



**EDMONTON
TRIBUNALS**

*Subdivision &
Development
Appeal Board*

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Date: February 9, 2017
Project Number: 231644800-001
File Number: SDAB-D-17-017

Notice of Decision

- [1] On January 25, 2017, the Subdivision and Development Appeal Board heard an appeal that was filed on December 29, 2016. The appeal concerned the decision of the Development Authority, issued on December 8, 2016, to approve the following development:

Construct a Semi-Detached House with front verandas, front balconies, rear uncovered decks (2.90m x 2.74m), and to demolish an existing Single Detached House and Accessory Building (rear detached Garage)

- [2] The subject property is on Plan 426HW Blk 19 Lot T, located at 9538 - 73 Avenue NW, within the RF3 Small Scale Infill Development Zone. The Mature Neighbourhood Overlay and Ritchie Neighbourhood Improvement Plan/Area Redevelopment Plan apply 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 and plans;
- Approved Development Permit decision;
- Development Officer's written submissions, dated January 19, 2017;
- Appellant's supporting materials, including photographs; and
- Respondent's PowerPoint presentation.

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

- Exhibit A – Overhead map submitted by 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.

Summary of Hearing

i) Position of the Appellant, Ms. C. Steiger

- [8] Ms. Steiger stated that the required variance will create negative impacts within her neighbourhood and to her own property, located two doors east of the subject development across 73 Street. The variance, when considered in the context of the collective impact of multiple variances granted for other developments, will disrupt the balance of diversity and greenery within this mature neighbourhood.
- [9] Ms. Steiger identified a number of concerns, including an increase in population density, safety concerns due to increased traffic, the impact of the subject development upon the value of her property, and the lack of community consultation from the developer.
- [10] She had initially been concerned about the potential symmetry of the design of the Semi-Detached House, but upon further discussion with the Development Authority, learnt that it would be an asymmetrical design. However, her other concerns remain.
- [11] 73 Avenue is a narrow street and does not permit cars to pass each other when street parking is utilized. Double garages reduce on-street parking and the impacts upon traffic flow. However, the subject development proposes a parking pad, which does not appear to provide adequate off-street parking. Furthermore, there is no indication that there will be a passageway from the rear parking pad to the principal dwelling. In her experience, the occupants of homes that do not have such accesses park on the street at the front of the property. All of these factors will contribute to the existing on-street parking stresses and have a negative impact upon traffic.
- [12] Ms. Steiger also expressed concerns about drainage. She submitted Exhibit "A", an overhead view of the development and the surrounding neighbourhood. The properties identified by blue rectangles represented traditional bungalow homes with 50 feet wide lots as well as single-family homes. The properties identified by red rectangles represented structures for two-family dwellings. Two additional two-family dwellings were identified with blue arrows. She noted that for the proposed development, the two red rectangles overlap in the middle, which suggests that the site width is insufficient, which may contribute to drainage issues.
- [13] The plans incorporate the potential for a future basement suite development, as shown by the side doors located on the main floor. Though the current development permit before this Board does not permit development of a Secondary Suite, the potential for basement development remains.

ii) Position of the Development Authority

- [14] The Development Authority was represented by Mr. K. Yeung.
- [15] Mr. Yeung was out of the office when a colleague spoke with the Appellant. At the time, his colleague indicated that the development was a symmetrical design, but upon his return, Mr. Yeung spoke with the Appellant and clarified that the design is asymmetrical.
- [16] Upon questioning by the Board, Mr. Yeung confirmed that the development is for a Semi-Detached House and the reference to “Single Detached House” in the decision of approval should read “Semi-detached Housing.” Should the Applicant wish to develop a basement suite, a separate application would be required.
- [17] The lot grading plan was circulated to the drainage department, and no drainage concerns were identified. The minimum Side Setback in this zone is 1.2 metres, and the proposed development will have Side Setbacks of 1.29 metres.
- [18] The proposed development also meets or exceeds all other development regulations. For example, the maximum site coverage is 28%, and the proposed development will have a site coverage of 27.96%. Even if the Applicant had proposed a garage instead of a parking pad, the development would still comply with the overall site coverage requirements and both Side Setbacks would exceed the minimum of 0.9 metres required for Accessory buildings by .09 metres. The parking pad also meets the width and length requirements for parking spaces.
- [19] A passageway between the parking pad and the principal dwelling is required in the RF4 Semi-detached Residential Zone, but not in the RF3 Zone.
- [20] The Board referred to Mr. Yeung’s written submissions, and sought further clarification regarding his statement that the subject lot size presents a peculiarity to this neighbourhood given the Appellant’s evidence that there are compliant lots in close proximity. Mr. Yeung explained that his statement did not mean that the entire neighbourhood is comprised of narrower lots which would all require variances to site width. He meant that the development is located in the RF3 Zone, where Semi-Detached Housing is a Permitted Use. It is therefore peculiar that a Permitted Use should be refused due to the unique size of the lot, particularly where the overall development meets all other development regulations.

iii) Position of the Respondent, Bowen Homes

- [21] The Respondent was represented by Mr. R. Tan.

