



Date: July 14, 2016
Project Number: 161302339-002
File Number: SDAB-D-16-152

Notice of Decision

- [1] On June 29, 2016, the Subdivision and Development Appeal Board heard an appeal that was filed on June 6, 2016. The appeal concerned the decision of the Development Authority, issued on May 16, 2016, to approve the following development:

Construct 3 Dwellings of Row Housing with a Side Attached Garage and
Demolish the existing Semi-Detached Building.

- [2] The subject property is on Plan RN39B Blk 53 Lots 1-2, located at 10960 - 122 Street NW, within the RF3 Small Scale Infill Development Zone. The Mature Neighbourhood Overlay and West Ingle 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:

- Copy of the Development Permit Application and plans;
- Copy of the approved Development Permit decision;
- Copy of the Development Officer's written submissions, dated June 22, 2016, with responses from Sustainable Transportation and Edmonton Fire Rescue Services;
- Copy of the Appellant's written submissions received June 21, 2016 and June 29, 2016;
- Respondent developer's PowerPoint presentation and written submissions received June 29, 2016;
- One email letter in support and one in opposition to the development; and
- One letter from the Westmount Community League expressing a neutral position with respect to the subject 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 appeal was filed on time, in accordance with Section 686 of the *Municipal Government Act*, RSA 2000, c M-26.

Summary of Hearing

i) *Position of the Appellant, Ms. C. Craig*

[6] Under the *Edmonton Zoning Bylaw*, Section 814.3(10) of the Mature Neighbourhood Overlay (“MNO”) states:

Regardless of whether a Site has existing vehicular access from the front or flanking public roadway, there shall be no such access where an abutting Lane exists, and

- a. a Treed Landscaped Boulevard is present along the roadway adjacent to the property line;
- b. the Site Width is less than 15.5 m; or
- c. fewer than 50% of principal Dwellings on the blockface have vehicular access from the front or flanking roadway.

[7] Ms. Craig noted that the subject Site abuts a Lane, and the proposed front Driveway access fronts onto 122 Street, which is a Treed Landscaped Boulevard with ash trees. In addition, the Site width is greater than 15.5 metres, and none of the principal Dwellings on the blockface have front vehicular access onto 122 Street. As such, it was her view that the variance to permit front vehicular access should not have been granted.

[8] Ms. Craig then referred to Section 814.1, the General Purpose of the Mature Neighbourhood Overlay, which states:

The purpose of this Overlay is to ensure that new low density development in Edmonton’s mature residential neighbourhoods is sensitive in scale to existing development, maintains *the traditional character and pedestrian-friendly design of the streetscape*, ensures privacy and sunlight penetration on adjacent properties and provides opportunity for discussion between applicants and neighbouring affected parties when a development proposes to vary the Overlay regulations. [emphasis added]

[9] Ms. Craig expressed concern with respect to the Driveway’s length, which could potentially encourage double tandem parking along the Driveway and onto the sidewalk, impeding pedestrian movement in contravention of the General Purpose of the MNO. A shorter Driveway onto 122 Street would not alleviate her concerns, as her preference is to not have any front access onto 122 Street.

- [10] In addition, she submitted that the proposed development is not in keeping with the traditional character of the neighbourhood. In support, she referred to a diagram she had sketched of the housing forms along the 122 Street blockface. She noted that most of the houses within the neighbourhood attempt to emulate certain forms with particular roof pitches and porches, which the proposed development does not adhere to.
- [11] Upon questioning, Ms. Craig confirmed that she did not have concerns about the required Setback variances.
- [12] With respect to community consultation, Ms. Craig explained that in February 2016, she received a notice letter from the City with respect to the proposed development, including relevant site plans. However, the respondent developer did not conduct a door-to-door consultation.
- [13] Upon questioning, Ms. Craig clarified that a door-to-door consultation was conducted in 2015 for the initial proposed plans for a Row Housing development with four Dwellings. It was her understanding that due to the responses from that consultation, the developer submitted revised plans for a three Dwelling Row Housing project, which is the subject of this appeal.
- [14] In summary, Ms. Craig stated that her main concern is with the front access Driveway off 122 Street. Her concerns would be mitigated if Driveway access were off 109 Avenue or the Lane instead. She is not opposed to infill and recognizes that infill developments are part of neighbourhood revitalization, but she does not support infill that is not in keeping with the character and existing streetscape of the neighbourhood.

ii) Position of Affected Property Owner in Support of the Appellant, Mr. P. Wyminga

- [15] Mr. Wyminga submitted that since he resides in the property immediately to the north of the subject development, he will be the most impacted by the additional traffic and parking stresses generated by the subject development. He also expressed concerns with respect to the removal of several mature trees on the subject property, which will have a negative impact on his privacy.
- [16] Upon questioning by the Board, Mr. Wyminga clarified that his main concern is with the tandem parking variance, and the front access off 122 Street. In his view, flipping the garage to the opposite side of the building so that the Driveway is accessed off 109A Avenue would alleviate some of his concerns with respect to traffic.
- [17] He stated that he was not particularly concerned about shading caused by the principal building, as there is a fair amount of space dividing his home from the subject property.

*iii) Position of the Development Officer, Mr. M. Harrison*Front Access from 122 Street

- [18] Mr. Harrison submitted Exhibit “B”, an aerial view of the subject Site and surrounding area. He acknowledged that the proposed front access is atypical, as it is 9.15 metres wide to accommodate the three-car garage. A typical single car driveway is 3.1 metres wide. He understood that, based on the feedback he received, most neighbours prefer Driveway access via 109A Avenue. However, where 122 Street is considered a local road for local traffic and pedestrians, 109A Avenue is considered a collector road, with a greater number of pedestrians and traffic filtering out from the local roads. As such, while Driveway access off 109A Avenue is feasible, it has the disadvantage of potentially crossing more pedestrians and traffic.
- [19] Moving the front Driveway access from 122 Street to 109A Avenue would also require shifting the two and a half Storey building, which would effectively shadow the entire backyard of the property to the west. The current proposed site plan minimizes the shadowing effect, which was one of the primary reasons for why 122 Street was approved for vehicular access. In his view, the lot’s L-shape presents a hardship that helps justify the variance.
- [20] Upon questioning by the Board, Mr. Harrison clarified that the characterization of 122 Street as a local road and 109A Avenue as a collector road did not take into account their actual usage. When referred to a map of the surrounding area, Mr. Harrison acknowledged that although 109A Avenue is defined as a collector road, it terminates onto a green space one block east of the subject property.
- [21] Mr. Harrison also clarified that the proposed tandem parking consists of one row of three vehicles in the garage, with a second row of vehicles parked on the Driveway. The variance does not allow a third row of vehicles parked behind these two rows, so the sidewalk would not be blocked.

