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: July 17, 2015
Project Number: 155438279-002
File Number: SDAB-D-15-140

Notice of Decision

This appeal dated June 4, 2015, from the decision of the Development Authority for permission to:

Construct exterior alterations to a Single Detached House (concrete driveway in front yard and new access off of 65 Street)

on Plan 1997KS Blk 44 Lot 3, located at 10695 - 65 Street NW, was heard by the Subdivision and Development Appeal Board on July 2, 2015.

Summary of Hearing:

At the outset of the 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*, R.S.A 2000, c. M-26.

The Board heard an appeal of the decision of the Development Authority to refuse an application to construct exterior alterations to a Single Detached House (concrete driveway in front yard and new access off of 65 Street) located at 10695 - 65 Street NW. The subject Site is zoned RF1 Single Detached Residential Zone and is within the Mature Neighbourhood Overlay.

The development permit was refused for the following reasons: the proposed driveway does not lead to an overhead garage door or parking area, Front Yards must be landscaped, parking is not permitted in a Front Yard when a rear lane exists, and, it is the Development Officer's opinion that it would unduly interfere with the amenities of the neighbourhood.

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

- The Appellant's written submission of June 26, 2015. The submission included documentation of neighbourhood consultation, pictures of the subject Site, the subject Site Plan, and an excerpt of correspondence from the City.
- One online response from a neighbouring property owner in support of the proposed development**.**

The Board heard from Mr. Ball, the Appellant, who made the following points:

1. The proposed development is to reinstate the front Driveway to allow access to the carport, not to enable parking in the Front Yard.
2. The letter from Sustainable Development indicates that the attached carport was originally approved with the Principal Dwelling.
3. At some point in time, the carport was enclosed on the front and side by the previous property owners without the proper permits.
4. The enclosure consists of framing and siding. The walls are not structural.
5. He is willing to remove the front wall to facilitate vehicular access to the carport.
6. Between 25% and 30% of the houses on the block, including the immediately adjacent property, have front vehicular access to a carport, garage, or driveway pad. Three of the four adjacent lots to the north have front and back vehicular access.
7. The letter he received from the City notes that the he has an approved carport so he should be able to use it as a carport.
8. He spoke to several neighbours and received no opposition to the proposed Driveway.
9. Several houses in the area have front access driveways with carports. Some have parking pads in their Front Yards.
10. The property is located at a T-intersection with bus stops on both sides of the street. He is concerned that if he parks his vehicle on the street it will get damaged by vehicles making U–turns in front of his house.
11. He intends to build a Garage Suite in the future and the carport will alleviate any parking issues arising from additional parking requirements for a Garage Suite.

In response to questions by the Board, Mr. Ball provided the following information:

1. He purchased the home in the summer of 2013 from the original owners, who bought it in 1957. The curbs were restored approximately 4 years ago so he cannot tell if there was a curb cut or front vehicular access.
2. He identified nine houses in the immediate area that have front or flanking access to carports, garages, or driveway pads.
3. He expects nothing less than a condition that the portion of the front wall of the house outlined in red in his submission be removed to restore the vehicular access to the approved carport.
4. He confirmed that he has a contractor in place to remove the wall in front of the carport. He intends to replace the siding of the Principal Dwelling and restore the carport at the same time.

The Board then heard from Mr. Lee, representing Sustainable Development, who made the following points:

1. The Development Officer who refused the application for a development permit no longer works for Sustainable Development.
2. If this development is approved, the Appellant will be required to get an approval from Transportation Services for a curb cut.

3. He disagrees with the Appellant that there are safety concerns with on-street parking at the T-intersection. In his view, backing out of the front Driveway will cause safety concerns.
4. Currently there is neither a carport, nor access to a parking space on the subject Site.
5. There is enough room at the rear of the property to park six vehicles should a Garage Suite be constructed on the Site.
6. The development permit application was refused because there is currently no opening to the carport, and because a curb cut was not approved by Transportation Services.

In response to questions by the Board, Mr. Lee provided the following information:

1. A permit and approval for a curb cut will be required.
2. A carport was approved by the City for the subject Site, but he was uncertain if the original approved carport had vehicular access from the front or the rear of the property or any vehicular access at all.
3. Based on the relative distances shown in the site plan, he agrees that front vehicular access to the carport was more likely to have existed than rear vehicular access.
4. The determination of percentage of lots with front or flanking vehicular access was based on the entire blockface, which stretches past the lane to the North. He has no issue with the Appellant's evidence concerning existing vehicular access to lots in the immediate vicinity.
5. He agrees that if a portion of the front wall of the Principal Dwelling was removed, the area would become a carport consistent with the original development permit.
6. A variance was not granted as there is no hardship to the Appellant given that there is sufficient space for on-site parking at the rear of the property.

In rebuttal, Mr. Ball made the following points:

1. He believes the carport was originally accessed from the front street. The photos and Site Plan he submitted show cement steps at the rear of the carport which facilitate access to the back door of the Principal Dwelling. The cement steps appear to have been constructed at the same time as the cement pad in the carport. These steps prevent vehicular access to the carport from the rear of the property.
2. The existing garage is non-conforming and situated too close to the house. Any new garage would have to be relocated to comply with the bylaw. Therefore, there would not be adequate parking for six vehicles at the rear of the property if a Garage Suite was built.
3. He is aware that he has to contact Transportation Services to apply and pay for a curb cut.
4. He is willing to use a City contractor or one of his own to get a curb cut.

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, subject to the following CONDITION:

1. The portion of the front wall of the Principal Dwelling located directly in front of the concrete pad previously approved as a carport and outlined in red in the picture submitted by the Appellant must be removed and the exterior of the Principal Dwelling unit restored to provide direct vehicular access to the carport from 65th Street.

