

## **Edmonton Subdivision and Development Appeal Board**

Churchill Building  
10019 - 103 Avenue NW  
Edmonton, AB T5J 0G9  
Phone: 780-496-6079 Fax: 780-577-3537  
Email: sdab@edmonton.ca  
Web: www.edmontonsdab.ca

Date: August 7, 2015  
Project Number: 174147548-001  
File Number: SDAB-D-15-162

### **Notice of Decision**

This appeal dated June 30, 2015, from the decision of the Development Authority for permission to:

increase the number of Dwellings in an existing Apartment Housing building from 8 to 9 Dwellings (existing without permits)

On Plan 5036S Blk 46 Lots 29-30, located at 7929 - 82 Avenue NW, was heard by the Subdivision and Development Appeal Board at its hearing held on July 23, 2015. The decision of the Board was as follows:

#### **Summary of Hearing:**

At the outset of the appeal hearing, the Presiding Officer introduced the panel members. Mr. R. Hachigian, one of the panel members, disclosed that he knows the Appellant, Mr. Ellsworth, from the gym. He had also previously worked with Mr. K. Bacon, the Development Officer in attendance. There was no opposition to the composition of the panel.

The appeal was filed on time, in accordance with Section 686 of the *Municipal Government Act*, RSA 2000, c. M-26 (“MGA”).

The Board heard an appeal of the decision of the Development Authority to refuse an application to increase the number of Dwellings in an existing Apartment Housing Use building from 8 to 9 Dwellings (existing without permits). The development permit application was refused due to an excess in the maximum allowed density, a deficiency in the required number of parking stalls, a deficiency in the drive aisle width and a deficiency in the required Private Outdoor Amenity Areas.

The subject Site is zoned RA7 Low Rise Apartment Zone and is within the Medium Scale Residential Infill Overlay.

Prior to the hearing the following information was provided to the Board:

- A written submission from the Appellant received with original appeal on June 30, 2015
- A written submission from the Development Authority received on July 16, 2015

The Board heard from the Appellants, Mr. K. Ellsworth, owner of the subject property and Ms. P. Gill of Sutton Central Commercial who provided the following information to the board:

1. They submitted the following exhibits:
  - Exhibit A: Signatures of support obtained through community consultation.
  - Exhibit B: Photographs of the subject property and similar properties on the blockface including the parking areas.
  - Exhibit C: Letters from four current tenants indicating only two own a vehicle.
  - Exhibit D: Compliance Certificate dated December 10, 1993
2. The property was constructed in 1969 and he purchased it in 1993. It has always been classified and rented out as a 9 unit apartment building. His written submission included various documents such as rent rolls and plumbing applications confirming there have always been 9 units.
3. He carried out community consultation at the suggestion of the Development Officer. He obtained signatures of support from the owners of four other similar developments on the same blockface; all have 9 units and 9 or fewer parking stalls. The owners of the single family dwellings behind the subject property and the members of the church to the east also raised no objections to the proposed development. He spoke with a representative for the King Edward Community League and they have no issues with the variances. (Exhibit A)
4. His photographs of the four apartment developments on the blockface confirm that the buildings and parking stalls are similar to the subject Site. (Exhibit B)
5. Over many years as a landlord, he has always had vacant parking stalls in his complex as many of his tenants do not own vehicles and don't require a parking stall. At most, 6 stalls have been needed for tenants. Letters from four of his tenants indicate they either did not have a car or had just recently acquired one. (Exhibit C)
6. He has never received any complaints over the years about parking or about access to the individual on-site parking stalls.
7. Usually there are so many empty stalls that he can pile snow on the Site and does not need to pay for snow removal.
8. The garbage dumpster located on Site is often placed in one of the 9 parking stalls by the City employees who remove the garbage. The photographs show that there is still ample room to park beside the dumpster in the 9<sup>th</sup> stall if it is returned to the proper area. The dumpster is on wheels and is moveable. (Exhibit B)
9. The owners of the other 9 unit apartment buildings on the blockface have similar experiences with respect to demand for tenant parking.
10. Parking is less of an issue on this Site due to its proximity to Bonnie Doon Mall.
11. There is also a service road in front of the building which provides additional on-street parking.
12. In a memorandum dated July 14, 2015, Transportation Services indicated that it has no objection to the parking variance.
13. The lack of Private Outdoor Amenity Area is typical of the similar nearby apartments and others built at the same time. None of those developments would comply with the current bylaw.

14. The increase in density is consistent with City policy for this area.
15. He has a stamped compliance certificate from 1993, but it is silent with respect to the number of parking stalls and the number of dwelling units in the building. (Exhibit D)

Mr. Ellsworth and Ms. P. Gill provided the following responses to questions:

1. The discrepancy in the number of units came to light as a result of a request for a Compliance Certificate.
2. He was not able to get a response from some of the property owners in the 60 metre notification area despite making attempts to contact them.

The Board heard from Mr. K. Bacon, representing the City of Edmonton Sustainable Development Department, who provided the following information to the board:

1. If he had the requisite discretion, he would have approved all the variances including the 9 units on this property. The building has been operating as is for decades. The current application does not request any changes to the situation and therefore approval creates no impact.
2. 9 unit apartment buildings are typical for the area.
3. He conceded that the deficiencies in amenity space and parking may be legal non-conforming, but the proposed development was only approved as an 8 unit apartment building, not a 9 unit apartment building.
4. The deficiency came to light because of the potential sale of the property and the need for a compliance certificate.

The Appellants declined the opportunity for rebuttal.

**Decision:**

The appeal is ALLOWED and the decision of the Development Authority is REVOKED. The development is GRANTED as applied for to the Development Authority.

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

1. The maximum Density of 125 Dwellings/ha required by Section 210.4(1) is increased to to allow 131 Dwellings/ha or 9 Dwelling Units on the subject Site.
2. The minimum number of parking stalls of 11 required by Section 54.2, Schedule 1(A)(1) is reduced to 8.
3. The minimum required dimensions for a drive aisle under Section 54.2(4)(a)(vii) are waived.
4. The minimum required Private Outdoor Amenity Areas to be provided for each Apartment Housing Dwelling under Section 823.3(3)(a) is waived.

5. The minimum required width and length of 2.0 metres to be provided for each Private Outdoor Amenity Area for each Apartment Housing Dwelling under Section 823.3(3)(b) is waived.

**Reasons for Decision:**

The Board finds the following:

1. Apartment Housing is a Permitted Use in the RA7 Low Rise Apartment Zone, Section 210.2(1).
2. The Board accepts the submission of the Development Officer that this building has been in existence as is for 45 years and the proposed development involves no change; therefore, there is no impact to the surrounding area.
3. The Board notes that the Development Officer would have granted the variance in density if he had the discretion to do so.
4. The need for an updated Compliance Certificate prompted by a pending sale of the property led to the request for variances and this appeal.
5. There have been no known third party complaints concerning density, lack of on-site parking, access to parking stalls or absence of Private Outdoor Amenity Areas.
6. In addition, the Board accepts the evidence of the Appellant that over the past 23 years of renting there have been no tenant issues concerning density, lack of on-site parking, access to on-site parking stalls or absence of Private Outdoor Amenity Areas.
7. The photographic evidence demonstrates that the density and parking stalls are typical of similar developments in the immediate area.
8. Parking is ample in the area as shown by the photographic evidence.
9. Transportation Services has no concerns with allowing 8 on-site parking stalls based on current and historical tenant occupancy, ETS routing along 82 Avenue and the existence of on-street parking along the service road on 82 Avenue in front of the Site.
10. The Board also notes that the subject property is located in close proximity to Bonnie Doon Mall, a major public transportation hub.
11. Photographic evidence shows that the Private Outdoor Amenity Areas are typical of the area and of developments constructed in the late 60's.
12. The Appellant conducted a voluntary community consultation. He encountered difficulties in reaching some owners, but was able to obtain support from a substantial percentage of property owners within the notification area, including all owners on the blockface as well as the Community League.
13. No letters of objection were received and no one appeared in opposition to the proposed development.
14. The Board finds that the proposed development will not unduly interfere with the amenities of the neighbourhood nor materially interfere with or affect the use, enjoyment or value of neighbouring parcels of land.

### **Important Information for the Applicant/Appellant**

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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 revised City of Edmonton, by-law No 12800, *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.

A Development Permit will expire in accordance to the provisions of Section 22 of the revised City of Edmonton, by-law No 12800, *Edmonton Zoning Bylaw*.
4. 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.
5. 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.*

Kathy Cherniawsky  
Subdivision and Development Appeal Board

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Phone: 780-496-6079 Fax: 780-577-3537  
Email: sdab@edmonton.ca  
Web: www.edmontonsdab.ca

Date: August 7, 2015  
Project Number: 165755357-001  
File Number: SDAB-S-15-006

## **Notice of Decision**

This appeal dated June 8, 2015, from the decision of the Subdivision Authority for permission to:  
  
Obtain separate titles by bare land condominium to create two (2) semi-detached residential units  
  
on Plan 2090AH Blk 46 Lot 34, located at 12720 - 127 Avenue NW, was heard by the Subdivision and Development Appeal Board at its hearing held on June 30, 2015 and July 23, 2015. The decision of the Board was as follows:

### **June 30, 2015 Hearing**

“that the appeal hearing be tabled to July 22 or 23, 2015 at the non-appearance of the Appellant.”

### **July 23, 2015 Hearing**

“that SDAB-S-15-006 be raised from the table”.

### **Summary of Hearing:**

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.

The appeal was filed on time, in accordance with Section 686 of the *Municipal Government Act*, RSA 2000, c. M-26 (“*MGA*”).

The Board heard an appeal of the decision of the Subdivision Authority to refuse an application to create two (2) semi-detached residential units by Bare Land Condominium from Lot 34, Block 46, Plan 2090 AH located at 12720 – 127 Avenue. The subject Site is zoned RF4 Semi-detached Residential Zone. The proposed Subdivision application was refused because of a deficiency in the minimum required Site Depth.

Prior to the hearing the following information was provided to the Board, copies of which are on file:

- An on-line response in opposition to the proposed Subdivision.
- An e-mail from the Subdivision Authority received on July 23, 2015

The Board heard from the Appellant, Lingam Sanjesh of Modern Concept Homes, who provided the following information to the board:

1. The plans he originally submitted to the Development Authority in April, 2014, only showed a single car garage. He was advised by the Development Officer to increase the size of the garage to a double. This is why two sets of plans were submitted (marked as Exhibits "A" and "B").
2. He provided a copy of a map from the City of Edmonton website on which he had highlighted various lots in the area or the adjacent area showing several similar developments. These were all corner lots that had been subdivided to accommodate the same type of development as his.
3. Both units have already been sold and everything is on hold due to the length of time it is taking to obtain approval. (April 14, 2014, until now.)
4. He is proceeding with a bare land type of subdivision rather than obtaining pure separate titles to these lots. This method of subdivision is \$2,000.00 more expensive than just subdividing in the normal manner.
5. Water and sewer will enter through common land and electrical service will enter from the lane to each unit separately by overhead power lines.

Mr. Sanjesh provided the following responses to questions:

1. He had ample opportunity to review the e-mail from the Subdivision Authority received on July 23, 2015, which contained two conditions and he had no objections to the imposition of those conditions if the subdivision were approved.
2. He is aware of the prohibition on Secondary Suites in the approved development permit and is not developing Secondary Suites. Unit 2 will have a bedroom in the basement; the owners of Unit 1 did not want a basement bedroom.
3. There are no doors to restrict going from the main floor to the basement of either unit.
4. He confirmed that the other Sites he had highlighted on the map from the City's website were subdivided across the width of the lots in the same manner and orientation as his application.
5. He always seeks subdivision by bare land condominium to obtain separate titles for his developments and was advised by his surveyors to use this method.

No representative of the City of Edmonton Sustainable Authority was present at today's hearing.

**Decision:**

The appeal is **ALLOWED** and the decision of the Subdivision Authority is **REVOKED**. The subdivision is **GRANTED** as applied for to the Subdivision Authority, subject to the following conditions:

- a) Municipal services (water and sewer) must enter the proposed subdivision through common property.
- b) Any outstanding property taxes must be paid.

**Reasons for Decision:**

The Board finds the following:

1. The subject Site is located on a Corner Lot and is to be subdivided from north to south across the Site width resulting in two lots with approximately half the Site depth of other lots on the blockface.
2. The Board finds the proposed use, Semi-detached Housing, is a Permitted Use under Section 150.2(5) and therefore the appeal conforms to the uses in the RF4 Semi-detached Residential Zone as required for subdivision approval under Section 680(2)(b) of the *MGA*.
3. The Subdivision Authority refused this application for non-compliance with Section 150 of the *Edmonton Zoning Bylaw* and determined it will result in Site depths and lot sizes that are uncharacteristically small when compared to other properties on the blockface.
4. The Board disagrees with the first conclusion of the Subdivision Authority that the proposed subdivision is not in compliance with Section 150.4(2) of the *Edmonton Zoning Bylaw* for the following reasons:
  - a. Site and lot are not interchangeable terms:
    - i. Section 6.1(92) provides “**Site** means an area of land consisting of one or more abutting Lots.”
    - ii. Section 6.1(58) provides “**Lot**” means a lot as defined under part 17 of the *Municipal Government Act*.
    - iii. Section 616(m) of the *MGA* provides in part a “lot” means “(v) a part of a parcel of land described in a certificate of title if the boundaries of the part are described in a certificate of title by reference to a plan of subdivision”
  - b. Section 60(1) provides “A Bare Land Condominium project must comply with all the general regulations of this Bylaw and with the regulations of the applicable Zone such that each Bareland Condominium Unit is to be treated in the same respect as a **lot**. [Emphasis added]
  - c. Some zones regulate Site dimensions while others regulate lot dimensions for Semi-detached Housing.
  - d. In the RF4 Semi-detached Residential Zone, Section 150.4(2) requires a minimum Site depth of 30.0 metres for Semi-detached Housing.
  - e. Here the Site for the semi-detached residential units encompasses the entire original lot which will become the new subdivided abutting lots. Therefore, while the condominium units may ultimately result in smaller lots, the Site complies with all of the regulations listed in Section 150.4(2)(a) through (d).
5. The Board also disagrees in part with the second reason for refusal of the Subdivision Authority. As shown in Exhibit A, at least ten Corner Lots in the area have been subdivided in a similar manner to the proposed subdivision resulting in twenty lots of comparable sizes. Therefore, this type of subdivision on Corner Lots while not characteristic of the blockface, is characteristic of other Corner Lots in the area.
6. If the Board is incorrect with respect to the first decision of the Subdivision Authority and the proposed subdivision is not in compliance with Section 150.4(2) of the *Edmonton Zoning Bylaw*, then the Board would nonetheless approve the subdivision for the following reasons:
  - a. This is an appeal under Section 678 of the *MGA*.



- b. Accordingly, the Board's authority is set out in Section 680(2) of the *MGA* which provides in part "the Board hearing the appeal (b) must conform with the uses of land referred to in a land use bylaw... and... (f) *may, in addition to other powers it has*, exercise the same power as a subdivision authority is permitted to exercise pursuant to this Part or the regulations or bylaws under this Part."
  - c. Section 654(2) of the *MGA* authorizes a subdivision authority to approve an application for a subdivision even though the proposed subdivision does not comply with land use bylaw if: the proposed subdivision 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; and, the proposed subdivision conforms with the use prescribed for that land in the land use bylaw.
  - d. The Board finds that the proposed subdivision meets the test in Section 654(2) of the *MGA* for the following reasons:
    - i) As shown in Exhibit A at least ten Corner Lots in the area have been subdivided into two separate lots in a similar manner to the proposed subdivision resulting in twenty lots of comparable size and dimension; therefore, this type of subdivision on a Corner Lot is characteristic of the area.
    - ii) The proposed Site is located on a residential block at the dead end of a street facing an Industrial Use.
    - iii) Semi-detached Housing is a Permitted Use in the RF4 zone.
    - iii) Historically, increased density including Semi-detached Housing has been encouraged at Corner Lot locations.
5. Based on his own admission, the Board finds that the Appellant was very aware of and agreeable to the imposition of Conditions 1 and 2 above.
  6. The Board received one written response in opposition to the proposed subdivision from an adjacent neighbour who expressed the concern that "the developer (Modern Concept Homes) has not been truthful about what he is actually building and is in fact building 2 condominiums with basement suites even though their development permit expressly states the basement is not to be used as additional dwellings".
  7. The Board notes that the stamped approved plans (dated November 7, 2014) contained in the Development Permit, marked "Exhibit D" clearly indicate that the basements of the two condo units are not to be used as Secondary Suites and specifically advises: "No wet bars, or cooking facilities authorized under this Development Permit. Secondary suites prohibited in Semi-detached housing". Based on his own admission, the Board finds that Appellant is well aware of this restriction.
  8. While compliance with the Development Permit is beyond the scope of the subdivision approval or application, the Board notes that if this development contained Secondary Suites it would be classified by default as Apartment Housing under Section 7.2(1) which is not a listed Use in the RF4 Semi-detached Residential Zone and this subdivision would be expressly prohibited by Section 680.2(b) of the *MGA*.

**Important Information for Applicant/Appellant**

1. This decision may be appealed to the Alberta Court of Appeal on a question of law or jurisdiction under Section 680 of the *Municipal Government Act*, RSA 2000, c. M-26.

Kathy Cherniawsky  
Subdivision and Development Appeal Board