# SUBDIVISION

# AND

# DEVELOPMENT APPEAL BOARD

# AGENDA

Wednesday, 9:00 A.M. January 31, 2018

Hearing Room No. 7 Churchill Building, 10019 - 103 Avenue NW, Edmonton, AB

# SUBDIVISION AND DEVELOPMENT APPEAL BOARD HEARING ROOM NO. 7

15922 - 94 Avenue NW   Project No.: 139257959-003   II 10:30 A.M.   SDAB-D-18-016 Construct a 3 Dwelling Apartme demolish the existing Single Det	
II 10:30 A.M. SDAB-D-18-016 Construct a 3 Dwelling Apartme	
11007 - 85 Avenue NW	
Project No.: 182128114-001	

<u>ITEM I: 9:00 A</u>	<u>A.M.</u>	FILE: SDAB-D-18-015
	AN APPEAL FROM THE DECISION OF T	HE DEVELOPMENT OFFICER
	APPELLANT:	
	APPLICATION NO.:	139257959-003
	APPLICATION TO:	Construct an Accessory building (shed, 2.44m x 1.74m).
	DECISION OF THE DEVELOPMENT AUTHORITY:	Refused
	DECISION DATE:	December 20, 2017
	DATE OF APPEAL:	January 3, 2018
	MUNICIPAL DESCRIPTION OF SUBJECT PROPERTY:	15922 - 94 Avenue NW
	LEGAL DESCRIPTION:	Plan 2034KS Blk 32 Lot 60
	ZONE:	RF1 Single Detached Residential Zone
	OVERLAY:	MNO Mature Neighbourhood Overlay
	STATUTORY PLAN:	N/A

# Grounds for Appeal

The Appellant provided the following reasons for appealing the decision of the Development Authority:

- I bought the house with the shed. I had no idea that it was non-conforming.

- As you can see from the pictures, the shed does not interfere with anything.

- The neighbours have no problem with the shed.

- From the front, it looks like part of the house.

- I am on a fixed income and cannot afford removal, etc.

- It is a sound structure; well built.

## **Board Officer Comments**

The Appellant states that the subject property is non-conforming. Section 643 of the *Municipal Government Act*, RSA 2000, c M-26 states:

#### Non-conforming use and non-conforming buildings

**643(1)** If a development permit has been issued on or before the day on which a land use bylaw or a land use amendment bylaw comes into force in a municipality and the bylaw would make the development in respect of which the permit was issued a non-conforming use or non-conforming building, the development permit continues in effect in spite of the coming into force of the bylaw.

(2) A non-conforming use of land or a building may be continued but if that use is discontinued for a period of 6 consecutive months or more, any future use of the land or building must conform with the land use bylaw then in effect.

(3) A non-conforming use of part of a building may be extended throughout the building but the building, whether or not it is a non-conforming building, may not be enlarged or added to and no structural alterations may be made to it or in it.

(4) A non-conforming use of part of a lot may not be extended or transferred in whole or in part to any other part of the lot and no additional buildings may be constructed on the lot while the non-conforming use continues.

(5) A non-conforming building may continue to be used but the building may not be enlarged, added to, rebuilt or structurally altered except

(a) to make it a conforming building,

(b) for routine maintenance of the building, if the development authority considers it necessary, or

(c) in accordance with a land use bylaw that provides minor variance powers to the development authority for the purposes of this section.

(6) If a non-conforming building is damaged or destroyed to the extent of more than 75% of the value of the building above its foundation, the building may not be repaired or rebuilt except in accordance with the land use bylaw.

(7) The land use or the use of a building is not affected by a change of ownership or tenancy of the land or building.

# **General Matters**

# **Appeal Information:**

The Municipal Government Act, RSA 2000, c M-26 states the following:

#### **Grounds for Appeal**

685(1) If a development authority

- (a) fails or refuses to issue a development permit to a person,
- (b) issues a development permit subject to conditions, or
- (c) issues an order under section 645,

the person applying for the permit or affected by the order under section 645 may appeal to the subdivision and development appeal board.

