



**EDMONTON
TRIBUNALS**

*Subdivision &
Development
Appeal Board*

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Date: June 8, 2017
Project Number: 167847299-001
File Number: SDAB-D-17-097

Notice of Decision

[1] On June 1, 2017, the Subdivision and Development Appeal Board (the “Board”) heard an appeal that was filed on **May 2, 2017**. The appeal concerned an Order issued on April 18, 2017, by Development Services, to:

Cease the use of all main floor dwellings by May 18, 2017, and Decommission the Apartment Housing / Main Floor Dwellings (12707 - 119 Street & 12709 - 119 Street) by May 18, 2017

[2] The subject property is on Plan 3229Z Blk 7 Lot 31, located at 12709 - 119 Street NW, within the CNC Neighbourhood Convenience Commercial Zone.

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

- Copy of the Stop Order;
- The Development Officer’s written submissions; and
- The Appellant’s written submissions.

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

- Exhibit A – PowerPoint presentation from the Development Compliance Officer

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, R.S.A 2000, c. M-26 (the “*Municipal Government Act*”).

Summary of Hearing*i) Position of the Appellant, L. Hayes*

- [8] The current owner purchased this property in 2006. At that time it was listed as residential property as per the copy of the advertisement that she submitted with her appeal.
- [9] She relied on a lawyer to handle the purchase and perform the required searches and also looked at the City of Edmonton “slim maps”. The tax assessment showed this as a residential triplex.
- [10] The Real Property Report in 2015 labelled this as a commercial property but she had a letter from the City showing a variance had been granted and it would not be a problem unless the property was redeveloped. The lawyer reviewed this letter and felt everything was in order.
- [11] The previous owner told her that, when he purchased the property, he had the City come out and confirm it was residential. She believes that the first floor dwellings were developed in the 1970’s.
- [12] In 2015, she had a difficult tenant and the police assisted her in evicting this tenant. This tenant registered a complaint and as a result she received an order from the Government of Alberta stating that renovations were required. They spent a substantial amount of money to comply with the order and fix the stairwell, remove the drywall from the basement and update the plumbing.
- [13] Subsequently, she received a call from the City advising that an inspection was required to determine the Use. She was advised that the City needed to obtain the previous development permits and they finally got back to her and advised that the last permit was for a beauty parlour.
- [14] At that time it was suggested that she should apply for a development permit. She paid to have plans done and made the application, which was subsequently refused. The reason for refusal was that the *Edmonton Zoning Bylaw* requires that the first floor must be commercial and only the upper storey could be Apartment Housing. She could not understand why she was told to apply only to be refused.
- [15] She does not want to operate this as a commercial property. The types of commercial properties in this area do not make it a better neighbourhood and consist of pawn shops, bars, the Dover Hotel and “massage parlours”.
- [16] She provides low income housing and one of her tenants has lived on the main floor for six years. He is on AISH and pays \$700.00 a month rent. This is one of the only affordable places he can find with a laundry room on the main floor and no stairs. Most rents in the neighbourhood are at least \$900.00 and it will be difficult for him to find

alternative housing close to bus service and the Yellowhead Trail. She does not understand that, if it has been an apartment forever, why is it a problem all of a sudden.

