

Edmonton Subdivision and Development Appeal Board

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Date: January 29, 2016
Project Number: 157837120-014
File Number: SDAB-D-15-268

Notice of Decision

This appeal is dated October 23, 2015, from the decision of the Development Authority for permission to leave as built a Single Detached House on Plan 1275HW Blk 3 Lot 10, located at 11542 - 75 Avenue NW.

The development permit was refused because of a deficiency in the Basement elevation of structures of two or more Storeys in Height, and a deficiency in the minimum required right Side Setback.

The subject Site is zoned RF1 Single Detached Residential Zone and is within the Mature Neighbourhood Overlay.

The appeal was filed on time, in accordance with Section 686 of the *Municipal Government Act*, RSA 2000, c M-26 and was heard by the Subdivision and Development Appeal Board on November 18, 2015.

Summary of Hearing:

1. 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.
2. Prior to the hearing the following information was provided to the Board, copies of which are on file:
 - A copy of the Canada Post Registered Mail delivery confirmation;
 - A copy of the Development Permit; and
 - Three online responses in opposition to the proposed development.

Position of Mr. Murphy, Legal Counsel for Mr. Chen, the Appellant:

3. He provided a letter from Independent Real Property Appraisals Ltd., and a slim map showing the results of the Community Consultation, marked "Exhibits A and B".
4. The majority of the responses in opposition to the proposed development concerned the potential of setting a precedent in the neighbourhood.
5. Many of the comments are related to how the development was proceeding (that the site is unkempt), which is not a planning issue.

6. There are concerns that the Mature Neighbourhood Overlay should not be varied; however, that part of the *Edmonton Zoning Bylaw* is amenable to the Board's variance power.
7. The Development Authority does not have the power to vary Height, which is one of the issues before the Board. The Board's variance power is set out in Section 687(3)(d) of the *Municipal Government Act*.
8. The foundation of the house is too high out of the ground and is skewed; this may have been the result of a surveying or excavation error.
9. Exhibit "B" shows the contacted properties within the 60 metres notification radius, and their respective positions regarding the proposed development. The Community Consultation was inconclusive because the results were evenly split.
10. A Stop Order was issued when the Height issue was brought to the Development Authority's attention. At that point, Mr. Sung, who is an Alberta Land Surveyor, was retained to assist with the issues.
11. The design was changed from a peak roof to a flat roof to keep the overall Height of the house within the requirements of the *Edmonton Zoning Bylaw*, even though the Basement is 0.84 metres too high.
12. The Side Yard is 0.31 metres too close to the property line at the rear northeast corner of the house. This will be addressed by removing the chimney on that side of the house.
13. With respect to drainage concerns, the Appellant intends to install a V-shaped water trough or swale along the east side of the property with a five inch curb to keep drainage from entering the adjacent property east of the subject Site.
14. Only a small part of the building is too close to the east property line. The Appellant intends to upgrade the construction and install fireproof Hardie Board and cement siding on that side of the house, to address the fire concern.
15. The subject lot is higher than the neighbour's property and other lots on the block.
16. He provided photographs marked Exhibit "C", which show
 - a. the subject house in its current state of construction;
 - b. its relation to the adjacent house to the east;
 - c. the rear of the house in relation to the house east of the subject Site, which also has a thrusting Basement, but is not as dramatic as the Appellant's house;
 - d. the view looking across the street, west of the subject Site, where a house has a thrusting Basement;
 - e. the building north of the subject Site, which also has a thrusting Basement; and,
 - f. a view of the rear lane.
17. The surveyor measured the lane from the east end, which is five feet lower than the west end, where the subject Site is located.
18. Mr. Murphy played a video for the Board showing the neighbour's view of the Site, the immediate vicinity including a large building located across the street, the houses west and north of the site, and how the subject lot is raised at the rear.
19. The thrusting Basement has been addressed by a reduction in the overall Height so that it complies with the *Edmonton Zoning Bylaw* and should no longer have an impact on the minor Side Yard variance.

20. In his opinion, the required variances will not have a negative impact on property values in the neighbourhood.
21. As stated in Exhibit "A" (the property appraisal letter), the negative impacts of a variance, if any, will be borne by the subject house as people may be less inclined to purchase the property because of the variances it has been granted.
22. In his opinion, the proposed development is not an application to leave a house as built, but to leave a house as sited, as construction is not complete.
23. The items that remain unfinished on the house include the flat roof, drainage features, adding the fire resistant siding on the east side of the building, and removing the chimney on the east side of the building.
24. The Court of Appeal set the test for Board, which is outlined in Section 687 of the *Municipal Government Act*. The test is not about the character of the parties involved in the appeal.
25. Mr. Murphy does not have an issue with the way the Development Authority calculated the Grade.
26. He confirmed that the Appellant will remove the fireplace entirely from the proposed plans.
27. With respect to the drainage feature, he provided a sketch of the proposed drainage, showing that all drainage will remain on the subject property. The proposed drainage plan will be submitted to the Development Authority (Sustainable Development) for approval.
28. The drainage feature is allowed in the Side Setback; it will be located beside the sidewalk on the east side of the house.
29. He confirmed that his client has no issue with the recommended conditions listed on page three of the the Development Officer's written submissions.
30. The main issue is the Height. The subject Site will be less than the maximum allowable Height.

Position of the Development Officer, Mr. G. Robinson:

31. Mr. Robinson clarified that a "leave as built" permit deals with the siting of the building on the property.
32. If the Board approves the proposed development, a Safety Code review and Building Permit will still be required.
33. The Community Consultation met the requirements of the Mature Neighbourhood Overlay; however, he is not able to share the comments provided to Sustainable Development because of Freedom of Information and Protection of Privacy legislation.
34. He reviewed the summary of the consultation comments in his submission. Some of the comments indicated that neighbours were not opposed to a Basement Height variance if the house meets the overall Height requirements.
35. In his opinion, the variances are not acceptable because of the massing and siting of the house.

36. Asked about the impact of approving the proposed development to “leave as built” given the uncertain measurement of the Side Setback, he indicated that the approval will be given based on the proposed plans submitted by the Appellant. Therefore, the development permit will not be valid if the building does not in fact meet the measurements in the proposed plans.
37. With respect to the impact of the two variances, he argued that he is not opposed to the variance in the Basement Height elevation. However, in his opinion, if the Side Setback is varied the proposed development will still have a negative impact.

Position of Mr. Williams, representing the City of Edmonton Development Compliance:

38. Mr. Williams provided the Board with a written submission and clarified that references to the Side Setback should be to the east and not the west.
39. Development Compliance has visited the subject Site seven times.
40. Two Stop Orders and one ticket were issued with respect to the subject Site.
41. He confirmed that during the appeal process there is an opportunity for the Appellant to provide an accurate Plot Plan.
42. The east Side Setback was never confirmed. The previous Plot Plan is not accurate. The Appellant was asked, on two different occasions, to peg the corners of the building for surveying. The northeast corner was never pegged.
43. Ambiguity remains in the Site Plan on file. The Appellant has submitted several different versions of Site Plans.
44. He confirmed that a variance in the Side Setback was considered based on a measurement of 0.89 metres; however, this measurement has never been confirmed.
45. Photograph 7, attached to the Development Authority’s submission, shows the northeast corner of the building. It was taken during the last Site inspection on October 1, 2015.
46. Sustainable Development relies on information submitted by the surveyor. The City does not do any surveying.
47. He confirmed that houses in mature neighbourhoods, with new designs, have lower Basements; the intent is to keep infill developments consistent with the general design of the neighbourhood.
48. With respect to the Basement Height, he confirmed that the house immediately north of the subject Site is a split bi-level, and is designed with a Basement Height that is consistent with the area.
49. Development Authority’s cannot grant variances to the Height of a house or a Basement.
50. He confirmed that the revised drawing submitted shows the chimney cantilever, which could be removed from the proposed development.
51. He could not comment on the drainage structure and curb because its site and location is not currently shown on the submitted plans. He advised that the Board could impose a condition that the proposed drainage structure must comply with Drainage Bylaw 16200.

52. Given the change to a flat roof design, the house will look like a two-Storey development without any architectural differentiation or windows to break up the massing effect.