# Appeals

**686(1)** A development appeal to a subdivision and development appeal board is commenced by filing a notice of the appeal, containing reasons, with the board,

- (a) in the case of an appeal made by a person referred to in section 685(1)
  - (i) with respect to an application for a development permit,
    - (A) within 21 days after the date on which the decision is made under section 642, [...]

## **Hearing and Decision**

**687(3)** In determining an appeal, the subdivision and development appeal board

•••

. . .

- (a.1) must comply with the land use policies;
- (a.2) subject to section 638, must comply with any applicable statutory plans;
- (a.3) subject to clause (d), must comply with any land use bylaw in effect;

5

- (c) may confirm, revoke or vary the order, decision or development permit or any condition attached to any of them or make or substitute an order, decision or permit of its own;
- (d) may make an order or decision or issue or confirm the issue of a development permit even though the proposed development does not comply with the land use bylaw if, in its opinion,
  - (i) the proposed development would not
    - (A) unduly interfere with the amenities of the neighbourhood, or
    - (B) materially interfere with or affect the use, enjoyment or value of neighbouring parcels of land,

and

(ii) the proposed development conforms with the use prescribed for that land or building in the land use bylaw.

## General Provisions from the Edmonton Zoning Bylaw:

Section 110.1 states that the **General Purpose** of the **RF1 Single Detached Residential Zone** is "to provide for Single Detached Housing while allowing other forms of small scale housing in the form of Secondary Suites, and Garden Suites, as well as Semidetached Housing and Duplex Housing under certain conditions."

Section 7.2(8) states:

**Single Detached Housing** means development consisting of a building containing only one Dwelling, which is separate from any other Dwelling or building. Where a Secondary Suite is a Permitted or Discretionary Use in a Zone, a building which contains Single Detached Housing may also contain a Secondary Suite. This Use includes Mobile Homes which conform to Section 78 of this Bylaw.

Section 6.1(2) states: "**Accessory** means, when used to describe a Use or building, a Use or building naturally or normally incidental, subordinate, and devoted to the principal Use or building, and located on the same lot or Site."

Section 814.1 states that the **General Purpose** of the **MNO Mature Neighbourhood 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."

#### Accessory Building Setbacks

Section 50.3(5) provides in part:

5. Accessory buildings and structures shall be located on an Interior Site as follows:

- a. an Accessory building or structure shall be located not less than 18.0 m from the Front Lot Line, unless it complies with the Setback requirements for a principal building;
- b. an Accessory building or structure shall be located not less than 0.9 m from the Side Lot Line, except where it is a mutual Garage erected on the common property line to the satisfaction of the Development Officer, or where a Garage is placed on the common property line in accordance with the provisions of the RPL Zone, or where the Accessory building does not exceed the permitted fence Height;

## **Development Officer's Determination**

1. Accessory Building Setback - The shed is 8.1m from the front property line instead of 18.0m. (Section 50.3.5.a)\*

2. Accessory Building Setback - The shed is 0.0m from the side property line instead of 0.9 m. (Section 50.3.5.b)

\* Note: As the shed does not comply with the Setback requirements for a principal building, the shed must be at least 18.0m from the front lot line. (Section 50.3.5.a)

# Separation Distance between Accessory Building and Principal Building

Section 50.3(5)(c) states: "an Accessory building or structure shall be located not less than 0.9 m from a principal building and any other Accessory building or structure".

#### **Development Officer's Determination**

3. Separation Distance - The shed is 0.0m from the House instead of 0.9 m. (Section 50.3.5.c)

# Notice to Applicant/Appellant

Provincial legislation requires that the Subdivision and Development Appeal Board issue its official decision in writing within fifteen days of the conclusion of the hearing. Bylaw No. 11136 requires that a verbal announcement of the Board's decision shall be made at the conclusion of the hearing of an appeal, but the verbal decision is not final nor binding on the Board until the decision has been given in writing in accordance with the *Municipal Government Act*.

