Edmonton Subdivision and Development Appeal Board

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Project Number: 153614664-001
File Number: SDAB-D-15-130

Notice of Decision

This appeal dated July 17, 2014, from the decision of the Development Authority for permission to:

Construct a Single Detached House with a covered front and side veranda, upper front covered balcony (2.44 m x 4.723 m), upper side covered balcony (1.83 m x 1.83 m), partially covered rear deck with a hot tub (7.21m x 5.48m) basement development (not to be used as an additional Dwelling) and to demolish a Single Detached House and rear Detached Garage

On Plan 8073ET Blk 1 Lot 12, located at 7320 - Ada Boulevard NW, was heard by the Subdivision and Development Appeal Board at its hearing held on June 18, 2015. The decision of the Board was as follows:

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 Board heard from Mr. Noce, Legal Counsel for the Appellants, who asked the Board to postpone the hearing based on the following procedural issues:

1. The agenda package that was provided to the Board and the public does not provide an accurate history of this development application.
2. In addition, the agenda package lacked both an explanation of the appeal process and the information necessary to make an accurate presentation. The lack of this material may have prevented other interested parties from choosing to join his clients to contest the development permit.
3. It was also his view that the property owner should be the Appellant and not his clients because Section 11.4(2) of the *Edmonton Zoning Bylaw* does not provide the Development Authority with discretionary powers to vary the maximum allowable height requirement. Accordingly, the property owner should have been asked to submit revised plans, without which his permit application should have been denied in which case he would be the one having to appeal the decision rather than appearing as a Respondent to the appeal his clients have brought.
4. Mr. Noce argued that the process was backwards because the property owner should be the one having to justify the required variance. Further, upon reviewing the file, Mr. Noce

discovered that the development permit appearing on the file before the Board today is different than the original permit dated June 6, 2014.

5. In particular, without any explanation, the height of the proposed building from grade to midpoint, although still within the maximum allowable Height requirement of 8.6 metres, was changed from 7.4 metres to 8.4 metres. The City therefore changed evidence that was before the Court of Appeal and the previous Subdivision and Development Appeal Board hearing.
6. It was his opinion that the hearing should be postponed because of the many administrative and procedural irregularities that need to be addressed. He asked that a revised agenda with a history of the application be provided. He also asked the City to provide an explanation regarding the change made on the development permit

The Board then heard from Mr. Wakefield, Legal Counsel for the Respondent, who made the following points:

1. He did not support the request for a postponement because this matter has already been delayed by a complicated procedural history and the Appellant's availability.
2. In addition, it would be a hardship to adjourn the proceedings because of the number of people in attendance who took time from work in order to be in attendance.
3. It was his opinion that fairness must apply to all parties, that the hearing should not be scheduled based solely on the preferences of the Appellants, and that the Respondent has the right to have the appeal heard. It was his observation that all of the procedural history and relevant information was contained in his written submission as well as the submission provided by the Appellant.
4. It was his contention that it is inconsequential whether or not there was a change made to the development permit because both the Appellant and Respondent agree on the height of the existing building, that being 10.33 metres. It was his opinion that error on the development permit or omissions from the agenda package can be dealt with during the course of the hearing.
5. Mr. Wakefield referenced *Rau v Edmonton (City)*, 2015 ABCA 136 at para 18, noting that the Court simply directed the Board to reconsider the merits of the appeal, and did not direct a change in the parties as suggested by Mr. Noce.
6. Mr. Wakefield acknowledged that errors have clearly been made, but that his client, at all times, believed that he had a valid development permit, and expected to be moved in and living in this house by now.

The Board then heard from Mr. Anlin Wen, representing the Sustainable Development Department, who provided the following information:

1. Mr. Wen confirmed that the development permit was dated June 6, 2014.
2. The City's system updates the development permit following the completion of a review.
3. He assumed that a typing error was made on the development permit, but that the calculations were correct.
4. He reviewed the calculations yesterday and determined that the building does not exceed the maximum allowable height requirement.