Position of the Next Door Neighbour, Mr. Folllott:

53. Mr. Folllott is the property owner east of the subject Site.
54. He has lived in his house for 35 years and in the neighbourhood for 40 years.
55. He is not opposed to change in the neighbourhood or to infill developments, but is opposed to large variances because they will have a negative impact on the look and feel of the neighbourhood.
56. He received two notices regarding the proposed development, the first on September 8, 2015, for the Basement, and the second on November 2, 2015, for the variance in the Side Setback.
57. He sent a letter to the Development Authority after receiving the September 8, 2015, notice and provided the Board with a copy of the letter, marked Exhibit "E".
58. The Basement elevation to the first floor is 1.7 metres. It is too close to his house.
59. The higher house will look like a massive development in relation to his house.
60. The earth on the Site has been landscaped along the Basement elevation.
61. The original Site Plan approved by the City shows a 1.28 metres Setback along the east side of the house. He questions the value of stamped plans if they are not followed.
62. The house was built askew on the property and is closer to the shared property line at its northeast corner. The skew is apparent to observers.
63. The house, as built, affects the street appeal of his house, which may have a negative impact on his property value.
64. He is concerned that the eaves potentially extend over the property line and that the construction of the house is not proceeding according to the approved plans.
65. With respect to the proposed drainage structure, he trusted the City to ensure correct drainage management. He confirmed there have not been any drainage issues since construction began.
66. With respect to vegetation shielding the house after it is complete, he advised the Board that vegetation could help. However, he is still concerned about how close the house will be to the property line.
67. With respect to the right elevation of the proposed plan showing the siting of one window on the drawings, he advised the Board that the bottom of the window will be located approximately as high as his knees and the floor of the first level will be above his head.
68. He does not have an issue with the height of the first level or Basement window, but he does have an issue with how close the window and eaves of the house will be to his property.
69. There is already an issue with sun shadowing.

Position of a Neighbour, Mr. Murray:

70. Mr. Murry lives two houses east of the subject Site, beside Mr. Folliott.
71. He has been watching the construction and is appalled about how the proposed plans have been changing during the Appellant's presentation at the hearing. These "on the fly" changes do not instill in him confidence that what is approved will match what is built. He does not believe the Appellant has the necessary expertise to build a house.
72. He provided the Board with three photographs showing the original house on the subject Site that was on the same level as the adjacent house, the front view of the house, and the rear view of the house, marked as Exhibit "F".
73. The entire lot has been raised, which makes the house look larger than what was originally anticipated.
74. He believes the Basement should have been dug deeper.
75. The variance in elevation from the current house to the far end of the lane is five feet. This means run off from the new house could be greater and it is unclear how drainage concerns will be addressed, given the proposed location of the house.

Position of Neighbour, Mr. Bowman:

76. Mr. Bowman owns the house directly south of the subject Site across 75 Avenue. He supports the construction of a Single Family Dwelling, but is concerned with how this development is proceeding.
77. Removing the cantilevered chimney section will not change the fact the Setback will only be 0.89 metres. The required Setback is 1.2 metres and a 1.28 metres Side Setback was originally approved.
78. There is no room for either a sidewalk or drainage feature in the 0.89 metres Setback.
79. He would like to have the proposed changes reviewed by a professional and the property properly measured, given the information from the City that the southeast corner was never staked.
80. In the Community Consultation, neighbours were informed about the variance in the Basement Height, but not the variance in the Side Setback.
81. He is concerned about the negative impact the proposed development will have on Mr. Folliott's property, including the massing effect, sun shadowing, the use of his back yard, and fire safety because of the close proximity of the houses.
82. The lot has been built up. It was originally no higher than the surrounding lots.
83. The lot is in the former Lake McKernan area, which has a high water table and has had ongoing drainage and flooding issues.
84. He built his house in 2011 and had to reduce the elevation by three centimetres by lowering the Basement to meet the regulations of the *Edmonton Zoning Bylaw*.
85. It is not fair to grant a variance to the Basement elevation, given that he had to reduce the Height of his house to meet the requirements of the *Edmonton Zoning Bylaw*.

86. He provided the Board with several photographs of the subject Site, marked Exhibit "G".

Position of the Belgravia Community League, Represented by the Community League President, Ms. Boman:

87. Ms. Boman is the past President of the Community League, which has been actively involved in several infill projects including 20 that have started in the past year.
88. The proposed development is an example of a bad infill development.
89. The Community League was concerned that the Appellant disregarded the original approved development permit and advised the City of its concerns.
90. The Appellant carried on building the project and the Community League continued to report its concerns to the City.
91. The Community League is concerned with the ongoing changes to the proposed development and about the Appellant's ability to meet *Edmonton Zoning Bylaw* requirements.
92. The Community League would like to work with the Appellant.
93. She is aware that the Board's decision does not set precedent, but remains concerned that the proposed development will set a practical precedent for other builders (that they can stray at will from an approved permit).
94. She provided the Board with a copy of the letter the Community League sent to Sustainable Development, marked "Exhibit H".

Position of Mr. Murphy in Rebuttal:

95. He urged the Appellant to hire a project manager to oversee the development.
96. Some of the concerns presented are immaterial to the Board; the Board has to deal with the impacts of the two minor variances required.
97. The Board must determine if there will be negative impact on the neighbourhood.
98. The Development Authority did not provide any justification about how the proposed development will negatively impact the neighbourhood.
99. If the Side Yard was compliant, the Appellant could develop a house with the same massing effect.
100. The question is the incremental impact of the skew. In his view it will have no impact.
101. Until the hearing, they were not aware that there was an issue with the Plot Plan; the distance of 0.89 metres to the property line may not be accurate. A new survey should be done to confirm that distance.
102. He would like to prepare a plan of the drainage structure and get the City's drainage department to review it to determine if it is acceptable.
103. Accordingly, he requests an adjournment to allow the Appellant time to obtain a new survey to show the Side Yard variance, and a schematic of the drainage feature so that it can be submitted to the City for approval.
104. He confirmed that the fireplace will be entirely deleted from the proposed plans.

105. The property appraiser did visit the subject Site prior to preparing the report, marked Exhibit "A".
106. He confirmed that the Stop Order will remain in place if an adjournment is granted.
107. He will provide an updated survey and drainage schematic to the Board prior to the hearing so it can be forwarded to those in attendance at the hearing for review.

Parties in attendance at the hearing did not object to adjourning the appeal hearing to a later date.

Motion:

That SDAB-D-15-268 be tabled to January 15, 2016, to allow the Appellant time to provide the following information to the Board with respect to:

1. An updated survey confirming the Side Setback; and
2. A schematic of the proposed drainage feature on the east side of the proposed development.

An appeal by Ken Chen / Ogilvie LLP to leave as built a Single Detached House, located at 11542 - 75 Avenue NW, was tabled to January 15, 2016.

Motion:

That SDAB-D-15-268 be raised from the table."

Summary of Hearing:

1. This hearing is a continuation from the appeal heard on November 18, 2015.
2. The Board received the following new submissions with respect to the continuation of the appeal:
 - Land Title Certificate;
 - Proposed Internal Lot Grading Plan;
 - Schematic Diagram of the Swale;
 - Email correspondence between R. Carballo and G. Robinson with respect to the lot grading plan; and
 - Submissions, including photographs, from J. and R. Murray.
3. Prior to the hearing, the Chair confirmed that no parties objected to the continuation of the hearing or to the Board receiving the new submissions, and to providing all parties with the opportunity to speak and to respond to new information presented by the Appellant's Legal Counsel.

Position of Appellant's Legal Counsel, Mr. J. Murphy:

1. Since the November 18, 2015 hearing, the Appellant retained Hagen Surveys to create building plans for the proposed development in order to confirm the Side Setback distance. The Side Setback distance is 0.89 metres.
2. The Development Officer circulated materials through the City of Edmonton Drainage Services Department, who advised that a new Lot Grading Certificate is required. In the event the appeal is approved by the Board, the Appellant will comply with that requirement.
3. The drainage swale will be for the rain that falls between the houses and not for run off from the roof.
4. Mr. Murphy confirmed that the Appellant intends to run the swale from the rear property line all the way down the east side of the property line to the front property line. The swale feature will be made of concrete for fireproofing purposes, and will be located approximately three or four inches from the fence, which is on the property line. The swale feature will act as a permanent stopper for any potential drainage to the neighbour's property.
5. With respect to the roof Height and shape, Mr. Murphy confirmed that in order to meet the requirements in the *Edmonton Zoning Bylaw*, the Appellant plans to build a flat roof with no eaves. The plans are somewhat inconsistent, but should show an 18 inch overhang on all sides. They are willing to cut this down to a uniform 4 inch or 0.1 metres overhang for the entire circumference of the house.
6. Mr. Murphy reiterated that two additional approvals are required from the City Drainage Department with respect to the proposed development: a lot grading approval and approval of the swale feature.

Position of the Development Officer, Mr. G. Robinson:

7. Section 44(1)(b) states that eaves may project into required Setback areas provided that they do not exceed 0.6 metres in the case of Setbacks greater than 1.2 metres.
8. In this case, if Section 110.4(10)(a) is varied, the Side Setback would be under 1.2 metres, so a third variance may be required to section 44(1) to permit the eaves to project any distance into the required Setback.
9. If the Side Setback is varied to 0.89 metres and the eaves are 0.1 metres, the eaves will be 0.79 metres from the property line, which is greater than the 0.6 metres contemplated in Section 44. In his view it would be an acceptable variance because, practically, Section 44 allows eaves to come within 0.6 metres of the property line.
10. Lot grading must comply with Bylaw 16200, the City of Edmonton Drainage Bylaw.
11. The City has changed its lot grading review process since the Appellant applied for a development permit in 2014. Now, when an application is made, the lot grading review process runs concurrently with the development permit approval process.

