



**EDMONTON  
TRIBUNALS**

*Subdivision &  
Development  
Appeal Board*

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Date: July 11, 2019  
Project Number: 313136919-001  
File Number: SDAB-D-19-096

**Notice of Decision**

- [1] On June 26, 2019, the Subdivision and Development Appeal Board (the “Board”) heard an appeal that was filed on **June 3, 2019**. The appeal concerned the decision of the Development Authority, issued on June 3, 2019 to refuse the following development:

**To construct exterior alterations to a Single Detached House  
(Driveway extension 2.6 metres by 5.6 metres long)**

- [2] The subject property is on Plan 1223878 Blk 7 Lot 74, located at 17107 - 74 Street NW, within the (RSL) Residential Small Lot Zone. The Edmonton North Area Structure Plan and the Schonsee 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 proposed plan and the refused Development Permit;
  - The Development Officer’s written submission;
  - The Appellant’s written submission, including photographs and a Real Property Report; and
  - One online response in opposition to the proposed development.

**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, Ms. L. Wong:*

- [7] Ms. Wong has a legal basement suite that is currently occupied. She owns two vehicles and the tenants own two vehicles.
- [8] It is difficult to maneuver vehicles when her vehicles are parked inside the garage and the tenants vehicles are parked on the driveway.
- [9] Street parking is very congested and allowing the driveway extension will provide onsite parking for the tenants.
- [10] Proper drainage and landscaping will be provided on both sides of the driveway extension.
- [11] Ms. Wong provided the following information in response to questions from the Board:
- a) It is her intent to use the driveway extension to provide additional parking for her tenants.
  - b) It is her opinion that the driveway extension will not eliminate an on-street parking space.
  - c) Snow removal can be accommodated on the estimated four-foot green space located beside the proposed extension.
  - d) There are no street fixtures located in between her house and the (south) abutting house.
  - e) The notification map was referenced to illustrate the location of the existing driveway extensions referenced in the submitted photographs.
  - f) It was her opinion that allowing a parking space on the proposed driveway extension will not affect the neighbourhood or the neighbours. The driveway extension will alleviate the existing on-street parking congestion.

*ii) Position of the Development Officer, Mr. J. Folkman:*

- [12] The Development Authority did not attend the hearing and the Board relied on Mr. Folkman's written submission.

**Decision**

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

**Reasons for Decision**

[14] The proposed exterior alteration, a Driveway extension (2.6 metres by 5.6 metres), is Accessory to Single Detached Housing which is a Permitted Use in the (RSL) Residential Small Lot Zone.

[15] Based on the photographic evidence provided, the proposed Driveway extension will result in the elimination of one on-street parking space along 74 Street, which is immediately adjacent to the subject Site. The Board finds that on-street parking is an amenity of the neighbourhood.

[16] The Appellant submitted photographs of similar existing Driveway extensions to demonstrate that this is a common practice in the neighbourhood and that the effect on the amenities of the neighbourhood and the neighbours would be insignificant. The Board disagrees with the Appellant and finds that the proposed Driveway extension will impact the amenities of the neighbourhood and neighbouring property owners for the following reasons:

- a) Based on evidence provided by the Appellant, the intended use for the Driveway extension is to allow parking on both sides of the Driveway in the Front Yard so that the Garage can be used without moving vehicles that would normally be parked on the Driveway. The primary purpose of the extension is to create an additional parking stall in the Front Yard, and not merely address maneuverability issues.
- b) Section 54.2(2)(e)(i) of the *Edmonton Zoning Bylaw* states:

parking spaces shall not be located within a Front Yard in a Residential Zone.

The proposed Driveway extension will create a parking space in the Front Yard in a Residential Zone.

- c) The proposed Driveway extension will result in the elimination of one on-street parking space that is currently available for public use and essentially privatize it as an on-site parking space for the exclusive use of the Appellant which will exacerbate the parking problem that already exists along this block.
- d) All but one of the examples of similar existing Driveway extensions referenced by the Appellant are located outside of the 60-metre notification radius.

- [17] Moreover, several of the examples provided by the Appellant are distinguished for the following reasons:
- a) Many of the alleged “extensions” utilize alternative paving techniques which suggest they are landscaped features instead of a driveway extension;
  - b) Many of the alleged “extensions” which utilize alternative paving techniques appear to preserve parking spaces on the road;
  - c) Two of the alleged “extensions” serve three car garages which permit larger Driveway widths under the Zoning regulations.
- [18] While the Board may look at the photographic examples as indicia of the effect the development will have on the amenities of the neighbourhood, this Board must consider the application at hand in its own right.
- [19] Based on all of the above, it is the opinion of the Board that the proposed development will unduly interfere with the amenities of the neighbourhood. Therefore, the appeal is denied.

A handwritten signature in black ink, appearing to read 'R. Handa', with a stylized flourish at the end.

