



**EDMONTON  
TRIBUNALS**

*Subdivision &  
Development  
Appeal Board*

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Date: January 31, 2019  
Project Number: 256997689-013  
257013833-014  
File Number: SDAB-D-19-009  
SDAB-D-19-010

**Notice of Decision**

- [1] On January 23, 2019, the Subdivision and Development Appeal Board (the “Board”) heard two appeals that were filed on **December 19, 2018**. The appeals concerned the decision of the Development Authority, issued on December 19, 2018, to refuse the following developments:

**SDAB-D-19-009: 8807 - 148 Street NW (Plan 1722061 Blk 8 Lot 16A)**

To construct exterior alterations to a Single Detached House (increase in height).

**SDAB-D-19-010: 8809 - 148 Street NW (Plan 1722061 Blk 8 Lot 16B)**

To construct exterior alterations to a Single Detached House (increase in height).

- [2] The subject properties are within the (RF1) Single Detached Residential Zone. The Mature Neighbourhood Overlay applies to the subject properties.
- [3] The following documents were received prior to the hearing and form part of the record:
- A copy of the Development Permit applications with attachments and the refused Development Permits;
  - The Development Officer’s written submissions;
  - The Appellant’s written submission; and
  - Two on-line responses.
- [4] The following exhibits were presented during the hearing and form part of the record:
- Exhibit A – Signatures in support from the Appellant;
  - Exhibit B – Right elevation drawing of Lot 16A from the Appellant;
  - Exhibit C – Left elevation drawing of Lot 16B from the Appellant;
  - Exhibit D – Photograph of the subject houses from the Appellant; and

- Exhibit E – Photograph of a subject house from Ms. A. Coles.

### **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 appeals were filed on time, in accordance with section 686 of the *Municipal Government Act*, RSA 2000, c M-26.

### **Summary of Hearing**

*i) Position of the Development Officer, Mr. J. Folkman*

- [8] Mr. Folkman clarified that upon inspection by the City the subject houses were over height.
- [9] The inspector notified the developer to have a survey conducted on the properties.
- [10] The roof and pitch of the houses were not altered. The houses were built exactly how they were applied for and no physical alterations were made to the buildings.
- [11] Mr. Folkman provided the following information in response to questions by the Board:
- a. He could not confirm if the original permits for the Single Detached Houses were issued as Class A Permitted Developments.
  - b. He confirmed that the Development Authority cannot vary height; therefore, the development permits were refused.
  - c. He confirmed that there was no change in height from floor to floor.
  - d. He confirmed that the installed footings created the height issues for both houses.

*ii) Position of Mr. B. Wengryn, representing the Appellant, Living Trends Fine Homes Inc., who was accompanied by Mr. T. Land, the property owner*

- [12] The houses were built and after the inspection was completed it was discovered that the main floor was higher than what was initially proposed.

- [13] The grade was 64 centimetres above where the original footings were planned.
- [14] They did not intend to exceed the maximum height but discovered that the sewer invert was higher than what they were initially informed by the City.
- [15] Although the footings are higher than anticipated, no alterations were made to the appearance of the houses and developments meet all the other regulations of the *Edmonton Zoning Bylaw*.
- [16] They provided the Board with three signatures in support of the proposed developments (*Exhibit A*). The immediately adjacent neighbour at 8811 – 148 Street provided verbal support and the neighbour at 8815 – 148 Street signed in support of the proposed developments. In his opinion, those properties may have a sun shadowing impact from the height variances but only for a small portion of the day.
- [17] The neighbour across the rear lane has a high two-storey garage.
- [18] Mr. Wengryn referred to the notification map and the original side elevation drawings to show what the impact would be on the neighbouring properties with the excess in height (*Exhibit B* and *C*). In his opinion, the impact will be minimal and the variances will not be noticeable from the front of the houses.
- [19] He referred to a photograph of the completion of the front elevations and indicated that the variances will not be noticeable from the ground level (*Exhibit D*).
- [20] Additional front step risers were not needed to accommodate the excess in height.
- [21] Mr. Land indicated that he made several attempts to speak to all the neighbouring property owners but was not able to contact all of them.
- [22] Mr. Wengryn provided the following information in response to questions by the Board:
- a. A retaining wall along the side lane was always intended as the lot drops approximately one metre.
  - b. He confirmed that only the footings were raised.
  - c. The other solution to alleviate the height issue was to install a lift station for the sewer.
  - d. The basement is nine feet high with 12 inch joists.

