



**EDMONTON
TRIBUNALS**

*Subdivision &
Development
Appeal Board*

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Date: July 22, 2019
Project Number: 310374109-001
File Number: SDAB-D-19-107

Notice of Decision

- [1] On July 11, 2019, the Subdivision and Development Appeal Board (the “Board”) heard an appeal that was filed on June 17, 2019. The appeal concerned the decision of the Development Authority, issued on May 30, 2019, to refuse the following development:

Construct a Single Detached House with front attached Garage, Unenclosed Front Porch, electric fireplace, and Basement development (NOT to be used as an additional Dwelling).

- [2] The subject property is on Plan 6773MC Blk 11 Lot 12, located at 4112 - 122 Street NW, within the RF1 Single Detached Residential Zone. The Mature Neighbourhood Overlay applies to the subject property.

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

- Copy of the Development Permit application with attachments, proposed plans, and the refused Development Permit;
- The Development Officer’s written submissions;
- Written Submission, signatures of support from neighboring properties and a PowerPoint from the Property Owner
- Written Submission, photos and supporting materials from the Developer
- Three online comments, one letter and two e-mail responses from the Public as well as supporting materials from a neighbouring property owner at 4128 – 122 Street

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 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, C. Ma / N. Singh*

- [7] C. Ma and N. Singh are the property owners. They value family and community and respect the due process that they were required to follow regarding this proposed development.
- [8] They are requesting that they be permitted to build a front attached garage as it would best meet the requirements of their family:
- a) This would allow for a large play area in the backyard for their children. It is not safe for children to play in the front yard due to concerns relating to traffic and strangers.
 - b) Traversing a back lane to access a rear detached garage can be difficult in the winter due to the possibility of getting stuck in the snow.
 - c) A front attached garage would improve access for their aging parents, who may possibly reside with them in the future. Both her father and father-in-law have health concerns that make accessing the home through a rear detached garage difficult.
- [9] They understand that building a home in a mature neighbourhood has impacts on current residents. They plan to become part of the community and develop strong relationships with their neighbours.
- [10] They have taken care to design a home that is not intrusive and fits in with the character of the neighbourhood. Ms. Ma used a PowerPoint presentation to show that their proposed development is similar in design to the immediately adjacent property to the north.
- [11] The Appellants have tried to reach out to all property owners within the 60 metre notification radius.
- a) They obtained overwhelming support and submitted signatures of support from 27 residences.
 - b) They used the adjacent home located at 4116 – 122 Street as inspiration for the design of their own home, yet the neighbor at 4116 does not support their development.
 - c) The owner at 4124 – 122 Street originally supported their development but has since submitted an on-line response in opposition.
- [12] Building a home in accordance with bylaws and building codes is not their expertise and they have found the process to be confusing. When the development was first refused they tried to work with the Development Officer to come up with revisions to mitigate any concerns; however, their efforts were declined. They were advised that if they wanted to present revisions they would have to submit a new application in six months'

time. This left the Appellants with no other option than to appeal. Should this appeal be denied, the possible six month delay has been a great cause of anxiety for them.

[13] The Appellants provided the following responses to questions from the Board:

- a) They purchased the property about a year ago and are currently living in a downtown condo.
- b) They understood they were purchasing in a mature neighbourhood and that the development review process would be lengthy. However, they love Aspen Gardens, have family a few blocks away and like the schools in the area. They noticed that there are quite a few homes in Aspen Gardens with front attached garages so they did not think it would be an issue for them.
- c) While they acknowledge that regulations exist for a reason they believe their development will not disrupt the neighbourhood and they hope the Board will consider the overwhelming support they have received.
- d) Their yard is slightly irregular in that it is wider at the front and narrows toward the back. It was not their intention to build outside of the permitted building pocket. After they found out variances were required they tried to go back and work with the Development Officer to redesign the home to fit in the pocket.
- e) Their biggest concern is that they be allowed to have a front attached garage.
- f) They did not contact the community league during their neighbourhood consultation.

ii) Position of the Appellants' Developer, Kanvi Homes

[14] T. Huizinga, E. Lomeland, and F. Virani, of Kanvi Homes appeared as the builders for the proposed development.

[15] The development, per the original plans submitted, requires seven variances, six of which relate to side setbacks or side projections. Kanvi Homes used the plot plan to illustrate that the deficiencies in the side setbacks are less intrusive than what appears on the refused permit. On the south property line, only a small portion of the house infringes on the required setback, and on the north property line, the setback is only infringed upon by the length of the garage.

[16] There was never any intention to not comply with setback regulations and Kanvi Homes felt that better guidance could have been provided in their pre-application meeting with the City. When they tried to rectify the deficiencies, they were informed that the Development Authority would review new plans only as a part of a new application. Kanvi Homes submitted an email exchange between F. Virani and the Development Officer showing Kanvi Homes' efforts to resolve the deficiencies prior to the hearing.

- [17] The excess in the allowable side eave projections only applies to the main floor of the house and only to portions of the home. The remainder of the house is set back significantly. The plans call for standard 24 inch overhangs, which will not protrude over the side fence.
- [18] The proposed building will be similar in Height to the existing bungalows and single storey homes in the area, and will not tower over any neighbouring properties.
- [19] The main point of contention is the front attached garage. There are a number of front attached garages along the street and in the neighbourhood as a whole, both in new and existing construction. A map overview of the Aspen Gardens neighbourhood shows that close to 50 percent of the homes either have a front attached garage or front drive access despite the presence of a rear lane. The reverse pie shaped lot is conducive to construction of a front attached garage.
- [20] While neighbours expressed concern that the proposed front drive would alter traffic flow on the existing streetscape, Kanvi Homes submits that one additional front driveway will not drastically alter how the street is used. Their clients will likely be approaching their driveway slowly, knowing there are other young families in the area.
- [21] Another concern raised is that front driveways are used as collecting grounds for trailers, boats and abandoned vehicles. This is not the intention of their clients.
- [22] The results of their clients' community consultation are summarized on a map included with the additional documents submitted prior to the start of the hearing. The majority of the neighbourhood is in support of the entire project and a few are specifically in support of the front garage.
- [23] The adjacent property in opposition at 4116 was constructed in 2012 and also has a double front attached garage. Kanvi Homes acknowledged that zoning and overlays may have been different in 2012; however, 4116 served as an inspiration for the overall architectural style of the proposed development. The proposed development will utilize modern construction with large windows and trim bands while at the same time staying within the style of the neighbourhood.
- [24] They had used the requirements of the RF1 Single Detached Residential Zone when drawing the plans and the proposed development is set back more than the majority of the houses in this neighbourhood. Due to the shape of the lot and the requirements of the Mature Neighbourhood Overlay, there are deficiencies in the required setbacks and projections.
- [25] Kanvi Homes provided the following responses to questions from the Board:
- a) They are not asking the Board to approve the revised drawings presented today, which are incomplete. The revised drawings are intended to demonstrate their willingness to work with the Development Officer. The Chair confirmed that the

- Board does not approve revised plans that have not been reviewed by the Development Authority.
- b) Three existing large trees at the front of the property were removed to allow the previously existing house on the site to be moved to another site, rather than being demolished and taken to the landfill. The City indicated that they were fine with these trees being removed as long as they were replaced once the new development was built.
 - c) Kanvi Homes did not consult directly with the community league in this case because many neighbours supported the development.
 - d) The Chair noted that the current version of the Mature Neighbourhood Overlay states that no front access will be permitted where an abutting lane exists. Kanvi Homes is aware that the Mature Neighbourhood Overlay was revised in 2017 and many variances that were previously allowed have been removed.

iii) Position of an Affected Property Owner in Support of the Appellant

- [26] A. Bourgeois owns property four doors down from the Applicants. He is in support of their application and drafted several sketches to support this position.
- [27] This project meets the requirements of the underlying zone. However, because of the Mature Neighbourhood Overlay requirements, it does not meet the side yard setback requirements.
- [28] The Appellants' request for front access is well within what other neighbours are doing. Mr. Bourgeois used an overhead map to show which neighbours in the immediate vicinity use the lane and which use the front street to access their properties.
- [29] He used a series of diagrams to show what could be constructed in relation to what is being proposed. The proposed non-conforming development, including the garage, will cover only 26.7 percent of the site. A fully conforming development could cover up to 40 percent of the site without requiring any variances. Also the proposed development is well below the maximum allowable height. A totally conforming house could be built 1.3 metres taller. The Appellants are being careful to have the least possible negative impact on the neighbourhood. If this project is refused, it is his fear that something that has a much greater negative impact on the neighbourhood will be built on this site.
- [30] Mr. Bourgeois submitted a photo of a house in Aspen Gardens that is currently under construction to show what could be built on the site without the requirement of any variances.
- [31] While he was originally upset about the trees being removed from the front of the property, he agrees that moving the existing house to be used elsewhere is a much better option than demolishing it and moving everything to the dump. He is satisfied that the trees will be replaced once construction is completed.

[32] In his view, it is unfair that the Development Officer concluded that the need for seven variances is a clear indication that the proposed development is unsuitable for the site. This project should be looked at more subjectively, since only a small portion of the site is affected.

iv) Position of the Development Officer, R. Zhou

[33] The Development Authority did not attend the hearing and the Board relied on Mr. Zhou's written submission.

v) Position of a property owner opposed to the development, R. Belik

[34] His family has lived directly across from the proposed development for 14 years. They have rear access to their garage and that is one reason they chose this area. A rear access garage reduces the traffic travelling on the front street because vehicles stay in the rear lane. Their front street is very quiet.

[35] They have never had any issues with getting stuck in the lane. Garbage is picked up from the rear and the lane is serviced very well.

[36] The home at 4116 is the only one with a double front attached garage; all of the other front drives on the street are to single vehicle garages. The home at 4116 was built prior to the amendments to the Mature Neighbourhood Overlay.

[37] Many people in the neighbourhood have rear detached garages and there are no safety concerns. This area is safe with low crime statistics.

[38] After the house was moved from the subject site a safety fence was put up and there was no attempt made to clean the site up until he complained to the City. Fiberglass insulation was blowing from the yard for several months.

[39] He is not in support of a front attached garage and he stated that Councillor Walters also supported this position. The Mature Neighbourhood Overlay exists for a reason and there is no reason a rear detached garage cannot be built.

[40] Mr. Belik provided the following response to a question from the Board:

- a) He acknowledged that even if the proposed development had a rear detached garage the occupants of the house would likely drive down the front street prior to entering the alley to access the rear garage.

vi) Rebuttal of the Appellant

[41] The Appellants were not previously aware of Mr. Belik's concerns. While they had approached his residence on two separate occasions, they were unable to connect with

him. They do not share the same rear lane with Mr. Belik as he lives across the street, so they cannot speak to the condition of his rear lane.

- [42] Even if they had a rear detached garage their logical approach would be to travel down the front street and then through the alley; a rear garage would not lessen traffic on the front street.
- [43] Kanvi Homes acknowledged that it took a couple of months before the site was cleaned, but all debris has now been removed. Ms. Ma had provided her personal contact information to both immediately adjacent neighbours. Her personal phone number and email were also posted on the site but no one had contacted her with any concerns. Kanvi Homes takes full responsibility for their builds.
- [44] Front driveways provide parking areas for visitors so that they do not use on-street parking.

Decision

- [45] 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. The development shall be constructed in accordance with the stamped and approved drawings.
 2. **WITHIN 14 DAYS OF APPROVAL**, prior to any demolition or construction activity, the applicant must post on-site a development permit notification sign (Section 20.5)
 3. Landscaping shall be installed and maintained in accordance with Section 55.
 4. The maximum Height shall not exceed 8.9 m, in accordance with Section 52 of the Edmonton Zoning Bylaw 12800. (Reference Section 814.3.5).
 5. Platform Structures located within a Rear Yard or interior Side Yard, and greater than 1.0 m 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).
 6. Single Detached Housing requires 1 parking spaces per dwelling; parking may be in tandem as defined in Section 6.1(112) (Reference Schedule 1 of Section 54.2).
 7. Frosted or opaque glass treatment shall be used on windows to minimize overlook into adjacent properties (Reference Section 814.3.8).
 8. The driveway shall not exceed a width of 7.4m (Reference Section 54.1.4.c).

9. The proposed Basement development(s) shall NOT be used as an additional Dwelling. An additional Dwelling shall require a new Development Permit application.
10. Dwelling means a self contained unit comprised of one or more rooms accommodating sitting, sleeping, sanitary facilities, and a principal kitchen for food preparation, cooking, and serving. A Dwelling is used permanently or semi-permanently as a residence for a single Household (Reference Section 6.1).
11. Household means: one or more persons related by blood, adoption, foster care, marriage relationship; or a maximum of three unrelated persons; all living together as a single social and economic housekeeping group and using cooking facilities shared in common. For the purposes of this definition, two people living together in an adult interdependence relationship shall be deemed to be in a marriage relationship and each of the relatives of the parties to an adult interdependence relationship shall be considered to be related to the partners and to the other relatives thereof. One domestic worker or one boarder may be deemed the equivalent of a blood relative (Reference Section 6.1).
12. This development permit shall be revoked if the conditions of this permit are not met.

ADVISEMENTS

1. Any future deck development greater than 0.6m 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. Any future additional dwelling such as Secondary Suite shall require a separate development permit application.
5. The driveway access must maintain a minimum clearance of 1.5m from all surface utilities.
6. Lot grades must match the Edmonton Drainage Bylaw 18093 and/or comply with the Engineered approved lot grading plans for the area. Contact Lot Grading at 780-496-5576 or lot.grading@edmonton.ca for lot grading inspection inquiries.
7. Unless otherwise stated, all above references to "section numbers" refer to the authority under the *Edmonton Zoning Bylaw 12800*.
8. An approved Development Permit means that the proposed development has been reviewed against the provisions of this bylaw. It does not remove obligations to

conform with other legislation, bylaws or land title instruments including, but not limited to, the *Municipal Government Act*, the *Safety Codes Act* or any caveats, restrictive covenants or easements that might be attached to the Site. (Reference Section 5.2)

9. A Building Permit is required for any construction or change in use of a building. Please contact the 311 Call Centre for further information.

[46] In granting the development the following variances to the *Edmonton Zoning Bylaw 12800* are allowed:

1. The required total Side Setback of 4.1 metres (20 percent of the Site Width) per section 814.3(3)(c)(i) is reduced by 0.9 metres to allow a required total Side Setback of 3.2 metres (16 percent of the Site Width).
2. The minimum required interior Side Setback of 2.0 metres per section 814.3(3)(c)(ii) is reduced by 0.4 metres to allow a minimum required interior Side Setback of 1.6 metres from the house to the property line shared with 4108-122 Street (south lot line).
3. The minimum required interior Side Setback of 2.0 metres per section 814.3(3)(c)(ii) is reduced by 0.4 metres to allow a minimum required interior Side Setback of 1.6 metres from the house to the property line shared with 4116-122 Street (north lot line).
4. The requirement per section 814.3(17) that vehicular access shall be from the Lane where the Site Abuts a Lane is waived.
5. Section 44.1 is varied to permit eaves to project as follows:
 - (a) 1.0 metres to the property line shared with 4108 – 122 Street NW (south lot line); and
 - (b) 1.0 metres to the property line shared with 4116 – 122 Street NW (north property lot line).
6. The deficiency of 0.9 metres in the Total Side Projection is waived to permit a Total Side Projection of 2.0 metres.

Reasons for Decision

[47] Single Detached Housing is a Permitted Use in the RF1 Single Detached Residential Zone.

[48] The Appellant submitted a landscaping plan and will be replacing the trees that were removed to allow the existing house to be moved off of the property.

- [49] There was strong neighbourhood support for the proposed development within the 60-metre notification radius. The Appellants submitted signatures of support from renters and/or owners of 27 neighbouring properties, and only three neighbours opposed the development.
- [50] The Board acknowledges that while there was some opposition to the development, three of the required variances related to side setback regulations and were minor in nature. These variances affected a small portion of the den along the south property line, and the length of the garage along the north property line. Also, these variances relate to projections that are at the first Storey level, not the entire Height of the building, which mitigates the impact of those variances upon neighbouring properties.
- [51] With respect to the required front access variance off 122 Street, the Board notes that in addition to the majority support of neighbours for the proposed development, the Appellant also presented evidence that there are a large number of properties with front attached garages or front drive access in Aspen Gardens, including the property immediately to the north.
- [52] Although a neighbouring property owner submitted that front access would alter traffic patterns and result in increased traffic along 122 Street, the Board is not persuaded by this argument. Based on a map of the subject area, the proposed development is located on a site that is near the terminus of 122 Street where it loops onto 41 Avenue. Should the Board refuse to grant the front access variance, it is more likely that the Appellants will drive the full length of 122 Street and a portion of 41 Avenue to access the rear lane. In contrast, should the Board approve the front access, the Appellants would not need to traverse the entirety of 122 Street and a portion of 41 Avenue to access their home.
- [53] The proposed development, including the front drive garage, is at 26.7 percent of site coverage, well under the permitted 40 percent. The proposed development is also considerably below what the maximum Height could be. The reduced footprint and the reduced Height all mitigate the required variances.
- [54] For all of the above reasons, the Board finds that the proposed development 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.



Brian Gibson, Presiding Officer
Subdivision and Development Appeal Board

Board Members in Attendance:

Mr. M. Young, Mr. A. Bolstad, Ms. L. Delfs, Mr. J. Jones

cc: Kanvi Homes
Development & Zoning Services – R. Zhou / A. Wen

Important Information for the Applicant/Appellant

1. This is not a Building Permit. A Building Permit must be obtained separately from the Sustainable Development Department, located on the 2nd Floor, Edmonton Tower, 10111 – 104 Avenue NW, Edmonton, AB T5J 0J4.
2. Obtaining a Development Permit does not relieve you from complying with:
 - a) the requirements of the *Edmonton Zoning Bylaw*, insofar as those requirements have not been relaxed or varied by a decision of the Subdivision and Development Appeal Board,
 - b) the requirements of the *Alberta Safety Codes Act*,
 - c) the *Alberta Regulation 204/207 – Safety Codes Act – Permit Regulation*,
 - d) the requirements of any other appropriate federal, provincial or municipal legislation,
 - e) the conditions of any caveat, covenant, easement or other instrument affecting a building or land.
3. When an application for a Development Permit has been approved by the Subdivision and Development Appeal Board, it shall not be valid unless and until any conditions of approval, save those of a continuing nature, have been fulfilled.
4. A Development Permit will expire in accordance to the provisions of Section 22 of the *Edmonton Zoning Bylaw, Bylaw 12800*, as amended.
5. This decision may be appealed to the Alberta Court of Appeal on a question of law or jurisdiction under Section 688 of the *Municipal Government Act*, RSA 2000, c M-26. If the Subdivision and Development Appeal Board is served with notice of an application for leave to appeal its decision, such notice shall operate to suspend the Development Permit.
6. When a decision on a Development Permit application has been rendered by the Subdivision and Development Appeal Board, the enforcement of that decision is carried out by the Sustainable Development Department, located on the 2nd Floor, Edmonton Tower, 10111 – 104 Avenue NW, Edmonton, AB T5J 0J4.

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