

Edmonton Subdivision and Development Appeal Board

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DATE: March 13, 2015
PROJECT NO.: 160372390-001
FILE NO.: SDAB-D-15-038

NOTICE OF DECISION OF THE SUBDIVISION AND DEVELOPMENT APPEAL BOARD

This appeal dated January 29, 2015, from the decision of the Development Authority for permission to:

Erect an over height Fence (Front and Side Yard at 1.82 metres in Height)

On Plan I21 Blk 125 Lot 24, located at 9008 - 98 Street NW was heard by the Subdivision and Development Appeal Board at its hearing held on February 26, 2015. The decision of the Board was as follows:

SUMMARY OF HEARING:

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.

The appeal was filed on time, in accordance with Section 686 of the *Municipal Government Act*, R.S.A. 2000, c. M-26.

The Board heard an appeal of the decision of the Development Authority to approve an application to erect an over height fence (Front and Side Yard at 1.82 metres in Height), with a variance granted in the maximum allowable Height, subject to conditions, located at 9008 – 98 Street NW. The subject site is zoned RF2 Low Density Infill Zone and is located within the Mature Neighbourhood Overlay. The approved development permit application was appealed by a neighbouring property owner.

The Board notes that one letter was received in opposition to the proposed development.

Prior to the hearing the Board received the following documents, copies of which are on file:

1. A written submission from the Development Authority;
2. Photographs of the subject Site from the Appellant; and

SUMMARY OF HEARING CONTINUED:

3. A letter in opposition to the proposed development from the Strathcona Centre Community League.

The Board heard from Ms. M. Thill, the Appellant, who was accompanied by Mr. J. DeHaan. Together they made the following points:

1. In their opinion, the area is pedestrian friendly and it is important to maintain the pedestrian-friendly streetscape. Therefore, the fence on the subject property should remain at 4 feet as the proposed 6-foot fence will negatively impact the enjoyment of their property.
2. It was their assumption that the fence would be a solid structure, but realized that a solid structure is not what has been proposed after discussing the fence with the Respondent.
3. They spoke to the Respondent and have reached an agreement that will allow for privacy on the subject property as well as retain the pedestrian-friendly streetscape.
4. The Respondent has agreed to construct a concrete base and integrate portions of the existing wrought iron fence on top, up to a maximum of 6 feet.
5. Their main concern was that the development permit does not specify conditions on the design of the fence and materials to be utilized. The successor of the property could build a solid fence, which would negatively impact the pedestrian-friendly nature of the neighbourhood.

The Board then heard from Mr. D. Johnston and Ms. K. Mark, representing the Sustainable Development Department, who answered questions by the Board:

1. They reviewed the written submission provided to the Board, noting the setback of 6.0 metres between the fence and the front curb and the setback of 6.52 metres between the fence and the flanking side curb.
2. They confirmed that the Development Authority does not impose conditions relating to fence material or design on residential development permits.
3. In their opinion, there will be no impact on vehicular sight lines regardless of what materials are used to construct the fence.
4. The approval was made on the understanding that the existing design and wrought iron materials will be used.
5. The subject property is unique regarding the size, depth and width of the lot as well as its location, being a corner site.
6. The proposed fence will increase the available amenity space on the subject property.

SUMMARY OF HEARING CONTINUED:

7. They confirmed that the decision of the Development Authority would not have been different if they received the letter from the Strathcona Centre Community League earlier given the physical hardship unique to the lot.

The Board heard from Mr. K. Handzic, the Respondent, who made the following points:

1. He would like to maintain the overall appearance of the fence by raising the existing fence and adding a two foot concrete wall.
2. He is concerned for the safety of his young children as this is a busy pedestrian area with access to the Millcreek Ravine.

In rebuttal, Mr. J. DeHaan made the following points:

1. His main concern is the maintenance of the pedestrian-friendly neighbourhood and the aesthetics of the neighbourhood.

DECISION:

that the appeal be DENIED and the decision of Approval by the Development Authority CONFIRMED.

The Development Authority's decision contained the following variance and conditions:

Variance:

Section 49.4 - relaxed - the maximum height of a fence raised from 1.2 metres to 1.83 metres.

Conditions:

This Development Permit authorizes the construction of an over height fence (front and flanking side at 1.83 metres in height) only.

DECISION CONTINUED:

An approved Development Permit means that the proposed development has been reviewed only against the provisions of the Edmonton Zoning Bylaw. It does not remove obligations to conform with other legislation, bylaws or land title instruments such as the Municipal Government Act, the ERCB Directive 079, the Edmonton Safety Codes Permit Bylaw or any caveats, covenants or easements that might be attached to the Site.

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

REASONS FOR DECISION:

The Board finds the following:

1. The proposed development is Accessory to a Permitted Use in the RF2 Low Density Infill Zone.
2. The Board accepts the submission of the Development Authority that the sight lines of vehicular traffic will not be impacted given the sufficient distance of the proposed fence from the public sidewalk and public roadway, and the materials to be utilized for the construction of the fence.
3. The Board accepts the evidence of the Development Authority that there is a physical hardship regarding the lot. The Site is a Corner Lot with only one amenity space located on southeast portion of the lot. The Board finds the amenity space abuts two public sidewalks and the proposed development will allow for privacy.
4. The Board is satisfied that the Appellant is content with the proposed development after discussions with the Respondent.
5. The Board notes that one letter was received in objection to the proposed development but is satisfied the proposed design and materials utilized will mitigate the concerns of the Strathcona Centre Community League.
6. Based on the above, it is the opinion of the Board, 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.

IMPORTANT INFORMATION FOR APPLICANT/APPELLANT

1. **THIS IS NOT A BUILDING PERMIT.** A Building Permit must be obtained separately from the Sustainable Development Department, located on the 5th Floor, 10250 – 101 Street, Edmonton.
2. 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.
3. A Development Permit shall expire and shall no longer be valid after one year from the date of approval of the Permit, if no construction has been initiated. However, if the permit holder is unable to proceed pending a court decision involving the proposed development, time shall not run until such proceedings are finally completed. For further information, refer to Section 22 of the Edmonton Zoning Bylaw, 12800.
4. Notwithstanding clause (3) above, if a Building Permit is issued for the development within the twelve month period, the Development Permit issued therefore shall not lapse unless and until the Building Permit so issued is cancelled or allowed to lapse by virtue of work not having commenced within the statutory minimum period.
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, R.S.A. 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.

Mr. V. Laberge, Presiding Officer
SUBDIVISION AND DEVELOPMENT
APPEAL BOARD

CC:

NOTE: Citizens can call 311, 24-hours a day, every day of the year for access to City of Edmonton information, programs and services.

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DATE: March 13, 2015
PROJECT NO.: 164592126-001
FILE NO.: SDAB-D-15-039

NOTICE OF DECISION OF THE SUBDIVISION AND DEVELOPMENT APPEAL BOARD

This appeal dated February 2, 2015, from the decision of the Development Authority for permission to:

Construct a Single Detached House with attached Garage, veranda, fireplace, rear covered deck (1.52m x 3.81m), rear uncovered deck (2.74m x 3.81m) and basement development (not to be used as an additional Dwelling)

On Plan 6086CL Blk 6 Lot 4, located at 9610 - 99A Street NW, was heard by the Subdivision and Development Appeal Board at its hearing held on February 26, 2015. The decision of the Board was as follows:

SUMMARY OF HEARING:

At the outset of the appeal hearing, the Presiding Officer, Mr. V. Laberge, disclosed that he had played recreational floor hockey with the Appellant's neighbour who was in attendance of the hearing. The Presiding Officer confirmed with the parties in attendance that there was no opposition to the composition of the panel.

The appeal was filed on time, in accordance with Section 686 of the *Municipal Government Act*, R.S.A. 2000, c. M-26.

The Board heard an appeal of the decision of the Development Authority to refuse an application to construct a Single Detached House with attached Garage, veranda, fireplace, rear covered deck (1.52 metres by 3.81 metres), rear uncovered deck (2.74 metres by 3.81 metres) and basement development (not to be used as an additional Dwelling), located at 9610 – 99A Street NW. The subject site is zoned RF3 Small Scale Infill Development Zone and is within the Mature Neighbourhood Overlay. In addition, the North Saskatchewan River Valley and Ravine System Protection Overlay applies to the Site. The development permit application was refused because of a deficiency in the minimum required

SUMMARY OF HEARING CONTINUED:

Front Setback, the minimum required Rear Setback, that being 40 percent of the Site Depth, an excess in the maximum allowable Site Coverage for a Principal Building, an excess in the maximum allowable Height, an excess in Basement elevation above Grade, and because the proposed vehicular access from the front public roadway is not permitted.

The Board notes that no letters were received in support or opposition to the proposed development.

Prior to the hearing the Board received the following documents, copies of which are on file:

1. A written submission from the Development Authority in support of the decision;
2. A submission from the Appellant in support of the development; and
3. A memorandum from Transportation Services to Sustainable Development indicating no slope stability assessment is warranted.

The Board heard from Ms. D. Coles, representing the Appellant, Design 53 Consulting, who made the following points:

1. She provided the Board with a written presentation which included material previously submitted along with two additional letters in support of the proposed development, marked Exhibit "A".
2. In her opinion, the front setback variance should be granted for the following reasons:
 - a. The proposed development fits in with the context of the blockface.
 - b. The foundation of the proposed development excluding the partially covered landing is set back 7.09 metres.
 - c. The concrete landing does not look like a protrusion and without the landing the proposed development is in line with other houses on the blockface.
 - d. There are three houses on the blockface that are the original homes and are near the end of their life span.
 - e. One of the three houses is setback 11.5 metres and skews the blockface average.
3. In her opinion, the Rear Setback variance should be granted for the following reasons:
 - a. The lot is a parallelogram and the average setback to the rear lot line is 9.46 metres.
 - b. The proposed placement of the dwelling will have no impact on sight lines on the adjacent properties toward the river valley.

SUMMARY OF HEARING CONTINUED:

- c. To comply with the minimum rear setback, the dwelling will be required to further encroach into the blockface average. In her opinion, the proposed location is the best solution.
 - d. The slope percentage required for the front driveway to the below-grade garage limits the location of the dwelling on the lot.
 - e. There is a house on the blockface that is situated at a similar setback to the proposed development.
4. In her opinion, the variance in the front vehicular access should be granted for the following reasons:
 - a. Transportation Services has no concerns with the front access.
 - b. The excessive slope and lack of maintenance in the rear lane during the winter creates a hardship to access the property.
 - c. The rear lane is used by pedestrians and cyclists using the trails in the river valley.
 - d. The property owner wants to preserve the rear yard to keep the view of the river valley.
 - e. The 50 percent vehicular access from the front or flanking roadway is met if you do not account for the empty lots in the calculations.
 5. In her opinion, the variance in the maximum allowable Height should be granted for the following reasons:
 - a. The design and massing of the proposed development is appropriate for the streetscape and the extra roof-top storey will be used for green technology, as shown in the photographs submitted.
 - b. The block is unique and does not fit in with the Strathcona Area Redevelopment Plan and the Mature Neighbourhood Overlay.
 - c. The Mature Neighbourhood Overlay limits development in the area inappropriately.
 - d. The roof-top storey will have an elevator shaft and a stairwell to access the mechanical area.
 - e. The roof-top storey will have no visual impact for pedestrians along the public sidewalk and neighbours, as shown in the photographs submitted.
 - f. The proposed development will have opaque glass railings and there will be no side windows on the roof top storey which will provide privacy on neighbouring properties.
 - g. The roof is flat and if the uppermost storey contained a gabled roof the excess in height would be allowed; however, a gabled roof will not fit in with the other developments in the area.
 - h. There are several houses on 99A Street that are over the maximum height allowed and are similar to the proposed development.

SUMMARY OF HEARING CONTINUED:

- i. Transportation Services requires a 6 percent driveway slope over 4.5 metres in length for the below grade garage; therefore, the house has to be raised further out of the ground to increase the basement elevation height.
 - j. There are other houses in the area that have higher basement elevations than what is allowed.
6. In her opinion, the variance in the maximum allowable site coverage should be granted for the following reasons:
- a. There is discrepancy between her submission and the information from Sustainable Development with regard to the maximum allowable Site Coverage.
 - b. The site coverage includes two cantilevered sections that are 13 feet above grade and without the cantilevers; the site coverage will be 167.47 square metres.
 - c. This area is unique and it is difficult to comply with the regulations of the Mature Neighbourhood Overlay.
 - d. Exterior finishing of the front facade with color variations to break up the massing and height which makes the proposed development more appealing.
 - e. The rear deck will be more than 1.2 metres above grade and is therefore included in the maximum allowable site coverage.
 - f. She reviewed eleven letters from neighbouring property owners in support of the proposed development.
 - g. The proposed development will revitalize the area and add to the City tax base.
 - h. The proposed development is in keeping with the spirit and intents of the Mature Neighbourhood Overlay.

In response to questions by the Board, Ms. D. Coles provided the following information:

1. She confirmed that the railing on the rooftop will be opaque.
2. She confirmed that the two cantilever sections are walk-in closets.
3. She confirmed that the top floor includes a habitable area and not just a mechanical area.
4. The proposed deck adds to the site coverage.
5. If the variance in the front vehicular access is granted, the 50 percent average blockface regulation will be met.

The Board then heard from Mr. M. Compri, the property owner, who made the following points:

SUMMARY OF HEARING CONTINUED:

1. He has consulted with Sustainable Development while working on the proposed design of the house.
2. He tried to make the proposed design to fit in with the regulations of the Edmonton Zoning Bylaw.
3. The height of sewer line connections along the street is not as consistent as in a new suburban neighbourhood and within this specific lot and development the footings need to be raised to maintain a minimum of a two percent slope from the proposed development to the sewer connection invert.
4. The flat roof allows the residents to view the green space in the river valley.
5. The roof top elevator access will accommodate visitors with accessibility needs.
6. There is a house on the street that was approved with a third storey and a gabled roof.
7. A flat roof reduces the peak and the height of the proposed development.
8. In his estimation, the height of the proposed development is similar to the two houses north of the subject Site which are 31.5 feet and 33 feet. The proposed house is 38.5 feet.
9. The house at the south end of the block is larger and will tower over the proposed development.
10. Opaque glass will be installed on the sides of the house to address privacy issues and massing effect.

The Board then heard from Mr. G. Robinson, representing the Sustainable Development Department, who made the following points:

1. He reviewed his submission that was provided to the Board.
2. The proposed development does not meet the required front setback based on either the setbacks of abutting properties or the blockface average.
3. The rear setback is measured from the rear lot line to the closest portion of the house.
4. The site area calculations were made based on the plot plan dated January 21, 2015.
5. He explained the discrepancy in the numbers for the overall area of the site.
6. With regard to front vehicular access, he stated that 6 of the 12 properties in this area will have front access if the subject development is approved.
7. If the proposed development had a pitched roof, it would still be over the maximum allowable height.

SUMMARY OF HEARING CONTINUED:

8. The proposed development is considered a four storey development. However, if the house had a hipped roof it would be a three and a half storey house given the floor area of the roof-top storey.
9. He reviewed the points he used to establish the grade elevation and determined the elevation from grade to finished floor is 2.06 metres.
10. He stated that the City did not send letters to neighbouring property owners to collect their comments in the Mature Neighbourhood Overlay process as this was a refused application. The letters received in support of the proposed development were collected by the Appellant.

In response to questions by the Board, Mr. G. Robinson provided the following information:

1. He could not provide specific information regarding the sewer; however, he acknowledged that this could be a hardship to the property owner.
2. The proposed development is an enclave which might not be well suited to application of the Strathcona Area Redevelopment Plan and Mature Neighbourhood Overlay; however, the development was reviewed against that context. The Appellant should apply to have the property rezoned or exempted from the Mature Neighbourhood Overlay rather than seeking approval for the proposed variances from the SDAB.
3. The front setback is calculated from the most forward point of the house that is located one metre above grade.
4. This lot is flat but the entire blockface is sloped and the retaining wall shown in the photographs submitted will be in keeping with other dwellings along the blockface.
5. If there is a sewer invert issue and the finished floor could not be lowered he recommends that the rooftop floor be limited to a mechanical use to reduce the overall height of the development.

The Board then heard from Mr. R. Mykitiuk, who made the following points:

1. He is a neighbouring property owner in support of the proposed development.
2. He owns the house north of the subject site that was referred to.
3. He confirmed that the height of his house is approximately 38 feet.
4. There are other houses in the area that have front vehicular access.
5. He stated that the dilapidated properties in the area take away from new developments in the area.

SUMMARY OF HEARING CONTINUED:

6. The proposed development will be similar to his house and fits in well with the area.

In response to questions by the Board, Mr. R. Mykitiuk provided the following information:

1. He is not aware of any rezoning that may take place in the area.

In rebuttal, Ms. D. Coles and Mr. M. Compri made the following points:

1. The sewer governs the location of the foundation and the building cannot go further into the ground.
2. The proposed development fits in with the streetscape where many houses have front vehicular access.
3. He has paid a substantial amount of money for the lot and a smaller house on this property will not be economically viable.
4. There is difficulty for vehicles to maneuver in the rear lane.
5. The house at the end of the block has flanking vehicular access that may affect the average.
6. They could not provide any evidence about the sewer line invert specific to this property.

DECISION:

that the appeal be ALLOWED and the DEVELOPMENT GRANTED subject to the following conditions:

The Board grants the following variances to permit the following deficiencies and excesses:

1. Section 814.3(1) The Front Setback shall be consistent within 1.5 metres of the Front Setback on Abutting Lots and with the general context of the blockface.

Required Front Setback: 5.64 metres

Proposed Front Setback: 4.71 metres

Deficiency: 0.93 metres

DECISION CONTINUED:

2. Section 814.3(5) The minimum Rear Setback shall be 40 percent of Site depth.

Required Rear Setback: 15.13 metres

Proposed Rear Setback: 8.96 metres

Deficiency: 6.17 metres

3. Section 814.3(13) The maximum Height shall not exceed 8.6 metres nor 2 1/2 Storeys.

Maximum permitted Height: 8.60 metres

Proposed Height from Average Grade to the highest point of the roof:
11.71 metres

Deficiency: 3.11 metres

Maximum Storeys allowed: 2 and a half

Proposed Storeys: 4

Excess: 1.5 Storeys

4. Section 814.3(16) The Basement elevation of structures of two or more Storeys in Height shall be no more than 1.2 m above Grade. The Basement elevation shall be measured as the distance between Grade level and the floor of the first Storey.

Average Grade: 30.29 metres

Finished Floor: 32.35 metres

Maximum permitted: 1.20 metres

Proposed elevation: 2.06 metres

Excess: 0.86 metres

5. Section 140.4(10) Maximum Site Coverage for Principal building with attached Garage for Single Detached and Duplex Housing with a Site area 300 square metres or greater shall be 40 percent.

Site area: 374.30 square metres

Maximum Site Coverage: 149.72 square metres

Proposed: 169.76 square metres

Deficiency: 20.04 square metres

DECISION CONTINUED:

The Board waives the following:

1. Section 814.3(10) Regardless of whether a Site has existing vehicular access from the front or flanking public roadway, there shall be no such access where an abutting Lane exists and
 - a. a Treed Landscaped Boulevard is present along the roadway adjacent to the property line;
 - b. the Site Width is less than 15.5 metres; or
 - c. fewer than 50 percent of principal Dwellings on the blockface have vehicular access from the front or flanking roadway.

Existing Site Width: 10.06 metres

The proposed development is approved subject to the following conditions:

1. The proposed development shall be constructed in accordance with the stamped and approved drawings.
2. Any future deck development greater than 0.6m (2ft) 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 proposed Basement development(s) shall NOT be used as an additional Dwelling. Proposed wet bar shall only be used by the household which uses the principal kitchen on the main floor. A Secondary Suite shall require a new development permit application.
5. All yards, visible from a public roadway other than a lane, shall be seeded or sodded within eighteen (18) consecutive months of the issuance of an Occupancy Certificate for the development. Alternative forms of landscaping may be substituted for seeding or sodding as specified in Section 55.2(4)(b).
6. The area hard surfaced for a driveway, not including the area used for a walkway, shall comply with Section 54.6 of the Zoning Bylaw 12800.
7. 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 Zoning Bylaw 12800.

DECISION CONTINUED:

8. Notwithstanding the Landscaping regulations of Section 55 of this Bylaw, where new development consists of replacement or infill within areas of existing housing, Landscaping shall be implemented as a component of such new development in order to replace vegetation removed during construction or to reinforce an established Landscaping context in the area (Ref. Sect. 140.4(16)).
9. Lot grades must match the Engineered approved lot grading plans for the area. Contact Drainage Services at 780-496-5500 for lot grading inspection inquiries.
10. The Single Detached dwelling including driveway shall be located in accordance with the stamp approved site plan.

Transportation Conditions (Enclosures I and II)

1. The proposed 5.6 metres residential access to 99A Street, located 1.2 metres from the south property line, is acceptable to Transportation Services and must be constructed as a private crossing access to current City of Edmonton standards. The owner/applicant must obtain a crossing permit, available from Sustainable Development, 5th Floor, 10250 - 101 Street.
2. The underground driveway ramp must not exceed a slope of 6 percent for a minimum distance of 4.5 metres inside the property line and the ramp must be at grade at the property line. The proposed ramp slope submitted by the applicant, as shown on Enclosure II is acceptable to Transportation Services.
3. The proposed retaining walls bordering the underground driveway/parkade ramp, must not exceed a height of 0.3 metres for a distance of 3 metres from the property line and no portion of the wall may encroach onto road right-of-way. Should the owner/applicant wish to increase this height adequate sight line data must be provided to ensure vehicles can exit safely.
4. There may be utilities within road right-of-way not specified that must be considered during construction. The owner/applicant is responsible for the location of all underground and above ground utilities and maintaining required clearances as specified by the utility companies. Alberta One-Call (1-800-242-3447) and Shaw Cable (1-866344-7429; www.digshaw.ca) should be contacted at least two weeks prior to the work beginning to have utilities located. Any costs associated with relocations and/or removals shall be at the expense of the owner/applicant.

DECISION CONTINUED:

5. Any hoarding or construction taking place on road right-of-way requires an OSCAM (On-Street Construction and Maintenance) permit. The owner or Prime Contractor must apply for an OSCAM (On-Street Construction and Maintenance) permit. The owner or Prime Contractor must apply for an OSCAM online at: http://www.edmonton.ca/bylaws_licences/licences_pennits/oscam-permit-request.aspx
6. Any alley, sidewalk or boulevard damage occurring as a result of construction traffic must be restored to the satisfaction of Transportation Services, as per Section 15.5(f) of the Zoning Bylaw. The alley, sidewalks and boulevard will be inspected by Transportation Services prior to construction, and again once construction is complete. All expenses incurred for repair are to be borne by the owner.

Advisements:

1. The applicant is advised that more than a 12 percent difference in the ramp slope may result in vehicles "bottoming out" at the break-over point.
2. The applicant is advised that reconstruction of the sidewalk on 99A Street would be supported with the redevelopment of the site. The applicant may contact Mohammed Bashar (780-496-1799) for more information on sidewalk construction requirements.

Geotechnical Advisement:

The developer and owner should be aware that site-specific geotechnical investigation and inspections by qualified geotechnical personnel would reduce uncertainty and risk relative to the proposed development and the design and construction of the foundations for the proposed structure. Moreover, the property is located within a low level terrace of the North Saskatchewan River Valley with the presence of alluvial soils and potentially higher groundwater levels, which could pose additional geotechnical design and construction challenges.

A relatively large three-storey house structure with basement development is proposed within a constrained site footprint relative to adjacent properties. Should development be approved to proceed, the applicant must be aware that they are fully responsible to mitigate all geotechnical risks to the development and surrounding properties and structures.

DECISION CONTINUED:

Notably, all design and construction measures including retaining structures and any proposed temporary shoring to support the basement excavation must suitably protect neighbouring properties, structures and infrastructure from any adverse impacts during construction.

Notes:

The applicant is advised that there may be complications in obtaining a Development Permit for a future covered or uncovered deck because of excess in Site Coverage.

The applicant should also be aware that site-specific geotechnical investigation would reduce uncertainty and risk relative to the design and construction of the proposed development.

Transportation Services advises that a curb crossing permit is required, available from Sustainable Development, 5th Floor, 10250-101 Street.

An approved Development Permit means that the proposed development has been reviewed only against the provisions of the Edmonton Zoning Bylaw. It does not remove obligations to conform with other legislation, bylaws or land title instruments such as the Municipal Government Act, the ERCB Directive 079, the Edmonton Safety Codes Permit Bylaw or any caveats, covenants or easements that might be attached to the Site. (Reference Section 5.2).

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

REASONS FOR DECISION:

The Board finds the following:

1. The proposed development is a Permitted Use in the RF3 Small Scale Infill Development Zone.
2. The area where the subject property is located is a unique residential enclave and differs significantly from the rest of the Strathcona neighbourhood and other mature neighbourhoods in the City. In this regard, the Appellant has demonstrated that redevelopment in this area is architecturally unique and the design, character and appearance of redeveloped properties are not typical of other areas within the Mature Neighbourhood Overlay.

REASONS FOR DECISION CONTINUED:

3. Based on the evidence provided regarding the Front Setback, the Board noted that the proposed development is deficient by 0.93 metres from the blockface average regulation when measured to the front entrance landing of the development. The Board has determined that the front entrance landing is not covered and a cantilevered projection forms part of the stepped access to this property. The Board accepts that if the Front Setback was measured from the front wall of the Dwelling it would have a Front Setback of 6.05 metres and be in compliance with the required blockface average Setback.
4. Based on the evidence submitted, the Rear Setback of 8.96 metres complies with the regulations in the underlying RF3 Small Scale Infill Development Zone, which would be applicable if not for inclusion in the Mature Neighbourhood Overlay.
5. The Board accepts the evidence submitted that the location of the existing sewer invert may be at a level that does not allow the design of the foundation to be lower than what is proposed and may have an influence on the overall Height of this development.
6. Based on the evidence submitted, the Board finds that the use of the current rooftop area precludes it from exemption of Height calculation under Section 52.1 of the Edmonton Zoning Bylaw. This uppermost floor has a habitable space and is therefore a Storey.
7. Based on the evidence submitted with respect to Height, the Board accepts that if this home was built with a more traditional gable roof it may comply with the Height requirement measured from Grade to mid-roof but may actually be higher at the peak.
8. The Board accepts the submission of a neighbouring property owner that the Height of their home is approximately 38 feet from Grade to top of the roof which is approximately the same Height as the proposed development.
9. Based on the evidence submitted by the Appellant with respect to sight lines to the uppermost floor and given its small, recessed footprint, the Board has determined that the overall Height of this development is consistent with this specific neighbourhood and appears to not have an impact on neighbouring properties nor the pedestrian characteristics of this area.
10. The Board accepts the Development Authority's calculation that indicates the Height difference between the Finished Floor and Grade is 2.06 metres which is greater than the maximum allowable of 1.83 metres making the Basement a Storey as per Section 6.1(98) of the Edmonton Zoning Bylaw.

REASONS FOR DECISION CONTINUED:

11. Based on the evidence submitted, the Board notes that the proposed development is technically a 4 Storey structure, due to the 0.23 metres excess differential between the Finished Floor of the lowest floor and Grade and the presence of habitable space (in addition to stairwell access and mechanical areas) for the uppermost floor. However, it visually presents as a 3 Storey structure.
12. Based on the evidence provided the Board noted that the 9 front steps indicated on the subject plan is typical and similar to the two other developments located north of the subject property and therefore has the same appearance as this particular street.
13. Based on the evidence submitted, a significant amount of the 20.04 square metres excess in the Site Coverage is due to the deck that is over 1.0 metres in Height and therefore is included in the Site Coverage calculation.
14. Based on the evidence submitted, there are a minimum of five similar developments that have been recently constructed which include front drive access and therefore, the subject development will not be uncharacteristic of the area.
15. Based on the evidence submitted, the Board has determined that the development meets the requirement contained in Section 814.3(10)(c) as 50 percent of principal Dwellings on the blockface have vehicular access from the front or flanking roadway.
16. Allowing vehicular access from the front of the subject site will preserve the accessibility to the river valley park system.
17. The design, character and appearance of the proposed development will set a higher standard when compared to the older existing housing stock.
18. The opaque glass railing on the rooftop Storey will mitigate the massing effect and serves as a privacy screening.
19. The neighbour that would be most affected by the excess in Height, being that to the immediate north is in support of the proposed development, and ten other property owners in the immediate neighbourhood stated their support for the proposed development, four of which were in attendance at the hearing.
20. No letters were received in opposition to the proposed development and no one appeared in opposition at the hearing.
21. Based on the above, it is the opinion of the Board, 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.

IMPORTANT INFORMATION FOR APPLICANT/APPELLANT

1. **THIS IS NOT A BUILDING PERMIT.** A Building Permit must be obtained separately from the Sustainable Development Department, located on the 5th Floor, 10250 – 101 Street, Edmonton.
2. 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.
3. A Development Permit shall expire and shall no longer be valid after one year from the date of approval of the Permit, if no construction has been initiated. However, if the permit holder is unable to proceed pending a court decision involving the proposed development, time shall not run until such proceedings are finally completed. For further information, refer to Section 22 of the Edmonton Zoning Bylaw, 12800.
4. Notwithstanding clause (3) above, if a Building Permit is issued for the development within the twelve month period, the Development Permit issued therefore shall not lapse unless and until the Building Permit so issued is cancelled or allowed to lapse by virtue of work not having commenced within the statutory minimum period.
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, R.S.A. 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.

Mr. V. Laberge, Presiding Officer
SUBDIVISION AND DEVELOPMENT
APPEAL BOARD

CC:

NOTE: Citizens can call 311, 24-hours a day, every day of the year for access to City of Edmonton information, programs and services.

***Edmonton Subdivision and
Development Appeal Board***

Churchill Building
10019 - 103 Avenue NW
Edmonton, AB T5J 0G9
Phone: 780-496-6079 Fax: 780-496-8175
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Web: www.edmontontribunals.ca

SDAB-D-15-040

Application No. 162237902-001

An appeal by Lessard Community League VS Play Care Daycare Ltd. to Change a portion of an existing Religious Assembly Use to a Childcare Service (Out of School Care - 3 employees, 31 children), on Plan 7722037 Blk 12 Lot 46, located at 6104 - 172 Street NW, was TABLED TO MARCH 18, 2015.

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SDAB-D-15-041

Application No. 162237902-002

An appeal by Lessard Community League VS Play Care Daycare Ltd. to change a portion of an existing Religious Assembly Use to a Childcare Service (Daycare - 10 employees, 54 children) and construct interior / exterior alterations on Plan 7722037 Blk 12 Lot 46, located at 6104 - 172 Street NW, was TABLED TO MARCH 18, 2015.