



**EDMONTON  
TRIBUNALS**

*Subdivision &  
Development  
Appeal Board*

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Date: August 3, 2017  
Project Number: 239775603-001  
File Number: SDAB-D-17-129

**Notice of Decision**

- [1] On July 19, 2017, the Subdivision and Development Appeal Board heard an appeal that was filed on June 23, 2017. The appeal concerned the decision of the Development Authority, issued on June 16, 2017, to refuse the following development:

Construct a Single Detached House with a front veranda, attached Garage, 2-tiered rear uncovered deck (upper 2.82m x 3.05m, lower 5.64m x 5.49m), a rear attached Garage, and to demolish an existing Single Detached House and Accessory Building (rear detached Garage)

- [2] The subject property is on Plan 2938HW Blk 10 Lot 12, located at 11819 - 73 Avenue NW, within the RF1 Single Detached Residential Zone. The Mature Neighbourhood Overlay and the McKernan/Belgravia Station Area Redevelopment Plan apply to the subject property.

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

- Copy of the permit application with attachments, the refused permit and plans;
- Appellant's written submissions and supporting materials; and
- Development Officer's written submissions.

**Preliminary Matters**

- [4] At the outset of the appeal hearing, the Presiding Officer confirmed with the parties in attendance that there was no opposition to the composition of the panel.
- [5] The Presiding Officer outlined how the hearing would be conducted, including the order of appearance of parties, and no opposition was noted.
- [6] The 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 Appellants, Mr. D. Hitesman and Mrs. M. Hitesman*

[7] The Appellants were accompanied by a representative from the builder, Mr. H. Janke.

[8] The Appellants are requesting that the Board grant two variances to allow the development of a rear attached garage:

- a) Reduce the required rear setback from 40% of site depth to 20.3% of site depth
- b) Waive the requirement that a rear attached garage must be located on a corner lot

The proposed development complies with all other relevant bylaws.

[9] Mr. Hitesman reviewed the submission they previously submitted to the Board including the contents of Schedules A to J.

## Community Consultation

[10] Extensive community consultation was conducted with 17 neighbouring property owners in December 2016 and January 2017. Results of the consultation were submitted to the Development Authority at the time of their development permit application. They personally visited these owners and provided copies of the building plans and explained the variances being sought. All 17 of these neighbours provided signatures in support and no one voiced any concerns. (Schedule “B” of Appellants’ Supporting Materials)

[11] They were subsequently advised by the Development Authority that the City’s standard form must be used to conduct the community consultation and were provided with a map of the 26 properties within a 60 metre radius. Of these 26 properties, four had not been included in the initial consultation conducted in December 2016 and January 2017.

[12] To satisfy the requirements of the Development Authority, the Appellants engaged in a second round of community consultation in May 2017, and obtained 15 signatures in support of the development, many for the second time. Again no opposition was voiced by anyone. On May 23, 2017, they e-mailed the results of this second round of community consultation to the Development Officer. (Schedule “D” of Appellants’ Supporting Materials).

[13] An e-mail from the Development Officer on June 1, 2017, requested that they visit three properties one more time to attempt to obtain signatures (all three of these owners had signed their initial consultation). They were able to obtain one additional signature during this attempt. (Schedule “E” of Appellants’ Supporting Materials)

[14] The Development Officer’s written submission stated that signatures were obtained from 16 of the neighbouring property owners. If the Appellants’ initial consultation were

included in the tally, they actually obtained signatures from 20 of the 26 owners within the 60 metre notification area.

- [15] The Appellants visited the remaining six homes at least three times, and were never able to reach anyone at five of these locations. They left written materials but never heard back from anyone.
- [16] One of these properties, 11682 – 72 Avenue, is a new construction and they believe it is not yet occupied. This home was the subject of a successful appeal to this Board where the Board allowed a rear attached garage.
- [17] The last house they were unable to obtain a signature from is occupied by an elderly woman. They spoke with her about the proposed development and left her written materials. She did not voice any objections but did not return the signed form.
- [18] They presented their proposed development to Susan Kemp, Director of Planning and Place with the Belgravia Community League who confirmed, via e-mail, that she had no concerns. (Schedule “F” of Appellants’ Supporting Materials).
- [19] The Appellants have demonstrated they have wide community support for the proposed development, including the two immediately adjacent property owners and the owners of the three properties across the rear lane.