- As of October 1, 2015, the Drainage review is completed prior to a development permit being issued. Prior to this change, the processes were separate.
12. Prior to the hearing, Mr. Robinson exchanged email correspondence with Drainage Services to confirm that no lot grading plan was received with The Appellant's original application; it was not included in the original application.
 13. Mr. Robinson advised that Drainage Services requires more information to conduct a review on the proposed development. Specifically, Drainage Services requires information showing proposed elevations for the abutting property, and internal swale plans, which were not included with the original internal lot grading plan.
 14. Asked whether the flat roof design with ten inch parapet walls presents drainage or planning concerns, Mr. Robinson confirmed they do not.

Position of the next door neighbour, Mr. Foliott:

15. Mr. Foliott raised concerns about the schematic of the swale, the sufficiency of the drainage provisions, and the lack of adequate dimensions on the Site Plans.
16. The Appellant backfilled soil around the Basement. Originally the two houses were level, now there is an elevation change of approximately 0.5 metres between them. He argued that the Appellant's proposed lot grading plan gives the impression that it is level, but in fact, there is a 0.5 metres change in the grade.
17. The most recent Real Property Report shows that the actual building does not match what was originally approved. The original Site Plans showed one set of numbers and the revised Site Plans show a different set of numbers, leaving him with little confidence about what the Appellant actually intends to build.
18. Mr. Foliott argued that there are a number of disadvantages to the Board granting one or both variances, including that the proposed development changes the look and feel of the neighbourhood and the value of his property.
19. His property is part of his retirement plan and people have commented that "it's going to be a tall house" or "that foundation's kind of close." These comments show the adverse impact on his property.
20. The Appraiser, who signed Exhibit "A", submitted by the Appellant, has been retired for a long time. Infill is a recent phenomenon; he believes realtors who are currently working will negotiate a lower price if the Appellant's house proceeds with the variances.

Position of Mr. Murray:

21. Mr. Murray shares Mr. Foliott's concerns about the lot grading, specifically, that the proposed swale will not accommodate the water run off that will be produced by the lot grading, particularly during heavy storms. During heavy rainstorms the street becomes awash in water.

Position of Ms. Wunsen:

22. Ms. Wunsen is concerned that the swale elevations are misleading. Specifically, the back corner of the house is elevated by 25 centimetres, which is approximately three times the slope indicated in the Schematic Diagram of Swale for the proposed development.
23. Ms. Wunsen is also concerned about encroachment on the neighbouring property in order to accommodate the retaining wall, which she argued would have to be built significantly back from the property line. She urged the Board to consider the logistical aspects of the construction process.
24. Ms. Wunsen expressed frustration that the Appellant has presented much of the missing information and planning errors as accidental. She advised the Board that the Appellant was before the Subdivision and Development Appeal Board in 2010 requesting a variance on another matter; she believes the Appellant is using the Board as a means to have developments approved without adhering to the requirements of the *Edmonton Zoning Bylaw*. It is an unacceptable loophole.

Position of the Belgravia Community League (President, Ms. J. Boman):

25. Ms. Boman argued that the Appellant followed an unusual path; usually builders follow a procedure of obtaining permission for variances and then build. Here the original permit had no variances.
26. The Appellant employed cost cutting methods, dug a shallower hole resulting in the protruding Basement and failed to maintain the required Setback by 39 centimetres.
27. These actions show either blatant disregard for the regulations or incompetence.
28. Allowing the Appellant to proceed will cause further stress as the Community League will be forced to continue to watch him.
29. She also argued that this is not the Appellant's first development; he is building another building three blocks away under the same numbered company.
30. She urged the Board to keep the Appellant accountable, especially given the bad reputation for infill projects in the City. The City should stop this now and not allow the Appellant to return repeatedly for variances.

Position of Mr. Murphy, Legal Counsel for the Appellant, in Rebuttal:

31. Mr. Murphy argued that cutting down the projecting eaves so they are flush with the side of the proposed development would create more water in the yard than necessary.
32. The technical issues raised by the neighbours are important, but the Drainage department deals with them. The Appellant knows he is required to comply with a drainage plan and with the provisions of Bylaw 16200, the City of Edmonton Drainage Bylaw.
33. With respect to elevation, Mr. Murphy argued that the lots in the area have "incredible changes in elevation" from one to the next. The evidence of the neighbours shows there is a pre-existing drainage issue.

34. Mr. Murphy argued that the Board must base its decision on the test set out in Section 687 of the *Municipal Government Act*, which is whether the proposed development 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. He argued that even if his client is a bad builder, although not a commendable characteristic, it is not relevant with respect to the variances the Appellant seeks for the proposed development.
35. The issue is not the identity of the builder, but the impact of the variances - the two issues before the Board are the Height issue (the protruding Basement) and the fact that the foundation is skewed.
36. Neighbourhood consultation was completed.
37. The Height of the Basement is characteristic of the neighbourhood. There are many others that protrude further out of the ground than the proposed development. He argued that when it is finished, the proposed development will “fit in nicely.”
38. Asked to address the neighbours’ concern that because of his past conduct, there is little confidence that the Appellant will not be back before the Board requesting additional variances in the future. Mr. Murphy admitted that it is a possibility, but argued that the Board is bound by the test set out in Section 687 of the *Municipal Government Act*.
39. On one hand, Mr. Murphy argued that the character of the applicant can, in some circumstances, have an impact on the outcome of the appeal. On the other hand, he reminded the Board that the variances are what are at issue before them, regardless of who builds the project. An approval subject to the condition that the Appellant not build would be problematic.
40. The Board noted that the Appellant’s behaviour is directly connected to the variances required in this case. That is, the Appellant failed to comply with the requirements of the *Edmonton Zoning Bylaw* and with the specifications of the approved permit, and then appeared before the Board because of his non-compliance. In response, Mr. Murphy referred to the Alberta Court of Appeal decision in *Newcastle Centre GP Ltd v Edmonton (City)*, 2014 ABCA 295, and argued that the only test the Appellant must meet is the test set out in Section 687 of the *Municipal Government Act*; the Appellant is not required to provide additional planning reasons over and above that test. The Appellant is not required to *earn* a variance. The Appellant could appear countless times to receive variances if the test is met.
41. The Board asked Mr. Murphy to comment on the Alberta Court of Appeal’s Leave to Appeal decision in *Dennis McGinn Holdings Ltd. v Brazeau (County)*, 2016 ABCA 3, particularly comments regarding *Dallinga v. Calgary (City)*, 1975 Alta SCAD 13 with respect to whether or not the conduct of the applicant is a relevant consideration before the Board. Mr. Murphy acknowledged the Board may determine that in this instance the conduct of the applicant is a relevant consideration. However, he reiterated that the Board must consider the test for granting a variance, pursuant to Section 687 of the *Municipal Government Act*.

Position of the Development Officer, Mr. G. Robinson, on Rebuttal:

42. Mr. Robinson advised the Board that a condition could be imposed to ensure that the preliminary lot grading plan must be approved prior to the resumption of construction.

Decision:

The appeal is ALLOWED and the decision of the Development Authority is REVOKED. The following variances are GRANTED:

1. A variance of 0.49 metres is granted to the Height of the Basement elevation required per Section 814.3(16) to permit a distance of 1.68 metres between the Grade level and the floor of the first Storey
2. A variance of 0.31 metres to the Side Setback required per Section 110.4(10)(a) is granted to allow a Side Setback of 0.89 metres from the Side Lot Line on the east side of the property
3. A variance to Section 44(1) to permit the eaves to project into the required Side Setback up to a distance of 0.79 metres from the east Side Lot Line.

The appeal is subject to the following CONDITIONS:

1. No construction may occur until the Appellant has an approved preliminary lot grading plan in accordance with City of Edmonton Drainage Bylaw 16200, including approval of the design of a drainage swale of the type proposed by the Appellant.
2. The projecting portion of the flat roof must be reduced on all sides of the House to 0.1 metres, as indicated on the approved Site Plans, attached.
3. There shall be no cantilevered structures permitted on the east side of the House, nor on the most easterly 2.0 metres of the north side of the House as shown in the approved Site Plan, attached.
4. The fireplace as shown, in the refused plans, shall be removed in accordance with markings on the approved Site Plan, attached.
5. This Development Permit authorizes the development of a leave as built Single Detached House. The development shall be constructed in accordance with the stamped and approved drawings.
6. The Height of the principal building shall not exceed 8.6m as per the Height definition in Sections 6.1(49) and 52(1).