Mr. Noce made the following points in rebuttal:

1. The public is entitled to know exactly what is before the Board so that they can decide whether or not to participate in the hearing process.
2. He reiterated his opinion that the City changed evidence that was before the Court of Appeal and that the accurate height calculations do matter because the City would have had to refuse the development permit at the time of review.
3. He reiterated his opinion that the change in the permit is significant enough to warrant a postponement of the hearing and that the additional time will allow the City to provide an explanation regarding the change in the calculations.

In sur-rebuttal Mr. Wakefield submitted case law and case commentary, marked Exhibits A1 and A2, to support the proposition that a proceeding should not be postponed unless some real possibility of prejudice is established. In *Bridgeland Riverside Community Assn v Calgary (City)*, 1982 ABCA 138, at paras 27-28, the Alberta Court of Appeal held that "no defect should vitiate a proceeding unless, as a result of it, some real possibility of prejudice to the attacking party is shown". It was Mr. Wakefield's opinion that no such prejudice had been established by Mr. Noce.

Finally, in response to a question, Mr. Noce acknowledged that he had found no authority for the proposition that the Subdivision and Development Appeal Board is required to provide additional information beyond that which is normally provided in the notice to the public.

DECISION:

The request for postponement is DENIED.

REASONS FOR DECISION:

The Board finds the following:

1. Proper notice of the hearing was provided to affected parties and there is no requirement to provide a detailed development history for a Site with the notice.
2. Based on the decision rendered by the Alberta Court of Appeal, the Board finds that the Appellant in this matter is properly the Appellant because an appeal has been filed against a Development Permit that was issued without variance.
3. This matter has been delayed for more than one year, and granting a further postponement will result in a hardship and burden for the number of interested parties in attendance.

The Presiding Officer then addressed the issue of jurisdiction and whether the appeal was filed outside of the allowable 14 day appeal period, pursuant to the requirements under Sections 686(1)(b) and 685(2) of the *Municipal Government Act.*

Mr. Wakefield advised the Board that he was not contesting the issue of whether the appeal had been filed on time and, in any event, based on the verbal and written evidence provided by the Appellants, the Board finds that the Appellants received constructive notice sometime between

July 12 and 14, 2014 and filed an appeal on July 17, 2014, which is within the allowable 14 day appeal period.

MOTION:

The Board assumes jurisdiction to hear the matter under appeal.

REASON FOR DECISION:

The Board finds the following:

1. Based on the evidence provided, the Board applied Section 686(1)(b) of the *Municipal Government Act*, and therefore found that the appeal was filed within the allowable 14 days.

SUMMARY OF HEARING (CONTINUED):

The Board heard an appeal of the decision of the Development Authority to approve, subject to conditions, an application to construct a Single Detached house with a covered front and side veranda, upper front covered balcony (2.44 m by 4.723 m), upper side covered balcony (1.83 m by 1.83 m), partially covered rear deck with a hot tub (7.21 m by 5.48 m), basement development (not to be used as an additional Dwelling) and to demolish a Single Detached House and rear Detached Garage, located at 7320 Ada Boulevard NW. The subject site is zoned RF1 Single Detached Residential Zone and is within the Mature Neighbourhood Overlay. The approved development permit application was subsequently appealed by an adjacent property owner.

The Board notes that a detailed written submission was received from Legal Counsel for the Respondent on June 12, 2015, a copy of which is on file.

The Board further notes that a letter in support of the appeal was received from an affected property owner on June 16, 2015 and that an on-line response was received from an affected property owner in support of the proposed development, copies of which are on file.

The Appellants submitted a detailed written submission on June 17, 2015, a copy of which is on file.

The Board heard from Mr. Robert Noce, Legal Counsel for the Appellant, who provided the following information in support of the appeal:

1. Mr. Noce provided an historical timeline for development permit application and the procedural history that followed thereafter with respect to the construction of a Single Detached House and an Accessory Building on the subject site.
2. The fact that, on April 1, 2015, the full panel of the Alberta Court of Appeal was able to hear the appeal for which leave had been previously granted on December 10, 2015, was demonstrative of the genuine effort from both parties to move the matter forward.

