



**EDMONTON
TRIBUNALS**

*Subdivision &
Development
Appeal Board*

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Edmonton, AB T5J 0G9
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Date: July 17, 2018
Project Number: 261334932-013
File Number: SDAB-D-18-097

Notice of Decision

- [1] On July 5, 2018, the Subdivision and Development Appeal Board (the “Board”) heard an appeal that was filed on **June 6, 2018**. The appeal concerned the decision of the Development Authority, issued on June 5, 2018, to refuse the following development:

Construct 4th storey addition (1094 m²) to the existing General Industrial buildings (self-storage buildings).

- [2] The subject property is on Plan 0821861 Blk 2 Lot 15, located at 6910 - Meridian Street NW, within the (IL) Light Industrial Zone. The Maple Ridge Industrial Area Structure Plan applies to the subject property.
- [3] The following documents were received prior to the hearing and form part of the record:
- A copy of the Development Permit application with attachments, proposed plans, and the refused Development Permit;
 - The Development Officer’s written submission; and
 - The Appellant’s written submission and attachments.
- [4] The following exhibits were presented during the hearing and form part of the record:
- Exhibit A – Additional written submission from the Appellant.
 - Exhibit B – Energy System Assessment, submitted by the Appellant.
 - Exhibit C – Photographs of the subject Site and the area, submitted by the Appellant.
 - Exhibit D – Traffic Impact Study, submitted by the Appellant.

Preliminary Matters

- [5] At the outset of the appeal hearing, the Presiding Officer confirmed with the parties in attendance that there was no opposition to the composition of the panel.

- [6] The Presiding Officer outlined how the hearing would be conducted, including the order of appearance of parties, and no opposition was noted.
- [7] The Presiding Officer confirmed that the Appellants had received sufficient opportunity to review the Development Officer's written report and asked them to speak to all the issues outlined in that report during their presentation.
- [8] The appeal was filed on time, in accordance with section 686 of the *Municipal Government Act*, RSA 2000, c M-26.

Summary of Hearing

- i) *Position of the Appellant, Mr. B. McFarlane, who was accompanied by Mr. M. Roppelt, representing Maple Ridge Joint Venture*
- [9] Mr. McFarlane advised that the Maple Ridge Joint Venture proposal is to construct a self-storage facility.
- [10] He explained that the facility will be operated as a storage rental facility with the exception that all the storage units are sold as individual condo titled units on an investment basis and at the owner's option can be entered into the site operated rental pool.
- [11] The offices will operate during regular business hours which will give the self-storage facility a different element.
- [12] The site will be clean, professional, and secure.
- [13] The height of the main floor is increased to accommodate a mechanical room that facilitates the green energy system mechanical equipment and controls. The minimum requirement of electrical demand is to provide enough thermal load to meet yearly heat consumption.
- [14] The building will be running east/west and will be situated within the central portion of a Light Industrial Lot adjacent to a nature reserve to the north.
- [15] Mr. McFarlane referred to photographs in his submission showing the proximity to Aluma Systems and the tree line, as well as Anthony Henday Drive (*Exhibit C*).
- [16] There is a vacant lot adjacent to the subject site which will not be affected even if it is developed in the future because of the distance that separates the proposed development and the neighbouring lot.
- [17] Mr. McFarlane confirmed that the height will be 16.55 metres and not 16.35 metres as outlined by the Development Officer. This exceeds the allowable 14.0 metres but still fits within the allowable 18.0-metre maximum requirement.