7. Any future Basement development may require development and building permit approvals. A Secondary Suite shall require a new development permit application.
8. 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).
9. The area hard surfaced for a Driveway, not including the area used for a walkway, shall comply with Section 54.6 of the Edmonton Zoning Bylaw 12800.
10. 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 Edmonton Zoning Bylaw 12800.
11. All access locations and curb crossings shall have the approval of the City Transportation prior to the start of construction (Reference Section 53(1)). – Vehicle access from the rear lane only.

Reasons:

The appeal is granted for the following reasons:

1. This appeal involves an application to leave as built a Single Detached House, a permitted use in the RF1 Single Detached Residential Zone.
2. In October 2014, the Appellant's first application for a Development Permit was approved for a Single Detached House with no variance to overall Height, Basement elevation or Side Setbacks.
3. Community concerns arose about discrepancies between the approved permit and what was actually being constructed, particularly about the thrusting Basement foundation. In March 2015, Sustainable Development received a complaint that the finished floor was constructed too high. Development Compliance issued a first Stop Work Order on March 31, 2015.
4. In April 2015, the Appellant submitted a second development permit application seeking to construct exterior alterations to the existing house to lower the Height of the second floor and the foundation. According to the plans, with these changes, the house would comply with the required Basement elevation and continue to comply with the Side Setback. The application was processed as a Class A development. In May 2015, a development permit was issued.

5. In June 2015, Sustainable Development received another complaint that the finished floor was still too high. A second Stop Work Order was issued on July 2, 2015. Work continued in violation of the second Stop Work Order and a penalty ticket was issued. Sustainable Development again met with the Appellant and advised him that accurate survey plans and revised building plans were required.
6. In July 2015, the Appellant submitted a third development permit “To leave as built a Single Detached House” asking for two variances for the Basement elevation and the Side Setback. Community consultation occurred in September. The third application was refused on October 9, 2015.
7. In short, ongoing concerns about discrepancies between the originally approved permit and what was actually being constructed (particularly that the Basement foundation was not deep enough, not square to the Lot Line, and too close to the Side Lot Line) led to seven compliance visits, two stop orders, and the submission of two revised development permit applications for the house.
8. The Appellant maintains that the permit should issue as the variances would not unduly interfere with the amenities of the neighbourhood, nor materially interfere with or affect the use enjoyment or value of neighbouring properties.
9. The Parties in opposition to the proposed development disagree with the Appellant about the impact of the variances. They argue that the appeal should be denied because of the Appellant’s past conduct including failures to adhere to the terms of approved development permits, failure to comply with a Stop Order, and poor construction practices including poor practices on other developments. If the development is approved, they fear this conduct will continue and compel future variances.
10. The Development Officer refused the permit because of a lack of hardship with Site grading or dimensions, because the massing and siting of the structure would unduly interfere with the amenities of the neighbourhood and /or materially interfere with or affect the use enjoyment or value of neighbouring properties, and because he has no authority to vary Height.
11. The Board grants the variances for the following reasons.
 - a. Response from the neighbours within the 60 metres notification zone has been mixed. Some support the proposed development, others do not.
 - b. Concerns related to safety and building code issues are beyond the jurisdiction of this Board. The Board notes that the issuance of a development permit does not relieve the Appellant from complying with

the *Edmonton Zoning Bylaw* and any other applicable, municipal, provincial and federal laws, including obtaining all other permits legally required with respect to the proposed development.

- c. Concerns relating to drainage and the proposed swale are dealt with by Drainage Services who has the required technical expertise. To address the neighbours' concerns, the Board has imposed a condition requiring the Appellant to obtain Drainage Services approval of a lot grading plan in accordance with City of Edmonton Drainage Bylaw 16200, including approval of the design of a drainage swale, before any construction may resume. This condition also brings the application in line with current City practice.
- d. Parties opposed to the development argued that their property values would fall and provided the opinion of a local realtor who visited the Site and concluded that "the value of the property next door, for some potential buyers, will be affected adversely." The Appellant provided a contrary opinion in the form of a letter from a certified real estate appraiser who indicated that the variances, if granted, would have a negligible impact on property values, and if anything, would affect the subject Site rather than any adjacent Site. Given the mixed opinions, the Board does not find compelling evidence of material financial impact, positive or negative, as a result of granting these variances.
- e. With regard to the Basement in particular, the Board grants the variance for the following reasons:
 - i. The proposed development is within the overall Height requirements of the Bylaw. To ameliorate the impact of a raised Basement, the Appellant revised his initial building design by substituting a flat roof for the original peaked roof.
 - ii. The Development Officer is not authorized to vary Height, but in his view, this variance to Basement Elevation was not a significant issue given overall Height.
 - iii. The photographic evidence before the Board shows other developments in close proximity, with similar Basement elevations, including a bi-level Single Detached House directly to the north across the back lane.

- iv. The requested variance of 0.49 metres will require the addition of two or three risers to the front entry more than a compliant building. This increase in risers will not create a material difference.
 - v. The most directly affected adjacent neighbour to the east, while not pleased with the development, and concerned with overall massing and proximity to his property, indicated that he is not opposed to the proposed 1.68 metres Basement elevation. He objects the overall Height of the house, but recognizes it is within the allowed limit for the area.
- f. With regard to the Side Setback,
- i. the proposed development is not sited parallel to the east Lot Line and the building comes closer to the Lot Line towards the rear. The Side Setback is 1.2 metres at the front southeast corner of the House and 0.89 metres at the back northeast corner of the house
 - ii. While this configuration will still impact the neighbour directly to the east, the fact that the building is compliant in the front southeast corner gives less of an adverse visual impact and has less of an impact on the amenities of the neighbourhood.
 - iii. The Board has imposed conditions requiring both the removal of the fireplace and prohibiting any cantilevered structure on the east side of the house, which further ameliorates the impact of the variance.
 - iv. No development regulation requires buildings to be sited parallel to a Lot Line. Once the development has been completed, Landscaping added in accordance with Section 55 will provide screening to reduce any perceived impact on amenities of neighbourhood.
12. Parties opposed to the proposed development repeatedly raised concerns about Appellant's construction practices, particularly, his failure to adhere to approved plans, failure to adhere to a stop order, and ongoing failure to maintain the property in a safe and tidy manner.
13. The record shows and the Appellant admits that he has engaged in poor construction practices, failed to comply with approved plans, and provided incomplete and correct plans with respect to these variances.

14. Counsel for the Appellant also indicated that the Appellant has a language barrier, that he did not fully understand his obligations or rights. Counsel for the Appellant further advised that, through the use of a translator, he has fully informed the appellant about the need for accurate measurements, construction oversight and project management, and his related obligations and legal rights and responsibilities, particularly with respect to the construction of the house.
15. In *Dallinga v Calgary (City)*, 1975 ALTA SCAD 13 (affirmed by the Court of Appeal this year in the Leave to Appeal decision, *Dennis McGinn Holdings Ltd. v Brazeau (County)*, 2016 ABCA 3), the Alberta Court of Appeal recognizes that this Board has the discretion to take the conduct of the Appellant into consideration in making its decision.
16. That Board finds that the Appellant's own construction errors with respect to this very development and despite extensive interactions with city officials have necessitated repeated requests for development permits and the variances sought in this appeal. Further, the Appellant's failure to adhere to his own plans has prompted the issuance of two stop orders, one of which he violated.
17. The Board disagrees with the assertion of Counsel for the Appellant that an applicant could appear before the Board an infinite number of times with respect to a single development seeking consecutive variances for repeated failures to adhere to previously approved plans. In the Board's view, at a certain point, serial variance applications to regularize consecutive errors in construction would have the unintended effect of encouraging builders to disregard plans and seek retroactive approval. This would be contrary to the legitimate public interest and good planning. In *Dallinga*, the Alberta Court of Appeal stated:

Section 3 requires that the public interest be kept in view, and it is conceivable that there may be cases in which the evidence discloses a relationship between the character or morals of a developer and the use he proposes to make of his land, such that it engages the legitimate public interest in good planning in the particular circumstances of the community concerned. I do not think that a development appeal board should be foreclosed from those considerations if they are fairly raised in the hearing. In such case the evidence might properly form part of the circumstances to which a development appeal board is required to have regard. The point should be left open for consideration in a case in which it is raised on the evidence.