- [22] Mr. Tan reviewed his PowerPoint presentation, noting that infill developments for Single Detached Houses can be priced in the range of \$700,000.00 or higher. This pricing is incongruent with the City's infill plan to create "smart density" housing. The proposed development, which can be marketed at a lower price point, aligns with the City's development goals.
- [23] He chose 1.29 metre Side Setbacks because in his previous experiences developing homes, there have been concerns about rainwater drainage. For this application, he wished to ensure that the Side Setbacks would mitigate potential drainage issues, and therefore chose a setback that was slightly larger than required. The excess would also create a margin for any construction error.
- [24] Responding to questions from the Board about potential basement suite development, Mr. Tan confirmed that presently there is no development in the basement and he is not proposing Secondary Suites. Further, he would be fine with removing the internal door that accesses the basement via the kitchen in both dwellings.

iv) Rebuttal of the Appellant

- [25] Ms. Steiger reiterated her concerns, and noted in particular that notwithstanding the Respondent's willingness to remove the internal kitchen doorway access to the basement, it would not be difficult for the owner to subsequently add a lockable door after-the-fact.

Decision

- [26] The appeal is DENIED and the decision of the Development Authority is CONFIRMED. The development is GRANTED as approved by the Development Authority, subject to the following CONDITIONS:

This Development Permit is not valid until all outstanding fees are paid in accordance with Section 19 of the Edmonton Zoning Bylaw 12800.

The Development Permit Notification Sign must be posted on-site prior to any demolition or construction activity and within 14 days after the Notification Period expires with no appeal.

This Development Permit authorizes the development of a Semi-Detached House with a front veranda, fireplace, a rear uncovered deck (5.18m x 3.05m), and Basement development (NOT to be used as an additional Dwelling). The development shall be constructed in accordance with the stamped and approved drawings.

1. The maximum Height shall not exceed 8.6m, in accordance with Section 52 of the Edmonton Zoning Bylaw 12800.
2. Platform Structures greater than 1.0 m above Grade shall provide privacy screening to prevent visual intrusion into adjacent properties. (Reference Section 814.3(8))
3. The maximum number of Dwellings per Site shall be as follows: a maximum of one Single Detached Dwelling per Site, and, where the provisions of this Bylaw are met, up to one Secondary Suite, Garage Suite or Garden Suite. (Reference Section 140.4(19)(a))
4. Single Detached Housing/Semi-detached housing requires 2 parking spaces per dwelling; parking may be in tandem as defined in Section 6.1(100) (Reference Schedule 1 of Section 54.2).
5. The area hard surfaced for a driveway, not including the area used for a walkway, shall comply with Section 54.1(4).
6. Except for the hardsurfacing of driveways and/or parking areas approved on the site plan for this application, the remainder of the site shall be landscaped in accordance with the regulations set out in Section 55 of the Zoning Bylaw.
7. Landscaping shall be provided on a Site within 18 months of the occupancy of the Semi-Detached House. Trees and shrubs shall be maintained on a Site for a minimum of 42 months after the occupancy of the Semi-Detached House (Reference Section 55.2.1).
8. Two deciduous tree with a minimum Caliper of 50 mm, two coniferous trees with a minimum Height of 2.5 m and eight shrubs shall be provided on the property. Deciduous shrubs shall have a minimum Height of 300 mm and coniferous shrubs shall have a minimum spread of 450 mm (Reference Section 55.2.1).
9. All Yards visible from a public roadway, other than a Lane, shall be seeded or sodded. Seeding or sodding may be substituted with alternate forms of ground cover, including hard decorative pavers, washed rock, shale or similar treatments, perennials, or artificial turf, provided that all areas of exposed earth are designed as either flower beds or cultivated gardens (Reference Section 55.2.1).

10. Existing vegetation shall be preserved and protected unless removal is demonstrated, to the satisfaction of the Development Officer, to be necessary or desirable to efficiently accommodate the proposed development. (Reference Section 55.6(1)).