- [18] He referred to a letter in his submission from Aluma Systems in support of the proposed development. He confirmed that the correct height measurement was provided to Aluma Systems.
- [19] There is a triangle right-of-way on the east property line that encroaches on the subject site.
- [20] Mr. McFarlane noted that the intention of Maple Ridge Joint Venture was to initially enter into an encroachment agreement with the City to allow for the building and parking to encroach onto the right-of-way on the eastern side of the property. Mr. McFarlane advised, however, that this was not permitted which resulted in the building being reduced to 64 metres in length.
- [21] He further noted that they did not provide parking in the front of the building due to the right-of-way. However, they have entered into a sales agreement with the City to purchase this triangle portion of land to allow for additional parking and drive access lanes.
- [22] Mr. McFarlane advised the Board that due to this inability to enter into an encroachment agreement, the loss of building area caused hardship to the project revenue and viability. In order to gain back the lost area, a fourth level was added to the building design. In his opinion, the additional height of 2.55 metres over the 14 metres will not negatively impact the adjacent properties or roadways in the Maple Ridge Industrial area.
- [23] The solar panel mounting design is included within the 16.55 metre overall building parapet height.
- [24] All of the mechanical systems are on the main floor rather than roof mounted. This configuration pushes up the building height. The fourth floor area provides the required electrical load for the system to generate sufficient thermal levels to meet yearly heating demands.
- [25] Mr. Roppelt referred to the Energy System Assessment in the written submission and stated that the system synchronizes the heat and cooling demand for the proposed development (*Exhibit B*). If there is a short fall on the electrical load, they would have to add supplemental heat to the building.
- [26] In their opinion, the proposed development will not negatively impact the amenities of the neighbourhood as the building will be located a great distance from any other building. There will be no impact to the view or sunlight on adjacent properties.
- [27] A self-storage facility is not a high traffic site. Individuals can park in front of their units while they load and unload.
- [28] There is a drive through area that allows for approximately six vehicles to load and unload at a time.

- [29] They referred to the Traffic Impact Statement in their written submission (*Exhibit D*). They were not required to provide an impact study but they chose to provide a precedent study from another Site with a similar Use and size to provide an idea of the type of traffic through their facility.
- [30] Mr. McFarlane provided the following information in response to questions by the Board:
- a. At the initial application, Mr. McFarlane acknowledged that Maple Ridge Joint Venture did not include the proposed front parking on the plans as he was advised doing so would hinder, complicate, and slow down the process with respect to the various groups of professionals working on the development.
 - b. They showed where the additional parking could be accommodated on site and explained the changes from the initial application to the proposed additional parking marked on new plans. The disabled parking spaces will be moved to the front of the building.
 - c. Even if they do not acquire the triangular portion of the property they will still have sufficient on-site parking.
 - d. The self-storage facility does not require parking but the office portion does.
 - e. They confirmed that there will be 19 vehicles per hour for the entire site, referencing the precedent parking study.
 - f. There will be three businesses occupying the three levels. The three businesses comply with the regulations of the *Edmonton Zoning Bylaw*. The fourth level will be for storage use only.
 - g. There will be approximately three vehicles per peak hour for the entire fourth level, again referencing the parking study submitted to the Board.

ii) *Position of the Development Officer, Mr. N. Shah*

- [31] The Development Authority provided a written submission and did not attend the hearing.

Decision

- [32] 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**:

DEVELOPMENT SERVICES CONDITIONS:

1. The development shall comply to the performance standards for the IL District of the Edmonton Zoning Bylaw.
2. No parking, loading, storage, trash collection, outdoor service or display area shall be permitted within a Setback. Reference Section 410.4(4)
3. Immediately upon demolition/ alterations of the building, the site shall be cleared of all debris.
4. 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)
5. 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)
6. Parking spaces for the disabled shall be provided in accordance with the Alberta Building Code in effect at the time of the Development Permit application, for which no discretion exists and be identified as parking spaces for the disabled through the use of appropriate signage, in accordance with Provincial standards. Reference Section 54.1(3)
7. Bicycle parking shall be provided in accordance to Section 54.3 and to the satisfaction of the Development Officer.
8. The off-street parking, loading and unloading (including aisles or driveways) shall be provided, hard surfaced, curbed, drained and maintained in accordance to Section 54.6.
9. All outdoor trash collection areas shall be located and screened to the satisfaction of the Development Officer in accordance with Sections 55(4) & (5)
10. The design and use of exterior finishing materials shall be as far as reasonably practicable, that materials shall be used that ensure that the standard of the proposed buildings and structures shall be similar to, or better than, the standard of surrounding development and to the satisfaction of the Development Officer. (Reference Section 57.2)

11. Any indoor display, office, technical or administrative support areas or any retail sale operations shall be Accessory to the General Industrial Use. The Floor Area devoted to such Accessory activities shall not exceed 33% of the total Floor Area of the building(s) devoted to the General Industrial Use. (Reference Section 95(1)).