3. He did not dispute the fact that the maximum allowable height for the Single Detached House was 10 metres according to the development regulations contained in the RF1 Single Detached Residential Zone. However, the Mature Neighbourhood Overlay only permits a maximum allowable height of 8.6 metres and the Development Officer did not consider this regulation during the initial review.
4. The Court of Appeal determined that the height of the existing house is 10.33 metres and exceeds the maximum allowable height of 10.1 metres by 0.23 metres.
5. The proposed development plan is over the maximum allowable height and does not comply with the General Purpose of the Mature Neighbourhood Overlay because it interferes with the amenities of the neighbourhood and the use and enjoyment of neighbouring properties.
6. Section 814.3(4) of the Mature Neighbourhood Overlay states that an Applicant may be required to provide information regarding the location of windows and Amenity Areas on adjacent properties, and locate the windows of the proposed development to minimize overlook into adjacent properties.
7. The Development Officer failed to address the window locations and the provision of amenity areas when reviewing this development permit application. The placement of windows on the east elevation of the proposed house directly impacts the Appellants.
8. There is an issue of privacy and shadowing impacts on the Appellants' property.
9. The Respondents did not discuss the proposed development with his clients, there was a lack of community consultation, and the proposed development is not sensitive in scale with existing houses in the neighborhood.

The Board then heard from Ms. Denise Courteau, Co-Appellant, who referenced her written submission and provided the following information:

1. Ms. Courteau clarified that she submitted four letters of opposition from affected neighbours at the initial hearing held on August 14, 2014. However, these letters were not referenced in the Board's 2014 Notice of Decision.
2. She has therefore included these four letters plus two additional letters of opposition from property owners within the 60 metre notification radius in her written submission.

The Presiding Officer confirmed that all letters had been received and reviewed by the Board.

3. Ms. Courteau referenced Sections 46 and 47 of the *Edmonton Zoning Bylaw* to support her argument that a balcony is not permitted in a Front Yard.
4. Section 46(4)(a) of the *Edmonton Zoning Bylaw* states that a "required Amenity Area may be located within any Yard, other than a Front Yard in Residential Use Classes."
5. Section 47(4) of the *Edmonton Zoning Bylaw* states that a "Private Outdoor Amenity Area may be provided above grade, and may be located within any Yard other than a Front Yard."
6. It appears that these development regulations were not applied to the proposed development.
7. The proposed balcony at the front of this house is approximately 24 feet from her bedroom window.
8. She referenced Section 814.1 of the *Edmonton Zoning Bylaw*, the Mature Neighbourhood Overlay which states that "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".

9. It was her opinion that the proposed development contravenes the purpose of the Mature Neighbourhood Overlay.
10. The massing effect of the proposed house significantly impacts the amount of sunlight penetration in her rear yard and she referenced a photograph marked Exhibit "B" to illustrate the wall of the proposed development that she can see from her yard.
11. She referenced a photograph and drawing marked A-1 contained at Tab 10 of her written submission to illustrate that the house as built is not the same as the information that was submitted by the Respondent to obtain a building permit. The photograph in the lower left-hand corner of the Exhibit indicates that the proposed house will have a similar front setback as her house which is not the case.
12. The signatures of support provided by the Respondent were obtained from individuals who do not reside within the 60 metre notification radius and some are not property owners.
13. She referenced photographs contained in Tab 10 to illustrate that a portion of her fence has been compromised because of the construction occurring on the subject site. Mature plants and trees have also been damaged and it was her opinion that this is a direct result of the side setback on the subject site.
14. She referenced several photographs contained in her written submission to illustrate the sunlight that she received on her rear property last summer, which has now been blocked by the house on the subject site.

The Board then heard from Mr. John Paul Rau, Co-Appellant, who used a scale model of his house and the house on the subject site, marked Exhibit "C", and provided the following information:

1. He is a Journeyman Carpenter and owns his own construction company.
2. He referenced the Technical Review provided by the Development Officer contained at Tab 4 of the written submission and marked Exhibit "D"
3. It was his opinion that the builder and the Development Officer made the same mistake when calculating the height of the proposed house.
4. Section 17.1(4) of the *Edmonton Zoning Bylaw* states that "Any Development Permit issued on the basis of incorrect information contained in the application shall be invalid."
5. It was his opinion that the permit issued for this development should be deemed invalid on this basis.
6. Section 14.3(1) of the *Edmonton Zoning Bylaw* states that "The Development Officer shall require a Sun Shadow Impact Study where such a study is required in a Statutory Plan, and may require such a study for other applications if the proposed development warrants it." Section 14.3(2) of the *Edmonton Zoning Bylaw* further states that "This Study shall be prepared by a qualified, registered Professional Engineer or Architect, to professional standards."
7. It was his opinion that the Development Officer should have asked the Respondent to submit a Sun Shadow Impact Study to comply with this regulation.
8. The information regarding sun shadowing that was submitted with this application was not prepared by a qualified, registered Professional Engineer or Architect.

In conclusion, Mr. Noce made the following points:

1. He reiterated his opinion that the failure of the City to require the Respondent to undertake community consultation in accordance with Section 814.3(24) of the *Edmonton Zoning Bylaw* has resulted in the ongoing problems and expenses associated with the proposed development.
2. The Development Officer failed to consider the placement of the windows and the siting of the house and these omissions will have significant impacts on the Appellants.
3. The Respondent had ample time to revise the plans to lower the height of the house, relocate some of the windows, and consult with the neighbours to avoid the long drawn out appeal process.
4. He asked the Board to consider Section 687 of the *Municipal Government Act* because of the significant impact that the proposed development will have on the amenities of the neighbourhood and the use, enjoyment and value of neighbouring properties.

Mr. Noce, Ms. Courteau and Mr. Rau provided the following responses to questions:

1. Mr. Noce and his clients are willing to accept the determination of the Court of Appeal that the existing house is 10.33 metres even though their calculations indicate that the house is 10.53 metres high.
2. Ms. Courteau and Mr. Rau did not have a Sun Shadow Impact Study prepared by a qualified, registered Professional Engineer or Architect.
3. This is the first infill development on their block.
4. It was their opinion that the proposed front balcony is not permitted pursuant to Section 46.4(a) and 47.4 of the *Edmonton Zoning Bylaw*.
5. Section 6.1(5) of the *Edmonton Zoning Bylaw* defines Amenity Area: "with respect to Residential use Classes, space provided for the active or passive recreation and enjoyment of the occupants of a residential development, which may be for private or communal use and owned individually or in common, subject to the regulations of this Bylaw".
6. They conceded that a regular pitched roof that complied with the height requirements could result in even more sun shadowing on their property.
7. The Development Officer should have required information regarding the placement of windows.
8. If this development is approved by the Board, a variance will have to be granted for the excess in the maximum allowable Height. The requirements of Section 814.3(4) regarding window placement and the requirements of Section 46 and Section 47 will have to be waived to allow the proposed front balcony.
9. Six signatures of support were provided from property owners who reside within the 60 metre notification radius.

The Board then heard from Ms. Clara Qualizza, an affected property owner who resides within the 60 metre notification radius, who provided the following information in support of the appeal:

1. She submitted a letter of opposition and reiterated her disappointment and dismay at the failure of the City process and the negative impact that it has had on neighbourhood relationships.
2. It was her opinion that the entire situation could have been avoided if the development regulations contained in the Mature Neighourhood Overlay had been followed in the review of the proposed development.
3. She could not understand why community consultation was not required for a development of this magnitude.

The Board then heard from Mr. Anlin Wen and Mr. Trevor Illingworth, representing the City of Edmonton Sustainable Development Department, who provided the following information in response to questions:

1. Mr. Wen advised the Board that the Development Officer who approved the initial development permit no longer worked in the Sustainable Development Department.
2. Community consultation was not required because it was determined that the proposed development fully complied with all of the regulations and variances were not required.
3. The requirements regarding the Private Outdoor Amenity Area do not apply for the proposed front balcony because the proposed Rear Yard satisfies those requirements. The *Edmonton Zoning Bylaw* simply excludes a front balcony from being included as all or part of the requirement that the development must have a Private Outdoor Amenity Area.
4. In addition, the proposed front balcony is not located in the Front Yard because a Front Yard is defined under Section 6.1(40) of the *Edmonton Zoning Bylaw* as "the portion of a Site abutting the Front Lot Line extending across the full width of the Site, situated between the Front Lot Line and the nearest wall of the principal building, not including projections." The proposed front balcony sits above the nearest wall of the principal building.
5. The requirements of Section 14.3 of the *Edmonton Zoning Bylaw* do not apply to this development because the Stadium Station Area Redevelopment Plan does not require the Development Officer to obtain a Sun Shadow Impact Study.
6. The notes of the Development Officer indicate that the window locations on the side of the house with the 1.25 metre setback were reviewed and because of their height placement, were, as would typically be the case, approved.
7. It was not a requirement to frost bathroom windows but property owners have the choice to do so.
8. Section 52(5) of the *Edmonton Zoning Bylaw* provides the Development Officer with three methods to calculate Grade and allows the Development Officer to choose the method that best ensures compatibility with surrounding development. Section 52(5)(c) was used to calculate the Grade of the subject site by calculating the average elevation of the corners of the buildings on all properties abutting the Site or separated from the Site by a Lane and, using this methodology, it was determined that the height to the highest point of the subject house is 10.1 metres.
9. The height from Grade to the finished main floor is 0.54 metres, the height from the top of the main floor to the peak of the roof is 31.43 feet or 9.58 metres. Therefore the total height is 10.12 metres which, when rounded down, complies with the maximum allowable Height requirement.

10. In response to a question, Mr. Wen indicated that, when grade is simply measured from the foundation of the development under construction, rather than as provided for by Section 52 of the *Edmonton Zoning Bylaw*, errors can result.

At this point Mr. Noce objected to the City introducing new evidence regarding Height and how it was calculated.

The Board then heard from Mr. Kim Wakefield, who referenced his written submission and provided the following information in support of the proposed development:

1. Mr. Wakefield referenced the support received from residents of the community for the proposed development, specifically the fact that the Community League had replaced its initial response from the letter dated August 8, 2014 with the letter dated June 10, 2015 after hearing from more residents of the community.
2. He also referenced an additional letter of support from an affected neighbour.
3. When infill development begins in a mature neighbourhood there is a natural adjustment period for the owners of smaller older bungalows because of the construction of new larger houses.
4. Mr. Wakefield reviewed the height calculations that were before the Court of Appeal.
5. He referenced two sets of drawings contained in his written submission. The first set of drawings identified the height to the peak of the roof to be 10.33 metres. This is the plan on which the current development is proceeding.
6. The second set of drawings has been revised by removing a portion of the highest roof peak to reduce the total height to 10.06 metres.
7. The Board therefore has three options. The first option is to accept the height calculations provided at this hearing by the Sustainable Development Department, which applying the methodology in Section 52(5)(c) of the *Edmonton Zoning Bylaw* results in the existing house under development being 10.1 metres in height. The second option is to find that the height of the house is 10.33 metres, which is based on measurements applying the alternate methodology found in Section 52(5)(b) of the *Edmonton Zoning Bylaw*, and grant a variance of 0.23 metres in the maximum allowable height. The third option is to direct the Respondent to comply with the maximum allowable height requirement and reduce the height of the highest roof peak to 10.06 metres.
8. Mr. Wakefield reviewed the Plot Plan and the front setbacks of all of the houses on this block. The Appellant's house is sited farther forward than any other house on the block.
9. The front setback of the Respondent's house was determined by the Development Officer in accordance with Section 814.3(1) of the *Edmonton Zoning Bylaw*. This was done to achieve a balance between the neighbouring property to the west and the neighbouring property to the east.
10. On the other hand, the Appellant's house is non-conforming because the existing Front Setback does not comply with the block face average as required under Section 814.3(1) of the *Edmonton Zoning Bylaw*.
11. Mr. Wakefield referenced photographs in Tab 13 of his written submission to illustrate that the proposed development is in keeping with other developments in this neighbourhood.

The Board then heard from the Respondent and property owner of the subject site, Dr. Kelly Clarke, who provided the following information in support of the proposed development:

1. He and his partner were initially welcomed into this neighbourhood and had a good relationship with the Appellants who seemed very interested in what new development would occur next door.
2. The Appellants inquired about the proposed development and an offer was made to Mr. Rau to review the plans but he did not appear interested.
3. Ms. Courteau asked him how far forward the house would be sited and when he provided the information she seemed satisfied with the proposed location.
4. Everything was fine until ground was broken at which time the problems began.
5. Dr. Clarke had ongoing contact with the neighbours at parties and community events and was always open about the development and offered to review the plans with anyone who was interested.
6. It was never his intention to upset his neighbours and he is very upset about the impact that this development has had on the neighbourhood.
7. A draftsman was hired to develop the plans and ensure that all of the development regulations were met. When the plans were submitted to obtain a development permit, he was certain that the development completely complied.
8. The plans would have been revised if the City had advised him that the development did not comply.
9. He and his draftsman trusted the City and the Subdivision and Development Appeal Board who approved the development at the initial hearing last summer.
10. After the first hearing it was not possible to have conversations with the Appellants and both he and his partner are now exhausted with the process both emotionally and financially.
11. It was their preference to site the house further forward but the City directed them on the siting of the house, requiring them to maintain a view to the west, which was important to the Appellants.
12. If their house paralleled the neighbour's house there would not be an issue with the placement of windows or the front balcony.
13. Siting the house further back on the lot has created the problems.
14. He would be amenable to obscuring windows on the elevation of the house that is adjacent to the Appellant's property and installing privacy screening on the front balcony to address the concerns of the Appellants.

Dr. Kelly's partner, Dr. Vera Baziuk, provided the following information:

1. She reviewed the consultation process that she recently undertook and indicated that most of the neighbours expressed concerns about the construction delays and asked why the house was not finished.
2. The house immediately to the west is taller than the proposed height of her house, so no one could understand the problem with the proposed height.
3. There is a cascading effect to the houses on the block face, with the Appellant's house being farthest forward, followed by her house which is set farther back, and finally the house of her neighbor to the west which is set the farthest back. It was her opinion that this provided a pleasing block face.

4. She spoke with the City to learn how Height was calculated. She now understands how the height of the house was determined to be 10.1 metres using Section 52(5)(c) of the *Edmonton Zoning Bylaw* to calculate Grade.
5. She conducted a survey of houses located between 75 Street and 50 Street and discovered 27 surveyed houses with front balconies/ verandas.

Dr. Clarke concluded by making the following points:

1. The house has been designed to be in keeping with the character of the neighbourhood.
2. Every house experiences shading depending on the time of day.
3. He referenced a photograph to illustrate that the Appellant's house dwarfed the house immediately to the east. He questioned why they now have a problem with the construction of his house.

The Board then heard from Mr. Brian Wine, the draftsman who prepared the drawings. Mr. Wine provided the following information:

1. Has been a draftsman for 20 years and this is the first time he has appeared before the Subdivision and Development Appeal Board.
2. The proposed development complies with the maximum allowable Site Coverage requirement.
3. The Side Setback is greater on the west side. This allowed the inclusion of more windows on the west elevation to take advantage of the view to the west instead of on the east side of the house closest to the Appellants.
4. The windows on the east elevation, closest to the Appellant's house, have been placed in rooms that are infrequently used such as the pantry, den and bathrooms, at heights that prevent overlook onto adjacent properties.
5. The Front Setback was established by taking an average of the Front Setbacks along the block face.
6. He calculated the Grade by using the method provided in Section 52(5)(b) of the *Edmonton Zoning Bylaw* and determined that the height to the midpoint of the roof was 8.59 metres, which was under the maximum allowable height of 8.6 metres.
7. There is no need to restructure the entire roof in order to comply with the maximum allowable height requirement. If required, ten inches can be removed from the highest peak of the roof to comply with the requirement according to the revised drawing contained in Tab 9 of the written submission.

Mr. Wine provided the following responses to questions:

1. Reducing the height of the highest roof peak on the house by 0.2 metres would not result in any noticeable change for the Appellants.
2. There are computer programs that can be used to determine sun shadowing.
3. Some of the shadowing illustrated in photographs provided by the Appellant is the result of large mature trees on the Appellant's property and not the house under construction.

4. The photograph contained on the lower left-hand corner of Tab 10 of the Appellant's submission is a graphical representation and was not intended to show the actual setback, which can be determined by the "new" Site Plan on the same page.
5. If it is determined that the existing structure exceeds the maximum allowable height requirement, the height of the highest roof peak can easily be reduced in order to comply.

In summary, Mr. Wakefield made the following points:

1. The Appellants submitted a letter of support from Mr. Doug Brown who owns but does not reside in a property in this neighbourhood. Mr. Brown moved to a similar area nearby where similar infill development is occurring, and a photograph was submitted marked "Exhibit E".
2. Infill development is the way mature neighbourhoods develop and it is inevitable that the new larger houses will shade the older smaller houses.
3. Height was the only issue addressed in the Court of Appeal decision.
4. The Board should review the matter and determine if the house complies with the maximum allowable height requirement of 10.1 metres based on the calculations provided by the Sustainable Development Department at this hearing.
5. Alternatively, the Board can find that the height of the house is 10.33 metres and grant a variance of 0.23 metres.
6. In the further alternative, the Board can direct the Respondent to reduce the height to comply with the maximum allowable height requirement.

The Board then heard from Mr. David Scorgie and Ms. Doris Wilson, owners of the property located immediately west of the subject site. They provided the following information in support of the proposed development:

1. They have resided in this neighbourhood for 27 years and are distressed by the dispute that has now been shown to be *de minimis*.
2. They experience similar issues with shade and privacy and it has to be expected when new development comes into a mature neighbourhood.
3. They fully support the proposed development and are dismayed that a practical solution cannot be found.
4. The incomplete state of the proposed development has adversely affected the neighbourhood.
5. The Appellants have the largest variance in the Front Setback along the entire block.
6. Mr.Brown's house has been unoccupied for 10 years.
7. There are many mature City trees that shade properties in this area.
8. They have no expectation for absolute privacy.

The Board then heard from Mr. Brandenberg who indicated that he resides outside of the 60 metre notification radius.

1. He explained that he has been affected by the proposed development because he has acted on behalf of the Respondents, who do not currently reside in the neighbourhood, by answering questions and providing information to property owners.
2. The entire neighbourhood is affected by this development process.

The Board then heard from Mr. Leins who resides just outside of the 60 metre notification radius. He advised the Board that he has resided in this neighbourhood for many years and supports the development of new infill housing.

Mr. Noce made the following points in rebuttal:

1. He took exception to the introduction of new information by the Sustainable Development Department regarding the determination of height using a method of Grade calculation under Section 52(5)(c) of the *Edmonton Zoning Bylaw*.
2. He asked the Board to ignore this new evidence because to do otherwise would be to defy the principles of natural justice.
3. During his initial presentation he was under the assumption that the agreed upon height of the house was 10.33 metres and therefore did not fully address the height in his evidence.
4. He reiterated his concerns regarding the procedures followed by the Sustainable Development Department.
5. If they were to consider the new height calculations provided by the Sustainable Development Department, he asked the Board to also consider the new height calculation of 10.53 metres calculated by Mr. Rau.

At this point Mr. Wakefield reiterated his opinion that the Board had three options. The first option is to accept the height calculation of the City at 10.1 metres; secondly to determine that the height is 10.33 metres and grant a variance, and; thirdly, to proceed with the revised plans that comply with the maximum allowable height requirement.

It was his opinion that the Board must adhere to the decision of the Court of Appeal in finding that the maximum allowable height under the *Mature Neighbourhood Overlay* in RF1 zoning is 10.1 metres. In that regard, the Board is bound by the finding of the Court. In all other respects, the Board is holding a *de novo* hearing and may therefore consider all evidence before it – including new submissions by the City regarding Grade calculations in the determination of maximum height – as if the matter was newly before the Board.

Mr. Rau was allowed to review his calculations with the Board and demonstrate how he determined the height to midpoint to be 8.59 metres and the overall height to be 10.53 metres by using the measurements of the roof trusses contained in Tab 1 of the written submission, marked "Exhibit F".

Ms. Courteau made the following points in rebuttal:

1. Alterations made to her house only extended it into the rear yard and did not create any sun shadow or privacy concerns for her neighbour.
2. It was her opinion that the front balconies on houses located between 75 Street and 50 Street were built in the 1950s when Section 46 and Section 47 of the *Edmonton Zoning Bylaw* did not exist.
3. If the Board approves the development permit, she would like a condition imposed requiring the installation of privacy screening on the proposed front balcony.

In final rebuttal Mr. Wakefield referenced the definition of Platform Structure. He also indicated that the development permit application was reviewed based on the submission of to scale drawings and plans, and not roof truss information. He also indicated that the roof truss measurements were not considered by the Court of Appeal.

Mr. Noce had nothing further to add.

Decision:

The appeal is DENIED and the development is GRANTED, subject to the following CONDITION:

1. Privacy Screening shall be installed on the east side of the proposed front balcony, the side abutting the Appellant's property

In granting the development, the following variance to the *Edmonton Zoning Bylaw* is allowed:

An excess of 0.23 metres in the maximum allowable Height of the Single Detached House.

Reasons for Decision:

The Board finds the following:

1. Single Detached Housing is a Permitted Use in the RF1Single Detached Residential Zone.
2. The Board determined the Height based on the original calculation of the Development Authority who calculated the Grade of the site by using Section 52.5(b) of the *Edmonton Zoning Bylaw*. The Board further notes that both the Appellant and the Respondent agreed that the Height of the existing building is 10.33 metres using this method of calculating Grade which was also considered by the Alberta Court of Appeal.
3. The Board therefore finds that the Height of the Principal Building is 10.33 metres.
4. The Board has granted a variance of 0.23 metres in the maximum allowable Height of the Principal Building for the following reasons:
   a) Based on a review of the photographic evidence provided, the Height of the Principal Building is characteristic of other houses in this neighbourhood, including the most adjacent house to the west that is taller than the proposed development.
   b) Because only a small portion of the peaked roof exceeds the Height requirement, requiring the Respondent to lower the height of this relatively small part of the overall roof structure by 0.23 metres will not address the Appellants' concerns.
5. The proposed development complies with Section 110.1 of *the Edmonton Zoning Bylaw* which states that "The purpose of the Single Detached Residential Zone is to provide for Single Detached Housing while allowing other forms of small scale housing in the form of Secondary Suites, Semi-detached Housing and Duplex Housing under certain conditions."
6. In addition, Section 814.1 of the *Edmonton Zoning Bylaw* states that the purpose of the Mature Neighbourhood 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."

7. With the exception of the maximum allowable Height of the Principal Building, the proposed development complies with all of the development regulations pursuant to Section 110.2(4) and Section 814 of the *Edmonton Zoning Bylaw*.
8. The requirements of Section 46 and Section 47 of the *Edmonton Zoning Bylaw* do not apply to the proposed development because adequate outdoor amenity space is provided in the Rear Yard.
9. The Front Setback of the Respondent's house provides a cascading block face and will preserve the view to the west for property owners along Ada Boulevard.
10. Based on a review of the photographic evidence provided, the condition requiring screening on the proposed front balcony will address the privacy concerns of the Appellants.
11. The Respondent was amenable to the imposition of a condition to provide screening on the proposed front balcony.
12. Windows on the east elevation, adjacent to the Appellants' property, have been placed in rooms that are used infrequently at a height to prevent overlook onto the adjacent property.
13. Based on a review of the photographs provided there are many large mature trees that shade many of the houses along this block.
14. The Board reviewed letters and comments made by community members both for and against the development, and have taken these comments into consideration.
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 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*, RSA 2000, c S-1;
    c) the requirements of the *Permit Regulation*, Alta Reg 204/2007;
    d) the requirements of any other appropriate federal, provincial or municipal legislation; and
    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 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 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. M. McCallum, Presiding Officer
Subdivision and Development Appeal Board