



**EDMONTON
TRIBUNALS**

*Subdivision &
Development
Appeal Board*

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Date: January 10, 2018
Project Number: 263413847-001
File Number: SDAB-D-18-001

Notice of Decision

- [1] On January 3, 2018, the Subdivision and Development Appeal Board (the “Board”) heard an appeal that was filed on **November 20, 2017**. The appeal concerned the decision of the Development Authority, issued on October 24, 2017, to refuse the following development:

Change the use of the ground floor from General Retail Stores to two Dwellings of Apartment Housing (existing w/o permits)

- [2] The subject property is on Plan 0525979 Blk 9 Lot 26, located at 12106 - 90 Street NW, within the CNC Neighbourhood Convenience Commercial Zone. The Alberta Avenue / Eastwood Area Redevelopment Plan 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 refused Development Permit; and
 - The Development Officer’s written submissions.

Preliminary Matters

- [4] 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.
- [5] The Presiding Officer outlined how the hearing would be conducted, including the order of appearance of parties, and no opposition was noted.
- [6] The Chair advised the Appellant that the Board must first determine if the appeal was filed on time. The *Municipal Government Act*, RSA 2000, c M-26 (the “MGA”) was amended between the date of the Development Permit refusal and this hearing. Under the previous provisions of the MGA, the applicant had to file an appeal within 14 days after

the date the applicant was notified of the decision. Under the new Act, the appeal period has been extended to 21 days and begins to run from the date that the decision is made and is given or sent to the applicant.

- [7] The Presiding Officer advised the Appellant, Mr. Grant, that the Board has information that the Development Officer sent the decision of refusal via e-mail on October 24, 2017. The Board is aware that the registered mail containing the hard copy of the refusal was not received until November 9, 2017.
- [8] The Appellant advised that he has had computer issues for some time and did not see the e-mail until after the notification of a registered letter was left at the subject property at the beginning of November. He did not pick up the registered letter until November 9, 2017, because it was inconvenient to do so and because he has had serious, on-going medical conditions. He confirmed that his e-mail is working again.
- [9] The Appellant provided his e-mail address to the Development Officer because he was asked for it; the Development Officer did not ask if his computer was working. The Appellant confirmed he had had no other e-mail correspondence with the Development Officer during the course of this application.
- [10] The Appellant provided all required documents and drawings during consultation meetings he had with various Development Officers and building inspectors. Safety and fire issues and building code requirements were reviewed and noted in red on his drawings. He got the impression that everything was good to go; therefore, he paid his \$500.00 application fee.
- [11] Shortly after paying this fee, he was contacted by Mr. N. Shah, a Development Officer, who advised him that the application was going to be automatically refused but no reasons were provided at that time. He had a meeting with Mr. Shah on October 8, 2017. At that meeting, the Development Officer's verbal reasons for refusal were quite different than those on the written document.

Decision of Preliminary Matter

- [12] The appeal was filed out of time so the Board has no jurisdiction to hear the matter.

Reasons for Decision

- [13] The first issue on this appeal is whether the Appellant had filed his appeal within the time limit stipulated by the *Municipal Government Act*. This decision of the Development Officer was made on October 24, 2017. At that time, Section 686(1)(a) of the MGA read as follows:

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 within 14 days,

(a) in the case of an appeal made by a person referred to in section 685(1), after

(i) the date on which the person is notified of the order or decision or the issuance of the development permit.

[14] On Oct 24, 2017, the Development Officer sent an e-mail to the Appellant notifying him that his application had been refused and included a copy of the decision. A copy of the decision was also sent by registered mail.

[15] On Oct 26, 2017, an amendment was made to Section 686(1)(a). The new provision reads as follows:

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.

[16] Section 642(3) was also amended. Previously it read:

642(3) A decision of a development authority on an application for a development permit must be in writing, and a copy of it must be given to the applicant.

[17] The new section reads as follows:

642(3) A decision of a development authority on an application for a development permit must be in writing, and a copy of the decision, together with a written notice specifying the date on which the decision was made and containing any other information required by the regulations, must be given or sent to the applicant on the same day the decision is made.

[18] The essence of the changes is that the limitation period under the new legislation begins to run from the date that the decision is made under Section 642 rather than from the date that the applicant is notified of the decision. Also, the new legislation provides a 21-day appeal period as opposed to a 14-day appeal period. The Board is of the opinion that the new provisions of the MGA apply to this situation.

- [19] The Board is also of the opinion that the Development Officer complied with the provisions of Section 642(3). The e-mail sent by the Development Officer on October 24, 2017, complies with Section 642(3) in that all of the relevant information and a copy of the decision were sent to the Appellant on the same day the decision was made.
- [20] There is nothing in Section 686(1)(a)(i)(A) to suggest that the applicant must actually receive a copy of the decision before the 21-day limitation period begins to run. Rather, the appeal period begins to run on the date on which the decision is made under Section 642.
- [21] The Appellant advised the Board that his computer was not working on October 24, 2017, and so he did not receive any notice of the decision until November 9, 2017, when he picked up the registered mail. The Board is of the view that when the Appellant actually received the e-mail or the registered mail is immaterial because the provisions of the MGA, as amended, specifically change the date when the appeal period starts to run from the date the applicant is notified of the decision to the date when the decision is given or sent to the applicant.
- [22] The Board concludes that the 21-day appeal period in this case began to run on October 24, 2017, the day the e-mail was sent. The appeal period, therefore, expired on November 14. The appeal was not filed until November 20, 2017. Accordingly, the Board does not have jurisdiction to hear the appeal.



Mr. M. Young, Presiding Officer
Subdivision and Development Appeal Board

Board Members in Attendance

Mr. B. Gibson; Ms. N. Hack; Mr. A. Nagy; Mr. L., Pratt

Important Information for the Applicant/Appellant

1. This decision may be appealed to the Alberta Court of Appeal on a question of law or jurisdiction under Section 688 of the *Municipal Government Act*, 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.
2. 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.



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Date: January 10, 2018
Project Number: 233805217-001
File Number: SDAB-D-18-002

Notice of Decision

- [1] On January 3, 2018, the Subdivision and Development Appeal Board (the “Board”) heard an appeal that was filed on **December 4, 2017**. The appeal concerned the decision of the Development Authority, issued on November 20, 2017, to refuse the following development:

Construct a Semi-Detached House with front verandas

- [2] The subject property is on Plan 2463AE Blk 5 Lot 8, located at 12070 - 94 Street NW, within the RF3 Small Scale Infill Development Zone. The Mature Neighbourhood Overlay and Alberta Avenue / Eastwood 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, proposed plans, and the refused Development Permit; and
 - The Development Officer’s written submissions.
- [4] The following exhibits were presented during the hearing and form part of the record:
- Exhibit A – PowerPoint submission

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 the Appellant, Vida Nova Homes Ltd.*

- [8] The Appellant was represented by Mr. T. Fernandes. He submitted a presentation, marked Exhibit A. Mr. Fernandes is very familiar with this area. He has built a number of similar developments nearby and has lived in one of these units for the past five years.
- [9] In order to meet the minimum required Site Area of 442.20 square metres, a 33-foot wide lot would have to be at least 140 feet long. The majority of the 33-foot wide lots in this area are between 120 and 130 feet long. Only eight to 10 percent of the 33-foot wide lots would be able to meet the minimum required Site Area.
- [10] Seven other front to back Semi-detached houses within a 200-metre radius of the subject property are currently under construction or are proposed to start in the spring. A map was displayed showing the exact location of these developments, none of which would meet the minimum required Site Area.
- [11] While the minimum required width of the lot is deficient by 1.2 metres, all other requirements such as setbacks, separation spaces, parking, outdoor amenity areas and site coverage have been met. The rear yard is 20 feet rather than the standard 10 feet.
- [12] The width of the house has been adjusted to ensure that the side setbacks are complied with. The slightly narrower width of the proposed development would not be apparent unless a person used a tape measure to compare it to similar developments in the area. He showed interior and exterior plans of the standard size home and the slightly narrower version to show there is no visual difference.
- [13] When Mr. Fernandes purchased the subject lot in 2013, it was his intention to also purchase the narrow strip of property immediately to the north which is currently designated as AP Parkland. When he pursued this, he was unable to purchase the property as it is not owned by the City at that time.
- [14] The Appellant takes pride in constructing quality, modern homes. All of the homes he has constructed in this area have been purchased by young couples or families with young children. The completed front to back developments generate a 300 to 400 percent tax increase to the City.
- [15] When his original development permit application was refused in 2016, he consulted with as many neighbours as possible and the reaction from everyone that opened their door was positive. He confirmed to the Board that neighbours were provided with complete details of his proposed development, including the required variances. A map and petition were submitted showing the neighbours who had provided their support.

[16] The Appellant showed the Board photos of the lot in question, including the illegal structure a previous owner had put on it. The lot is currently empty with a dilapidated garage at the rear.

ii) Position of the Development Officer, Mr. Yeung

[17] The Development Officer did not attend the hearing and the Board proceeded on the basis of his written submission.

Decision

[18] The appeal is **ALLOWED** and the decision of the Development Authority is **REVOKED**. The development is **GRANTED** as applied for to the Development Authority, subject to the following **CONDITIONS**:

1. Within 14 days of the end of the notification period with no appeal and prior to any demolition or construction activity the applicant must post on-site a development permit notification sign (Section 20.5).
2. The development shall be constructed in accordance with the stamped and approved drawings.
3. The maximum Height shall not exceed 8.9 metres, in accordance with Section 52 of the *Edmonton Zoning Bylaw 12800*.
4. Platform Structures located within a Rear Yard or interior Side Yard, and greater than 1.0 metres above the finished ground level, excluding any artificial embankment, shall provide Privacy Screening to prevent visual intrusion into Abutting properties (Reference Section 814.3.9).
5. Semi-detached Housing requires 1 parking space per Dwelling; parking may be in tandem as defined in Section 6.1.112 (Reference Schedule 1(A) of Section 54.2).
6. For Semi-detached 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 metres. 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).
7. Landscaping shall be installed and maintained in accordance with Section 55.
8. Frosted or opaque glass treatment shall be used on windows as indicated on the drawings to minimize overlook into adjacent properties (Reference Section 814.3.8).

ADVISEMENTS:

1. Any future deck development greater than 0.6 metres (2 feet) in height will require development and building permit approvals.
2. Any future deck enclosure or cover requires a separate development and building permit approval.
3. Any future basement development requires development and building permit approvals.
4. Note that Secondary Suite Use Class does not include Semi-detached Housing.
5. The driveway access must maintain a minimum clearance of 1.5 metres from the service pedestal and all other surface utilities.
6. Lot grades must match the *Edmonton Drainage Bylaw 16200* and/or comply with the Engineered approved lot grading plans for the area. Contact Drainage Services at 780-496-5576 or lot.grading@edmonton.ca for lot grading inspection inquiries.

[19] In granting the development, the following variances to the *Edmonton Zoning Bylaw* are allowed:

1. The minimum required Site Area of 442.20 square metres pursuant to Section 140.4(3)(a) is varied to allow a deficiency of 105.79 square metres, thereby decreasing the minimum required to 336.41 square metres.
2. The minimum required Site Width of 10.0 metres pursuant to Section 140.4(3)(b) is varied to allow a deficiency of 1.2 metres, thereby decreasing the minimum required to 8.8 metres.

Reasons for Decision

[20] Semi-detached Housing is a Permitted Use in the RF3 Small Scale Infill Development Zone.

[21] The Development Permit was refused by the Development Officer because the following sections of the *Edmonton Zoning Bylaw* are not met:

1. Section 140.4(3)(a) requires a Site Area of 442.2 square metres but this Site Area is only 336.41 square meters.
2. Section 140.4(3)(b) requires a minimum Site width of 10 metres but this site only has a width of 8.8 metres.

- [22] In his written submission, the Development Officer noted that the Alberta Avenue / Eastwood Area Redevelopment Plan contains the following statements:
1. Very little redevelopment has occurred in the Alberta Avenue portion of the N.I.P. area because the smaller lots sizes (33 feet x 125 feet) have made it uneconomical to redevelop. With the average lot size being 4,125 square feet, a developer would have to purchase 2 lots to meet the 7,000 square foot minimum lot size requirement for a duplex (p. 29).
 2. The Planning Department recognizes a need to allow some duplex development in the area. Duplex development can help replace deteriorated housing that is beyond repair. Since Duplexes are a type of family housing, they can increase the child population in the area and thus help increase or stabilize school enrollment which are declining in most inner city neighbourhoods. It would, therefore, be desirable to encourage some Duplex development in Alberta Avenue/Eastwood where existing housing is in poor condition while still retaining good single family housing stock (p. 30).
- [23] Accordingly, this type of development is encouraged in this neighborhood. Nevertheless, the Development Officer felt that the variances required in this case should not be granted.
- [24] The Board disagrees with this conclusion. Although two variances are required, the Board notes that this Site complies with all the other requirements of the zoning regulations including those requirements relating to Amenity Areas, Setbacks, locational requirements, parking, Site Coverage and the Mature Neighbourhood Overlay regulations.
- [25] Further, the Site immediately to the north, which is zoned AP Public Parks, is a very narrow Site which is unlikely to see any future development. Accordingly the impact of the variances on that Site will be non-existent.
- [26] As well, several of the neighbours in the immediate area, including the one immediately to the south, have indicated that they have no opposition to the proposed development.
- [27] No one appeared at the hearing to voice any objection to the development and no written submissions were received by the Board indicating any objection to the development.
- [28] As well, there was a petition submitted to the Board, which the Appellant conducted during the 2016 application, indicating that 10 neighbours in the neighbourhood had no objection to the development.

[29] The Board finds that the proposed development with variances granted and conditions imposed 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. M. Young, Presiding Officer
Subdivision and Development Appeal Board

Board Members in Attendance

Mr. B. Gibson; Ms. N. Hack; Mr. A. Nagy; Mr. L. Pratt

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.

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