EDMONTON
**TRIBUNALS**
*Subdivision & Development Appeal Board*

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# SDAB-D-18-008
# Application No. 111691281-003

An appeal by G. Makarewicz VS M. Ewasiw to operate a Major Home Based Business (Administration Office and Material Fabrication for Heating and Ventilation - K.V.M. Ventilation Ltd., located at 13032 – 78 Street NW, was **WITHDRAWN**.

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Date: February 2, 2018
Project Number: 256822775-001
File Number: SDAB-D-18-009

## Notice of Decision

[1] On January 18, 2018, the Subdivision and Development Appeal Board (the "Board") heard an appeal that was filed on **December 18, 2017**. The appeal concerned the decision of the Development Authority, issued on December 1, 2017, to approve the following development:

> **Construct a Single Detached House with Fireplace, Basement Development (Not to be used as an additional Dwelling), rear uncovered deck (4.01 metres by 3.96 metres), rear covered deck (4.52 metres by 3.05 metres), 2nd floor balcony (1.52 metres by 4.52 metres) and Rooftop Terrace**

[2] The Development Permit states that the subject property is on Plan 2630KS Blk 4 Lot 30, located at 14023 - 91A Avenue NW, within the RF1 Single Detached Residential Zone. The Mature Neighbourhood Overlay applies to the subject property.

[3] The following documents were received prior to the hearing and form part of the record:

- Copy of the Development Permit application with attachments, proposed plans, and the approved Development Permit;
- The Development Officer's written submissions;
- The Appellant's written submissions; and
- The Respondent's written submissions.

[4] The following exhibits were presented during the hearing and form part of the record:

- Exhibit A – Videos from Appellant (on memory stick)
- Exhibit B – Summary of Appellant's Submission
- Exhibit C – Map of Mature Trees in Neighbourhood submitted by the Respondent
- Exhibit D – Photograph submitted by the Respondent
- Exhibit E – Photographs submitted by the Respondent
- Exhibit F – Photographs submitted by the Respondent
- Exhibit G – Tree report submitted by the Respondent

- Exhibit H – Photograph submitted by the Appellant
- Exhibit I – Email submitted by the Appellant
- Exhibit J – Photograph submitted by the Appellant

**Preliminary Matters**

[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 Presiding Officer outlined how the hearing would be conducted, including the order of appearance of parties, and no opposition was noted.

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

**Summary of Hearing**

*i) Position of Mr. Wakefield, Legal Counsel for the Appellants, Ms. Ryan and Mr. York*

Mr. Wakefield

[8] Mr. Wakefield indicated Page 15 of the Agenda should state that a Single Detached House is a Permitted Use in the RF1 Single Detached Residential Zone.

[9] Ms. Ryan and Mr. York are the neighbours immediately north of the subject Site.

[10] Mr. Wakefield referred the Board to his written submissions.

[11] He referred to a map showing the title lot of Ms. Ryan and Mr. York's property (TAB 22).

[12] He referred to the development permit application for the proposed development, dated July 7, 2017 (TAB 1).

[13] He referred to a development permit application that references Lot 30B, which does not exist as it is not currently registered (TAB 2).

[14] He referred to a Land Title Search for Lot 30 showing that the lot is not registered to the numbered company but in the names of the two Respondents (TAB 3).

[15] He referred to proposed plans and drawings that refer to Lot 30 and Lot 30B (TAB 4).

[16] He referred to an email he received from a Land Titles Agent dated January 11, 2018 indicating that there is an existing land title for Lot 30 but not for Lots 30A or 30B (TAB 21). He stated that there is a subdivision application for Lot 30B but it is not registered.

[17] He referred to Section 13.2 of the *Edmonton Zoning Bylaw* that states:

> 1. The applicant shall submit the appropriate application form fully and accurately completed in accordance with the following requirements.
>
>  a. the municipal address of land and buildings presently occupying the Site, if any;
>
>  b. a legal description of the land on which the proposed development is to occur, by lot, block, subdivision and registered plan numbers;
>
>  c. the applicant's name, address, interest in the land, and confirmation of the owner's authorization to apply for the Development Permit;
>
>  d. a detailed Site plan, showing the location of the proposed development relative to the boundaries of the Site;
>
>  e. description of the work to be performed.

[18] He referred to a Memorandum from Sustainable Development that refers to the proposed development outlining development permit conditions (TAB 5).

[19] In July 2017, an application was made for Lot 30 but was not approved because front access is no longer permitted. The developer made a new application on November 30, 2017 with a legal description that does not exist. In his opinion, there is not a valid development permit until the subdivision plan is registered.

Ms. Ryan

[20] Ms. Ryan stated that they have lived in the area since April 2005 with their four children.

[21] She requested information from the City regarding the adjacent property to be subdivided.

[22] She referred to the document that she had sent to the City regarding the subdivision that outlined her concerns regarding the survey for the subject Site. The document referenced 50 to 60 large evergreen trees. She would like an accurate survey done to determine the actual property line and the location of the trees (TAB 7).

[23] The trees along the property line were jointly maintained and they provided landscaping to the driveway of the previous owners' property.

[24] She referred to photographs of their property, the subject Site, and an aerial photograph showing the mature trees along the joining property line (TAB 8).

[25] The neighbour on the other side of the subject Site provided their concerns regarding the proposed development (TAB 7).

[26] She stated that there are Bylaw provisions that vegetation on adjacent lots need to be considered.

[27] On October 20, 2017, workers were cutting down trees overhanging their back yard that were presumably on the adjacent property. She does not have a Real Property Report showing the location of the trees between the two properties. There is a fence between the two properties with trees on both sides of the fence.

[28] She referred to a photograph showing a person on a ladder cutting down trees on their property to which they did not consent.

[29] In November, the Respondents informed them that work taking place on the subject Site was damaging their fence. The Respondents indicated that they would be willing to replace their fence. The builder agreed to build a new fence not the property owner.

[30] She was not certain if the company would pay for the full fence and does not want a chain link fence. She was informed that the fence was old and needed repair. However, she feels the fence was damaged by the construction work.

[31] She referred to a photograph taken November 6, 2017 showing the fence line between the two properties and a large amount of vegetation that was removed. However, she could not confirm if the fence line is more on her property or the adjacent property.

[32] The demolition permit issued was for the building and not the vegetation on the property. She had been assured that there would be no risk to the trees on her property. There is a provision in the *Edmonton Zoning Bylaw* for the removal of vegetation on a property. She was told that the proposed development was at the demolition stage and a permit was not required for tree removal. The Respondent informed her that the fence is considered to be the property line. She has not seen a survey showing where the property line is.

[33] She referred to an email asking the Respondent for the Real Property Report and the plans which she did not receive. They were unable agree to a place or date to meet to discuss the proposed development (TAB 9).

[34] She was informed that the property was owned by Urban Core Luxury Homes Inc. but she believes that is not correct.

[35] On December 8, 2017, she spoke to the Development Officer about the initial development permit application, who indicated that they have been working with the Respondents for some time as there were several issues with the proposed development. She received an email on December 9, 2017 asking for a meeting with the Respondents but she was not able to attend the meeting.