Required Setback Variance for Double Fronting Site

- [22] Mr. Harrison explained that, when reviewing the application, he treated both the areas fronting onto 122 Street and 109A Avenue as Front Yards, meaning this is a Double Fronting Site. As such, the Front Setback requirements in Section 814.3(1) of the Mature Neighbourhood Overlay apply to both sides of the Site, with respective Setback variances required.
- [23] Upon questioning by the Board, Mr. Harrison explained that Section 43(2) of the *Edmonton Zoning Bylaw* provides the Development Officer with the discretion to require any Corner site to provide an additional Front Yard. Having regard to the unique L-shape

of the lot, he determined that it was appropriate to provide an additional Front Yard on 109A Avenue. Mr. Harrison confirmed that he treated the area on the north side of the property as the Rear Yard.

- [24] The Board noted that the approved Development Permit lists only one variance granted to the Setback along the east property line on 122 Street (“East Setback”), and makes no mention of the additional variance required to the Setback along the south property line along 109A Avenue (“South Setback”). Mr. Harrison confirmed that a variance is also needed to the South Setback.
- [25] Section 814.3(1) states, in part: “The Front Setback shall be a minimum of 3.0 m and shall be consistent within 1.5 m of the Front Setback on Abutting lots and with the general context of the blockface.” Mr. Harrison explained that since the average blockface along 122 Street is 8.27 metres, the East Setback must be a minimum of 6.77 metres. The proposed East Setback is 6.02 metres, and therefore a variance of 0.75 metres is required.
- [26] Similarly, the South Setback requires 3.72 metres, and the proposed development provides only 3.0 metres, resulting in a variance of 0.72 metres.
- [27] Mr. Harrison clarified that although the Development Permit does not mention the variance to the South Setback, the community consultation letter dated February 9, 2016, does describe this required variance.
- [28] When the Board requested a copy of this community consultation letter, Mr. Harrison could not produce a copy. The Appellant, Ms. Craig, and a neighbour attending in opposition to the development, Mr. R. Hartfeil, had portions of this consultation letter. Upon reviewing the two portions of this letter as provided by Ms. Craig and Mr. Hartfeil, Mr. Harrison confirmed that taken together, the two portions made up the entirety of the community consultation package sent to property owners within the 60 metre notification area. This information was also confirmed by Ms. Craig and Mr. Hartfeil. The Board therefore accepted the documents as a copy of the community consultation information, entered as Exhibit “C”.
- [29] Upon reviewing Exhibit “C”, the Board noted further inconsistencies. First, the proposed site plan attached to the notice letter differs from the plot plan that was submitted with the original application. Mr. Harrison confirmed that the proposed site plan attached to Exhibit “C” is an accurate representation of the proposed development. He explained that following the initial community consultation in 2015, the developer provided revised plans to address some of the community’s concerns. Those revised plans are the ones attached to Exhibit “C”.
- [30] The Board then noted that the first variance in the community consultation letter referred to a relaxation of the setback along the *west* property line adjacent to 109A Avenue from

the required 3.72 metres to 3.0 metres. Mr. Harrison clarified that the reference to the west property line was a typo, and it should be in reference to the south property line.

- [31] The Board also noted that the second variance refers to a required Setback of 6.77 metres to the east property line, but the Development Officer's written submissions states that 6.87 metres is required. Mr. Harrison clarified that the correct number is 6.77 metres.

iv) Position of the Respondent, Ivyland Developments

- [31] The Respondent was represented by Mr. Z. Yin, Mr. N. Yang, and Mr. D. Lu.

- [32] In response to the Appellant's concerns as outlined in her verbal submissions, Mr. Yin provided the following comments:

- 1) The trees located along 109A Avenue, on the south side of the property, will not be removed. However, two of the trees along 122 Street, which are located on private property, will be taken down to make room for the driveway. The northern most tree will remain.
- 2) The proposed development has been designed with architectural features that reflect the existing landscape. For example, the developer will use materials similar to those found in other developments within the neighbourhood. Incompatible colours such as bright reds or yellows will be avoided in favour of the typical whites and greys found in the surrounding area.

- [33] Referring to the Developer's PowerPoint presentation, Mr. Yin noted that there are existing developments with vehicular access onto 122 Street between 109A Avenue and 110 Avenue. He also noted that, across from the development on 109A Avenue, there is another house with access directly onto 122 Street. He stated that since 122 Street parallels an arterial road, 124 Street, the developer felt that front access from 122 Street would be appropriate, particularly as the City's Transportation Department also preferred access from 122 Street as opposed to 109A Avenue.

- [34] After reviewing the Developer's PowerPoint presentation, the Board noted some inconsistencies with respect to the results of the community consultation.

- [35] The Developer provided the following clarification with respect to the community consultation process:

- 1) The initial development proposed Row Housing for four Dwellings.
- 2) Community consultation was conducted for the proposed four Dwellings in 2015. This initial consultation consisted of door-to-door meetings with property owners within the 60 metre notification area.