NOTES:

1. Signs require separate Development Applications. Please apply all sign permits at earliest possible to avoid any delays in approvals.
2. The Development Permit shall not be valid unless and until the conditions of approval, save those of a continuing nature, have been fulfilled.
3. Unless otherwise stated, all above references to section numbers refer to the authority under the Edmonton Zoning Bylaw 12800 as amended.
4. Any future development on this site (including a constructing a mezzanine floors) requires new development and building permits.

TRANSPORTATION PLANNING AND ENGINEERING CONDITIONS:

1. The existing access to Meridian Street must be removed and reconstructed as a 10 m culvert crossing access to City of Edmonton standards, located 77.3 m from the north property line, as shown on the Enclosure. The culvert crossing access must be hard surfaced with asphalt for a minimum distance of 10 m from the edge of Meridian Street to 10 m into the site.
2. There are boulevard trees located along Meridian Street that conflict with the proposed access widening and must be removed, as shown on the Enclosure. The cost to remove the trees is estimated to be \$3,600.00 as stated in the Corporate Tree Management Policy C456A. All costs associated with removal, compensation value for the tree and a replacement tree will be borne by the owner/applicant. Prior to construction of the access, the owner/applicant must contact Bonnie Fernnanuik at City Operations, Parks and Roadways (780-496-4960).
3. PRIOR TO THE RELEASE OF DRAWINGS FOR BUILDING PERMIT REVIEW, the owner must enter into a Servicing Agreement with the City for the following improvements:
 - a) the existing access to Meridian Street must be removed and reconstructed as a 10 m culvert crossing access to City of Edmonton standards, located 77.3 m from the north property line. The culvert crossing access must be hard surfaced with asphalt for a minimum distance of 10 m from the edge of Meridian Street to 10 m into the site; and

- b) removal of boulevard trees located along Meridian Street that conflict with the proposed access widening.

The Servicing Agreement must be signed PRIOR to the release of the drawings for Building Permit review. Please contact Esther Anderson (780-944-7773) of the Development Servicing Agreements Unit to initiate the Servicing Agreement.

Once signed by the land owner, the Agreement must be returned to Development Servicing Agreements to the attention of Esther Anderson including an irrevocable Letter of Credit in the amount of \$44,200.00 to cover 100% of construction costs and 30% for engineering drawing approval. The owner is also required to have a Civil Engineer submit stamped engineering drawings for approval by Development Engineering and Drawing Review.

Upon engineering drawing approval, security will be reduced to 100% of the construction costs of \$34,000.00. The difference of \$10,200.00 shall be returned to the land owner.

The applicant must contact Trevor Singbeil (780-496-1799) 48 hours prior to removal or construction within city road right-of-way.

4. Any proposed gate must not swing out over road right-of-way. It must either swing into the property or slide along the fence. No objects are permitted to encroach onto, over or under road right-of-way.
5. 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.
6. 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: [:http://www.edmonton.ca/transportation/on_your_streets/on-street-construction-maintenance-permit.aspx](http://www.edmonton.ca/transportation/on_your_streets/on-street-construction-maintenance-permit.aspx)

7. 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. The sidewalk and boulevard will be inspected by Development Inspections prior to construction, and again once construction is complete. All expenses incurred for repair are to be borne by the owner.

ADVISEMENT:

1. Arterial Roadway Assessments were previously paid for this site, and therefore are not owed under this development application.

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

1. The maximum allowable Height of 14.0 metres per section 410.4(5) is varied to allow an excess of 2.55 metres, thereby allowing a Height of 16.55 metres.
2. The minimum required total on-site parking spaces of 114 per section 54.2, schedule 1(A)(27) is varied to allow a deficiency of 93 parking spaces, thereby allowing a total of 21 parking spaces.

Reasons for Decision

[34] The proposed development, an addition to a General Industrial Use building, is a Permitted Use in the (IL) Light Industrial Zone.

[35] The Board notes that the Development Authority determined that the Height of the principal Building with the proposed addition is 16.35 metres. However, it was clarified through the proposed elevation drawings that the principal Building with the proposed addition is 16.55 metres in Height.

[36] Section 410.4(5) of the *Edmonton Zoning Bylaw* states:

The maximum Height shall not exceed 14.0 m, except that the Development Officer may, notwithstanding Section 11.4, grant a variance to permit a greater Height for a building housing a General Industrial Use up to a maximum of 18.0 m, where this is required to facilitate the industrial development of the Use involved.

