

SDAB-D-15-114

Application No. 159466458-001

An appeal to Construct a Freestanding Minor Digital On-premises Off-premises Sign on Plan 0927895 Blk 1 Lot 27 located at 18304 - 100 Avenue NW was **TABLED TO JULY 2, 2015**

Edmonton Subdivision and Development Appeal Board

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Date: June 19, 2015
Project Number: 161885937-010
File Number: SDAB-D-15-115

Notice of Decision

This appeal dated May 11, 2015, from the decision of the Development Authority for permission to:

Develop a Secondary Suite in the Basement and to construct exterior alterations (side entry door, main floor window, main floor cantilever 0.46m x 2.13m, eave cover 0.61m x 1.83m, and landing 0.91m x 1.07m on the south side) to an existing Single Detached House

On Plan 1425376 Blk 9 Lot 14B, located at 11233 - 125 Street NW, was heard by the Subdivision and Development Appeal Board at its hearing held on June 4, 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 appeal was filed on time, in accordance with Section 686 of the *Municipal Government Act*, R.S.A 2000, c. M-26.

The Board heard an appeal of the decision of the Development Authority to approve an application to develop a Secondary Suite in the Basement and to construct exterior alterations (side entry door, main floor window, main floor cantilever 0.46m x 2.13m, eave cover 0.61m x 1.83m, and landing 0.91m x 1.07m on the south side) to an existing Single Detached House, located at 11233 – 125 Street NW.

The subject Site is zoned RF3 Small Scale Infill Development Zone and is within the Mature Neighbourhood Overlay and the West Ingle Area Redevelopment Plan. The application was approved subject to conditions with a variance granted in the minimum required Site area for a Single Detached House containing a Secondary Suite. The approved development permit application was subsequently appealed by an adjacent property owner.

Prior to the hearing the following information was provided to the Board:

- A written submission from the Development Officer dated May 29, 2015
- Additional information from the Appellant received on May 29, 2015

The Board heard from the Appellant, Jonaitascha (Laura) Telford, who provided the following information:

1. She referred to a May 28, 2015, Edmonton Journal article regarding an approved development permit allowing a garage suite on a 25 foot wide lot. That decision was subsequently appealed and overturned by this Board.
2. The May 28, 2015, article reported that Mr. Scott Mackie, head of Current Planning for the City of Edmonton, stated that the Development Officer had erred in granting that development permit.
3. She feels today's appeal is identical to the one identified in the Edmonton Journal article and questions how allowing 3 or 4 dwellings on what was once a single lot fits into the neighbourhood.
4. She had called the Development Officer to discuss the variance on the appeal currently before the Board.
5. She provided an e-mail from Councillor Scott McKeen, marked "Exhibit A", which states that "council policy is to allow no more than two homes on a 50-foot lot" and "If the lot is subdivided into "skinny" homes on 25-foot lots, no other suite is allowed".
6. She is concerned that a secondary suite would create a parking issue.
7. She spoke with neighbours to get support for her appeal. Some were renters and she was unable to contact the property owners.
8. She had e-mailed Mr. S. Mackie regarding this application but did not get a formal response.
9. She reviewed the photos which she had submitted to the Board, illustrating that all of the mature trees are removed as a result of the new construction occurring in the neighbourhood.
10. There are several historical homes in area – one of significance is approximately two blocks away.
11. These skinny lot homes are not consistent with general purpose of the Mature Neighbourhood Overlay.

Ms. Telford provided the following responses to questions from the Board:

1. She believes the property discussed in the Edmonton Journal was zoned RF3 Small Scale Infill Development Zone.
2. She realizes the Edmonton Journal article is regarding a garage suite, not a secondary suite but saw no difference.
3. She feels that if the requested variance reducing the required site area is granted it would lead to other such developments and in her opinion these structures would be too large for the context of the area.

The Board heard from Mr. J. Xie and Mr. A Wen representing the City of Edmonton Sustainable Development Department, who provided the following information:

1. A revised report was submitted to further detail why the variance was granted, marked "Exhibit B".

2. The Board questioned why there was no stamp of approval on Page 2 of the submitted site plan. After a short adjournment, Mr. Xie confirmed the plans before the Board were the ones submitted with the Development Permit Application. The second site plan showing the landing into the side yard should have been stamped and the omission was an error.
3. Mr. Wen confirmed the proposed side landing is less than 4 feet by 4 feet and is a low landing; therefore, complied with Section 44(1)(a) of the *Edmonton Zoning Bylaw*.
4. The site is 150 feet in length and a typical site depth is only 105 feet.
5. All of the 25 foot wide lots in the area would be under the 360 square metres minimum Site area requirement for secondary suites.
6. Although a secondary suite is a permitted use in the RF3 Zone, the City of Edmonton Sustainable Development Department may decide to do community consultation for future applications.
7. The deficiency in the minimum required Site area is minor (3 percent). They would consider granting a variance on a property with an identical situation but each application would have to be examined on its own merits.
8. The intent of the 360 square metres minimum requirement in Site area is to allow for on-site parking, appropriate setbacks and the required outdoor amenity area. The subject lot is deep enough and meets all of these requirements.
9. The Board noted that the minimum required Site area for a Duplex, which is a permitted use within the RF3 Zone, is 300 square metres. A Duplex is not unlike a single family home with a basement suite from the standpoint of a dwelling over a dwelling.
10. The street pattern will not be changed in any way by granting this variance.
11. Secondary Suites are not included in density calculations and the RF3 Zone allows up to 4 Dwelling Units per lot.
12. The Development Officers are bound by the *Edmonton Zoning Bylaw*, not council policy, although they can take council policy into consideration.
13. The Development Officer felt there was no hardship associated with this site other than the subdivision of the original lot resulted in it not meeting the required size to allow a secondary suite.
14. There is no material effect on the neighbourhood because the secondary suite is not detectable from the street.
15. Mr. Xie confirmed that a secondary suite would also be a Permitted Use if the subject site was zoned RF1 Single Detached Residential Zone.

The Board heard from Ms. J. Olvera and Mr. S. Olvera, the Respondents, who provided the following information:

1. This is a personal development, not a builder's development.
2. The proposed secondary suite is safe and legal and the only variance required is the Site area, which is quite minor.
3. They intend to use the secondary suite to accommodate their nanny or relative for child care purposes.
4. A secondary suite will not be noticed from the street.
5. The population density within the dwelling could be the same with or without a secondary suite.

6. The respondent further provided context as to the Site area difference by indicating to the Board that if the lot were 25 centimetres wider it would have fully complied with all of the Secondary Suite regulations.
7. They moved the garage forward to allow for 4 parking spots; only 3 are required.
8. The garage and parking pad will be built prior to the move in date.
9. This property is an upgrade over the derelict house it replaces.
10. The north half of the original lot has been sold to an older couple, not a builder.
11. They feel that neighbours were not adequately informed about the nature of the required variance.

Ms. Telford declined the opportunity to consult with the others present who were in support of the appeal and made the following points in rebuttal:

1. All skinny lots in this area would require exactly the same variance to Site area to allow a secondary suite.
2. She and her neighbours all understood the variance issue and the adverse effect this could have on the character of neighbourhood.
3. She does not want double residences on these lots.

Decision:

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

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

- Pursuant to Section 86.1 a variance of 11.61 square metres is granted to the minimum required Site area of 360.00 square metres.

Reasons for Decision:

The Board finds the following:

1. A Secondary Suite is a Permitted Use in the RF3 Small Scale Infill Development Zone, Section 140.2(7) of the *Edmonton Zoning Bylaw*.
2. The Board accepts the Development Officer's submission that the reason for the 360 square metre minimum required Site area, is to allow for compliance of on-site parking, private Amenity space and to meet the required Setbacks. This development meets or exceeds all of those requirements.
3. This variance granted meets the intent of the RF3 Small Scale Infill Development Zone which states "the purpose of this Zone is to provide for Single Detached Housing and Semi-detached Housing while allowing small-scale conversion and infill redevelopment to buildings containing up to four Dwellings, and including Secondary Suites under certain conditions."

4. The proposed development fully complies, save for the variance requested, with the requirements and regulations of the RF3 Small Scale Infill Development Zone and the Mature Neighbourhood Overlay.
5. The development will have no effect on the streetscape or massing as the proposed Secondary Suite is fully contained within the principal structure.
6. The Board accepts that if this lot were 0.25 metres wider it would have fully complied and the Board has determined that this deficiency would be indistinguishable from the street.
7. The Board further notes that on-site parking exceeds the required spaces for this development and the requirement for private amenity space exceeds the required minimum area for the RF3 Small Scale Infill Development Zone.
8. The Board recognizes that the RF3 Small Scale Infill Development Zone permits Duplex Housing and Row Housing, which would allow a higher density on this lot than the proposed development, as Secondary Suites are not included in density calculations.
9. The Board is not bound by precedent and each appeal is examined on its own merits.
10. The Board is bound by the *Edmonton Zoning Bylaw* and the *Municipal Government Act*.
11. Given the above, the Board was not provided with any planning reasons that would justify granting the appeal and overturning the decision of the Development Officer.
12. The Board has determined that the variance granted is minor in nature and pursuant to Section 687(3)(d) of the *Municipal Government Act*, finds that the proposed development will not unduly interfere with the amenities of the neighbourhood nor materially interfere with or affect the use, enjoyment or value of neighbouring parcels of land.

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.

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

***Edmonton Subdivision and
Development Appeal Board***

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SDAB-D-15-116

Application No. 165868468-001

An appeal Change the Use from a General Industrial Use to a Child Care Service Use, and to construct interior and exterior alterations (construct play area and new front entry). (94 kids total: 9 kids 0-11 months, 12 kids 12-18 months, 12 kids 19 months-9 years, 16 kids 3-4.5 years, 20 kids 4.5-7 years, 25 school aged children) on Plan B4 Blk 14 Lots 156-157_located at 10575 - 115 Street NW was **WITHDRAWN**