



**EDMONTON  
TRIBUNALS**

*Subdivision &  
Development  
Appeal Board*

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Date: July 6, 2018  
Project Number: 271496304-001  
File Number: SDAB-D-18-081

**Notice of Decision**

- [1] The Subdivision and Development Appeal Board (the “Board”) at a hearing on June 7, 2018, made and passed the following motion:

“That SDAB-D-18-081 be scheduled for June 21, 2018, at 9:00 a.m.”

- [2] On June 21, 2018, the Board made and passed the following motion:

“That SDAB-D-18-081 be raised from the table.”

- [3] On June 21, 2018, the Board heard an appeal that was filed on April 16, 2018. The appeal concerned the decision of the Development Authority, issued on April 4, 2018, to refuse the following development:

Construct a Single Detached House with Basement development (NOT to be used as an additional Dwelling), rear covered deck, Rooftop Terrace, Unenclosed Front Porch, and to demolish an existing Single Detached House

- [4] The subject property is on Plan 1226AQ Blk 4 Lot 30, located at 9716 - 96 Street NW, within the RF3 Small Scale Infill Development Zone. The Mature Neighbourhood Overlay, the North Saskatchewan River Valley and Ravine System Protection Overlay; and the Cloverdale Area Redevelopment Plan apply to the subject property.

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

- Copy of the Development Permit application with attachments, proposed plans, and the refused Development Permit;
- The Development Officer’s written submissions;
- The Appellant’s written submissions; and
- One Online response and five e-mails in opposition to the proposed development.

**Preliminary Matters**

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

**Summary of Hearing***i) Position of the Appellants, Ms. A. Pinkowicz and Mr. R. Peterson*

- [9] The Appellants were accompanied by Mr. A. Harbinson, their contractor.
- [10] They originally moved into a condo in Cloverdale twelve years ago and have been working at moving back into the neighbourhood for the last three years.
- [11] When they heard that neighbours had issues with the height of their original home design, they worked to come as close as possible to the 8.9 metres maximum Mature Neighbourhood Overlay height requirement.
- [12] After the Development Officer’s initial review they revised the rooftop terrace to eliminate privacy issues by adding the required stepbacks and privacy walls. Anyone on the patio cannot look down onto the neighbouring yards.
- [13] While their proposed development could impact the house directly to the north in terms of shading or ability to use solar panels efficiently, a two storey house could be built on the subject site that complies with all the bylaws which would have the same impact. This house directly to the north was built in the 1940s or 1950s and will most likely be replaced with at least a two storey home in the near future.
- [14] The large canopy created by the mature trees in this neighbourhood can have more of an impact on the ability of home owners to install solar than the height of the homes.
- [15] Mr. Harbinson explained the two major revisions which resulted in the overall Height of the development being reduced from 10.31 metres to 9.205 metres and reviewed his calculations.
- a) The roof trusses have been reduced from 24 ½ inches to 14 1/2 inches.
  - b) The finished floor height has been dropped from 23.26 geodetic to 22.45 geodetic or down 0.81 metres by dropping the footing depth. This lowers the finished floor height

in relation to the average geodetic elevation of the lot and also protects the floor joists with concrete:

	<u>Original Plans</u>	<u>Revised Plans</u>
Finished floor height above average geodetic elevation	1.1 metres	0.29 metres
Plus height of structure from finished floor	<u>9.21 metres</u>	<u>8.915 metres</u>
Overall Building Height:	10.31 metres	9.205 metres

- [16] The proposed revisions have not been reviewed by the Development Officer; however, since the overall height is still above the permitted height they would still end up appearing before this Board as the Development Officer has no jurisdiction to vary height. The revised plans would still be reviewed when the building permit is applied for to ensure compliance with the new truss design.
- [17] Ms. Pinkowicz reviewed the photographs contained in her written submission which depicted similar homes located within the 60 metre notification radius as well as others in the nearby vicinity. The home at 9729 – 96A Street came before this Board in October, 2017, and a final height of 9.3 metres was approved.
- [18] They have had general conversation with neighbours regarding their proposed development.
- [19] They want to be part of the community and are not asking for something others do not have. They are now very close in height to other developments that have been approved in the area.