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

1. The Board waives Section 814.3(10)(c) which provides that regardless of whether a Site has existing vehicular access from the front or flanking public roadway, there shall be no such access where an abutting Lane exists, and fewer than 50% of principal Dwellings on the blockface have vehicular access from the front or flanking roadway.

Reasons for Decision:

The Board finds the following:

1. The proposed development is Accessory to a Permitted Use, Single Detached House, in the RF1 Single Detached Residential Zone.
2. Based on the evidence submitted, there are a variety of configurations of Garages and carports, Driveways and vehicular accesses in the immediate area.
3. Some nearby lots have Parking Areas located in their Front Yards which do not lead to either a carport or a Garage.
4. The Board notes the Development Authority took no issue with the Appellant's evidence concerning the existence of front and flanking vehicular access in the area and accepts the Appellant's evidence that:
    a. approximately 25-30% of lots on the blockface have front vehicular access;
    b. two of the three lots immediately adjacent to the north of the subject Site and the two lots directly across 65th Street from the subject Site have front or flanking vehicular access; and,
    c. within the immediate area along 65th Street, nine properties have front or flanking vehicular access.
5. Therefore, the Board concludes front or flanking vehicular access is typical of the immediate area regardless of rear access.
6. Based on the evidence submitted, a carport attached to the north end of the Principal Dwelling was approved on the subject Site. This attached carport was subsequently enclosed by the previous owner without a development permit.

7. Based on the evidence submitted, it is more likely than not that the approved carport incorporated vehicular access from the front off of 65th street due to the location of cement steps leading to the rear door of the Principal Dwelling and the distances to the carport from the Front and Rear Lot Lines.
8. The Appellant is agreeable to the condition imposed by the Board that a portion of the front wall be removed from the Principal Dwelling to restore direct vehicular access to the carport.
9. With the imposition of this condition, the Board finds that the proposed development:
    a. complies with the meaning of "Driveway" in Section 6.1(26) as it provides access for vehicles from a public roadway to a Parking Area (the carport);
    b. does not fall under the definition of "Parking Area" in Section 6.1(69) which expressly excludes Driveways;
    c. complies with Section 54.1(4) as it leads directly from the roadway to the Parking Area (the carport);
    d. complies with the requirement in Section 54.2(2)(e)(i) that parking spaces, not including Driveways, not be located within a Front Yard; and,
    e. as shown in the Site Plan, leaves ample area in the Front Yard for landscaping to comply with the requirements for landscaping in Section 55.4(1).
10. Accordingly, the Board finds no need to grant variances regarding these sections of the Bylaw.
11. The Board also notes that the Appellant has complied with the obligation under Section 814.1 to consult with his neighbours and has received support for the proposed front Driveway:
    a. the Appellant received no negative feedback during this consultation;
    b. nine neighbouring property owners within the 60-metre notification zone indicated they had no objection to the proposed development.
    c. one of the nine sent an online response of support to the Board; and,
    d. four of the nine indicated that the Appellant should be allowed a front access driveway given that a number of other neighbours currently have front and rear vehicular access.
12. No letters of opposition were received by the Board and no neighbours appeared in person to oppose the proposed development.
13. There were mixed submissions about safety of on-site versus off-street parking in front of the subject Site. The Development Authority suggested at the hearing that front vehicular access at a T-intersection may raise safety concerns. The Appellant indicated concerns over on-street parking which would be alleviated by front vehicular access to the carport. The Board notes that this issue was not listed as a reason for refusal of the development permit, nor was it mentioned as a concern in the written submission from Transportation Services, which indicated access to the Front Yard would not be granted due to existing access to the on-site rear Garage and to recent reconstruction of the adjacent sidewalk, curb and gutter.
14. The Board's decision in no way relieves the Appellant from the need to obtain approval from Transportation Services for a curb cut as that issue is beyond the authority of the Board.

15. Based on the above, it is the opinion of the Board that 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.

Important Information for the Applicant/Appellant

1. This is not a Building Permit. A Building Permit must be obtained separately from Sustainable Development, located on the 5th 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.

Ms. K. Cherniawsky, Presiding Officer
Subdivision and Development Appeal Board

cc:

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: July 17, 2015
Project Number: 145296516-016
File Number: SDAB-D-15-141

Notice of Decision

This appeal dated June 5, 2015, from the decision of the Development Authority for permission to:

Construct a rear uncovered deck (3.10m x 6.4m @ 4.3m in Height)

on Plan 1324395 Unit 11, located at 52 - Sylvancroft Lane NW, was heard by the Subdivision and Development Appeal Board on July 2, 2015.

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*, R.S.A 2000, c. M-26.

At the outset of the hearing, the Presiding Officer requested all new submissions and materials from all parties and indicated that the Board would recess for a short time to review the items which were marked as Exhibits.

The Board heard an appeal of the decision of the Development Authority to refuse an application to construct a rear uncovered deck (3.10m x 6.4m @ 4.3m in Height), located at 52 – Sylvancroft Lane NW. The subject Site is zoned RF3 Small Scale Infill Development Zone and located within the Mature Neighbourhood Overlay.

The development permit was refused because of an excess in the maximum allowable projection of a Platform Structure into the Rear Setback and an excess in the maximum allowable Site Coverage for Semi-detached Housing.

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

- A submission from the Appellant, dated June 5, 2015.
- A submission dated July 1, 2015, from a neighbouring property owner, including e-mails, letters and a photo.

