



**EDMONTON
TRIBUNALS**

*Subdivision &
Development
Appeal Board*

*10019 – 103 Avenue NW
Edmonton, AB T5J 0G9
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SDAB-D-17-127

Application No. 251899519-001

An appeal by Mikitecture to change the use from Professional, Financial and Office Support Services to a Personal Service Shop (Body Rub Centre) and to construct interior alterations, located at 9303/9339 – 35 Avenue NW, was **WITHDRAWN**.



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Date: July 20, 2017
Project Number: 246994130-001
File Number: SDAB-D-17-128

Notice of Decision

- [1] On July 12, 2017, the Subdivision and Development Appeal Board (the “Board”) heard an appeal that was filed on **June 15, 2017**. The appeal concerned the decision of the Development Authority, issued on June 15, 2017, to refuse the following development:

Construct a Semi-detached House with Unenclosed Front Porch, and to demolish an existing Single Detached House and Accessory building (rear detached Garage).

- [2] The subject property is on Plan RN50 Blk 102 Lot 19, located at 11638 - 84 Street NW, within the (RF3) Small Scale Infill Development Zone. The Mature Neighbourhood Overlay and Parkdale Area Redevelopment Plan apply to the subject property.
- [3] The following documents were received prior to the hearing and form part of the record:
- A copy of the Development Permit application with attachments, proposed plans, and the refused Development Permit;
 - The Development Officer’s written submission;
 - The Appellant’s written submissions; and
 - On-line responses; one in opposition and one neutral response.

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, Mr. J. Rodas*

- [7] Mr. Rodas has developed three identical Semi-detached Houses in this neighbourhood. Two of them were approved by the Board because of a deficiency in the minimum required site area.
- [8] In his opinion, the site area regulation is a technical variance required by the Zone. However, he understands why the required variance could not be approved by the Development Officer.
- [9] The existing single detached house is beyond repair which has raised concerns by neighbours.
- [10] He met with neighbours to review the proposed plans. 21 neighbours signed a petition to support the proposed development and they were excited to see new development on this block.
- [11] A Semi-detached House of this exact design has been built two lots away from the subject site.
- [12] In his opinion, the proposed front-to-back Semi-detached House is aesthetically more appealing than an up-down design.
- [13] He referenced the submitted photographs and indicated that there are six Semi-detached Houses existing in close proximity to the subject site.
- [14] The private outdoor amenity area is deficient by 0.8 metres. However, parking is only allowed on one side of 84 Street and providing two on-site parking spaces at the rear of the proposed garage would be more beneficial for the neighbourhood than complying with the minimum required amenity area.
- [15] This development will be a condominium and from his experience, the front dwelling is assigned the front yard and the rear dwelling is assigned the rear yard.
- [16] He has reviewed and accepts all of the recommended conditions provided by the Development Officer.
- [17] This neighbourhood is being revitalized by the redevelopment that has occurred over the past five years.
- [18] The proposed dwellings will be sold. In his opinion, the proposed dwelling units will be affordable for first time home buyers.

[19] Mr. Rodas provided the following with respect to questions from the Board:

- a. He contacted the property owner to the rear of the subject site and answered her questions but she chose not to sign the petition of support.
- b. Any windows that overlook onto the adjacent properties will be frosted or opaque to comply with a recommended condition from the Development Officer.
- c. It would be his preference not to relocate the detached garage to comply with the private outdoor amenity area requirement but he would amend his plan if that was a requirement of the Board.
- d. A variance has been granted for a deficiency in the minimum required private outdoor amenity area for all of the other Semi-detached Houses that he has developed in this neighbourhood. It has never been an issue for the purchasers or negatively impacted the sale of the houses. The purchasers prefer the provision of two on-site parking spaces.
- e. Moving the detached garage further toward the rear lane would make it difficult for a larger vehicle to park on the driveway.
- f. An owner of a Semi-detached House that he developed erected fencing to provide amenity area for both dwellings in the rear yard.

ii) Position of the Development Officer, Mr. K. Yeung

[20] Mr. Yeung clarified that the development of a new detached garage is not part of this development permit application. The detached garage application is still under review. This development permit application only includes the demolition of the existing garage on the site and the construction of a Semi-detached House.

[21] Mr. Yeung provided the following with respect to questions from the Board:

- a. He clarified that there is no variance to the private outdoor amenity area, as that variance would be under the detached Garage development permit application.
- b. The minimum site area requirement was implemented to ensure that a lot can accommodate a development that complies with all of the other development regulations, including Height, Setbacks and Site Coverage. He confirmed that the proposed development complies with all of these development regulations.
- c. In his opinion, based on the recent *Edmonton Zoning Bylaw* parking amendment, there is merit to approve a development permit application that is only deficient in site area.

- d. In his opinion, the variance required for the minimum site area will not negatively impact the neighbourhood because the proposed development complies with all of the other development regulations.
- e. There is a park located approximately one block from the subject site.
- f. He could not provide any information about the type of developments that are located on the larger lots on the block facing this site.

iii) Position of affected property owners in opposition to the Respondent, Mr. M. Royer & Ms. L. Lai:

- [22] Mr. Royer advised the Board that single detached houses exist on the larger lots located across the street from the subject site.
- [23] He is not categorically opposed to infill development but is concerned that the proposed development is too large. The proposed Semi-detached House is twice the size of most of the other houses on the street with the exception of the other buildings built by this developer.
- [24] They purchased their house approximately four years ago because they like the mature trees and character of the neighbourhood.
- [25] The design of the proposed Semi-detached House is very modern and is not in keeping with the character of the neighbourhood.
- [26] He questioned the selling price of the proposed units and if it is conducive to bringing low income earners into the neighbourhood.
- [27] In his opinion, the existing house could be saved and renovated. The neighbourhood is becoming more vibrant as a result of people buying and renovating existing character houses.
- [28] He reiterated that the proposed development is too large for the subject lot. He acknowledged that a single detached house of the same size as the proposed development could be developed on this lot without any variances.

iv) Rebuttal of the Appellant, Mr. Rodas

- [29] Mr. Rodas acknowledged the design challenges when developing in a mature neighbourhood.
- [30] He reiterated his opinion that the existing house is beyond repair.

[31] The development of Semi-detached Housing in a mature neighbourhood makes it affordable for young families to enter the housing market. A new single detached house on this lot would be more expensive.

Decision

[32] 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 APPROVAL, prior to any demolition or construction activity, the Applicant must post on-site a development permit notification sign;
2. The development shall be constructed in accordance with the stamped and approved drawings;
3. Platform Structures greater than 1.0 metres above Grade shall provide privacy screening to prevent visual intrusion into adjacent properties;
4. Landscaping shall be installed and maintained in accordance with Section 55;
5. Frosted or opaque glass treatment shall be used on windows as indicated on the drawings to minimize overlook into adjacent properties.

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. 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.

[33] In granting the development, the following variance to the *Edmonton Zoning Bylaw* is allowed:

1. The minimum required Site area of 442.20 square metres per section 140.4(3)(a) of the *Edmonton Zoning Bylaw* is varied to allow a deficiency of 74.31 square metres, thereby decreasing the minimum allowed to 367.89 square metres.

Reasons for Decision

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

[35] Based on evidence provided by the Development Authority at the hearing, the Development Permit Application before the Board only includes the construction of a Semi-detached House and the demolition of an existing House and an Accessory building (detached Garage) on the subject Site. A permit for the construction of a rear detached Garage will come at a later date. Therefore, the deficiency in the Private Outdoor Amenity Area is not part of this appeal or before the Board at this time.

[36] The only variance being considered under this appeal is a deficiency in the minimum required Site area for Semi-detached Housing, pursuant to section 140.4(3)(a) of the *Edmonton Zoning Bylaw*.

[37] Although the Site area of this lot is deficient for Semi-detached Housing, the proposed development complies with all the other development regulations for the (RF3) Small Scale Infill Development Zone and the Mature Neighbourhood Overlay, including Site Coverage, Height, and Setbacks.

[38] Given the same Site area, other low-density Residential Uses, including a Duplex or a Single Detached House with a Secondary Suite, with the same built form and scale could be approved as a Class A Development. The design of the proposed development gives the appearance of a Single Detached House.

[39] Based on a review of the photographic evidence provided, this is a neighbourhood in transition and there are several similar developments located in close proximity to the subject Site.

[40] The Appellant undertook an extensive community consultation and submitted a petition containing 21 signatures of support, including the signatures of the two most affected property owners to the north and south.

[41] The Board acknowledges the concerns of a property owner who lives on the same block, who appeared in opposition to the proposed development. The Board notes that the major concern was how this mature neighbourhood is changing as a result of the demolition of older character houses and the redevelopment of larger more modern houses. However, the Board was not provided with any planning reasons regarding how

the variance required in the minimum required Site area would negatively impact neighbouring property owners.

- [42] Based on the above, it is the opinion of the Board, 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.



Ms. P. Jones, Presiding Officer
Subdivision and Development Appeal Board

Board Members in Attendance : Mr. A. Nagy; Ms. S. LaPerle; Ms. M. McCallum; 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.

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.