It is the opinion of the Board that the 2.55-metre excess will not have any impact on the amenities associated with this property or the adjacent properties for the following reasons:

- a. There is undeveloped land to the south, a nature reserve to the north, and Anthony Henday Drive to the east, which will have no impact from the Height adjustment.

- b. There is a letter of support from the west adjacent property for the proposed addition.
- c. Although, solar collectors are not considered for the purpose of Height determination under section 52.2(a) of the *Edmonton Zoning Bylaw*, the Appellant indicated that future solar panel additions will not exceed 16.55 metres in any event.
- d. The Board notes that the subject building is setback approximately 100 metres from the south property line, which is in excess of the minimum setback requirement. Further, there is a right-of-way, which will not impact future development.

[37] With respect to the parking deficiency, the Appellant provided a parking impact study from a similar development and site that indicated that 21 parking spaces for the subject site would be sufficient to cover any business activity within the building and will meet the aggregate demand during peak hours of business. Further, the Board notes that there are six indoor loading spaces that would cover the majority of the additional parking spaces necessitated by the addition as identified by the Development Authority.

[38] Based on the above, 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.



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

Board Members in Attendance:

Ms. K. Cherniawsky; Ms. L. Delfs; Mr. J. Kindrake; Mr. A. Nagy

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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Date: July 17, 2018
Project Number: 274040958-001
File Number: SDAB-D-18-098

Notice of Decision

- [1] On July 5, 2018, the Subdivision and Development Appeal Board (the “Board”) heard an appeal that was filed on **June 12, 2018**. The appeal concerned the decision of the Development Authority, issued on June 11, 2018, to refuse the following development:

Construct a Single Detached House with rear attached Garage, front veranda, fireplace, Basement development (NOT to be used as an additional Dwelling), rear covered deck and demolition of a Single Detached House and Accessory Building (detached Garage).

- [2] The subject property is on Plan 4065AE Blk 8 Lot 13, located at 6202 - 111 Avenue NW, within the (RF1) Single Detached Residential Zone. The Mature Neighbourhood Overlay applies to the subject property.

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

- A copy of the Development Permit application with attachments, proposed plans, and the refused Development Permit;
- The Development Officer’s written submission;
- The Appellant’s written submission; and
- On-line responses from neighbours in support of the proposed development.

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

- Exhibit A – Notification Map showing the community consultation results submitted by the Appellant.
- Exhibit B – Photographs of the subject Site.

Preliminary Matters

- [5] At the outset of the appeal hearing, the Presiding Officer confirmed with the parties in attendance that there was no opposition to the composition of the panel.

- [6] The Presiding Officer outlined how the hearing would be conducted, including the order of appearance of parties, and no opposition was noted.
- [7] The appeal was filed on time, in accordance with section 686 of the *Municipal Government Act*, RSA 2000, c M-26.

Summary of Hearing

i) Position of the Appellant, Mr. K. Stevenson, who was accompanied by Ms. S. Stevenson

- [8] They have lived in the Highlands area for 30 years.
- [9] The proposed development was designed so their elderly parents have easy access to the house. The design will also enable them to age in the house.
- [10] Mr. Stevenson referred to Appendix 1 of their written submission and outlined the letters received in support from neighbouring property owners and photographs of houses in the neighbourhood. A map was referenced to show the results of their consultation (*Exhibit A*).
- [11] Mr. Stevenson indicated that neighbouring property owners received a notice from Development & Zoning Services outlining an incorrect scope of application for the proposed development that included a front attached garage. To correct any misinformation, they reviewed the proposed plans with neighbours within the 60-metre notification radius including neighbours in the general Highlands area prior to the Development Officer's decision.
- [12] In their opinion, the proposed development will increase the value of neighbouring properties.
- [13] In their opinion, the design of the house will be characteristic of the neighbourhood.
- [14] There is minimal change to the original footprint.
- [15] In their opinion, the rear attached garage is consistent with other developments in the neighbourhood.
- [16] The neighbour immediately to the north of the subject site supported the rear attached garage as it would be set back further from the rear lot line. She felt that a detached garage would create shading and impact their sightlines.
- [17] They intend to maintain as much vegetation as they can and will plant extra plants as needed.
- [18] Mr. Stevenson referred to Appendix 4 and the Plot Plan. In his opinion, there is sufficient space between the proposed development and the property to the north.