[36] The Respondents told Ms. Ryan that the seven trees were on the subject Site. They stated that the first four trees on the site could be preserved but digging on the property would damage the other three trees. She sent an email to the Respondent indicating that she has an issue with any trees being damaged.

[37] She referred to a video that her husband took of the trees that were being cut down after the appeal was filed (Exhibit A).

[38] She indicated to the Respondent through an email that she would be in contact with the Development Officer to have the plans forwarded to her. The Respondent informed her that she needed to review the plans personally and they could not be sent to her.

[39] She was able to review the plans which did not show the impact of the infill development on either Lot 30 or the adjacent property.

[40] She referred to the revised drawing that indicates there is one deciduous tree. However, there are several trees on the property which should be outlined on the survey (TAB 4).

[41] With an infill development, trees should be preserved in a mature neighbourhood. That is what makes a property mature.

[42] She referred to TAB 8 showing a large deciduous tree and TAB 18 shows the tree that has since been removed.

[43] The initial plans show that the garage was going to abut their property line, but that has been changed.

[44] The Lot Grading Plan shows the house and the garage that abuts their property line (TAB 4, Page 7). The location of the garage has been moved to the other side of the property (TAB 4, Page 5). In her opinion, all the trees at the back of the building did not need to be removed.

[45] In her opinion, revising the proposed plans with the removal of the trees will have a major negative impact on their property.

[46] She referred to a photograph from 2006 showing trees on Lot 30 that are overhanging the fence into her back yard and the following photograph showing that the trees had been removed (TAB 18, Page 12 and 13).

[47] She wanted to review the survey and plans showing the location of the trees prior to the removal of any foliage but she was not provided with that information. The Respondent indicated that they would like to show her around the property rather than meet at an office.

[48] She referred to the approved development permit and read the rights to the appeal and that the permit is not valid until the appeal period has expired (TAB 1). She referred to a letter from the Subdivision and Development Appeal Board that was also sent to the Respondent indicating that the permit is suspended until the final outcome of the appeal (TAB 6). The Respondent continued to do work at the subject Site.

[49] She referred to a Corporate Registration System Search showing it was the numbered company that owned Lot 30 (TAB 6, Page 3).

[50] Ms. Ryan and Mr. Wakefield referred to and read Section 17.1(1)(a) and (b) of the *Edmonton Zoning Bylaw* (TAB 10).

[51] She contacted an arborist and received a report dated January 12, 2018 and photographs outlining the condition of the trees and how they would be impacted by the proposed development (TAB 19).

[52] She contacted Bylaw Enforcement regarding the continuation of the construction on the site and the removal of the trees. She was told to contact the City Police.

[53] Once the appeal was filed, she was able to access information from the SDAB on-line system to locate the additional information she had been requesting.

[54] With regard to the Setback, she stated that the development will be set further ahead from their house. She is concerned that the Setback was calculated incorrectly and the foundation was poured incorrectly (TAB 4).

[55] She referred to the Lot Grading Plan and stated that she did not receive any information regarding the plan until she was able to access it on the SDAB online system (TAB 4, Page 7). The plans show how much further forward the proposed house will be from their house. The plan shows the trees as they are on the sidewalk but this is incorrect. In her opinion, the lot line is also incorrect.

[56] The proposed house will have windows that face their property and will overlook into their living room, the master bathroom and the master bedroom. In her opinion, the windows on the second storey will overlook her patio and back yard. This will impact privacy in her yard and house.

Mr. Wakefield

[57] Mr. Wakefield stated that TABs 1 to 5 deal with the absence of title for the subject Site. TAB 3 shows the Land Title Certificate and that the registered owner is not the numbered company. TAB 3, Page 3 shows a subdivision plan for the lots.

[58] He referred to the blockface plan showing Lot 30B as the subject Site, which does not exist (TAB 4, Page 1). The Plan shows the trees on the city boulevard that were to be preserved (TAB 4, Page 2). TAB 4, Page 3 and 4, refer to the design of the house and the landscaping requirements.

[59] Other than the trees on the boulevard that were to be preserved, the plans do not indicate other vegetation on either Lot 30 or 31.

[60] He referred to Sections 11.1, 11.2(1)(f), 11.3, 11.4, and 11.4(1)(c) of the *Edmonton Zoning Bylaw* which outline the Development Officer's duties and which he thought were disregarded in several instances. (TAB 10).

[61] He stated that the proposed development does not comply with all the regulations of the Bylaw and the Mature Neighbourhood Overlay which makes the proposed Development a Discretionary Use and should only be approved if all of the regulations are met including community consultations.

[62] He referred to Section 17 and stated that the developer trespassed on Ms. Ryan and Mr. York's property and they did not wait until the appeal period was over to proceed with construction on the property (TAB 10).

[63] He referred to Section 55 of the *Edmonton Zoning Bylaw*. The City sets out goals for Landscaping and the photographs submitted show that the trees have been impacted. Section 55.2(1)(c) states, Landscaping Requirements for Low Density Residential Developments:

> ….all applications for a Development Permit listed in subsection 55.2(1) shall include a Site plan that identifies:
>
> i. the number, type and approximate size of existing trees and shrubs;
>
> ii. trees and shrubs proposed for preservation;
>
> iii. the number, type and approximate size of proposed trees and shrubs; and
>
> iv. proposed ground cover.

[64] Mr. Wakefield stated that a Landscaping Plan has not been provided and no evidence submitted indicating that the Development Officer varied the landscaping.

[65] In his opinion, if there was a plan for trees, many of the existing trees would not have to have been removed. The removal of these trees will have a negative impact on the Appellant's property.

[66] The Development Officer should have contacted the City Forestry Department with regard to the mature trees on the subject Site.

[67] He agreed that there is no appeal to a Permitted Use if the proposed development complies with the regulations in the *Edmonton Zoning Bylaw*.

[68] He referred to the location of the garage and referenced Section 687 of the *Municipal Government Act* related to the Board's Authority (TAB 12).

[69] He referred to a previous Board Decision (File No. DAB/93-462) where landscaping was a large part of that proposed development. In this Decision, the Board conditioned that the approved permit required new mature trees to be planted (TAB 14).

[70] He referred to the Mature Neighbourhood Overlay in Section 814 of the *Edmonton Zoning Bylaw* which states:

> The purpose of this Overlay is to ensure that new low density development in Edmonton's mature residential neighbourhoods is sensitive in scale to existing development, maintains the traditional character and pedestrian-friendly design of the streetscape, ensures privacy and sunlight penetration on adjacent properties and provides opportunity for discussion between applicants and neighbouring affected parties when a development proposes to vary the Overlay regulations.

[71] In his opinion, the Development Officer does not have the discretion to disregard that requirement.

[72] He referred to Section 814.3(4) which states where a structure is two or more Storeys and an interior Side Setback is less than 2.0 metres, the applicant shall provide information regarding the location of windows and Amenity Areas on Abutting properties, and the windows of the proposed development shall be located to minimize overlook into Abutting properties or the development shall incorporate design techniques such as, but not limited to, incorporating vegetative Privacy Screening, translucent window treatment or raised windows to minimize overlook into Abutting properties, to the satisfaction of the Development Officer.

