



**EDMONTON
TRIBUNALS**

*Subdivision &
Development
Appeal Board*

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Date: July 21, 2016
Project Number: 219149376-001
File Number: SDAB-D-16-158

Notice of Decision

- [1] On July 6, 2016, the Subdivision and Development Appeal Board heard an appeal that was filed on **June 13, 2016**. The appeal concerned the decision of the Development Authority, issued on May 27, 2016, to refuse the following development:

**To operate a Major Home Based Business (Construction Contractor -
VINNY LAM CONSTRUCTION LTD)**

- [2] The subject property is on Plan 8148AC Blk 44 Lots 24-25, located at 12418 - 85 Street NW, within the RF3 Small Scale Infill Development Zone. The Mature Neighbourhood Overlay applies to the subject property.
- [3] The following documents, which were received prior to the hearing and are on file, were read into the record:
- A package of photos submitted by the Appellant;
 - The refused development permit with attachments;
 - A registered mail delivery notification;
 - The Development Officer's written submissions;
 - A letter opposing the proposed development;
 - An online response in opposition; and
 - An e-mail in opposition.

Preliminary Matter

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

Summary of Hearing

i) Position of the Appellants, Mr. V. Lam & Mr. A. Wagram

- [7] The Appellants reiterated the Grounds for Appeal included in the Notice of Appeal.
- [8] They stated that they are not a major business. They are a small contractor. Although the yard on the subject Site got out of control, it has recently been cleaned up and complies with the requirements of a Home Based Business. They took all of the clutter in the yard to the dump. This clutter consisted of leftover materials from previous contracting jobs that were no longer needed.
- [9] Approximately 90 percent of the work associated with the business is done on location. Nothing is pre-built on the subject Site. The loading and unloading of materials that takes place on Site is consistent with a Home Based Business. They do not have workers travelling to and from the Site. They only store tools, ladders and small materials that they need to take to a particular job Site, and those items are stored in the Garage. Larger materials are not stored on the subject Site.
- [10] With respect to the vehicles on the property, the overweight cubed van that the Development Officer took issue with is being sold. Mr. Lam's wife also owns a van that was being parked on the lawn due to congestion in the neighbourhood, but they now understand that parking on the lawn is prohibited. There is also an enclosed trailer that Mr. Lam parks in the Driveway. He uses the trailer to transport materials to and from the job Site.

ii) Position of the Development Officer, Ms. F. Hamilton

- [11] The Development Officer stated that a City Compliance Officer attended the subject Site the week of the hearing and confirmed that the photos of the Site submitted by the Appellants are an accurate representation of the current state of the property. It has been cleaned up.
- [12] As the overweight vehicle is being sold and will no longer be on the property, the Development Authority's remaining concern is the enclosed trailer. The City does not support parking the enclosed trailer on the Driveway. The City would prefer that the trailer be parked at the rear of the property if it has to be parked at the Site. While there is enough parking to accommodate the trailer on Site, it would require a variance to the *Zoning Bylaw*, as it would be considered outdoor storage of equipment related to the business.
- [13] Given the cleanup that has taken place, the City is more comfortable identifying the proposed development as a Home Based Business. A review of the photos illustrates the appearance of a more typical residential yard. The storage that was previously occurring on this site was not typical of a residential area.

iii) Rebuttal of the Appellant

- [14] Mr. Lam typically backs the enclosed trailer into the front Driveway to facilitate loading and unloading. However, he would be willing to park the trailer in the rear of the property, as it would likely create less noise.
- [15] The neighbours have not brought any concerns to them directly. After cleaning up the yard and apologizing, there have not been any issues.
- [16] They will have no trouble complying with the conditions suggested by the Development Officer.