- [19] Photographs of the subject site and the 111 Avenue and 62 Street intersection were referenced to show how the houses are staggered. (*Exhibit B*).
- [20] Appendix 3-1 and 3-2 were referenced to show front verandas on properties that are in close proximity to the subject site.
- [21] The variance in the front projection is due to the unique shape of the lot and how it is curved.
- [22] The proposed development is within the allowable height for a bungalow. However, they are willing to lower the roof to address any potential sunshading concerns from the neighbours.
- [23] Mr. Stevenson provided the following information in response to questions by the Board:
- a. The point of concern from neighbours was not with an attached garage, but rather with a front garage with front street access. Neighbouring property owners feel the proposed design of the house and rear attached garage fits in with the character the neighbourhood.
 - b. He could not confirm the height of the proposed house but indicated that the roof is lower over the garage.
 - c. The refused plans show that only a bathroom and a bedroom window will face the adjacent property.
 - d. The finishing of the house will be hardy board with white trim.

ii) Position of the Development Officer, Mr. B. Langille

- [24] The Development Authority provided a written submission and did not attend the hearing.

Decision

- [25] 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 development shall be constructed in accordance with the stamped approved drawings by the Subdivision and Development Appeal Board.

2. The Height of the principal building shall not exceed 8.9m as per the Height definition of Section 6.1(49) of the Edmonton Zoning Bylaw 12800.
3. The Basement elevation of structures of two or more Storeys in Height shall be no more than 1.5 m above Grade. The Basement elevation shall be measured as the distance between Grade level and the floor of the first Storey.
4. Platform Structures greater than 1.0 m above Grade shall provide privacy screening to the satisfaction of the Development Officer to prevent visual intrusion into adjacent properties.
5. All unenclosed steps shall not project more than 0.60m into required Setbacks of 1.20m or greater (Reference Section 44.1(a)).
6. All yards, visible from a public roadway other than a lane, shall be seeded or sodded within eighteen (18) consecutive months of the issuance of an Occupancy Certificate for the development. Alternative forms of landscaping may be substituted for seeding or sodding as specified in Section 55.2(4)(b).
7. Landscaping shall be developed in accordance with Section 55 of the Edmonton Zoning Bylaw 12800.
8. A. Landscaping shall be provided on a Site within 18 months of the occupancy of the Single Detached House. Trees and shrubs shall be maintained on a Site for a minimum of 42 months after the occupancy of the Single Detached House (Reference Section 55.2.1).

B. Two deciduous trees with a minimum Caliper of 50 mm, Two coniferous tree with a minimum Height of 2.5 m and Eight shrubs shall be provided on the property. Deciduous shrubs shall have a minimum Height of 300 mm and coniferous shrubs shall have a minimum spread of 450 mm (Reference Section 55.2.1).

C. All Yards visible from a public roadway, other than a Lane, shall be seeded or sodded. Seeding or sodding may be substituted with alternate forms of ground cover, including hard decorative pavers, washed rock, shale or similar treatments, perennials, or artificial turf, provided that all areas of exposed earth are designed as either flower beds or cultivated gardens (Reference Section 55.2.1).
9. Immediately upon demolition of the building, the site shall be cleared of all debris.

Development Advisements:

- i.) Lot grades must comply with the Edmonton Drainage Bylaw 16200. Contact Drainage Services at 780-496-5500 for lot grading inspection inquiries.

- ii.) Any future deck development greater than 0.6m (2ft) in height will require development and building permit approvals
- iii.) Any future deck enclosure or cover requires a separate development and building permit approval.
- iv.) The driveway access must maintain a minimum clearance of 1.5m from any service pedestal and all other surface utilities.
- v.) Any hoarding or construction taking place on road right-of-way requires an OSCAM (On-Street Construction and Maintenance) permit. It should be noted that the hoarding must not damage boulevard trees. The owner or Prime Contractor must apply for an OSCAM online at:
http://www.edmonton.ca/bylaws_licences/licences_permits/oscam-permit-request.aspx
- vi.) Unless otherwise stated, all above references to "section numbers" refer to the authority under the Edmonton Zoning Bylaw 12800.
- vii.) An approved Development Permit means that the proposed development has been reviewed only against the provisions of the Edmonton Zoning Bylaw. It does not remove obligations to conform with other legislation, bylaws or land title instruments such as the Municipal Government Act, the ERCB Directive 079, the Edmonton Safety Codes Permit Bylaw or any caveats, covenants or easements that might be attached to the Site.

