



**EDMONTON
TRIBUNALS**

*Subdivision &
Development
Appeal Board*

*10019 - 103 Avenue NW
Edmonton, AB T5J 0G9
P: 780-496-6079 F: 780-577-3537
sdab@edmonton.ca
edmontonsdab.ca*

Date: August 9, 2019
Project Number: 266010257-021
File Number: SDAB-D-19-113

Notice of Decision

- [1] On July 25, 2019, the Subdivision and Development Appeal Board (the “Board”) heard an appeal that was filed on June 26, 2019. The appeal concerned the decision of the Development Authority, issued on June 24, 2019, to refuse the following development:

Construct an addition (loft, 293.29m²) to approved fourth floor Apartment Hotel units in an approved mixed-use building, and to construct interior alterations

- [2] The subject property is on Plan 8220508 Blk 30 Lot 9, located at 17104 - 90 Avenue NW, within the CSC - Shopping Centre Zone. The Summerlea Neighbourhood Area Structure Plan applies to the subject property.

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

- From the Development Authority, copies of:
 - Development Application, Refused Permit and Plans;
 - Correspondence from Drainage;
 - Written Submissions
- From the Appellant, copies of proposed plans and site plan.

Preliminary Matters

- [4] At the outset of the appeal hearing, the Chairman confirmed with the parties in attendance that there was no opposition to the composition of the panel.
- [5] The Chairman 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, Jasper Summerlea Shopping Centre Ltd.*

- [7] E. Gooch of EFG Architects appeared to represent the Appellant.
- [8] The Appellant obtained a Development Permit for Apartment Housing, but upon further consideration, wished to utilize the fourth floor attic space to provide a loft for each unit on the fourth floor.
- [9] Adding a loft will not alter the exterior of the building. Exterior elevations, approved setbacks, required parking spaces and provided parking spaces all remain the same.
- [10] The maximum permitted Floor Area Ratio (“FAR”) is 1.0 and the proposed change will result in a FAR of 1.1, which is approximately 0.65 percent higher than permitted. The Appellant believes that granting this minor increase in FAR is appropriate.
- [11] The addition of the proposed lofts will provide a unique feature to the fourth floor units, and will be well-received. There will be no increase to the total number of units.
- [12] The Appellant provided the following responses to questions from the Board:
- a. All 16 units on the top floor will have a loft area.
 - b. There will likely be some very minor changes to the roof to accommodate additional vents for bathrooms.
 - c. The Appellant always intended for the mechanical equipment to be located on the roof rather than in this attic area.

ii) Position of the Development Officer, Mr. Adams

- [29] The Development Authority did not attend the hearing and the Board relied on Mr. Adams’ written submissions.

Decision

- [30] 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. PRIOR TO THE RELEASE OF DRAWINGS FOR BUILDING PERMIT REVIEW, the applicant or property owner shall pay a Sanitary Sewer Trunk Charge fee of \$3360.14. All assessments are based upon information currently available to the City. The SSTC charges are quoted for the calendar year in which

the development permit is granted. The final applicable rate is subject to change based on the year in which the payment is collected by the City of Edmonton.

2. The owner shall construct and maintain vehicular access up to the west property line allow for access and egress to the adjacent parcel to the west (as shown on Enclosure 1 of the Subdivision Planning Response to DP#266010257-006 as an arrow signifying the "Cross Lot Access"). In the event that the owner of the adjacent parcel to the west hinders or obstructs the passage of vehicles between parcels, the owner shall take all reasonable steps to obtain a registered access easement on the adjacent west parcel, assert and enforce any acquired prescriptive rights, or make other arrangements to allow the free passage of vehicular traffic between the two parcels.

A) Access to the subject site from 90 Avenue exists, as shown on Enclosure I of the Subdivision Planning Response to DP#266010257-006. Any modification to the existing access requires the review and approval of Subdivision Planning. No additional access will be permitted to 90 Avenue.

B) Pedestrian connections including applicable curb ramps must be provided on site from the building entrances to the public sidewalk, as shown on Enclosure I. The proposed sidewalk connection to the public sidewalk is acceptable to Subdivision Planning.