11. Notwithstanding the Landscaping regulations of Section 55 of this Bylaw, where new development consists of replacement or infill within areas of existing housing, Landscaping shall be implemented as a component of such new development in order to replace vegetation removed during construction or to reinforce an established Landscaping context in the area. (Reference Section 140.4(16))

12. For Single-detached Housing, Semi-detached Housing and Duplex Housing, a minimum Private Outdoor Amenity Area shall be designated on the Site plan. Neither the width nor length of the Private Outdoor Amenity Area shall be less than 4.0 m. The Private Outdoor Amenity Area may be located within any Yard, other than a Front Yard, and shall be permanently retained as open space, unencumbered by an Accessory Building or future additions. (Reference Section 47)

NOTES:

1. Any future deck enclosure or cover requires a separate development and building permit approval.
2. Any future basement development requires development and building permit approvals.
3. Note that Secondary Suite Use Class does not include Semi-detached Housing.
4. The driveway access must maintain a minimum clearance of 1.5m from the service pedestal and all other surface utilities.
5. Lot grades must comply with the Edmonton Drainage Bylaw 16200. Contact Drainage Services at 780-496-5500 for lot grading inspection inquiries.
6. An approved Development Permit means that the proposed development has been reviewed only against the provisions of the Edmonton Zoning Bylaw. It does not remove obligations to conform with other legislation, bylaws or land title instruments such as the Municipal Government Act, the ERCB Directive 079, the Edmonton Safety Codes

Permit Bylaw or any caveats, covenants or easements that might be attached to the Site. (Reference Section 5.2)

7. Unless otherwise stated, all above references to "section numbers" refer to the authority under the Edmonton Zoning Bylaw 12800.

[27] In granting this development, the following VARIANCE to the *Edmonton Zoning Bylaw* is allowed:

- 1) Section 140.3(3)(b) is relaxed by 0.5 metres to permit a Site Width of 12.9 metres instead of the required 13.4 metres.

Reasons for Decision

[28] The proposed development is for a Semi-Detached House, a Permitted Use in the RF3 Small Scale Infill Development Zone.

[29] The Appellant argued that builders should be made to defend any required variances. The Board notes that the Court of Appeal has addressed this argument in *Newcastle Centre GP Ltd. v. Edmonton (City)*, 2014 ABCA 295. The Court ruled that it is an error for the Board to take the position that the *Bylaw* creates a presumption of harm and that it cannot intervene unless the Applicant rebuts this presumption. The Court held that the proper legal test for waivers is set out in section 687(3)(d) of the *Municipal Government Act*, and accordingly the Board must determine the impact of a particular variance. Further, in refusing a permitted Use, the Board has a duty to explain any interference with neighbourhood amenities or with use, value and enjoyment of other land parcels.

[30] The proposed development complies with all applicable development regulations, with the exception of the Site Width which is deficient by 0.5 metres.

[31] While the Site Width deficiency may be an indicator of overdevelopment, in this case the Board notes that all requirements for Site Area, Site Coverage and Setbacks have been met or exceeded. In particular, the development regulations for minimum Side Setback, which are most closely associated with Site Width, exceed the minimum requirements by 0.9 metres on each side of the proposed development.

[32] The immediately adjacent neighbours to the east and west who share Side Lots Lines with the subject development – and therefore are the most likely to be affected by the required variance – did not provide any opposition to the development.

[33] The Appellant had concerns over the adequacy of parking associated with the required variance to the Site Width. The Board finds that even with the variance, four fully compliant off-street parking spaces have been provided. Also, a detached rear Garage was initially included in the plans, but later replaced by the parking pad. If the parking pad were to be converted into a detached Garage as indicated on the earlier plans, the maximum Site Coverage would be met. In addition, the distance between the Garage and

both Side Lot Lines would also exceed the required minimum Setback for Accessory buildings.

- [34] The Appellant submitted that as the number of Semi-Detached Housing developments increases across the streetscape, it takes on the look of Row-Housing. In this way, Single Detached Homes such as her own could become negatively impacted. However, no evidence was provided to support this opinion or to connect this impact to granting the requested 0.5 metres variance to Site Width for this Permitted Use on this Site. Furthermore, the Board notes that Row Housing is also a permitted Use in this Zone.
- [35] The Appellant argued that the proliferation of Semi-detached Housing as a means to increase density is changing the mix of housing forms placing Single Detached Housing at risk, and that Single Detached Housing in conjunction with Secondary Suites would be preferable. Again the Board notes that Semi-detached Housing is a permitted Use and it is the impact of the 0.50 metres variance to the minimum Site Width that is being considered. In any event, based on the Appellant's aerial photograph, the Board finds there is a mix of housing forms and that most of the developments in immediate proximity are currently Single Detached Houses.
- [36] The Appellant also expressed concerns about the potential for a basement suite development.
- [37] The application before the Board is for Semi-detached Housing. The Applicant has provided evidence, supported by the approved plans, that there is to be no development in either basement. The original approval included a condition that the basement was not to be used as an additional Dwelling and the Board has affirmed this condition. Further, section 7.2(7) defines Secondary Suites as a development consisting of a Dwelling located within, and Accessory to, a structure in which the principal Use is Single Detached Housing. Secondary Suites are not allowed in conjunction with Semi-detached Housing.
- [38] Should the Appellant or anyone else wish to add to the number of Dwellings on this Site at some future date, a new application would be required involving a full evaluation by the Development Authority including redetermination of Use class, applicable development regulations and variances.
- [39] The future development of unauthorized illegal basement developments would be a compliance issue outside the jurisdiction of this Board.
- [40] The Appellant expressed concern about the developer's failure to communicate. Under the Mature Neighbourhood Overlay (the MNO), only those deficiencies that require a variance to the overlay itself require community consultation. While it may be good practice for developers to engage in community consultation, there is no obligation to do so outside of the MNO. In any event, this concern is not related to the impact of the required variance.