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

1. Section 814.3(19) is waived to allow a rear attached Garage.
2. The minimum required Rear Setback of 16.20 metres per section 814.3(4) is varied to allow a deficiency of 12.93 metres, thereby allowing a Rear Setback of 3.27 metres.
3. The minimum required Front Setback of 8.10 metres per section 814.3(1) is varied to allow a deficiency of 1.10 metres, thereby allowing a Front Setback of 7.00 metres.
4. Section 814.3(10) is waived to allow a front veranda projection as shown on the stamped plans.

Reasons for Decision

[27] The proposed development, a Single Detached House, is a Permitted Use in the (RF1) Single Detached Residential Zone.

- [28] The Board notes that the Development Officer's report indicates that the Community Consultation requirement per section 814.5 of the Mature Neighbourhood Overlay was met.
- [29] However, based on the Appellant's oral submissions it appears that the original Community Consultation notification letter from the City of Edmonton contained an error that indicated that the development proposed a front attached Garage. The Appellant rectified the error immediately and canvassed all residents in the 60 metre notification radius showing them the accurate proposed plans that had been reviewed by the Development Authority. Therefore, the Board finds that the Community Consultation requirement was met in substance and the results included 14 letters in support, two verbal responses in support and one neighbour with concerns.
- [30] The Board grants the variances for the following reasons:
- a. There was strong community support for the rear attached Garage, especially from the neighbour immediately to the north across the lane who felt that a detached Garage would cause more adverse impacts, specifically shading to their property as well as impede some of their sightlines as their property sits at a 90 degree angle to the subject Site.
 - b. The proposed development is a bungalow-style House that is well below the maximum allowable Height of 8.9 metres. Further, the attached Garage is lower than the Height of the House. The Board finds that this bungalow-style design combined with articulation in the side elevations will mitigate massing concerns to (west) adjacent neighbour.
 - c. With respect to the Front Setback and the front veranda, based on photographic evidence, the footprint of the existing House is similar to the proposed House. The Board notes that the curvature of the property line creates a reduction in space due to the irregular shape of the corner site. Further, the Board notes that there were no known concerns with the Front Setback of the original House and the variance to the front veranda projection is minimal.
 - d. Based on photographic evidence, the Board finds that the architectural design of the proposed House is characteristic of the Highlands neighbourhood.
 - e. With respect to the Development Officer's concerns regarding Inclusive Design requirements, the Board finds these concerns have been addressed as it heard evidence that the Appellant will be adding a portable ramp from the Garage to the House, which meets section 93.1(a) of the *Edmonton Zoning Bylaw*.

[31] Based on the above, 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.

A handwritten signature in blue ink, appearing to read 'B. Gibson', is written over a faint, light-colored rectangular stamp or watermark.

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

Board Members in Attendance:

Ms. K. Cherniawsky; Ms. L. Delfs; Mr. J. Kindrake; Mr. A. Nagy

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 Development & Zoning Services, the enforcement of that decision is carried out by the Sustainable Development Department, located on the 2nd Floor, Edmonton Tower, 10111 – 104 Avenue NW, Edmonton, AB T5J 0J4.

NOTE: The City of Edmonton does not conduct independent environmental checks of land within the City. If you are concerned about the stability of this property for any purpose, you should conduct your own tests and reviews. The City of Edmonton, when issuing a development permit, makes no representations and offers no warranties as to the suitability of the property for any purpose or as to the presence or absence of any environmental contaminants on the property.



**EDMONTON
TRIBUNALS**

*Subdivision &
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Date: July 17, 2018
Project Number: 274492456-001
File Number: SDAB-D-18-099

Notice of Decision

- [1] On July 5, 2018, the Subdivision and Development Appeal Board (the “Board”) heard an appeal that was filed on **June 12, 2018**. The appeal concerned the decision of the Development Authority, issued on May 25, 2018, to refuse the following development:

Construct three Dwellings of Row Housing with Basement development (NOT to be used as an additional Dwelling), fireplace, veranda, 3rd floor patio and construct a detached Garage.