[73] There is no evidence that any information was given about the location of the windows of the proposed development. In his opinion, with the vegetation removed, the windows will negatively impact the Appellants' property.

[74] The Respondent has not contacted the affected parties or the Community League.

[75] He referred to the Court of Appeal Case *Thomas* v *Edmonton (City)*, 2016 ABCA 57. The *Thomas* decision and the appeal on the subject Site are the same (TAB 15). Paragraph 25 outlines Section 814.1 General Purpose. Paragraph 26 outlines that the Alberta Legislature has conferred statutory variance powers to the Board and the Board does not have the jurisdiction to waive Community Consultation. This case was referred back to the Board.

[76] He referred to the Court of Appeal decision, *Garneau Community League* v *Edmonton (City)*, 2017 ABCA 374. Here the Court found that the Side Setbacks were incorrect and that the Development Officer failed to follow the direction of City Council and the Board does not have the authority to waive this (TAB 16, Paragraph 22 and 23).

[77] In *Bell* v *Edmonton Subdivision and Development Appeal Board*, 2017 ABCA 354, the Court of Appeal found that privacy is an issue. The removal of the trees has negatively affected the privacy on the Appellant's property. TAB 8 of his submission shows the mature trees. The Board needs to look at the Community Consultation and the Mature Neighbourhood Overlay. In his opinion, the appeal should be allowed and the Respondent should replace the trees that were removed.

[78] Upon questioning from the Board, Mr. Wakefield confirmed that under Section 687(3), a Permitted development must be fully compliant for the appeal to fail. He believes the proposed development requires a variance. Those required variances are summarized in Exhibit B and supported by the evidence previously submitted.

[79] The Board directed the parties to the most recent version of the Mature Neighbourhood Overlay.

[80] Mr. Wakefield does not believe Section 814.3(8) was properly considered by the developer or Development Officer.

[81] Even if the Rooftop Terrace fully complies with the *Edmonton Zoning Bylaw*, Mr. Wakefield does not believe it complies with privacy requirements as set out in the Mature Neighbourhood Overlay. In *Bell* v *City of Edmonton Subdivision and Development Appeal Board and City of Edmonton*, 2017 ABCA 354, the Court of Appeal, in a Permission to Appeal only decision, stressed the importance of privacy.

*ii) Position of the Development Officer, Mr. Langille*

[82] The Development Officer stated that the subdivision has been approved and endorsed by the City. The only issue is that it is not registered. Thus, he could not approve a second house on the lot.

[83] Landscaping and fence disputes are civil issues. The Development Officer had suggested to the Appellant to call the police non-emergency line because they are not regulated under the *Edmonton Zoning Bylaw*.

[84] The protection of the boulevard tree is not part of Development Permit conditions. It would be dealt with under the curb crossing permit. Any damage to the tree would be dealt with under that permit and not this application.

[85] In considering the blockface measurements, he relied upon a registered Land Surveyor document. He is entitled to assume it to be accurate. Any discrepancies may be by virtue of the tools used.

[86] With regards to not providing plans, the City is prohibited in doing so by virtue of FOIP. The Appellant has a right to look at the exterior plans, but not floor plans. The opportunity was extended to the Appellant.

[87] Section 55.4 of the *Edmonton Zoning Bylaw* does not apply as this project is not any of the following: Multi-unit Project Development; Residential Related Use Class under Section 7.3(9); Commercial Use Class; Industrial Use Class; Basic Services Use Class; Community, Educational, Recreational Use Class; or Cultural Service Use Class.

[88] Mr. Langille does not feel there is a direct window conflict. There is a sufficient separation distance between the locations of windows. Section 814.3(8) speaks to reducing overlook, not eliminating it. The Applicant has done this in this case.

[89] On the back portion of the house, the windows are minimal and privacy screening is provided.

[90] The Rooftop Terrence does not require any variances. Noise disputes are regulated under a different bylaw.

[91] With regards to the General Purpose of the Mature Neighbourhood Overlay, all the provisions of the Overlay have been complied with. They have removed the existing front access. The neighbourhood has seen other new development.

[92] The proposed development is not an uncommon design and it is not out of character with neighbourhood or streetscape.

[93] The Appellant has not proven their case and the appeal should be dismissed.

[94] The Board asked the Development Officer to clarify how he calculated the setbacks. Amendments were made to the *Edmonton Zoning Bylaw* in September 2017 and setbacks are now calculated differently. Specifically, with regards to the front setback, he needs to only consider the setbacks on abutting lots and not the entire blockface. There are no variances required to the front, back or side setbacks.

*iii) Position of the Respondents, Mr. Gylander and Mr. Ahlskog*

[95] The Respondents plan to live in this home and their goal is be part of community. They respect the existing vegetation and this is part of why they love the community.

[96] They hired Pals Geomatics to properly stake the property. The only vegetation touched was on the Respondents' property.

[97] The Appellant had requested plans and real property reports many times. However, it does not show the location of any trees, so they would have no significance. They requested several times that the Appellant meet on site with them to review the pins and try to come up with solutions as neighbours.

[98] The deciduous tree on the front of the boulevard was removed by the city because it contained fungus.

[99] They had originally spent 6 months designing their plans to meet the regulations of the Mature Neighbourhood Overlay. This project consisted of an attached garage because the Overlay previously allowed it. A couple of months later, amendments were made that no longer allowed front attached garages and they were forced to change that plan.

[100] The property had a significant number of overgrown unhealthy trees. Prior to demolishing the home, they completed the removal of dangerous vegetation, around the end of October. They were very pleased to be able to keep several trees. They still have more vegetation than most on the block except for the Appellant who has similar amounts. They submitted a diagram of the blockface listing all trees, marked Exhibit C.

[101] They submitted Exhibit D to show that some of the trees lean over their property.

[102] The previous home had not been lived in for some time. The trees had grown onto the rooftop of the existing home and the root structure was causing problems for the foundation. Whether the development is approved or not, the trees would not be retained. They would be forced to remove roots on that part of the site.

[103] One tree leaned over more than the rest. They had an arborist assess the situation. All the trees on the northern lot line imposed risk and one was in particularly bad shape. They submitted the report, marked Exhibit G.

[104] On December 1, they were granted a Class A Development Permit. They saw the appeal period was 14 days. They waited until the 15th to start construction. However, leading up to December 15, they knew trees were an issue and had to be trimmed.

[105] Numerous emails were sent between the parties to try to arrange a meeting. On six separate occasions, the Appellants requested the plans and real property report. However, the plans are copyrighted and the real property report does not show the location of the trees.

[106] They know they can only trim trees on their property. The row of trees is still there post trimming as shown in Exhibit E. They trimmed the minimal amount to move forward. They will able to save some trees.

[107] On December 22 when they received notice of the appeal, they ceased construction. They allowed trades to remove forms. They tarped off the property and installed heaters to prevent damage to the foundation.

[108] The Appellant made arguments that they are developers only there to maximize profit. This is not case as they are going to be living in the community.