*ii) Position of Affected Property Owner in Opposition to the Development.*

- [20] Mr. R. Kontz resides three streets away from the proposed development but is outside the 60 metre notification area. He is the president of the Cloverdale Community League but is not here in that capacity today.
- [21] He believes he is an affected party and his major concern about any Cloverdale development is that the allowable height is gradually being increased. His own home is a two storey built in 1997 and is gradually becoming one of the smaller homes in the area.
- [22] Granting exceptions for height creates more of a barrier for adopting solar; future developments should not impede the possibility for property owners to take advantage of solar. Keeping within the Mature Neighbourhood Overlay restrictions limits potential negative impact.

- [23] Developments should respect the character of the neighbourhood. He clarified that when he referred to “character”, he was not particularly talking about the design of the home but more the feel of the neighbourhood which is small, compact and isolated from other parts of the City. It has a great tree canopy, is a walkable community and people get to know one another well. People value being outside and value their back yard experience.
- [24] He is also concerned about privacy issues although could not comment explicitly as to how he would be affected.
- [25] He had gone to the City prior to this hearing to look at the original plans – the Development Officer was not aware of any revised plans.

*iii) Position of the Development Officer, Mr. J. Xie.*

- [26] The Development Authority was not in attendance and the Board relied on Mr. Xie’s written submission.

*iv) Rebuttal of the Appellant*

- [27] The Appellants believe that they have addressed any privacy concerns by making revisions to the patio design. These revisions were included in the final package that the Development Officer reviewed.
- [28] Their proposed height of 9.2 metres does not set a precedent in the neighbourhood because a similar development has already been approved at a height of 9.3 metres.

**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. **WITHIN 14 DAYS OF APPROVAL**, prior to any demolition or construction activity, the applicant must post on-site a development permit notification sign (Section 20)
  2. The development shall be constructed in accordance with the stamped and approved revised plans submitted and reviewed by the Board on June 21, 2018.
  3. Frosted or translucent glass treatment shall be used on windows as required on the left and right elevations to minimize overlook into adjacent properties as per the submitted revised plans (Reference Section 814.3.8).
  4. For the Single Detached House, **ONE DECIDUOUS TREE, ONE CONIFEROUS TREE, and FOUR SHRUBS SHALL BE PROVIDED**. Required trees and shrubs

may be provided either through the planting of new trees and shrubs, or the preservation of existing trees and shrubs in accordance with Section 55.6.

5. Existing vegetation should be preserved and protected unless removal is demonstrated to be necessary or desirable to efficiently accommodate the proposed development. If vegetation is removed during construction, it shall be replaced. (Reference Sections 55.6 and 140.4.18)
6. Landscaping shall soften edges and transitions between the street and the structure and reinforce the established Landscaping context in the area. (Reference Section 140.4.18)
7. All yards, visible from a public roadway other than a lane, shall be seeded or sodded within eighteen (18) consecutive months of the issuance of an Occupancy Certificate for the development. Alternative forms of landscaping may be substituted for seeding or sodding. (Reference Section 55.2)
8. Landscaping shall be provided on a Site within 18 months of the occupancy of the development. (Reference Section 55.2)
9. Trees and shrubs shall be maintained on a Site for a minimum of 42 months after the occupancy of the development. (Reference Section 55.2)
10. The area hard surfaced for a Driveway shall comply with Section 54.6 of the *Edmonton Zoning Bylaw 12800*.
11. Except for the hard surfacing of Driveways and/or Parking Areas approved on the site plan for this application, the remainder of the site shall be landscaped in accordance with the regulations set out in Section 55 of *the Edmonton Zoning Bylaw 12800*.

Advisements:

1. Lot grades must match the *Edmonton Drainage Bylaw 16200* and/or comply with the Engineered approved lot grading plans for the area. Contact Lot Grading at 780-496-5576 or [lot.grading@edmonton.ca](mailto:lot.grading@edmonton.ca) for lot grading inspection inquiries.
2. Any future deck development greater than 0.6 metres (2 feet) in height will require development and building permit approvals. Any future deck enclosure or cover requires a separate development and building permit approval.
3. Any future basement development may require development and building permit approvals.
4. Dwelling means a self-contained unit comprised of one or more rooms accommodating sitting, sleeping, sanitary facilities, and a principal kitchen for

food preparation, cooking, and serving. A Dwelling is used permanently or semi-permanently as a residence for a single Household. (Reference Section 6.1)

5. Household means: one or more persons related by blood, adoption, foster care, marriage relationship; or a maximum of three unrelated persons; all living together as a single social and economic housekeeping group and using cooking facilities shared in common. For the purposes of this definition, two people living together in an adult interdependence relationship shall be deemed to be in a marriage relationship and each of the relatives of the parties to an adult interdependence relationship shall be considered to be related to the partners and to the other relatives thereof. One domestic worker or one boarder may be deemed the equivalent of a blood relative. (Reference Section 6.1)
6. A Building Permit is required for any construction or change in use of a building. Please contact the 311 Call Centre for further information.

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

1. The maximum allowable building Height of 8.9 metres (to the midpoint of parapet) as per Section 814.3(5) is varied to allow an excess of 0.2 metres (as per the revised plot plan and drawings), thereby increasing the maximum allowed Height to 9.1 metres (in the event of any discrepancies, the stamped plans shall prevail).

NOTE: The maximum allowable building Height (to the top of parapet) as per Section 52(1)(b) is 9.3 metres. As per the revised plot plans and drawings, the Height to the top of the parapet is 9.2 meters, therefore complies and no variance is required. In the event of any discrepancies, the stamped plans shall prevail.

### **Reasons for Decision**

[31] Single Detached Housing is a Permitted Use in the RF3 Small Scale Infill Development Zone.

[32] The Board was presented with a revised plot plan and drawings, which included changes to the proposed finished floor level and roof truss system. This resulted in a reduction in the Height of the structure from the finished floor and a reduction in the finished floor from the average geodetic elevation of the lot. More importantly, it negated the variance required for the house to the top of the parapet and significantly reduced the variance required for the house to the midpoint of the parapet. Pursuant to Section 687(3)(c) of the *Municipal Government Act*, the Board may confirm, revoke or vary the order, decision or development permit or any condition attached to any of them or make or substitute an order, decision or permit of its own.

- [33] The over-Height portion of this development is approximately 5.9 metres in width, is centrally located and does not cover the entire second floor. It is stepped back significantly from both the front and rear exterior walls of the floors below, which minimizes the visual impact from the street and the lane.
- [34] The Board notes that the proposed development meets all other *Edmonton Zoning Bylaw* regulations, including Setback and Site Coverage regulations.
- [35] Upon a review of the photographic evidence provided, the Board finds that the Height of the proposed development is characteristic with surrounding properties.
- [36] The Board finds the community consultation provisions pursuant to Section 814.5 have been complied with. The Development Officer solicited feedback on the original plans, which included variances required on excess in maximum allowable Height. The Appellants reduced the Height variances in a response to address neighbours' concerns, which now should be partially mitigated, with the significant reduction in one Height variance and complete deletion of the other Height variance.
- [37] The Board was presented with various letters and e-mails of opposition and acknowledges the neighbours' concerns with respect to privacy. However, the Development Officer did not indicate any variances were required for the Rooftop Terrace (subsequently acknowledged as a balcony by the Development Officer in his written submission) nor cite any shadowing or privacy concerns. Further, the Rooftop Terrace (balcony) is stepped back significantly to prevent any perceived privacy intrusions. The Board was not presented with any sun-shadow studies that the portion of the proposed development that is over-Height would create excessive shade or prevent the use of alternative energy generation.
- [38] The Board finds that the proposed development, as revised, will not unduly interfere with the amenities of the neighbourhood nor materially interfere with or affect the use, enjoyment or value of neighbouring parcels of land.

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

Board Members in Attendance:

Ms. P. Jones; Ms. L. Gibson; Ms. M. McCallum; Ms. E. Solez

**Important Information for the Applicant/Appellant**

1. This is not a Building Permit. A Building Permit must be obtained separately from Development & Zoning Services, located on the 2nd Floor, Edmonton Tower, 10111 – 104 Avenue NW, Edmonton, AB T5J 0J4.
2. Obtaining a Development Permit does not relieve you from complying with:
  - a) the requirements of the *Edmonton Zoning Bylaw*, insofar as those requirements have not been relaxed or varied by a decision of the Subdivision and Development Appeal Board,
  - b) the requirements of the *Alberta Safety Codes Act*,
  - c) the *Alberta Regulation 204/207 – Safety Codes Act – Permit Regulation*,
  - d) the requirements of any other appropriate federal, provincial or municipal legislation,
  - e) the conditions of any caveat, covenant, easement or other instrument affecting a building or land.
3. When an application for a Development Permit has been approved by the Subdivision and Development Appeal Board, it shall not be valid unless and until any conditions of approval, save those of a continuing nature, have been fulfilled.
4. A Development Permit will expire in accordance to the provisions of Section 22 of the *Edmonton Zoning Bylaw, Bylaw 12800*, as amended.
5. This decision may be appealed to the Alberta Court of Appeal on a question of law or jurisdiction under Section 688 of the *Municipal Government Act*, RSA 2000, c M-26. If the Subdivision and Development Appeal Board is served with notice of an application for leave to appeal its decision, such notice shall operate to suspend the Development Permit.
6. When a decision on a Development Permit application has been rendered by Development & Zoning Services, the enforcement of that decision is carried out by the Sustainable Development Department, located on the 2nd Floor, Edmonton Tower, 10111 – 104 Avenue NW, Edmonton, AB T5J 0J4.

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





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Date: July 6, 2018  
Project Number: 252204092-001  
File Number: SDAB-D-18-090

**Notice of Decision**

[1] On June 21, 2018, the Subdivision and Development Appeal Board (the “Board”) heard an appeal that was filed on May 18, 2018. The appeal concerned the decision of the Development Authority, issued on April 12, 2018, to refuse the following development:

To construct a Single Detached House with two balconies, Secondary Suite in the Basement, and Unenclosed Front Porch

[2] The subject property is on Plan I23A Blk 164 Lot 24, located at 11031 - 86 Avenue NW, within the RF6 Medium Density Multiple Family Zone. The Medium Scale Residential Infill Overlay and the Garneau Area Redevelopment Plan apply to the subject property.

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

- Copy of the Development Permit application with attachments, proposed plans, and the refused Development Permit;
- The Development Officer’s written submissions; and
- The Appellant’s photo submissions.

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

- Exhibit A – Appellants Photo submission
- Exhibit B – Garneau Community League Letter and Letter from Mr. Payne

**Preliminary Matters**

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

[6] The Presiding Officer outlined how the hearing would be conducted, including the order of appearance of parties, and no opposition was noted.

[7] The appeal was filed on time, in accordance with Section 686 of the *Municipal Government Act*, RSA 2000, c M-26 (the “*Municipal Government Act*”).

### **Summary of Hearing**

#### *i) Position of the Appellants, Ms. B. Sihota and Mr. M. Aujla*

[8] Mr. J. Murphy of Ogilvie Law appeared to represent Ms. Sihota and Mr. Aujla, the property owners.

[9] His clients had received an approved Development Permit for a single family dwelling with a basement suite and their submitted plans had been stamped as “Approved” by the Development Officer. Based on this approval, they proceeded to demolish the existing house and purchased all of the trusses and windows.

[10] At the Building Permit stage, it was noticed that the Development Officer had made an error in the height calculation and the proposed development was 2 feet 6 inches too high. They have had discussions with the Development Officer and he is of the view that granting the necessary variance to allow the project to proceed 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.

[11] Mr. Murphy displayed a number of photographs (marked Exhibit A) which show different views of the subject property as well as the properties in the immediate vicinity. The immediately surrounding properties are a mixture of older and newer apartments, older single family homes nearing the end of their lifespan as well as a high rise apartment. One of the photos is of the sign posted by the City of Edmonton indicating that the development has been approved.

[12] These photographs clearly show that what is proposed is not out of scale with existing developments in the neighbourhood.

[13] The Appellants have no issues with any of the proposed conditions of the Development Authority should this permit be approved.

#### *ii) Position of the Development Officer, Mr. J. Xie*

[14] Mr. Xie was accompanied by Mr. M. Gunther of Law Branch.

[15] The Development Officer who initially reviewed the application is no longer with the City and Mr. Xie is now handling this file. A very substantial error was made with respect to the height calculation and subsequent approval of the initial application. This error was noticed at the building permit stage.

- [16] A Development Officer does not have the jurisdiction to vary Height; therefore the original approved permit was revoked and the refused permit before us today was issued.
- [17] Mr. Xie has examined the circumstances and has determined that the requested variance is minor and does not create undue hardship or interfere with the amenities of the surrounding area. The Development Authority does not take opposition to the proposal before us today.
- [18] The Development Officer has conducted community consultation and received two responses from property owners. One was from the owner of 11023 – 86 Avenue who supports the proposed development. An additional response was received but that property owner did not want his response or name made public. The Garneau Community League also submitted a letter which advised that the development should not be granted as the Development Officer does not have authority to vary Height. No one has appeared to represent the Community League at today's hearing.
- [19] They provided the following responses to questions from the Board:
- a) Conditions 13, 14 and 15 are standard conditions that are always included for secondary suites or basement developments. They serve to make it abundantly clear as to what is being approved – this development cannot be turned into a group home or additional suites cannot be added.
  - b) A development that is substantially higher could be applied for and approved on this site.
  - c) The Development Officer acknowledged that there are a number of wet bars included on the drawings but these are not considered to be kitchen facilities.
- v) *Rebuttal of the Appellant*
- [20] Mr. Murphy believes that the letter from the Garneau Community League does not express a comment on the actual development. It simply states that the Development Officer does not have the ability to approve a height variance.
- [21] He provided copies of the Garneau Community League letter as well as the e-mail of support from Mr. F. Payne which was referred to in the Appellant's presentation. (marked Exhibit B).
- [22] The extra wet bars are included at this stage of the development for future planning purposes. You cannot get a plumbing permit unless it is approved at the development stage. Mr. Murphy has made it clear to his clients that a new application would have to be made for any conversion of the approved single family home to another type of dwelling. Also if something is built that is not approved, it would not be covered by insurance.

**Decision**

[23] The appeal is ALLOWED and the decision of the Development Authority is REVOKED. The development is GRANTED as applied for to the Development Authority, subject to the following CONDITIONS:

1. The development shall be constructed in accordance with the stamped and approved drawings.
2. Privacy Screening shall be provided on the balconies to prevent visual intrusion into Abutting properties (Section 814.3.9)
3. For the Single Detached House, TWO DECIDUOUS TREES, ONE CONIFEROUS TREE, and SIX SHRUBS SHALL BE PROVIDED. Required trees and shrubs may be provided either through the planting of new trees and shrubs, or the preservation of existing shrubs in accordance with Section 55.6.
4. Existing vegetation should be preserved and protected unless removal is demonstrated to be necessary or desirable to efficiently accommodate the proposed development. (Reference Section 55.6)
5. All yards, visible from a public roadway other than a lane, shall be seeded or sodded within eighteen (18) consecutive months of the issuance of an Occupancy Certificate for the development. Alternative forms of landscaping may be substituted for seeding or sodding. (Reference Section 55.2)
6. Landscaping shall be provided on a Site within 18 months of the occupancy of the development. (Reference Section 55.2)
7. Trees and shrubs shall be maintained on a Site for a minimum of 42 months after the occupancy of the development. (Reference Section 55.2)
8. The area hard surfaced for a Driveway shall comply with Section 54.6 of the *Edmonton Zoning Bylaw 12800*.
9. Except for the hard surfacing of Driveways and/or Parking Areas approved on the site plan for this application, the remainder of the site shall be landscaped in accordance with the regulations set out in Section 55 of the *Edmonton Zoning Bylaw 12800*.
10. For the Secondary Suite, 1 parking space in addition to the parking requirements for primary Dwelling. (Reference Section 54.2 Schedule 1)
11. All required parking shall be clearly demarcated, have adequate storm water drainage and storage facilities, and be Hardsurfaced. (Reference Section 54.6(1)(a)(i))

12. A Secondary Suite shall be developed in such a manner that the exterior of the principal building containing the Secondary Suite shall appear as a single Dwelling. (Reference Section 86.4)
13. Only one of a Secondary Suite or a Garden Suite may be developed in conjunction with a principal Dwelling. (Reference Section 86)
14. A Secondary Suite shall not be developed within the same principal Dwelling containing a Group Home or Limited Group Home, or a Major Home Based Business, unless the Secondary Suite is an integral part of a Bed and Breakfast Operation in the case of a Major Home Based Business. (Reference Section 86)
15. Notwithstanding the definition of Household within this Bylaw, the number of unrelated persons occupying a Secondary Suite shall not exceed three. (Reference Section 86)
16. The Secondary Suite shall not be subject to separation from the principal Dwelling through a condominium conversion or subdivision. (Reference Section 86)
17. Locked separation that restricts the nonconsensual movement of persons between each Dwelling unit shall be installed.
18. Secondary Suites shall not be included in the calculation of densities in this Bylaw. (Reference Section 86.9)

#### ADVISEMENTS:

- i. Lot grades must match the *Edmonton Drainage Bylaw 16200* and/or comply with the Engineered approved lot grading plans for the area. Contact Lot Grading at 780-496-5576 or [lot.grading@edmonton.ca](mailto:lot.grading@edmonton.ca) for lot grading inspection inquiries.
- ii. Any future deck development greater than 0.6 metres (2 feet) in height will require development and building permit approvals.
- iii. Any future deck enclosure or cover requires a separate development and building permit approval.
- iv. Any future basement development may require development and building permit approvals.
- v. Dwelling means a self contained unit comprised of one or more rooms accommodating sitting, sleeping, sanitary facilities, and a principal kitchen for food preparation, cooking, and serving. A Dwelling is used permanently or semi-permanently as a residence for a single Household. (Reference Section 6.1)

- vi. Household means: one or more persons related by blood, adoption, foster care, marriage relationship; or a maximum of three unrelated persons; all living together as a single social and economic housekeeping group and using cooking facilities shared in common. For the purposes of this definition, two people living together in an adult interdependence relationship shall be deemed to be in a marriage relationship and each of the relatives of the parties to an adult interdependence relationship shall be considered to be related to the partners and to the other relatives thereof. One domestic worker or one boarder may be deemed the equivalent of a blood relative. (Reference Section 6.1)
- vii. An approved Development Permit means that the proposed development has been reviewed against the provisions of this bylaw. It does not remove obligations to conform with other legislation, bylaws or land title instruments including, but not limited to the *Municipal Government Act*, the *Safety Codes Act* or any caveats, restrictive covenants or easements that might be attached to the Site.
- viii. A Building Permit is required for any construction or change in use of a building. Please contact the 311 Call Centre for further information.

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

1. The maximum allowable building Height of 8.9 metres as per Section 814.3(5) is varied to allow an excess of 0.8 metres, thereby increasing the maximum allowed Height to 9.7 metres.

### **Reasons for Decision**

[25] Single Detached Housing is a Discretionary Use in the RF6 Medium Density Multiple Family Zone.

[26] The Board grants the variance to Height based on following:

- a) The RF6 Medium Density Multiple Family Zone as well as the Medium Scale Residential Infill Overlay allows for even greater heights for other types of developments than the proposed Height of 9.7 metres.
- b) The Board was presented with photographs of structures on the blockface, across the street and in close proximity to the existing dwelling that exceed the proposed height for this development.
- c) The Board received one letter of support for the Height variance.
- d) The City, by way of its attendance and presentation, indicated to the Board that they had no objections to this variance.

- e) The Board acknowledges receipt of a letter from the Garneau Community League but upon review the Board agrees with the position of the Appellant that it had more to do with the jurisdiction of the Development Officer rather than the development itself.
- f) The Board was provided with no planning reasons that supported any kind of material impact on the neighbourhood.

[27] Based on the above the Board finds that the proposed development will not unduly interfere with the amenities of the neighbourhood nor materially interfere with or affect the use, enjoyment or value of neighbouring parcels of land.

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

Board Members in Attendance:

Ms. P. Jones; Ms. L. Gibson; Ms. M. McCallum; Ms. E. Solez

**Important Information for the Applicant/Appellant**

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  - a) the requirements of the *Edmonton Zoning Bylaw*, insofar as those requirements have not been relaxed or varied by a decision of the Subdivision and Development Appeal Board,
  - b) the requirements of the *Alberta Safety Codes Act*,
  - c) the *Alberta Regulation 204/207 – Safety Codes Act – Permit Regulation*,
  - d) the requirements of any other appropriate federal, provincial or municipal legislation,
  - e) the conditions of any caveat, covenant, easement or other instrument affecting a building or land.
3. When an application for a Development Permit has been approved by the Subdivision and Development Appeal Board, it shall not be valid unless and until any conditions of approval, save those of a continuing nature, have been fulfilled.
4. A Development Permit will expire in accordance to the provisions of Section 22 of the *Edmonton Zoning Bylaw, Bylaw 12800*, as amended.
5. This decision may be appealed to the Alberta Court of Appeal on a question of law or jurisdiction under Section 688 of the *Municipal Government Act*, RSA 2000, c M-26. If the Subdivision and Development Appeal Board is served with notice of an application for leave to appeal its decision, such notice shall operate to suspend the Development Permit.
6. When a decision on a Development Permit application has been rendered by the Subdivision and Development Appeal Board, the enforcement of that decision is carried out by Development & Zoning Services, located on the 2nd Floor, Edmonton Tower, 10111 – 104 Avenue NW, Edmonton, AB T5J 0J4.

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





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Date: July 6, 2018  
Project Number: 277937618-001  
File Number: SDAB-D-18-091

**Notice of Decision**

[1] On June 21, 2018, the Subdivision and Development Appeal Board (the “Board”) heard an appeal that was filed on **May 24, 2018**. The appeal concerned the decision of the Development Authority, issued on April 26, 2018, to approve the following development:

**To change the Use from Personal Service Shop to Restaurant (63.03 square metres Public Space) and to construct interior alterations (Pizza Restaurant).**

[2] The subject property is on Condo Common Area (Plan 1721728), located at 1803C - 91 Street SW, within the (EIB) Ellerslie Industrial Business Zone. The Ellerslie Industrial Special Area, the Ellerslie Industrial Area Structure Plan and the Summerside Neighbourhood Structure Plan apply to the subject property.

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

- A copy of the Development Permit application with attachments, proposed plans, and the approved Development Permit;
- The Development Officer’s written submission and revised written submission;
- The Appellant’s appeal submission and supporting documents; and
- An e-mail in opposition from an affected condominium owner.

**Preliminary Matters**

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

[5] The Presiding Officer outlined how the hearing would be conducted, including the order of appearance of parties, and no opposition was noted.

[6] The appeal was filed on time, in accordance with Section 686 of the *Municipal Government Act*, RSA 2000, c M-26.

### **Summary of Hearing**

*i) Position of the Appellant, Mr. R. Tucker of Stone Tucker Instruments Inc.*

[7] Mr. Tucker is a small business owner in the subject site. His business does not require customer parking but he is concerned that a deficiency in parking will devalue the investments of all condominium owners in general.

[8] The subject site has 24 business units and 81 parking spaces which provides approximately three spaces per company. There is not enough parking to support the staff of 24 businesses plus customers. An existing dental office currently uses up to ten spaces per day.

[9] In Mr. Tucker's opinion, the proposed development would require at least three parking spaces for its staff and would require additional parking for customers.

[10] In his opinion, the proposed location at the north end of the building would interfere with current customers and the delivery trucks that travel to the back of the building.

[11] Restaurants should not be included in the current zoning and he is aware of another area three blocks away at Ellerslie Road where businesses have no parking due to restaurants.

[12] Mr. Tucker provided the following responses to questions from the Board:

- a) The majority of the business units between his location and the proposed development are either occupied or will be in the very near future. Mr. Tucker reviewed the current businesses and each unit they occupy.
- b) Mr. Tucker acknowledged that the proposed development would face west and the pizza business parking would be primarily on the west side. However, there are only ten parking spaces for four business units on the west side of the building.
- c) Although the pizza establishment parking may not directly affect his business, Mr. Tucker reiterated that the overall amount of parking available should be considered with the total number of businesses.
- d) A floor plan of the pizza establishment submitted to the condominium board four weeks ago shows seating for up to ten people and this does not match the floor plan approved by the Development Officer.

- e) An overall total deficiency of two parking spaces will make a considerable difference as the overall parking deficiency has continued to compound. In Mr. Tucker's opinion, there is no room for additional parking deficiencies and he questioned when the parking variances would end. He acknowledged that parking issues will continue within two months as more businesses open in the vacant units.
- f) None of the parking spaces are designated to a particular business.
- g) Mr. Tucker indicated that other restaurants within the Ellerslie area are not located in buildings that have high bay loading doors in the back and those restaurants do not have to contend with the maneuvering of large delivery trucks.

*ii) Position of Affected Property Owners in Support of the Appellant*

- [13] Ms. V. Kujundzic and Mr. V. Mattia appeared to represent Vicky's Homes who are affected condominium owners within the subject building.
- [14] There are inconsistencies in the development application processes followed by the various Development Officers. When Vicky's Homes applied for their development permit they had to provide a parking impact study. They require a fraction of the parking that a restaurant would require and are currently still waiting for their approved permit. Granting a variance for two more parking spaces for the restaurant is not acceptable in their view.

*iii) Position of the Development Officer, Ms. J. Kim*

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

*iv) Position of the Respondent, Mr. G. Vidhu*

- [16] Mr. Vidhu was accompanied by his Agent, Mr. M. Ghalayeni as well as his brother, Mr. V. Kumar.
- [17] They plan on opening a pizza restaurant that is just over 1,000 square feet. 90 percent of their business will be take-out/delivery and there will be a seating capacity for 8 to 10 patrons at the most. They purchased \$150,000 worth of equipment upon receiving their approved development permit.

- [18] They are not a franchise and will not require a large delivery truck or use on-line food couriers. They will employ one driver in addition to two restaurant employees. The restaurant will not open until later in the afternoon and most of the business will be in the evening.
- [19] The Respondents provided the following responses to questions from the Board:
- a) The stamped approved floor plan area of approximately 700 square feet with a small waiting area and no dining area is the correct floor layout for this location.
  - b) The floor layout diagram submitted by the Appellant with a floor area of approximately 1,000 square feet with seating for 10 patrons was incorrectly provided to the condominium board by their contractor. This layout is for one of the other five locations they plan on opening.
  - c) While staff will arrive at 11:00 a.m. to prepare food the the public hours will be between 2:00 p.m. and 3:00 a.m. The delivery driver will be working mainly in the evening.

*vi) Rebuttal of the Appellant, Mr. R. Tucker*

- [20] Mr. Tucker indicated that the pizza establishment's on-line site advertises that their business will be open at 11:00 a.m. In his opinion, there are not many pizza establishments that do not open until later in the afternoon.
- [21] The condominium board received the floor plan showing seating for 10 people on May 4, 2018. In Mr. Tucker's opinion, either floor plan proposal will affect the parking situation. In his opinion, four patrons waiting for pizza and two staff members could potentially occupy six parking spaces.
- [22] There are businesses in the subject building that do not start operating hours until after 4:00 p.m. The pizza establishment is not the only business open in the evening.

### **Decision**

- [23] The appeal is **ALLOWED** and the decision of the Development Authority is **REVOKED**. The development is **REFUSED**.

### **Reasons for Decision**

- [24] The proposed development, a Restaurant, is a Discretionary Use in the (EIB) Ellerslie Industrial Business Zone.

[25] The Board, while reviewing this appeal, was compelled to review section 930.4(5)(1)(a) of the Ellerslie Industrial Business Zone that states:

Convenience Retail Stores, Child Care Services, Specialty Food Services, Restaurants, Bars and Neighbourhood Pubs, Nightclubs and Personal Service Shops shall be sited in accordance with the following:

- a. as part of an office or industrial project where such Discretionary Uses are intended to service and support the principal industrial or office Use.

[26] The Board in analyzing this regulation has concluded that this particular location is part of an office / industrial project and the proposed development meets the first part of the regulation as it is *part of an office or industrial project*.

The Board considered the second part of the regulation that *such Discretionary Uses are intended to service and support the principal industrial or office Use*. The Board concludes that the proposed Restaurant does not meet this intent for the following reasons:

1. The presentation of the Respondent indicated that their hours of operation are open to the public from 2:00 P.M. to 3:00 A.M. each day. Based on the site development plan and the evidence provided regarding the Uses occupying the subject building and given that the current majority of the existing office and industrial Uses would not operate during the late evening and early morning hours the Board finds that the proposed Restaurant does not intend to service and support the principal industrial or office Use.
2. The Respondent stated that take-out/delivery would account for 90 percent of business operations. Given this significant component of the business operations, the Board finds that this Restaurant's services are in excess of what would service and support this industrial and office project.
3. Further, the Respondent indicated that proposed Restaurant would require two staff and one delivery driver. The Respondent indicated that food would be delivered to businesses and residents outside of the subject Site.
4. Based on the above, the Board finds that this Discretionary development is not reasonably compatible with surrounding development.

[27] The Board submits that because the proposed development is not reasonably compatible with the surrounding development, the Board did not consider the parking variance. Further, the Board notes that there was no determination about how the Development Officer arrived at a total minimum requirement of 105 on-site parking spaces as there was no parking calculation table or a detailed history of previous development approvals.

[28] Therefore, based on this particular application, the Board finds that this proposed development is not reasonably compatible as a Discretionary Use and specifically does not meet the intent of the (EIB) Ellerslie Industrial Business Zone.

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

Board Members in Attendance:

Ms. P. Jones; Ms. L. Gibson; Ms. M. McCallum; Ms. E. Solez

**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 Development & Zoning Services, located on the 2nd Floor, Edmonton Tower, 10111 – 104 Avenue NW, Edmonton, AB T5J 0J4.