- [2] The subject property is on Plan 1389HW Blk 30 Lot 15, located at 8510 - 83 Avenue NW, within the (RF3) Small Scale Infill Development Zone. The Mature Neighbourhood Overlay applies to the subject property.
- [3] The following documents were received prior to the hearing and form part of the record:
- A copy of the Development Permit application with attachments, proposed plans, and the refused Development Permit;
 - The Development Officer’s written submission;
 - The Appellant’s revised plans and written submissions;
 - An online response with a property owner with a neutral position; and
 - One e-mail in opposition to the proposed development.

Preliminary Matters

- [4] At the outset of the appeal hearing, the Presiding Officer confirmed with the parties in attendance that there was no opposition to the composition of the panel.
- [5] The Presiding Officer outlined how the hearing would be conducted, including the order of appearance of parties, and no opposition was noted.
- [6] The appeal was filed on time, in accordance with section 686 of the *Municipal Government Act*, RSA 2000, c M-26.

- [7] The Presiding Officer advised the Appellant that the Board would not consider any of the revised plans that were submitted with the appeal. The plans that were reviewed by the Development Officer with the initial application and refused are the subject of this appeal hearing. Information that was not reviewed by the Development Officer will not be considered. Decisions of the Board are based on a review of the development permit application completed by the Development Officer. It was also noted that some information required by the Development Officer to complete a thorough review was not provided.
- [8] The Presiding Officer indicated there is an option to withdraw the appeal and submit revised plans to the Development Authority.

Summary of Hearing

i) Position of the Appellants, Mr. M. Asadi and Mr. R. Khorasani:

- [9] Mr. Khorasani indicated that they are in front of the Board today because several of the variances are necessary due to the size and location of the lot which cannot be changed. He noted that the plans were revised in an attempt to address some of the deficiencies that are required.
- [10] The Presiding Officer reiterated that the revised plans could be submitted to the Development Authority with a new development permit application.
- [11] The Board Officer noted the re-submittal requirements contained in the *Edmonton Zoning Bylaw*.
- [12] After a brief recess to discuss the options, Mr. Khorasani advised the Board that they would like to proceed with the hearing today.
- [13] The Presiding Officer brought to the attention of the parties the Alberta Court of Appeal decision, *Thomas v Edmonton (City)*, 2015 ABCA 30. In this decision, the Court has directed that the Board does not have the power to waive the requirement for Community Consultation. It was further noted that Community Consultation had not been properly completed and submitted for this development permit application.
- [14] Mr. Khorasani referenced the notification map and advised that there are existing four dwelling housing units located on either side of the subject site on lots that are the same size as the subject lot.
- [15] The decision was made to reduce their proposed row housing development from four units to three units in order to address the size of the lot and still have the ability to develop garages on the site.

- [16] Mr. Khorasani submitted that it is his belief that this development is in keeping with the vision of the City to provide affordable housing in this neighbourhood. He acknowledged that the development requires variances to the development regulations. Photographs of other nearby larger row housing developments were referenced and he questioned how those row housing developments were allowed to be built on adjacent lots.
- [17] It was his assumption that Community Consultation was completed because no one objected to the proposed development.
- [18] Mr. Asadi further questioned why this development was refused when larger row housing developments have been approved on lots of the same size in the same neighbourhood. Attempts have been made to address the problems with the Development Officer but the size and location of the lot cannot be changed. He is trying to develop affordable housing in this neighbourhood that is in keeping with the vision of the City. The development permit process is long and time consuming. He will have to wait six months to re-apply if this development is refused which will result in a significant financial burden.

ii) Position of Affected Property Owner, Ms. M. Pelka:

- [19] Ms. Pelka advised that she owns a property close to the subject site and is concerned about the impact of the proposed development on parking in the area.
- [20] She advised that residents in the neighbourhood do not park their vehicles in the garage. The garages are used for storage which results in numerous vehicles being parked on the street.
- [21] The proposed three unit row house will bring at least six more vehicles into the neighbourhood.
- [22] It was her opinion that some adjustments can be made to the proposed development to reduce the size of the variances required to make it more suitable for the lot.

iii) Position of the Development Officer, Mr. J. Angeles

- [23] The Development Authority provided a written submission and did not attend the hearing.

iv) Rebuttal of the Appellant

- [24] The proposed development is for three units instead of four to allow the development of garages that will provide on-site parking which should address the concerns of Ms. Pelka regarding the lack of on-street parking.