*iii) Position of Affected Property Owners in Opposition to the Appellant***Ms. A. Coles**

- [23] Ms. Coles signed the letter in support of the proposed developments but felt she was misinformed about the developments. In her opinion, she did not have a detailed explanation of the houses and was told by the Appellants that they complied with the regulations of the *Edmonton Zoning Bylaw*.
- [24] She and her husband have built homes in and out of the city, bought and renovated houses and then sold them. Each time they have followed the regulations of the *Edmonton Zoning Bylaw*. At times they did not purchase properties if they did not comply with the regulations.
- [25] Her husband spoke to the contractors building the houses several times and pointed out construction issues that were not correct.
- [26] In her opinion, the houses are large and look like they are built on a hill.
- [27] The garage on her property is not over height.
- [28] The sun sets toward their property in the summer and the houses will have a sun shadowing impact on their property for a few hours. She referenced a photograph (*Exhibit E*).
- [29] She would not have an issue with the houses if they complied with the regulations of the *Edmonton Zoning Bylaw*.
- [30] In her opinion, the developer was aware the houses did not comply with the height regulation.
- [31] Ms. Coles provided the following information in response to questions by the Board:
- a. In her opinion, the excess in height will impact their property when the sun is setting.
  - b. In her opinion, a two-storey house would impact their sunlight; however, the excess in height will have a larger impact on their property.
  - c. She confirmed that both of the subject houses have a rear deck.
  - d. She confirmed that the portion of the house at 8809 – 148 Street with the height variance in *Exhibit E* is situated more into the front half of the lot.
  - e. In her opinion, the houses are an eyesore and the excess in height will have a negative impact on her property.

**Mr. J. Gladwin**

- [32] In his opinion, the notices sent to property owners regarding a proposed development should provide more detail so the public is aware of what will be dealt with at the hearing.
- [33] He did not have anything further to add in regard to the excess in height of the houses.

*iv) Rebuttal of the Appellant*

- [34] Mr. Wengryn stated that out of the two subject houses, the house at 8809 – 148 Street as shown in *Exhibit E* would be the only one that would impact Ms. Coles' property.

**Decision**

- [35] The appeals are **ALLOWED** and the decision of the Development Authority is **REVOKED**. The developments are **GRANTED** as applied for to the Development Authority.
- [36] In granting the developments the following variances to the *Edmonton Zoning Bylaw* are allowed:

**SDAB-D-19-009: 8807 - 148 Street NW (Plan 1722061 Blk 8 Lot 16A)**

1. The maximum allowable Height of 8.9 metres per section 814.3(5) is varied to allow an excess of 0.25 metres, thereby increasing the maximum allowed to 9.15 metres.

**SDAB-D-19-010: 8809 - 148 Street NW (Plan 1722061 Blk 8 Lot 16B)**

1. The maximum allowable Height of 8.9 metres per section 814.3(5) is varied to allow an excess of 0.19 metres, thereby increasing the maximum allowed to 9.09 metres.

**Reasons for Decision (SDAB-D-19-009 and SDAB-D-19-010)**

- [37] The proposed developments to construct exterior alterations to a Single Detached House are a Permitted Use in the (RF1) Single Detached Residential Zone.
- [38] The Board was presented with two applications for exterior alterations to address a construction error that created a higher footing elevation than proposed and therefore, an excess in the final height dimension.

- [39] The Board heard from the Development Authority and the Appellants that there were no changes to the construction plans with respect to floor assembly, roof systems and construction process.
- [40] The Appellants, during the construction process, determined that the existing sewer invert height was higher than originally thought and the decision was made to raise the footings to a level to accommodate the change in sewer invert height and therefore, brought these structures over height of what was allowed.
- [41] The Board in dealing with the variances, which equated to 7 ½ inches (0.19 metres) and 9 ¼ inches (0.25 metres), considered the elevation drawings and photographs that clearly show the actual effect this had.
- [42] Pursuant to section 687(3)(d) of the *Municipal Government Act*, in determining an appeal it is the Board's responsibility to determine if by granting these two variances would it unduly interfere with the amenities of the neighbourhood, or materially interfere with or affect the use, enjoyment or value of neighbouring parcels of land on the neighbourhood.
- The Board finds that it was not presented any planning reasons that could have justified a position that the proposed developments failed to meet section 687(3)(d).
- [43] The Board notes that based on photographic evidence the actual ridge line of both structures is significantly pushed forward away from the rear yard given the exposed exterior second floor main deck. There were no sun shadow reports that indicated that these two variances would have a material impact on neighbours.
- [44] The neighbours in opposition indicated that they did not receive prior notices for the original development approvals. The Board notes that it is possible that the subject houses were approved as Class A Permitted Developments, which may not have required notification at that time.
- [45] The parties who appeared in opposition made representations on matters that are outside of the Board's purview such as site grading, style of construction, state of the lane, lack of original development notifications and construction practices. The Board could not consider those presentations.
- [46] The Appellants indicated that through their community consultation the most affected property owner at 8811 – 148 Street was not in opposition to the variances or construction throughout the process.

[47] For above reasons pursuant to 687(3)(d) of the *Municipal Government Act*, the Board finds that the proposed developments will not unduly interfere with the amenities of the neighbourhood nor materially interfere with or affect the use, enjoyment or value of neighbouring parcels of land.

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

Board Members in Attendance:

Mr. B. Gibson; Mr. L. Pratt; Ms. E. Solez; Ms. S. LaPerle

cc: City of Edmonton, Development & Zoning Services, Attn: Mr. J. Folkman / Mr. A. Wen

**Important Information for the Applicant/Appellant**

1. This is not a Building Permit. A Building Permit must be obtained separately from Development & Zoning Services, 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 Development & Zoning Services, 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.*