To resolve apparent ambiguities in the Development Officer's written submission and in the Minor Development Permit dated January 30, 2014, the Board heard first from Mr. Booth, representing Sustainable Development, who answered questions from the Board:

1. Another Development Officer reviewed the initial application for a Semi-detached House Development and issued the 2014 Minor Development Permit. Mr. Booth had discussions with that Development Officer, but did not have notes on those discussions.
2. Mr. Booth personally reviewed the 2015 application for a deck permit currently before the Board under this appeal.
3. He corrected an error at page 1 of his written submission. He intended it to read: "On January 30, 2014 the Semi-detached House was approved. Prior to the approval, the Development Officer informed the applicant that the 3.10 m x 6.40 m rear uncovered deck did not comply with the regulations of the Edmonton Zoning Bylaw and that it would **not** be included as part of the part of the approval for the Semi-detached House." [Edit emphasized]
4. At page 1 of the 2014 Minor Development Permit under the heading "Scope of Permit" the scope of items applied for are listed and include a 3.10 m x 6.40 m rear balcony (the "Deck").
5. The first condition on page 2 of the 2014 Minor Development Permit lists the items that have been authorized for construction. The Deck is not listed in this condition.
6. In the approved and stamped Site Plan included in his written submission, the Deck is marked "Balcony" and circled in red ink. The following is also noted: "3.1m x 6.4m Balcony Not included in DP approval."
7. He confirmed that other approved elevations include the Deck and have no notations excluding the Deck.
8. He understood that at the time of decision, the Development Officer had a conversation with the Appellant. During this conversation, the Development Officer confirmed that the Deck was not included in the 2014 Minor Development Permit.
9. In sum, the Appellant applied for the Deck, but it was not approved in the 2014 Minor Development Permit.
10. With the deletion of the Deck, the application complied with all development regulations under the *Edmonton Zoning Bylaw*, including the Rear Setback required under the Mature Neighbourhood Overlay. Therefore the permit was processed as a Class A development.
11. The 2014 Minor Development Permit and the approved site plans and elevations were returned to the Appellant in due course.
12. Construction of the Deck proceeded without a development permit.
13. The application for the 2014 Minor Development Permit was reviewed using the subject Site and the adjacent Site to the north, which contains the other half of the Semi-detached House.
14. The 2015 Deck Application was reviewed in the context of the subject Site only.
15. He clarified that the minimum Rear Setback for the Principal Dwelling is 16 metres (40% of a base figure of 39.9 metres) from the property line and that Section 44.3(a) permits Platform Structures to project up to 2.0 metres into a required Setback. The minimum Rear Setback to the Platform Structure for the subject Site is therefore 14 metres. The proposed Rear Setback to the Platform Structure is 12.5 metres, which would require a 1.5-metre variance in Section 44.3(a).

16. The maximum Site Coverage allowed on the subject Site is 42%. With the addition of the Deck, the proposed Site Coverage is 42.76% and involves a 0.76% variance to Section 140.4(10)(d).
17. As no variances are required to any of the regulations contained in the Mature Neighbourhood Overlay for the proposed development, Section 814.3(23) does not apply and community consultation is not required.

The Board then heard from Mr. Thompson, representing the Appellant, The House Company Ltd. Mr. Thompson made the following points:

1. With respect to the 2014 Minor Development Permit for the Semi-detached House:
    a. He recalls receiving a phone call from the Development Officer in January, 2014, during which the Development Officer said that she could not approve the Deck. He does not recall whether she indicated that the Deck would require a separate development permit.
    b. The 2014 Minor Development Permit was approved as a Class A permit on January 30, 2014.
    c. The Deck was specifically listed in the "Scope of Permit" on page one of the issued 2014 Minor Development Permit. He took "Scope of Permit" to mean scope of what had been approved.
    d. Scope of Permit is not the same as Scope of Application, Scope of Permit means scope of what is approved. Scope of Application means scope of what is applied for.
    e. He did not receive the Building Permit and stamped plans until August 20, 2014.
    f. There was a red notation on the stamped Site Plan only. There was an approval stamp below the balcony area on the South Elevation drawing and no comparable red notation. Photos of elevations submitted by the Appellant were referenced in the hearing and marked Exhibit "F".
    g. He saw the red notation, reviewed the entire 2014 Minor Development Permit, and concluded the Deck was included based on Page 1.
    h. Page 2 of the 2014 Minor Development Permit does not expressly prohibit the Deck, it was just not mentioned. In his mind, the City had neglected to include the Deck in the list on Page 2.
    i. The same list (including the Deck) that appears under Scope of Permit in the 2014 Minor Development Permit also appeared under Scope of Application in the approved Building Permit under "Scope of Application."
    j. For the reasons listed above, he thought he had an approved permit for the Deck and proceeded to build the Semi-detached House and Deck.
2. He was informed in March, 2015, that there was no permit for the Deck as it was not included in the 2014 Minor Development Permit.
3. He felt the Deck was previously included in the 2014 Permit, but agreed to make the 2015 Deck Application anyways.
4. The application for the 2014 Minor Development Permit was assessed using the full Semi-detached House and the full lot, while the 2015 Deck Application was assessed using the half lot and the South half of the Semi-detached House.

5. The 2015 Deck Application was refused because of an excess projection into the Rear Setback and an excess in the maximum allowable Site Coverage.
6. In 2014, Site Coverage for the total development including the Deck was calculated to be 39% of the total lot. In 2015, using the subject Site only, the maximum allowed Site Coverage is 42% and 42.76% is requested. In his view, this excess of approximately 2 metres squared is insignificant.
7. He contacted Sustainable Development and confirmed that the Setback should be to the closest point. If you use the single lot this distance is 15.74 metres and15.76 metres exist.
8. The Deck can project 2.0 metres into that Setback and they are asking for 3.1 metres which exceeds the allowable projection by 1.1 metres and not 1.5 metres as suggested by the Development Authority.
9. Due to inaccuracies in the 2014 Minor Development Permit, the Appellant believed he had a right to build the Deck. The Board should therefore overturn the Development Officer's decision and grant the Development Permit for the Deck.