- [17] In 2015 the City advised her that, as long as she is doing something to try to fix or sell the property, no action would be taken and she would not be forced to evict the tenants. She has been trying to sell since last year.
- [18] In 2017 she received another call from the City to inspect the property, which resulted in the Stop Order which is the subject of today's appeal, with a compliance date of three weeks from when she received the Order. This is in clear violation of the *Residential Tenancies Act*, which requires a landlord to give tenants three months clear notice for eviction.
- [19] The subject property is adjacent to another commercial property, which was a computer repair shop when she purchased her property 10 years ago and later became an adult store. It is currently vacant and for sale. On the other side of her property is a vacant lot. She did not apply for re-zoning as she would have had to get these immediately adjacent neighbours to agree to the re-zoning application.
- [20] She had no reason to believe that this was not a residential property because the surrounding area is all residential.
- [21] This whole situation has occurred because of a lack of coordination between City departments. If the tax department had communicated with the development department, this problem could have been identified a long time ago and she would never have purchased the property and would not be facing fines and having to evict tenants.
- [22] She was never informed when she first started dealing with the City in 2015 that a Stop Order could potentially be issued. She was under the assumption that she could keep operating as long as she was actively trying to sell the property. She has listed it as commercial property with her realtor.
- [23] If the Stop Order were to be upheld she would like the compliance date extended until the property sells – at least until the end of September. The current tenants are aware that the property is being sold and that they will eventually have to vacate but they have not been given formal notice to vacate. She wants to be able to provide them with the required three months' notice.

ii) *Position of the Development Compliance Officer, N. Swain*

- [24] Ms. Swain was accompanied by her supervisor, Ms. K. Lamont. Ms. Swain gave a PowerPoint presentation (marked Exhibit A).
- [25] Apartment Housing is not a Permitted Use in the underlying CNC Neighbourhood Convenience Commercial Zone. It is only a Discretionary Use if the main floor is developed as commercial Use.

- [26] Maps were shown to illustrate the location of the site as well as the boundaries of the Calder Neighbourhood Improvement Plan. A Google Street View of the property was also shown.
- [27] The original approval on September 24, 1948, was for “retail store and apartment in a “G” Three Storey Business District, with the front yard to be less than required by the Bylaw”. In October 26, 1966, the Use was changed from retail store to a beauty parlor.
- [28] An interior inspection was conducted on November 16, 2015, which confirmed there were two occupied main floor dwellings as well as an occupied dwelling on the second floor. Interior photos of the three dwellings showed separate front entrances, kitchens bathrooms and bedrooms for each unit.
- [29] A Violation Notice was mailed to the property owners as a result of the November 16, 2015, inspection which provided the owners with two options. They could either apply for a Development Permit or revert the property to its original approved state as a Retail Store and Apartment. The owner applied for a Development Permit, which was refused on September 29, 2016 because:
- The general purpose of the CNC Neighbourhood Convenience Commercial Zone would not be met. As per Section 11.3(1) of the *Edmonton Zoning Bylaw* a Development Officer does not have the authority to vary the General Purpose of the appropriate zone.
 - Although Apartment Housing is a Discretionary Use in the CNC Neighbourhood Convenience Commercial Zone it shall only be permitted in buildings where the first Storey is used for commercial purposes as per Sections 310.3 and 310.5(1)(a) of the *Edmonton Zoning Bylaw*.
- [30] On April 12, 2017, a second inspection was conducted but they were only able to gain access to one of the main floor dwellings (12709 – 119 Street); they were granted entry by the tenant.
- [31] On April 18, 2017, a Section 645 *Municipal Government Act* Order was issued and mailed to the property owners advising them to “Cease the use of all main floor dwellings by May 18, 2017 and to decommission the Apartment Housing / Main Floor Dwellings by May 18, 2017.”
- [32] Since 2009 several complaints have been received regarding this property including snow on sidewalk, nuisance complaints, unlicensed businesses and two inappropriate land uses.
- [33] Ms. Swain reviewed the relevant legislation and definitions she used when making her decision.
- [34] The Order before the Board was issued by a Designated Officer of the Development Authority as defined in Section 624 of the *Municipal Government Act*. Due to the number of complaints listed above, Ms. Swain requests that the Board uphold the Order. She feels

the current development is not meeting the intent of the *Edmonton Zoning Bylaw* and it unduly interferes with the enjoyment or value of the neighbouring parcels of land.