[41] For the above reasons, the Board finds that the proposed development 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.

Kathy Cherniawsky, Presiding Officer
Subdivision and Development Appeal Board

Board Members in Attendance:

Mr. B. Gibson; Ms. S. LaPerle; Mr. I. O'Donnell; Ms. N. Hack

Important Information for the Applicant/Appellant

1. This is not a Building Permit. A Building Permit must be obtained separately from the Sustainable Development Department, located on the 5th Floor, 10250 – 101 Street, Edmonton.
2. Obtaining a Development Permit does not relieve you from complying with:
 - a) the requirements of the *Edmonton Zoning Bylaw*, insofar as those requirements have not been relaxed or varied by a decision of the Subdivision and Development Appeal Board,
 - b) the requirements of the *Alberta Safety Codes Act*,
 - 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 5th Floor, 10250 – 101 Street, Edmonton.

NOTE: The City of Edmonton does not conduct independent environmental checks of land within the City. If you are concerned about the stability of this property for any purpose, you should conduct your own tests and reviews. The City of Edmonton, when issuing a development permit, makes no representations and offers no warranties as to the suitability of the property for any purpose or as to the presence or absence of any environmental contaminants on the property.



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Date: February 9, 2017
Project Number: 233876119-001
File Number: SDAB-D-17-018

Notice of Decision

- [1] On January 25, 2017, the Subdivision and Development Appeal Board heard an appeal that was filed on January 1, 2017. The appeal concerned the decision of the Development Authority, issued on December 21, 2016, to approve the following development:

Construct a 2 Storey Accessory Building (Garage Suite on 2nd floor; Garage on main floor, irregular-shaped), and to demolish the existing Accessory Building (rear detached Garage)

- [2] The subject property is on Plan 6490KS Blk 19 Lot 8, located at 13207 - 105 Street NW, within the RF1 Single Detached Residential Zone. The MNO 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 original development application with attachments and plans;
- Approved Development Permit decision;
- Development Officer's written submissions dated January 19, 2017;
- Written submissions of the Appellant, with supporting materials;
- Written submissions of the Respondent, with supporting materials including results of consultation;
- One online response in opposition to the development; and
- Three letters and emails in opposition to the development.

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

- Exhibit A – Map of two-Storey developments in the surrounding area, identified by the Appellant; and
- Exhibit B – Map of property owners consulted, identified by the Respondent.

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.

Summary of Hearing

i) Position of the Appellant, Mr. M. Steingard

- [8] Mr. Steingard was accompanied by his daughter, Ms. J. Steingard.
- [9] The Appellant identified a number of concerns, foremost of which was the development's potential impact upon his privacy, as he lives directly to the north of the adjacent subject property.
- [10] While he understands the City is promoting the goal of increased density, none of it has occurred in his area. Within 200 metres from his property there are no applications of this kind and the developments are all single family bungalows. He argued that the neighbours had all purchased their properties with the expectation that bungalows would be maintained. They do not want people perched up above and looking down on their properties. There are other less obtrusive ways to increase density.
- [11] The Appellant referenced a series of photographs to demonstrate how his view and privacy would be impacted by the taller development. He expressed particular concern for the second Storey windows which would overlook his yard. Even though these windows are to be frosted, his privacy remains negatively impacted because the occupant could easily open the windows for a view of his backyard.
- [12] The Board noted that two-Storey Single Detached Housing is a permitted Use in this neighbourhood, and questioned the difference in impact between a two-Storey Accessory building compared to a two-Storey Single Detached House. In response, the Appellant stated that the proposed development is situated in such a way as to give a tower-like effect, overlooking the Appellant's backyard as well as a number of surrounding properties. It is the second Storey windows and not the main floor entrance to the Garage Suite that causes his privacy concerns.