The Board then heard from Mr. Hupfer, the property owner, who made the following points:

1. The Deck has been an integral part of the house since the original design. It is located off the living room. He intends to use it in the summer months as a living space and eating area.
2. He wants privacy just as much as the neigbouring property owners do.
3. He will provide Landscaping, including trees, once construction is complete.
4. Subject to contrary advice from an arbourist, he wishes to preserve the trees on the subject Site.
5. Existing trees on the neighbouring properties should also provide some form of privacy.

Mr. Hupfer and Mr. Thompson made the following points:

1. The Deck was designed to be 3.0 metres wide to allow room for outdoor dining and a livable space.
2. There will be a 24-inch-high parapet wall with an 18-inch railing on the top along the Deck.
3. The photo provided by the neighours of the Deck and construction scaffolding creates the impression that the Deck imposes on the adjacent property. However, there are trees between the balcony and the neighbour's property, therefore, the photo was taken from the subject Site and not from the neighbour's property. The photo is therefore not an accurate representation of the view from the neighbour's property.
4. The aerial photo of the neighbourhood (Exhibit "B") shows a mass of foliage mainly on the adjacent property. This demonstrates that the privacy concerns are not legitimate.
5. To counter the suggestion that people on the Deck will look into adjacent properties, the Appellant provided photographs (Exhibit "A") which show various outward sightlines toward the adjacent properties from different vantage points (within the semi-detached House, at a point on the Deck 2.0 metres from the east wall of the semi-detached House and from a point on the Deck 3.0 metres from the east wall of the semi-detached House).
6. These photos show that the trees on the subject Site and those on the neighbouring properties provide a privacy barrier. The required variance to Section 44(3)(a) would therefore not make a material difference in sightlines to adjacent properties to the east.

7. The property owner wants to preserve the trees on the subject Site and is agreeable to adding landscaping and trees to the property as a condition of approval of the Deck.
8. The map they submitted shows Rear Setbacks and the distances between the proposed development and the houses along 127 Street (Exhibit "B").
9. The nearest House is on the adjacent property to the northeast. The owners of this property have no objections to the proposed development.
10. The Fields own the adjacent property shown to the southeast. Their House is the next closest at 21.42 metres from the Rear Lot Line, so there is 34 metres between the two houses (Exhibit "B")
11. The map shows that most of the houses along the street to the east would not comply with the Rear Setback currently required under the Mature Neighbourhood Overlay (Exhibit "B")
12. As shown on another submitted map, the demolished House previously located on the Site was even closer to the neighbouring properties to the east and included a second floor bathroom with glass solarium (Exhibit "B").
13. The requested variances will not create privacy, sun shadowing, or massing issues for adjacent neighbours.
14. Due to pending litigation concerning another property, past conflicts over other developments on Sylvancroft Lane, and the concern that they might have to perform community consultation, the Appellant and the property owners performed a community consultation in May, 2015, with the property owners on 127 Street and the properties west of the subject Site (Exhibit "C").
15. Packages outlining the proposed development were dropped off to property owners in the 60-metre notification radius.
16. The owners knocked on doors along 127 Street. The Appellant dealt with areas to the west. Some neighbouring property owners had discussions with the Appellant and the owners.
17. The adjacent neighbour to the northeast of the subject Site had no objection to the proposed development. This neighbour simply wants the development to be completed as quickly as possible. This neighbour's home is the one closest to the Deck and, as such, is the most affected property.
18. The owners intended to speak with the Fields, but were unable to find a mutually acceptable time prior to the hearing.

The Board then heard from Mr. and Mrs. Fields, who together made the following points:

1. Their concerns are outlined in their letter of July 1, 2015, previously submitted to the Board.
2. Their house conformed to the bylaw in place at the time of its construction which predated the Mature Neighbourhood Overlay. The Appellant's comments about compliance are irrelevant.
3. The house previously in place on the subject Site was located to the north and was screened by many trees.
4. They confirmed that the photo of the Deck included in their letter to the Board was taken from their own backyard.
5. They are concerned that the majority of the trees backing onto the proposed development will be removed.

6. The Appellant's photos in Exhibit "A" show the trees when they are leafed out. The majority of the trees on their property are deciduous. They have only one spruce tree, so in the winter there will be a direct view on to their property, excessive massing, and sunlight blockage.
7. They acknowledged that the property owner and the developer delivered packages regarding the proposed development; however, they do not feel that delivery constituted appropriate community consultation.
8. They would have contacted the owners if their number had been on the package. They did try to meet with the owners, but were unsuccessful due to the busy schedules of all parties.
9. They responded to the package by letter to the Development Officer dated May 27, 2015. If the package drop-off is considered adequate community consultation, then their letter should be considered adequate feedback.
10. The Board should be aware of the broader context. Four properties within the larger development have been dealt with so far and each has involved variances. This process feels like death by a thousand cuts for the neighbours.
11. They wonder if anyone is considering the whole of the project; whether all these variances are a way to overbuild the zone or *de facto* piecemeal rezoning and whether there has been a pressing need for each development to overbuild.
12. They note that the Appellant stated in a letter to a neighbouring property owner dated April 4, 2013, that variances to Rear Setbacks for future developments would be highly unlikely, yet he is here again seeking variances.
13. They are still waiting for restitution of vegetation removed from an environmental reserve that was dealt with in SDAB-D-13-157 for another Site within the Sylvancroft development.
14. They want a sign of goodwill that landscaping will actually be done and are asking for a landscaping plan for the subject Site.
15. They are concerned that granting the required variances will set precedence in the area.
16. In their opinion, with this being a bare land condominium development, all of the required variances should be done up front and not in a piecemeal approach.
17. In their opinion, the proposed development is overbuilt.