#### Compatibility and Conformity in the Neighbourhood.

- [20] Homes with either front or rear attached garages are common in Belgravia as well as in the adjacent neighbourhoods of McKernan and Windsor Park. Schedule “G” contains a map together with photographs of various homes within a 60 metre radius that have either rear or front attached garages.
- [21] The Appellants submit that the proposed development is entirely compatible with other homes in the neighbourhood and fits the character of the neighbourhood.

#### No Massing effect

- [22] The proposed attached garage is a single-storey, which is a step down from the two-storey principal dwelling. The garage is on a different angle relative to the side property line when compared to the home. These two factors reduce any massing effect.
- [23] The garage is a triple garage with one side being single and the other being a tandem garage. A detached rear garage would create a larger massing effect than the design they are proposing.
- [24] Their proposed garage runs along the property line that abuts the adjacent property at 11815 – 73 Avenue. The garage on this adjacent property is located along the same property line such that the two garages will be side by side.

### Amenities Area

[25] The lot they are proposing to build on is extremely large at nearly 10,000 square feet. It is pie shaped with the wider part being at the rear and has a 92 foot rear property line. The rear attached garage will be off to the side leaving a very large rear amenity area. The Real Property Report in Schedule “H” confirms the lot dimensions and size.

### Landscaping Features

[26] There are large, mature trees between the subject property and both immediately adjacent neighbours. The intent is to keep as many of these mature trees as possible. The backyards of the properties immediately across the rear lane also contain mature trees. Schedule “I” contains photographs of these landscaping features.

[27] These mature trees mitigate any potential massing effect of the rear attached garage.

### Precedent in Immediate Vicinity

[28] A recently constructed single detached home with a rear attached garage is located across the lane at 11682 – 72 Avenue. (marked with an asterisk on the map in Schedule “C”). This is the property that was the subject of a successful appeal to this Board, and resulted in the same two variances being granted as are being sought in today’s appeal.

[29] In that case, the Board reversed the Development Authority’s decision of refusal because the proposed development mitigated the massing effect through articulating features, preserved a large amenities area, and the existing landscaping masked the proposed structure. Today’s proposed development possesses all of these features and has the additional feature of being a reverse pie shaped lot which creates an extremely large rear yard.

### Conclusion

[30] In light of the extensive community consultation resulting in no expressed opposition by any neighbours within the 60 metre radius, the demonstrated compatibility and conformity with the neighbourhood, and the specific characteristics of their lot which mitigate any massing effect, the Appellants request that the Board grant their appeal and permit the required variances.

[31] The Appellants confirmed they have read the recommended conditions of the Development Officer should the development be approved, and provided the following comments:

- a) They would prefer not to have Condition Three included, which requires frosted or opaque glass treatment on the left elevation. They feel this is unnecessary as the neighbouring property is quite a distance away.

- b) The trees currently on the property far exceed the requirements of Conditions Six and Seven.

However, they are willing to accept these conditions if they will allow the development to be approved.

ii) *Position of the Development Authority*

- [32] The Development Authority was represented by Mr. G. Robinson, Development Officer.
- [33] He confirmed that the total combined site coverage of the house and garage is 27.73%.
- [34] The principal dwelling and attached garage are considered as one building and the southeast corner of the garage is 1.82 metres away from the adjacent property. This is less than the two metres required in Section 814.3(4) of the *Edmonton Zoning Bylaw*; therefore, the kitchen window should be frosted. If the garage were not there, this provision would not apply.
- [35] With the garage attached to the home, the 40 percent rear setback requirement is not met. While a rear attached garage would have less of an impact than a front attached garage, it is more characteristic in these older neighbours to have a detached structure toward the rear of the lot. The proposed large, hard surfaced driveway in the rear yard is uncharacteristic of older neighbourhoods. There is no hardship associated with this lot that would justify granting a variance to allow a rear attached garage.
- [36] He confirmed that the existing trees remaining on the property can be credited toward the landscaping requirements, but the trees must be identified on the plot plan. He had previously requested this material during the initial consultation with Mr. Janke, but he has not received the information.
- [37] It is the City's position that any consultation done prior to the time an application is made would not meet the requirements of Section 814.3(24) of the *Edmonton Zoning Bylaw*. To ensure that consultation complies with this provision, the City requires that all consultation processes use the City's standard form.

iii) *Rebuttal of the Appellants*

- [38] The basis of the Hitesmans' appeal is that their proposed development meets the Board's test under section 687(3)(d) of the *Municipal Government Act*. They believe 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.