Decision

- [17] The appeal is **ALLOWED** and the decision of the Development Authority is **REVOKED**. The development is **GRANTED** with the following conditions:
- i)* This Development Permit may be revoked or invalidated, at any time, if the Major Home Based Business as stated in the Permit Details, or if the character of the Dwelling or Accessory Building, changes.
 - ii)* The Major Home Based Business shall be operated by a resident of the Dwelling on the property (Section 7.3.7).
 - iii)* The Major Home Based Business must be secondary to the residential Use of the building (Section 7.3.7).
 - iv)* A minimum of 3 parking spaces shall be used for the purpose of accommodating the vehicles of clients and residents in connection with the Single Detached House or the Major Home Based Business (Reference Sections 54.1.1.c, 54.2.1.a, and 54.2.4).
 - v)* There shall be no exterior display or advertisement other than an identification plaque or Sign a maximum of 20 cm x 30.5 cm in size located on the Dwelling (Section 75.1).
 - vi)* There shall be no mechanical or electrical equipment used that creates external noise, or visible and audible interference with home electronics equipment in adjacent Dwellings (Section 75.2).
 - vii)* The Major Home Based Business shall not generate pedestrian or vehicular traffic, or parking, in excess of that which is characteristic of the Zone in which it is located (Section 75.3).
 - viii)* The number of non-resident employees of business partners working on-site shall not exceed two at any one time (Section 75.4).
 - ix)* There shall be no outdoor business activity, or outdoor storage of material or equipment associated with the business, except for one trailer with a maximum length of 14 feet

stored on the rear driveway. Indoor storage related to the business activity shall be allowed in either the Dwelling or Accessory buildings.

- x) The Major Home Based Business shall not change the principal character or external appearance of the Dwelling or Accessory buildings (Section 75.6).
- xi) A Major Home Based Business shall not be allowed within the same principal Dwelling containing a Secondary Suite or within the same Site containing a Garage Suite or a Garden Suite and an associated principal Dwelling (Section 75.10).
- xii) All commercial, industrial, and overweight vehicles, including trailers used for this business, shall be parked at an approved storage facility. This Development Permit may be revoked if any commercial, industrial and overweight vehicles are parked or stored in a residential area.
- xiii) This approval is for a 5-year period from the date of this decision. A new Development Permit must be obtained to continue to operate the business from this location.
- xiv) The overweight vehicle (cubed van) shown in photographs of the Site shall be removed from the Site.

[18] In granting the development, the following variance to the *Zoning Bylaw* is granted:

- i) The requirements of Section 75.5 are varied to allow the 14-foot utility trailer to be stored on Site. However, when on Site, the trailer must be stored in the rear parking area.

Reasons for Decision

[19] A Major Home Based Business is a Discretionary Use in the RF3 Small Scale Infill Development Zone.

[20] The Board accepts the Appellants' submission that there are no employee or client visits that occur on Site. The Appellant confirmed to this Board that the storage of materials and equipment has been confined to the existing accessory structure (Garage). The updated photos provided at the hearing confirmed that all materials on Site have been removed. The Development Officer stated that a Compliance Officer from the City has also confirmed that this is the current state of the Site.

[21] The Board does not support the Development Officer's determination that this is a General Contractor Services use but has made a finding that it is a Major Home Based Business.

[22] The Board notes the letters, emails and submissions in opposition to this application, but their concerns appear to be associated with the unsightly appearance and storage of materials that are no longer occurring on the Site.

[23] The Board, by requiring the utility trailer to be stored in the rear yard, has mitigated other concerns raised by the adjoining neighbour with respect to noise.

[24] Given the conditions included and based on the submissions made at the hearing, 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 in accordance with Section 687(3)(d) of the *Municipal Government Act*.

Mr. V. Laberge, Presiding Officer
Subdivision and Development Appeal Board

Board members: Mr. B. Gibson, Ms. M. McCallum, Mr. L. Pratt, Mr. J. Wall

Important Information for the Applicant/Appellant

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



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Date: July 21, 2016
Project Number: 189279570-001
File Number: SDAB-D-16-159

Notice of Decision

[1] On July 6, 2016, the Subdivision and Development Appeal Board heard an appeal that was filed on **June 8, 2016**. The appeal concerned the decision of the Development Authority, issued on June 6, 2016 to refuse the following development:

To install (2) Fascia On-premises Signs (Pizza Hut)

[2] The subject property is on Plan 1322505 Blk 19 Lot 17, located at 13317 - 115 Avenue NW, within the RA9 High Rise Apartment Zone.

[3] The following documents, which were received prior to the hearing and are on file, were read into the record:

- Photos submitted with the appeal;
- Additional drawings;
- The refused development permit with plans attached;
- A Sign Combo Permit Application; and
- The Development Officer's written submissions.