- [13] Upon further questioning by the Board, the Appellant stated that if the proposed development had been for a two-Storey Single Detached House, he would have appealed that application as well. In his view, two-Storey structures are not compatible with the surrounding neighbourhood and Uses. On questioning from the Board, the Appellant confirmed there is a two-Storey Single Detached House, with a rear attached Garage, within the notification zone. It is located three lots to the north of the subject Site, but he objected to that development as well. He felt the Community League “dropped the ball” in that instance. The Appellant identified two additional two-Storey developments in close proximity and marked their location on a copy of the notification map marked Exhibit “A.”
- [14] Mr. Steingard expressed concerns about parking and traffic safety. Presently, there are four vehicles associated with the existing house. The approval of the proposed Garage Suite will result in these vehicles being parked on the street. The occupants try, but do not successfully juggle the vehicles and the problem will be worse with the introduction of a Garage Suite.
- [15] Drivers often use the rear lanes as alternative roadways, and he has experienced near-misses by vehicles turning around the corner of the laneway on which the subject development is located. A handy-bus regularly uses the lane to access a home further down the block and turns this corner. The development of a Garage Suite will heighten these traffic safety concerns, particularly as the larger structure may potentially impact driver sightlines. The new structure will be located nearer to the lane – it is currently 25 feet from the lane so the occupants can park on the driveway and it will be moved to 3.05 metres from the lane with the reorientation of the Garage.
- [16] The Respondents were not in attendance when the Appellant approached the Community League with their concerns.
- [17] Although the Appellant had no research on the point, he believes that the proposed development will devalue his property. If he wanted to buy a bungalow and saw a Garage Suite in the back, it would discourage him from purchasing the property.

ii) Position of Affected Property Owner in Support of the Appellant, Mr. M. Desjarlais

- [18] Mr. Desjarlais owns the property south of the subject development. The two properties are separated by a laneway that runs east-west, and both are located at the T-intersection of this rear lane.
- [19] His main concern is with the location of the proposed Garage Suite at this T-intersection. He has two young grandsons who often visit and play in his backyard and rear driveway. Everyday, he observes vehicles driving down this lane, navigating the tight corner at the T-intersection. A portion of his fence located at this intersection has been run over. The

proposed development will create a blind spot at this corner, and someone will eventually get hurt.

- [20] Referring to photographs from the Appellant's supporting materials, Mr. Desjarlais identified the view from his property onto the subject property as it currently exists. From his kitchen window he can see down the lane. This view will be negatively impacted should the development be approved.
- [21] Mr. Desjarlais uses his rear yard regularly and considers it a sanctuary. He echoed the concerns of the Appellant that the proposed Garage Suite will overlook his yard and interfere with his privacy.
- [22] Upon questioning by the Board, Mr. Desjarlais explained that he shares the driveway with the property owner of 10420 – 132 Avenue. It is possible for this driveway to accommodate a normal-sized vehicle. However, he owns a truck, and the tail end protrudes into the lane, so he parks the truck and a trailer in the back of his rear yard, parallel to Rear Lot Line.

iii) Position of the Development Authority

- [23] The Development Authority was represented by Mr. K. Yeung.
- [24] Mr. Yeung explained that he considered a number of factors when he reviewed this discretionary Use application. To avoid excessive protrusion of the Garage Suite into the backyard, it was determined that a southern orientation would be more suitable, but with a separation from the Rear Lot Line and lane to the east. The property to the east of the subject development also shares a similar orientation. Therefore, in his opinion, backing out of the subject driveway onto the lane should not present any safety concerns. As vehicular access is off the lane, the application was not circulated to Transportation.
- [25] Mr. Yeung also gave consideration to the lack of restrictions upon Garage Suite developments within this neighbourhood's statutory plans. He considered concerns about privacy and windows. Mr. Yeung noted that Mr. Desjarlais' property faces the portion of the Garage Suite that has no windows, so his concerns about the potential overlook into his yard should be mitigated.
- [26] The windows facing westward toward the Principal Dwelling are to be frosted. This decision was made to reduce impacts upon privacy. All the second Storey windows can be opened. These windows are located where the Great Room and Bedroom 2 are located.
- [27] The north-facing façade also has one window, located along the stairway. The glass is to be obscured and it is unlikely that this window will be used for the view, as the window is located above the staircase, in an area used for transitioning between the first and second Storeys. Upon questioning by the Board regarding this stairwell, Mr. Yeung

submitted that while it would have been possible to locate the stairwell on the exterior, the interior stairwell actually improves privacy, as it obscures the view available to occupants moving between the two floors.