Mr. R. Handa, Presiding Officer  
Subdivision and Development Appeal Board

Board members in attendance: Mr. V. Laberge, Ms. D. Kronewitt-Martin, Mr. L. Pratt, Mr. J. Wall

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



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Date: July 11, 2019  
Project Number: 149168726-001  
File Number: SDAB-D-19-097

**Notice of Decision**

- [1] On June 26, 2019, the Subdivision and Development Appeal Board (the “Board”) heard an appeal that was filed on **May 31, 2019**. The appeal concerned the decision of the Development Authority, issued on May 17, 2019, to refuse the following development:

**To construct a 2.24 metre high Fence in the required Front and flanking Side Yard.**

- [2] The subject property is on Plan 5515AE Blk 23 Lot 16, located at 7803 - 103 Avenue NW, within the (RF3) Small Scale Residential Infill 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 proposed plan and the refused Development Permit;
  - The Development Officer’s written submission; and
  - Signatures of support submitted by the Appellant.
- [4] The following exhibits were presented during the hearing and form part of the record:
- Exhibit A – Photographs submitted by the Appellant; and
  - Exhibit B – Google Street View photographs.

**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. J. Kotecha and Ms. B. Kotecha:*

[8] The subject fence was discussed with as many neighbours as they could contact. Fourteen properties provided signatures of support for their fence. Most of their neighbours did not realize that there was a problem with the height of the fence and some neighbours even volunteered to attend the hearing in support.

[9] The Appellants submitted photographs of existing over height fences in the neighbourhood as well as the subject fence that were marked *Exhibit A*. Most of the over height fences have been built on corner lots in the neighbourhood and some of the fences are higher than their fence. Several of the existing over height fences are located along 75 Street and a new over height fence has recently been built at a property located at 75 Street and 102 Avenue.

[10] With the consent of all of the affected parties, Google Street View was accessed to provide additional views of the subject site and the subject fence.

[11] Since the Google photographs were taken a new house has been built on the adjacent lot to the south and a fence was built along the north property line that is higher than their fence.

[12] Ms. J. Kotecha and Ms. B. Kotecha provided the following information in response to questions from the Board:

- a) The existing fence is 5 ½ feet high.
- b) The subject fence was built to replace a wooden fence that was approximately 4 ½ feet high.
- c) Their lot is elevated from the sidewalk but the grade of the lot was not changed to accommodate the fence.
- d) The decision was made to replace the old fence with a higher fence to provide increased privacy and security.
- e) Since the Google Street View photographs were taken approximately five years ago, the boulevard trees have grown and the landscaping is more mature.
- f) It was estimated that the fence is located approximately seven feet from the public sidewalk and an additional four feet from the road.

*ii) Position of an Affected Property Owner in Opposition to the Appellant, Mr. W. Lopata, representing his daughter, Ms. A. Lopata:*

- [13] Mr. Lopata questioned how the fence was built without a permit and advised that a complaint was registered when the fence was being built.
- [14] He measured the distance from the bottom of the fence to the sidewalk elevation to be 26 inches and the height of the fence to be 62 inches.
- [15] It is his opinion the fence does impact sight lines at the intersection.
- [16] The height of the fence does not conform with the development regulations and an exception should not be made to allow the fence to remain.
- [17] Mr. Lopata provided the following information in response to questions from the Board:
- a) Allowing this development will impact the neighbours because they will assume that they are able to build over height fences as well.

*iii) Position of the Development Officer, Mr. G. Alexander:*

- [18] The Development Authority did not attend the hearing and the Board relied on Mr. Alexander's written submission.

*iv) Rebuttal of the Appellant:*

- [19] The fence is setback quite a distance from the corner. Many of the fences referenced in the photographs submitted are located much closer to the sidewalk.
- [20] There is a lot of pedestrian traffic at the intersection, including runners and dog walkers. It is their opinion that sight lines at the intersection are not impacted by the existing fence.

## **Decision**

- [21] The appeal is **ALLOWED** and the decision of the Development Authority is **REVOKED**. The development is **GRANTED** as applied for to the Development Authority.
- [22] In granting the development, the following variances to *the Edmonton Zoning Bylaw* are allowed:



1. Sections 49.1(e)(i) and (ii) are waived to allow the Fence Height to remain as proposed.

### **Reasons for Decision**

[23] The proposed Fence is Accessory to Single Detached Housing which is a Permitted Use in the (RF3) Small Scale Infill Development Zone.

[24] Section 49.1(e)(i) states:

On a Corner Site, the Height of a Fence, wall, or gate shall not exceed 1.2 metres for the portion of the Fence, wall or gate constructed in the Front Yard.