Preliminary Matter

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

Summary of Hearing*i) Position of the Appellant, Mr. S. Curtis, Mr. G. Christenson & Mr. A. Walker*

- [7] The Appellants reiterated the Grounds for Appeal included in the Notice of Appeal.
- [8] By way of background, they explained that they purchased the subject Site to build a two-phase retirement community that required re-zoning to RA9. It also required the temporary relocation of two businesses to another portion of the Site, one being a Pizza Hut.
- [9] Part of the relocation agreement with Pizza Hut was to keep Pizza Hut's Signage presence equal to or above what they had before. The Appellant's will be penalized if they are not able to obtain a development permit for the Signs. The difficulty is that the Signs they had previously do not comply with RA9 zoning regulations. They comply with the previous commercial zoning of the Site.
- [10] With the commitment they have made to Pizza Hut, a re-zoning may be necessary. However, the Pizza Hut's temporary location is where the second phase of the Appellant's retirement development will be located in approximately two years. They are attempting to avoid re-zoning to a commercial zone simply to accommodate temporary Signs at a temporary location. Once construction of the second phase of the retirement development begins, they would then have to re-zone the Site again to RA9 to accommodate the retirement development.
- [11] The Appellants advised the Board that they consulted other businesses on the premises and not one opposed the proposed Signage for the Pizza Hut. Four of the businesses voiced support, and the other two did not only because the employees present were not in a management position and did not have authority to do so.
- [12] The location of the Pizza Hut is strictly temporary, meaning the proposed Signs will be temporary as well. The liberal estimate for when construction will begin on the second phase of the residential development on Site is five to seven years from now, but realistically it could be as little as two years from now.
- [13] Further, the Signs in question cannot be seen from residences in the area. They will face a parking lot and mall to the south of the subject Site.

ii) Position of the Development Officers, R. Lee & S. Ahuja

- [14] The Development Officers confirmed that the subject Site was previously within a CSC commercial zone. It has since been rezoned to RA9, a residential zone that follows Sign Schedule 59B of the *Zoning Bylaw*. This schedule has restrictions in terms of Sign area. Both of the Appellants' proposed Signs exceed the square meterage associated with these restrictions. Because the purpose of the RA9 zone is residential in nature, the City does not support large, commercial Signs in that zone.

[15] Further, the *Zoning Bylaw* calls for consistency in Signage. The size of the proposed Signs is not consistent with other Signs associated with other businesses on Site. One of the proposed Signs stands out in particular because it is located above the canopy while the other businesses' Signs hang below it.

[16] With respect to the allegation that the larger-sized Sign is necessary to make it visible from the street, there are other mediums of advertisement the Appellants can use, such as free-standing Signs, which can be placed closer to the street and would comply with the requirements of the RA9 zone.

iii) Rebuttal of the Appellant

[17] In rebuttal, the Appellants stated, with respect to placing alternative Signs closer to the street, that there are free-standing Signs on the premises, but they have no control over what goes on those Signs. They are owned by another entity.

[18] In terms of consistency with other Signs on Site, there is a Rexall Pharmacy located on the Site with large Signage that hangs underneath the canopy as well. Consistency in Signage is not a significant factor in this appeal.

Decision

[19] The appeal is ALLOWED and the decision of the Development Authority is REVOKED. The development is GRANTED with the following conditions:

- i) The proposed Fascia On-premises Signs shall comply with the approved plans submitted.
- ii) The intensity of exposed bulbs on a Sign, excluding Digital Signs, shall not exceed 1100 lumens (Reference Section 59.2(4)).

[20] In granting the development, the following variances to the *Zoning Bylaw* are allowed:

- iii) With respect to the upper proposed Sign, the size restriction prescribed by Section 59B.2(1)(b) is varied 2.69 square metres from 3 square metres to 5.69 square metres.
- iv) With respect to the bottom proposed Sign, the size restriction prescribed by Section 59B.2(1)(b) is varied 2.88 square metres from 3 square metres to 5.88 square metres.

Reasons for Decision

[21] Fascia On-premises Signs are a Discretionary Use in the RA9 High Rise Apartment Zone.