18. The Board believes the Appellant's past actions are a relevant consideration.
19. However, based on all the evidence and submissions, the Board cannot assume, in deciding whether or not to grant the two variances (for items that currently exist and have been accurately measured), that past behavior will continue in the future for this proposed development.
20. The Board approves the proposed development as shown in the approved plans with the same expectation that it applies in all cases, going forward the Appellant will comply with those approved plans during the remainder of construction of the house, and will not be returning to seek a further approval for another "leave as built permit" for any other variance for any element of the building which is not yet in fact built, including in particular overall Height.
21. The Board finds that the proposed development would not unduly interfere with the amenities of the neighbourhood or 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. 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*,
 - c) the *Alberta Regulation 204/207 – Safety Codes Act – Permit Regulation*,
 - d) the requirements of any other appropriate federal, provincial or municipal legislation,
 - 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, 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*, 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.

Additional Advisements:

- i.) 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.
- ii.) A Building Permit is required for any construction or change in use of a building. For a building permit, and prior to the Plans Examination review, you require construction drawings and the payment of fees. Please contact the 311 Call Centre for further information.
- iii.) Lot grades must comply with the Edmonton Drainage Bylaw 16200. Contact Drainage Services at 780-496-5500 for lot grading inspection inquiries.
- iv.) Any future deck development greater than 0.6m (2ft) in height will require development and building permit approvals
- v.) Any future deck enclosure or cover requires a separate Development and Building Permit approval.
- vi.) The driveway access must maintain a minimum clearance of 1.5m from all surface utilities.
- vii.) Any hoarding or construction taking place on road right-of-way requires an OSCAM (On-Street Construction and Maintenance) permit. It should be noted that the hoarding must not damage boulevard trees. The owner or Prime Contractor must apply for an OSCAM online at: http://www.edmonton.ca/bylaws_licences/licences_permits/oscam-permit-request.aspx
- viii.) Unless otherwise stated, all above references to "section numbers" refer to the authority under the Edmonton Zoning Bylaw 12800.
- ix.) An approved Development Permit means that the proposed development has been reviewed only against the provisions of the Edmonton Zoning Bylaw 12800. 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.

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.

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

CC:



Alberta Land Surveyor's Real Property Report
HAGEN SURVEYS (1982) LTD.

ALBERTA LAND SURVEYORS
8929 - 20 STREET
EDMONTON - ALBERTA
T6P 1K8
TELEPHONE: 464-5506

D. J. HAGEN A.L.S.
G. D. CROSS, A.L.S.

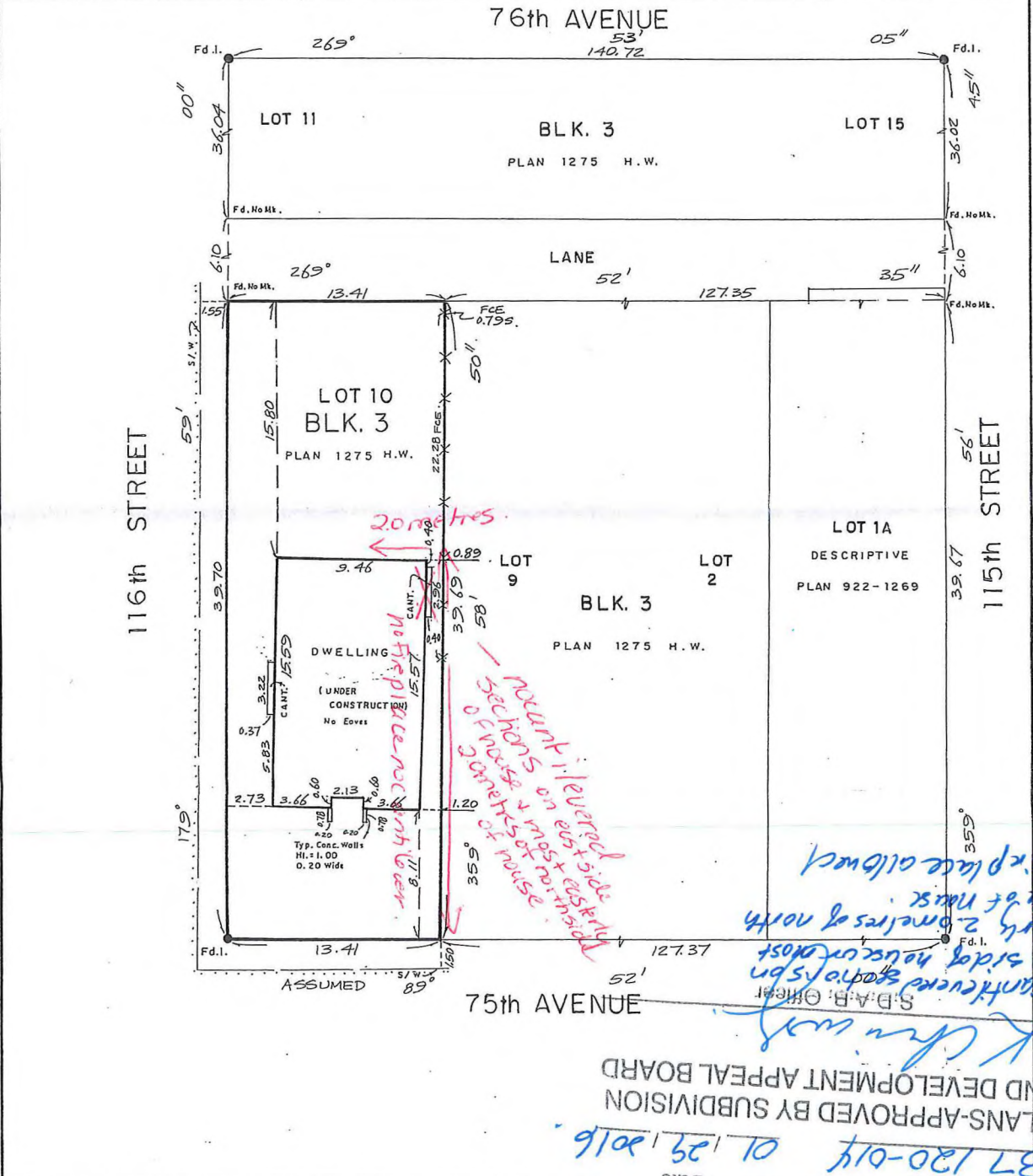
N. R. RONSKO, A.L.S.
D. G. CHEN, A.L.S.



CLIENT: **Ken Chen / November 25, 2015**

PAGE 2

LEGEND:	ASS'D BLDG. DOCUMENT	ASS'D BLDG. FOUNDATION	RETAINING WALL	ACCESS ROAD	POWER POLE	BAY WINDOW	D/W DRIVEWAY	FOUNDATION	ASPH. BLDG.	BASEMENT	B/W D/W	CONCRETE	EAVES	FENCE	TYP. BRICK PLANTER	ADJ. CONC. E.	FIREPLACE	RIGHT-OF-WAY	SIDEWALK	F.P. R/W	S/W	IRON POST FOUND MARK	BOUNDARY SUBDIVISION	PROPERTY LINE	I. Fd. MK.	HEIGHT ENCROACHES MOVEABLE	HT. ENC.'s (M)	RADIAL (R)	BRICK FACING	B.F. METRES



NOTES:

1. ALL DISTANCES ARE IN METRES AND DECIMALS THEREOF
2. UNLESS OTHERWISE SPECIFIED, THE DIMENSIONS SHOWN RELATE TO DISTANCES FROM PROPERTY BOUNDARIES TO OUTSIDE WALLS ON THE DATE OF SURVEY.
3. THIS PLAN IS PAGE 2 OF A REAL PROPERTY REPORT AND IS INEFFECTIVE IF IT IS DETACHED FROM PAGE 1.
4. COPY OF TITLE SHOWN ON REVERSE SIDE OF THIS DOCUMENT
5. FENCES SHOWN IN URBAN AREAS ONLY.
6. ALL FENCES SHOWN ARE WITHIN 0.20m OF THE PROPERTY LINE UNLESS OTHERWISE NOTED.
7. ALL MEASUREMENTS TO FENCES ARE TO CENTERLINE UNLESS OTHERWISE NOTED.
8. UNDERGROUND UTILITIES NOT LOCATED.
9. ALL YARD DIMENSIONS SHOWN ARE PERPENDICULAR OR RADIAL FROM PROPERTY LINES UNLESS OTHERWISE INDICATED.
10. THIS DOCUMENT IS NOT VALID UNLESS IT BEARS AN ORIGINAL SIGNATURE (IN BLUE INK) AND A RED HAGEN SURVEYS (1982) LTD. PERMIT STAMP.

Date: 01.29.2016
157837120-014
PLANS-APPROVED BY SUBDIVISION AND DEVELOPMENT APPEAL BOARD
S.D.A.B. Official
Ken Chen

Appl'n No.