- 3) As a result of the consultation, the Developer submitted revised plans that incorporated feedback from the neighbours. The revised plans proposed Row Housing for three Dwellings.
- 4) The Developer felt that door-to-door community consultation with respect to the revised plans could potentially discourage some neighbours from providing honest feedback. As such, they collaborated with the Development Officer for the second round of community consultation, which was done by mail.
- 5) The community consultation with respect to the revised plans consisted of a notice letter dated February 9, 2016. The letter outlined the variances required, and provided copies of the proposed revised Site Plan and Front Elevation drawings. This consultation package has been submitted to the Board as Exhibit "C".

v) *Rebuttal of the Appellant, Ms. C. Craig*

- [37] Ms. Craig noted that the developer has referred to developments in the neighbourhood with front access onto 122 Street. However, those developments are not on the same blockface. In addition, the houses across from the subject property along 122 Street were developed prior to the implementation of the MNO.
- [38] With respect to the developer's intent to keep the tree along the east end of the property, Ms. Craig expressed the view that the tree will likely need to be removed in the future, as people will have difficulty accessing the Driveway while also attempting to avoid the tree.
- [39] Ms. Craig also expressed confusion with respect to the actual variances that are required, as the Development Officer's oral submissions were different from the documents she had received.
- [40] The Board recalled the Development Officer to clarify the variances.
- [41] Mr. Harrison confirmed that the variances as listed on the February 9, 2016 community consultation letter are the correct variances. However, he noted several typos, including:
- 1) The first variance is for the Setback to the south property line adjacent to 109A Avenue, and not the west property line.
 - 2) Due to the form letter template, the wording of the third variance is a standard clause, and in such case, the Rear Setback from the building does not take into account the attached garage. Due to the unique nature of the subject development, this standard phrasing should have been corrected to take into account the attached garage, and the required setback from the north property line should be 11.76 metres instead of 12.19 metres. However, the required variance of 1.62 metres remains correct.

Decision

- [42] The appeal is ALLOWED and the decision of the Development Authority is REVOKED. The development is DENIED.

Reasons for Decision

- [43] Row Housing is a Permitted Use within the RF3 Small Scale Infill Zone.

Community Consultation

- [44] In the recent case of *Thomas v Edmonton (City)*, 2016 ABCA 57, the Alberta Court of Appeal ruled that the community consultation process required by Section 814.3(24) of the Mature Neighbourhood Overlay (“MNO”) must be carried out as a condition precedent to the issuance of a development permit. The Court also ruled that the Board had the authority to determine in the circumstances of each case whether the process had been substantially complied with.
- [45] Accordingly, the Board must first determine if the community consultation process was substantially complied with in this case.
- [46] The first round of consultation was undertaken by the Respondent when the proposed development was a four-dwelling Row Housing development with garages below grade and four separate driveways exiting onto 122 Street. This first round of consultation consisted of door-to-door meetings with property owners within the 60 metre notification area. As a result of the concerns of affected neighbours, the proposed development was significantly changed. It became a three-dwelling Row Housing development with a three-car attached garage and a wide driveway exiting onto 122 Street.
- [47] The second round of consultation occurred when the details of the new proposal, complete with plans and the required variances to the MNO, were sent out to all the owners within the 60-metre notification zone by the Development Authority. The Development Authority received feedback from a number of affected property owners, one in favour of the development and a number of others against it. According to the Development Officer, the concerns of those opposed were essentially that the wide front driveway was out of character for the neighbourhood, that the proposed building and attached garage did not reflect the streetscape, that there would be a loss of trees at the front of the property and that the building was suburban in flavour and vocabulary.
- [48] Rather than attempt to make further concessions to address these concerns, the Respondent elected to proceed with the development permit application. The Development Officer issued the development permit with three variances to the MNO regulations and a fourth variance to a non-MNO provision of the *Edmonton Zoning Bylaw*.

- [49] The Board finds that the condition precedent to issuing a development permit has been satisfied because the community consultation process was substantially complied with in this case. The intent of the process is to ensure that all affected property owners within the 60-metre notification zone are informed about proposed variances to the MNO regulations and are given an opportunity to voice their concerns prior to the issuance of a development permit.
- [50] The Appellant felt that community consultation had not been carried out because she had not had a face-to-face discussion with the Respondent, although she acknowledged that she had received the material sent out by the Development Officer in the second round of community consultation. The Board is of the view that community consultation does not have to be face-to-face. Section 814.3(24) requires that affected owners are to be “contacted”. Written communication with the affected property owners that contains all the relevant information and provides an opportunity to provide feedback prior to the issuance of the permit is sufficient. The material that was sent out by the Development Officer and the subsequent gathering of feedback substantially complied with the community consultation requirements.
- [51] Section 814.3(24) states that it is the applicant who is to contact the affected owners. However, it was the Development Authority who carried out the last round of community consultation regarding the revised proposal. The Board is of the view that nothing turns on this. It does not matter who carries out the community consultation so long as the relevant information is communicated to the affected owners, their concerns are documented and the applicant has the opportunity to make changes to the proposed development if he chooses to do so prior to the issuance of the permit. That was done in this case.
- [52] The Board is of the opinion that the community consultation process carried out by the Development Authority in this case was, in many ways, superior to the door-to-door community consultation that developers often conduct. By sending out written documentation it is clear exactly what was communicated to the affected owners. Also, sending out material to the mailing addresses of the affected owners makes it more likely that they will be notified of the proposed development. Door-to-door canvassing can be problematic because people are often not at home, do not answer the door or are tenants rather than the property owners.

Inaccuracies in the Site Plan Approved by Development Officer

- [53] During the course of the hearing, the Board learned that the site plan attached to the development application and the variances listed on the approved development permit as granted by the Development Officer were not accurate. The proper plans showing what the Respondent actually wishes to build was submitted as Exhibit “C”, which has been attached to this decision. These revised plans were included in the community consultation letter as part of the requirements under Section 814.3(24) of the Mature

Neighbourhood Overlay. It is this site plan and the variances set out in the community consultation process that the Board has considered in this decision.