[22] The Board notes, with the agreement of both the Development Officer and the Appellant that the subject Site was previously zoned CSC Shopping Centre Zone, which was typical

of such a location. The subject Site was subsequently re-zoned to RA9 High Rise Apartment Zone to accommodate a future high density residential development. The existing building is not changing in any way, and the proposed Signs are being applied to an existing building.

- [23] The Board notes that the consensus reached amongst all parties was that the two Fascia On-premises Signs that are part of the development application would have fully complied with the *Zoning Bylaw* had the subject Site maintained its CSC zoning.
- [24] The Board accepts the verbal representation provided by the Appellants that there were no current tenants within the 60-metre notification radius that objected to the proposed Signs.
- [25] The Board recognizes, based on the evidence provided by the Appellants, that the life of the existing building is expected to be short term. The existing building could remain at this location for as little as 18 months or for as long as five to seven years. Therefore, the proposed Signs may be temporary.
- [26] The Board further notes that these Fascia On-premises Signs do not project onto any residential use. They face the parking lot to the south.
- [27] Based on photographic evidence provided at this hearing, it was noted that there are, existing Signs in the portions of lands zoned CSC in the area, larger Fascia On-premises Signs than what is being applied for in this development permit application.
- [28] The Board is bound, when revoking a decision of a Development Officer, by Section 687(3)(d) of the *Municipal Government Act* and has found that granting 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. V. Laberge, Presiding Officer
Subdivision and Development Appeal Board

Board members: Mr. B. Gibson, Ms. M. McCallum, Mr. L. Pratt, Mr. J. Wall

Important Information for the Applicant/Appellant

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 - 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.
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Date: July 21, 2016
Project Number: 189089318-001
File Number: SDAB-D-16-160

Notice of Decision

- [1] On July 6, 2016, the Subdivision and Development Appeal Board heard an appeal that was filed on **June 9, 2016**. The appeal concerned the decision of the Development Authority, issued on May 20, 2016, to approve the following development:

To construct a Single Detached House with a front veranda, fireplace, and Basement development (NOT to be used as an additional Dwelling)

- [2] The subject property is on Plan 1621345 Blk 10 Lot 74, located at 11657 - 73 Avenue NW, within the RF1 Single Detached Residential Zone. Mature Neighbourhood Overlay and the McKernan/Belgravia Station Area redevelopment plan apply to the subject property.
- [3] The following documents, which were received prior to the hearing and are on file, were read into the record:
- A package of plans from the Appellant;
 - The approved development permit;
 - A House Combo Permit application;
 - A revised lot grading plan;
 - A revised lot plan;
 - The signed approval with plans attached;
 - A signed waiver;
 - The Development Officer's written submissions; and
 - An online response in opposition to the proposed development.

Preliminary Matter

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

Summary of Hearing

i) Position of the Appellant, Ms. S. Kamp

- [7] The Appellant reiterated the Grounds for Appeal included in the Notice of Appeal.
- [8] The proposed development is a very narrow home. These kinds of homes are rapidly changing the look and feel of the neighbourhood. There is less green space and there are fewer older trees.
- [9] Although the variance to the cantilever does not seem significant, it faces the adjacent narrow home and adds massing to the streetscape. If it is ultimately only a difference of 0.5 metres, the proposed development should be able to proceed without requiring such an insignificant variance.
- [10] The cantilever manipulation appears to be a way of getting around the *Zoning Bylaw*. It is a way to add additional floor space. However, as more and more variances are allowed to the cantilevers, the massing effect created by these homes becomes greater and greater.
- [11] The Respondent met with the community league to explain the proposed development. It was only then that the community league realized that the cantilever came all the way down to the ground. It means the houses on those adjacent lots will be very close together, creating a significant massing effect.

iii) Position of Affected Property Owner in Support of the Appellant, Mr. R. Tait

- [12] Mr. Tait stated that the cantilevers are two feet from the property line bordering onto his property. The difference in the length of the cantilevers affects the amount of sunlight that reaches his property.

vi) Position of the Development Officer, Mr. G. Robinson

- [13] The Development Officer stated that the projection variances in question here are not covered by the Mature Neighbourhood Overlay, and, therefore, the Respondent was not required to complete a community consultation. Only a variance to Sections 1 through 23 of the Mature Neighbourhood Overlay would require official community consultation, and this variance does not fall within those provisions.
- [14] He allowed the variance because he does not believe it will have a material impact on the other neighbours in the area. The City acknowledges the concerns from the community but believes that the variance is appropriate because the impact it produces will almost exclusively affect the adjacent lot, which is owned by the same Applicant. Based on the

Development Officer's previous experience, it is his understanding that that the eventual owners of the homes being built on those lots will know and understand the issue before purchasing the homes.