- [39] They confirm that they would prefer to have a regular kitchen window to match the other windows of the house. They did not understand the condition of a frosted window in this location but reluctantly agreed to it in order to allow the development to proceed. If the garage was detached, this window would not be an issue.
- [40] There are many mature trees on the property, and they plan to keep as many of them as possible. They were never requested to indicate which specific trees would be kept and were not prepared to provide a diagram on the day of the hearing. The requested landscaping conditions would be more applicable for a new lot, but if they have to comply with these conditions to allow the development to proceed, they will do so.

### **Decision**

- [41] The appeal is **ALLOWED** and the decision of the Development Authority is **REVOKED**. The development is **GRANTED** as applied for to the Development Authority, subject to the following **CONDITIONS**:
- 1) The Height of the principal building shall not exceed 8.6 m (Reference Sections 6.1(49) and 52).
  - 2) Platform Structures greater than 1.0 m above Grade shall provide Privacy Screening to prevent visual intrusion into adjacent properties. (Reference Section 814.3(8))
  - 3) The area hard surfaced for a Driveway shall comply with Section 54.6 of the Zoning Bylaw 12800.
  - 4) 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.
  - 5) Landscaping shall be provided on a Site within 18 months of the occupancy of the Single Detached House. Trees and shrubs shall be maintained on a Site for a minimum of 42 months after the occupancy of the Single Detached House (Reference Section 55.2.1).
  - 6) Two deciduous trees with a minimum Caliper of 50 mm, two coniferous trees with a minimum Height of 2.5 m and eight shrubs shall be provided on the property. Deciduous shrubs shall have a minimum Height of 300 mm and coniferous shrubs shall have a minimum spread of 450 mm (Reference Section 55.2.1).
  - 7) All Yards visible from a public roadway, other than a Lane, shall be seeded or sodded. Seeding or sodding may be substituted with alternate forms of ground cover, including hard decorative pavers, washed rock, shale or similar treatments,

perennials, or artificial turf, provided that all areas of exposed earth are designed as either flower beds or cultivated gardens (Reference Section 55.2.1).

- 8) WITHIN 14 DAYS OF APPROVAL, prior to any demolition or construction activity, the applicant must post on-site a development permit notification sign (Section 20.2)

ADVISEMENTS:

- 1) 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.
  - 2) Any future deck development greater than 0.6m (2ft) in height will require development and building permit approvals
  - 3) Any future deck enclosure or cover requires a separate development and building permit approval.
  - 4) The driveway access must maintain a minimum clearance of 1.5m from all surface utilities.
  - 5) Any hoarding or construction taking place on road right-of-way requires an OSCAM (On-Street Construction and Maintenance) permit. It should be noted that the hoarding must not damage boulevard trees. The owner or Prime Contractor must apply for an OSCAM online at:  
[www.edmonton.ca/transportation/on\\_your\\_streets/on-street-construction-maintenance-permit.aspx](http://www.edmonton.ca/transportation/on_your_streets/on-street-construction-maintenance-permit.aspx)
  - 6) Unless otherwise stated, all above references to "section numbers" refer to the authority under the Edmonton Zoning Bylaw 12800.
  - 7) 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.
- [42] In granting this development the following VARIANCES to the *Edmonton Zoning Bylaw* are allowed:
- 1) Section 814.3(5) is varied to permit a Rear Setback of 10.75 metres (20.3% of site depth) instead of the required 21.1 m (40% of site depth).
  - 2) Section 814.3(18) is waived to permit a rear attached garage to be located on a non-corner lot.

