



**EDMONTON  
TRIBUNALS**

*Subdivision &  
Development  
Appeal Board*

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Date: July 27, 2016  
Project Number: 222168300-001  
File Number: SDAB-D-16-168

**Notice of Decision**

- [1] On July 14, 2016, the Subdivision and Development Appeal Board heard an appeal that was filed on June 20, 2016. The appeal concerned the decision of the Development Authority, issued on June 17, 2016 to refuse the following development:

**To construct a Semi-Detached House with front and back landings, fireplaces and to demolish an existing Single Detached House, existing Garage was burned down 6 months ago not applying for demo.**

- [2] The subject property is on Plan 8136AC Blk 2 Lot 2, located at 12015 - 91 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, which were received prior to the hearing and are on file, were read into the record:
- A Development Permit Application, including the plans of the proposed Development;
  - The refused Development Permit;
  - The Development Officer's written submissions; and
  - The Appellant'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 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, on behalf of Platinum Living Homes Ltd.*

- [7] The Appellant stated that the proposed development exceeds the minimum allowable Site depth and Site Width.
- [8] The Appellant submitted pictures of examples of front to back Semi-detached Housing being built in the neighborhood. These examples of properties also have Site Areas under the minimum allowable of 442.2 square metres. He specifically highlighted a similar development next door to the proposed development with a Site Area of approximately 355 square metres. Four blocks away, another builder built a similar development with the same lot size as the subject site.
- [9] The Appellant had consulted with the neighbourhood as he constructed on the property next door to the subject site and had received no objections on that one. Two young families purchased the property. On the proposed development, he had 22 out of 30 signatures of support and no objections. The neighbors liked the design of the development and were happy the community was being revitalized with a dilapidated building being replaced with a new affordable one.
- [10] The Appellant stated each of the proposed dwellings will have a single detached garage and full parking pad so there will be no parking issues.
- [11] The Appellant submitted that he recently applied for and was granted a Development Permit with a similar variance for a Semi-detached House located at 11630-92 street, about 4 blocks south of the proposed development.
- [12] In the Appellant's opinion, the Alberta Avenue area has been deteriorating. However, in the last 5 years, there has been revitalization because of the redevelopment of the area.
- [13] Upon questioning from the Board, the Appellant confirmed that the property next door and property 4 blocks south are zoned RF3 and are similar sized lots. The property next door required a variance in minimum allowable Site Area and in Rear Setback.
- [14] Upon questioning from the Board, the Appellant confirmed the 15 examples provided are from the same community, within about a 10 block radius. Several were up and down duplexes and many lots do not have garages at the rear. He confirmed lot dimensions from the City of Edmonton websites.
- [15] The Appellant had no issue with the conditions proposed by the Development Officer in his written submission.

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

- [16] The Development Officer stated that the proposed development exceeds the minimum allowable Site area by 17 percent, which is a substantial variance. The Development Officer did not find 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 Zone.
- [17] In the opinion of the Development Officer, the proposed development does not meet the Residential Infill Guidelines, although not a statutory plan, in regards to the location criteria. According to the Residential Infill Guidelines, a Semi-detached House may be located in the following areas: a. On any corner site throughout a neighbourhood; b. On a lot between two existing Semi-detached Houses; c. On the edge of a neighbourhood, where the lot fronts or flanks onto an arterial or service road; and d. On large sites that are being developed as part of a comprehensive plan.
- [18] Upon questioning from the Board as to the effect the proposed development has on the neighborhood, the Development Officer stated there is an increase in Density. The Development Officer typically will grant up to 3 percent of the deficiency when considering a variance to the Site Area required within the regulations.
- [19] Upon questioning from the Board, the Development Officer stated no site inspection was conducted. The proposal is a front to back unit so for an individual on the street looking towards the property, it looks like a single property.
- [20] Upon questioning from the Board, the Development Officer indicated that he cannot speak to the approval of other Semi-detached Housing in the neighbourhood. The neighborhood is going through changes so photos appear accurate.
- [21] The Board referred the Development Officer to page 30 of the Alberta Avenue/Eastwood Area Redevelopment Plan (“Area Redevelopment Plan”) which provides:
- 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.
- [22] The Development Officer stated the Area Redevelopment Plan is a general document and was adopted in the 1970’s.
- [23] Upon questioning from the Board, the Development Officer confirmed that the proposed development is a Permitted Use and there is no applicable location criteria regulation. However, in the Development Officer’s opinion and as stated in his written submission,

“the Residential Infill Guidelines provide a clear direction to developers, communities, City staff and City Council on how infill development in mature neighbourhoods should occur. Directing majority of infill projects away from the interior of neighbourhoods to the edges of neighbourhood or onto large sites helps protect the critical mass of Single Detached Housing in the interior of mature neighbourhoods. For instance, focusing infill development on the edge of the neighbourhood, on block ends, and across from neighbourhood schools will help to minimize parking and traffic impacts.”

- [24] The Development Officer reiterated that there was no unnecessary hardship/practical difficulty peculiar to the site; and the variance unduly interferes with the amenities of the neighbourhood and has an effect on the use, enjoyment, and value of neighbouring properties.
- [25] The Board stated because the property is zoned RF3, that Semi-detached Housing is a Permitted Use, and further the Area Redevelopment Plan supports the proposed development, could the test for hardship be met with respect to Site Area. In the Development Officer’s opinion this was at most a practical difficulty. The Area Redevelopment speaks of the need to monitor developments. The character of the neighbourhood is predominately Single Detached Housing, although it is acknowledged that the Appellant did supply numerous pictures of Semi-detached Houses in the area.
- [26] The Development Officer could not say with certainty why the minimum Site Area for Semi-detached housing of 442.2 square metres was chosen. However, he did agree with the Board’s reasoning that a reason could be to prevent a “domino” effect of variances. Given that all other regulations are met, in this case, granting a variance in the minimum allowed Site Area could have limited effect.

*iii) Rebuttal of the Appellant*

- [27] The Appellant reiterated that the proposed development exceeds the minimum requirement for Site depth and Site Width. The proposed development revitalizes the neighbourhood and meets Council’s intent. The neighbours have no objections to the proposed development. The Appellant is agreement with the Development Officer’s suggested conditions.

**Decision**

- [28] 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**:

This Development Permit authorizes the development of a Semi-Detached House with front and back landings, fireplaces and to demolish an existing Single Detached House, existing Garage was burned down 6 months ago not applying

for demo. The development shall be constructed in accordance with the stamped and approved drawings.

