



**EDMONTON  
TRIBUNALS**

*Subdivision &  
Development  
Appeal Board*

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Date: June 24, 2019  
Project Number: 275433347-001  
File Number: SDAB-D-19-084

**Notice of Decision**

- [1] On June 12, 2019, the Subdivision and Development Appeal Board (the “Board”) heard an appeal that was filed on **May 17, 2019**. The appeal concerned the decision of the Development Authority, issued on April 29, 2019, to refuse the following development:

**Construct a two-Storey Garden Suite (main floor Garage 9.14m x 8.53m, second floor Garden Suite 9.14m x 8.53m) and to demolish an existing Accessory Building (detached Garage).**

- [2] The subject property is on Plan 1738HW Blk 45 Lot 10, located at 7932 - 80 Avenue NW, within the (RF3) Small Scale Infill Development Zone. The Mature Neighbourhood Overlay applies 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 refused Development Permit;
- The Development Officer’s written submission;
- The Appellant’s written submission and attachments;
- An online response and emails from four neighbouring property owners in opposition to the proposed development.

- [4] The following exhibit was presented during the hearing and forms part of the record:

- Exhibit A – Google Street View of the subject Site.

**Preliminary Matters**

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

- [6] The Chair 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.

### **Summary of Hearing**

i) *Position of Mr. A. McAllister, representing the Appellant, Franken Holdings Ltd., who was accompanied by Mr. M. Rose*

[8] They have researched and reviewed several designs for the proposed Garden Suite as this is their first Garden Suite development.

[9] They provided additional space to the floor area to allow two people to live in the dwelling.

[10] A three-car garage is proposed which will provide more on-site parking and extra storage.

[11] They have seen other Garden Suites being built that are larger than the proposed development.

[12] They referred to each of the emails and online responses received in opposition to the proposed development.

a. There is a four-plex across the rear lane with a large garage. The proposed Garden Suite will be a smaller development.

b. The three-car garage will eliminate on-street parking.

[13] They spoke to neighbouring property owners and did not receive any opposition to the proposed development.

[14] Mr. Rose reiterated that they did a significant amount of research to make the development characteristic of the neighbourhood.

[15] Mr. McAllister and Mr. Rose provided the following information in response to questions by the Board:

a. They are not aware of any Garden Suites within the block, however; there are Garden Suites two to three blocks away from the subject site.

b. Mr. McAllister was unsure how the Development Officer calculated the height from the elevation drawings.

c. With regard to one of the emails received in opposition, they indicated that they previously spoke to that neighbour and received support for the proposed development.

- d. In their opinion, the excess in site coverage is minimal. The increase allows for extra space for vehicles to park in the garage.
- e. The neighbourhood is being revitalized with infill developments, duplexes, and narrow homes. The proposed Garden Suite will replace an old garage which will enhance the property.
- f. The proposed Garden Suite is adjacent to a rear detached garage; therefore, sun shadowing will not be an issue.
- g. They are willing to revise the proposed plans to comply with the *Edmonton Zoning Bylaw*.
- h. The existing house is a small two-storey building. They referred to the Google Street View of the subject site and indicated that the peak of the house will be the same or slightly lower than the proposed Garden Suite.
- i. The proposed Garden Suite will be located in the rear of the property and will not affect the curb appeal from the front of the house.
- j. The proposed development will line up with the adjacent detached garages along the rear lane.

ii) *Position of the Development Officer, Mr. R. Zhou*

[16] The Development Authority did not appear at the hearing and the Board relied on Mr. Zhou's written submission.

### **Decision**

[17] The appeal is **DENIED** and the decision of the Development Authority is **CONFIRMED**. The development is **REFUSED**.

### **Reasons for Decision**

[18] The proposed development, a two-Storey Garden Suite, is a Permitted Use in the (RF3) Small Scale Infill Development Zone.

[19] This proposed Garden Suite was refused by the Development Officer because it exceeded the maximum permitted Height, second storey Floor Area, total Floor Area and Site Coverage.

[20] The Board refused to grant the four requested variances for the following reasons:

- a. Section 87.3(c) allows for 50 square metres in Floor Area on the second storey for a Garden Suite. The proposed Garden Suite is 75 square metres on the second floor. The Board reviewed the elevation drawings and renderings of the proposed structure and notes that there is no stepback from the first floor to the second floor and the Garden Suite forms a singular rectangular two-storey structure. While the Board notes that the proposed development contained a partially articulated roof line; that was not sufficient to prevent a fairly significant massing effect created by a two-storey rectangular structure that covers most of the site width at the rear portion of the subject Site. As a result, the Board finds that this will create a deleterious massing effect which will impact the enjoyment of the two abutting properties. The Board notes that the west abutting neighbour is opposed to the proposed development.
- b. In addition to the concerns the Board has with the specific requested variance to the second storey Floor Area, the Board considered the totality of all of the requested variances. The Garden Suite is supposed to be an Accessory structure to the Single Detached House. However, the Board finds that the cumulative effect of the variances to the total Floor Area, Height and Site Coverage would create a building that is larger than the Single Detached House on-site.
- c. The Board notes that having a Garden Suite that is larger than the existing Single Detached House on the subject Site would further exacerbate the visual massing of the Accessory structure from the point of view of the adjacent neighbours.
- d. The Board acknowledges there was some support in the neighbourhood for the proposed development, including the east abutting neighbour. However, the Board also received responses from four property owners opposed to the proposed development.

[21] For the above reasons, the Board declines to grant the requested variances as the proposed development will unduly interfere with the amenities of the neighbourhood and materially interfere with or affect the use, enjoyment or value of neighbouring parcels of land; therefore, the appeal is denied.

Mr. I. Wachowicz, Chair  
Subdivision and Development Appeal Board

Board Members in Attendance:

Mr. M. Young; Mr. R. Hobson; Ms. L. Delfs; Mr. L. Pratt

CC: City of Edmonton, Development & Zoning Services, Attn: Mr. R. Zhou / Mr. A. Wen

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



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Date: June 24, 2019  
Project Number: 292228779-001  
File Number: SDAB-D-19-085

**Notice of Decision**

- [1] On June 12, 2019, the Subdivision and Development Appeal Board (the “Board”) heard an appeal that was filed on **May 17, 2019**. The appeal concerned the decision of the Development Authority, issued on April 25, 2019, to approve the following development:

**Construct an Apartment House building (47 Dwellings), with an underground parkade.**

- [2] The subject property is on NW-30-51-24-4, located at 950 - 119 Street NW, within the (RA7) Low Rise Apartment Zone. The North Saskatchewan River Valley and Ravine System Protection Overlay and the Twin Brooks Neighbourhood Area 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 submissions and documents from other City of Edmonton Departments;
- The Appellant’s written submission; and
- Emails and online responses from two neighbouring property owners in opposition to the proposed development.

**Preliminary Matters**

- [4] At the outset of the appeal hearing, the Chair confirmed with the parties in attendance that there was no opposition to the composition of the panel.
- [5] The Chair 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. I. Edwards*

- [7] Mr. Edwards referred to the main points from his appeal submission.
- [8] The approval contravenes the City of Edmonton Top of Bank Policy C542 (Development Setbacks from River Valley/Ravine Crests). It was passed by Council in 2010 and it sets the conditions under which any construction, either roads or buildings, may occur in proximity to the crest of the river valley/ravine system. The property is just metres away from his property and it is obvious that establishment of an Urban Development Line (UDL), as required by Policy C542, would not safely accommodate construction of a four-storey residential building with an underground parkade. The purpose of the Policy is to minimize environmental risk due to slope instability and failure and this condition would not be met if construction is allowed to proceed.
- [9] He understands the depth and steepness of the valley sides of Blackmud Creek Ravine and it is his opinion that any disturbance of land on the subject site would contribute to soil instability (i.e. slumping, settling, creeping, or sloughing) and, consequently, failure. Such disturbance would accelerate soil erosion and lead to further environmental degradation. Further, because of the depth and steepness of the valley, geotechnical assessment should be conducted to establish an Estimated Long-Term Line of Stability, and an Urban Development Line, prior to approval of the development permit.
- [10] After Policy C542 was passed, the City has registered a restrictive covenant against the titles of property owners in his condominium corporation, prohibiting construction of permanent sprinkler or irrigation systems. Under Policy C542, the City has the authority to impose restrictions on land use near the crest of the river valley to protect the integrity of the most vulnerable part of the landscape. It is illogical to have restrictions imposed on adjacent land, while permitting such construction on nearby land that abuts the crest of the Blackmud Creek Ravine.
- [11] Because the subject site abuts the crest of the Blackmud Creek Ravine system, it is his opinion that further soil disturbance will make it vulnerable to soil slippage and slumping. In 2012, a landslide occurred along the crest of the ravine just metres to the north of the subject site and signage was erected by the City to indicate the closure of the public trail. The sign erected by the City is still in place.
- [12] City authorities should adopt a proactive stance and refrain from approval of construction that results in undue disturbance of vulnerable areas of the ecosystem. At least one incident of soil instability within the City has compromised the integrity of buildings that were constructed on land of dubious long-term stability.

- [13] The proposed development has a potential to reduce property values in the area. Stability of the slope and top-of-bank is jeopardized and this would detract from the esthetic value of the public walking trail. Although the subject site is not part of the public trail system along the Blackmud Creek, nearby properties and the entire community benefit from the natural ambiance of the ravine system and maintenance of soil stability along its banks.
- [14] In his opinion, the terms in the City of Edmonton Top of Bank Policy C542 should be followed.
- [15] Mr. Edwards provided the following information in response to questions by the Board:
- a. The City's Geotechnical Engineering response indicates that there is some risk of instability of the slopes below the subject property that could lead to a loss of property within the life span of the proposed development.
  - b. He could not provide the Board with information how he felt the Engineering Report was incorrect.

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

Mr. D. Mayor

- [16] The condominium complex he lives in was built in four phases. At the fourth phase, they were told that duplexes were too heavy and single dwelling units could only be built due to the slope stability.
- [17] The duplexes have walkout basements and no excavation was needed at the back of the property.
- [18] It is his opinion that two levels of an underground parkade will create soil instability.

Mr. S. Sigurdson

- [19] It is his opinion the proposed development does not fit in with the naturalized area.
- [20] The neighbourhood was not aware of the process to rezone the subject site.

Mr. R. Titiryn

- [21] The neighbourhood was not aware of the zoning process and questioned if there was some recourse.



*iii) Position of the Development Officer, Mr. K. Bacon*

- [22] The proposed development complies with the regulations of the *Edmonton Zoning Bylaw*.
- [23] The ravine portion of the site will be dedicated as environmental and municipal reserve which will become the property of the City.
- [24] The proposed development complies with the Top of Bank Policy and the ravine portion of the site will be protected.
- [25] A Geotechnical Report was submitted and reviewed at the rezoning and permit stage. The proposed development is fully compliant.
- [26] A walkway will be developed with the subdivision which is also in accordance with the Top of Bank Policy to ensure residents and the public have access to the ravine.
- [27] Mr. Bacon provided the following information in response to questions by the Board:
- a. He is not aware of the history for development on the property south of the subject site.

*iv) Position of the Respondent, Mr. B. Pfau, representing Pagaro Investments LP, who was accompanied by Mr. D. Niawchuk, Geotechnical Engineer.*

- [28] Mr. Pfau has been involved with the subject site and the zoning and permit process since 2014.
- [29] Extensions have been granted since that time to allow for a development permit application last year.
- [30] Mr. Niawchuk outlined the methods used in compiling the Geotechnical Assessment.
- [31] Mr. Niawchuk provided the following information in response to questions by the Board:
- a. He has not reviewed any restrictions on other developments in the area.
  - b. There are no restrictions in place for the weight of the proposed development.

v) *Rebuttal of the Appellant, Mr. I. Edwards*

[32] Mr. Edwards reiterated his concerns and quoted the City's Geotechnical Engineer that:

The developer and owner must be aware that there remains some residual risk of instability of the slopes below the subject property that could lead to a loss of property within the life span of the proposed development. The owner must also recognize that the City of Edmonton will assume all erosion and regression of the slopes to be of natural origin and that we will not undertake any remedial repairs, irrespective of the ownership of the land between the development and the ravine slopes.

[33] He is concerned that the City has given a qualified approval of this report.

### **Decision**

[34] The appeal is **DENIED** and the decision of the Development Authority is **CONFIRMED**. The development is **GRANTED** as applied for to the Development Authority.

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

1. In accordance with section 210.4(6) the maximum Floor Area Ratio is permitted to be increased from 1.3 to 1.4 when an underground parkade is provided. The proposed Floor Area Ratio for the proposed Apartment House with an underground parkade is 1.4.

### **Reasons for Decision**

[36] The proposed Apartment House is a Permitted Use in the (RA7) Low Rise Apartment Zone.

[37] The only reason this appeal has come before the Board stems from development regulation outlined in section 210.4(6) of the *Edmonton Zoning Bylaw* that states:

The maximum Floor Area Ratio shall be 1.3. The maximum Floor Area Ratio may be increased to 1.4 when underground parking is provided. In such a case, the application will be a Discretionary Development.

[38] The Development Officer allowed the Floor Area Ratio to be increased to 1.4 as underground parking is provided. This is in accordance with section 210.4(6) of the *Edmonton Zoning Bylaw*. However, that regulation makes the Apartment House a Discretionary Development creating notices to be sent to adjacent property owners.

- [39] The Board notes that the subject Site was rezoned by Council for a Low Rise Apartment Zone. The General Purpose under section 210.1 of the *Edmonton Zoning Bylaw* is to provide a Zone for Low Rise Apartments.
- [40] The subject Site is isolated by a large Environmental Reserve and 119 Street which is an arterial roadway making it suitable for Low Rise Apartments.
- [41] The Appellant and three adjacent property owners had concerns that the development of a Low Rise Apartment with an underground parkade will create slope instability. However, the Appellant and neighbouring property owners did not commission a geotechnical report to indicate instability. In contrast, the developer submitted an extensive geotechnical report demonstrating that the area is capable of supporting the proposed development.
- [42] The subject Site is located within the North Saskatchewan River Valley and Ravine System Protection Overlay, section 811 of the *Edmonton Zoning Bylaw*. Section 811.3(3) states “Any development permit application on a Site that Abuts or is partially or wholly contained within the North Saskatchewan River Valley and Ravine System, as shown in Appendix I to this Overlay, shall be accompanied by a report prepared by a registered Professional Engineer, and as set out in subsection 14.1 of this Bylaw, and that also details: (a) the minimum Setback for structures on the Site; and (b) any development conditions for the property required to prolong the stability of the bank.”
- [43] The Board reviewed the geotechnical report prepared by CT & Associates Engineering Inc. dated November 2012 and signed and sealed by professional Engineers. The report included data that found that the land used for the proposed development is stable and safe to build on. This was further supported by an update to that report again prepared and sealed by CT & Associates Engineering Inc. on December 4, 2018.
- [44] The geotechnical report was reviewed by a City of Edmonton Senior Geotechnical Engineer who concluded that, providing the building setback and other development restrictions outlined in the geotechnical report are strictly adhered to, they had no further questions regarding the geotechnical report.
- [45] As a result, the requirement of the North Saskatchewan River Valley and Ravine System Protection Overlay has been complied with and there are no concerns with regard to the geotechnical stability of the land provided the conditions of the geotechnical report are complied with.
- [46] Based on the above, it is the opinion of the Board 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.

[47] For the above reasons, the appeal is denied and the decision of the Development Officer is confirmed.

Mr. I. Wachowicz, Chair  
Subdivision and Development Appeal Board

Board Members in Attendance:

Mr. M. Young; Mr. R. Hobson; Ms. L. Delfs; Mr. L. Pratt

CC:

City of Edmonton, Development & Zoning Services, Attn: Mr. K. Bacon / Mr. H. Luke

**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 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.*