**Reasons for Decision**

- [43] Single Detached Housing is a Permitted Use in the RF1 Single Detached Residential Zone.
- [44] Both variances required for the proposed development are related to the fact that a rear attached Garage is proposed.
- [45] The Garage portion of the proposed development is single Storey. This will reduce any massing effect because of the step down from the two Storey principal Dwelling to a single Storey garage.
- [46] The Board recognizes that while the southeast corner of the garage is 1.82 metres away from the adjacent property, at the location of the kitchen window the separation distance from the adjacent property exceeds four meters. With this setback distance, there would be no overlook from this window into the adjacent property. Furthermore, the Development Officer indicated that it is the Garage portion of the development that would potentially create overlook and privacy concerns. However, the subject window is located in the kitchen of the principal building. The Board therefore finds that a frosted window treatment will not be required as a condition of this permit.
- [47] The proposed development has wide community support as well as the support of the community league. Both immediately adjacent neighbours are in support of the development, including the neighbour along whose property line the proposed garage will run (11815 – 73 Avenue). No letters of opposition were received and no one appeared in person at the hearing to object to the development.
- [48] The lot is very large and the proposed development occupies only 27.73% of the Site, allowing for a significant Amenity Area.
- [49] The Board is convinced that the proposed development is compatible with the neighbourhood and 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. B. Gibson, Presiding Officer  
Subdivision and Development Appeal Board

**Board Members in Attendance**

Mr. V. Laberge; Ms. E. Solez; Ms. D. Kronewitt Martin; Ms. M. McCallum



**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.*



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Date: August 3, 2017  
Project Number: 253206169-001  
File Number: SDAB-D-17-130

**Notice of Decision**

- [1] The Subdivision and Development Appeal Board received an appeal that was filed on June 25, 2017. The appeal concerned the decision of the Development Authority, issued on June 12, 2017, to approve the following development:

Operate a Major Home Based Business - Health Enhancement Centre -  
(EVA'S MASSAGE THERAPY)

- [2] The subject property is located on Plan 2239X Blk 13 Lot 11, at 9723 - 72 Avenue NW, within the RF3 Small Scale Infill Development Zone. The Mature Neighbourhood Overlay applies to the subject property.
- [3] The Board was in receipt of an email from the Respondent, Ms. M. Zhong, requesting that the permit be cancelled as she no longer wished to operate a Home Based Business from this location.
- [4] The Subdivision and Development Appeal Board, at a hearing on July 19, 2017, made and passed the following motion:

“That the Board accept the Appellant’s request to cancel Permit  
253206169-001”

- [5] Pursuant to its authority under section 687(3)(c) of the *Municipal Government Act*, RSA 2000, c M-26, the Board revokes Permit 253206169-001, and the hearing scheduled for July 19, 2017, is accordingly cancelled.

Mr. B. Gibson, Presiding Officer  
Subdivision and Development Appeal Board

**Board Members in Attendance:**

Mr. V. Laberge; Ms. E. Solez; Ms. D. Kronewitt Martin; Ms. M. McCallum



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Date: August 3, 2017  
Project Number: 252373077-001  
File Number: SDAB-D-17-131

**Notice of Decision**

- [1] On July 19, 2017, the Subdivision and Development Appeal Board heard an appeal that was filed on June 22, 2017. The appeal concerned the decision of the Development Authority, issued on June 5, 2017, to approve the following development:

Erect a 2.44 m tall Fence along 24.1 metres of the southeast side lot line  
(to be constructed beside existing fence)

- [2] The subject property is on Plan 7820905 Blk 71 Lot 3, located at 2015 - 139 Avenue NW, within the RF1 Single Detached Residential Zone.

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

- Copy of the permit application with attachments, letter from the Applicant to the Development Authority dated May 23, 2017, and the approved permit;
- Appellant's supporting materials;
- Respondent's written submissions and supporting materials;
- Development Officer's written submissions;
- Two online comments regarding the development, one in support and one in opposition (submitted by the Appellant);
- Supporting materials of a neighbouring property owner in opposition to the development.

**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, Ms. I. Smith*

[7] Ms. I. Smith was accompanied by Mr. A. Smith.

[8] The average Height of fences within the neighbourhood is approximately five feet tall, whereas the Respondent has erected a six feet high fence along the property line shared with the Smiths. The application before this Board is for an even taller fence at eight feet, which is inappropriate and does not fit within the general character of the neighbourhood. The proposed fence will devalue their property.

[9] The height of the fence will block their view into the yards of neighbouring properties. Since the proposed fence will be built inside the Respondent's property line, the Smiths will not be able to maintain, repair, or otherwise touch the fence. The fence will make their home feel like a prison cell.

[10] Upon questioning by the Board, the Smiths confirmed that they would be amenable to sharing the costs of a six feet tall fence built along the property line, which would allow them to maintain their side of the fence. However, they oppose an eight feet tall fence. They have tried working with the Respondent to come to an agreement, but the Respondent refuses to cooperate.

#### *ii) Position of Affected Property Owner in Support of the Appellant*

[11] Mr. J. Gervais stated that the entire community has five feet tall fences, and neighbours frequently chat with each other over their fences. Referencing his supporting materials, he noted that the photographs he submitted demonstrate the vast difference between a six feet tall fence compared to an eight feet tall fence.

[12] Upon questioning by the Board, he confirmed that he is located southeast of the subject property, and that the photos were taken from his property. The photographs show that the proposed fence would have a negative impact upon his view. The Board noted that it is possible for the fence height to gradually slope downward as it approaches his property, which might mitigate some of the visual impact.

[13] He also referenced a petition signed by people living within his crescent. During the consultation, he was surprised by the "overwhelming opposition" expressed by his neighbours with regard to the proposed fence. He reviewed the information collected in the petition.

*iii) Position of the Development Authority*

- [14] The Development Authority was represented by Mr. B. Liang, Development Officer.
- [15] Mr. Liang took into consideration the following factors when issuing his decision to approve the proposed development:
- a) The subject fence runs parallel to the property line shared with the Smiths, and only extends from the rear property line to the front step of the house. It does not extend to the front yard.
  - b) When determining whether a development is characteristic of the neighbourhood, the Development Authority takes into consideration the appearance of the development from the street. Since the fence does not extend to the front yard, it will not be visible from the street, and therefore maintains the character of the neighbourhood.
  - c) The purpose of this fence will be for privacy and noise attenuation. Although there is a potential massing effect to this eight feet tall fence, the need for privacy in this instance outweighed the massing concerns.
  - d) The fence also has a southeast/northwest orientation such that the sunshadow impact upon the Smiths' yard will be negligible. Any shadows cast would be onto the Respondent's property, and therefore would not impact neighbouring properties.
- [16] Upon questioning by the Board, Mr. Liang confirmed the following:
- a) Fences can be made of a variety of materials, and the Zoning Bylaw sets no requirements. However, there is an expectation that fences are compatible with the existing neighbourhood, and he has conditioned the permit accordingly. The pictures submitted by the neighbouring property owners show a fence constructed from metal cladding, which is inconsistent with the permit condition. The Applicant informed him that the final completed fence will be made of wood.
  - b) Trees can be planted in yards, and there is no maximum Height limitation for trees. It is possible for the Appellant to plant a tree that will be taller than eight feet.
  - c) Section 49 of the Zoning Bylaw does contemplate variance powers for fence Heights over 2.44 metres in certain circumstances. Based on the information available to him, he deemed this situation as one of those circumstances in which it would be appropriate for him to grant a Height variance.
  - d) Referencing a photograph submitted from Mr. Gervais, the Board noted that there appeared to be existing landscaping over eight feet tall. Mr. Liang confirmed that he did consider existing screening. When the fence is juxtaposed against the existing mature trees, it is likely that the trees will feature more prominently than the eight feet tall fence.

*iv) Position of the Respondent, Mr. B. Rombough and Ms. M. Rombough*

- [17] Mr. Rombough was not present, and Ms. Rombough appeared on her own behalf.
- [18] The photographs submitted by the Appellant demonstrate that her neighbours have full view of her yard.
- [19] Contrary to the Appellant's submissions, she has tried to cooperate with her neighbours to build a fence along the shared property line. She referenced the mediation letter addressed to her from the Mediation and Restorative Justice Centre, dated May 18, 2016. The letter indicates her willingness to work with her neighbours. However, her neighbours refused to attend the mediation session.
- [20] She has obtained signatures from 27 neighbouring property owners who support her fence. There are other properties in the area with fences similar to the one she is proposing.
- [21] Referencing photographs submitted, she confirmed that the fence is currently six feet tall in the rear yard and then drops to four feet before gradually dropping to two feet. The other two fences on the west and south side are six feet tall.