[109] The Appellant only expressed concerns regarding the trees and when they received the appeal documents earlier in the week, they were made aware of other concerns.

[110] They have tried to supply documents to prove that the home is properly placed. They supplied the surveyor's letter prepared for the hearing. The surveyor also agreed to come to speak to the Board, but they were not sure if this was allowed.

[111] They relied on the City interpretation on using the block face plan.

[112] The subject property is a pie-shaped lot that gets wider in the rear. It is in their best interests to position the house as far back as possible.

[113] They have spent thousands of dollars in added costs and it has been extremely stressful. They will be neighbours soon. They are still willing to meet, but can no longer hold up the building process. If the Board finds the development requires no variances, the house is properly positioned, and they have not trimmed outside their property, then they should be allowed to continue building their home.

[114] They do have a plan for replanting and, as indicated previously, they were able to save many of the trees. They only removed vegetation because of overgrowth. They plan on planting a row of aspens between the two houses.

[115] This process has taken several months and they did not try to push anything through.

[116] They submitted Exhibit F, pictures showing that there are no privacy concerns. There are no windows on the side of the Appellant's property facing the subject property. Their intention is having a private Rooftop Terrace, they do not want to see the neighbours or have the neighbours seeing them. The Rooftop Terrace is stepbacked appropriately.

[117] They confirmed the February 2017 survey was not part of their company and perhaps that company had been retained by the City.

[118] The trees were planted so long ago that the roots were growing into the foundation of the house on the property when they purchased it. The inspection report found the foundation was leaking. Those trees would have to be dealt with. If the previous house remained, machinery would have been needed to dig out roots, which may not have fully dealt with the situation. This would have been extremely difficult to do because of the close proximity of the house to the trees.

[119] They were asked to clarify why the application was for lot 30 B versus lot 30. When they originally purchased the lot, they were instructed to apply for a permit prior to subdivision, so that the subdivision could be processed at the same time as the Development Permit. This would save them a couple of months. The only thing they could not do was apply for a development permit for a second house. They relied on the City's representations.

[120] With regards to the location of the side windows, they were required to submit documents, showing the Appellant's windows, so the Development Officer could take that into account. They referred the Board to Exhibit F.

[121] With regard to Landscaping, they tried to keep as much vegetation as possible. They are even shaping the rear deck around a retained tree at the back. They also need to cut vegetation to allow for the penetration of sunlight for new vegetation to grow.

[122] The Respondents were asked to describe the siting of the proposed development. Their development will be in front of the Appellant's house. But the Appellant does have a portion of the development that juts out. The portion on the other adjacent side of the proposed development is significantly closer to the front property line. Their property is in between two neighbors. They are further back from the front property line than the adjacent house to the south but closer than the Appellant's home. The fronts of the houses are on a curve. The placement looks proportional to the eye.

[123] The row of trees on the Appellant's lot allows a breakup and goes almost to the boulevard.

*vi) Adjournment Request*

[124] Prior to the Rebuttal, the Appellant requested an adjournment to have time to review the documentation presented to the Board by the Respondents, which consists primarily of sets of photographs and a letter from an arborist. The Appellant cited the Principles of Natural Justice and procedural fairness to contend that a refusal would be prejudicial to the Appellant as not having the opportunity to review the documents so as to fully present their case. The Appellant has a right to be heard.

[125] The Respondents argued against an adjournment citing the additional costs added to their substantial investment in the property as well as carrying costs leading up to and during the hearing. They were granted a Class A Permit. They have a right to a timely decision and the avoidance of an unreasonable delay.

[126] The Board deliberated to determine how to balance the Appellant's rights against those of the Respondent's.

[127] Following deliberations, the Board proposed a 1-week adjournment, feeling that this would balance both party's rights after considering the extent of additional information submitted and the prejudice alleged by each party.

[128] The Appellant did not agree to a 1-week adjournment. They requested a 2-week adjournment which the Board denied. The Board deemed that a 2-week adjournment was unreasonable prejudice against the Respondents and that the Appellant would have adequate time for preparations within the time allowed as the additional evidence was primarily a set of photographs and one letter.

[129] The Appellant chose to proceed with the Rebuttal at this point but wanted to register their protest for doing so.

[130] In the Board's opinion the prejudice suffered by the Appellant was reasonable. They were offered a 1-week adjournment which they refused. The Board also felt that more than a 1-week adjournment would be undue prejudice for the Respondent.

[131] Also, the Board noted that the extra materials that were introduced by the Respondent consisted primarily of sets of photographs and one letter from an arborist which would not demand an extensive adjournment.

[132] Both the Appellant and the Respondent had submitted letters from arborists. The issues discussed by both the arborists are not relevant to the Board's determination under Section 685(3) of the *Municipal Government Act*. The Board placed minimal weight on either of them in considering the merits of this case.

*v) Rebuttal of the Appellant*

[133] Ms. Ryan stated that she would like a professional arborist to review the letter from the arborist submitted by the Respondent.

[134] She contacted Mr. Davies from Arbor-Pro Tree Consulting who stated in his report that the roots of a blue spruce tree will not affect a house foundation.

[135] She stated that she sent an email to the Board Office for further information but did not receive a response, marked Exhibit I.

[136] She was willing to meet with the Development Officer, Mr. Langille, but they could not agree to a time that worked for both of them.

[137] She spoke to Mr. Langille about the date of the Development Permit and the different letters that were sent to property owners. She wanted to ensure that the appeal was filed on time.

[138] She contacted the Respondents once she filed the appeal and they continued to proceed with construction.

[139] She was not aware that any new trees would be planted on the subject site or she would have discussed this with the Respondent.

[140] She does not believe any coniferous trees are remaining on the subject Site.

[141] She provided the Board with a streetscape photograph showing the evening view from their front window facing east from their property (Exhibit H).

[142] The lot adjacent to the subject Site has some trees remaining but they have not started developing on that lot.

[143] She raised concerns with the proposed development in November and she was assured that there would be no impact on her property. She then received an email on December 11, 2017 indicating there would not be an issue with the trees on the property.

[144] She provided the Board with a photograph looking straight onto the property from the front of the subject Site (Exhibit J).

[145] In her opinion, there are two conflicting surveys but they did not have the opportunity to review it.

[146] She believes she could sort out information and concerns with the developers if she had additional time.

[147] She is concerned that incorrect information was provided to the Development Officer.

[148] She stated that the footprint shown in TAB 4 does not represent her home.

[149] The Respondent did not speak to her about the trimming the trees which they are entitled to do. However, they chose to cut down the trees and damage trees with construction so they may not survive.

[150] The south side of her house does not have windows that face the subject Site. However, there is an extension on the house toward the back yard that has windows that face the subject site.

[151] The front windows on the proposed house will look directly into the front of their property from the second floor. The proposed plans do not show any frosting on the windows to mitigate the privacy issues. With the removal of the trees, there is more of a privacy impact.

[152] She was only aware of the setback and the cantilever facing their house at the hearing today. She is not aware of any window placement facing their house.

[153] The image shown in TAB 8 is not a true image.