- [28] Mr. Yeung confirmed that neither the first Storey windows, nor the windows facing east, will be frosted. The east windows face onto the rear lane, which provides some separation distance from the neighbouring property to the east.
- [29] Upon questioning by the Board, Mr. Yeung stated that he is satisfied with the provided on-site parking. Although the plot plan identifies three parking spaces on the driveway in addition to the two spaces inside the garage itself, his technical review of the application considered only two tandem parking spaces on the driveway. Since only three parking spaces are required for the principal Dwelling and the Garage Suite, the four parking spaces provided are satisfactory.
- [30] Regarding the concerns about a two-Storey development within a predominantly one-Storey neighbourhood, Mr. Yeung referenced development regulations governing Garage Suite developments in section 87 of the *Edmonton Zoning Bylaw*. He noted that under section 87(2)(a)(i), the maximum Height of a Garage containing an above Grade Garage Suite is limited to 6.5 metres, or 1.5 metres greater than the Height of the principal Dwelling where the Garage Suite has a roof slope of 4/12 or greater. Measuring from Grade to the midpoint of the roof, the development is 5.63 metres in Height. The peak of the roof sits at 6.41 metres.
- [31] Mr. Yeung confirmed that these recent amendments to the Section 87 regulations allow for Garage Suites that are Accessory to bungalow developments. Previously applicable locational criteria have also been removed.

iv) Position of the Respondent, Ms. S. Mohammed

- [32] Ms. Mohammed was accompanied by her son, Mr. A. Mohammed and her husband, Mr. A. Mohammed. One of their existing tenants who resides in the Principal Dwelling, Mr. A. Safi, was also in attendance.
- [33] The Board noted that there appeared to be mature trees located in the portion of the yard where the parking spaces will be provided, and questioned whether these will be removed. The Respondent initially stated no trees would be removed, but then modified his response, stating that they hoped to avoid removing any of the mature trees, but if needed, they will relocate the trees. They have no intention to park more cars on site other than what is allowed as shown in the plot plan.
- [34] The Board referenced the floor plans, which showed an interior wall on the main floor of the Garage, with two locked doors, as well as heating and plumbing. The Board questioned the need for these items. The Respondent clarified that the locked doors were required by Safety Codes, and that the heating and plumbing on the first floor was likely

required to prevent the pipes from freezing. The plumbing is also for the laundry room, which will be heated. There is no main floor washroom, and there is no intention to create another suite on the main floor.

- [35] The Respondent submitted Exhibit “B”, a map identifying the neighbours in the surrounding area who were consulted about the development. The Respondent visited only those homes with lights switched on. Out of those homes, only seven individuals opened their doors. However, all who provided a response indicated support for the development.
- [36] They attempted unsuccessfully to contact the Community League representative.
- [37] Upon questioning by the Board, the Respondent confirmed that the main floor of the Garage is of normal height with standard overhead doors. There are no windows on the south elevation because due to the roof, the wall height needed to be dropped. As a result, there was insufficient space for windows.

v) Rebuttal of the Appellant

- [38] The Appellant disagreed with the Development Authority’s submission that the property to the east has a garage with a similar orientation to the proposed development as the garage to the east is smaller.
- [39] The Appellant noted if all five parking spaces as shown on the plot plan are utilized, the vehicles will be parked right along the lane.

Decision

- [40] The appeal is DENIED and the decision of the Development Authority is CONFIRMED. The development is GRANTED as approved by the Development Authority, subject to the CONDITIONS as set out in the approved Permit Number 233876119-001, issued by the Development Authority on December 21, 2016, in addition to the following:
- 1) All second Storey windows located on the north elevation and the west elevation shall be opaque or frosted.

Reasons for Decision

- [41] The proposed development is a Garage Suite, a Discretionary Use in the RF1 Single Detached Residential Zone (section 110.3(3)).