Decision

- [25] The appeal is **DENIED** and the decision of the Development Authority is **CONFIRMED**. The development is **REFUSED**.

Reasons for Decision

- [26] The proposed development, a Row House, is a Permitted Use in the (RF3) Small Scale Infill Development Zone.

- [27] Section 683.1(2) of the *Municipal Government Act* states:

An application is complete if, in the opinion of the development authority, the application contains the documents and other information necessary to review the application.

- [28] Based on the evidence provided by the Development Officer, the development permit application did not contain information necessary to review seven (7) development regulations, including two (2) development regulations pursuant to the Mature Neighbourhood Overlay which trigger regulations pertaining to community consultation.

- [29] This creates two insurmountable problems for the Board.

First, as directed by the Alberta Court of Appeal in *Thomas v Edmonton (City)*, 2015 ABCA 30, the Board has no jurisdiction under section 687(3)(d) of the *Municipal Government Act* to waive the Community Consultation requirement pursuant to the *Edmonton Zoning Bylaw*. The Board takes the view that the requirements of section 814.5(1) of the *Edmonton Zoning Bylaw* have not been met because the Development Officer was not provided with information required to properly assess variances required to section 814.3(8), the Mature Neighbourhood Overlay. Therefore, the Development Officer could not properly notify assessed land owners abutting the site of the proposed development to outline the requested variances and solicit comments directly related to the proposed variances.

Second, in the normal course the Board depends on a thorough review of a proposed development by the Development Authority. In this case, the Development Officer did not have sufficient information to assess the development and review the requirements of the *Edmonton Zoning Bylaw* to determine the number and size of any potential variances to the *Edmonton Zoning Bylaw*.

- [30] Section 683.1(8) of the *Municipal Government Act* states:

If the applicant fails to submit all the outstanding information and documents on or before the date referred to in subsection (6), the application is deemed to be refused.

[31] Section 683.1(9) of the *Municipal Government Act* states:

If an application is deemed to be refused under subsection (8), the development authority must issue to the applicant a notice in the form and manner provided for in the land use bylaw that the application was refused and the reason for refusal.

[32] The Board notes that the Applicant received notice of the refusal and the reasons for refusal when the development permit was refused on May 25, 2018. The decision of the Development Officer identified all of the variances required to development regulations pursuant to the *Edmonton Zoning Bylaw* as well as information not provided to properly review specific development regulations.

[33] The Appellant tried to overcome this issue by arguing that the Board could sever the variances required for the Locational Criteria and the Site Width from the other variances required and approve a three dwelling Row House in principle while leaving other details and information to be provided at a later date. However, development permit applications cannot be dealt with in a piecemeal manner and require a complete vetting of all of the necessary information by the Development Authority prior to proceeding to appeal at the Subdivision and Development Appeal Board. This would result in significant uncertainty and the potential to circumvent the requirements of the *Municipal Government Act* and the *Edmonton Zoning Bylaw*.

[34] The Board acknowledges that the Appellant referenced photographs of similar Row Housing developments in the neighbourhood to support his position that the development should be approved. However, the Board did not receive any evidence to establish other details concerning these developments, including site dimensions and whether or not these were illegal developments, legal non-conforming developments or permitted developments for which variances had been granted. Therefore, the Board placed little weight on this evidence other than to note that there are other Row Housing developments on other lots in this neighbourhood.

[35] Therefore, for all the above reasons, the Board finds that the appeal is denied and the development is refused.



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

Board Members in Attendance: Ms. K. Cherniawsky; Ms. L. Delfs; Mr. J. Kindrake; Mr. A. Nagy

Important Information for the Applicant/Appellant

1. 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.
2. When a decision on a Development Permit application has been rendered by Development & Zoning Services, the enforcement of that decision is carried out by the Sustainable Development Department, located on the 2nd Floor, Edmonton Tower, 10111 – 104 Avenue NW, Edmonton, AB T5J 0J4.