[154] An arborist informed her that one tree that was not diseased, was cut down to 14 feet and that none of the trees on the property were in poor condition.

[155] With regard to Mr. Langille's submissions, Mr. Wakefield stated that he spoke to the Subdivision Authority and received an email from a Land Title Agent who indicated that there is no title. The subdivision on the lot is not registered.

[156] A decision was made on the proposed permit before the lot was registered which is different than what is listed on the Development Permit.

[157] He disagrees with Mr. Langille's comment that landscaping could be a civil issue as there are several sections in the Bylaw that deal with trees.

[158] The plans in TAB 4 do not show the trees that are on the subject Site. If they intended to plant additional trees on the property, that should be shown on the plans.

[159] The Board has a surveyor's report and the footprint of Ms. Ryan and Mr. York's house shows the frontage which is different.

[160] The Board needs to have regard for Section 55.7.1(a) of the *Edmonton Zoning Bylaw* (TAB 10).

> The Development Officer may require Landscaping in addition to that specified in Section 55 if:
>
> a. there is a likelihood that the proposed development will generate undesirable impacts on surrounding Sites and between Uses within the development, such as poor appearance, excessive noise, light, odours, traffic, litter or dust;

[161] In their opinion, the concerns are not just a civil issue and the Development Officer should have taken the concerns more seriously.

[162] The plans did not show everything that was on the subject site.

[163] The patio will have a privacy screen but does not deal with the rest of the lot.

[164] In their opinion, the Development Officer and the Respondent could have provided them with a copy of the plans as the copyright provision in the *Copyright Act* allows for that as long as you are not copying something to make a profit. Plus FOIP does not apply to Board proceedings

[165] The Front Setback is further forward than on their property and the foundation will be more affected by the lack of trees.

[166] Consultation should have been taken place to address the visual impacts and privacy.

[167] In their opinion, no weight should be given to the Respondent's arborist letter (Exhibit G).

[168] The appeal period ran 14 days from the date of the letter and not the receipt.

[169] The proposed development does not comply with the regulations of the *Edmonton Zoning Bylaw* and is not a Permitted Use.

[170] There was no Subdivision Plan at the time of the development permit application.

[171] Mr. Wakefield stated that the Board could adjourn the hearing for two weeks to see if the parties can work it out, if not, the Board can conclude and provide a decision. If the parties worked out any concerns, the Board could agree to their conditions.

[172] A Development Permit was issued for Lot 30. TAB 2 is for Lot 30B and evidence shows that the initial application was for Lot 30. There is no congruence for a lot that does not exist.

[173] An approved Subdivision is valid for one year.

[174] The land has to be registered before the development permit application.

**Decision**

[175] The appeal is DENIED and the decision of the Development Authority is CONFIRMED. The development is GRANTED as approved by the Development Authority.

**Reasons for Decision**

[176] Section 110.2(4) states a Single Detached House is a Permitted Use in the RF1 Single Detached Residential Zone (not a Discretionary Use as incorrectly set out in the agenda)

[177] The Board needs to determine if the proposed development is a Permitted Use as described in the *Municipal Government Act*, section 685(3). Section 685(3) states:

> (3) Despite subsections (1) and (2), no appeal lies in respect of the issuance of a development permit for a permitted use unless the provisions of the land use bylaw were relaxed, varied or misinterpreted or the application for the development permit was deemed to be refused under section 683.1(8).

[178] The Board heard submissions from the Appellant that the proposed development should have been described as Discretionary due to alleged "non-compliance". It is the opinion of the Board that a non-compliant Permitted Use does not change the character of the proposed development from a Permitted Use. Further, the Board determined that the clerical error in the agenda did not change the character of the proposed development from that of a Permitted use.

[179] If this proposed development was deemed non-compliant by the Development Authority because of a relaxation or variance, this would have the effect of changing the proposed development to a *discretionary development* under Section 12.4 of the *Edmonton Zoning Bylaw*. The use as a Permitted Use would remain the same under these circumstances.

[180] Since the proposed development is considered to be Single Detached Housing that is a Permitted Use in the RF1 Zone, the Board must determine, pursuant to Section 685(3) of the *Municipal Government Act*, whether *the provisions of the land use by-law were relaxed, varied and misinterpreted.*

[181] The Appellant referred to several alleged areas of non-compliance to demonstrate their right to appeal the Development Officer's decision. These will be discussed under the following headings:

1. The Development Application Permit was for a lot that had not been registered
2. No landscaping plan was provided contrary to Section 55 of the *Edmonton Zoning Bylaw*
3. Actions of the Respondents prior to and after receiving the Notice of Appeal
4. The Mature Neighbourhood Overlay was not complied with and raising privacy issues with respect to the placement of side windows and the Rooftop Terrace
5. Community Consultation requirements
6. Front Setback

**1. Development Application Permit and subdivision for a lot that had not been registered.**

[182] The original application for the Development Permit was dated July 7, 2017 as noted in the Appellant's submission at TAB 1. This application was for Single Detached Housing on Lot 30. Subsequent to this initial filing, the Mature Neighbourhood Overlay was significantly changed with the amendments coming into effect September 1, 2017. These changes required multiple alterations to the original plans as shown in TAB 4, page 2, such as the removal of the front driveway and the front attached garage. The Respondent worked with the Development Officer to amend the plans according the *Edmonton Zoning Bylaw* and Mature Neighbourhood Overlay regulations. On November 30, 2017, the Respondent re-applied for a Development Permit on Lot 30B. On December 1, 2017, the Development Officer approved the modified plans. Development Permit applications are often amended following the initial application and the Development Authority stated this as a commonly accepted process.

[183] In supporting their appeal application, the Appellant pointed to s.13.2(1)(b) of the *Edmonton Zoning Bylaw* which requires an applicant to submit an application form fully and accurately completed in accordance with the following requirements:

> [1] A legal description of the land on which the proposed development is to occur by lot, block, subdivision and *registered plan numbers* [emphasis added]

[184] The Appellant pointed to the Respondent's application dated November 30, 2017, to allege non-compliance with the bylaw. In that application, the Respondent had entered LOT 30B in the application rather than LOT 30.

[185] The reason for doing so, as submitted by the Respondent and the Development Officer, was due to a subdivision application that was occurring at the same time. The Subdivision Authority (section 623 *Municipal Government Act*) and the Development Authority (section 624 *Municipal Government Act*) are separate entities and applications can be made to both departments simultaneously. It was the submission of the Development Authority and the Respondent that, had the subdivision application proceeded more quickly, the proposed development would have occurred on LOT 30B as it would have then been created and registered with Land Titles. The Development Officer further stated that, at the time of the hearing, the Subdivision Authority had approved the subdivision of the lot and the city had enacted on it. The Respondent has one year from the date of approval of the subdivision, to register such with Land Titles.

[186] The Appellant refuted the above submitting that LOT 30B could never exist under the current block, subdivision, and registered plan number according to the methods used by the Land Titles Office when approving subdivisions. The Appellant conceded that they understood why the Respondent approached their development in this fashion but insist that no permit could be granted until such time as the subdivision was registered.

[187] The Board disagrees. We find that s. 13.2(1)(b) of the *Edmonton Zoning Bylaw* has been satisfied. Concurrent applications to both Subdivision and Development Authorities are not uncommon in Edmonton to try to expedite a development project. This point is supported by the fact that the Appellant conceded that they understood why the Respondent approached their application in this manner.

[188] While we do agree that no permit could be granted for Lot 30B prior to the registration of the subdivision, the permit was granted for the whole of Lot 30. This is the proper legal description with a registered plan number that satisfies the requirements of s. 13.2(1)(b).

[189] The Appellant asserts that the application dated November 30, 2017 should have been an application for Lot 30, and by failing to do so renders the application invalid from the beginning for lack of congruence. We do not agree, given that the Appellant accepts the premise that if the subdivision was registered prior to granting the development permit, then the permit could have been issued for Lot 30B.

[190] When deciding if a clerical error amounts to a fatal application, we must consider whether there would be prejudice to the Permit Applicant or any of the interested neighbours with respect to participating in the Permit process. The Board finds that there was no such prejudice here as all interested neighbours were notified as required under the *Edmonton Zoning Bylaw* regardless of whether the application was for Lot 30 or Lot 30B.

[191] The Board finds that s. 13.2(1)(b) of the *Edmonton Zoning Bylaw* was not relaxed, varied or misinterpreted. Therefore, there is no right of appeal on these grounds. The Board also finds that the Development Officer had the authority to grant a Development Permit on Lot 30.

**2. No Landscaping Plan was provided Contrary to Section 55 of the *Edmonton Zoning Bylaw***

[192] The second area of non-compliance alleged by the Appellant was the lack of a landscaping plan, contrary to section 55 of the *Edmonton Zoning Bylaw*. Specifically, the Appellant points to section 55.1 (General Purpose), section 55.2 (Landscaping Requirements for Low Density Residential Developments), section 55.4 (Landscaping Plan and Context), section 55.5 (General Requirements), section 55.6 (Incentives for Preserving Existing Trees and Shrubs), and section 5.7 (Additional Landscaping Regulations for Specific Land Uses).

[193] The General Purpose of this section of the bylaw reads:

> The intent of these Landscaping regulations is to contribute to a reasonable standard of livability and appearance for developments, from the **initial placement of the Landscaping through to its mature state**, to provide a positive overall image for Edmonton and to encourage good environmental stewardship *[emphasis added]*.

[194] While it is alleged that the Respondent has improperly removed vegetation from their property and from the Appellant's, there appears to be no restriction in the General Purpose governing the removal of mature landscaping. The General Purpose only required that the developments use the regulations in section 55 as a guide for their decisions and *to contribute to a reasonable standard of livability.*

[195] Reasonability is the standard that must be used to balance the right of the subject property landowner with the rights of adjacent land owners and the broader community. The Board heard submissions from the Respondent that the vegetation removed was necessary for their prudent development of the subject lands. We agree, notwithstanding that the methods for removal are in dispute. However, those methods are not before the Board in this application.

[196] When considering this application, it appears to be reasonable to this Board that some removal of vegetation would be required in order to permit the development to take place. The Board also accepts the Respondent's position that they attempted to preserve other mature vegetation on the site and that they intend to plant new trees on a portion of the property line where vegetation was removed.

This combined approach to landscaping reasonably satisfies the requirements in the General Purpose through both a consideration of new landscaping and the retention of mature vegetation on the site. The Board therefore, finds no relaxation, variance or misinterpretation of this subsection.

[197] With respect to section 55.2, Landscaping Requirements for Low Density Residential Developments, the Development Authority submitted that they were satisfied with the Site Plans provided. The Plan includes new foliage to be added which demonstrates compliance with the requirements of section 55.2 where the requirements can be satisfied by either new or existing trees. In addition, the Responded declared their intent to plant a row of aspens between the two houses at the property line though this is not specifically mentioned on the site plan. Landscaping has been conditioned on the Development Permit.

[198] The Board arrives at this conclusion by reading section 55.2 as a whole and accepts the Development Authority's position that they were satisfied with the provision of Landscaping on the subject lot with respect to the Landscaping Requirements of this section. The Board therefore, finds no relaxation, variance or misinterpretation of this subsection.

[199] In the alternative, if the Board is incorrect in this conclusion, we find that there would be no miscarriage of justice in allowing a relaxation specifically to section 55.2 nor would that relaxation satisfy the Board's test under the *Municipal Government Act* section 687(3)(d). We arrived at this conclusion based on the photographic and oral evidence provided at this hearing. The Board observed that there was an abundance of mature trees remaining on this site. As such, the development would have met the meager landscaping requirements in section 55.2 simply by virtue of the existing trees that will remain on the site.

[200] With respect to section 55.4, the Appellant alleges that the Respondent had an obligation to comply with the more intensive Landscape Plan and Context requirement, as distinguished from a more general Site Plan. This section does not apply to the development in question as it only extends to developments listed in section 55.3. Those developments do not include Single Detached Housing.

[201] The Appellant alleged that Residential-Related Use Classes included Single Detached Housing which brought this application under section 55.3. This Board disagrees as on reading section 7.3, the definition of Residential-Related Use Classes, this is not the case. Therefore, section 55.4 does not apply to this development and the Board finds no relaxation, variation or misinterpretation of this subsection.

[202] The Appellant also mentioned section 55.5, General Requirements. This subsection requires that landscaping be a condition of the issuance of a permit where, amongst other things, the development concerns an existing development, future development on a subject site and large parking lots.

[203] The Board finds that this subsection does not pertain to the subject property or development application and therefore, finds no relaxation, variance or misinterpretation of section 55.5.

[204] The Appellant also relied on section 55.6, Incentives for Preserving Existing Trees and Shrubs. Reading the plain meaning of this section, it appears that this subsection simply provides an incentive to landowners to preserve existing trees, but does not operate as a prohibition on removing them.

This subsection reads:

1. Existing vegetation should be preserved and protected unless removal is demonstrated to be **necessary or desirable to efficiently accommodate the proposed development**. [emphasis added]
2. The requirement to provide trees and shrubs may be satisfied either through planting new or preserving existing trees and shrubs.

[205] As discussed above, this Board finds that the Respondent took reasonable steps to preserve existing vegetation and was entitled to remove vegetation where necessary or desirable to efficiently accommodate the proposed development. This Board accepts the Respondent's position that the trees removed were both necessary and desirable in this manner and finds no relaxation, variance or misinterpretation of section 55.6.

[206] In reading section 55.6 as a whole, the incentive exists to limit the requirement for new landscaping requirements found in section 55.2. This is supported by section 55.6(2). As discussed above, the Respondent has met the landscaping requirements and would not need to rely on this incentive to satisfy those requirements.

[207] If that were not the case, this Board finds that this section operates simply as an incentive and does not replace a requirement on the Respondent to preserve all existing trees on the site. Should a Permit Applicant wish to remove vegetation on the site they would simply need to demonstrate that it is desirable to efficiently accommodate the proposed development.