Date

157837120-014 01/29/2016

PLANS-APPROVED BY SUBDIVISION AND DEVELOPMENT APPEAL BOARD

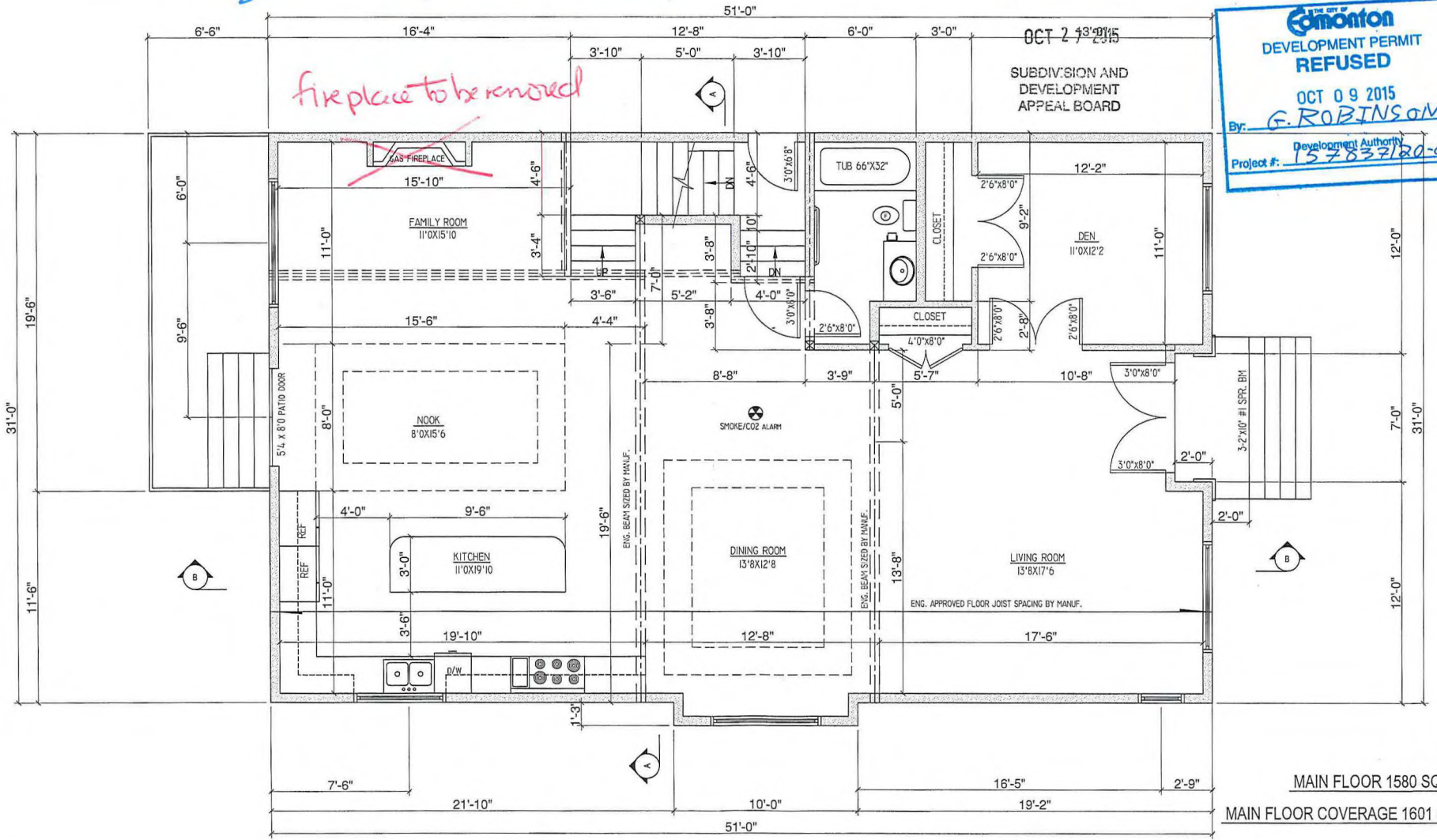
K. King
S.D.A.B. Officer

fireplace to be removed.

RECEIVED

OCT 21 2015
SUBDIVISION AND DEVELOPMENT APPEAL BOARD

THE CITY OF
Edmonton
DEVELOPMENT PERMIT
REFUSED
OCT 09 2015
By: *G. ROBINSON*
Development Authority
Project #: 157837120-014



MAIN FLOOR 1580 SQ.FT.
MAIN FLOOR COVERAGE 1601 SQ.FT.

SyView Designs & Drafting Ltd.
7430-182 STREET, NW EDMONTON, AB T5T 2G7 780 436-8380 sdu.syview@gmail.com

CLIENT:

MODEL: TWO STOREY
FLOOR AREA: 3063 SQ.FT.

ADDRESS: 11542-75 Ave
LOT: 10 BLOCK: 3 PLAN: 1275 H.W.

DRAWING: MAIN FLOOR
DATE: Aug 19, 2015

DRAWN BY:
DESIGN BY:

SCALE: 3/16"=1' 0
SHEET:

Appl'n No. 157837120-014 Date 01/29/2016.

PLANS-APPROVED BY SUBDIVISION
AND DEVELOPMENT APPEAL BOARD

K. Chivarsky
S.D.A.B. Officer

allows project up to 0.1 metres.

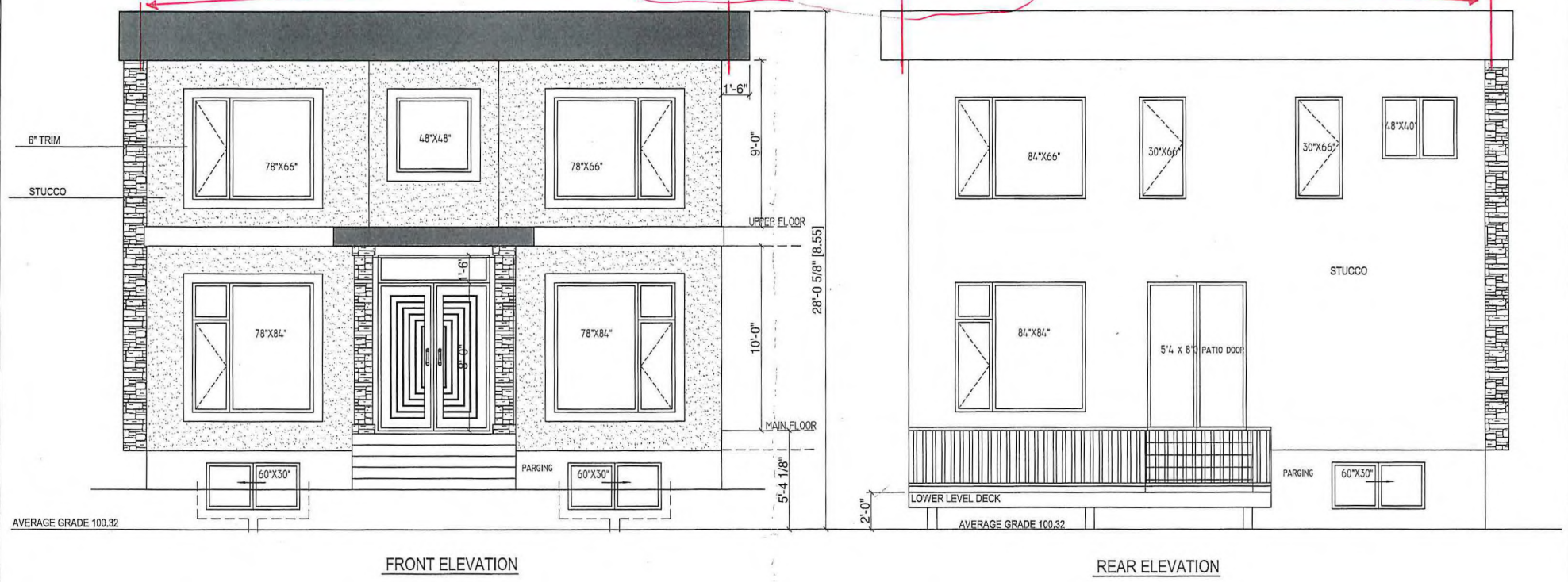
RECEIVED

OCT 27 2015

SUBDIVISION AND
DEVELOPMENT
APPEAL BOARD

City of Edmonton
DEVELOPMENT PERMIT
REFUSED
OCT 09 2015
By: G. ROBINSON
Development Authority
Project #: 157837120-014

Note: Eaves reduced to 4" *of Jan. 29, 2016*



FRONT ELEVATION

REAR ELEVATION

SyView Designs & Drafting Ltd.
7430-182 STREET, NW 780 436-8380
EDMONTON, AB T5T 2G7 sdu.syview@gmail.com

CLIENT:

MODEL: TWO STOREY
FLOOR AREA: 3063 SQ.FT.

ADDRESS: 11542-75 Ave
LOT: 10 BLOCK: 3 PLAN: 1275 H.W.

