



**EDMONTON
TRIBUNALS**

*Subdivision &
Development
Appeal Board*

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Date: June 29, 2017
Project Number: 238988349-001
File Number: SDAB-D-17-105

Notice of Decision

- [1] On June 14, 2017, the Subdivision and Development Appeal Board heard an appeal that was filed on May 18, 2017. The appeal concerned the decision of the Development Authority, issued on May 3, 2017, to approve the following development:

To construct a Single Detached House with a veranda, Rooftop Terrace with Privacy Screening, fireplace, rear uncovered deck (under 0.6 metres in height), Secondary Suite in the Basement, and to demolish the existing Single Detached House and Accessory Building (rear detached Garage).

- [2] The subject property is on Plan I7 Blk 93 Lot 34, located at 9843 - 86 Avenue NW, within the RF2 Low Density Infill Zone. The MNO Mature Neighbourhood Overlay and Strathcona 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 permit application and approved permit with attachments, including proposed plans;
 - Development Officer's written submissions, dated June 6, 2017;
 - Permits related to the subject development, including a demolition Building Permit and Accessory Building Development Permit; and
 - Appellant's written submissions, including supporting materials.
- [4] The following exhibit was presented during the hearing and form part of the record:
- Exhibit A – Respondent's PowerPoint presentation

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.

Summary of Hearing

i) Position of the Appellant, Ms. R. Bell

- [8] Ms. Bell was accompanied by her father, as they are joint owners of 9847 – 86 Avenue, which abuts the subject development.
- [9] Ms. Bell explained that she understood the development required a number of variances, but she intended to speak only to the variances related to the Rooftop Terrace. She submitted that the proposed development will negatively impact the peaceful use and enjoyment of her property.
- [10] Referencing page 11 of 35 from her supporting materials, which depicted the proposed roof deck, she explained that the rendering formed part of the documents provided to her by the developer. Based on this rendering, it was her understanding that the proposed Rooftop Terrace would contemplate a fire pit, a seating area for approximately eight individuals, and a hot tub for four to five individuals. The proposed Rooftop Terrace amounts to the addition of an entire separate floor.
- [11] Requiring that the development meet the 2.0 metre Stepback under the *Edmonton Zoning Bylaw* would reduce the size of the terrace and in turn, reduce the maximum number of people using the terrace at any given time.
- [12] Her neighbours are very social people who often host parties in their backyard. During such occasions, she makes the conscious choice to move indoors to maintain her privacy and peaceful enjoyment of her home. With the new Rooftop Terrace, her neighbours' get-togethers will move upstairs, where there will be overlook into her home. Referencing page 21 of 35 from her supporting materials, she noted that there is very little separation space between her property and her neighbours' property. The minimal separation space, as well as the location of the proposed Rooftop Terrace, will result in direct overlook into one of the top floor windows of her home, as shown on page 22 of her supporting materials.
- [13] Ms. Bell noted that the additional space from the reduced Stepback allows a large hot tub to be installed. In her experience, hot tub jets are noisy, and the proposed six-seater hot tub will generate noise that will travel across the minimal separation space between the two properties. As the terrace is located right outside her bedroom window, her peaceful use and enjoyment of her home will be further impacted. By contrast, requiring that the development meet the 2.0 metre Stepback requirement would potentially result in a smaller hot tub located further away from her window. The noise from the hot tub jets

would be reduced, and there would be more separation space to allow the sound to dissipate.

- [14] She clarified that she did not have any studies or information regarding the proposed hot tub, nor the potential noise that could be generated. In her view, this information should have been obtained during the application review process. Unlike the Applicant, she has had very little time to prepare for this appeal, due to the statutory timelines for filing an appeal and having a matter heard by the Board. The onus was therefore on the Applicant to canvas this type of information during the permit review stage. At no point prior to the permit approval was she consulted or provided with this information.
- [15] The Board noted that the duty to consult is triggered only when there is a variance to a regulation under the Mature Neighbourhood Overlay (“MNO”). As no such variance is needed in this case, the Applicant was not required to consult with neighbouring property owners regarding the development, including information related to the Rooftop Terrace. The Appellant acknowledged her understanding of the consultation requirements under the MNO. However, she emphasized that it is difficult to understand how the Development Officer came to the conclusion that the development would not materially interfere with or affect the use, enjoyment or value of her property, without first consulting with her.
- [16] Although the proposed development complies with Height regulations, the additional five feet high Privacy Screening for the terrace will result in a massing effect that will potentially block sunlight. She referenced page 30 of her supporting materials, a photograph of a home located on 89 Avenue. This house has a similar Rooftop Terrace with Privacy Screening. Upon questioning by the Board, she confirmed that although the portion of the screening facing toward the front is not frosted, the portion facing the neighbouring property is frosted.
- [17] The Appellant clarified that the neighbours on the other side of the subject development are non-resident owners, and that the property is occupied by renters. She does not know who the current renters are.
- [18] The Board noted that the initial application for this development proposed a 1.0 metre Stepback before it was revised to the current proposal, and questioned whether she would be more amenable to a 1.0 metre Stepback instead. The Appellant confirmed that 1.0 metres is more acceptable. In her view, an increased Stepback translates into a bit more distance between the two properties, fewer people on the terrace, and a smaller hot tub. She would be in support of anything that would reduce the activity on the terrace.

ii) Position of the Development Authority

- [19] The Development Authority was represented by Mr. C. Lee, Development Officer.

- [20] Mr. Lee affirmed that no community consultation was required for this development, as there were no variances under the MNO.
- [21] In his conversations with the developer, it was his understanding that the owner of the subject property would speak with the Appellant regarding variances.
- [22] He noted that even the portion of the development located closest to the Appellant's property has a 1.3 metre setback, which exceeds the required 1.2 metres. A good portion of the building is actually eight feet away from the Appellant's property line, and this factor was one of the primary reasons why the development was approved.
- [23] He acknowledged the concerns of the Appellant relating to noise generated by social gatherings. However, he has an obligation to make development decisions based on Use, not the user. There is a separate bylaw governing noise and enforcement of noise regulations under the City's *Community Standards Bylaw*.
- [24] He confirmed that the total Height of the building, including the Privacy Screening for the Rooftop Terrace and measured from the average Grade, does not exceed the maximum allowable Height of 8.6 metres. Even if the Privacy Screening extended above the 8.6 metre maximum allowable Height, no variance would be required, as Privacy Screening does not contribute to Height calculations.
- [25] Upon questioning by the Board, he explained that the Applicant's initial plans proposed a 1.0 metre Stepback, which they believed was fully compliant with the regulations. However, due to a recent amendment to Rooftop Terrace regulations, Stepbacks on an Interior Site are now required to be 2.0 metres. Once the Applicant understood that a variance would be required regardless of whether the Stepback was 1.0 metres or 0.18 metres, and after consultation with the property owner who desired a more useable space, it was decided that the application should move forward with a further reduced Stepback.
- [26] The Board noted that section 61 appears to restrict Rooftop Terraces to only a percentage of the house below it. The Development Officer agreed that the Stepback variance he granted allows for a Rooftop Terrace that covers a greater percentage of the house.

iii) Position of the Respondent, Engleman Homes Ltd.

- [27] The Respondent was represented by Mr. C. Engleman and Mr. R. Sieben.
- [28] Much consideration was given to the design of the proposed development. Initially, a Rooftop Terrace with 1.0 metre Stepback was proposed, but the new bylaw that recently came into effect required a 2.0 metre Stepback. This amendment was intended to address privacy concerns, not noise. It was the Respondent's position that the proposed development mitigates potential privacy concerns that would justify a variance to the 2.0 metre Stepback requirement.

- [29] First, it is possible that a development that complies fully with the development regulations could result in a rectangular, box house with a Rooftop Terrace without any articulation or architectural features. Such a development would have a greater massing effect upon the Appellant's property than what is being proposed.
- [30] Second, the proposed development was purposefully designed to utilize 23% Site Coverage rather than the maximum allowable of 28%. The smaller Site Coverage reduces the size of the building, massing effect, and impact on neighbouring properties. As a tradeoff, the Rooftop Terrace was expanded so that the house would still have comparable useable space. If the Stepback were to be increased to 2.0 metres, the design of the entire house would change significantly, likely resulting in a maximization of Setbacks.
- [31] Third, the Rooftop Terrace will have a frosted privacy screen. Referring to a rendering of the terrace, he noted that it is not possible to look into the Appellant's upstairs bedroom window that faces the terrace. Any attempts to peer over the five feet tall privacy screen would require even a six feet tall individual to purposefully crane their necks.
- [32] Fourth, the development has been moved forward as much as possible to maximize the privacy of the Appellant's rear Amenity Space. Much of the useable space on the Rooftop Terrace to the rear has also been removed for the same reason.
- [33] Finally, the Appellant's submissions regarding potential noise is speculative. It was the Respondent's view that noise from a Rooftop Terrace would actually be less noticeable than noise from the ground.
- [34] Upon questioning by the Board, the Respondent confirmed that as mentioned by the Development Officer, the Stepback was decreased from the originally proposed 1.0 metres to 0.18 metres after conversations with the client. Once it was discovered that a variance would be needed to the 2.0 metre Stepback requirement, regardless of whether the development would have a 1.0 metre or 0.18 metre Stepback, it was determined that a smaller Site Coverage would justify a larger Rooftop Terrace to ensure that the client could maximize useable space.
- [35] The Board noted that the amended section 61 Stepback requirements are intended to keep a Rooftop Terrace in proportion with the bulk of the house. In this case, the terrace appears to be disproportionately large. The Respondent reiterated that should the Board require that the Rooftop Terrace revert to the original proposed 1.0 metre Stepback, the entire house would need to be reconfigured to maximize the Site Coverage for comparable useable space.

iv) Rebuttal of the Appellant

- [36] The Appellant expressed displeasure with the Development Officer's dismissal of her concerns regarding noise as a matter that is covered under a separate bylaw. In her view,

it is the peaceful use and enjoyment of her property that should be considered, and the Rooftop Terrace will have a detrimental impact.

Decision

- [37] The appeal is DENIED and the decision of the Development Authority is CONFIRMED. The development is ALLOWED, subject to the CONDITIONS as set out in Permit 238988349-001, issued by the Development Authority on May 3, 2017.
- [38] In granting the development, the following variances to the *Edmonton Zoning Bylaw* are allowed:
- 1) Section 86(1) is varied to permit a Site Area of 353 square metres instead of 360 square metres.
 - 2) Section 61(1)(a)(ii) is varied to permit the Stepback of the Rooftop Terrace from the rear of the house facing the alley to be 0.91 metres instead of 2.0 metres.
 - 3) Section 61(1)(a)(iv) is varied to permit the Stepback of the Rooftop Terrace from the interior side façade facing 9847 – 86 Avenue NW to be 0.18 metres instead of 2.0 metres.

Reasons for Decision

- [39] The proposed development is for a Single Detached House, which is a Permitted Use in the RF2 Low Density Infill Zone. It is noted that although Secondary Suites are Permitted Uses in the RF2 Zone, the proposed Secondary Suite which forms a part of this application was deemed as a Discretionary Use by the Development Officer under section 7.1(3)(b) of the *Edmonton Zoning Bylaw*, due to the minimum site area requirements for the development. None of the parties made submissions in opposition to this point, and the Board therefore accepts that the Secondary Suite was granted as a Discretionary Use.
- [40] The Board acknowledges the Appellant's concerns regarding the potential for the proposed development to generate noise, as well as its impact upon the privacy of neighbouring properties. However, the Board is of the view that the noise and potential nuisance generated by social gatherings held in an Amenity Area is not a planning consideration that is within the purview of this Board. The enforcement of noise regulations and nuisance properties fall under the City's *Community Standards Bylaw 14600*.
- [41] The Respondent's submissions and supporting materials showed the limited potential of overlook onto the Appellant's property. In particular, the second Storey transom window of the Appellant's property, which faces directly the Rooftop Terrace, is not visible through the translucent glass of the privacy screen. The Board therefore finds that the condition requiring privacy screening imposed by the Development Authority will address the issue of potential overlook into neighbouring properties.

[42] The proposed development involves three variances which the Board grants for the following reasons:

- a) The deficiency in Site Area for the subject lot, which results from the Secondary Suite, is less than 2% and was not of significant concern to the Appellant.
- b) The variance granted to the required 2.0 metre Stepback to the Rooftop Terrace for a flanking interior property is mitigated by the fact that the proposed development exceeds the minimum 1.2 metre Setback requirement at its closest point to the Appellant's property line. In addition, the bulk of the west side of the proposed development is set even further back from the property line.
- c) The variance granted with respect to the rear Stepback of the Rooftop Terrace is mitigated by the Height of the privacy screens. Based on the plans, this portion of the terrace serves mainly as an access between the terrace and the principal Dwelling. As such, it will mainly be used for people walking in and out rather than as a mingling point, which also mitigates privacy concerns related to overlook into neighbouring properties.
- d) Further, the Board notes that the 23% Site Coverage of the proposed primary residence is significantly below the 28% allowable Site Coverage, providing further justification for relaxation of setbacks for the Rooftop Terrace.
- e) While the Appellant raised concerns with respect to massing, the Board notes that the privacy screen does not result in a Height calculation that exceeds the maximum allowable of 8.6 metres for the development. The articulation of the building also mitigates the massing concerns that would otherwise arise in a fully compliant rectangular box development.

[43] For the above reasons, the Board is satisfied 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. The appeal is denied.

Mr. N. Somerville, Presiding Officer
Subdivision and Development Appeal Board

Board members in attendance: Mr. M. Young, Mr. L. Pratt, Ms. E. Solez, Ms. M. McCallum

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 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 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.