				Project Number: 139257959-003 Application Date: NOV 22, 2017	
	1	Application	n for	Printed: December 20, 2017 at 11:57 AM Page: 1 of 2	
	Mino	r Developr	nent Permit		
This document is a Development	nt Permit Decision for th	ne development app	lication described below	Ν.	
Applicant		P	roperty Address(es) a 15922 - 94 AVENU	nd Legal Description(s)	
Plan 2034KS Blk 32 Lot 60					
Scope of Application		· · ·			
To construct an Accessor	y building (shed, 2.44m	x 1.74m).			
Permit Details					
# of Dwelling Units Add/Remov	e: 0	c	lass of Permit:		
Client File Reference Number:			ot Grading Needed?: N		
Minor Dev. Application Fee: Ex Secondary Suite Included ?: N	terior Alterations (Res.)		ew Sewer Service Required: at. Plan Overlay/Annex Area	N 1: Mature Neighbourhood Overlay	
I/We certify that the above noted	details are correct.				
Applicant signature:					
Development Application De Refused	cision				
Reason for Refusal 1. Accessory Buildin	ng Setback - The shed is	8.1m from the fron	t property line instead o	of 18.0m. (Section 50.3.5.a)*	
2. Accessory Buildin	ng Setback - The shed is	0.0m from the side	property line instead o	f 0.9 m. (Section 50.3.5.b)	
3. Separation Distan	ce - The shed is 0.0m fr	om the House instea	nd of 0.9 m. (Section 50	0.3.5.c)	
* Note: As the shed the front lot line. (See		e Setback requirem	ents for a principal buil	ding, the shed must be at least 18.0m from	
	e right of appeal within 1 83 through 689 of the M			nent Application Decision, as outlined in	
Issue Date: Dec 20, 2017	Development Authority	y:XIE, JASON	Sig	nature:	
Fees					
Dev. Application Fee	Fee Amount \$166.00	Amount Paid \$166.00	Receipt # 04636859	Date Paid	
Dev. Application ree	\$100.00	\$100.00	04030838	Nov 22, 2017	
		THIS IS NOT A	PERMIT		

	1	Application	for	Project Number: <b>139257959-0</b> Application Date: NOV 22, 20 Printed: December 20, 2017 at 11:57 A Page: 2 c
	Mino	r Developme	ent Permit	
Fees				
Existing Without Permit Penalty Fee Total GST Amount:	Fee Amount \$166.00 \$0.00	Amount Paid \$166.00	<b>Receipt #</b> 04636859	Date Paid Nov 22, 2017
Totals for Permit:	\$332.00	\$332.00		
		THIS IS NOT A PEI	RMIT	





File: SDAB-D-18-015

11

▲ N

AN APPEAL FROM THE DECISION OF T	HE DEVELOPMENT OFFICER
APPELLANT:	
APPLICATION NO.:	182128114-001
APPLICATION TO:	Construct a 3 Dwelling Apartment House and to demolish the existing Single Detached House
DECISION OF THE DEVELOPMENT AUTHORITY:	Refused
DECISION DATE:	July 4, 2016
DATE OF APPEAL:	July 5, 2016
MUNICIPAL DESCRIPTION OF SUBJECT PROPERTY:	11007 - 85 Avenue NW
LEGAL DESCRIPTION:	Plan I23A Blk 161 Lot 31
ZONE:	DC1 Garneau Direct Development Control District
OVERLAY:	N/A
STATUTORY PLAN:	Garneau Area Redevelopment Plan

# Grounds for Appeal

In 2016, the Appellant provided the following reasons for appealing the decision of the Development Authority:

We are solicitors for SAN Properties Limited, the owner of the lands on which the proposed development is situate. Our client's builder's Development Permit Application has been refused. On behalf of our client, we hereby appeal the refusal on the following grounds:

- 1. The Development Officer failed to follow the directions of Council by failing to consider discretion granted to the Development Officer:
  - a. as set out in the Garneau Area Redevelopment Plan, section DC1..2; and/or

- b. in sections 720.3, 11.2(5) and 11.3 of the Zoning Bylaw to the extent the Development Officer failed to consider the propriety of granting a variance relative to the Development Permit Application.
- 2. The Development Officer failed to consider the impact of the proposed development on the existing character of built forms and on the existing streetscape.
- 3. In the particular circumstances of this application, the proposed development meets the requirements for a variance a provided in section 687(3)(d) of the Municipal Government Act.
- 4. Such further and other reasons as may be presented at the hearing of this appeal.

# General Matters

#### **Appeal History:**

On July 5, 2016, the Applicant for the subject development appealed the Development Authority's refusal decision to the Subdivision and Development Appeal Board.

In a decision issued on September 22, 2016, the Subdivision and Development Appeal Board allowed the appeal, revoked the decision of the Development Authority, and granted the development subject to various conditions.

That decision was appealed to the Alberta Court of Appeal by the Garneau Community League.

On November 14, 2017, the Court issued its decision in *Garneau Community League v Edmonton (City)*, 2017 ABCA 374. In that decision, the Court held at paragraph 29:

To the extent that council's directions gave a development authority the ability to consider "the merits of the development", the subdivision and development appeal board has similar authority. However, there is no basis for a subdivision and development appeal board to have broader powers on appeal than the development authority with respect to land in a direct control district.

And at paragraph 40:

In summary, the SDAB is entitled to substitute its decision for that of the Development Officer having found, correctly, that he failed to follow the direction of Council. However, because this property is zoned direct control, section 641(4) [now section 685(4)] applies and the SDAB must also follow the directions of Council. In particular, the broad variance provisions of section 11(5) of the [*Land Use Bylaw 5996* (the "Bylaw")]

(and section 687(3)(d) of the *Municipal Government Act*) are constrained by section 11.6(3) of the Bylaw. It provides that "where the issuance of a Development Permit for any use involves the exercise of any specified discretion ... to relax a regulation of a District or any other regulation of this Bylaw, he shall not permit any additional variance from that regulation pursuant to Section 11.5."

The Court cancelled the 2016 decision of the Board and referred the matter back to the Board, with the following directions (para 41):

- a. the SDAB is required by section 641(4)(b) of the Municipal Government Act to make its decision "in accordance with the directions" of Council; and
- b. variances from minimum setback or other requirements specified in RF3 may only be granted pursuant for individual applications, where such "relaxations would assist in the achievement of the development criteria in Clauses 3, 4 and 5" [of the development regulations under DC1 Garneau Direct Development Control District].

## **Direct Control Districts:**

The Municipal Government Act, RSA 2000, c M-26 states the following:

#### **Grounds for Appeal**

**685(4)** Despite subsections (1), (2) and (3), if a decision with respect to a development permit application in respect of a direct control district

- (a) is made by a council, there is no appeal to the subdivision and development appeal board, or
- (b) is made by a development authority, the appeal is limited to whether the development authority followed the directions of council, and if the subdivision and development appeal board finds that the development authority did not follow the directions it may, in accordance with the directions, substitute its decision for the development authority's decision.

The Development Officer's decision references the Garneau Area Redevelopment Plan (Bylaw 6221), which was passed in 1982. The Garneau Area Redevelopment Plan refers to the Land Use Bylaw in effect at the time it was passed, which was the old Land Use Bylaw 5996.

#### Section 2.7 of the Edmonton Zoning Bylaw states:

Unless there is an explicit statement to the contrary in a Direct Control District or Provision, any reference in a Direct Control District or Direct Control Provision to a land use bylaw shall be deemed to be a reference to the land use bylaw that was in effect at the time of the creation of the Direct Control District or Provision.

In *Parkdale-Cromdale Community League Association v Edmonton (City)*, 2007 ABCA 309, the Court of Appeal of Alberta held that section 2.7 of the *Edmonton Zoning Bylaw* applies only if there is an express cross-reference in a Direct Control Bylaw passed before 2001 to a provision of the old Land Use Bylaw 5996. In the absence of an express reference in the Direct Control Bylaw to the old Land Use Bylaw 5996, section 2.7 does not prevail over section 2.4 of the *Edmonton Zoning Bylaw*.

## General Provisions from the Edmonton Land Use Bylaw 5996:

Section 10.1(1) of the Land Use Bylaw 5996 states:

**Apartment Housing** means development consisting of one or more Dwellings contained within a building in which the Dwellings are arranged in any horizontal or vertical configuration, which does not conform to the definition of any other Residential Use Class.

Sections 11.5 and 11.6 with respect to the Development Officer's authority provide as follows:

#### **11.5 Variance to Regulations**

The Development Officer may approve, with or without conditions, an application for development that does not comply with this Bylaw:

1) where the proposed development would not, in his opinion:

a) unduly interfere with the amenities of the neighbourhood; or

b) materially interfere with or affect the use, enjoyment or value of neighbouring properties; and

2) the proposed development would, in his opinion, conform with the use prescribed for that land or building in this Bylaw.

# **11.6 Limitation of Variance**

In approving an application for a permit pursuant to Section 11.5 the Development Officer shall adhere to the following:

1) a variance shall be considered only in cases of unnecessary hardship or practical difficulties peculiar to the use, character, or situation of land or a building, which are not generally common to other land in the same District;

2) except as otherwise provided in this Bylaw, there shall be no variance from maximum height, floor area ratio and density

regulations, and the regulations specified in the Airport Protection Overlay;

3) where the issuance of a Development Permit for any use involves the exercise of any specified discretion of the Development Officer to relax a regulation of a District or any other regulation of this Bylaw, he shall not permit any additional variance from that regulation pursuant to Section 11.5; and

4) the General Purpose of the appropriate Districts.

# Section 710.1 of the Land Use Bylaw 5996 states that the **General Purpose** of the **DC1 Direct Development Control District** is:

To provide a Direct Control District for detailed, sensitive control of the use, development, siting and design of buildings and disturbance of land where this is necessary to establish, preserve or enhance:

- a) areas of unique character or special environmental concern, as identified and specified in an Area Structure Plan or Area Redevelopment Plan; or
- b) areas or sites of special historical, cultural, paleontological, archaeological, prehistorical, natural, scientific, or aesthetic interest, as designated under the Historical Resources Act, 1980.

Section 710.4 of the Land Use Bylaw 5996 states:

# 710.4 Development Regulations

1. All developments shall comply with the development regulations contained in an approved Area Redevelopment Plan or Area Structure Plan, except that any regulations or conditions applying as a result of designation of a historical resource under the Historical Resources Act, shall take precedence.

2. In the case of designated historical resources, any application to demolish, alter, restore or repair a building or structure, or to excavate or otherwise disturb land, shall require prior written authority, in accordance with the Historical Resources Act, 1980.

3. A development may also be evaluated with respect to its compliance with:

- a. the objectives and policies of an applicable Statutory Plan;
- b. the General Regulations and Special Land Use Provisions of this Bylaw; and
- c. the regulations of abutting Land Use Districts.

# <u>Garneau Area Redevelopment Plan (Bylaw 6221) and DC1 (Garneau Direct</u> <u>Development Control District)</u>

The Garneau Area Redevelopment Plan Bylaw 6221 (as amended) was adopted by Council on May 25, 1982. This Statutory Plan incorporated **DC1 Garneau Direct Development Control District**, see pages 147-48 of the Garneau Area Redevelopment Plan, a portion of which has been excerpted below:

- Area of Application: Portions of Sub area 1 north of 83 Avenue between 111 Street and 109 Street, designated DC1 in Bylaw 6220 amending the Land Use Bylaw.
- **Rationale:** The Garneau Plan in Policy 1.1 identifies the subject area as a "Special Character Residential Area" contributing to the city as a whole a precinct of older detached housing having interesting architectural detailing and variety in built form. This District is intended to encourage the retention and rehabilitation of existing while structures allowing for infill redevelopment. The regulations associated with this District are intended to ensure that all rehabilitation and redevelopment activities are sensitive to the existing character of both the built form and its relationship to existing streetscapes.

Uses:

The following uses will be considered in this area:

•••

(6) Apartment Housing, containing not more than 4 dwellings.

## **Development Criteria:**

The following development criteria shall apply to developments within this District pursuant to Section 710.4 of the Land Use Bylaw.

- 1. The General Regulations and Special Land Use Provisions of the Land Use Bylaw.
- 2. The development regulations of the RF3 (Low Density Redevelopment) District, provided that the Development Officer may relax these regulations for individual applications, where such relaxations would assist in the achievement of the development criteria in Clauses 3, 4 and 5 below.

- 3. New developments or additions to existing buildings shall be compatible with the scale, massing and siting of adjacent buildings along the same street frontage.
- 4. The rehabilitation and renovation of existing buildings shall retain the original details of rooflines, doors and windows, trim, exterior finishing materials and similar architectural features to the greatest extent practical.
- 5. The design and appearance of new developments shall incorporate building details and finishing materials which are common to the domestic architecture of the turn of the century and early 1920's detached housing in the area.
- 6. Existing trees and vegetation shall be retained wherever possible and where removal for new construction

# **Reduced Side Setback**

Section 140.4(8)(a) of the Land Use Bylaw 5996 states:

- 8. Side Yards shall be established on the following basis;
  - a) Side Yards shall total at least 20 percent of the site width, but the requirement shall not be more than 6.0 metres (19.7 feet) with a minimum Side Yard of 1.2 metres (3.94 feet) except that the minimum Side Yard for buildings over 7.5 metres (24.6 feet) in Height shall be 2 metres (6.6 feet).

# **Development Officer's Determination**

Reduced Side Setback - The distance from the house to the property line shared with 11009 - 85 Avenue (West side lot line) is 1.2 metres instead of 2.0 metres and the

distance from the house to the property line shared with 11003 - 85 Avenue (East side lot line) is 1.2 metres instead of 2.0 metres (Section 140.4.8.a). [unedited]

# Notice to Applicant/Appellant

Provincial legislation requires that the Subdivision and Development Appeal Board issue its official decision in writing within fifteen days of the conclusion of the hearing. Bylaw No. 11136 requires that a verbal announcement of the Board's decision shall be made at the conclusion of the hearing of an appeal, but the verbal decision is not final nor binding on the Board until the decision has been given in writing in accordance with the *Municipal Government Act*.

				Project Number: Application Date: Printed:	182128114-001 NOV 06, 2011 July 4, 2016 at 9:10 AM	
	A	Application for				
	Majo	r Developmen	nt Permit			
This document is a Development Pe				ν.		
Applicant		Prope	rty Address(es) a	nd Legal Description(s	)	
			007 - 85 AVENUI		,	
			Plan I23A Blk	161 Lot 31		
		Specif	ic Address(es)			
		Suite:	101, 11007 - 8	35 AVENUE NW		
		Suite:	201, 11007 - 8	35 AVENUE NW		
		Suite:	BSMT, 11007	- 85 AVENUE NW		
		Entrywa	y: 11007 - 85 AV			
		Building	-			
Scope of Application		1				
To construct a 3 Dwelling Apa	artment House and	to demolish the existing S	Single Detached H	ouse.		
Permit Details						
Class of Permit:		Contact	Contact Person:			
Gross Floor Area (sq.m.): 363.8			Lot Grading Needed?: Y			
New Sewer Service Required: Y			NumberOfMainFloorDwellings: 1			
Site Area (sq. m.): 405			Stat. Plan Overlay/Annex Area: (none)			
I/We certify that the above noted deta	ls are correct.					
Applicant signature:						
Development Application Decision Refused	n					
Reason for Refusal Reduced Side Setback - T 1.2m instead of 2.0m and 1.2m instead of 2.0m (Sec	the distance from the					
<b>Rights of Appeal</b> The Applicant has the rig Chapter 24, Section 683 ti				nent Application Decisi	on, as outlined in	
Issue Date: Jul 04, 2016 Deve	lopment Authority	HARRISON, MARK	Sigr	nature:		
Fees						
	Fee Amount	Amount Paid	Receipt #	Date Paid		
Lot Grading Fee Major Dev. Application Fee	\$275.00 \$770.00	\$275.00 \$770.00	02877264 02877264	Nov 06, 2015 Nov 06, 2015		
		THIS IS NOT A PERM	MIT			

	1	Application	for	Project Number: Application Date: Printed: Page:	<b>182128114-00</b> NOV 06, 20 July 4, 2016 at 9:10 A 2 of
	Majo	r Developme	ent Permit		
Fees	Fee Amount	Amount Paid	Receipt #	Date Paid	
Sanitary Sewer Trunk Fund 2012+ Total GST Amount:	\$2,198.00 \$0.00		Receipt #	Date I alu	
Totals for Permit: (\$2,198.00 outstanding)	\$3,243.00	\$1,045.00			
		THIS IS NOT A PEI	RMIT		



21