The Board then heard from Mr. and Mrs. Thomas, who together made the following points:

1. There is inconsistency in the information received in the packages delivered to the Board by the property owner and the developer. There appear to be changes in the elevations from those approved in 2014.
2. They acknowledged that the property owner made additional information available to them.
3. They questioned the overhanging roof structure and the Site Coverage, and requested clarification from the Development Authority concerning its inclusion in this calculation.

Mr. Booth, the Development Authority, provided clarification:

1. The roof projection over the Deck is not included in the calculation of Site Coverage.
2. He went through his calculations regarding the required Rear Setback. He confirmed a 1.5-metre variance is required for the projection of the Deck into the required Rear Setback.
3. He acknowledged that the neighbours in opposition sent him a consolidated response to the Community consultation initiated by the Appellant and the property owner (Exhibit "D").

Mr. and Mrs. Thomas continued to provide the following information:

1. The entire three-page 2014 Minor Development Permit (Exhibit "E") is a legal document which forms the approval for construction of the base building.
2. The "Scope of Permit" on Page 1 is actually the builder's information, not something generated by the City. The conditions appear on Page 2 and on careful reading it is clear that proposed Deck was removed.
3. Given it was acknowledged by the Appellant and the property owner that the Deck was a major part of the house design, they question why it was removed from the original Semi-detached House application.
4. Mr. Thomas finds the Appellant's representations inconsistent and notes it is incredulous that a builder would not review the conditions of a development permit.
5. This raises the main reasons for their opposition: they are sick and tired of representations made by the Appellant to them, to the City, and to the SDAB about what is going on in this development. Mr. Thomas does not believe the Appellant. He has no issue with the homeowners, as they are entitled to rely on the Appellant, who is their builder
6. In their opinion, the Deck, a Platform Structure, was pulled out of the original Development Permit, as it was clear that the permit would not be approved with the Deck.
   In their Opinion, the proposed Deck was removed so
   a) the development could proceed as a Class A permit;
   b) no variances would be required and no notification would be sent to neighbouring property owners;
   c) the builder could avoid pursuing variances before the SDAB; and
   d) the builder could continue developing, and come back later for permission for the Deck.
7. As noted in their letter of July 1, 2015, the power of the Board to refuse or grant a variance is set out in Section 687(3)(d)(i)(A) and (B) of the *Municipal Government Act* and it is up to the Applicant, not the people affected by the decision, to show why the Board should exercise this variance power under the Act.
8. Section 814.3(8) of the Mature Neighbourhood Overlay was not addressed. It states Platform Structures greater than 1.0 metres above Grade shall provide privacy screening to prevent visual intrusion into adjacent properties. In their opinion, privacy screening is necessary and there is no screening in the plans that they have seen. In the event the Board approves the Deck, it should include a condition concerning screening.

In response to questions by the Board, Mr. and Mrs. Thomas provided the following information:

1. In their opinion, the notification requirements in the Mature Neighbourhood Overlay apply even though requested variances are to requirements contained in the more general development regulations and not the Mature Neighbourhood Overlay. The notification requirements are in play because the neighbours are expected to participate given the nature of the location of the proposed development and the way in which this approval unfolded.

2. They acknowledge that some effort was made for community consultation; however, they have concerns regarding this consultation process:
    a. The 1.5-metre protrusion into the required Setback is the only variance outlined in the packages. Both of the variances requested should have been highlighted in the information packages delivered to neighbouring property owners, as required by Section 814.3(24)(b).
    b. Responses should have been solicited and resultant modifications to address concerns documented as required by Section 814.3(24)(c). The Applicant should then have submitted this documentation to the Development Officer for compilation as required by Section 814.3(24)(d).
    c. The array of plans and revisions are confusing.
    d. It is difficult to compile a community consultation on something that is in the construction stage or already built.
3. They did not know that the only variances considered were intrusion into the Rear Setback and Site Coverage until they downloaded materials prepared for the Board for this appeal.
4. They urge the Board to carefully consider the neighbours' letters, which point out more technicalities than are apparent. More variances may in fact be required given what actually is being constructed on the subject Site.
5. In their opinion, the Appellant has a pattern of building without the appropriate permits. He proceeded without seeking a permit until the City rang the bell and required a permit for the Deck.
6. It is not believable that this Platform Structure was not carved out simply to avoid notification and seeking a variance on the 2013 Semi-detached House application. That is why they are here today and that is why effective consultation is impossible when the structure is already is built.
7. He questions whether it is appropriate to use this variance power to bail out the Applicant when he knew a Development Permit was required.
8. This is the fourth set of variances required for the Appellant's projects within the Sylvancroft development.
9. This is the only project where variances have been sought after the fact. In their opinion, the Appellant is not acting in good faith and is trying to make a run around the *Edmonton Zoning Bylaw*.
10. They believe the Appellant should seek appropriate rezoning of the property by City Council and stop using the SDAB to obtain rezoning one property at a time.
11. The Appellant's approach creates a burden and anguish for the neighbours, who are asked again and again to respond.
12. While they recognize that the two proposed variances are minor based on a narrow consideration of the issues or in isolation, the two proposed variances are also part of the broader circumstances that impact the community. They question whether the Board should exercise its discretion given these broader circumstances and want to ensure the Board has adequate information and looks at the total circumstance when exercising its variance power.