[208] Finally, the Appellant relies on section 55.7, Additional Landscaping Regulations for Specific Land Uses. The Board finds that this subsection does not apply to the proposed development. This section is drafted to deal with situations where there are undesirable impacts on surrounding sites and between uses (section 55.7(1)(a)).

This position is strengthened by section 55.7(1)(b) which specifically contemplates that additional landscaping is warranted due to a combination of uses. The Bylaw goes on to describe such potential combination of uses, none of which apply to this application.

[209] This application concerns Single Detached Housing adjacent to other Single Detached Housing. There is no combination of uses as contemplated by section 55.7 and therefore, the Board finds that there was no relaxation, variance or misinterpretation of this subsection.

[210] The Board therefore finds that none of the subsections in section 55 were relaxed, varied or misinterpreted and there are no rights of appeal under these subsections referenced by the Appellant.

3. **Actions of the Respondents prior to and after receiving the Notice of Appeal**

[211] The Appellant stated that the Respondent started construction prior to the end of the appeal period and continued after receiving the Notice of Appeal on Dec. 22, 2017. The Respondent claimed they had to secure the property and tradesmen were allowed to remove their property after that date but no further construction took place in accordance with section 17.1.3.

[212] While the Board understands the allegations of the Appellant on this point, this is an issue of enforcement. This Board is only dealing with an application for a Development Permit and not the conduct of the parties in relation to this development. There are means of dealing with these types of grievances which do not include the Subdivision and Development Appeal Board.

[213] Therefore, the Board finds that this is not a ground where the *Edmonton Zoning Bylaw* was relaxed, varied or misinterpreted. There is no right of appeal on these grounds.

**4. The Mature Neighbourhood Overlay was not complied with and raising privacy issues with respect to the placement of side windows and the Rooftop Terrace**

[214] The Appellant relied on a General Purpose of the *Mature Neighbourhood Overlay* which is outdated. The version presented by the Appellant reads:

> The purpose of the Overlay is to ensure that new low density development in Edmonton's mature residential neighbourhoods is sensitive in scale to existing development, maintains the traditional character and pedestrian-friendly design of the streetscape, **ensures privacy and sunlight penetration** on adjacent properties and provides opportunity for discussion between applicants and neighbouring affected parties when a development proposes to vary the Overlay regulations *[emphasis added]*.

[215] The revised version of this section now reads:

> The purpose of this Overlay is to regulate residential development in Edmonton's mature residential neighbourhoods, while responding to the context of surrounding development, maintaining the pedestrian-oriented design of the streetscape, and to provide an opportunity for consultation by gathering input from affected parties on the impact of a proposed variance to the Overlay regulations.

[216] The Board observes that there was a clear intention to remove the section of the definition relating to privacy and sunlight penetration. This is the section of the General Purpose on which the Appellant sought to rely and which is no longer in effect.

[217] The Appellant argues that the removal of vegetation has the effect of decreasing visual and auditory privacy. As such, they rely on the former version of the General Purpose to support their contention that a variance was in effect granted. However, the removal of the trees has the effect of increasing sunlight penetration, which is another objective of the former General Purpose which the proposed development would support. The Appellant cannot have the advantage of the General Purpose without also assuming the burden of it.

[218] Even with this analysis, the fact is that the General Purpose is amended and the Board is required to make its determinations under current legislation.

[219] The only submissions by the Appellant regarding the General Purpose on a reading of the new version, is their belief that the two versions are very similar and that privacy could still be read into the definition.

[220] The Board disagrees. The deliberated removal of wording from the General Purpose section must support the opposite conclusion. The Board finds that the General Purpose of the Overlay is now as it is written and privacy no longer has the same importance in this Overlay as it once did with the previous General Purpose.

a) Side Windows

[221] Privacy is still a material concern in this Overlay, but is not as pressing a concern as it once was. This is supported by the fact that the Overlay still considers privacy in section 814.3(8) with respect to the locational criteria of side windows in relation to the side windows of Dwellings on the Abutting properties. This is the second grounds of appeal alleged by the Appellant with respect to the Mature Neighbourhood Overlay.

Section 814.3(8) reads:

Where an interior Side Setback is less than 2.0 metres,

a) The applicant shall provide information regarding the location of side windows of the Dwellings on the Abutting properties and Amenity Areas on Abutting properties;
b) The side windows of the proposed Dwelling shall be located to reduce overlook into Amenity Areas of the Abutting properties; and
c) The proposed Dwelling shall incorporate design techniques, such as, but not limited to translucent window treatment, window location, raised windows, or Privacy Screening, to reduce direct line of sight into the windows of the Dwelling on the Abutting property.

[222] This section applies to the proposed development. The evidence presented by the Respondent by way of photographs, showed that there is a general lack of side windows on the Appellant's dwelling. The Appellant contradicted this by saying that there is a portion of their house that is stepped back from the south façade that does have windows. The Board finds that the stepped back portion of the Appellant's dwelling is of sufficient distance from the south lot line as to not be affected by window placement on the proposed development, therefore this section regarding window placement would not apply.

[223] Subsection 814.3(8) only applies in those situations where the interior side setback is less than 2.0 metres. This suggests that the privacy overlook criteria, with respect to abutting Dwelling windows, are dealing with those windows which would experience a material impact, namely the ones abutting the side lot line.

[224] In addition, the Appellant contends that the side windows of the Respondent's proposed development will look in through the front windows of the Appellant's property and which is exacerbated by the removal of the mature trees that took place. The Board is not persuaded by this submission. The effect of the Appellant's front windows looking toward the side yard of the subject property is largely due to the siting of the Appellant's house. While this would not determine the placement of the Respondent's dwelling, it must be considered as one of many factors in balancing the Respondent's right to develop their property.

[225] The Respondent provided verbal evidence that new trees would be planted along the property line between the two dwellings. These trees will have the effect of providing privacy screening into the Appellant's front windows, if in fact, there is an overlook issue.

[226] The Respondent was required to provide information regarding the location of side windows of the Dwellings on Abutting properties. We heard evidence from the Respondent that this was provided in accordance with section 814.3(8)(a) and, given the Development Officer approval for the proposed dwelling, the Board accepts that this was done to his satisfaction.

[227] Therefore, the Board finds that there was no relaxation, variance or misinterpretation of the General Purpose of the Overlay nor from the placement of the side windows on the proposed development. There is no right of appeal on these grounds.

b) Rooftop Terrace

[228] The Appellant contends that in light of the removal of the trees, the development of the Rooftop Terrace becomes more intrusive and invasive. However, Rooftop Terraces are a permitted form of development as long as they comply with the stepback requirements of the *Edmonton Zoning Bylaw*.

[229] The proposed development complies in all regards with the Rooftop Terraces regulations (section 61). There is nothing in that section, the underlying zone or the *Municipal Government Act* that suggests that the development of a Rooftop Terrace is discretionary. Therefore, to suggest that a Rooftop Terrace has a negative impact on the privacy of the Appellant's site is irrelevant.

[230] The Appellant also raised section 94 but these regulations pertain to Apartment Housing or Group Homes and not to Single Family Dwellings.

[231] Any development may have a negative impact on the privacy of adjacent neighbours. However, the purpose of the *Edmonton Zoning Bylaw* is to regulate the extent that the privacy and development rights of adjacent landowners and balance these with the rights of the landowners of the property to be developed. In this case, the proposed development includes a fully compliant rooftop terrace with no alleged variances. This Board finds that this compliant rooftop terrace balances the rights between the two landowners and, therefore, there was no relaxation, variances or misinterpretations on this issue. There is no right of appeal on these grounds.

[232] The Appellant makes mention of *Bell v City of Edmonton et. al*, 2017 ABCA 354. That case was an application for leave to appeal which was ultimately granted. The Appellant relies on that case to support the contention that noise is a privacy concern which must be considered by the Board in allowing Rooftop Terraces.

[233] The Board disagrees. That decision simply granted a right to appeal the underlying SDAB decision and made no findings on the legal issues raised. As such, this Board is not convinced by the Appellant's submissions that privacy concerns in relation to noise override the Respondent's right to develop a Rooftop Terrace if they so choose.

[234] Similarly, in *Garneau Community League* v *City of Edmonton*, et. al 2017 ABCA 374, the case was returned to the SDAB with no findings on the legal issues raised.

[235] Alternately, if the Board did accept this submission by the Appellant, we would find that there is not an unreasonable amount of noise generated simply by virtue of a Rooftop Terrace development and the removal of vegetation that straddled the property line.

**5. Community Consultation**

[236] The Appellants requested meetings to view the plans at the Appellant's office. The Respondent wanted the meetings to be held at the site. The Respondents indicated that they could not provide a copy of the plans to the Appellant for copyright reasons. After the appeal was filed, the Appellant had the right to view the plans at the Board office.

[237] The Development Officer approved the application as a Class A development. Pursuant to Section 12.3 of the *Edmonton Zoning Bylaw,* Class A Permitted Development:

> This class includes all developments for which applications are required and are for a Permitted Use or Accessory Building or activities and the Development Permit complies in all respects to the requirements of this Bylaw.

[238] The General Purpose of the MNO states:

> The purpose of this Overlay is to regulate residential development in Edmonton's mature residential neighbourhoods, while responding to the context of surrounding development, maintaining the pedestrian-oriented design of the streetscape, and to **provide an opportunity for consultation by gathering input from affected parties on the <u>impact of a proposed variance</u>** to the Overlay regulations. *[Emphasis added]*

[239] Further, Table 814.5(2) states who must be consulted depending on which variance is being sought. The connection between the General Purpose and section 814.5 is, that in order for community consultation to be required, a variance must be requested for that development. As discussed above, no variances were sought. Therefore, there is no obligation on the part of the Respondent to have conducted community consultation.

[240] The Appellant also claimed that the privacy issue should have demanded community consultation be undertaken. As previously discussed, privacy was removed from the General Purpose of the Overlay. Moreover, this Board found that those provisions dealing with privacy and overlook in section 814.3(8) did not necessitate a variance on these issues.

[241] The Board finds that community consultation was not required under these circumstances. No variances to the Mature Neighbourhood Overlay were requested through the application and the Board has not arrived at a different conclusion through its deliberations. It is the opinion of the Board that this is a compliant, Permitted Use, proposed development. The Board finds that there are no grounds for appeal on this basis.

[242] The Appellant referenced *Thomas v City of Edmonton*, 2016 ABCA 57. That case referred to the need for community consultation when a variance had been requested for a development. However, in this case the permit is for a Class A development, therefore, as there were no variances granted, there was no need to engage in community consultation.

**6. The Front Setback**

[243] The regulations governing the Front Setback of the subject property are found in section 814.3(1) of the Mature Neighbourhood Overlay. Under that Overlay, the Front Setback of the proposed development must be a minimum of 3.0 metres and shall be consistent within 1.5 metres of the average of the Front Setback of the two abutting lots, to a maximum of 20 percent of the Site Depth.

[244] The Front Setback of the proposed development is not connected in any manner to the house that had been previously situated on that property although the Appellants argued that there should be a connection.

[245] Based on evidence submitted, as part of the Respondent's Development Permit Application, the Front Setback of the Appellant's house is 10.07 metres and the Abutting Lot to the east is 6.68 metres. Using these values, the Front Setback of the subject site would have to be consistent with the average of these two measurements or 8.38 metres. This means that the proposed Front Setback could be between 6.88 metres and 9.88 metres from the Front Property line.

[246] The Front Setback was set at 8.96 metres and is well within this range. Therefore, no relaxation, variance or misinterpretation of this regulation occurred according to the Mature Neighbourhood Overlay.

[247] The Appellants also argued that the calculation methods used by the surveyors are inaccurate or flawed. In support, the Appellants produced the Real Property Report of their property (dated 1995) which suggests that the Front Setback was 11.19 metres instead of 10.07 metres, the distance shown on the chart by Pals Geomatics (2017), a registered surveyor in the Province of Alberta.

[248] The Board prefers the evidence of the surveys which were conducted more recently, that being those of Pals Geomatics which were conducted for the purposes of the Respondent's Application. The Board heard evidence from the Development Officer that surveying technology has become more accurate as that technology has advanced. This is a logical conclusion and the Board accepts this conclusion.

[249] Moreover, the Development Officer and Respondent both provided evidence regarding the calculation methods of surveyors with respect to measurement locations. Namely, they suggest that registered surveyors practicing today understand the methods of measurement generally accepted by the Development Authority.

The Board accepts that the Pals Geomatics surveys are the more reliable drawings when compared to the Appellant's Real Property Report of several years ago.

[250] The Board and the Development Authority must be able to rely on the professional documentation submitted as part of an application. This includes architectural drawings, engineering reports and survey drawings.

[251] Alternately, if this Board is wrong in coming to this conclusion, there would be no material difference to the decision. If the 11.19 metres value from the Appellant's Real Property Report is used, the average of the abutting lots becomes 8.94 metres. The proposed development could be situated between 7.44 metres and 10.44 metres. As the drawings place it at 8.96 metres, it complies. The Board finds that there would be no miscarriage of justice, notwithstanding the Appellant's contention that the Front Setbacks of Abutting Lots were miscalculated, which this Board does not accept.

**Summary**

[252] In consideration of the above, this Board finds that none of the grounds for appeal submitted by the Appellant demonstrate a relaxation, variation or misinterpretation of the *Edmonton Zoning Bylaw*. Therefore, the Appellant has no right to appeal the decision of the Development Authority pursuant to Section 685(3) of the *Municipal Government Act* and the appeal must fail.

Ms. P. Jones, Presiding Officer
Subdivision and Development Appeal Board

Board Members in Attendance
Mr. B. Gibson; Mr. R. Handa; Ms. G. Harris; Mr. K. Hample

**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 2nd Floor, Edmonton Tower, 10111 – 104 Avenue NW, Edmonton, AB T5J 0J4.

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*, 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 2nd Floor, Edmonton Tower, 10111 – 104 Avenue NW, Edmonton, AB T5J 0J4.

*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.*