C) No objects are permitted to encroach onto, over or under road right-of-way, as shown on Enclosure I of the Subdivision Planning Response to DP#266010257-006.

D) There may be utilities within road right-of-way not specified that must be considered during construction. The owner/applicant is responsible for the location of all underground and above ground utilities and maintaining required clearances as specified by the utility companies. Alberta One-Call (1-800-242-3447) and Shaw Cable (1-866-344-7429; www.digshaw.ca) should be contacted at least two weeks prior to the work beginning to have utilities located. Any costs associated with relocations and/or removals shall be at the expense of the owner/applicant.

E) Garbage bins must be located so that all turning maneuvers for the waste management vehicles are accommodated on site. It will be the responsibility of property owner/management to keep the collection area clear at all times. We also recommend paint/signage to prevent or minimize the possibility of vehicle parking in this area.

F) Any hoarding or construction taking place on road right-of-way requires an OSCAM (On-Street Construction and Maintenance) permit. OSCAM permit applications require Transportation Management Plan (TMP) information. The TMP must include:

- the start/finish date of project;
- accommodation of pedestrians and vehicles during construction;
- confirmation of lay down area within legal road right of way if required;
- and to confirm if crossing the sidewalk and/or boulevard is required to temporarily access the site.

It should be noted that the hoarding must not damage boulevard trees. The owner or Prime Contractor must apply for an OSCAM online at:

https://www.edmonton.ca/business_economy/licences_permits/oscam-permitrequest.aspx

and,

<https://www.edmonton.ca/documents/ConstructionSafety.pdf>

G) Any sidewalk or boulevard damage occurring as a result of construction traffic must be restored to the satisfaction of Development Inspections, as per Section 15.5(f) of the Zoning Bylaw. All expenses incurred for repair are to be borne by the owner.

3. The Site shall comply with the approved Landscaping Plan and Landscaping Conditions in Development Permit #266010257-002.

4. All required parking and loading facilities shall only be used for the purpose of accommodating the vehicles of clients, customers, employees, members, residents or visitors in connection with the building or Use for which the parking and loading facilities are provided, and the parking and loading facilities shall not be used for driveways, access or egress, commercial repair work, display, sale or storage of goods of any kind. (Reference Section 54.1.1.c)

5. The off-street parking, loading and unloading (including aisles or driveways) shall be hardsurfaced, curbed, drained and maintained in accordance to Section 54.6.

6. No parking, loading, storage, trash collection, outdoor service or display area shall be permitted within an approved Setback. (Reference 320.4.5)

7. Bicycle parking shall be provided in accordance to Section 54.3 and to the satisfaction of the Development Officer.

8. Any outdoor lighting for any development shall be located and arranged so that no direct rays of light are directed at any adjoining properties, or interfere with the effectiveness of any traffic control devices. (Reference Section 51)

9. Trash collection and loading areas shall be screened from view from any adjacent Sites and public roadways, to the satisfaction of the Development Officer. (Reference Section 320.4.5)

ADVISEMENTS:

- a. This Development Permit is NOT valid until the Notification Period expires in accordance to Section 21.1. (Reference Section 17.1)
- b. This Development Permit is NOT a Business Licence. A separate application must be made for a Business Licence. Please contact the 311 Call Centre (780-442-5311) for further information.
- c. Signs require separate Development Applications.
- d. A building permit is required for any construction or change in Use of a building. For a building permit, and prior to the plans examination review, you require construction drawings and the payment of fees. Please contact the 311 Call Centre (780-442-5311) for further information.
- e. The City of Edmonton does not conduct independent environmental checks of land within the City. If you are concerned about the suitability of this property for any purpose, you should conduct your own tests and reviews. The City of Edmonton, in issuing this 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.
- 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. (Reference Section 5.2)
- g. Unless otherwise stated, all above references to section numbers refer to the authority under the *Edmonton Zoning Bylaw 12800* as amended.
- h. Upon the first Development Permit Inspection and determination that landscape construction has been completed in compliance with the approved Landscape Plan, 20% of the approved Guaranteed Landscape Security shall be collected and retained for a period of 24 months from the date of first Development Permit Inspection.
- i. Sites that are not completed or are not compliant with approved Landscape Plans at the first Development Permit Inspection, shall be required to submit a Security

for incomplete work, up to and including the full value of the approved Guaranteed Landscape Security value.

- j. The applicant is advised that more than a 12% difference in the ramp slope may result in vehicles “bottoming out” at the break-over point.

[31] In granting the development the following variance to the *Zoning Bylaw* is allowed:

- a. The maximum Floor Area Ratio (“FAR”) of 1.0 pursuant to section 320.4(2) is increased by 0.1 to allow a maximum FAR of 1.1.

Reasons for Decision

[32] Apartment Hotels is a Discretionary Use in the CSC Shopping Centre Zone.

[33] This application is for the approval of an additional loft to be appended to the existing fourth floor units of an Apartment Hotel that was approved by this Board in SDAB-D-19-017.

[34] Section 320.4(2) states: “The maximum Floor Area Ratio shall be 1.0”. The subject development application was refused by the Development Authority because allowing the fourth floor units to have a loft constructed in the attic of the approved structure would increase the FAR to 1.1, which is greater than the 1.0 FAR allowed in the CSC Shopping Centre Zone.

[35] The Board grants a variance to section 320.4(2). After reviewing the evidence, the Board finds that the test for granting a variance under section 687(3)(d) of the *Municipal Government Act* is met:

687 (3) In determining an appeal, the subdivision and development appeal board

...

(d) may make an order or decision or issue or confirm the issue of a development permit even though the proposed development does not comply with the land use bylaw if, in its opinion,

(i) the proposed development would not

(A) unduly interfere with the amenities of the neighbourhood, or

(B) materially interfere with or affect the use, enjoyment or value of neighbouring parcels of land, and

(ii) the proposed development conforms with the use prescribed for that land or building in the land use bylaw.

[36] The Board finds that the variance test has been met for the following reasons:

- a. The exterior of the building will be identical to the building already approved: it will have the same Height, exterior Elevations and Setbacks. It will not be noticeable to anyone but the residents and occupants of those fourth floor units that the loft space even exists.
- b. Importantly, the application does not increase the total number of units. The number of units remains at 48, meaning that there is no increase in the Density due to the proposed application. There is also no increase in the number of required parking stalls.

[37] As the Density of the Use remains the same, the exterior remains the same, and the proposed lofts will only be noticeable to the occupants of the fourth floor units, the Board finds that granting the variance to the required FAR will 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. For the above stated reasons, the variance is granted and the appeal is allowed.

Mr. I. Wachowicz, Chairman
Subdivision and Development Appeal Board

Board Members in Attendance:

Mr. M. Young; Mr. B. Gibson; Ms. S. LaPerle; Ms. D. Kronewitt Martin

CC: City of Edmonton, Development & Zoning Services, Attn: Mr. P. Adams / Mr. H. Luke

Important Information for the Applicant/Appellant

1. This is not a Building Permit. A Building Permit must be obtained separately from Development & Zoning Services, 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 Development & Zoning Services, 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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Edmonton, AB T5J 0G9
P: 780-496-6079 F: 780-577-3537
sdab@edmonton.ca
edmontonsdab.ca

Date: August 9, 2019
Project Number: 313062198-001
File Number: SDAB-D-19-114

Notice of Decision

- [2] On July 25, 2019, the Subdivision and Development Appeal Board (the “Board”) heard an appeal that was filed on June 24, 2019. The appeal concerned the decision of the Development Authority, issued on June 10, 2019, to approve the following development:

Erect a Fence @ 2.44m in Height in the Rear Yard abutting the Rear Lot Line

- [3] The subject property is on Plan 4823RS Blk 16 Lot 27, located at 10527 - 35A Avenue NW, within the RF1 Single Detached Residential Zone. The Mature Neighbourhood Overlay and Duggan Neighbourhood Area Structure Plan apply to the subject property.

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

- From the Development Authority, copies of:
 - Approved Fence Plans and approved permit;
 - Correspondence from the Respondent to neighbouring property owners;
 - Written Submissions
- From the Appellant:
 - Reasons for appeal;
 - Correspondence indicating non-attendance at hearing;
 - Written submissions and correction to submissions;
- From the Respondent:
 - Written submission, letters of support, and response to a neighbouring property owner;
- From the public:
 - 3 emails and 2 online responses in support of the Respondent
- From Administration:
 - A map showing support from neighbouring properties

Preliminary Matters

- [5] At the outset of the appeal hearing, the Chairman confirmed with the parties in attendance that there was no opposition to the composition of the panel.
- [6] The Chairman outlined how the hearing would be conducted. Since the Appellant was not in attendance, the Affected Property Owners in Support of the Appellant would have the opportunity to speak first, followed by the Respondent. No opposition was noted to this order of appearance.
- [7] 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. Semeluk*

- [8] The Appellant was not able to attend the hearing and requested that the Board proceed based on her written submissions and supporting materials.

i) Position of Affected Property Owners in Support of the Appellant

- [9] C. Xu and P. Yin, owners of 10536 – 35 Avenue, appeared in opposition to the development. They currently do not live at their property and have rented it out.
- [10] Their living room is located at the rear of their property and overlooks the subject fence. In their view, the subject fence is too high and too dark. The other fences surrounding their property are all white, of varying heights, and none are as tall as the subject fence.
- [11] Their neighbour asked them to pay more than \$1,000 toward the fence. They do not want to pay this amount since the fence is on the Respondent's property and they are not in favour of it.
- [12] Due to the high, dark fence, visitors and family members no longer feel comfortable when sitting at the rear of their property because the fence impacts their view of the trees in their rear yard.
- [13] In response to a question from the Board, they confirmed that the old white fence that was previously there was removed by the Respondent's contractors and replaced by the higher fence.

iii) Position of the Development Officer, Mr. Payne

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

iv) Position of the Respondent, Ms. Friedley

- [15] C. Xu and P. Yin own one of the abutting properties to the south of the Respondent and have rented it out. Since they no longer reside there, Ms. Friedley does not think they are personally affected. She did try to contact them prior to replacing the fence but they never returned any of her calls. She also was not able to contact the landlord at 3515 – 105B Street, therefore, when her contractor was available, she proceeded with construction. The new fence runs along the rear property line of all the affected neighbouring yards.
- [16] The pictures submitted by the Appellant are deceiving and make it look like the subject fence is right behind the Appellant's white fence. In reality, the new fence is at a 90 degree angle and is not directly behind the Appellant's fence as there is a yard separating the two.
- [17] While the Respondent's application was for an 8 foot high fence, the actual height of the new fence on the Appellant's side would be between 6 foot 2 inches and 6 foot 5 inches, which is not that much over height. The Respondent's property is approximately 8 to 10 inches lower than the adjacent yards, so the fence will appear higher when measured from the Respondent's side of the fence.
- [18] The Respondent chose the fence colour and style so that it can be consistent with what is going up in the immediate vicinity. Five or six properties near her home recently changed to this fence style. The neighbourhood is at the stage where everything is being replaced.
- [19] No trees were removed from anyone's yards as a result of the fence being built. The Respondent agreed that perhaps the owners who appeared in opposition may have less of a view of the trees in the Respondent's yard as a result of the higher fence.
- [20] It was never Ms. Friedley's intention to harass any neighbours. She wanted to ensure that everyone was well informed, as being a part of the community and a good neighbour are important to her. The Development Officer suggested that she approach her neighbours and obtain their written support for the development.
- [21] She did not think to contact the Appellant regarding the new fence as the fence does not abut the Appellant's property. She did not realize until after the appeal was filed that everyone within 60 metres would be notified of the proposed development.
- [22] The Respondent had several reasons for requesting an over-height fence:
- a. Both rear properties are rentals and the yards are not exceptionally well-kept.
 - b. The Respondent has three children and a dog she wishes to keep contained.
 - c. The neighbour at 3515 – 105B Street NW has a large Labrador retriever that always barks at her children and dog through the old fence. The new fence has improved the situation.