In rebuttal, Mr. Hupfer made the following points:

1. He and his wife bought and proceeded to build a House they thought was foursquare within the Bylaw. They were surprised to find that the Deck was not included in the approved permit so they tried to reach out and compromise, but were unable to meet with the neighbours before this hearing.
2. In their opinion, there is sufficient distance between the two properties that are also separated by trees. There is adequate privacy and they will not be eating out on the Deck in the winter when the leaves are off the deciduous trees.
3. The two variances requested are minor:
    a. The requested variance in the Site Coverage is insignificant and immaterial at only 0.76% or 2.45 square metres.
    b. The photographs in Exhibit "A" show no appreciable difference in the views toward adjacent properties to the East from within the House, from 2.0 metres on to the Deck and from 3.0 metres on to the Deck.
4. He clarified that the revised south elevation shows the stairs have been changed. They were cut back to improve the look of the House, but that has nothing to do with the Deck.
5. With regard to the concerns about the process, he clarified that they were not aware a variance would be required in the original Development Permit. If they had known, they would have started earlier. They thought they had an approved permit.

Mr. Thompson made the following points:

1. There are plenty of trees on the adjacent properties.
2. He never said that neighbouring houses did not conform to the rules in place at the time of their construction; his point is that the neighbours are vehemently trying to deny what they enjoy as they built their houses prior to the Mature Neighbourhood Overlay.
3. Contact information was included in the packages left with the property owners.
4. He personally did not set the time for responses. He is required to contact property owners at different times of the day and only has 21 days to provide responses to Sustainable Development based on the Mature Neighbourhood Overlay.
5. With regard to an impact on sunlight, in the summer trees will screen the proposed development and in the winter the property owners will not be using the balcony.
6. He reviewed the circumstances and the history of variances requested on other developments in Sylvancroft.
7. The neighbours are saying that no variances should ever be granted for properties that are contiguous with their properties. If this is true, the area would be unique because the Bylaw allows for variances city-wide.
8. The neighbours must show negative impacts of the variance and he has not heard much to date to substantiate the claimed negative impacts.
9. The neighbouring property owned by the Fields is the only property that may be affected. The Thomas house is located three doors south of the Fields' property.
10. The reference to his representation (in a letter written in the context of another SDAB appeal) that variances would not be sought for the subject Site is irrelevant and he noted the agreement upon which any such representation was based never in fact came to fruition.

11. His integrity has been attacked by the suggestion that he has an incorrigible habit of going after variances on every project. Arguments have been made about his business practices, not about the requested variances.
12. The House Company has high business standards and has never experienced this type of conflict in 28 years of operation.
13. With regard to the request for clearer plans during Community consultation, the Appellant noted that during earlier meetings with the Mr. and Mrs. Thomas clear-cutting and oversized windows were raised, but not questions concerning plans.
14. The neighbours think that the Deck is a ploy for the property owner to look into their backyard; however, privacy works both ways.
15. He clarified that the community consultation documented in Exhibit "C" was performed on his own initiative. Based on his own review of his 2015 Deck Application, a single variance to Section 44 adding 1.1 metres to the allowed 2.0 metres projection was required. That variance and a Site Plan were included in the consultation packages.
16. He did not have the Development Authority's decision at the time he prepared the packages and undertook the community consultation.
17. He was not aware that a community consultation was not required. He only completed it based on prior experience and to avoid the notification issues that arose in another development in Sylvancroft currently before the Court of Appeal on the issue of community consultation.

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, subject to the following CONDITIONS:

1. The deck shall provide privacy screening to prevent visual intrusion into adjacent properties as required under Section 814.3(8).

2. Landscaping shall be provided in the Rear Yard, and in particular along the Rear Lot Line to increase privacy between the subject Site and all adjacent properties.

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

1. The maximum allowed projection of 2.0 metres for Platform Structures in Section 44.3(a) is increased by 1.5 metres to permit a projection of 3.5 metres into the required minimum Rear Setback (16.0 metres).

2. The total maximum Site Coverage of 42% for Semi-detached Housing with a Site area less than 600 metres required in Section 140.4(10)(d) is increased by 0.76% (2.45 metres squared) to permit a total maximum Site Coverage of 42.75%.

Reasons for Decision:

The Board finds the following:

1. This is an appeal of the June 4, 2015, decision of the Development Officer refusing an Application for Deck Development and Building Permit number 145296516-016 to construct a rear uncovered deck (3.10m x 6.4m @ 4.3m in Height) (the "Deck").
2. The Deck is Accessory to a Permitted Use in the RF3 Small Scale Infill Residential Zone.
3. The Deck is a "Platform Structure" as defined in Section 6.1(74).
4. The Appellant appealed the June 4, 2015, refusal in part on the ground that the Deck was previously approved in a Minor Development Permit for a Semi-detached House approved January 30, 2014 (the "2014 Minor Development Permit"). (Exhibit "E")
5. The Board does not accept this ground of appeal.
6. The Board received conflicting evidence and submissions concerning whether the Deck had been included in the 2014 Minor Development Permit and notes the following:
    a. The 2014 Minor Development Permit contains inconsistencies or ambiguities as to whether or not the Deck was included in the permit (Exhibit "E").
    b. The Deck is specifically listed as one of a number of structures under the heading "Scope of Permit" on page 1 of the 2014 Minor Development Permit, as "rear balcony (3.1 m x 6.4m)." (Exhibit "E").
    c. Page 2 of the 2014 Minor Development Permit states the permit is subject to a number of conditions that then follow. The first of these conditions provides that the development approval authorizes the construction of a list of structures. This list includes all items appearing under "Scope of Permit" on page 1 with the exception of the "rear balcony (3.1 m x 6.4m)" which does not appear. (Exhibit "E").
    d. The Deck is not mentioned anywhere else in the 2014 Minor Development Permit. (Exhibit "E").
    e. The site plan on file accompanying the 2014 Minor Development Permit is stamped "APPROVED January 30, 2014." The Deck appears on this site plan. It has been circled in read ink and a notation has been added which reads, "3.1 metres by 6.4 metres balcony – not included in DP Approval" (Exhibit "E").
    f. The accompanying South Elevation for the property shown at the hearing includes the Deck. It is stamped APPROVED Aug 19 2014 and lists the same permit number. There is no notation excluding the Deck on this South Elevation. (Exhibit "F").
    g. The Building Permit associated with the 2014 Minor Development Permit was shown at the hearing. It lists the Deck in its Scope of Application and is stamped approved.
    h. In January, 2014, when the 2014 Minor Development Permit was issued, the Appellant understood it to be a Class A Permit without variances. The Appellant confirmed that he received a call at that time from the Development Authority indicating that the Deck could not be approved, but he could not recall if she said a separate permit would be required.
    i. After reviewing all the documents he received in August, 2014, the Appellant concluded the Deck was approved.

7. Based on the evidence provided at the hearing, including the submission of the Development Officer and the Site Plan approved in 2014, the Board accepts that if the Deck had been included in the approved development, a variance to Section 44.3(a) of the *Edmonton Zoning Bylaw* would have been required and the project could not have proceeded as a Class A development.
8. The Board accepts the evidence of the Development Officer that, with the deletion of the Deck, it was determined that the application complied with all development regulations under the *Edmonton Zoning Bylaw*, including the Rear Setback required under the Mature Neighbourhood Overlay, and the permit proceeded as a Class A development.
9. Based on the above, the Board concludes that the Deck (the subject of this appeal) was not included in the 2014 Minor Development Permit and that a separate Application for Development Permit was required for the Deck.
10. The required Application for Deck Development and Building Permit was made on April 17, 2015 (the "2015 Deck Application"), and refused June 4, 2015, because of non-compliance with two development regulations: an excess in the maximum allowable projection of a Platform Structure into the Rear Setback [(Section 44.3(a)]) and an excess in the maximum allowable Site Coverage for Semi-detached Housing [(Section 140.4(10)(d)]).
11. The Appellant appealed this refusal and is seeking variances to the two regulations cited in the refusal.
12. Authority to grant the appeal and approve the Deck with the two requested variances is set out in Section 687(3) of the *MGA* which provides that the 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.

13. A 1.5-metre variance to Section 44.3(a) increasing the allowable projection from 2.0 to 3.5 metres into required Rear Setback (16.0 metres) is granted for the following reasons:
    a. The Board accepts the Development Officer's calculations about the magnitude of the required variance: the proposed development requires a variance of 1.5 metres to Section 44.3(a) increasing the allowed projection from 2.0 metres to 3.5 metres into the minimum required Rear Setback of 16.0 metres. In other words, under Section 44.3(a) the Deck must be located at least 14.0 metres from the Rear Lot Line. The Site Plan indicates the Deck is to be located 12.5 metres from the Rear Lot Line. The difference is 1.5 metres.
    b. The photos taken from the Deck by the property owner (Exhibit "A") and the aerial photo (Exhibit "B") show that significant amounts of mature vegetation on the adjacent properties in conjunction with the remaining mature vegetation on the subject Site effectively screen the adjacent properties from one another.

c. Privacy screening to prevent visual intrusion into adjacent properties required per Condition 1 of this decision and new landscaping required per Condition 2 of this decision will further ameliorate any privacy issues.
d. The house nearest to the Deck is located on the adjacent lot to the northeast. Its owner, arguably the most affected neighbour, has no objection to the variance and wants the development to proceed to completion as soon as possible.
e. Based on the plans submitted by the Appellant, there is a significant distance (32.92 metres) between the closest point of the Deck (located 12.5 metres from the Rear Lot Line) and the closest point of the Fields residence, the second nearest house on the adjacent property southeast of the subject Site (located 21.42 metres from the Rear Lot Line). (Exhibit "B")
f. The adjacent properties to the east are offset slightly from the subject Site and the sightlines between developments are therefore at an angle, creating more distance between those two houses and the Deck.
g. While no sun shadow studies were submitted, the Board finds sun shadowing from the additional projection of the Deck is unlikely to be a concern due to the distance between it and the adjacent properties to the east, the fact that the Deck is located at 4.3 metres in Height (well below the roof line of the Principal Dwelling), and the pre-existing sun shadowing impacts of mature vegetation located between the Deck and the neighbouring properties.
h. Photos taken by the owner depicting various sightlines toward the adjacent neighbours from the rear of the Principal Dwelling, from the Deck at a point 2.0 metres east of the Principal Dwelling and from the Deck at a point 3.0 metres east of the Principal Dwelling demonstrate there is no material difference with respect to visibility or visual intrusion into the privacy of the adjacent neighbouring properties at the point of the requested variance in comparison to points within the allowed projection. (Exhibit "A")

14. Based on the Site Plan approved with the 2014 Minor Development Permit, the total Site Coverage (including the Deck) was within the maximum allowed when evaluated for the entire original lot. However, this same configuration results in an excess of 0.75% of the allowable Site Coverage when the owner's property is considered on its own for the 2015 Deck Application.
15. The Board grants the required variance to the maximum allowable Site Coverage under Section 140.4(10)(d) for the following reasons:
    a. The requested variance is very small, amounting to 0.76% or 2.45 metres squared.
    b. Given the existing mature vegetation, the distance between the Deck and neighbouring properties along 127 Street, and Conditions 1 and 2 described above in the reasons for allowing a projection variance, the Board agrees with the submission of the Appellant that allowing an excess in Site Coverage of 2.45 metres squared would not create a material massing impact, unduly interfere with the amenities of the neighbourhood, or materially interfere with or affect the use, enjoyment or value of neighbouring properties.