1. Immediately upon demolition of the building, the site shall be cleared of all debris.
2. The maximum Height shall not exceed 8.6 metres, in accordance with Section 52 of the Edmonton Zoning Bylaw 12800.
3. Platform Structures greater than 1.0 metres above Grade shall provide privacy screening to prevent visual intrusion into adjacent properties. (Reference Section 814.3(8))
4. Single Detached Housing/Semi-detached housing requires 2 parking spaces per dwelling; parking may be in tandem as defined in Section 6.1(102) (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. All yards, visible from a public roadway other than a lane, shall be seeded or sodded within eighteen (18) consecutive months of the issuance of an Occupancy Certificate for the development. Alternative forms of landscaping may be substituted for seeding or sodding as specified in Section 55.
8. 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
9. 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(19))
10. 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 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)

**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. Note that Secondary Suite Use Class does not include Semi-detached Housing.
4. The driveway access must maintain a minimum clearance of 1.5 metres 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.

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

1. The minimum allowable Site Area of 442.2 square metres per Section 140.4(3)(a) is varied to allow a deficiency of 74.83 metres, thereby decreasing the minimum allowable to 367.37 square metres.

**Reasons for Decision**

[29] Section 140.2(8) of the Edmonton Zoning Bylaw provides that a Semi-detached House is a Permitted Use in the RF3 Small Scale Infill Development Zone.

[30] The Board finds, based on the evidence submitted, 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, because:

- i) Although the Site Area is deficient, all other regulations have been met or exceeded, including those of the Mature Neighbourhood Overlay.
- ii) Based on the pictorial evidence submitted, the proposed development is characteristic of the neighbourhood.
- iii) The Board finds the front elevation of the proposed development gives the appearance of a Single Detached House.
- iv) The Board finds this type of development is consistent with the policy of the Area Redevelopment Plan.
- v) The Board finds the proposed development is consistent with Section 4.4.1.1 of the *Municipal Development Plan*, which states one policy is to “provide a broad and varied housing choice, incorporating housing for various demographic and income groups in all neighbourhoods.”
- vi) The Appellant has voluntarily submitted community support for the proposed development. No letters of objections were received, nor did anyone attend the hearing in opposition to the proposed development.

[31] The Development Officer advanced an argument the proposed development does not meet the Residential Infill Guidelines in terms of location criteria. The Board finds this document is not a statutory plan binding on the Board and is unrelated to the requested variance. The Board was not provided with any planning reason to support a conclusion that the proposed development would unduly interfere with the amenities of the neighbourhood, or materially interfere with or affect the use, enjoyment or value of neighbouring parcels of land.

Mr. V. Laberge, Presiding Officer  
Subdivision and Development Appeal Board

**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 5<sup>th</sup> 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*, R.S.A. 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: July 27, 2016  
Project Number: 182147071-011  
File Number: SDAB-D-16-169

**Notice of Decision**

- [1] On July 14, 2016, the Subdivision and Development Appeal Board heard an appeal that was filed on **June 21, 2016**. The appeal concerned the decision of the Development Authority, issued on June 16, 2016 to refuse the following development:

**To construct an Accessory Building - rear detached Garage Suite (2 Storeys, 8.84 metres by 7.32 metres)**

- [2] The subject property is on Plan 715HW Blk 4 Lot 22, located at 9134 - 117 STREET NW, within the RF1 Single Detached Residential Zone. The Mature Neighbourhood Overlay applies to the subject property.

- [3] The following documents, which were received prior to the hearing and are on file, were read into the record:

- A Development Permit Application, including the plans of the proposed Development;
- The refused Development Permit;
- The Development Officer's written submissions; and
- Online submissions from surrounding property owners

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

- Exhibit A – Site Plan
- Exhibit B – Plan approving Garage Pad
- Exhibit C – Slab and Foundation Plan
- Exhibit D – Grading plan

**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, Mr. D. Hunka*

- [8] The Appellant reviewed his Grounds for Appeal set out in the Board’s agenda, including three illustrations of garage suites with varying Heights. Flat roof suites have different Height restrictions compared to traditional roof suites. Most notably, a garage suite with a traditional roof which meets the Height restriction has a greater perceived massing effect.
- [9] In December 2015, the Appellant appeared before City Council in an attempt to rectify this problem. The Mayor understood the issue and made a motion to amend the *Edmonton Zoning Bylaw*. Since then, he has been working with Sustainable Development Administration.
- [10] In regards to the Drive Aisle width, the Appellant stated that when the Single Detached House was approved, he was also given approval for the garage pad. He can increase the width of the pad on the north side by 3 feet, but not the full 4 feet. The Appellant submitted Exhibit A, Exhibit B, and Exhibit C as evidence.
- [11] The Appellant stated he chose a flat roof suite to match the flat roof on the house.
- [12] The Appellant stated the house he is building is approximately 4-5 feet higher than the proposed Garage Suite.
- [13] The Board appreciated the efforts the Appellant undertook to have the Bylaw changed, but the Board is bound by the *Zoning Bylaw* that exists at the time of the hearing. Specifically, the Board must determine whether the proposed development would unduly interfere with the amenities of the neighbourhood, or materially interfere with or affect the use, enjoyment or value of neighbouring parcels of land, as per Section 687(3)(d) of the *Municipal Government Act*. In that regard, the Board asked the Appellant to speak to any community consultation he conducted. The Appellant submitted the following in that regard:
- 9142 – 117 Street NW – Did not speak directly about this application, but was aware of the entire development and did not seem opposed.

- 9138 – 117 Street NW - Did not speak directly about this application, but was aware of the entire development and did not seem opposed.
- 9130 – 117 Street NW – This neighbour was not opposed.
- 9135 – 117 Street NW- Did not speak directly about this application, but was aware of the entire development and did not seem opposed.

[14] In regards to the two people in opposition to the proposed development, the Appellant does not believe he could do anything to appease their concerns. The house is only 2500 square feet in size and is two stories. He reiterated the most affected neighbours have no objection.

[15] The Board asked the Appellant how much higher the peak of the gable is compared to the flat room. The Appellant directed the Board to Illustration #3 from his submission, which indicates the measurement to midpoint of the gable roof is 21 feet 4 feet versus the proposed 19 feet 11 ½ feet to top of the sheeting, but there is parapet to account for.

[16] The Board asked the Appellant to explain the use of the driveway between the attached garage and Garage Suite. Both the attached garage and Garage Suite will share the use of the driveway as there is no front access and access is provided from the laneway. The Appellant stated the owner may have a family member occupy the unit or rent to a student.

ii) *Position of the Development Officer, Mr. C. Lee*

[17] The Development Officer did not think adding an extra 3 feet on the drive aisle would make much of a difference. He confirmed that the driveway was already approved.

[18] The Development Officer sympathized with the Appellant's issue of reasonable floor to ceiling height with a flat roof compared to a traditional roof.

[19] The Development Officer refused the application because pursuant to Section 11.4, he is not allowed to vary Height. If he had the authority to vary Height, he would consider it if the Appellant canvassed his neighbours to determine any impacts as Height may contribute to the massing of a building. In the Development Officer's opinion, the neighbours in opposition were not specifically addressing the Height variance.

[20] Upon questioning from the Board, the Development Officer confirmed that Grade was calculated in accordance with section 52 of the *Edmonton Zoning Bylaw*. A common way to determine Grade is to calculate the average of the elevation at the corners of the Site. In this case, the finished floor was above grade by 24 centimeters. Upon questioning from the Board, the Development Officer agreed that the elevation of the Front corner of the site may not be as applicable to the Garage Suite and if a different grade calculation was used, it may make a difference of approximately 0.5 metres. It is at the Board's discretion to use a different calculation for Grade.

[21] Upon questioning from the Board, the Development Officer confirmed the minimum side setback required for a Garage Suite is 1.2 metres versus 0.9 metres for just a garage.

*iii) Rebuttal of the Appellant*

[22] In rebuttal, the Appellant submitted Exhibit D, a Lot Grading Plan, which accurately reflects the proposed development other than the Side Setback dimension.

**Decision**

[23] 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. Eave projections shall not exceed 0.46 metres into required Setbacks or Separations spaces less than 1.2 metres. (Reference Section 44.1(b))
2. A Garage Suite or Garden Suite shall not be allowed within the same Site containing a Group Home or Limited Group Home, or a Major Home Based Business and an associated principal Dwelling, unless the Garage Suite or Garden Suite is an integral part of a Bed and Breakfast Operation in the case of a Major Home Based Business (Section 87(13)).
3. Only one of a Secondary Suite, Garage Suite or Garden Suite may be developed in conjunction with a principal Dwelling (Section 87(11)).
4. A Garage Suite or Garden Suite shall not be subject to separation from the principal Dwelling through a condominium conversion or subdivision (Section 87(15)).
5. Garage Suites and Garden Suites shall not be included in the calculation of densities in this Bylaw (Section 87(16)).
6. Notwithstanding the definition of Household within this Bylaw, the number of unrelated persons occupying a Garage Suite or Garden Suite shall not exceed three (Section 87(12)).
7. Every Driveway, off-street parking or loading space, and access provided or required in any Residential Zone, including the area contained within City-owned land from which access or egress is obtained, shall be Hardsurfaced if access is from a public roadway which is Hardsurfaced or gravelled.

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)

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

1. The maximum allowable Height of 5.5 metres per Section 87.2.a.ii is varied to allow an excess an excess of 0.91 metres, thereby increasing the maximum allowable to 6.41 square metres.
2. The minimum allowable drive aisle of 7.0 metres per Section 54.2.4.a.vi is varied to allow deficiency of 1.21 metres, thereby decreasing the minimum allowable to 5.79 metres.

**Reasons for Decision**

- [24] Section 110.3(3) states a Garage Suite is a Discretionary Use in the RF1 Zone.
- [25] The Board finds the proposed development is compatible with surrounding developments and approves it as an appropriate Discretionary Use in the neighbourhood.
- [26] The Board accepts the submission that the original home was also a flat roof home. The Appellant is maintaining the style of the built form previously existing by constructing a flat roof two storey accessory Building.
- [27] With respect to the Height variance, the Board finds that the impact of the Height of the Garage Suite is mitigated as it is less than the Principal dwelling and less than the maximum allowed in a sloped roof Garage Suite development.
- [28] The Board finds by granting variance to the maximum allowable Height, it will not have a material sun shadowing or massing effect.
- [29] The Board also notes that the particular method chosen by the Development Officer in analyzing the average calculation as the grade of four corners of the property increases the Height variance. The front elevation of the lot is higher than the rear elevation and would have an effect on the grade calculation. The impact of this Height variance is mitigated by the site conditions. The garage is located on the lower portion of the lot.

- [30] The Board finds there is an additional 3 feet, not hard surfaced, between the edge of concrete pad and property line that would help mitigate the variance to the drive aisle.
- [31] The Board finds the proposed development is consistent with Section 4.4.1.1 of the *Municipal Development Plan*, which states one policy is to “provide a broad and varied housing choice, incorporating housing for various demographic and income groups in all neighbourhoods.”
- [32] The Board accepts the Appellant’s submission that he had informal discussions with the most directly affected adjacent neighbours and they were not opposed to the proposed development.
- [33] The Board received one written submission in opposition to the proposed development that did not refer to the Height specifically or to planning reasons that granting Height would cause an impact. The second letter in opposition comes from an owner of a lot located across 92 avenue and in the Board’s opinion is unaffected by the Height variance.
- [34] For the above reasons, 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.

Mr. V. Laberge, Presiding Officer  
Subdivision and Development Appeal Board

**Important Information for the Applicant/Appellant**

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  - 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*, R.S.A. 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: August 5, 2016

Project Number: 150878850-004

File Number: SDAB-D-16-170

**Notice of Decision**

- [1] On July 14, 2016, the Subdivision and Development Appeal Board (the “Board”) heard an appeal that was filed on **June 21, 2016**. The appeal concerned the decision of the Development Authority, issued on June 3, 2016, to refuse the following development:

**To convert a Group Home to 8 Dwellings of Apartment Housing and to construct interior alterations (existing without permits)**

- [2] The subject property is on Plan RN43 Blk 17 Lots 26-27, located at 11516 - 95A Street NW, within the RF3 Small Scale Infill Development Zone. The Mature Neighbourhood Overlay applies to the subject property.

- [3] The following documents, which were received prior to the hearing and are on file, were read into the record:

- A Development Permit Application, including the plans of the proposed Development;
- The refused Development Permit;
- The Development Officer’s written submissions;
- The Appellants’ written submissions;
- A letter of support for the proposed development from the Alberta Avenue Community League; and
- Online submissions from surrounding property owners.

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

- Exhibit A – Appellants’ PowerPoint presentation;
- Exhibit B – Appellants’ pictures; and
- Exhibit C – Development Officer’s additional 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 Appellants advised that they were no longer seeking an adjournment at this time.
- [8] The decision of refusal by the Development Officer is dated June 3, 2016. The Board accepts the evidence of the Appellants that the decision of refusal was received on June 9, 2016. The Notice of Appeal was filed on June 21, 2016. The Board finds 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 Appellants, W. Sims/M. Figueira on behalf of the Appellant, Gatineau Enterprises Inc.*

- [9] The Appellants reviewed their PowerPoint presentation, stamped Exhibit A.
- [10] The Appellants submitted that this house built was built in 1924 and is over 90 years old. The property has not been registered as a historical property. The property is in good condition and very little has been altered. From 1924-1994, the property was used as a Lodging House and residence for doctors. For the last 20 years, it was in varied states of multiple residences. A doctor used it as a Lodging House for people from the north. A Group Home for 9 residents plus staff was approved by a panel of this Board in 2001, which was renewed in 2004 by the Sustainable Development Department. From 2004-2007, the property remained vacant. In 2008, the property was purchased by the Appellants' client and she conducted minor interior refurbishments only to convert the Group Home into Apartment Housing. In 2015, the City of Edmonton issued a Violation Notice. In 2016, the Appellants' client applied for a Development Permit for a Change in Use.
- [11] The Appellants submitted the subject property occupies 30 percent of the Site Area, but could potentially occupy up to 40 percent. The Site Area is reasonably large because the Site is a consolidation of two lots. The exterior has remained essentially the same from when it was first built. At some point, the front porch was turned into part of the building, but this did not alter the footprint.

- [12] In regards to the parking variance being requested, the Appellants submitted the subject site has 6 parking stalls located in the rear that meet the *Edmonton Zoning Bylaw* for adequate size. These stalls are separated from the rear by a row of trees. Transportation Services has reviewed the Development Application and has no objection to the parking variance. There has never been a need for 8 stalls. Currently, only 5 stalls have been used. There is also a shed that was previously approved by a panel of this Board that could be removed to accommodate more stalls if necessary.
- [13] In regards to the minimum required Stepback for a Rooftop Terrace, the Appellants submitted there is a long balcony located on the top loft floor. There is an opportunity to move the Terrace back to achieve compliance, but visually is not an issue considering the size of the building. Further, it does enhance safety as it overlooks the street.
- [14] In regards to the side entry issue, the Appellants submitted it applies to one unit only. This entry is discreet, cannot be seen from the street and the most affected neighbor has no issue because no windows are located in that area and the door is screened by landscaping. The Appellants submitted there is an opportunity to add an interior front door, if deemed necessary.
- [15] The Appellants submitted a letter of support from the President of the Alberta Avenue Community League who toured the property and valued the historic nature of the property.
- [16] In regards to the Amenity Area, the Appellants submitted that there is such a large amount of yard, there is an opportunity for shared space and in fact has been operating like that for the last 7 years. Based on the amount of units, the total Amenity Area required is 90 square metres. The total Amenity Area provided totals 183 square metres, albeit not specific to each unit. Lots of space exists between residents and neighbours and the existing fence shields the Amenity Areas from the street. The character of the property is so unique that adding big decks will not enhance or improve how the project looks from the street. However, the Appellants submitted that there is a potential to add a deck and patio, add new fences, and add a new garbage enclosure with access from the property and the lane.
- [17] The Appellants reviewed the summary of their community consultation. There were a total of 49 homes visited. There were 24 signed letters of support, 3 signed letters of support for change in use application, 2 not in support, 6 had no concerns, 3 vacant, and 11 not home. In their view, this amount to approximately 90 percent approval.

- [18] The Appellants submitted when the Application was originally entered, the Scope of Permit indicated it was “to convert from a Limited Group Home to 8 Dwellings of Apartment Housing.” The Appellants clarified that in fact it was a Group Home for 15 people, which was revised by the Board in 2001 to 9 people, with a time limit of 3 years. After 3 years, the Sustainable Development Department allowed the continuation, with no further time limit imposed. The Sustainable Development Department has since rectified the application to a Group Home.
- [19] In regards to the deficient Site Area, the Appellants noted that in his written submission, the Development Officer found no undue hardship to warrant a variance. The Appellants disagreed and provided a map of properties within a 400 metres radius of the subject site to illustrate a possibly ultra vires situation. Assembling two standard lots results in a Site Area of less than 750 square metres. Assembling three standard lots result in approximately in a Site Area of 1050 square metres, which is bigger than the RA7 Low Rise Apartment Zone minimum Site Area requirement of 800 square metres. In the Appellants’ opinion, when City Council creates a regulation, there is an expectation created that lots are of a size sufficient for the listed uses. In this case, this did not happen, resulting in an ultra vires situation, that is it was beyond City Council’s power to adopt a RF3 Zoning to this particular site.
- [20] In regards to the location criteria, the Appellants submitted a similar ultra vires argument, specifically that all four criteria are impossible to meet in this neighbourhood.
- [21] In regards to the excess in maximum allowable Density, the Appellants submitted two alternative approaches. First of all, the building sits on two lots that have been consolidated over time. As such, one can infer that the intent and purpose of the Bylaw is being met because although there are eight units in the building, there are only four units per lot. The second approach involves considering the actual number of people rather than number of dwelling units when evaluating the impacts on the neighbourhood. In this case, there is an approved Group Home for 9 person plus staff versus an Apartment House with 8 Dwelling units which are either 1 bedroom or bachelor suites (which market to 1 person per unit). The neighbourhood profile suggests 33 percent of households are 1 person and 65 percent of households are 1.49 persons. In the Appellants’ opinion, this evidence supports that the proposed development will most likely house only one occupant per suite.
- [22] The Appellants submitted Exhibit B, pictures of the neighbourhood and proposed development.

- [23] The Appellants submitted the Board should consider Section 617 of the *Municipal Government Act* which provides that the purpose and regulations and bylaws of Part 17 Planning Development “is to provide means whereby plans and related matters may be prepared and adopted (a) to achieve the orderly, economical and beneficial development, use of land and patterns of human settlement, and (b) to maintain and improve the quality of the physical environment within which patterns of human settlement are situated in Alberta, without infringing on the rights of individuals for any public interest except to the extent that is necessary for the overall greater public interest.” In this case, the private interests (variances) must be considered against the public interest (strong community support for Apartment Housing versus Group Home). The Appellants referenced two Alberta Court of Appeal cases to support this position.
- [24] The Appellants asked the Board to consider its test in Section 687 of the *Municipal Government Act*, which provides that the Board may issue the development permit even though the proposed development does not comply with the *Edmonton Zoning Bylaw* if in its opinion 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.”
- [25] The Appellants concluded this is a historical building that is being well maintained, being used within the context of the community and is supported by the neighbours.
- [26] At this point in the hearing, the Development Officer asked the Board if he could proceed with his presentation prior to the Appellants’ questioning as he had a previous engagement that he could not reschedule and would not be able to stay for the duration of the Appeal. The Appellants agreed with this request. The Board proceeded in this fashion.
- ii) Position of the Development Officer, C. Lee accompanied by J. McArthur*
- [27] The Development Officer stated he is not the Development Officer who made the original decision, but was appointed by that Development Officer to attend the hearing on his behalf.
- [28] The Development Officer submitted Exhibit C, a summary of his proposed argument.
- [29] The Development Officer stated that when the Board is looking at its test in Section 687 of the *Municipal Government Act*, it must firstly examine whether the proposed development conforms to the Uses prescribed for that land or building in the *Edmonton Zoning Bylaw*.

- [30] The Development Officer stated, to his knowledge, the RF3 Zone is the only standard residential zoning that contemplates a maximum “Density” without actually prescribing the regulation in accordance with the actual definition of Density as outlined in Section 6.1(23) of the *Edmonton Zoning Bylaw*, that being the number of allowable Dwellings per Hectare. Instead the maximum allowable "Density" appears within the General Purpose of the Zone and is also drafted in a similar fashion in Section 140.4(20) of the RF3 Zone, that being absent of a Dwelling per Hectare figure.
- [31] In the Development Officer’s opinion, notwithstanding the Apartment Housing Use Class being listed as a Permitted Use in the Zone, it should be interpreted as a Permitted Use "subject to the General Purpose of the Zone". The General Purpose of Zones serve as the most salient and direct summary of Council's direction when it comes to regulating land use. The RF3 Zone was not contemplated by City Council to ever allow for more than 4 Dwellings on a single Site and certainly not on a site that does not meet the locational criteria.
- [32] In the Development Officer’s opinion, the Board should treat this development as though it was not a prescribed Use in the RF3 Zone and should rule it outside of their purview and jurisdiction. The appropriate avenue of getting this development approved as proposed is through an amendment to the *Edmonton Zoning Bylaw* through the rezoning process and then making another Development Permit application.
- [33] After a brief adjournment, the Appellants indicated that they were advised that the Development Authority was going to be only addressing questions, not supporting or opposing the proposed development. However, the Development Officer has now raised a brand new argument that was not listed in the Reasons for Refusal. The Appellants are not seeking an adjournment, but does not want the Board to consider the Development’s Officer argument as the decision is set and the Board is now the Development Officer. The Board will consider during its decision making process whether to accept the Development Officer’s argument regarding Use.
- [34] Upon questioning from the Board regarding whether the lot size could be considered a hardship, the Development Officer stated notwithstanding there are two lots, the definition of Site can consist of one or more lots so in this case, the proposal is one Site.
- [35] Upon questioning from the Board, the Development Officer stated the Amenity Area cannot be located in the Front Yard.
- [36] Upon questioning from the Board, the Development Officer could not comment if rezoning would be allowed. It is a longer drawn out process.

- [37] Upon questioning from the Board, the Development Officer confirmed there is not an Area Redevelopment Plan that applies to this area.
- [38] Upon questioning from the Board, the Development Officer confirmed the existing Group Home permit for 9 individuals is in effect.
- [39] Upon questioning from the Board, the Development Officer stated that Apartment Housing is a Permitted Use in the RF3 Small Scale Infill Development Zone and there is no specific limitation, such as the maximum number of allowable Dwellings, listed with the Use. In any event, the Development Officer cannot vary Density pursuant to Section 11.4 of *Edmonton Zoning Bylaw*.
- [40] Upon questioning from the Board concerning the change in Density associated with a change in approved Use as a Group Home for 9 individuals, or even as a Lodging House, the Development Officer confirmed under strict examination, there is an increase in Density, but practically probably not. However, given that definition of Dwelling is “a residence for a single Household” and that the definition of “Household” can include three unrelated persons, there is a potential for up to 24 unrelated people to live there. The Development Officer did acknowledge given the size of the units, the risk is remote.
- [41] Upon questioning from the Board, the Development Officer stated the following:
- i) He does not have an issue for the variance for Amenity Area.
  - ii) He does not have an issue for the side entrance way if the most affected neighbour does not find an impact.
  - iii) He does not have an issue for the Rooftop Terrace as it is existing and the *Edmonton Zoning Bylaw* was just amended to regulate them and there have been no complaints.
  - iv) He rarely varies Location Criteria, but maybe with good justification, he would consider a variance.
  - v) He thinks the deficient Site Area is minimal. There is an existing building form, the Site Coverage is low, and there are no changes to the exterior.
  - vi) He has no issues with parking as Transportation Services did not oppose the parking variance.
- [42] Upon questioning from the Board, the Development Officer stated there was no complaints since the new owner took over. The Bylaw Enforcement Officer was just conducting routine inspections.

- [43] Upon questioning from the Board, the Development Officer confirmed that if the proposed development became a Lodging House, there would be different regulations that applied and it is a Discretionary Use.
- [44] Upon questioning from the Board regarding his Use argument, the Development Officer stated it was his opinion only, but was confident the Development Officer who made the original decision would concur.
- [45] Upon conclusion of the Development Officer's presentation, the Board continued with the questioning of the Appellants.
- iii) Position of the Appellants, W. Sims/M. Figueira on behalf of the Appellant, Gatineau Enterprises Inc.*
- [46] Upon questioning from the Board, the Appellants stated the proposed development is located three blocks from 118 Avenue, one block from 95 Street and a couple blocks from 97 Street, which are all well serviced by transit.
- [47] The Appellants confirmed there have been no complaints from neighbours regarding the Rooftop Terrace.
- [48] Upon questioning from the Board, the Appellants stated any changes they are proposing are only if deemed absolutely essential by the Board.
- [49] Upon questioning from the Board, the Appellants stated there is a greater chance the number of people would increase under the Group Home Use as compared to the Apartment House Use. Group Homes are regulated by Sleeping Units, which is up to two people. In this case of Apartment Housing, this is an 8 person unit, consisting of 3 bachelor units and 5 one bedroom units, and the owner of building would not increase that amount. The functionality of the building is rental, not condos. The common areas and amenity areas are regulated.
- [50] Upon questioning from the Board regarding that improvements were made without permits, the Appellants stated the changes were not that substantial and only some units were upgraded.
- [51] Upon questioning from the Board regarding the ultra vires argument, the Appellants stated the regulations were adopted by City Council without first being checked into their feasibility, that is whether an Apartment House as a Permitted Use could actually be developed within the current regulations. Under the *Municipal Government Act*, City Council needs to provide Uses, Density, and development standards. The purpose statement, location criteria, and other special development standard should be treated equally. Through the *Edmonton Zoning Bylaw*, City Council told the Development Officers they cannot vary Height, Floor Area Ratio or Density.

Most recently, City Council has stated in the Mature Neighbourhood Overlay that “the Development Officer shall have regard for any applicable Statutory Plan and may, where a Statutory Plan specifies, notwithstanding subsection 11.4 of this Bylaw, vary the regulations of both this Overlay and the underlying Zone as they affect Height, Density and Floor Area Ratio.” The Board can vary Density.

- [52] The Board asked the Appellants to describe the community consultation process further. Individuals were presented with an approved Group Home or an Apartment Building being used as such for the last 7 years. Neighbors expressed concern whether the building was going to be knocked down. They communicated that there was no new development; the building was being kept as is. This is why some people choose not to comment.
- [53] The Board asked the Appellants if there already exists another door on the side unit. There exists an opportunity to install a door, but currently does not exist. The existing storage unit would be made into a hallway. Currently access is from the inside and not accessible from outside.
- [54] Upon questioning from the Board, the Appellants stated that even if two lots on the corner were amalgamated, the regulations could not be complied with. Some of the properties indicated in the map provided may be in a different zone.
- [55] Upon questioning from the Board as to why the property is not rezoned, the Appellants stated it would need to be rezoned to a Direct Control, and the process is extensive and costly. That is something that will be needed to be looked at if the Board does not allow this Appeal.

*iv) Position of the Landowner, L. Bechstein-Hess*

- [56] Ms. Bechstein-Hess has owned the subject property for 7 years. There is a new LRT station at Kingsway, which is a 7 minute walk from the subject site. With the close location of transit, the property is ideal for students. An increasingly number of young people do not own a car. The site has always operated with 6 or less cars.
- [57] Ms. Bechstein-Hess stated the units are small and provide affordable housing with easy access to transportation.
- [58] When Ms. Bechstein-Hess purchased the property, there were actually three kitchens, one on each floor. Two kitchens are historical. It would be a shame to destroy the historical elements. Units 2 and 3 were already apartments and the rest required minor configurations. The hallways, stairwells and fire code issues have all been dealt with.



- [59] Ms. Bechstein-Hess stated this was her first attempt at a development application and had no knowledge of the process. She provides the highest level of professionalism and is bringing a positive contribution to the community. Density does not seem to be an issue with neighbours. There is a constant struggle for affordable housing. The City wants market housing, which attract citizens to the neighbourhood. She has 3 tenants that have lived there more than 5 years. If the house reverts to a Group Home, there will be a different demographic of tenants. The single units have one occupant.
- [60] Ms. Bechstein-Hess stated there were 5 bathrooms and 1 water closet, which was extended. Nothing new was created. It is a very organized use of what was there. There were specific defined areas like an apartment and some units were already apartments.
- [61] Ms. Bechstein-Hess confirmed there was a previous door existing on the storage space, but has been sealed off because there is no landing.
- [62] Ms. Bechstein-Hess confirmed the results of the community consultation. The first draft of letter did not specifically address the variances to be granted, so that was modified in the new one to address each point. Many people were opposed to a Group Home.
- [63] Ms. Bechstein-Hess stated the proposed building is over 5000 square feet in size and similar in size to 3 buildings.
- [64] Ms. Bechstein-Hess confirmed she has not received a complaint regarding the property. A Development Compliance Officer was monitoring the area and asked to view the property. She has had only positive feedback.
- [65] Ms. Bechstein-Hess confirmed she has never operated this as a Group Home and the property has sat vacant for a long time.

*v) Position of Affected Individuals in Support of the Appeal*

T. Martin

- [66] Ms. Martin lived at the subject property for 3½ years and completely supports the project. She lives in another unit owned by Ms. Bechstein-Hess, still within the 60 metres notification radius.

J. Brandl

[67] Mr. Brandl is a current tenant in the property and has lived there 1 year. It is always quiet and there is one tenant per unit. It is unreasonable to think the property would house 24 people. It would ruin the character of the house if changes were made. The place offers affordable rent and it would be a hardship to him if he was forced to moved out. Shared amenity space poses no problem for him.

H. Sombrofsky

[68] Ms. Sombrofsky is a current tenant in the property and has lived there 5 years. She is a Member of the Community League and the community garden. It is always quiet and there is less noise with 8 people sharing a yard than noise made from a Single Family Dwelling. The shared amenities are never busy or crowded. The house has been finished with quality workmanship and detail. It is a quality place that is affordable and attracts quality tenants. There are no parking problems. All feedback has been positive.

*v) Position of Affected Property Owners in Opposition to the Appeal*M. MacKinnon

[69] Mr. MacKinnon own and lives in a property several lots north of the subject site. Parking is an issue on that block and he has phoned bylaw enforcement several times in the last 5 years. Infraction tickets are issued regularly. It is at least conceivable that there could be two people living together in each suite. It is a lower priced rental in a lower income area close to amenities.

[70] Mr. MacKinnon expressed concerns that this is an investment property. There might be other be owners. There is no guarantee that the next person will have the same caring attitude. If the Board makes a variance to allow this proposed development, it travels with the house. He does understand if the house is torn down, a new developer would need to start afresh. However, there has been a precedent set of a higher occupant building. There is already a rooming house on the block, a shelter on the block, and triplex on the block approved by a panel of this Board.

[71] Upon questioning from the Board whether he would agree to an Apartment House with 4 dwellings, Mr. MacKinnon said it is not reasonable but allowed. He would prefer a Single Detached House, Semi-detached House or even a tri-plex.

[72] Mr. MacKinnon agrees the proposed development does not appear to be a large change, but he is most concerned about the future of the neighbourhood. He does not have an issue with the Apartment in its current state and the owner takes great care of the property, but any approved permit runs with the land. His main concern for the future is that this approval will set a precedent enabling the house to be torn down and replaced with a new building with an equal or greater number of dwellings. He would be less concerned if the site was a historically designated property.

[73] Mr. MacKinnon stated there is an active church on the corner and angle parking on both sides of street. He conceded this could be causing some of the parking problems and he agreed the parking congestion problems are not attributable to the development in particular.

P. Waddington

[74] Mr. Waddington owns two properties across the lane. His most pressing issue is parking. It is unreasonable to think there will only be 8 people living in that building. There is only room for 5 cars. It is hard to drive down 95A Street. He questions the practicality of the garbage bin enclosure, will someone be hired or will someone from the unit do it. There are no other problems that he is aware of.

*vi) Rebuttal of the Appellants*

[75] The Appellants referred the Board to the last page of their PowerPoint presentation, where the Use clause of Section 687(3)(d)(ii) of the *Municipal Government Act* is provided. The Development Officer's opinion today went beyond the Reasons for Refusal and the written submission. There are no regulations intertwined with the Apartment Housing Use. The Board has the power to vary regulations.

[76] The Appellants take issue with the Development Officer's statement that the proposed development could house a potential of 24 people. The Appellants referred to an older case that discussed the definition of family. The word family was struck down as it was ultra vires. The *Edmonton Zoning Bylaw* uses the terminology Household. It is not feasible to accommodate that many people and it is not consistent with, as indicated in their written submission, the profile of occupancy per Dwelling Unit across the neighbourhood which is very low, so it is not a valid argument.

[77] The Appellants stated there is an expectation that it is feasible to assemble land. The location criteria are impossible to meet so this is not an empty argument.

- [78] The Appellants stated the Church has its own parking requirements and the shed would be removed if the Board deems it a requirement. The dimensions of the parking spaces meet the minimum requirements.
- [79] The Appellants stated approving this proposed development will not set a precedent. A demolition permit would cease this permit and the new building would require a new permit.
- [80] The Appellants stated what triggered this application is a Violation Notice in 2015 which required the property owner to apply for an 8 unit apartment house. It was only a Use issue, not a safety issue.
- [81] The Appellants stated the Development Officer appeared to not have any issues with anything else other than Density.
- [82] The Appellants concluded the property should be kept for its best and highest use as a historical building. The buildings that are cherished the most do not typically comply with the *Edmonton Zoning Bylaw* as zoning applies to new buildings.

### **Decision**

- [83] 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**:
- a) This Development Permit authorizes the development of converting a Group Home to 8 Dwellings of Apartment Housing and to construct interior alterations (existing without permits). The development shall be constructed in accordance with the stamped and approved drawings.
  - b) Any future basement development may require development and building permit approvals. An additional Dwelling shall require a new development permit application.
  - c) Except for the hard surfacing 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 12800.
  - d) All access locations and curb crossings shall have the approval of the City Transportation Services prior to the start of construction. Reference Section 53(1). Access will be limited to the rear alley only.

- e) The outdoor Amenity Area shall be permanently retained as open space, unencumbered by an Accessory building or future additions. Reference Section 46.
- f) PRIOR TO THE RELEASE OF DRAWINGS FOR BUILDING PERMIT REVIEW, the applicant or property owner shall pay a Sanitary Sewer Trunk Charge fee of \$7826.00. The SSTC charge is quoted at year 2016 rate. Please contact Private Development, Drainage Services, at 780-496-5665 for further details regarding the fee. However, the final SSTC is based on the prevailing rate at the time the applicant/owner makes payment at the 5th Floor cashiers, Sustainable Development, 10250 - 101 Street NW.

#### TRANSPORTATION SERVICES ADVISEMENTS:

- a) Bicycle parking should meet the requirements of the Zoning Bylaw (Section 54.3 and Section 54.3 Schedule 2).

#### ADVISEMENTS:

- a) This is a residential property and therefore falls under the City of Edmonton Bylaw 13777, requiring the waste services is provided by the City of Edmonton. This site would receive manual hand collection of waste and recycling. Appropriate containers (cans or bags) should be placed within 3 metres of the rear lot line before 7 a.m. on the designated collection day.
- b) Lot grades must comply with the *Edmonton Drainage Bylaw 16200*. Contact Drainage Planning and Engineering at 780-496-5576 or [lot.grading@edmonton.ca](mailto:lot.grading@edmonton.ca) for lot grading inspection inquiries.
- c) Any future deck development greater than 0.6 metres (2 feet in height will require development and building permit approvals.
- d) Any future deck enclosure or cover requires a separate development and building permit approval.
- e) The driveway access must maintain a minimum clearance of 1.5 metres from all surface utilities.
- f) 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.

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

- a) The minimum allowable Site Area of 750.00 square metres as per Section 140.4(5)(a) is varied to allow a deficiency of 14.08 square metres, thereby decreasing the minimum required to 735.92 square metres.
- b) The Apartment Housing locational criteria of Section 140.4(7) are waived.
- c) The maximum allowable number of four Dwellings as per Section 140.4(20)(c) is varied to allow an excess of 4 Dwellings, thereby increasing the maximum allowable to 8 Dwellings.
- d) The requirement for each Dwelling that has direct access to Grade to have an entrance door or entrance feature facing a public roadway, other than a Lane, as per Section 140.4(24), be waived.
- e) The requirement for Private Outdoor Amenity Area on Site be provided in accordance with Section 47 be waived and shall be constructed in accordance with the stamped and approved drawings.
- f) The minimum allowable Stepback of 2.0 metres as per Section 140.4(17)(a)(ii) is varied to allow a deficiency of 1.40 metres, thereby decreasing the minimum required to 0.6 metres.
- g) The minimum allowable number of Parking spaces of 9 as per Section 54.2, Schedule 1(1) is varied to allow a deficiency of 3 Parking spaces, thereby decreasing the minimum required to 6 spaces.

### **Reasons for Decision**

[85] Apartment Housing is a Permitted Use in the RF3 Small Scale Infill Development Zone.

[86] The Development Officer submitted the Board has no jurisdiction to consider an Apartment House with 8 dwelling units because Section 140.1 of the *Edmonton Zoning Bylaw* states, in part, that the purpose of the Zone is to “provide small-scale conversion and infill redevelopment to buildings containing up to four Dwellings.” Further, Section 140.4(20) provides that Apartment Housing is allowed in this Zone, up to a maximum of four Dwellings. In the Development Officer’s opinion, notwithstanding the Apartment Housing Use class being listed as a Permitted Use in the Zone, it should be interpreted as a Permitted Use "subject to the General Purpose of the Zone" and accompanying regulation.

[87] Taking a purposive and contextual approach, the Board does not accept this argument for the following reasons:

- i) Section 640 of the *Municipal Government Act* sets out the elements a Land Use Bylaw must and may include. The subsections of Section 640(2) distinguish between Uses (with or with conditions), Density requirements and development regulations of Density.
- ii) Despite the General Purpose of the Zone and in accordance with Section 640(2)(b)(i) of the *Municipal Government Act*, Section 140.2 of the *Edmonton Zoning Bylaw* lists Apartment Housing as a Permitted Use without condition or qualification.
- iii) By contrast to Section 140.2, the Board notes there are many other instances of Permitted and Discretionary Uses with conditions that relate to size or intensity or occupancy in other Zones. For instance, in the RF5 Zone pursuant to Section 160.2 that identifies the Permitted Uses in this Zone, both Row Housing and Semi-detached Dwellings have a specific size limitation described within the Use Class.
- iv) The definition of Apartment Housing Use in Section 7.2(1) of the *Edmonton Zoning Bylaw* is unqualified and specifically contains no restrictions regarding the number of dwellings per building.
- v) The maximum allowance of four Dwellings per site for Apartment Housing in Section 140.4(20)(c) is a development regulation which the Board in its discretion may vary pursuant to section 687(3)(d) of the *Municipal Government Act*.

[88] The Board finds the building within which the proposed development will occur has existed since the 1920s and is representative of the character of the neighbourhood. Further, the Board finds that the building, particularly the exterior form, has not changed significantly since it was built. The Apartment Housing Use has been in existence with eight dwellings for several years without incident or complaint. It was only through a random inspection, and not through the complaint process, that it was determined that the proposed development did not have a valid permit. This evidence concerning the existing state of affairs supports the view that none of the variances individually, or cumulatively, will unduly interfere with the amenities of the neighbourhood, nor materially interfere with or affect the use, enjoyment or value of neighbouring parcels of land.

[89] With respect to variance over the minimum required Site Area, the Board was not presented with any planning reasons that the variance would have any material effect on the neighbourhood. The Board notes the Development Officer described this variance as minimal as the existing built form remains the same, there are no exterior changes and the Site Coverage is well under the maximum allowed.

- [90] With respect to variance over locational criteria, the Board was not presented with any planning reasons that the variance would have any material effect on the neighbourhood. The Development Officer indicated that he would have considered the variance based on the results of appropriate community consultation. At the hearing, the Appellants provided evidence of strong community support. Further, the proposed development has been in existence in its current location for 7 years without complaint.
- [91] With respect to the variance to the regulation requiring each Dwelling that has a direct access to Grade to have an entrance door facing a public roadway, the Board was not presented with any planning reasons that the variance would have any material effect on the neighbourhood. The most directly affected neighbour has no privacy concerns, mature landscaping screens the only side entrance and it is not visible from the front. Further, the principal dwelling is significantly separated from the Side Lot Line which further mitigates any potential impact.
- [92] With respect to Amenity Area, the Board was not presented with any planning reasons that the variance would have any material effect on the neighbourhood. All parties agreed that the property has several communal spaces that seem to function well and, in total, is double in size than required. Further, the Board has placed a condition the area shall be permanently retained as open space, unencumbered by an Accessory building or future additions. The Appellant presented an alternative option that provided several decks construction that could help meet private outdoor amenity space. All parties agreed that those decks would change the historical look of the existing dwelling and could create privacy concerns for the neighbours to the north and that it was preferable to let the site remain as is.
- [93] With respect to Rooftop Terrace, the Board was not presented with any planning reasons that the variance would have any material effect on the neighbourhood. The adjacent neighbours had no concerns and it was typical of the area. It may also serve as an additional point of egress and enhance security by providing overlook into the lane.
- [94] With respect to Parking, the neighbours who had concerns agreed during their verbal submissions that no parking issues could be directly attributed to this site. The variance in the minimum required number of off-street Parking spaces was supported by Transportation Services on the basis of the development's proximity to bus routes and LRT. The Board heard from existing tenants who reside in the dwelling for a significant period of time who indicated that there have never been parking issues amongst tenants and they were unaware of any neighbours' complaints associated with parking specific to their building.



[95] With respect to Density, the Board recognizes that the General Purpose section of this RF3 Small Scale Infill development Zone speaks of “allowing small-scale conversion and infill redevelopment to buildings containing up to four Dwellings.” However, the Board finds after consideration of all the unique circumstances, that a variance to development regulation found in Section 140.4(20)(c) by allowing an excess of 4 Dwellings units is appropriate for the following reasons:

- i) The property involves a very unique situation because it is a large building that has been in existence for a long time with an unusually high level of occupancy since the 1920’s.
- ii) The blend of suites of five 1-bedroom and three bachelor units lends itself to fewer residents than in other suite types.
- iii) The small size of the 8 units will also practically limit the occupancy.
- iv) The Board accepts the evidence of the Appellants that the typical occupancy per dwelling is from 1 to 1.5 occupants per Dwelling of any size across the entire neighbourhood. This suggests a lower than average occupancy rate which ameliorates the increased Density.
- v) The Board notes that the Development Officer acknowledged that given the size of the suites, the neighbourhood demographics, the change from a Group Home for 9 residents and staff to an Apartment Housing Use with 8 Dwelling units would be unlikely to materially increase the Density measured in number of occupants.
- vi) There is broad community support to change from the Use of the site from an approved Group Home to an Apartment Housing Use.
- vii) It has been operating for several years without complaint.

[96] The Board finds that even though the development has been operating as an Apartment House for 7 years and notwithstanding the number of variances associated with it, the development still has significant community support, including the Alberta Avenue Community League, to allow it to exist as it has.

[97] The Board notes that one letter of opposition was retracted at the hearing as that property owner was under the impression it pertained to another property in the area.

[98] The Board finds the proposed development is consistent with Section 4.4.1.1 of the *Municipal Development Plan*, “The Way We Grow”, which states one policy is to “provide a broad and varied housing choice, incorporating housing for various demographic and income groups in all neighbourhoods.”

[99] For the above reasons, 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.

Mr. V. Laberge, Presiding Officer  
Subdivision and Development Appeal Board

**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 5<sup>th</sup> 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*, R.S.A. 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.*