DRAWING: FRONT & REAR ELEVATION
DATE: Aug 19, 2015

DRAWN BY:
DESIGN BY:

SCALE: 3/16"=1'0"
SHEET:

Appl'n No.

Date

157837/20-014 01/29/2016

PLANS-APPROVED BY SUBDIVISION AND DEVELOPMENT APPEAL BOARD

[Signature]

S.D.A.B. Officer

eaves to project up to @.1 metres.

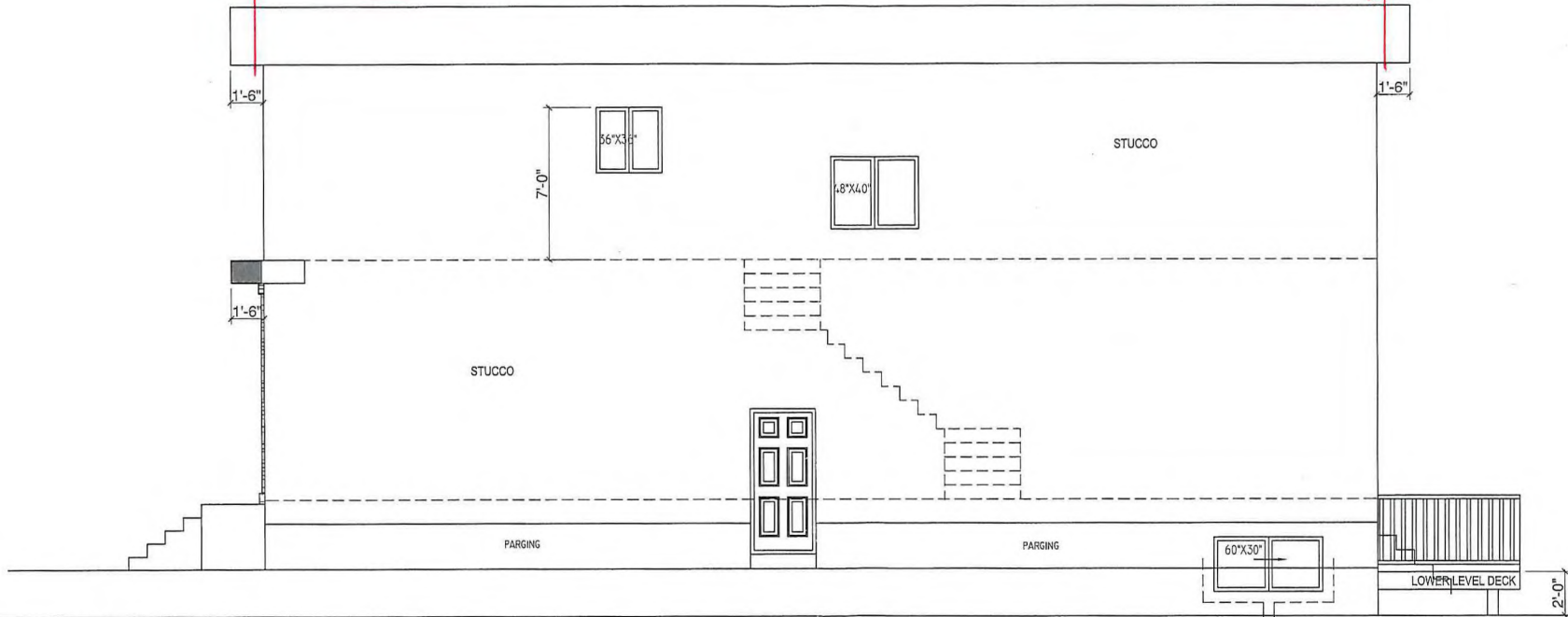
Note: Eaves reduced to 4" Jan. 29, 2016

RECEIVED

OCT 27 2015

SUBDIVISION AND DEVELOPMENT APPEAL BOARD

City of Edmonton
 DEVELOPMENT PERMIT
REFUSED
 OCT 09 2015
 By: G. ROBINSON
 Development Authority
 Project #: 157837/20-014



RIGHT ELEVATION



SyView Designs & Drafting Ltd.
 7430-182 STREET, NW 780 436-8380
 EDMONTON, AB T5T 2G7 sdu.syview@gmail.com

CLIENT: _____

MODEL: TWO STOREY
 FLOOR AREA: 3063 SQ.FT.

ADDRESS: 11542-75 Ave
 LOT: 10 BLOCK: 3 PLAN: 1275 H.W.

DRAWING: RIGHT ELEVATION
 DATE: Aug 19, 2015

DRAWN BY: _____
 DESIGN BY: _____

SCALE: 3/16"=1'0"
 SHEET: _____

Plan No. 157837/20-014 Date 01/29/2016

PLANS-APPROVED BY SUBDIVISION
AND DEVELOPMENT APPEAL BOARD

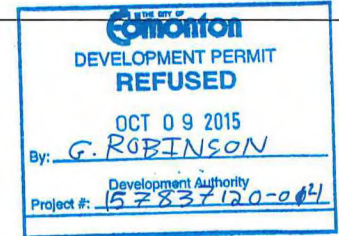
K. Chiriac
S.D.A.B. Officer

eaves to project up to 0.1 metres.

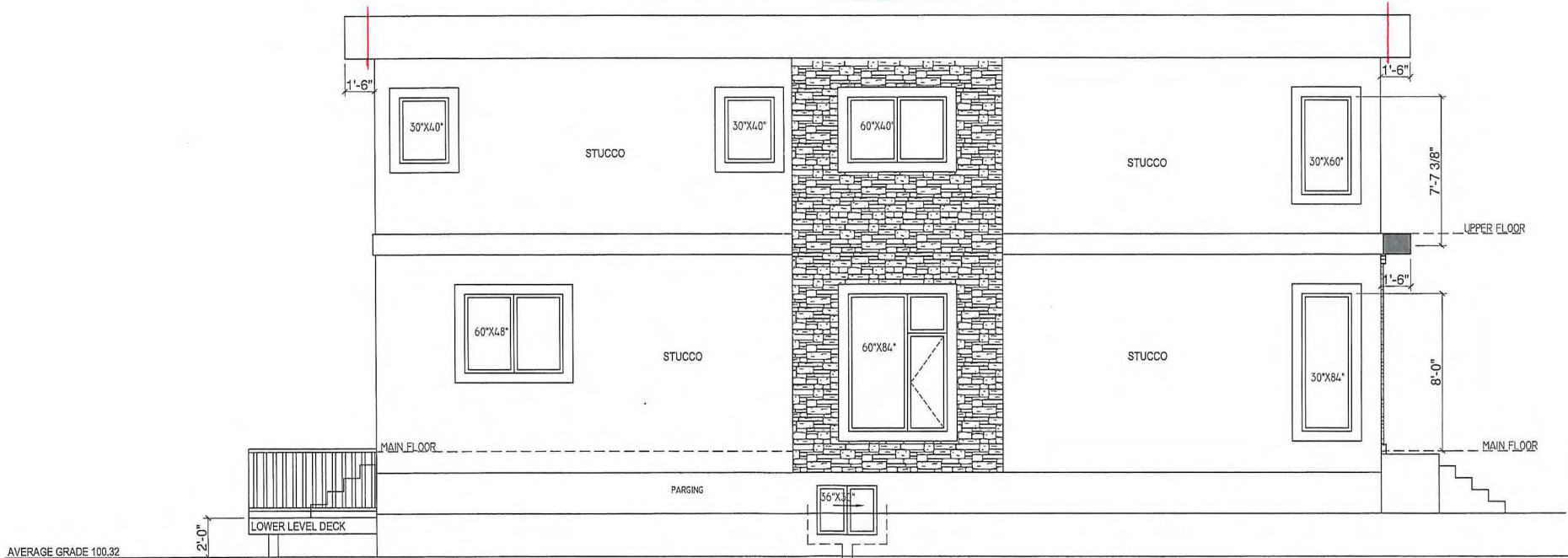
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OCT 27 2015

SUBDIVISION AND
DEVELOPMENT
APPEAL BOARD



Note: Eaves reduced by 4" of Jan. 29, 2016



LEFT ELEVATION



SyView Designs & Drafting Ltd.
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EDMONTON, AB T5T 2G7 sdu.syview@gmail.com

CLIENT:

MODEL: TWO STOREY
FLOOR AREA: 3063 SQ.FT.

ADDRESS: 11542-75 Ave
LOT: 10 BLOCK: 3 PLAN: 1275 H.W.

DRAWING: LEFT ELEVATION
DATE: Aug 19, 2015

DRAWN BY:
DESIGN BY:

SCALE: 3/16"=1'0"
SHEET:

Appl'n No.