*v) Rebuttal of the Appellant*

- [22] The Respondent was not in favour of a five feet tall fence and was adamant about building a taller fence, which the Appellant did not support. Mr. Smith stated that he favoured leaving the existing fence at the same Height and doing some repair work. Since he did not support the Respondent's proposed changes, he did not wish to speak with her about it.
- [23] He referenced a photograph which depicted the view from the Smiths' property to the Respondent's property, and pointed out a sign that had been placed over the top portion of this fence. The sign contained derogatory language which the Appellant found distasteful and upsetting.
- [24] Contrary to the Development Authority's submission, it was the Appellant's position that there will be a sunshadow impact in the afternoon.

**Decision**

- [25] The appeal is DENIED and the decision of the Development Authority is CONFIRMED. The development is GRANTED as approved by the Development Authority.

**Reasons for Decision**

- [26] The proposed development is Accessory to a Single Detached House, which is a Permitted Use in the RF1 Single Detached Residential Zone. Under section 49(1)(g), the Development Officer may vary the Height of a Fence to a maximum of 2.44 metres. During the hearing, the Board heard that in the Development Officer's view, the circumstances surrounding this development made it appropriate for him to exercise this discretion.
- [27] Even if the Development Officer did not exercise his discretion appropriately, the Board still has variance powers under section 687(3)(d) of the *Municipal Government Act*, which states that the Board may grant a variance if "the proposed development would not unduly interfere with the amenities of the neighbourhood, or materially interfere with or affect the use, enjoyment or value of neighbouring parcels of land."
- [28] The Board heard that the proposed fence will not extend to the Front Yard of the property, and therefore will not feature prominently from the street view. Since the street view will not be materially impacted, the Board finds that the proposed development remains consistent with the character of the neighbourhood. There is no undue interference with the amenities of the neighbourhood.
- [29] The Board also heard that due to the orientation of the fence, sun shadow from the proposed eight feet tall fence would be cast mainly upon the Applicant's yard. The Board has reviewed the various photographs submitted by the parties, and accepts this submission. The photographs also show that there is significant landscaping and tall trees on both the subject property, as well as surrounding properties. The existing landscaping mitigates the visual impact of an eight feet tall fence. For these reasons, the Board finds that the proposed development will not materially interfere with the use and enjoyment of neighbouring parcels of land.
- [30] Some mention was made by the Appellant regarding the potential for the fence to devalue neighbouring properties. However, no evidence or materials was submitted in support of this position, and the Board therefore makes no finding as to whether the development will materially affect the value of neighbouring parcels of land.
- [31] The Board considered all petitions submitted by the parties. Although not a statutory requirement, the Board notes that all parties demonstrated both support and opposition to the development. Based on the responses of those neighbours who would be most impacted visually by the development, there appeared to be almost equal support and opposition to the development.
- [32] Finally, the Board notes that based on the written submissions of the Appellant and Respondent, there appears to be a desire for privacy, reduced interaction, and reduced noise from both sides. Indeed, the Appellant's submissions during rebuttal, particularly in reference to the derogatory sign placed over the existing fence, confirmed that there is an

increased desire for privacy between the two neighbours. The Board also accepts the position of the Development Authority that one of the purposes of residential fencing is for noise attenuation and privacy screening. The proposed development is therefore consistent with both this purpose and the stated desire of both parties.

- [33] For the above reasons, the Board finds that the proposed development will not unduly interfere with the amenities of the neighbourhood, nor materially interfere with or affect the use and enjoyment of neighbouring parcels of land. The appeal is denied.



Mr. B. Gibson, Presiding Officer  
Subdivision and Development Appeal Board

Board Members in Attendance

Mr. V. Laberge; Ms. E. Solez; Ms. D. Kronewitt Martin; Ms. M. McCallum



**Important Information for the Applicant/Appellant**

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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.*