- [42] The proposed development meets or exceeds all applicable development regulations and therefore complies with the *Edmonton Zoning Bylaw*. As no variances are required, the Board must determine if a Garage Suite Use is reasonably compatible with the surroundings, or if there is a planning basis upon which this Use should be denied.
- [43] Garage Suites are classified as a Residential Use under section 7.2 of the *Bylaw*. Garage Suites are listed as discretionary Uses in several Residential Zones, particularly in the lower density residential zones, including the RF1 Zone. In addition, City Council recently removed the locational criteria formerly applicable to Garage Suites in the RF1 Zone. These factors are general indicators of suitability.
- [44] The Subject Site is an interior Lot. Along the Rear Lot Line to the east, it abuts a lane and the rear of one Lot containing a Single Detached House. Along the south Side Lot Line, the subject Site abuts a lane and the rear of three Lots each containing Single Detached Houses. Along the north Side Lot Line, it abuts the Appellant's Lot. The lanes intersect at the southeast corner of the subject Site.
- [45] The Board received and considered community responses in favour and opposed to the proposed development.
- [46] The Respondents submitted seven signed form letters in support of the development. The form letter indicates that the authors: support the construction of a Garage Suite; and, have no issue with the current renters, the cleanliness of the yard or the parking situation. The letter also indicates that there is no Secondary Suite in the basement and that only one family lives in the residence. Three letters were attributed to addresses located in the notification area, including two of the most impacted property owners: one immediately to the south of the front yard of the subject Site and one immediately to the east of the rear yard of the subject Site. Four letters were from properties located further to the north on 105 Street and therefore less impacted by the proposed development.
- [47] The Board received one online response and three letters/emails from property owners within the 60 metre notification area and the Rosslyn Community League in opposition to the Garage Suite. In addition, an adjacent owner to the south appeared to oppose the development.
- [48] The Appellant and the others opposed to the Garage Suite specified the following concerns:
- a. The principal dwelling is occupied by renters who bring problems and the Garage Suite may also be rented;
 - b. The appeal was filed over the holiday season;
 - c. Lack of maintenance on the property;

- d. Existing on-street parking problems will be exacerbated by the Garage Suite;
- e. The Height of the Garage Suite and the associated potential loss of sunlight, view and privacy; and,
- f. Safety issues in the lane.

[49] The first two concerns, rental occupancy and timing of filing, are not valid planning considerations relevant to a determination about the suitability of the proposed discretionary Use. The Board also notes that although the appeal was filed during the holiday season, it was filed on time, in accordance with the limitation period set out under section 686 of the *Municipal Government Act*.

[50] Cleanliness or the unsightly condition of the subject Site is an issue of compliance with other City bylaws that are beyond the jurisdiction of this Board, and is not a relevant basis upon which this Board may exercise its discretion to refuse a Development Permit application for a Garage Suite.

[51] The Appellant and others raised various concerns about on-street parking and the habits of the existing or former tenants. The Board declines to allow the appeal on the basis of parking issues for the following reasons:

- a. The number of proposed off-street parking spaces exceed the required minimum under the development regulations contained in the *Bylaw*. The proposed development requires three on-Site parking spaces, the Applicant has provided four. Two spaces in the Garage and two in tandem spaces on the driveway.
- b. While some neighbours perceived on street parking issues, other neighbours indicated there were no such issues.
- c. The Board received no evidence that on-street parking in the vicinity was restricted in any unique manner. The photographic evidence is limited, but it does not show a shortage of on-street parking spaces.
- d. In any event, the regulations governing parking in the *Bylaw* are limited to on-Site parking requirements. No provisions in the *Bylaw* limit the number of vehicles that may be associated with a particular residence or specify where those vehicles may be parked on public roadways. The Board has no authority to enforce or establish on-street parking conditions.

[52] The Appellant strongly objected to the Height of the Garage Suite and indicated he would even oppose the development of a two-Storey House on the subject Site. The Board finds that the proposed development is reasonably compatible with its surroundings in terms of Height for the following reasons:

- a. Two-Storey Single Detached Houses are a permitted Use in the RF1 Zone.
- b. Regardless of the nearby building Heights, the Board notes that the *Bylaw* contemplates a mix of one and two-Storey developments with Garage Suites. In 2015 City Council amended the development regulations governing the Height of Garage Suites in section 87(1)(a) of the *Bylaw* specifically to regulate the construction of two Storey Garage Suites on Sites with existing Single Storey principal Dwellings.
- c. At 5.63 metres in Height, the proposed development is fully compliant with the Height regulations in the *Bylaw*. This is under the 6.5 metre absolute maximum and not more than 1.5 metres greater than the Height of the currently existing principal Dwelling.
- d. Furthermore, based on the evidence of the Appellant, the proposed development will not be the only two-Storey building in this area. The majority of Houses in the neighbourhood are Single Storey bungalows and some Houses are bi-level developments. However, there are three two-Storey Single Detached Houses in the immediate vicinity: one within the 60 metre notification radius (four lots to the north of the subject Site), a second further along the same block face (seven lots north of the subject Site), and a third located on nearest corner Lot of the next adjacent block to the east on 104 Street.

[53] As the Garage Suite is fully compliant in terms of Height, Setbacks and Site Coverage, the consequential impacts on neighbouring views and sun shadowing are minimized, and do not constitute a planning basis for the Board to refuse the application. No evidence was presented by any party concerning sun shadowing.