Required Variances

- [54] There are five variances required for the proposed development, four of which relate to the MNO. Two of the MNO variances are with respect to the front setbacks to 122 Street and 109A Avenue. The third MNO variance is to the rear setback and the fourth MNO variance relates to the front driveway. The fifth, non-MNO, variance relates to tandem parking on the driveway.
- [55] During the course of the hearing, it became evident that the front and rear setback variances were not an issue for members of the community who opposed the development. The Board agrees that both of the front setback variances and the rear setback variance are minor and would not have a significant impact on the neighbourhood or on neighbouring parcels of land.
- [56] Those opposed to the development were primarily concerned with the front driveway access from 122 Street, and the fact that there could potentially be double tandem parking along the front driveway, which would block the sidewalk.
- [57] Double tandem parking is not the variance granted by the Development Officer. The variance granted is restricted to single tandem parking, which did not appear to be a concern for those opposed to the development, who recognized that single tandem parking is allowed so long as the driveway dimensions permit. The Board finds that the variance with respect to tandem parking would not have a significant impact on the neighbourhood or on neighbouring parcels of land.
- [58] Although some of the affected owners expressed some concern about the proposed development not reflecting the existing house pattern on the street and being suburban in flavour and vocabulary, these concerns do not involve variances to the *Edmonton Zoning Bylaw* and are not, therefore, grounds that this Board can rely upon to deny a development permit for this Permitted Use.
- [59] The remaining issue is, therefore, the variance granted to Section 814.3(10) of the MNO, permitting front driveway access off 122 Street. This regulation is engaged because one portion of the lot abuts the Lane and (i) there is a Treed Landscaped Boulevard present along 122 Street adjacent to the property line, and (ii) fewer than 50% of principal Dwellings on the blockface have vehicular access from the front or flanking roadway. Section 814.3(10) stipulates that, in these circumstances, there shall be no vehicular access to either the front or flanking public roadway.

- [60] The lot is an unusual shape. Almost the entire western property line abuts the lot to the west. At the north end of the lot, there is a strip of land 3.05 metres wide by 21.40 metres long that connects the lot to the Lane to the west. The Development Officer in his written submission stated that he did not consider this to be feasible access to the lane for a Row Housing development. This is why he was prepared to vary the regulation and allow vehicular access to 122 Street.
- [61] The Board agrees that vehicular access to the Lane is problematic. The narrowness and length of any driveway accessing the Lane will make navigating the driveway difficult, particularly in reverse. Also, using the strip of land as a driveway would necessitate removing some mature trees, something that the neighbour to the north did not want to happen. Nevertheless, although this lot may not be the typical situation that Section 814.3(10) was intended to address, the regulation does apply to this lot. Accordingly, before it can grant a variance, the Board must be satisfied that the proposed vehicular access to 122 Street will not unduly interfere with the amenities of the neighbourhood and will not materially interfere with the use, enjoyment or value of neighbouring parcels of land.
- [62] The Board notes that the MNO regulations are intended, among other things, to maintain the traditional character and pedestrian-friendly design of the streetscape. The variance must be evaluated in that context.
- [63] Although there appear to be some front access driveways within the neighbourhood on 122 Street, those properties that do have front access have narrow driveways, which is distinguishable from the proposed 9.15-metre wide driveway leading to the three-car attached garage.
- [64] The Board is of the view that such a driveway is uncharacteristic of the neighbourhood and changes the streetscape in an unacceptable way. The Board is of the opinion that the proposed driveway would unduly interfere with the amenities of the neighbourhood and, for this reason, the Board allows the appeal.

Mark Young, Presiding Officer
Subdivision and Development Appeal Board

Board Members in attendance

Ms. A. Lund, Mr. R. Handa, Mr. R. Hobson



Our File: 161302339-002

Feb 9th, 2016

To property owner(s):

Regarding 10960 – 122 Street, Edmonton AB

As a property owner within 60 m from the above-noted property, this is to advise you that an application for a development for which you were notified about in May of 2015 has been **revised**. The initial scope of the permit was to;

“To construct 4 Dwellings of Row Housing with Attached Garages and front balconies and to demolish the existing Semi-Detached House.”

The revised permit is now;

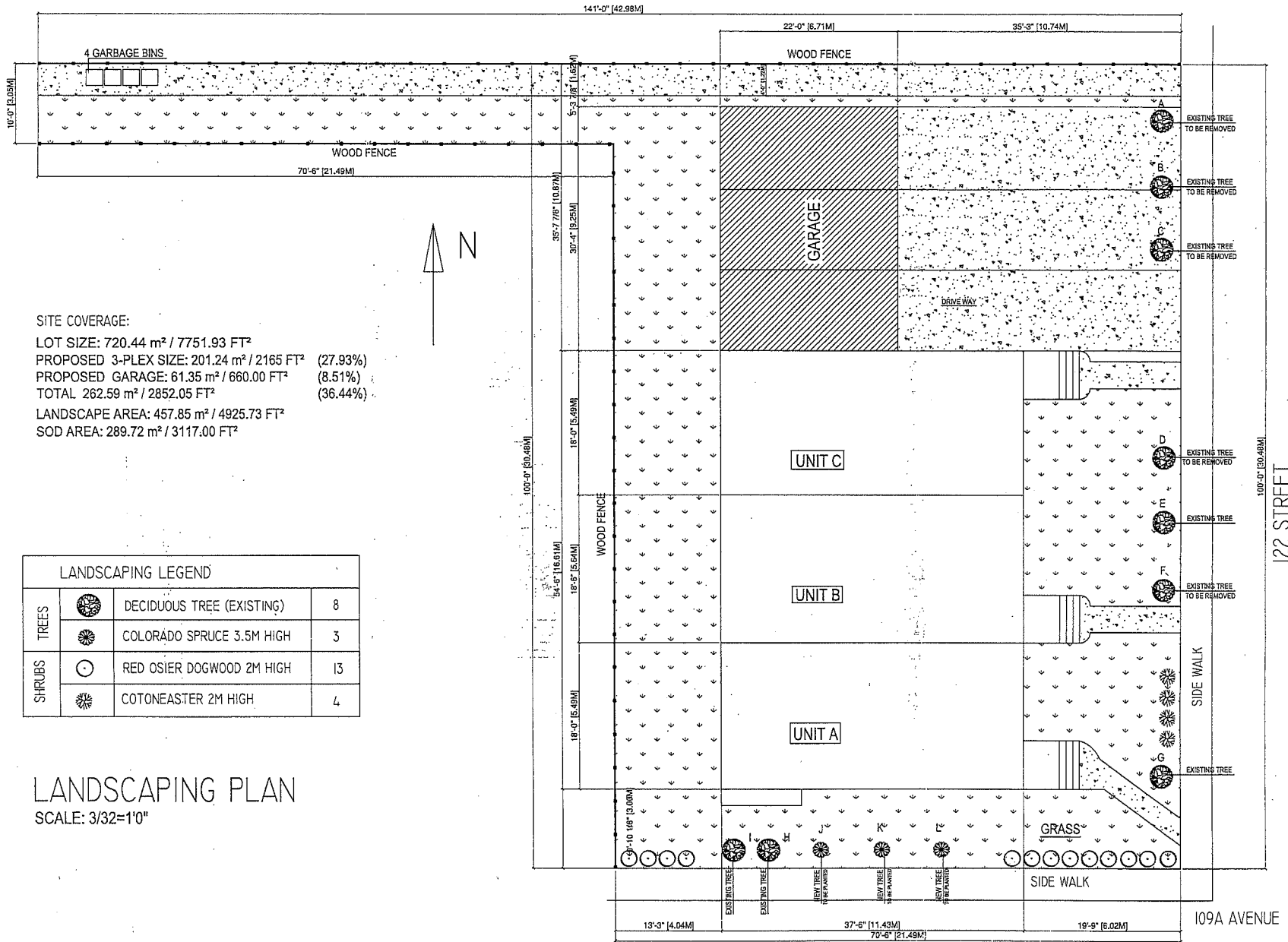
“To construct 3 Dwellings of Row Housing with a side Attached Garage and to Demolish the existing Semi-Detached Structure”

In compliance with the Edmonton Zoning Bylaw (Section 814.3.24) the applicant must contact properties within 60 meters of the subject site. This notice outlines the variances being requested under the Mature Neighborhood Overlay and to solicit comments, opinions and concerns.

The variance(s) being requested in the revised permit include:

1. Relaxing the setback of the proposed building from the west property line adjacent to 109a Avenue from the required 3.72m to 3.00m. (Reference Section 814.3.1)
2. Relaxing the setback of the proposed building from the east property line adjacent to 122 Street from the required 6.77m to 6.02m (Reference Section 814.3.1)
3. Relaxing the setback of the proposed building from the north property line from the required 12.19m to 1.62m. (Reference Section 814.3.5)
4. Allowing the applicant to provide driveway access to the Site from 122 Street instead of the normally required Rear Lane. (Reference Section 814.3.10)

New Plan (3-units townhouse) - Site Plan



SITE COVERAGE:

LOT SIZE: 720.44 m² / 7751.93 FT²

PROPOSED 3-PLEX SIZE: 201.24 m² / 2165 FT² (27.93%)

PROPOSED GARAGE: 61.35 m² / 660.00 FT² (8.51%)

TOTAL 262.59 m² / 2852.05 FT² (36.44%)

LANDSCAPE AREA: 457.85 m² / 4925.73 FT²

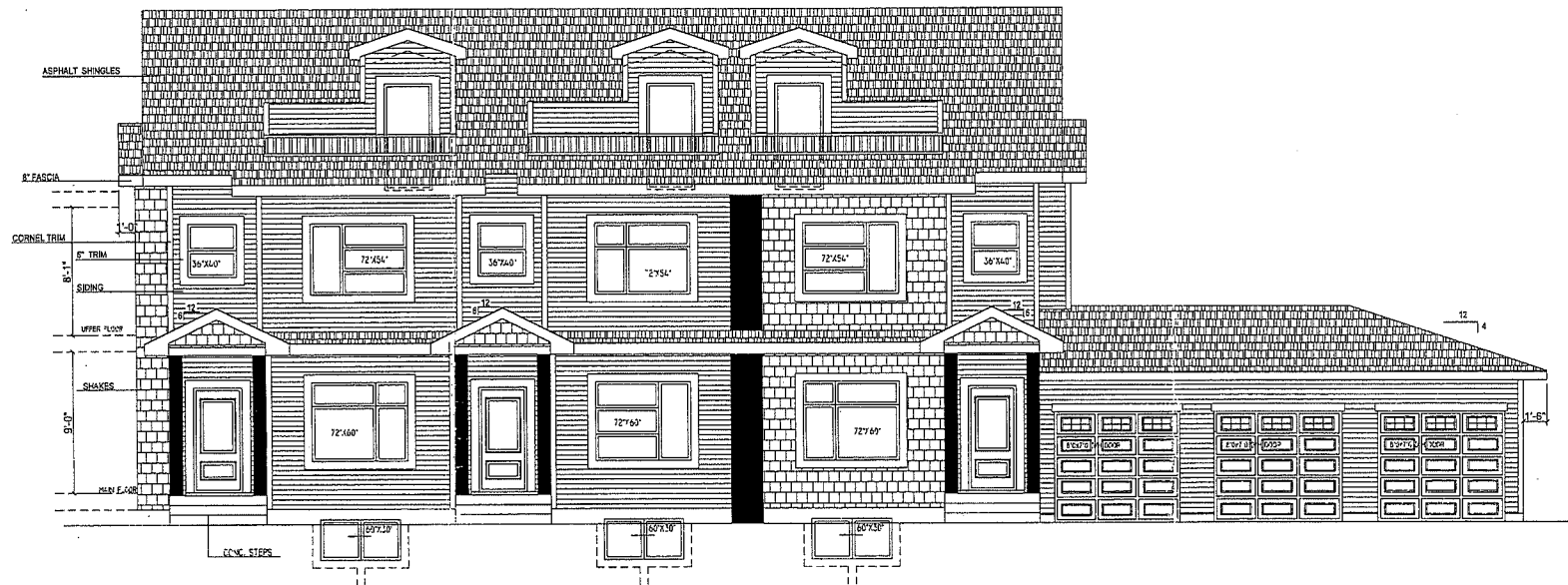
SOD AREA: 289.72 m² / 3117.00 FT²

LANDSCAPING LEGEND			
TREES		DECIDUOUS TREE (EXISTING)	8
		COLORADO SPRUCE 3.5M HIGH	3
SHRUBS		RED OSIER DOGWOOD 2M HIGH	13
		COTONEASTER 2M HIGH	4

LANDSCAPING PLAN

SCALE: 3/32=1'0"

New Plan (3-units townhouse) - Elevation



SyView Designs & Drafting Ltd.

7430-182 STREET, NW 780 436-8380
EDMONTON, AB T5T 2G7 sdu.syview@gmail.com

CLIENT:

NING YANG

MODEL:

TWO STOREY TRIPPLEX

FLOOR AREA:

5302 SQ.FT.

ADDRESS:

10960-122 St

LOT:

1 & 2

BLOCK:

53

PLAN:

RN 39B

DRAWING:

FRONT ELEVATION

DATE:

Jan 30, 2016

DRAWN BY:

DESIGN BY:

SCALE:

3/16"=1' 0

SHEET:

1 OF 10

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 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.



Date: July 14, 2016
Project Number: 176510801-004
File Number: SDAB-D-16-153

Notice of Decision

- [1] On June 29, 2016, the Subdivision and Development Appeal Board heard an appeal that was filed on June 7, 2016. The appeal concerned the decision of the Development Authority, issued on June 1, 2016, to refuse the following development:

Construct a two storey Accessory Building (Garage Suite on Second Floor
Garage on Main Floor - 9.14m x 7.92m, balcony 2.44m x 3.05m and side
landing 1.20m x 1.20m)

- [2] The subject property is on Plan 8296ET Blk 2 Lot 10, located at 9239 - Strathearn Drive NW, within the RF1 Single Detached Residential Zone. The Mature Neighbourhood Overlay and Southeast Area Structure 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:
- Copy of the Development Permit Application and plans;
 - Copy of the Development Permit refusal decision;
 - Copy of the Development Officer's written submissions dated June 27, 2016;
 - Copy of the Appellant's written submissions with various attachments and results of community consultation, received June 29, 2016;
 - Copy of Bylaw 17277 and the Southeast Area Structure Plan; and
 - Two online responses and one email letter in opposition to the 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 appeal was filed on time, in accordance with Section 686 of the *Municipal Government Act*, RSA 2000, c M-26.

Summary of Hearing

i) *Position of the Appellant, Ms. D. James*

- [6] Ms. James was represented by Mr. D. Tripp and Ms. D. Tripp, the proposed tenants of the subject Garage Suite.
- [7] Mr. Tripp explained that the consultation package delivered to neighbours within the 60 metre notification area did not provide an accurate depiction of the location of the Garage Suite on the subject property. There was a slight miscommunication with the contractor that drafted the site plans, resulting in proposed plans that depicted the Garage being located 5.3 metres too far into the yard.
- [8] Mr. Tripp referred to a Google Maps aerial view of the subject Site, which depicted a more accurate representation of where the proposed Garage Suite is situated.
- [9] Referring to the concerns raised by the neighbour appearing in opposition to the development, Mr. Tripp submitted that the proposed development has been designed to minimize the impacts.
- [10] First, the large second floor window facing the neighbouring lot is also located at a high point approximately six feet above the second floor. Mr. Tripp submitted that it would be impossible for him to look into the neighbour's yard when the window is located at such a high point. Further, although the window faces the neighbour's lot, its location effectively restricts the view, if any, to the wall of the neighbour's garage.
- [11] A second window is located on the western side of the subject property, just above the landing. Mr. Tripp submitted that this window also does not present any privacy concerns in practice, as it is set back further from the property line.
- [12] The proposed Garage Suite is designed such that the roof is nearly flat, which Mr. Tripp submitted should minimize any sun shadowing effects when compared to a peaked roof.
- [13] Finally, although he recognizes that the proposed development requires a variance to the maximum Floor Area, Mr. Tripp noted that under the *Edmonton Zoning Bylaw*, apartments are measured to the dimensions of the inside walls. In contrast, Garage Suites which are part of Single Detached Houses are measured to the outside walls, which reduce the amount of liveable space. It was his view that measurements to the inside walls would be more appropriate.
- [14] Upon questioning by the Board with respect to what appeared to be documents for two separate community consultations, Mr. Tripp clarified that he had conducted an initial consultation with neighbours located on Donnell Road and was able to speak with four neighbours who had no concerns about the development. The consultation with

neighbours on Strathern Drive was completed by the Appellant, Ms. Delores, who had expressed to Mr. Tripp that since she wished to speak to the neighbours on Strathearn Drive, with whom she had an established relationship.

ii) Position of the Development Authority

- [15] The Development Officer who refused the application, Ms. F. Hamilton, was represented by her colleague, Mr. B. Liang.
- [16] Mr. Liang explained that when the original refusal decision was made, the Development Officer was concerned about the location of the proposed stairwell, which is located along the parking pad of the adjacent property, as well as the location of the proposed balcony, which faced onto the adjacent property.
- [17] Mr. Liang submitted Exhibit "A", an aerial photo of the subject Site, with the outline of the Garage Suite drawn onto the map to depict its proposed location in relation to surrounding structures.
- [18] When questioned by the Board about the maximum Floor Area deficiency, Mr. Liang explained that the regulation is intended to ensure that Garage Suites do not become larger than the principal building. He acknowledged that the proposed Garage Suite is clearly subordinate to the principal Dwelling, notwithstanding the excess Floor Area.
- [19] With respect to the sun shadowing concerns expressed by the neighbour appearing in opposition to the development, Mr. Liang noted that the proposed Garage Suite has a slightly angled roof, but is mostly flat. As such, the massing effect could be significant, with resultant shadowing upon the Amenity Space of the neighbouring property. When questioned on this point, Mr. Liang clarified that while the highest point of a peaked roof is typically located closer to the centre line, a flatter roof would push the highest point closer to the building edge, thereby increasing the appearance of massing.
- [20] On the other hand, Mr. Liang noted that the height of the window along the west side of the subject property could alleviate some of the privacy concerns. In addition, the proposed development ultimately faces the neighbour's detached garage and parking pad, further minimizing privacy concerns.

iii) Position of the Affected Property Owner in Opposition to the Development, Ms. J. Semeniuk

- [21] Ms. Semeniuk was represented by her son, Mr. D. Semeniuk.

- [22] Mr. Semeniuk observed that the proposed staircase is located very close to the property line. He expressed surprise that municipal bylaws now permit a permanent structure to be constructed so close to a property line.
- [23] Mr. Semeniuk submitted that it is not only the height of the roof and the massing effect that is a concern, but also the roof's angle, which could result in snow being blown off the roof and onto his mother's property.
- [24] Mr. Semeniuk also noted that the proposed development impacts his mother's property the most. Upon reviewing the proposed plans, it would appear that the tallest portion of the proposed development is along the western side of the subject Site. In addition, the proposed windows on the western side face onto his mother's property.
- [25] Mr. Semeniuk also disagreed with both the Appellant and the Development Officer with respect to the windows facing only onto his mother's parking pad and detached garage. He submitted Exhibit "B", a series of photographs that depict the view onto the amenity space of his mother's property from a point approximately six feet high. In his view, the photographs demonstrate that not only does the proposed development face onto the Amenity Space of his mother's property, but also that a window set six feet above the second floor can still have an impact upon privacy.
- [26] When questioned by the Board about alternative solutions, Mr. Semeniuk stated that balcony screening would allay some of his concerns. However, the location of the windows along the western wall of the subject development remains a concern, regardless of how high they are placed.

iv) Rebuttal of the Appellant

- [27] Mr. Tripp acknowledged that the proposed development does impact the Semeniuk property the most. However, he reiterated that the largest window on the western side is planned to be six feet above the floor of the second floor. In his view, a person would have to be six feet and seven inches tall, and purposefully angle their heads to have a view of the neighbour's yard.
- [28] When questioned about his views on potentially frosting both western windows, Mr. Tripp stated that he would prefer to not frost any of the windows, which would prevent some of the natural light from reaching the interior of the Garage Suite.

Decision

- [29] 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 bottom of the window circled and initialed on the attached Schedule "A", must be at least 6.0 feet from the finished floor level.
 - 2) This Development Permit authorizes the development of a two storey Accessory Building (Garage Suite on Second Floor Garage on Main Floor - 9.14m x 7.92m, balcony 2.44m x 3.05m and side landing 1.20m x 1.20m). The development shall be constructed in accordance with the stamped and approved drawings.
 - 3) Prior to any demolition or construction activity, the applicant must post on-site a development permit notification sign (Section 20.2)
 - 4) Eave projections shall not exceed 0.46m into required yards or Separations spaces less than 1.2m. (Reference Section 44.1(b))
 - 5) Notwithstanding the definition of Household within this Bylaw, the number of unrelated persons occupying a Garage Suite shall not exceed three.
 - 6) The Garage Suite shall not be subject to separation from the principal Dwelling through a condominium conversion or subdivision.
 - 7) For an on-site driveway in any Residential Zone, the area required to be hard surfaced may be constructed on the basis of separated tire tracks, with natural soil, grass, or gravel between the tracks, but shall be constructed so that the tires of a parked or oncoming vehicle will normally remain upon the hard surface. Section 54.6.2
- [30] In granting the development, the following variances to the *Edmonton Zoning Bylaw* are allowed:
- 1) Section 110.4(7)(a) is varied to permit an excess of 1.60% in the Maximum Site Coverage for an Accessory Building, for a total Site Coverage of 13.60% for the Accessory Building.
 - 2) Section 87(2)(a)(ii) is varied to permit an excess of 0.84 metres in the maximum Height of the subject Garage Suite, for a total Height of 6.34 metres.
 - 3) Section 87(3)(a) is varied to permit an excess of 13.95 square metres in the maximum Floor Area for a Garage Suite above grade, for a total Floor Area of 73.95 square metres.
 - 4) Section 87(10) is waived to permit a portion of the proposed Platform Structure (balcony) to face onto the abutting lot located at 9243 Strathearn Drive.

ADVISEMENTS:

- 1) Only one of a Secondary Suite, a Garage Suite or Garden Suite may be developed in conjunction with a principal Dwelling.
- 2) A Garage Suite shall not be allowed within the same Site containing a Group Home or Limited Group Home, or a Major Home Based Business and an associated principal Dwelling, unless the Garage Suite is an integral part of a Bed and Breakfast Operation in the case of a Major Home Based Business.
- 3) Any future lot Subdivision must meet the minimum Site Area required for a Garage Suite.
- 4) Lot grades must comply with the Edmonton Drainage Bylaw 16200. Contact Drainage Services at 780-496-5500 for lot grading inspection inquiries.
- 5) 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/oscaml-permit-request.aspx

Reasons for Decision

- [31] Garage Suites are a Discretionary Use in the RF1 Single Detached Residential Zone.
- [32] There are four variances required for this development.
- [33] The first variance is a 1.60% deficiency in terms of maximum Site Coverage for the Accessory Building. Section 110.4(7)(a) requires that the Maximum Site Coverage of an Accessory Building on a Site greater than 300 square metres may be no more than 12% of the Site. The proposed development has a Site Coverage of 13.60%. The Board is of the view that this minimal variance will not significantly interfere with the neighbourhood or neighbouring parcels of land, particularly given that total Site Coverage for the principal building and the Accessory Building is less than the 40% allowable under Section 110.4(7)(a). Also, the Accessory Building is considerably smaller than the principal Dwelling, making it clear that it is an accessory structure.
- [34] The second variance relates to the maximum Height for Garages and Garage Suites. Section 87(2)(a)(ii) sets out the regulations for determining the maximum Height of a Garage Suite. The proposed Height of the subject development is 6.34 metres, which is 0.84 metres over the maximum allowable Height. However, this building has been designed such that the west side is taller than the eastern side, with an almost flat roof. The side of the roof that is over height is located towards the rear of the lot beside the large garage to the west. Due to the location of the proposed building relative to the neighbouring garage, the over height portion of the Garage Suite will have little or no impact on the neighbours. The Board is also of the view that being over height by 0.84

metres will have a minimal impact with respect to sun shadowing on adjacent properties. Accordingly, the Board is of the view that the height variance will not have a significant impact on the neighbourhood or on neighbouring parcels of land.

- [35] The third variance relates to maximum Floor Area. As a result of this Garage Suite being located over a three-car garage, it exceeds the maximum allowable Floor Area for a Garage Suite specified by Section 87(3)(a) by 13.95 square metres. However, the Board is of the view that this excess of Floor Area will not significantly interfere with the neighbourhood or neighbouring properties. The size of the lot relative to the accessory building, the location of the building near the rear of the lot and adjacent to the large garage on the lot to the west, minimize the massing effect of the building.
- [36] The fourth variance relates to the fact that the balcony at the southwest corner of the structure has one side that faces toward the property to the west, in contravention of Section 87(10). However, the balcony is located at the back of the property and even the portion that faces to the west looks out onto the neighbouring driveway, not into the neighbour's yard. Accordingly, the Board is of the view that this will not have any significant impact on the privacy of the neighbour to the west.
- [37] One of the main concerns of the neighbour to the west was the fact that the Garage Suite's living room window faces toward their property. They were concerned that this window would impact their privacy. However, the Board notes that the bottom of the window is to be located six feet from the finished floor area on the second floor. Also, this window faces the neighbour's garage and does not look directly into the Amenity Area of the neighbour's yard. Accordingly, the Board is of the opinion that this window will not have any impact on the privacy of the neighbour to the west.
- [38] However, the Board has made it a condition that the bottom of this window must be at least 6.0 feet above the finished second floor of the development to help allay the neighbour's concerns.
- [39] For the above reasons, the Board is of the opinion that the variances granted 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.

Mark Young, Presiding Officer
Subdivision and Development Appeal Board

Board Members in attendance

Ms. A. Lund, Mr. R. Handa, Mr. R. Hobson

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.

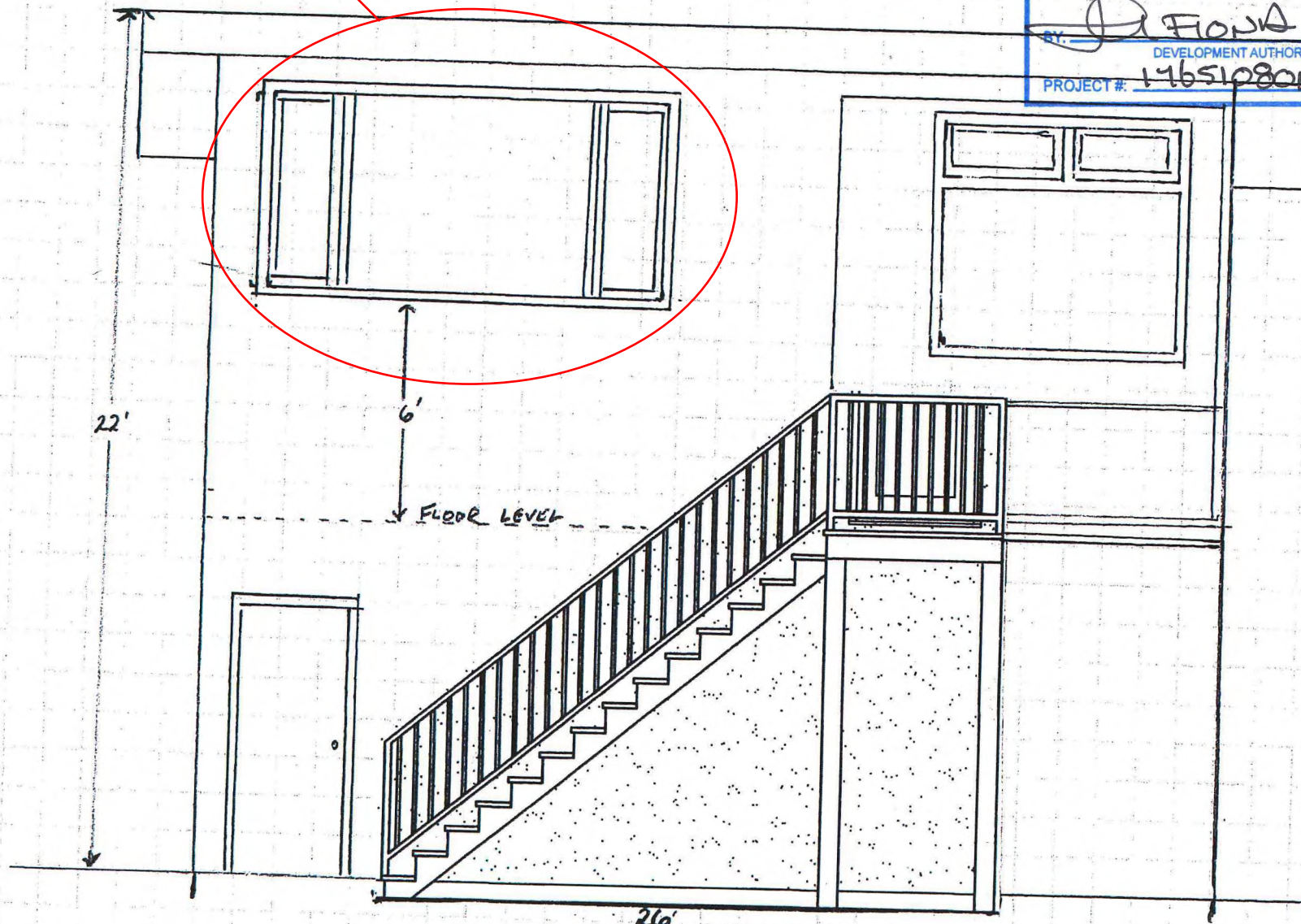
NOTE: The City of Edmonton does not conduct independent environmental checks of land within the City. If you are concerned about the stability of this property for any purpose, you should conduct your own tests and reviews. The City of Edmonton, when issuing a development permit, makes no representations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

26x30

Bottom of the window must be at least 6.0 feet from the finished floor level.

THE CITY OF
Edmonton
DEVELOPMENT PERMIT
REFUSED
JUN 01 2016
BY: *[Signature]*
DEVELOPMENT AUTHORITY
PROJECT #: 17651080404

Schedule "A"



Scale 1/4" = 1'-0"

North Arrow