16. In making this decision, the Board has considered the oral representations of the opposing, neighbours, the letters submitted to the Board dated July 1, 2015, and the joint written response sent to the City dated May 27, 2015, and signed by owners of six neighbouring properties along 127 Street (Exhibit "D").
17. In addition to their oral and written submissions about privacy, use enjoyment, and amenities, the neighbours identify three core issues of concern in the joint written response:
    1. "Consultation" initiated **after** the unapproved structure has been built.
    2. The failure of the City to monitor this development and stop construction of an illegal structure.
    3. The unacceptable practice of The House Company in seeking, on a piecemeal basis, variances for buildings within the Sylvancroft site.
18. The first core issue concerns the sufficiency of the community consultation, particularly given that the Deck appears to be under construction as shown in the photo submitted by the neighbouring property owners.
19. The Appellant and the owners voluntarily engaged in a form of community consultation. They knocked on doors and distributed materials which described the proposed projection variance. These materials also included a proposed site plan clearly identifying the Deck, a request for feedback within a specified timeframe, and contact information. Unfortunately, as the Appellant did not wait for input or a decision from the Development Officer concerning the Deck, the distributed notices were inaccurate and incomplete.
20. The Development Officer determined that approval of the 2015 Deck Application:
    a. requires a variance in Section 44.3(a) (a general development regulation for projection into required Setbacks);
    b. requires a variance to Section 140.4(10)(a) (a development regulation for the RF3-Small Scale Infill Development Zone for maximum Site Coverage); and,
    c. does not require a variance to any of the regulations contained in the Mature Neighbourhood Overlay, which are found under Section 814 of the *Edmonton Zoning Bylaw*.
21. Therefore, the Development Officer concluded that a community consultation under Section 814.3(24) was not required for the 2015 Deck Application.
22. The Board agrees with this conclusion. It is consistent with a plain and purposive reading of Sections 814.1 and 814.3(24).
23. Section 814.1 sets out the general purpose of the Mature Neighbourhood Overlay:

    "The purpose of this Overlay is to ensure that new low density development in Edmonton's mature residential neighbourhoods is sensitive in scale to existing development, maintains the traditional character and pedestrian-friendly design of the streetscape, ensures privacy and sunlight penetration on adjacent properties and **provides opportunity for discussion between applicants and neighbouring affected parties when a development proposes to vary the Overlay regulations."** [Emphasis added]
24. Section 814.3(24) of the Mature Neighbourhood Overlay requires community consultation as specified in subsections (a)-(d): "[w]hen a Development Permit application is made **and the Development Officer determines that the proposed development does not comply with the regulations contained in this Overlay**." [Emphasis added].
25. Given the Board's conclusion that community consultation under Section 814.3(24) is not required, sufficiency of community consultation is a moot point.

26. The second core issue involves concerns over compliance with respect to the Deck and with respect to other aspects of the Semi-detached House, including unauthorized construction, deviation from the approved plans, and the possibility of stop orders.
27. The Board notes compliance issues concerning the 2014 Minor Development Permit and any aspects of the Semi-detached House other than the Deck are beyond the scope of this appeal.
28. Compliance matters are dealt with by Bylaw Enforcement and are beyond the Board's authority. The specific authority to issue stop orders lies with the City under Section 645 of the *MGA* and is beyond the purview of the Board. Per Section 685 of the *MGA*, the Board's authority concerning stop orders is restricted to appeals of previously issued stop orders.
29. The third core issue is an objection to a wider course of conduct whereby the Appellant applies for variances on a piecemeal basis which effectively circumvents the Bylaw and results in *de facto* rezoning.
30. All parties have confirmed that the current appeal is but one of a number of contentious developments on Sylvancroft Lane involving the Appellant developer and the neighbouring property owners. Some of these developments have been the subject of prior appeals to the SDAB and one is currently before the Court of Appeal of Alberta.
31. The Board recognizes that the concerns of the opposing neighbours extend beyond the permit under appeal to the initial 2104 Minor Development Permit and to other developments on Sylvancroft Lane. However, as in all other cases, the Board is tasked to consider the merits of **this** individual appeal on its merits and to determine whether the two requested variances meet the test in Section 687(3)(d) of the *MGA*, based on planning considerations.
32. In the opinion of the Board, the issue of whether or not the Appellant has sought variances on other developments is not relevant to this appeal.
33. The Board notes that at the hearing Mr. Thomas acknowledged that the two requested variances, considered narrowly or in isolation, were "minor," but then urged the Board to consider the broader context in making this decision.
34. Based on the above, it is the opinion of the Board that the test set out in Section 687(3)(d) of the *MGA* has been met; the Board is satisfied that the proposed development, a deck which includes the two requested variances and two conditions, 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.

Important Information for the Applicant/Appellant

1. This is not a Building Permit. A Building Permit must be obtained separately from Sustainable Development, located on the 5th 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 with 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.

Ms. K. Cherniawsky, Presiding Officer
Subdivision and Development Appeal Board

CC: