



**Subdivision and
Development Appeal Board**

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DATE: January 30, 2015
APPLICATION NO: 161116987-001;
LDA14-0435
FILE NO.: SDAB-S-15-001

NOTICE OF DECISION OF THE SUBDIVISION AND DEVELOPMENT APPEAL BOARD

This appeal dated December 12, 2014, from the decision of the Subdivision Authority for permission to:

Create one (1) additional Single Detached Residential Lot

on Lot 8, Block 111, Plan 2803 AF, located at 10225 – 137 Street NW, was heard by the Subdivision and Development Appeal Board at its hearing held on January 15, 2015. The decision of the Board was as follows:

SUMMARY OF HEARING:

At the outset of the appeal hearing, the Presiding Officer confirmed with the parties in attendance that there was no opposition to the composition of the panel.

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

The Board heard an appeal of the decision of the Subdivision Authority to create one (1) additional Single Detached Residential Lot, located at 10225 – 137 Street NW. The subject site is zoned RF1 Single Detached Residential Zone and is within the Mature Neighbourhood Overlay. The proposed subdivision was refused because the proposed subdivision would not comply with Section 654 of the *Municipal Government Act*, the proposed subdivision does not comply with the minimum Site area and minimum Site depth requirements for the RF1 Single Detached Residential Zone, and it is the position of the Subdivision Authority that the proposed subdivision does not comply with the spirit and intent of the Mature Neighbourhood Overlay. Any proposed development would not be sensitive in scale to the existing developments and would subsequently impact the existing streetscape.

SUMMARY OF HEARING (CONTINUED):

The Board notes that one letter of opposition was received from an affected property owner, a copy of which is on file.

Prior to the hearing a memorandum from Transportation Services was provided to the Board. The memorandum indicated that Transportation Services supported the inclusion of a condition requiring dedication of a sliver of land for the future Valley Line Light Rail Transit in the event that the subdivision application was approved.

The Board heard from Ms. Gwendolyn Stewart-Palmer, Legal Counsel for the Applicant, Hagen Surveys and the property owner, Mr. Conrad Langier who was also in attendance. Ms. Stewart-Palmer provided a detailed written submission, marked Exhibit 'A'. Ms. Stewart-Palmer referenced her written submission in detail and provided the following information:

1. The current site is an irregularly shaped lot that faces Stony Plain Road. There is an existing lane at the south end of the subject lot.
2. She referenced plans of the proposed building siting for each new lot which also included potential plans showing an attached garage and alternate plans showing a detached garage. Although these plans are just in the contemplation stage, any future development could occur within the building pockets without variance.
3. Maps were referenced to demonstrate that there are other irregular shaped lots in the area with similar Site areas and Site depths.
4. She referenced Section 680 of the *Municipal Government Act* to support her argument that the proposed subdivision is for a Permitted Use in the RF1 Single Detached Residential Zone and supports densification in a mature neighbourhood.
5. She referenced the *Subdivision and Development Regulation*, Alta. Reg. 4312002, to support her argument that the proposed subdivision complies with the relevant considerations set out in Section 7. She reiterated that these are all matters that the Board must regard.
6. She referenced excerpts of the Municipal Development Plan (The Way We Grow) contained in Tab 6 of her written submission and stated that the Municipal Development Plan is a Statutory Plan that the Board must consider, pursuant to Section 680(2)(a.1) of the *Municipal Government Act*. She specifically referenced Policy 3.5.1 which encourages increased densification.
7. She referenced excerpts of the Mature Neighbourhood Overlay and stated that these are development regulations that should not be considered for a subdivision application.

SUMMARY OF HEARING (CONTINUED):

8. It was her opinion that the proposed subdivision will not negatively impact any of the neighbours and the Board has a discretionary power to vary the lot size requirements.
9. She referenced the City Policy C551 “Residential Infill in Mature Neighbourhoods” contained at Tab 10 of her written submission that supports increased densification in mature neighbourhoods.
10. She referenced several previous subdivision appeals, contained at Tabs 11, 12 and 13 of her written submission, that were approved by the Board with variances granted in the minimum required lot size. Several of these subdivision approvals are located in close proximity to the subject site and although the cases are not binding on the Board, they may be persuasive.
11. She summarized the subdivision requirements in this case and submitted that the proposed subdivision meets all of those requirements, and the Board should exercise its discretion to grant the subdivision.
12. She referenced the letter of opposition received from an affected property owner and noted that the concerns addressed were relative to the Carruthers Caveat. The Carruthers Caveat states that not more than one dwelling house can be erected on one lot. She noted that the proposed subdivision is compliant with this requirement, but noted that the Subdivision and Development Appeal Board cannot enforce caveats.

Ms. Stewart-Palmer and Mr. Langier provided the following information in response to questions from the Board:

1. The provision of land for the LRT right-of-way was not considered when the Concept Plan was developed.
2. It was her opinion that it would be unfair to dedicate this land at this time because the City has not finalized plans for the LRT.
3. Most of the lots in this area are 50 feet wide. It does appear that the lots to the east are narrower, but the specific width could not be confirmed.
4. The design plans contained in Tab 2 of her written submission do not require variances. Both of the plans provide four feet between the proposed detached Garages and the rear property line.
5. She could not confirm whether or not the proposed lots would be the smallest in the neighbourhood.

SUMMARY OF HEARING (CONTINUED):

The Board then heard from Mr. Harrison, the owner of a property located across the street from subject site. He indicated that he fully supports the proposed subdivision.

In rebuttal, Ms. Stewart-Palmer confirmed that the property owner, Mr. Langier, met with Mr. David Percy, President of the Old Glenora Conservation Association on December 6, 2014, and was advised that the Association did not oppose the proposed subdivision application.

He also met with Ms. Dianne Thomas, President of the Glenora Community League and Mr. Mark Nicholl, Vice President, on December 9, 2014, and was advised that the Community League did not oppose the subdivision application.

DECISION:

that the appeal be ALLOWED and the SUBDIVISION GRANTED and the deficiency of 25.06 square metres in the minimum Site area, the deficiency of 5.06 metres in the minimum (east) Site depth and the deficiency of 10.73 metres in the minimum (west) Site depth for Lot 18 be permitted; and the deficiency of 25.06 square metres in the minimum Site area, the deficiency of 0.47 metres in the minimum (east) Site depth and the deficiency of 5.06 metres in the minimum (west) Site depth for Lot 19 be permitted.

REASONS FOR DECISION:

The Board finds the following:

1. Section 680(2)(a.1) of the *Municipal Government Act* states that the Board must have regard to any statutory plan. In this regard, the Board must have regard to the Municipal Development Plan (The Way We Grow), specifically Policy 3.5.1 that encourages densification in mature neighbourhoods.
2. Section 680(2)(b) of the *Municipal Government Act* states that a subdivision must conform with the uses of land referred to in a land use bylaw. In this regard, Section 110.2(4) of the Edmonton Zoning Bylaw lists Single Detached Housing as a Permitted Use.
3. The Subdivision Authority did not cite any concerns regarding the *Subdivision and Development Regulation* and upon review, the Board finds that the proposed subdivision complies with this regulation.

REASONS FOR DECISION (CONTINUED):

4. The Board therefore concludes that the proposed subdivision complies with all of the applicable statutory plans, the land use bylaw and the *Subdivision and Development Regulation*.
5. The Subdivision Authority did not attend the hearing and did not provide any concrete evidence to support the reason for refusal that the proposed subdivision would unduly interfere with the amenities of the neighbourhood or materially interfere with or affect the use, enjoyment or value of the neighbouring parcels of land.
6. Although the proposed subdivision will create two sites that are deficient in Site area and Site depth, the Board notes that there are other similar sized lots of an atypical shape within the 60 metre notification radius.
7. The Appellant provided plans in Tab 2 of Exhibit 'A' that illustrate the ability to develop, without variances, Single Detached Houses on both of the proposed lots.
8. The Board notes the support of a neighbouring property owner who resides within the 60-metre notification radius who attended the hearing.
9. The Board also notes the verbal support of the Glenora Community League and the Old Glenora Conservation Association.
10. The Board notes that the one letter of objection received cited concerns regarding the Carruthers Caveat which is outside the purview of the Board.
11. The Board finds that the Mature Neighbourhood Overlay contains development regulations and that any concerns regarding the scale of future development on the proposed lots must be addressed through the development permit application process and these concerns are not appropriate considerations for a subdivision application.
12. Transportation Services has recommended that a condition be imposed related to the dedication of land for future LRT use. Section 662 of the *Municipal Government Act* gives the Subdivision Authority the power to require the owner of a parcel of land that is the subject of a proposed subdivision to provide part of that parcel for the purpose of public utilities, such as LRT use. The Subdivision Authority did not appear at the hearing to give the Board any guidance on whether it was appropriate to require the dedication recommended by Transportation Services even though the proposed LRT line is unlikely to be built for many years, if ever. The Board declines to exercise its discretion to require the dedication since it was not persuaded that the imposition of this condition is appropriate at this time.

REASONS FOR DECISION (CONTINUED):

13. Pursuant to Section 654(2) of the *Municipal Government Act*, the Board concludes that the proposed subdivision would not unduly interfere with the amenities of the neighbourhood nor materially interfere with or affect the use, enjoyment or value of neighbouring parcels of land.

IMPORTANT INFORMATION FOR APPLICANT/APPELLANT

1. This 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.

Ms. D. Poon Phillips, Presiding Officer
SUBDIVISION AND DEVELOPMENT
APPEAL BOARD

cc:

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