[54] The Board finds that the proposed development has been designed in a manner which is reasonably compatible with its surroundings in terms of privacy for the following reasons:

- a. The Garage Suite was reoriented and relocated on the subject Site to reduce oversight and increase privacy for surrounding neighbours.
- b. There are no windows on the Garage Suite facing south toward the rear yards of the three adjacent Lots across the lane. The building is also screened in part by existing vegetation and the three rear detached Garages located in each of the three lots to the south and by other vehicles parked in these rear yards.
- c. There are two transparent windows on the second floor of the Garage Suite facing east toward the rear yard of the adjacent property across the lane. The Garage Suite is separated from this property by the lane and screened by existing landscaping and by the double rear detached garage on that lot. Also, this neighbour, who is most affected

by the windows which face east, signed one of the form letters in support of the development.

- d. There is one window located on the second floor facing north towards the Appellant's rear yard. It is located along the stairway where the occupants of the Garage Suite are unlikely to linger. This window cannot be viewed from the habitable portion of the Garage Suite. Under the conditions of approval the glass for this window is to receive frosted or opaque treatment. The Board has affirmed this condition. The location and condition both reduce privacy concerns associated with this window.
- e. Two windows are located on the second floor west elevation facing the principal Dwelling. The Appellant's rear yard could be viewed at an angle from these windows. The development is subject to the condition that these windows also receive frosting or opaque treatment to reduce privacy concerns. The Board has affirmed this condition. The Board also notes that in terms of impact and compatibility of Uses, two-Storey Houses are a permitted Use on the subject Site that could enable similar, or even greater, oversight into the Appellant's property.
- f. The Garage Suite design reduces privacy impacts. The Garage Suite has an exterior access on the first floor and an interior stairwell to access the dwelling. This design eliminates the privacy concerns that would be associated with an exterior staircase and second Storey landing and access.

[55] The Appellant also identified concerns related to the Garage Suite's location at the T-intersection of the rear lane. The Board accepts the Development Authority's evidence that this issue was considered, and that there were no concerns, given the orientation of the proposed garage is similar to the immediately adjacent neighbour to the east. The Board also notes that the Garage Suite is to be setback a distance of 3.05 metres from the Rear Lot Line and a distance of 5.46 metres from the south Side Lot Line. There is also a cutout at the southeastern corner of the Lot where it abuts the T-intersection which also improves the sightlines at this corner of the lane. The Board notes that a single Storey Garage built at the same location would have the same impact in terms of pedestrian and driver sightlines. The Board finds that the proposed location of the Garage Suite on the Lot does not raise a planning reason to deny the two-Storey proposed Use.

[56] In determining this appeal the Board has also considered compliance with applicable statutory plans as required per section 687(3)(a.1) of the *Act*. The Board finds that the proposed Garage Suite complies with many of the densification, renewal and diversity policies and objectives stated in the City of Edmonton's Municipal Development Plan, *The Way We Grow*, including:

- a. Policy 4.4.1 which states: "Ensure neighbourhoods have a range of housing choice to meet the needs of all demographic and income groups and create more socially sustainable communities."

- b. Policy 4.4.1.1 which states: “Provide a broad and varied housing choice, incorporating housing for various demographic and income groups in all neighbourhoods.”

[57] For the above reasons, the Board finds that there is no valid planning reason to refuse this development, which is a Discretionary Use in the RF1 Zone requiring no variances, and finds that it is reasonably compatible with the surrounding developments.

Kathy Cherniawsky, Presiding Officer
Subdivision and Development Appeal Board

Board Members in Attendance:

Ms. S. LaPerle; Mr. I. O’Donnell; Ms. N. Hack

Important Information for the Applicant/Appellant

1. This is not a Building Permit. A Building Permit must be obtained separately from the Sustainable Development Department, located on the 5th Floor, 10250 – 101 Street, Edmonton.
2. Obtaining a Development Permit does not relieve you from complying with:
 - a) the requirements of the *Edmonton Zoning Bylaw*, insofar as those requirements have not been relaxed or varied by a decision of the Subdivision and Development Appeal Board,
 - b) the requirements of the *Alberta Safety Codes Act*,
 - 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 5th Floor, 10250 – 101 Street, Edmonton.

NOTE: The City of Edmonton does not conduct independent environmental checks of land within the City. If you are concerned about the stability of this property for any purpose, you should conduct your own tests and reviews. The City of Edmonton, when issuing a development permit, makes no representations and offers no warranties as to the suitability of the property for any purpose or as to the presence or absence of any environmental contaminants on the property.



**EDMONTON
TRIBUNALS**

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SDAB-D-17-019

Application No. 228171237-001

An appeal to Change the use from General Industrial to a Religious Assembly (maximum 80 seats) and to construct an interior alteration (extend mezzanine adding 149.4 sq.m. of floor area) on Condo Common Area Plan 0125639, 0220604, 0122871, 0323928, 0227621, 0729486, located at 3104 / 3140 – Parsons Road NW, was **WITHDRAWN**