- d. Both the Respondent and her husband are very tall and can see over a six foot high fence. The height is as much for the neighbours' privacy as for her family's.
 - e. There have recently been some issues with crime, and the fence will provide her family with some added security.
- [23] The Respondent purchased the subject property because of the large rear yard. This yard shares a property line with five different neighbours. The proposed development has replaced the old fence at the rear of the Respondent's property, much of which was in poor condition and falling down.
- [24] The Respondent provided the following responses to questions from the Board:
- a. No changes were made to the grade as a result of constructing the new fence.
 - b. She confirmed that both 3515 – 105B Street NW and 10536 – 35Avenue NW are rentals. While she spoke with the tenants prior to the fence construction, she was unable to reach the owners of these properties.
- [25] The fences that the Respondent shares with the side neighbours are currently white. The plan is to eventually replace these white fences with a six foot high brown fence like the one constructed at the rear of the property.

Decision

- [26] 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

- [27] The proposed development is for a Fence at 2.44 metres in Height, for a Single Detached House within the RF1 Single Detached Residential Zone.
- [28] Construction of a Fence that exceeds 1.85 metres in Height is a development that requires a Development Permit pursuant to section 12.2(1)(h) of the *Zoning Bylaw*, which states: "A Development Permit is not required for... the construction of any Fence, wall or gate not exceeding 1.85 m in Height, provided that the erection of such structure does not contravene any provision of this Bylaw".
- [29] Regulations regarding developments of Fences in residential zones are set out in section 49 of the *Zoning Bylaw*. The proposed development is for a Fence that is over 1.85 metres, located in the Rear Yard of a non-corner site. The following subsections of the *Zoning Bylaw* therefore apply:

49. Fences, Walls, Gates, and Privacy Screening in Residential Zones

1. Fences, walls and gates

- d. On an Interior Site, the Height of a Fence, wall, or gate shall not exceed:

...

- ii. 1.85 m in all other Yards.

...

- g. In the case where the permitted Height of a Fence, wall, or gate is 1.85 m, the Development Officer may vary the Height of the Fence, wall, or gate to a maximum of 2.44 m, in order to provide additional screening from public roadways or incompatible adjacent Uses,

[30] The Development Officer found that the existence of a dog on one of the neighbouring lots constituted an incompatible Use that could be remedied by a Fence greater than 1.85 metres.

[31] The Board agrees with the decision of the Development Officer and finds that the existence of the dog is sufficient to allow the Development Officer to use the power granted to him in section 49(1)(g) to approve a Fence to a maximum Height of 2.44 metres.

[32] Further, the Board finds that the existence of the subject Fence, which photos show is a new Fence that replaced a derelict Fence, is an improvement over the old Fence 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.

[33] The Board considered the written submissions of the Appellant. Much of the information provided by the Appellant related to conversations or correspondence (or lack thereof) she had with the Respondent. The Board finds that this information is largely irrelevant to its legal test for granting variances, as set out under section 687(3)(d) of the *Municipal Government Act*. Other submissions from the Appellant related to allegations concerning former tenants of the subject property, prior noise complaints, and enforcement matters, which are outside the scope of this Board's jurisdiction.

[34] Included in the Appellant's submissions and supporting materials were photographs of the subject Fence, which did show that the new Fence was taller than the fences of the immediately adjacent neighbours. However, the Board notes that in this area and within the wider community, there are Fences of varying Heights, materials, styles, colours and states of repair. The Board found no evidence that the new taller Fence 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.

- [35] The Board also notes while two owners within the 60 metre notification area opposed the development of the over-height Fence, the majority of those who responded to the neighbourhood consultation were in favour of the Fence.
- [36] For these reasons, the Board dismisses the appeal and confirms the decision of the Development Authority.

Mr. I. Wachowicz, Chairman
Subdivision and Development Appeal Board

Board Members in Attendance:

Mr. M. Young; Mr. B. Gibson; Ms. S. LaPerle; Ms. D. Kronewitt Martin

CC: City of Edmonton, Development & Zoning Services, Attn: Mr. K. Payne / Mr. A. Wen

Important Information for the Applicant/Appellant

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