.

In order to make the two suites on the main floor comply, Elton Construction have submitted proposals for modifications to the existing building and site to ensure parking, amenity areas, bicycle parking, habitable window separation / privacy and landscaping all meet the current Bylaws. This is outlined on the enclosed drawings set A0-10 - EXISTING SITE PLAN, A1-1 - 1969 MAIN FLOOR PLAN, A1-2 - RECORD DRAWINGS SUITE PLANS and A1-3 - PROPOSED SITE PLAN. This has been to the satisfaction of the development officer assigned to this file.

#### Rationale Behind the Appeal

We find no reason to believe that the original building was constructed unlawfully in 1969 when the original 70 units were completed. Both the F.A.R. and the building height remain unaltered since the original construction. The change of amenity space to apartment units on the ground floor has been completed for over 20 years and has not caused any issues to the building, public safety or local community. The change in density from 70 to 72 units on this site is a minor increase and the area of the building has not increased. The maximum density of the existing non-conforming building is 194 Dwellings/ ha for 70 units and the proposed density would be 200 Dwellings/ ha.

There are at least two sites in the area that also contain buildings of similar height and density to this site and are also of a similar vintage. These are located to the West and South West of this property and share boundaries. The main reason for this appeal is that the Development Officer cannot vary the three items in question (height, F.A.R. and density) and we seek approval from the Subdivision and Appeal Board based on the current and historical use of the building. In our Development Permit application we have proposed changes to the site to improve parking, amenity areas, add additional bicycle parking, upgrade habitable window separation / privacy (with new screens and spacing) and enhance landscaping in order that they meet, or exceed, the current Bylaw requirements (which are more stringent than when the building was constructed). In order to offset the lost amenity spaces we have provided additional private and public exterior amenity areas in the form of patios and a fenced garden with a patio, lighting and barbeque area for the residents of this building. We have also improved the balcony size and privacy at the ground floor adjacent to the two units in question. This will provide the required privacy and amenity area.

In addition to amenity space improvements in size, we also propose new planting in the form of trees and shrubs to replace those that may have been lost over the years and comply with the new bylaws. These will improve the quality of the general amenity space. We have also increased the number of bicycle parking racks in order to meet the current bylaw, although this building is typically adult senior living and likely will not see an uptake in use.

We trust the information provided is clear and can underline the case for a successful outcome to approve the existing development with the proposed updates and improvements. If you require any additional information, please do not hesitate to contact the undersigned.

#### General Matters

## **Appeal Information:**

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

#### **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.

#### 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, [...]

#### **Hearing and Decision**

**687(3)** In determining an appeal, the subdivision and development appeal board

•••

- (a.1) must comply with the land use policies;
- (a.2) subject to section 638, must comply with any applicable statutory plans;
- (a.3) subject to clauses (a.4) and (d), must comply with any land use bylaw in effect;
- (a.4) must comply with the applicable requirements of the regulations under the Gaming, Liquor and Cannabis Act respecting the location of premises described in a cannabis licence and distances between those premises and other premises;
  - •••
  - (c) may confirm, revoke or vary the order, decision or development permit or any condition attached to any of them or make or substitute an order, decision or permit of its own;
  - (d) may make an order or decision or issue or confirm the issue of a development permit even though the proposed development does not comply with the land use bylaw if, in its opinion,
    - (i) the proposed development would not
      - (A) unduly interfere with the amenities of the neighbourhood, or

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(B) materially interfere with or affect the use, enjoyment or value of neighbouring parcels of land,

and

(ii) the proposed development conforms with the use prescribed for that land or building in 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 75percent 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.

#### General Provisions from the Edmonton Zoning Bylaw:

Section 210.2(1) states **Apartment Housing** is a **Permitted Use** in the **(RA7) Low Rise Apartment Zone.** 

Under Section 7.2(1), Apartment Housing means

development consisting of one or more Dwellings contained within a building in which the Dwellings are arranged in any horizontal or vertical configuration, which does not conform to the definition of any other Residential Use.

Section 210.1, the **General Purpose** of **(RA7) Low Rise Apartment Zone** is to provide a Zone for Low Rise Apartments.

Section 823.1 states that the **General Purpose** of the **Medium Scale Residential Infill Overlay** is to accommodate the development of medium-scale infill housing in Edmonton's mature residential neighbourhoods in a manner that ensures compatibility with adjacent properties while maintaining or enhancing a pedestrian-friendly streetscape.

#### *Height – Non-conformity*

Section 210.4(5) states that the maximum Height shall not exceed 14.5 metres for flat, mansard and gambrel roofs, or 16.0 metres for a roof type with a pitch of 4/12 (18.4 degrees) or greater, in accordance with Section 52.

Under Section 6.1, Height means "a vertical distance between two points".

#### **Development Officer's Determination**

The Apartment Housing no longer conforms to current Zoning Bylaw rules for Low Rise Apartment Zone (RA7). This application does not increase the non-conformity of the building's Height (s210.5). [unedited]

#### Floor Area Ratio – Non-conformity

Section 210.4(6) states that the maximum Floor Area Ratio shall be 1.3. The maximum Floor Area Ratio may be increased to 1.4 when underground parking is provided. In such a case, the application will be a Discretionary Development.

Under Section 6.1, **Floor Area Ratio** means "the numerical value of the Floor Area of the building or structure relative to the Site upon which it is located, excluding:

- a. Basement areas used exclusively for storage or service to the building, or as a Secondary Suite;
- b. Parking Areas below ground level;
- c. Walkways required by the Development Officer;

- d. Floor Areas devoted exclusively to mechanical or electrical equipment servicing the development, divided by the area of the Site; and
- e. indoor Common Amenity Area, divided by the area of the Site.



#### **Development Officer's Determination**

The Apartment Housing no longer conforms to current Zoning Bylaw rules for Low Rise Apartment Zone (RA7). This application does not increase the non-conformity of the Floor Area Ratio (FAR) (s210.6). [unedited]

#### Density

Section 210.4(2)(a) states that the maximum Density shall be 125 Dwellings/ha; and

a. this shall be increased by an additional 15 Dwellings/ha where Common Amenity Area of at least 2.5 square metres per Dwelling is provided in addition to Amenity Area required by subsection 46(2) and is developed in accordance with Section 46.

Under Section 6.1, **Density** means when used in reference to Residential and Residential-Related development, the number of Dwellings on a Site expressed as Dwellings per hectare.

Under Section 6.1, **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.

Under Section 6.1, **Common Amenity Area** means communal space provided for the active or passive recreation and enjoyment of all occupants of a residential development.

#### **Development Officer's Determination**

The maximum Density shall be 140 Dwellings/ ha (50 Dwellings). They have provided an additional 2.5m2 of Common Amenity Area per Dwelling to receive a Density bonus (s210.2(a)).

The existing building has a Density of 194 Dwellings/ ha (70 Dwellings). The proposed building Density is 200 Dwellings/ ha (72 Dwellings). [unedited]

# 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.

	I	Application	for	Application Date	er: <b>284978069-00</b> JUN 13, 201 January 23, 2019 at 3:33 PM 1 of
	Majo	r Developme	e <mark>nt Permit</mark>		
This document is a Development P	ermit Decision for th	e development applica	tion described below	и.	
Applicant			• • • • •	and Legal Descriptio	n(s)
			13404 - 96 STREET Plan 518RS Bl		
		Spe	cific Address(es)		
		Suite		STREET NW	
		Suite		STREET NW	
		Entry	way: 13404 - 96 ST		
		-	ing: 13404 - 96 ST		
Scope of Application			-		
To convert a recreation room 70 to 72) to an Apartment Hor				room Dwelling; incre	ase Dwellings from
Permit Details					
Class of Provide Class P			th Demonstra		
Class of Permit: Class B Gross Floor Area (sq.m.):	Contact Person: Lot Grading Needed?: N				
New Sever Service Required: N/A NumberOfMainFloorDwellings: 2					
Site Area (sq. m.): Stat. Plan Overlay/Annex Area: Medium Scale Residential Infill Overlay					
I/We certify that the above noted deta	ails are correct.				
Applicant signature:					
Development Application Decision Refused Issue Date: Jan 18, 2019 D		ity:BAUER, KERRY			
Reason for Refusal	-	•			
The Apartment Housing a does not increase the non					A7). This application
The maximum Density sl Area per Dwelling to reco The existing building h The proposed building	eive a Density bonus nas a Density of 194	(s210.2(a)). Dwellings/ ha (70 Dw	ellings).	an additional 2.5m2 o	of Common Amenity
<b>Rights of Appeal</b> The Applicant has the rig through 689 of the Munic			n which the decision	ı is made, as outlined	in Section 683
Fees					
	Fee Amount	Amount Paid	Receipt #	Date Paid	
Major Dev. Application Fee Total GST Amount: Totals for Permit:	\$835.00 \$0.00 \$835.00	\$835.00	05099574	Jun 13, 2018	
		THIS IS NOT A PE	DMIT		



ITEM II: 10:30 A.M.		FILE: SDAB-D-19-021	
AN APPEAL FROM THE DECISION O		F THE DEVELOPMENT OFFICER	
APPELLANT:			
APPLICATION	NO.:	295205432-001	
APPLICATION	TO:	Construct a Single Detached House with rear attached Garage, Basement development (NOT to be used as an additional Dwelling), solar photovoltaic system, uncovered deck and veranda	
DECISION OF DEVELOPMEN	THE IT AUTHORITY:	Refused	
DECISION DAT	ГЕ:	November 26, 2018	
DATE OF APPE	EAL:	January 28, 2019	
MUNICIPAL D OF SUBJECT P		10611 - 146 Street NW	
LEGAL DESCR	IPTION:	Plan 5887HW Blk 4 Lot 20	
ZONE:		(RF1) Single Detached Residential Zone	
OVERLAY:		Mature Neighbourhood Overlay	
STATUTORY F	PLAN:	N/A	

# Grounds for Appeal

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

We were put a lot of thought into considering our request for the variance acknowledging the current bylaws, and feel it is important to develop accessible housing for our elderly parents, who will stay with us when no longer able to stay in their current homes, particularly in the winter city we live in. There is precedent for rear attached homes even as close as 10438 145 street NW and we would like to appeal the decision for the refusal of our home development permit.

#### General Matters

#### **Appeal Information:**

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

#### **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.

## 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, [...]

#### **Hearing and Decision**

**687(3)** In determining an appeal, the subdivision and development appeal board

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- (a.1) must comply with the land use policies;
- (a.2) subject to section 638, must comply with any applicable statutory plans;
- (a.3) subject to clauses (a.4) and (d), must comply with any land use bylaw in effect;

- (a.4) must comply with the applicable requirements of the regulations under the Gaming, Liquor and Cannabis Act respecting the location of premises described in a cannabis licence and distances between those premises and other premises;
  - •••
  - (c) may confirm, revoke or vary the order, decision or development permit or any condition attached to any of them or make or substitute an order, decision or permit of its own;
  - (e) may make an order or decision or issue or confirm the issue of a development permit even though the proposed development does not comply with the land use bylaw if, in its opinion,
    - (i) the proposed development would not
      - (A) unduly interfere with the amenities of the neighbourhood, or
      - (B) materially interfere with or affect the use, enjoyment or value of neighbouring parcels of land,
    - and
    - (ii) the proposed development conforms with the use prescribed for that land or building in the land use bylaw.

#### General Provisions from the Edmonton Zoning Bylaw:

# Section 110.2(7) states Single Detached Housing is a Permitted Use in the (RF1) Single Detached Residential Zone.

Under Section 7.2(8), **Single Detached Housing** means development consisting of a building containing one principal Dwelling which is separate from any other principal Dwelling or building. This Use includes Mobile Homes which conform to Section 78 of this Bylaw.

Section 110.1, the **General Purpose** of (**RF1**) **Single Detached Residential Zone** is to provide for Single Detached Housing while allowing other forms of small scale housing in the form of Secondary Suites, Garden Suites, Semi-detached Housing and Duplex Housing.

Section 814.1 states that the **General Purpose** of the **Mature Neighbourhood Overlay** is to regulate residential development in Edmonton's mature residential neighbourhoods, while responding to the context of surrounding development, maintaining the pedestrianoriented 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.

#### **Rear Setback**

Section 814.3(4) states that the minimum Rear Setback shall be 40% of Site Depth.

Under Section 6.1, **Rear Setback** means the distance that a development or a specified portion of it, must be set back from a Rear Lot Line. A Rear Setback is not a Rear Yard, Amenity Space or Separation Space.



## **Development Officer's Determination**

Reduced Rear Setback - The distance from the house with rear attached garage to the rear property line is 9.8m (23% of site depth) instead of 17.4m (40% of site depth) (Section 814.3.4). [unedited]

#### Attached Garage

Section 814.3(19) states that rear attached Garages shall not be allowed.

Under Section 6.1, **Garage** means an Accessory building, or part of a principal building designed and used primarily for the storage of motor vehicles and includes a carport.

#### **Development Officer's Determination**

Attached Garage - The rear garage is requesting to be attached, instead of detached (Section 814.3.19).[unedited]

#### **Community Consultation**

Section 814.5(1) states the following with respect to Proposed Variances:

When the Development Officer receives a Development Permit Application for a new principal building, or a new Garden Suite that does not comply with any regulation contained within this Overlay, or receives a Development Permit for alterations to an existing structure that require a variance to Section 814.3(1), 814.3(3), 814.3(5) and 814.3(9) of this Overlay:

- a. the Development Officer shall send notice, to the recipient parties specified in Table 814.5(2), to outline any requested variances to the Overlay and solicit comments directly related to the proposed variance;
- b. the Development Officer shall not render a decision on the Development Permit application until 21 days after notice has been sent, unless the Development Officer receives feedback from the specified affected parties in accordance with Table 814.5(2); and
- c. the Development Officer shall consider any comments directly related to the proposed variance when determining whether to approve the Development Permit Application in accordance with Sections 11.3 and 11.4.

Section 814.5(2) states:

Tier #	<b>Recipient Parties</b>	Affected Parties	Regulation of this Overlay to be Varied
Tier 2	The municipal address and assessed owners of the land Abutting the Site, directly adjacent across a Lane from the Site of the proposed development and the President of each Community League	The assessed owners of the land Abutting the Site and directly adjacent across a Lane from the Site of the proposed development	814.3(4) – Rear Setback 814.3(19) – Rear Attached Garage

# 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.

	1	Applicatio	n for	Project Number:     295205432-0       Application Date:     OCT 15, 2       Printed:     January 29, 2019 at 8:31       Page:     1	
Minor Development Permit					
This document is a Development Pern	nit Decision for th	ne development app	lication described below	w.	
Applicant		I	Property Address(es) a	and Legal Description(s)	
10611 - 146 STREET NW					
			Plan 5887HW	Blk 4 Lot 20	
		S	pecific Address(es)		
		Er	ntryway: 10611 - 146 S	STREET NW	
		Вι	uilding: 10611 - 146 S	STREET NW	
Scope of Application		I			
To construct a Single Detached I solar photovoltaic system, uncov			ement development (N	OT to be used as an additional Dwelling),	
Permit Details					
# of Dwelling Units Add/Remove: 1		#	of Primary Dwelling Units To	o Construct:	
# of Secondary Suite Dwelling Units To Construct: Class of Permit: Class B					
Client File Reference Number: Lot Grading Needed?:   Minor Dev. Application Fee: Single Detached House   New Sewer Service Required: N					
					Secondary Suite Included ?: N Stat. Plan Overlay/Annex Area: Mature Neighbourhood Overlay
I/We certify that the above noted details	are correct.				
Applicant signature:			_		
Development Application Decision					
Refused Issue Date: Jan 28, 2019 Deve	elopment Author	wity PALIED VED	DV		
Issue Date: Jan 28, 2019 Dev	elopment Autio	THY: DAUER, KER	K I		
Reason for Refusal Reduced Rear Setback - The instead of 17.4m (40% of si			tached garage to the rea	ar property line is 9.8m (23% of site depth	
Attached Garage - The rear	garage is request	ing to be attached, in	nstead of detached (Sec	ction 814.3.19).	
Rights of Appeal	0 0 1	0		,	
· · ·			e on which the decision	n is made, as outlined in Section 683	
Fees					
	Fee Amount	Amount Paid	Receipt #	Date Paid	
Development Permit Inspection Fee	\$204.00	\$204.00	77014306298S001	Oct 15, 2018	
Dev. Application Fee	\$485.00	\$485.00	77014306298S001	Oct 15, 2018	
Lot Grading Fee	\$143.00	\$143.00	77014306298S001	Oct 15, 2018	
Total GST Amount: Totals for Permit:	\$0.00	\$832.00			