- [35] She disputes that the property owner was assured that no enforcement steps would be taken or that tenants were permitted to stay as long as steps were being taken to sell the property. There are Building Code issues here as confirmed by the order issued by the Government of Alberta.
- [36] On December 7, 2015, J. McArthur, a City of Edmonton Development Officer discussed the compliance letter with Ms. Hayes that she previously referred to. That letter stated that the Use was non-conforming but this only applies to the exterior of the building. Ms. Hayes was not satisfied with the answer.
- [37] Ms. K. Lamont advised that the Development Authority had been given the impression that the property would sell quickly. Due to the length of time the sale is taking, they are concerned regarding the continuance of the illegal Use.
- [38] Ms. Swain is aware of the three-month notice requirement in the *Residential Tenancies Act* but this is an agreement between the Landlord and the Tenant. They typically allow 30 days for a Stop Order to be complied with. It is up to the land owner to work with the tenants; sometimes the Landlord will offer to pay for moving costs to get them out earlier. The Compliance Officer does have the ability to give a time extension if an actual deadline date has been set.

iii) Rebuttal of the Appellant

- [39] The safety concerns raised by Alberta Health have been corrected. She is not aware of any other safety or health concerns applicable to this property that would endanger the tenants. There are no fans above the stoves, however many old properties do not have these fans because they were not required at the time the properties were developed.
- [40] She was verbally advised on the phone that the City would not make her evict her tenants.
- [41] The reason the sale is taking longer than anticipated is she was told to apply for a Development Permit. Why was she advised to do this if this development was not possible? She would have moved more quickly to try to sell and would not have bothered to get blueprints done.
- [42] She did not appeal the Development Permit refusal because she did not see any point. She had been told the only way this could be approved is if the main floor reverts to commercial.

Decision

[43] The appeal is ALLOWED IN PART and the Stop Order is UPHeld. The compliance date of the Stop Order is varied to October 1, 2017.

Reasons for Decision

[44] In September 1948, a Development Permit was issued for this property to erect a retail store with an Apartment on the second storey. Over the years there have been a number of changes in Uses in the business on the main floor of this development, but at no time was a Development Permit ever obtained for residential development on the main floor. At some point the main floor commercial Use was converted into two Dwellings.

[45] In February 2015, the situation came to the attention of City authorities with the result that a *Municipal Government Act* Order was issued on November 25, 2015 to either obtain a Development Permit for a three unit Apartment House or to revert the property to its original approved state as a retail store on the main floor with a second storey Apartment. On September 29, 2016, the Appellant's application for a Development Permit for a three unit Apartment House was refused.

[46] While Apartment Housing is a Discretionary Use in the CNC Neighbourhood Convenience Commercial Zone, the refusal was based on the fact that, under Section 310.5(1)(a) of the *Edmonton Zoning Bylaw*, Apartment Housing shall be permitted only in buildings where the first storey is used for commercial purposes. The Appellant did not appeal the September 29, 2016 refusal.

[47] A Stop Order was subsequently issued to cease the use of all main floor dwellings and to de-commission the main floor dwellings by May 18, 2017. The Appellant appealed that Stop Order and that is the issue before the Board today.

[48] The Board accepts the Appellant's evidence that she was not aware when she purchased the property that the main floor dwellings did not comply with the *Edmonton Zoning Bylaw*. The Board also accepts her evidence that she has acted in good faith to do everything she thought was required by Provincial and City authorities with respect to the property. The Board sympathizes with the Appellant's situation. However, the issue before the Board is simply whether the Stop Order under appeal was properly issued.

[49] The Board is satisfied that the Stop Order was validly issued by a person having the authority to do so.

[50] The Appellant does not contest the fact that there are two tenant-occupied dwellings on the main floor in contravention of Section 310.5(1)(a) of the *Edmonton Zoning Bylaw*. Accordingly, the Stop Order must stand.

[51] However, the Board thinks that it is appropriate to grant an extension of time to comply with the Stop Order so that the Appellant can provide appropriate notice to the main floor tenants. Accordingly the time for complying with the Stop Order is extended to October 1, 2017.