[15] With respect to any potential massing effect, unless the proposed development is viewed from an extreme angle, no one will be able to notice any significant massing. As there will be another structure on the lot next door, any massing effect will be imperceptible once that building is erected. The only real effect those two buildings will have will be on each other.

x) *Position of the Respondent, Mr. M. Agnew*

[16] Mr. Agnew stated that, once the proposed development was approved and notices were sent out, he did meet with the community league to explain the variance to them, even though he was not required to do so by the *Zoning Bylaw*.

[17] The variance only applies to the second floor of the proposed development. The main floor is compliant with all zoning regulations.

[18] In building the proposed development, efforts were made to ensure that massing would not be an issue. The house going up on the adjoining lot will have the same cantilever projection. The exteriors of the two homes will be different, but the cantilevers will line up with each other.

[19] The package presented to the Board at the hearing shows what the floor plan would look like if it complied with the *Zoning Bylaw* with no variance. While it achieves compliance, it is less functional and less conducive to satisfying the needs of a family of four or five people. Market feedback indicates that the bedroom would simply be too small.

v) *Rebuttal of the Appellant*

[20] In rebuttal, with respect to the emphasis that has been placed on the streetscape and the appearance of massing from the street, the Appellant stated that it is not accurate to say that the only important view of the development is from the front street. Back alleys are also important. In this particular area, there are Garage Suites behind the homes that have people coming in and out of the alley. The variance will be perceptible from the rear of the proposed development.

[21] The community league is concerned that, once this type of variance is allowed once, the same thing will be requested more and more frequently.

Decision

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

[23] In granting the development, the following variances to the *Zoning Bylaw* are allowed:

- xi)* As stated in the approved development permit, the projection requirements of Section 44.2 regarding the width of the cantilevers facing 11655-73 Avenue NW are varied from 4.43 metres (33% of the length of the house wall) to 5.49 metres (40.9% of the length of the house wall).
- xii)* As stated in the approved development permit, the cantilever length projection requirements of Section 44.2 are varied from 3.1 metres to 3.66 metres for the cantilevered portion of the house wall facing 11655-73 Avenue NW.

Reasons for Decision

[24] The proposed development, Single Detached Housing, is a Permitted Use in the RF1 Single Detached Residential Zone.

[25] It is important to note that, save for the one variance, all other elements of the proposed development were in full compliance with the *Zoning Bylaw*.

[26] The Board notes that, given the presentation by both the Appellant and Respondent, the portions of the cantilevers that require a variance are situated similarly between the two developments. In other words, they face each other. The variance granted is not on any adjacent property line other than the new development proposed on lot 75.

[27] The Board notes that this cantilever variance is on the second floor only and cannot be seen from the street, as there is a cantilever portion on the northeast side of the proposed development that would shield this variance from view. Similarly, the southeast portion of the rear cantilever already exists and would shield or mitigate the presence of that cantilever that is being varied.

[28] The Board heard from both the Appellant and the Respondent that conversations were held between the parties notwithstanding that community consultation was not required pursuant to the Mature Neighbourhood Overlay in relation to this application. The Appellant acknowledged that the Respondent, although not required to do so by the *Zoning Bylaw*, consulted with the community league regarding the variance and that she had obtained a much better understanding of the variance being requested as a result of that consultation.

[29] The Board notes that some opposition to the proposed development was received as correspondence prior to the hearing and in person at the hearing. Nevertheless, given the location of the proposed variances, the Board cannot make a finding that what is being proposed would increase the massing in a way that would materially impact the surrounding neighbourhood.

[30] Therefore, pursuant to Section 687(3)(d) of the *Municipal Government Act*, the Board has determined 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. V. Laberge, Presiding Officer
Subdivision and Development Appeal Board

Board members: Mr. B. Gibson, Ms. M. McCallum, Mr. L. Pratt, Mr. J. Wall

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