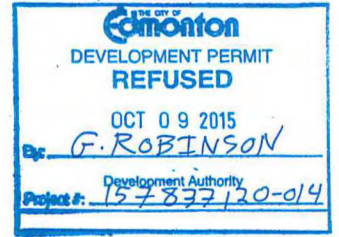
Date

157837120-014 01/29/2016

PLANS-APPROVED BY SUBDIVISION AND DEVELOPMENT APPEAL BOARD

[Signature]
S.D.A.B. Officer

leaves to project up to 0.1 metres



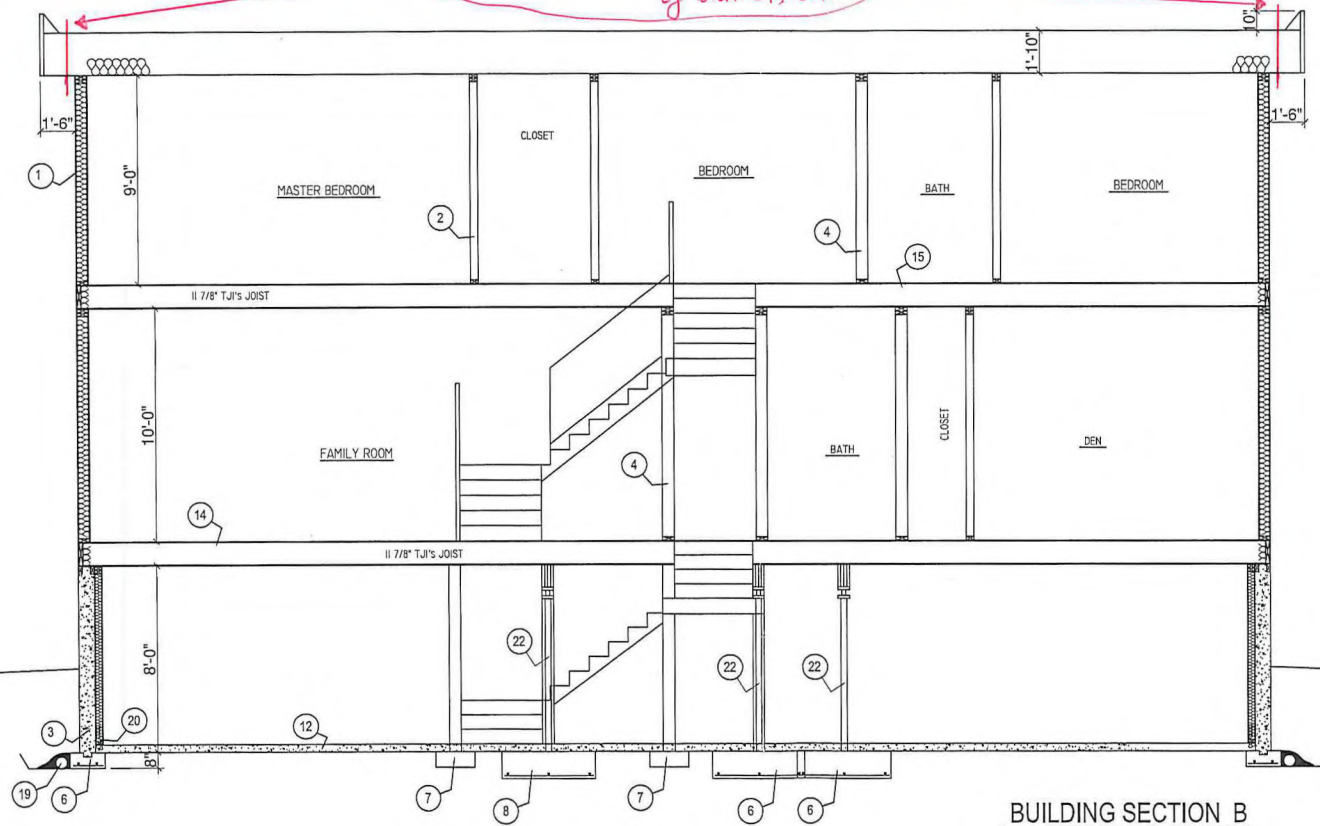
Note: eaves reduced by 4" EJ Jan. 29, 2016

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OCT 27 2015

SUBDIVISION AND DEVELOPMENT APPEAL BOARD

AVERAGE GRADE 100.32



BUILDING SECTION B



SyView Designs & Drafting Ltd.

7430-182 STREET, NW 780 436-8380
EDMONTON, AB T5T 2G7 sdu.syview@gmail.com

CLIENT:

MODEL: TWO STOREY
FLOOR AREA: 3063 SQ.FT.

ADDRESS: 11542-75 Ave
LOT: 10 BLOCK: 3 PLAN: 1275 H.W.

DRAWING: SECTION
DATE: Aug 19, 2015

DRAWN BY:
DESIGN BY:

SCALE: 3/16"=1'0
SHEET:

Appl'n No.

157837120

Date

01/29/2016

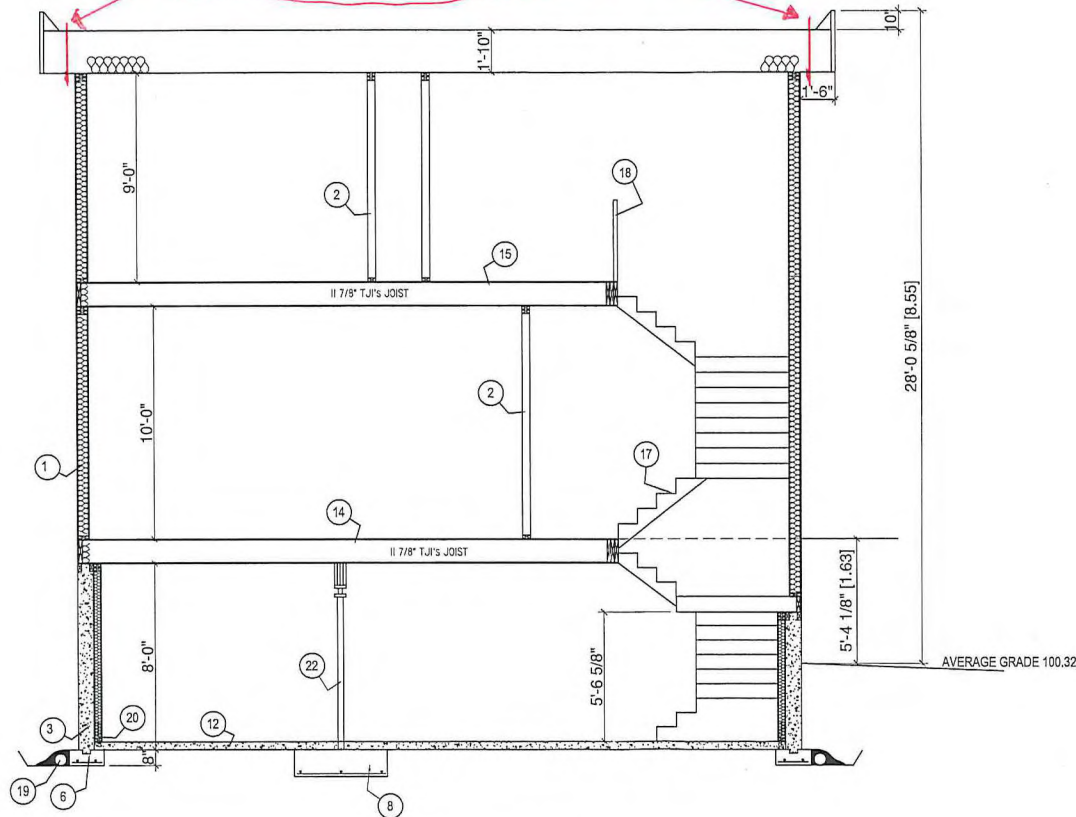
PLANS-APPROVED BY SUBDIVISION AND DEVELOPMENT APPEAL BOARD

[Signature]

S.D.A.B. Officer

eaves to project up to 0.1 metres.

note: Eaves reduced by 4" of Jan. 29, 2016.



BUILDING SECTION A

DEVELOPMENT PERMIT

REFUSED

 OCT 09 2015

 By: F. ROBINSON

 Development Authority

 Project #: 157 837 120-014

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OCT 27 2015

SUBDIVISION AND DEVELOPMENT APPEAL BOARD



SyView Designs & Drafting Ltd.

7430-182 STREET, NW 780 436-8380
EDMONTON, AB T5T 2G7 sdu.syview@gmail.com

CLIENT:

MODEL: TWO STOREY
 ADDRESS: 11542-75 Ave
 FLOOR AREA: 3063 SQ.FT.
 LOT: 10
 BLOCK: 3
 PLAN: 1275 H.W.

DRAWING: SECTION
 DATE: Aug 19, 2015

DRAWN BY:
DESIGN BY:

SCALE: 3/16"=1' 0
SHEET: