

Edmonton Subdivision and Development Appeal Board

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Date: January 28, 2016
Project Number: 128342819-015
File Number: SDAB-D-16-014

Notice of Decision

- [1] On January 13, 2016, the Subdivision and Development Appeal Board heard an appeal that was filed on December 15, 2015.
- [2] The appeal concerned the decision of the Development Authority, issued on December 10, 2015, to refuse the following development:
- Construct an Accessory Building (rear Detached Garage, 6.17m x 6.76m), existing without permits [unedited from the Development Permit]
- [3] The subject property is located on Plan ND Blk 19 Lot 38, municipal description 9624 - 106 Avenue NW, within the RF6 Medium Density Multiple Family Zone.
- [4] The following documents, which were received prior to the hearing and copies of which are on file, were read into the record:
- Notice of Appeal received December 15, 2015;
 - Copy of the Development Permit Application;
 - Canada Post Receipt confirming delivery of the Permit Decision;
 - Written submissions of the Development Officer, dated December 21, 2015;
 - Copy of the Boyle Street/McCauley ARP; and
 - An online response from one neighbour in opposition to the development.

Summary of Hearing:

- [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 appeal was filed on time, in accordance with Section 686 of the *Municipal Government Act*, RSA 2000, c M-26.

i. Position of Appellant, Skyview Homes Ltd.

- [7] The Appellant was represented by Ms. R. Deane, who submitted Exhibit “A”, a petition signed by neighbouring property owners in support of the existing development.
- [8] She reiterated the grounds for appeal as outlined on the Notice of Appeal form. She clarified that Skyview Homes Ltd. (“Skyview”) had originally purchased the property from another developer. At the time, the rear Detached Garage had already been constructed, resulting in the deficiency of two parking spaces.
- [9] The transaction was overseen and completed by the Appellant’s lawyer, who did not catch the parking deficiency. Ms. Deane stated that she did not understand why it was possible for the previous developer to construct the Garage despite the deficiencies. She also did not know why the lawyer completed the transaction, but she assumes that the lawyer was able to obtain the Certificate of Compliance, though she was unsure on this latter point as well.
- [10] With respect to the Development Officer’s concerns about the utility poles that might interfere with access, she noted that the poles were on the north side of the alley, whereas the property is on the south side, so there should be no concerns with accessing the Driveway.
- [11] She acknowledged the parking concerns raised by Edmonton City Centre Church Corporation in its online response in opposition to the development. However, she noted that churches experience parking pressures only on one day of the week.
- [12] The existing Garage also takes vehicles off the streets, and provides more room for others to park on the street. The buyers interested in purchasing the property have only one vehicle each, so they will park only in the Garage. Finally, she noted that there are many neighbouring rooming houses, and many residents of such homes do not have vehicles and therefore, do not require on-street parking.
- [13] When questioned by the Board, she acknowledged that the small lot size prevents four parking stalls, However, she submitted that behind the Garage, there is a driveway with sufficient room for two small cars. She also acknowledged that the property’s proximity to downtown and a nearby commercial area could present parking problems. However, when she visited the previous evening, there was ample on-street parking.
- [14] Throughout her submissions, Ms. Deane raised the point that a Garage is vital in this particular neighbourhood, as it prevents transient individuals breaking into vehicles that are parked outside garages.

ii. Position of the Development Officer

- [15] Ms. F. Hetherington appeared on behalf of Ms. K. Heimdahl, the Development Officer who refused the development permit for the subject development.
- [16] Ms. Hetherington stated that under Section 54.2(4)(a)(iii) of the *Edmonton Zoning Bylaw*, Development Officers do have discretion to reduce the depth of parking stalls to a minimum of 4.6 metres. However, the Driveway parking proposed by the Appellant will result in a parking length of 3.09 metres, which is still a deficiency of over one metre. In addition, the discretion applies only for the depth of a parking stall, and not to width.
- [17] Upon further questioning by the Board, she confirmed that the suggested tandem parking on the west side of the Garage would result in a parking stall width of 2.44 metres, which would be deficient from the 2.6 metres requirement under Section 54.2(4)(a)(i). She confirmed that the Development Authority would not typically consider a variance in this instance, particularly as the proposed parking space is limited on one side by a wall, which would actually require an unobstructed width of 2.7 m pursuant to Section 54.2(4)(a)(v).
- [18] She confirmed that the original permit issued to the developer prior to Skyview was for a Semi-detached House. Anytime such housing is approved, parking requirements are put in place. Ms. Hetherington was unsure as to what was originally approved, but it is possible that the original plans would have been approved for semi-detached housing with a parking pad for four parking stalls, two in tandem, which would meet the 4 m x 4 m requirement for amenity space. However, the construction of the Garage cuts out the required amenity space.
- [19] With respect to the on-street parking concerns, she stated that across the street from the subject property on 106 Avenue, there are two apartment buildings which limit the parking on that side of the street. One building has a no parking area, and the other is restricted by a fire hydrant.
- [20] To demonstrate the on-street parking concerns and limitations presented by the Appellant's proposal to park small cars on the Driveway, Ms. Hetherington submitted Exhibit "B", a Google Maps aerial photo of the parking situation along 106 Avenue NW, and a picture of the detached Garage with its small Driveway.
- [21] Upon questioning by the Board, she acknowledged that Section 1.1 of the Boyle Street/McCauley Area Redevelopment Plan ("ARP") appears to focus on "parking overspill from commercial areas", which may be differentiated from the residential parking concerns that have been raised for the subject property. That being said, the ARP has clearly identified parking as an issue.

iii. Rebuttal of the Appellant

- [22] She reiterated that the apartments across the street from the subject property house low income individuals and the homeless, many of whom do not drive. In fact, she had attempted to obtain signatures of support from residents of those developments, but the residents were not permitted to sign the petition because they are low income individuals.

Decision:

- [23] The appeal is GRANTED and the decision of the Development Authority is REVOKED. The development is APPROVED.
- [24] In approving the development, the Subdivision and Development Appeal Board grants the following variance:
- 1) Section 3 under Section 54.2 Schedule 1(A) is varied to permit two parking spaces rather than the required four parking spaces for Semi-detached Housing.

Reasons for Decision:

- [25] Under Section 170.2(3), Semi-detached Housing is a Permitted Use in the RF6 Medium Density Multiple Family Zone. The existing detached Garage is accessory to a Permitted Use.
- [26] The Board acknowledges that the existing Garage was built without a permit, and eliminated the existing four parking spaces that were required for the original Semi-detached Housing development.
- [27] When considering whether to grant the variance of two parking spaces, the Board is obligated to determine whether pursuant to Section 687(3)(d), the variance would unduly interfere with the amenities of the neighbourhood, or materially interfere with or affect the use, enjoyment or value of neighbouring parcels of land.
- [28] Given the increased density opportunities in a RF6 Zone, this Semi-detached Housing development, by itself, would have less of a parking impact over other potential developments in a RF6 Zone.
- [29] The Board was not presented with any compelling evidence indicating that parking was an issue in the neighbourhood. Indeed, although Exhibit "B" was submitted to demonstrate the limited on-street parking available on 106 Avenue NW, the Board notes that on-street parking was not actually fully utilized in the photo. Furthermore, the development is located within easy walking distance of a major transit corridor on 97 Street.

- [30] The Board was also provided with verbal testimony that several of the existing buildings in the near vicinity are of a rooming house variety, and that there are less vehicles associated with such developments.
- [31] Based on the above, the Board does not believe that granting the variance will unduly interfere with the amenities of the neighbourhood, nor will it materially interfere with or affect the use, enjoyment or value of neighbouring parcels of land. As such, the development is granted.

Important Information for the Applicant/Appellant

1. This is not a Building Permit. A Building Permit must be obtained separately from the Sustainable Development Department, located on the 5th Floor, 10250 – 101 Street, Edmonton.
2. Obtaining a Development Permit does not relieve you from complying with:
 - a) the requirements of the *Edmonton Zoning Bylaw*, insofar as those requirements have not been relaxed or varied by a decision of the Subdivision and Development Appeal Board;
 - b) the requirements of the *Alberta Safety Codes Act*, RSA 2000, c S-1;
 - c) the requirements of the *Permit Regulation*, Alta Reg 204/2007;
 - d) the requirements of any other appropriate federal, provincial or municipal legislation; and
 - e) the conditions of any caveat, covenant, easement or other instrument affecting a building or land.
3. When an application for a Development Permit has been approved by the Subdivision and Development Appeal Board, it shall not be valid unless and until any conditions of approval, save those of a continuing nature, have been fulfilled.
4. A Development Permit will expire in accordance to the provisions of Section 22 of the *Edmonton Zoning Bylaw 12800*, as amended.
5. This decision may be appealed to the Alberta Court of Appeal on a question of law or jurisdiction under Section 688 of the *Municipal Government Act*, RSA 2000, c M-26. If the Subdivision and Development Appeal Board is served with notice of an application for leave to appeal its decision, such notice shall operate to suspend the Development Permit.
6. When a decision on a Development Permit application has been rendered by the Subdivision and Development Appeal Board, the enforcement of that decision is carried out by the Sustainable Development Department, located on the 5th Floor, 10250 – 101 Street, 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.

Mr. V. Laberge, Presiding Officer
Subdivision and Development Appeal Board

CC:

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Date: January 28, 2016
Project Number: 182271264-001
File Number: SDAB-D-16-015

Notice of Decision

- [1] On January 13, 2016, the Subdivision and Development Appeal Board heard an appeal that was filed on December 11, 2015.
- [2] The appeal concerned the decision of the Development Authority, issued on December 8, 2015, to refuse the following development:
- Operate a Major Home Based Business (auto repair shop/garage - MAYFAIR AUTO REPAIR) [unedited from the Development Permit]
- [3] The subject property is located on Plan 4543TR Blk 17 Lot 63, municipal description 13403 - 41 Street NW, within the RF1 Single Detached Residential Zone.
- [4] The following documents, which were received prior to the hearing and copies of which are on file, were read into the record:
- Notice of Appeal received December 11, 2015;
 - Violation Notice dated November 3, 2015;
 - Copy of the Development Permit Application;
 - Canada Post Receipt confirming delivery of the Permit Decision;
 - Written submissions of the Development Officer, dated January 6, 2016, along with Site photos; and
 - Online responses from three neighbours in opposition to the development.

Summary of Hearing:

- [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 appeal was filed on time, in accordance with Section 686 of the *Municipal Government Act*, RSA 2000, c M-26.

i. Position of the Appellant, Mr. M. Ali.

- [7] From 1995 to 2008, he worked at Kingsway Toyota. In 2008, he was laid off and he subsequently went on Employment Insurance for two years.
- [8] In 2011, he applied for a permit for a home-based mobile business. Clients who experienced home or auto problems could contact him, and he would travel to the clients' addresses to provide assistance. However, after his initial application, he heard nothing from the City, so he continued to operate his mobile business for two years.
- [9] In 2013, he located a suitable property from which to operate his business, and applied for a business licence so that he could operate his business from the new location. It was at this point that the City informed him that there was no record in the system for an approved development permit.
- [10] He discussed the issue with the landlord, who informed him that he needed to file for a Development Permit.
- [11] In June 2014, the landlord informed him that he would no longer rent the property to him, as he did not want to deal with the hassle of waiting for the City to approve the Appellant's Development Permit. As a result, Mr. Ali had to remove all his work-related equipment and store the equipment at home.
- [12] In March 2015, customers started contacting him again, and he started to work on some car repairs from his home, gradually building up his business from his residential property.
- [13] In November 2015, he received a violation notice from the City, and immediately stopped working from his home.
- [14] Mr. Ali stated that he, himself, does not wish to operate his business from his home, as he has a family with young children living on the property. However, he is simply not financially able to rent or lease a place at this point, and would require at least six months to get back on his feet. He has been working with a realtor, and in fact, will be seeing his realtor after the appeal hearing. He hopes that his visit with the realtor will make this appeal unnecessary.
- [15] He clarified that when he was operating his mobile business, he used a truck for client visits, but he no longer has that truck. He also clarified that when he made his Development Permit application, City staff advised him to apply for a Major Home Based Business rather than a Minor Home Based Business.
- [16] He emphasized that everyday, he has been looking for alternative properties to house his business, but all properties with commercial zoning cost upward of \$4000.00 per month, and he is simply unable to pay that amount right now.

- [17] He also confirmed that initially, approximately two vehicles per day would visit his property. However, as the business grew, and right up to the point of the violation notice, he had to implement an appointment system wherein approximately five vehicles per day would visit his home. He confirmed that the information on the permit application with respect to proposed client and courier visits was accurate. Since the violation notice, no vehicles have visited the subject property.
- [18] With respect to parking, he stated that there are three parking spaces on the property where vehicles can park.

ii. Position of the Development Officer, Mr. K. Bacon

- [19] Mr. Bacon confirmed the definition of Major Home Based Business pursuant to Section 110.3(7) of the *Edmonton Zoning Bylaw*.
- [20] In his opinion, an auto body repair shop, which generates noise and activity uncharacteristic of a residential area, likely cannot be considered a Major Home Based Business.
- [21] He referenced Section 75(9), which states that the Development Officer may exercise discretion to refuse an application for a Major Home Based Business if he believes the “Use would be more appropriately located in a Commercial or Industrial Zone”.
- [22] When deciding whether to refuse a development pursuant to Section 75(9), part of the review process includes looking up the definition for Automotive and Equipment Repair Shops under Section 7.4(4), and comparing that definition with a Major Home Based Business. In this case, the proposed development fits exactly under the Automotive and Equipment Repair Shop definition.
- [23] He confirmed that Development Permits for both Major and Minor Home Based Businesses are typically approved for five years.

iii. Rebuttal of the Appellant, Mr. M. Ali

- [24] The Board invited the Appellant to return to the stand for rebuttal, but Mr. Ali declined.

Decision:

- [25] The appeal is DENIED and the decision of the Development Authority is UPHeld. The development is REFUSED.

Reasons for Decision:

- [26] The application under appeal is for a Major Home Based Business in the RF1 Single Detached Residential Zone. Under Section 110.3(7), Major Home Based Business is a Discretionary Use in this zone.
- [27] Although the application was for a Major Home Based Business, the Board supports the conclusion of the Development Officer that the proposed Use falls more appropriately under the definition of Automotive and Equipment Repair Shop.
- [28] The Board reviewed the information provided by the Appellant in his application, which proposed five client visits for customers dropping off and picking up vehicles, along with three courier visits per day for parts delivery, in addition to 10 to 11 client visits on Saturdays. The Board notes that the Appellant confirmed this information during the hearing.
- [29] The Board also compared the definition for Major Home Based Business with Automotive and Equipment Repair Shop, and finds that the proposed development as outlined on the Appellant's permit application falls within the latter category.
- [30] The Board also notes that three online submissions were received in opposition to this development, whereas no evidence was presented with respect to neighbourhood support for the appeal.
- [31] Based on the above findings, the Board supports the decision of the Development Officer that the proposed Use is for an Automotive and Equipment Repair Shop, and is not appropriate in the RF1 Zone.
- [32] Since Automotive and Equipment Repair Shop is not a listed Use under the RF1 Zone, and since the Board has no authority to vary Uses, the decision of the Board is to refuse the development and deny the appeal.

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 - b) the requirements of the *Alberta Safety Codes Act*, RSA 2000, c S-1;
 - c) the requirements of the *Permit Regulation*, Alta Reg 204/2007;

- d) the requirements of any other appropriate federal, provincial or municipal legislation; and
 - e) the conditions of any caveat, covenant, easement or other instrument affecting a building or land.
3. When an application for a Development Permit has been approved by the Subdivision and Development Appeal Board, it shall not be valid unless and until any conditions of approval, save those of a continuing nature, have been fulfilled.
 4. A Development Permit will expire in accordance to the provisions of Section 22 of the *Edmonton Zoning Bylaw 12800*, as amended.
 5. This decision may be appealed to the Alberta Court of Appeal on a question of law or jurisdiction under Section 688 of the *Municipal Government Act*, RSA 2000, c M-26. If the Subdivision and Development Appeal Board is served with notice of an application for leave to appeal its decision, such notice shall operate to suspend the Development Permit.
 6. When a decision on a Development Permit application has been rendered by the Subdivision and Development Appeal Board, the enforcement of that decision is carried out by the Sustainable Development Department, located on the 5th Floor, 10250 – 101 Street, Edmonton.

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Mr. V. Laberge, Presiding Officer
Subdivision and Development Appeal Board

CC:

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Date: January 28, 2016
Project Number: 178957210-001
File Number: SDAB-D-16-016

Notice of Decision

- [1] On January 13, 2016, the Subdivision and Development Appeal Board heard an appeal that was filed on December 15, 2015.
- [2] The appeal concerned the decision of the Development Authority, issued on December 2, 2015, to refuse the following development:
- Construct an addition (1.98m x 10.72m, 2.97m high enclosed passage)
to an existing Single Detached House (existing without permits)
[unedited from the Development Permit]
- [3] The subject property is located on Plan 590NY Blk 67 Lot 9, municipal description 11216 - 35A Avenue NW, within the RF1 Single Detached Residential Zone.
- [4] The following documents, which were received prior to the hearing and copies of which are on file, were read into the record:
- Notice of Appeal received December 15, 2015;
 - Copy of the Development Permit Application;
 - Canada Post Receipt confirming delivery of the Permit Decision; and
 - Written submissions of the Development Officer, dated December 23, 2015.

Summary of Hearing:

- [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 appeal was filed on time, in accordance with Section 686 of the *Municipal Government Act*, RSA 2000, c M-26.
- i. Position of the Appellant, Mr. R. Chan*
- [7] The Appellant submitted Exhibit “A”, a petition signed by 21 individuals from neighbouring properties in the 60 metres notification area, in support of the development.

He explained that nobody objected to the development, and he was unable to obtain signatures only because some individuals either did not open the door to speak to him, or they simply did not want to provide their signatures.

[8] Mr. Chan provided a lengthy history of the events leading up to the existing development, built without a permit. A summary of that history is outlined below:

- 1) The house was built in 1968. When he moved to Edmonton from Hong Kong, he immediately started looking for a property, and eventually purchased the subject property in 1971 because it was located near his sister. The proximity made it easier for his aging mother to visit both her children. By then, the detached Garage already existed.
- 2) Initially, the passageway connecting the detached Garage to the home was built in 1986 so that his mother could move between the two buildings with greater convenience during the winter months. She was able to enjoy use of the passage for several years, before she passed away in 1999.
- 3) His wife has undergone surgery to remove a brain tumor, which resulted in double vision. Both he and his wife are a senior couple with decreasing bone density, and accidents caused by winter snow and ice could be very dangerous. The passage helps to avoid such accidents.
- 4) Originally, he had intended that the passage be covered by plastic material at ¼ inch thickness. However, the contractor used 1/8 inch plastic materials, and after the first snowfall, the roof of the passage fell apart.
- 5) The contractor was then asked to replace the deficient roof using ¼ inch plastic materials, but instead, he used leftover wooden materials obtained from a different construction job. The contractor refused to complete the work as requested originally by Mr. Chan, and told the Appellant that he could sue him if he wished.
- 6) To avoid the cost and time of legal action, Mr. Chan accepted the situation, though he requested that the contractor reuse the damaged plastic materials to seal off gaps in the wooden passage.
- 7) At the time, Mr. Chan was not aware that a Development Permit was required, nor did the contractor inform him of this requirement. The passageway has existed for 29 years without complaints from neighbouring property owners.

[9] Following recent discussions with a realtor friend, Mr. Chan was advised to apply for a Development Permit.

ii. Position of the Development Officer

[10] Ms. F. Hetherington attended on behalf of her colleague, Ms. K. Heimdahl, the Development Officer who made the initial decision to deny the Development Permit.

- [11] Ms. Hetherington confirmed that the reasons for refusing the development are based on the regulations under the Mature Neighbourhood Overlay, which was not in place when the passage was built. She could not recollect exactly when the Overlay was passed by City Council, but it would have been after 1986, when the passageway was constructed.
- [12] She clarified that even though the passage was built prior to the coming in force of the Mature Neighbourhood Overlay, the Development Authority must look to the current land use bylaw in effect at the time of the permit application.
- [13] In this case, the current land use bylaw is the *Edmonton Zoning Bylaw 12800*, which includes the development regulations under Section 814 Mature Neighbourhood Overlay, specifically Section 814.3(5) which defines the minimum Rear Setback, and Section 814.3(18) which prohibits rear attached Garages.
- [14] Further, although the passageway has not resulted in any complaints from neighbouring property owners, the Development Authority must look directly to the Bylaw to provide justification for granting a variance.
- [15] She clarified that under the old land use bylaw, there were no provisions prohibiting the development of rear attached Garages. As such, if a Development Permit was granted to the Appellant under the old land use bylaw, the existing passage would be considered legally non-conforming under the old land use bylaw. She also confirmed that the Single Detached House itself, and the accessory Garage, meet the underlying zoning regulations.
- [16] She acknowledged that Exhibit "A" submitted by the Appellant would appear to meet the consultation requirements under Section 814.3(24) of the Mature Neighbourhood Overlay. The fact that the responses appear positive would be a factor that the Development Authority would take into consideration when reviewing Development Permit applications.

iii. Rebuttal of the Appellant, Mr. R. Chan

- [17] He stated that he is still on good terms with the neighbours who did not wish to sign the petition. He also emphasized that although those neighbours did not sign in support of the development, they were not in opposition either.
- [18] He drew attention to the hardship he suffered in his attempt to obtain signatures, as he had to go door-to-door during the winter holiday break when some residents were away on vacation, and when the weather was cold.

Decision:

- [19] The Appeal is GRANTED and the decision of the Development Authority is REVOKED. The Development is GRANTED.
- [20] In granting the development, the Subdivision and Development Appeal Board grants the following variances:
- 1) Section 814.3(5) is varied to permit a deficiency of 14.03 metres or 95.8% to the Rear Setback;
 - 2) Section 814.3(18) is waived to permit the accessory rear detached Garage to be attached to the principal Single Detached House via the enclosed passage, currently existing without permits; and
 - 3) No variance or waiver is required for Section 814.3(24), due to the petition submitted by the Appellant (Exhibit "A"), demonstrating that community consultation has been completed.

Reasons for Decision:

- [21] Under Section 110.2(4), Single Detached Housing is a Permitted Use in the RF1 Single Detached Residential Zone. A detached Garage is Accessory to this Permitted Use.
- [22] The Board accepts the following:
- 1) The Single Detached House and detached Garage were built prior to 1971.
 - 2) The passage was built without permits in 1986.
 - 3) At the time that the passage was constructed, the old Land Use Bylaw 5996 would have applied. However, since no Development Permit was granted, the structure is not legal, and cannot be considered a legally non-conforming use pursuant to Section 643 of the *Municipal Government Act*.
- [23] The Board accepts that the Development Authority must consider the subject application under the current *Edmonton Zoning Bylaw 12800*, which includes the development regulations under the Mature Neighbourhood Overlay.
- [24] The Board notes that the structure has existed for 29 years without complaints. The Appellant provided evidence of written support from 21 adjacent property owners, a significant majority of owners within the 60 metres notification area.

- [25] Although the most affected neighbour next door to the Appellant did not sign the petition, the Board accepts the verbal testimony of the Appellant that he did, in fact, consult with this neighbour, and although he was unable to obtain a signature, this neighbour did not object to the development. No other neighbours within the notification area submitted written responses or appeared at the hearing in opposition to the development.
- [26] The Board further notes that the development otherwise complies with the underlying RF1 Zoning regulations, and that no variances are required in this regard.
- [27] Based on the above, the Board does not believe that granting the variance will unduly interfere with the amenities of the neighbourhood, nor will it materially interfere with or affect the use, enjoyment or value of neighbouring parcels of land. As such, the development is granted.

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 - c) the requirements of the *Permit Regulation*, Alta Reg 204/2007;
 - d) the requirements of any other appropriate federal, provincial or municipal legislation; and
 - e) the conditions of any caveat, covenant, easement or other instrument affecting a building or land.
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5. This decision may be appealed to the Alberta Court of Appeal on a question of law or jurisdiction under Section 688 of the *Municipal Government Act*, RSA 2000, c M-26. If the Subdivision and Development Appeal Board is served with notice of an application for leave to appeal its decision, such notice shall operate to suspend the Development Permit.

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Mr. V. Laberge, Presiding Officer
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Web: www.edmontonsdab.ca

Date: January 28, 2016
Project Number: 177485784-001
File Number: SDAB-D-15-298

Notice of Decision

- [1] On January 13, 2016, the Subdivision and Development Appeal Board heard an appeal that was filed on November 23, 2015.
- [2] The appeal concerned the decision of the Development Authority, issued on November 9, 2015, to approve the following development:
- Erect an over height fence (5.44m in length on West property line @ 2.44m in Height) in the rear yard of a Single Detached House
[unedited from the Development Permit]
- [3] The subject property is located on Plan 169HW Blk 11 Lot L, municipal description 11224 - 77 Avenue NW, within the RF3 Small Scale Infill Development Zone.
- [4] The following documents, which were received prior to the hearing and copies of which are on file, were read into the record:
- Notice of Appeal received November 23, 2015;
 - Email from the Appellant dated December 28, 2015, indicating absence from the hearing, with written submissions and attachments;
 - Email from the Respondent dated January 5, 2016, instructing that he wishes to withdraw his development permit application;
 - Email dated January 7, 2016 from the Development Authority, indicating that they will not attend the hearing in light of the January 5, 2016 email from the Respondent; and
 - Copy of the McKernan-Belgravia Station Area Redevelopment Plan.

Summary of Hearing:

- [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 appeal was filed on time, in accordance with Section 686 of the *Municipal Government Act*, RSA 2000, c M-26.

Preliminary Matters:

- [7] Ms. J. Branch-Mueller, a member of the McKernan Community League Board and Housing Committee Chair, attended the hearing. No other parties appeared before the Board.
- [8] The Presiding Officer introduced the members of the Panel, and confirmed that Ms. Branch-Mueller did not oppose the composition of the panel.
- [9] The Board noted that the appeal was filed on time, in accordance with Section 686 of the *Municipal Government Act*, RSA 2000, c M-26.
- [10] The Board referred to the January 5, 2016 email from the Respondent. The Presiding Officer explained that under Section 17.1(3)(a) of the *Edmonton Zoning Bylaw*, once an appeal is filed, the Development Authority cannot move forward with respect to any approved Development Permit until the matter is resolved through the Subdivision and Development Appeal Board. Section 17.1(3)(a) provides:

17.1 Validity of a Development Permit

...

3. The Development Officer shall suspend a Development Permit upon receipt of a filed notice of appeal to the City of Edmonton from the Subdivision and Development Appeal Board in accordance with the *Municipal Government Act*, and Section 21.1 of this Bylaw. The Development Permit remains suspended until:
 - a. the Subdivision and Development Appeal Board renders a decision approving the Development Permit and the time for filing a leave to appeal application to the Court of Appeal has passed without a leave to appeal being filed;
- [11] As such, even though the Respondent has instructed that his permit application be withdrawn, the Development Authority cannot act upon his instructions until the Subdivision and Development Appeal Board renders a decision.
- [12] In this instance, the Board accepts the January 5, 2016 email instructions of the Respondent. Since the development application has been withdrawn, the Development Permit is null and void. No valid Permit exists, the Respondent is not permitted to erect an over height fence in the rear yard of his Single Detached House, and the appeal is rendered moot.
- [13] The Presiding Officer thanked Ms. J. Branch-Mueller for attending, and closed the hearing.

Important Information for the Applicant/Appellant

1. This is not a Building Permit. A Building Permit must be obtained separately from the Sustainable Development Department, located on the 5th Floor, 10250 – 101 Street, Edmonton.
2. Obtaining a Development Permit does not relieve you from complying with:
 - a) the requirements of the *Edmonton Zoning Bylaw*, insofar as those requirements have not been relaxed or varied by a decision of the Subdivision and Development Appeal Board;
 - b) the requirements of the *Alberta Safety Codes Act*, RSA 2000, c S-1;
 - c) the requirements of the *Permit Regulation*, Alta Reg 204/2007;
 - d) the requirements of any other appropriate federal, provincial or municipal legislation; and
 - e) the conditions of any caveat, covenant, easement or other instrument affecting a building or land.
3. When an application for a Development Permit has been approved by the Subdivision and Development Appeal Board, it shall not be valid unless and until any conditions of approval, save those of a continuing nature, have been fulfilled.
4. A Development Permit will expire in accordance to the provisions of Section 22 of the *Edmonton Zoning Bylaw 12800*, as amended.
5. This decision may be appealed to the Alberta Court of Appeal on a question of law or jurisdiction under Section 688 of the *Municipal Government Act*, RSA 2000, c M-26. If the Subdivision and Development Appeal Board is served with notice of an application for leave to appeal its decision, such notice shall operate to suspend the Development Permit.
6. When a decision on a Development Permit application has been rendered by the Subdivision and Development Appeal Board, the enforcement of that decision is carried out by the Sustainable Development Department, located on the 5th Floor, 10250 – 101 Street, 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.

Mr. V. Laberge, Presiding Officer
Subdivision and Development Appeal Board

CC: