SUBDIVISION

AND

DEVELOPMENT APPEAL BOARD

AGENDA

Wednesday, 9:00 A.M.
June 14, 2017

Hearing Room No. 3
Churchill Building,
10019 - 103 Avenue NW,
Edmonton, AB

SUBDIVISION AND DEVELOPMENT APPEAL BOARD
HEARING ROOM NO. 3

I 9:00 A.M. SDAB-D-17-105

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).

9843 - 86 Avenue NW
Project No.: 238988349-001

NOTE: ***Unless otherwise stated, all references to "Section numbers" refer to the authority under the Edmonton Zoning Bylaw 12800.***

ITEM I: 9:00 A.M. FILE: SDAB-D-17-105

AN APPEAL FROM THE DECISION OF THE DEVELOPMENT OFFICER BY AN ADJACENT PROPERTY OWNER

APPELLANT:	
APPLICATION NO.:	238988349-001
APPLICATION 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).
DECISION OF THE DEVELOPMENT AUTHORITY:	Approved with Conditions
DECISION DATE:	May 3, 2017
DATE OF APPEAL:	May 18, 2017
NOTIFICATION PERIOD:	May 9, 2017 through May 23, 2017 (Reference page 3 of permit)
RESPONDENT:	
ADDRESS OF RESPONDENT:	9843 - 86 Avenue NW
MUNICIPAL DESCRIPTION OF SUBJECT PROPERTY:	9843 - 86 Avenue NW
LEGAL DESCRIPTION:	Plan I7 Blk 93 Lot 34
ZONE:	RF2 Low Density Infill Zone
OVERLAY:	MNO Mature Neighbourhood Overlay
STATUTORY PLAN:	Strathcona Area Redevelopment Plan

Grounds for Appeal

The Appellant provided the following reasons for appealing the decision of the Development Authority:

Background

As background, I learned of the neighbors' development when I received the Development Permit Notice, dated May 3, 2017. Prior to that Notice being issued, I knew nothing of my neighbors' plans to tear down their existing home and build a new home.

Since receiving this Notice, I have done and continue to do what I can to ensure that I am informed about the proposed plans. Presumably my neighbors with their developer have been planning this development for some time; I am frustrated that I am given 14 days to inform myself about the plans and decide whether to Appeal. I have filed the Appeal to preserve that filing deadline; however, I am hoping that prior to the Hearing at least some of the issues noted below may be addressed/resolved through communication with the City Development Planner, Christian Lee, and the developer who is building the new home next door.

Going forward, it may behoove the City to consider changing this process. As it is now, the 14-day window sets up a scheme for developers to "hope they can get away with" a variance ("risk an Appeal") as opposed to a system that would force dialogue and information exchange in advance, and certainly prior to an adversarial forum (an Appeal) having to be engaged.

Reasons

Briefly:

1. My home is the immediate neighbor to the west. The development permit issued is for 9843 and I reside at 9847.

2. I am concerned about the roof top terrace that the neighbors wish to build. I am particularly concerned about the variances permitted for the stepback. These variances are noted at paragraphs 2 and 3 of the Development Permit Notice.

3. Generally, I don't know why these variances are necessary. I have briefly reviewed the City Bylaw 12800, Section 61. I am presuming that, prior to that Bylaw being enacted, thorough research was conducted, stakeholders consulted and expertise engaged to ensure that appropriate minimum distances were set. I note the mandatory language used in this Section.

4. As a starting point, the only reason I have thus far been given to justify relaxing this mandatory stepback regulation is because otherwise the rooftop deck would be “virtually unusable”. Of course, the balancing act is the neighbor’s desire to have a large rooftop deck, against the City’s reasons for enacting the Bylaw in the first place, which presumably address many of my concerns. I am presuming that stepbacks are required for reasons such as:

   A. safety (e.g. fire hazard; safety for users of the rooftop terrace);

   B. privacy (e.g. for both the users of the rooftop terrace, as well as neighbors such as myself who shouldn’t have people looking down at them in the privacy of their own backyard or directly into their home through windows);

   C. use and enjoyment (e.g. the towering nature of a rooftop terrace blocks sunshine; users on the rooftop top increase the noise); and

   D. property value (e.g. the closer the rooftop terrace is to my property, the lower potential resale value).

5. I am told that the City Development Planner canvassed with the developer a proposed variance to 1.0 m stepback (instead of the 2.0 m stepback mandated by the Bylaw), but the developer “opted” to proceed with a stepback of 0.18 m on “my” side and 0.91 m at the rear of the property, and “risk an Appeal”. I note the permissible language of “opted” as contrasted with the mandatory language of the Bylaw.

6. A further important note: my home was built in 1914. With the property lines having changed over the years, my home sits closer to the neighbors’ home than it “should”. Of course, this is permissible considering the year of my home. But this means that, in a neighborhood where the lots are small to begin with and neighboring homes are closer than what might be ideal, relaxing or varying requirements for distances is more problematic than it might be in a newer neighborhood, with larger lots.

7. In addition to the stepbacks, I am also concerned about the proposed railing that the City has required the neighbors to build on the rooftop terrace. I am told that they will be building a 5 ft high railing with privacy glass. Putting such a railing at the edge of the home, instead of back the 2.0 m required by the bylaw, means that a further 5 ft will be added to the height of this home. I have inquired with the City Development Planner and am told that this is permissible because the regulations for maximum height fall under a different Section that those for a privacy screen.

8. Finally, I expect that any requirements around privacy screens and frosted glass (for interior windows) will be confirmed in writing. The neighbors and I have discussed a proposed tall (6 ft) fence between our homes to resolve the issue of the windows they are installing along the west side of their home (looking into mine).

9. As I noted at the beginning of these Reasons, I am taking my time to communicate with the City Development Planner and the developer (as of today's date we have only exchanged voicemails) to ensure that I am informed as to impact that these variances will have on me.

10. With the information I have to date, these variances are unnecessary and will materially interfere with and otherwise affect my use and enjoyment of my property (including but not limited to privacy in my yard and in my home; noise travelling down into my yard and into my home – the neighbors are installing a hot tub on this terrace; blocking sunshine available to my yard; and other such reasons). The stepback variance will negatively impact the value of my property, considering the towering nature of the proposed build – the 5 ft tall railing added on top of an already tall two-story home.

General Matters

Appeal Information:

The *Municipal Government Act*, RSA 2000, c M-26 states the following:

Grounds for Appeal

685(1) If a development authority

(a) fails or refuses to issue a development permit to a person,

(b) issues a development permit subject to conditions, or

(c) issues an order under section 645,

the person applying for the permit or affected by the order under section 645 may appeal to the subdivision and development appeal board.

685(2) In addition to an applicant under subsection (1), any person affected by an order, decision or development permit made or issued by a development authority may appeal to the subdivision and development appeal board.

Appeals

686(1) A development appeal to a subdivision and development appeal board is commenced by filing a notice of the appeal, containing reasons, with the board within 14 days,

…

(b) in the case of an appeal made by a person referred to in section 685(2), after the date on which the notice of the issuance of the permit was given *in accordance with the land use bylaw*. [emphasis added]

The *Edmonton Zoning Bylaw 12800* provides as follows:

20. Notification of Issuance of Development Permits

20.2 Class B Development

1. Within seven days of the issuance of a Development Permit for a Class B Discretionary Development, the Development Officer shall dispatch a written notice by ordinary mail to all relevant parties listed below that are wholly or partially within 60.0 m of the boundaries of the Site which is the subject of the Development Permit:

   a. each assessed owner of the Site or a part of the Site of the development;

   b. each assessed owner of land;

   c. the President of each Community League; and

   d. the President of each Business Revitalization Zone.

2. The notice shall describe the development and state the decision of the Development Officer, and the right of appeal therefrom.

3. Within 10 days of the issuance of a Development Permit for Class B Discretionary Development, the Development Officer shall cause to be published in a daily newspaper circulating within the City, a notice describing the development and stating their decision, and the right to appeal therefrom.

4. Where, in the opinion of the Development Officer, a proposed development is likely to affect other owners of land beyond 60.0 m, the Development Officer shall notify owners of land at such additional distance and direction from the Site as, in the opinion of the Development Officer, may experience any impact attributable to the development.

The decision of the Development Officer is dated May 3, 2017. Notice of the development was published in the Edmonton Journal on May 9, 2017. The Notice of Appeal was filed on May 18, 2017.

Determining an Appeal

The *Municipal Government Act* states the following:

Hearing and decision

687(3) In determining an appeal, the subdivision and development appeal board

…

(a.1) must comply with the land use policies and statutory plans and, subject to clause (d), the land use bylaw in effect;

…

(c) 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;

(d) may make an order or decision or issue or confirm the issue of a development permit even though the proposed development does not comply with the land use bylaw if, in its opinion,

(i) the proposed development would not

(A) unduly interfere with the amenities of the neighbourhood, or

(B) materially interfere with or affect the use, enjoyment or value of neighbouring parcels of land,

and

(ii) the proposed development conforms with the use prescribed for that land or building in the land use bylaw.

General Provisions from the *Edmonton Zoning Bylaw:*

Section 120.1 states that the **General Purpose** of the **RF2 Low Density Infill Zone** is:

…to retain Single Detached Housing, while allowing infill on narrow lots, including Secondary Suites under certain conditions.

Under sections 120.3(4) and 120.3(6), **Secondary Suites** and **Single Detached Housing** are **Permitted Uses** in the RF2 Low Density Infill Zone.

Section 7.2(7) states:

Secondary Suite means development consisting of a Dwelling located within, and Accessory to, a structure in which the principal Use is Single

> Detached Housing. A Secondary Suite has cooking facilities, food preparation, sleeping and sanitary facilities which are physically separate from those of the principal Dwelling within the structure. A Secondary Suite also has an entrance separate from the entrance to the principal Dwelling, either from a common indoor landing or directly from the side or rear of the structure. This Use includes the development or Conversion of Basement space or above Grade space to a separate Dwelling, or the addition of new floor space for a Secondary Suite to an existing Single Detached Dwelling. This Use does not include Apartment Housing, Duplex Housing, Garage Suites, Garden Suites, Semi-detached Housing, Lodging Houses, Blatchford Lane Suites, Blatchford Accessory Suites, or Blatchford Townhousing.

Section 7.2(9) states:

> **Single Detached Housing** means development consisting of a building containing only one Dwelling, which is separate from any other Dwelling or building. Where a Secondary Suite is a Permitted or Discretionary Use in a Zone, a building which contains Single Detached Housing may also contain a Secondary Suite. This Use includes Mobile Homes which conform to Section 78 of this Bylaw.

Section 814.1 states that the **General Purpose** of the **Mature Neighbourhood Overlay** is:

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

Secondary Suite – Site Area

Section 86(1) states: "A Secondary Suite shall comply with the following regulations: the minimum Site area for a Single Detached Dwelling containing a Secondary Suite is 360 m2, except in the case of the RR [Rural Residential] Zone, where it shall be the same as the minimum Site area for the Zone."

<u>Development Officer's Determination</u>

1. Site Area - The Site Area proposed is 353 sq. m. instead of 360 sq. m. (Section 86(1)).

Rooftop Terrace and Privacy Screening

Section 61(1)(a) states:

> On a Site Abutting a Site zoned to allow Single Detached Housing as a Permitted Use, or a Site zoned RF5 Row Housing Zone, Rooftop Terraces and Privacy Screening, excluding vegetative screening constructed on a Rooftop Terrace, shall be developed in accordance with the following Stepback regulations:
>
> a. On an Interior Site, the minimum Stepback shall be:
> …
> ii. 2.0 m from any building Façade facing a Rear Lot Line;
> …
> iv. 2.0 m from any building Façade facing a Side Lot Line, where the Site Width is 10.0 m or greater.

Development Officer's Determination

2. Stepback - The Stepback of the Rooftop Terrace from the rear of the house facing the alley is 0.91m instead of 2.0m (Section 61(1)(a)(ii)).

3. Stepback - The Stepback of the Rooftop Terrace from the interior side facade facing 9847 - 86 Avenue NW is 0.18m instead of 2.0m (Section 61(1)(a)(iv)).

Determination of Secondary Suite Use

Section 7.1(3)(b) states:

> The following guidelines shall be applied in interpreting the Use definitions:
> …
> b. where specific purposes or activities do not conform to any Use definition or generally conform to the wording of two or more Use definitions, the Development Officer may, at their discretion, deem that the purposes or activities conform to and are included in that Use which they consider to be the most appropriate. In such a case, the Use shall be considered a Discretionary Use, whether or not the Use is listed as a Permitted Use or Discretionary Use within the applicable Zone;

Development Officer's Determination

4. Secondary Suite - The proposed development has been deemed to include a Secondary Suite (Section 7.1(3)(b)).

ADVISEMENTS:

1. Sufficient parking was provided in accordance with the Edmonton Zoning Bylaw 12800. The variance for Site Area is a result of the Secondary Suite. Sufficient Site Area exists for the proposed development's principal use being a Single Detached House.

Notice to Applicant/Appellant

Provincial legislation requires that the Subdivision and Development Appeal Board issue its official decision in writing within fifteen days of the conclusion of the hearing. Bylaw No. 11136 requires that a verbal announcement of the Board's decision shall be made at the conclusion of the hearing of an appeal, but the verbal decision is not final nor binding on the Board until the decision has been given in writing in accordance with the *Municipal Government Act.*

SURROUNDING LAND USE DISTRICTS

Site Location ←

File: SDAB-D-17-105