Mark Young, Presiding Officer
Subdivision and Development Appeal Board

Board Members in Attendance:

Ms. P. Jones; Mr. A. Nagy; Mr. J. Wall; 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 Stop Order appeal 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.



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Date: June 8, 2017
Project Number: 240634557-001
File Number: SDAB-D-17-098

Notice of Decision

- [1] On June 1, 2017, the Subdivision and Development Appeal Board (the “Board”) heard an appeal that was filed on **May 4, 2017**. The appeal concerned the decision of the Development Authority, issued on April 12, 2017, to approve the following development:

Construct a Single Detached House with a front Veranda, rear uncovered deck (1.22 metres by 2.29 metres), front upper floor balcony, fireplace, and Basement development (NOT to be used as an additional Dwelling).

- [2] The subject property is on Plan 222HW Blk 22 Lot O, located at 11207 - 60 Street NW, within the RF1 Single Detached Residential 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:

- Copy of the Development Permit application with attachments, proposed plans, and the approved Development Permit;
- The Development Officer’s written submissions; and
- The Respondent’s revised plans.

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

- Exhibit A – An e-mail from the Community League President

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, R.S.A 2000, c. M-26 (the “*Municipal Government Act*”).

Summary of Hearing

i) Position of the Appellant, M. Moore

- [8] The only concern he has with the proposed development is the privacy issue created by the terrace on top which allows the residents to look into his bathroom window. The revised drawings eliminate this concern.
- [9] One of his trees needs to be trimmed and he has an estimate for this. He is confident this issue can be worked out.
- [10] He has no concerns with the deficiency in the required front Stepback of the Rooftop Terrace.
- [11] He wants a house to be developed on the subject site; the sooner it goes ahead the better.

The Chair called for a brief adjournment at this point to allow the Appellant time to review the Development Officer's submission regarding his reasons for granting a variance for the side Stepback for the Rooftop Terrace.

- [12] After reviewing the report, the Appellant still felt the Respondents would be able to look directly into his bathroom window without the proposed privacy wall. The Appellant's house is a split level and his bathroom is located in the higher portion, which is closest to the proposed development. The Appellant confirmed that his bathroom window is not frosted and it opens.
- [13] The Appellant does not want to overhear conversations taking place on the Rooftop Terrace. The proposed wall would address privacy issues for both parties.

ii) Position of the Development Officer, B. Liang

- [14] Mr. Liang reviewed some illustrations in his report which he had prepared using information from the Real Property Report and the drawings. He used these drawings to show why he had approved the variances to the required Stepbacks for the Rooftop Terrace.
- [15] A person standing on the Rooftop Terrace would not be able to see into any of the neighbouring windows; their view would be of the neighbouring roof. There are no skylights located on the neighbour's roof and the neighbour's amenity areas are located on the opposite side of the neighbouring buildings. The roof of the neighbouring house blocks any views of the patios in the amenity areas. A person would have to stick their head out over the side of the Rooftop Terrace to see anything.
- [16] Most of the sound generated from the Rooftop Terrace would travel away from house and over the neighbour's roof. In order to reach the neighbour's property it would first have

to pass through the floor, a wall and the railing. The building itself blocks most of the sound from the Rooftop Terrace. A person would have to intentionally yell from right at the edge of the terrace in order for sound to become an issue.

- [17] In his opinion, there are no privacy concerns associated with the proposed Rooftop Terrace. That is why he did not require any type of privacy screening at the time of approval.
- [18] He confirmed he has seen the revised plans with the addition of a wall. His decision would remain the same because the variances for the Rooftop Terrace Stepbacks would still be required. The proposed wall would completely eliminate any possible privacy impacts.
- [19] He confirmed that the Appellant's home is a split level and that both portions have a flat roof. One side of the house is slightly elevated from the other.
- [20] If the Rooftop Terrace were an enclosed room with a window on the side facing the neighbour's property, the Development Officer would not have asked for any special window treatment as the window would be overlooking the roof of the adjacent house.

iii) Position of the Respondent, T. Hoover, Habitat Studio & Workshop Ltd.

- [21] Their intent has always been to construct a beautiful home to replace the current eyesore.
- [22] All of the regulations of the Mature Neighbourhood Overlay have been met.
- [23] The Rooftop Terrace is a design element that adds character to the development and the only variances required are:
- A variance of 1.0 metre to the required front Stepback of the Rooftop Terrace.
 - A variance of 2.0 metres to the required Stepback of the Rooftop Terrace on the side facing the Appellant's property.
- [24] The Appellant does not have a concern with the deficiency in the required front Stepback. The deficiency in the side Stepback has been addressed by adding a full height wall on this side of the Rooftop Terrace. This is a design change that has already been made and they intend to stay with this revision.
- [25] Mr. Hoover referred to an e-mail from the Community League President, Anne Parker, approving the design changes and expressing confidence that a certified arborist will work with the Appellant to protect his tree. This e-mail was marked as Exhibit A.
- [26] Habitat Studio has guidelines they follow regarding trees. Mr. Hoover acknowledged that there is a large evergreen tree on the Appellant's property that will require pruning but this should not cause any damage to the tree.

- [27] There is no reason not to approve this permit. They have taken steps beyond what is required and are trying to be as neighborly as possible by addressing concerns regarding overlook and noise. 112 Avenue is a very busy road and a wall will also benefit the homeowner by alleviating noise coming from this road.
- [28] His personal preference would be to put up a lattice to address privacy concerns as this would be more aesthetically pleasing but he confirmed that they are requesting the Board to approve the revised plans with the addition of a full privacy wall.

iv) Rebuttal of the Appellant

- [29] Mr. Moore wants a house to be built on the subject site and is tired of looking at weeds.
- [30] He would like this project to move forward, as per the revised plans, as this will satisfy all parties.

Decision

- [31] The appeal is DENIED and the decision of the Development Authority is CONFIRMED. The development is GRANTED as approved by the Development Authority, subject to the following additional condition:
1. This approval is based on the addition of a privacy wall as shown on the revised plans submitted and reviewed by the Board on June 1, 2017.

Reasons for Decision

- [32] Single Detached Housing is a Permitted Use in the RF1 Single Detached Residential Zone.
- [33] The only variances required with respect to this development relate to Stepbacks for the Rooftop Terrace. Section 61.1(a) of the Edmonton Zoning Bylaw sets out the Stepbacks required for Rooftop Terraces on an interior site.
- [34] The first variance relates to the 1.0 metre Stepback required from the Front Lot Line as per Section 61.1(a)(i). In this case there is no Stepback provided. No one who appeared at the hearing had any issue with respect to this Stepback. The Board agrees with the Development Officer's opinion that, because this Stepback is at the front of the house facing the front street, it will not result in a loss of privacy to anyone.
- [35] The contentious Stepback is the 2.0 metre Stepback required in Section 61.1(a)(iv) from any building Façade facing a Side Lot Line. The proposed development has no side Stepback. The Appellant took issue with the elimination of this Stepback because it is on the side of the house that faces his property. The Respondent appeared at the hearing with

revised plans showing a full length and full height privacy wall along that side of the Rooftop Terrace. The Appellant indicated that this wall would completely eliminate all of his concerns about loss of privacy and noise from the Rooftop Terrace.

- [36] The Board agrees that this privacy wall completely mitigates these concerns and that granting this side Stepback variance 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.
- [37] Accordingly the appeal is denied with the adoption of the new plans showing the privacy wall.

Mark Young, Presiding Officer
Subdivision and Development Appeal Board

Board Members in Attendance:

Ms. P. Jones; Mr. A. Nagy; Mr. J. Wall; Ms. E. Solez

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.