[25] Section 49.1(e)(ii) states:

On a Corner Site, the Height of a Fence, wall, or gate shall not exceed 1.2 metres for the portion of the Fence, wall or gate situated between the flanking Side Lot Line and the foremost side Façade of the principal structure, and extending from the Front Lot Line to the rear Lot Line.

[26] The main issue before the Board is whether the proposed variances satisfy the test in section 687(3)(d) of the *Municipal Government Act*. Namely, the Board must consider whether the proposed development with the variances would:

- i) unduly interfere with the amenities of the neighbourhood, or
- ii) materially interfere with or affect the use, enjoyment or value of neighbouring parcels of land.

[27] The Board is satisfied that this development satisfies both prongs of the section 687(3)(d) test.

[28] The Board arrives at this conclusion for the following reasons:

- a) The Fence is setback from the north and east property lines and the elevation of the lot increases as you move away from the sidewalk.
- b) The Fence was built five years ago in order to provide privacy and security for the amenity area located at the rear of the Single Detached House and has existed since that time without any documented complaints.
- c) With the consent of all parties, Google Street View was accessed during the hearing and from the photographs provided, it was determined that the existing Fence does not create a significant visual impact, affect sight lines, or create a safety concern.

- d) The Appellants submitted numerous photographs of existing over Height Fences that have been built in this neighbourhood. It was noted that some of these Fences are higher than the subject Fence and are sited on or near the property line. Therefore, the proposed development is not out of character for this neighbourhood and cannot be said to impact the amenities of the neighbourhood insofar as it relates to the character.
  - e) The Board notes the objections of a concerned neighbour but finds that these concerns predominantly relate to precedent and not the required variances. The decision contained herein is not binding on any future SDAB panels or the City and is based solely on the circumstances of this appeal.
  - f) The Appellants undertook extensive community consultation even though there was no requirement to do so. Based on the information provided, the Appellants reviewed all of the plans and development requirements with the neighbours who were consulted to ensure that they could make an informed decision on whether or not to support the proposed development. The signatures of 14 property owners were submitted in support of the proposed development.
- [29] The Board also questions the calculation methods used by the Development Officer in determining the Height of the Fence. Section 49.1(c) of the *Edmonton Zoning Bylaw* states “the height of a Fence, wall, or gate shall be measured from the general ground level 0.5 metres back from the property line of the Site on which the Fence, wall or gate is to be constructed”.
- [30] Based on the submissions provided by Mr. Lopata, the Fence is 88 inches above the sidewalk elevation. This number roughly converts to 2.24 metres, or the Height of the Fence as determined by the Development Officer. It is therefore likely that the Fence Height was measured from the sidewalk elevation, rather than in accordance with section 49.1(c).
- [31] The evidence provided shows that the site slopes up considerably from the sidewalk. Given that the survey indicates the property line is approximately 1.51 metres from the back of the sidewalk, and that the Height calculation should occur 0.5 metres in from the property line, the Board believes that the Development Officer made an error in determining the actual Height of the Fence.
- [32] This error reduces the impact of the existing Fence because the actual Height is lower. Given that the Board was not provided with enough information to complete a new calculation, the Board has chosen to waive this development regulation.
- [33] Based on all of the above, it is the opinion of the Board that the proposed development with the required variances, 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.

[34] Therefore, the appeal is allowed and the development is granted.

A handwritten signature in black ink, appearing to read "R. Handa". The signature is stylized with a large initial "R" and a long horizontal stroke.

Mr. R. Handa, Presiding Officer  
Subdivision and Development Appeal Board

Board members in attendance: Mr. V. Laberge, Ms. D. Kronewitt-Martin, Mr. L. Pratt, Mr. J. Wall

**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.*



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Date: July 11, 2019  
Project Number: 303932988-001  
File Number: SDAB-D-19-098

**Notice of Decision**

- [1] On June 26, 2019, the Subdivision and Development Appeal Board (the “Board”) heard an appeal that was filed on **June 1, 2019**. The appeal concerned the decision of the Development Authority, issued on May 15, 2019 to approve the following development:

**To construct four Dwellings of Row Housing.**

- [2] The subject property is on Plan RN46 Blk 19 Lot 10, located at 12603 - 115 Avenue NW, within the (RF3) Small Scale Infill Development Zone. The Mature Neighbourhood Overlay and the West Ingle Area Redevelopment 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 proposed plans and the approved Development Permit;
  - The Development Officer’s written submission;
  - The Appellant’s written submissions;
  - The Respondent’s written submissions;
  - One email in opposition to the proposed development; and
  - Two online responses in opposition to the proposed development.
- [4] The following exhibit was presented during the hearing and forms part of the record:
- Exhibit A – Photographs of existing Row Housing developments submitted by the Respondent.

**Preliminary Matters**

- [5] At the outset of the appeal hearing, Ms. D. Kronewitt-Martin disclosed that she has had previous business interactions with the Appellant, Mr. D. Kroening but has not had any recent contact and did not feel that this would impact her ability to provide a fair and unbiased hearing. No one objected 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, Mr. D. Kroening:*

- [8] The area between 126 and 127 Street south of 115 Avenue is already congested with parking and traffic. The proposed development will add another four to eight vehicles that will require parking. Even with a single car garage for each unit, there will be a need to park another four cars assuming the garages are not used to park vehicles.
- [9] There have been a number of infills with skinny houses and duplexes built over the past few years which has also increased the density of the area. The proposed development is too large for the lot that appears to be in excess of 85 percent site coverage.
- [10] There is a school zone located on 115 Avenue that is already congested without the addition of residential parking and access to the proposed Row House.
- [11] The existing infrastructure, water lines and sanitary services are outdated and will not support the higher density of housing and occupants.
- [12] Mr. Kroening is not familiar with the terminology of the conditions and variances that were granted.
- [13] At this point, the Presiding Officer clarified that the Board is required to consider how the required variances will impact the amenities of the neighbourhood and the use, enjoyment and value of neighbouring properties because the proposed development is a Permitted Use in the (RF3) Small Scale Infill Development Zone.
- [14] Mr. Kroening reiterated that he filed the appeal to address community concerns regarding the proposed Row House. However, he does not have any reason to oppose the required variances.
- [15] In response to a question regarding the impact of the proposed development on the use and enjoyment of his property, Mr. Kroening responded that his only concern is the development of Row Housing on this site and not the required variances.

*ii) Position of the Development Officer, Mr. K. Yeung:*

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

*iii) Position of the Respondent, Mr. R. Gill, representing Equity Built Homes:*

[17] It is very rare to find a four unit Row Housing development that complies with both the front and rear setback requirements. Usually one or both setbacks require a variance. In this case, the front setback was maintained in order to maintain the curb appeal of the neighbouring block.

[18] The proposed development complies with the maximum allowable 45 percent site coverage requirement.

[19] No responses were received from neighbouring property owners during the 21 day consultation period.

[20] The proposed development meets and exceeds parking and amenity space requirements.

[21] The reduced rear setback will not interfere with the amenities of abutting properties or the neighbourhood.

[22] Photographs of existing four-plexes located within four or five blocks of the subject site, primarily on corner lots, were submitted and marked *Exhibit A*. In each of these cases, a front or rear setback variance or a combination of both were required.

*iv) Rebuttal of the Appellant:*

[23] In response to a question, Mr. Kroening was advised that a legal parking space has to be 5.5 metres in length.

**Decision**

[24] The appeal is **DENIED** and the decision of the Development Authority is **CONFIRMED**. The development is **GRANTED** as approved by the Development Authority.

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

2. The minimum required Rear Setback of 18.3 metres (40 percent of Site Depth) per section 814.3(4) is varied to allow a deficiency of 1.5 metres, thereby decreasing the minimum required Rear Setback to 16.8 metres (37 percent of Site Depth).
3. The required distance of 17.7 metres from the cantilever to the Rear Lot Line per section 44.2 is varied to allow a deficiency of 1.5 metres, thereby decreasing the minimum required distance to 16.2 metres.

### **Reasons for Decision**

[26] Row Housing is a Permitted Use in the (RF3) Small Scale Infill Development Zone.

[27] The main issue before the Board is whether the proposed variances satisfies the test in section 687(3)(d) of the *Municipal Government Act*. Namely, the Board must consider whether the proposed development with the variances would:

- i) unduly interfere with the amenities of the neighbourhood, or
- ii) materially interfere with or affect the use, enjoyment or value of neighbouring parcels of land.

[28] The Board is satisfied that this development satisfies both prongs of the section 687(3)(d) test.

[29] The Appellant clearly stated that he did not have an issue with the required variances and could not demonstrate any material impacts that would result by granting the requested variances.

[30] The Board did not consider the concerns raised by the Appellant related to the proposed Use of the lot to develop four Dwellings of Row Housing. The Use is Permitted at this location and the Applicant can develop Row Housing as of right.

[31] Based on all of the above, it is the opinion of the Board, that the proposed development with the required variances, 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.



[32] Therefore, the appeal is denied and the development is granted.

A handwritten signature in black ink, appearing to read "R. Handa". The signature is stylized with a large initial "R" and a horizontal line extending across the middle of the name.

Mr. R. Handa, Presiding Officer  
Subdivision and Development Appeal Board

Board members in attendance: Mr. V. Laberge, Ms. D. Kronewitt-Martin, Mr. L. Pratt, Mr. J. Wall

**Important Information for the Applicant/Appellant**

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  - c) the *Alberta Regulation 204/207 – Safety Codes Act – Permit Regulation*,
  - d) the requirements of any other appropriate federal, provincial or municipal legislation,
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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.
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