



**EDMONTON
TRIBUNALS**

*Subdivision &
Development
Appeal Board*

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Date: March 30, 2017
Project Number: 227340646-001
File Number: SDAB-D-17-052

Notice of Decision

- [1] On March 15, 2017, the Subdivision and Development Appeal Board heard an appeal that was filed on **February 2, 2017**. The appeal concerned the decision of the Development Authority, issued on January 30, 2017, to refuse the following development:

Construct a Single Detached House with front and rear attached Garage, fireplace, and to demolish an existing Single Detached House.

- [2] The subject property is on Plan 2424HW Blk 10 Lot 10, located at 12006 - 87 Avenue 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:
- A copy of the Development Permit application with attachments, proposed plans, and the refused Development Permit;
 - The Development Officer's written submission;
 - The Appellant's written submission; and
 - An e-mail in opposition from an adjacent resident.
- [4] The following exhibits were presented during the hearing and form part of the record:
- Exhibit A and B – Community consultation form and information sheet submitted by the Development Officer.
 - Exhibit C – Community consultation submitted by the Appellant.
 - Exhibit D and E – Photographs from the Windsor Park Community League.

Preliminary Matters

- [5] At the outset of the appeal hearing, the Presiding Officer indicated that he was an acquaintance of Mr. A. Lange, from Ace Lange Construction, from years ago but felt that he was not biased to hear the appeal. There was no opposition from parties in attendance at the hearing for the Presiding Officer to sit on the panel and 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 property owners of the subject Site, Mr. A. Kan, who was accompanied by his wife, Ms. R. Fok.

- [8] He and his wife invested in this property because his wife teaches at the University of Alberta and their children attend Windsor Park School. They intend to have in-laws live with them in the future.
- [9] The detached garage will have wider doors for easier access for seniors that may have a disability.
- [10] The proposed house will accommodate their family needs for several years.

ii) Position of the Appellant, Ms. J. Lange, representing Ace Lange Construction

- [11] The property owners are hoping to build their dream house in the Windsor Park neighbourhood.
- [12] The front access attached garage will have no impact on traffic in the area.
- [13] Keeping a single car in the front driveway will have a small impact on the look of the home.
- [14] Ms. Lange reviewed a PowerPoint Presentation that was submitted prior to the hearing.
- [15] There are only three other houses on the block face and none have a front drive garage, however, there are several other houses nearby on 87 Avenue, which have front drive garages.

- [16] Ms. Lange referred to photographs and a map to show that there are 84 front drive garages in the Windsor Park area. Many of the garages are double-car and they are proposing a single-car garage.
- [17] The front driveway leads onto a service road. The public sidewalk is on the south side of the service road, abutting 87 Avenue. With regard to safety, in her view, an attached garage will be less of a safety issue as there is higher pedestrian traffic in the north rear lane.
- [18] There is 27 feet from the front driveway to the service road and sufficient distance from the rear attached garage to the rear lane.
- [19] The property owners prefer the proposed drive-through attached garage over a rear detached garage.
- [20] The house is under the 40 percent maximum allowed site coverage.
- [21] The house next door to the west has a detached garage, which is comparable to the proposed development as there is less useable space in the rear yard on both properties.
- [22] If a detached Garage is approved, the property owners could apply for a Garage Suite, which would have more of an impact on the neighbourhood than their proposed Garage.
- [23] From their discussions with neighbours, they would rather see a single residential development than a lot subdivided to allow for two narrow houses or a rental property catering to the high University demand.
- [24] The proposed development will be an asset to the Windsor Park area.
- [25] With respect to questions from the Board, Ms. Lange provided the following:
- a. The front driveway will eliminate some parking on the service road, but it will be replaced with parking spaces on the front driveway. Only three vehicles can park on the service road at a time.
 - b. There is room on the northwest side of the proposed deck for children to play or they can use the playground at Windsor Park School.
 - c. She submitted the community consultation to the Development Officer when she applied for the development permit. She stated that there was 95 percent support from neighbouring property owners and only the Windsor Park Community League was in opposition.
 - d. She confirmed that the attached garage is a drive-through garage.

- e. Although the front garage is attached it will not be that noticeable as it will blend in with the house.
- f. In her view, the height of the main floor will not have a negative impact on the neighbouring properties as shown on page 9 in the photographs in her submission. The main floor was raised to accommodate an eight foot high front door.
- g. She confirmed that one of the mature trees in the front yard will need to be removed to develop the driveway to the front attached garage. However, if possible, they intend to keep the existing trees on the property.
- h. They would be willing to lower the rear deck to eliminate the variance of the projection into the rear setback.
- i. In her opinion, there is a hardship to build a house on the subject Site because of the unusual lot dimensions.

iii) Position of the Development Officer, Mr. G. Robinson, representing Ms. K. Bauer, the Development Officer that refused the proposed development

- [26] He received community consultation from neighbouring property owners but is unable to provide the results of the community consultation to the Board due to an internal policy. He submitted the City's community consultation forms, marked Exhibit A and B.
- [27] He referenced Ms. Bauer's written submission and stated that the Development Officer determined that there was no hardship to justify any of the variances and the proposed development does not meet the intent of the Mature Neighbourhood Overlay.
- [28] He referred to the aerial photograph showing existing front attached garages in the area and noted that prior to 2001, front attached Garages were permitted.
- [29] He referred to a chart in the Development Officer's written submission outlining the history of approval of other developments with front attached garages.
- [30] The City is trying to encourage pedestrian friendly design in the neighbourhood and detract from front attached garages.
- [31] He confirmed that the proposed rear amenity area meets the requirements of the *Edmonton Zoning Bylaw*.
- [32] The main reason for refusal is that the proposed front attached garage does not meet the intent of the Mature Neighbourhood Overlay.

- [33] Although the public sidewalk is across the street from the subject site, the service road is used for pedestrians. There is a bus stop directly across the street from the subject site which could have an impact when backing out of the driveway.
- [34] The proposed plans do not include a Secondary Suite.
- [35] The driveway to the rear attached garage is a large area that will be used for vehicle access and storage rather than being used for an amenity area.
- [36] The Development Officer did not provide conditions for the Board to attach to the proposed development if it was approved, but indicated that there are no special conditions that need to be added if the proposed development is approved.
- [37] He confirmed that the community consultation met the requirements of section 814.3(24) of the Mature Neighbourhood Overlay.

After a short recess, the Board heard from Ms. Lange regarding the community consultation.

- [38] She stated that she provided Ms. Bauer all of the community consultation documents based on the original plans. She stated that the only change to the plans was the rear balcony.
- [39] She is willing to provide the community consultation to the Board for their review. She confirmed that the property owners did not have a concern with any privacy issues.

After a further short recess, the Appellant submitted an e-mail with attachments to the SDAB office regarding the community consultation conducted by the Applicant (Exhibit C). After reviewing the information, the Board determined that community consultation was completed as outlined in the requirements of the Mature Neighbourhood Overlay and continued with the hearing.

iv) Position of Mr. J. Collier, representing the Windsor Park Community League, in opposition to the proposed development

- [40] Mr. Collier indicated that he sits on the building committee for the Windsor Park Community League.
- [41] He submitted photographs of the neighbourhood, marked Exhibit D and E.
- [42] He confirmed that the Appellant was thorough in conducting the community consultation and the Community League does not have any concerns with that process.

- [43] This is the type of property that needs to be redeveloped in the Windsor Park neighbourhood.
- [44] The main concern with the proposed development is the front attached garage and driveway.
- [45] Originally, the second storey deck was to be covered but that proposal has been revised and he no longer has a concern with the deck.
- [46] He referred to a photograph showing the street view, to demonstrate that vehicles are parked on the service road, and the laneway adjacent to the house to the west.
- [47] The location for the proposed driveway is where a mature tree is located.
- [48] There is a narrow sidewalk and a bus stop directly across the street from the subject site.
- [49] When cars are parked on the service road there is no room for two cars to pass.
- [50] 87 Avenue is a busy major corridor to the University and the sidewalk is close to 87 Avenue so pedestrians often walk on the service road.
- [51] There are several charity runs that happen in this area and the City needs to restrict these runs as there is significant pedestrian traffic on the service road especially in the Spring, Summer, and Fall.
- [52] Sightlines are limited on the subject Site because it is near where the rear lane intersects with the service road. In his view, the access from the rear lane to the subject Site is not difficult to maneuver.
- [53] The Community League agrees with the directions of City Council and the regulations of the Mature Neighbourhood Overlay in restricting front driveways in mature neighbourhoods.
- [54] He agreed that there are other front drive garages in the area; however, they were built years ago. This is a walkable community and front attached Garages are not common.
- [55] Rear attached garages with suites that exceed the 40 percent allowable Rear Setback are not common along 87 Avenue.
- [56] There are only two other attached garages in the area that are a single storey and only one house on the block face that has a rear double detached garage.
- [57] The Community League would like to maintain the character of the neighbourhood so front driveways will not be support for redevelopments in the future.

- [58] With regard to the width of the front driveway, he stated that they want to maintain the safety and walkability of the area. If front driveways are not allowed they should not be approved. However, if the Board approves the proposed development, a narrower driveway is better.
- [59] He spoke to the neighbouring property owners and discussed the variances. The neighbour east of the subject site is opposed to the proposed development.
- [60] He reiterated that the main concern of the Community League is the front driveway and attached garage.

v) *Rebuttal of the Appellant, Ms. Lange*

- [61] She reiterated that there is support from the majority of the neighbouring property owners.
- [62] Vehicles would only be coming and going from the subject site a few times a day, making the impact on pedestrians minimal. Parking on the proposed front driveway will reduce parking on the service road.
- [63] Properties in the area that have rear detached garages will not be parking on the service road.
- [64] In response to questions by the Board, she stated that it might be possible to curve the driveway around the existing mature tree in the front yard. However, it might be difficult to install services if the tree was left as it is.
- [65] If the front driveway is not approved, the property owners will need to park in tandem in the rear of the property, which is not a good solution.
- [66] They are willing to comply with the proposed changes to the rear deck by adding privacy screening.

Decision

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

Reasons for Decision

- [68] The proposed development, a Single Detached House, is a Permitted Use in the (RF1) Single Detached Residential Zone.
- [69] The Board accepts the community consultation that was undertaken by the Appellant and agrees with the Development Officer that it complies with section 814.3(24) of the *Edmonton Zoning Bylaw*.
- [70] When analyzing the proposed development, the Board determined through presentations that the requested variances were significant for the following reasons:
- a. The Rear Setback not only contravenes the requirement of the Mature Neighbourhood Overlay but also the (RF1) Single Detached Residential Zone. The proposed Rear Setback is almost 50 percent less than the required amount which pushes the most northerly portions of the house further back. This has a direct impact on the neighbour to the east by affecting sunlight and shadowing. If allowed, the close proximity of the rear wall of the house to the Rear Lot Line would increase the massing.
 - b. The projecting rear deck is completely within the Rear Setback and does not comply with the *Edmonton Zoning Bylaw*. That is to say the entire deck structure is fully contained within the required Rear Setback, bringing the elevated deck closer to the Rear Lot Line, which may have an effect on the privacy of surrounding properties.
- [71] The Board heard presentations with regard to the Garage access from 87 Avenue. The Board determined that if the variance was granted it will interfere with the amenities of the neighbourhood, and materially interfere with or affect the use and enjoyment of neighbouring properties for the following reasons:
- a. The service road is adjacent to a major arterial road, a bus stop, and is used for pedestrian and bicycle traffic.
 - b. If the front Driveway is approved, this will eliminate one on-street parking space on the service road.
 - c. There was opposition from the Windsor Park Community League, and two neighbouring property owners including the most affected neighbour east of the subject Site.
- [72] The Board accepts the presentation provided that the subject Site does not have Site limitations that would preclude the ability to access the rear property and necessitate requiring access from the front.

[73] The Board was not presented with any documentation showing that an attached Garage to both the front and rear of the property was indicative of this neighbourhood.

[74] The Board considered Section 814.1, the General Purpose of the Mature Neighbourhood Overlay which states:

The purpose of this 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.

[75] The Board has determined that the General Purpose of the Mature Neighbourhood Overlay has not been met given the size and locations of the variances which are not sensitive to scale nor do they maintain the traditional character of the neighbourhood.

[76] The Board finds that the requested variances for the proposed development will unduly interfere with the amenities of the neighbourhood, and materially interfere with or affect the use, enjoyment or value of neighbouring parcels of land.

Mr. V. Laberge, Presiding Officer
Subdivision and Development Appeal Board

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. 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.
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: March 30, 2017
Project Number: 224913641-001
File Number: SDAB-D-17-053

Notice of Decision

- [1] On March 15, 2017, the Subdivision and Development Appeal Board heard an appeal that was filed on **February 16, 2017**. The appeal concerned the decision of the Development Authority, issued on January 30, 2017, to approve the following development:

Construct a Single Detached House with attached Garage, front entry, partially covered deck (irregular shape), balcony and Basement development (Not to be used as an additional Dwelling).

- [2] The subject property is on Plan 2630KS Blk 1 Lot 14, located at 13912 - Valleyview Drive NW, within the (RF1) Single Detached Residential Zone. The Mature Neighbourhood Overlay and the North Saskatchewan River Valley and Ravine System Protection Overlay apply to the subject property.
- [3] The following documents were received prior to the hearing and form part of the record:
- A copy of the Development Permit application with attachments, proposed plans, and the approved Development Permit;
 - A Geotechnical response and a Transportation Services response from the City;
 - The Development Officer's written submission and revised PowerPoint;
 - Documentation from Legal Counsel representing the Respondent;
 - The Appellant's documentation;
 - Multiple e-mails and letters in opposition to the proposed development from three adjacent property owners; and
 - An e-mail from the Parkview Community League.

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. P. Elder who was accompanied by Mr. Szlichcinski*

- [7] Ms. Elder and Mr. Szlichcinski read from their documentation that was submitted to the Board prior to the hearing. Together they provided the following information:
- [8] Their property abuts the west side of the subject site which backs onto the MacKenzie Ravine in close proximity to the North Saskatchewan River. The properties on this block face are comprised of large residential lots which are oriented to maximize views of the ravine, city skyline and/or river valley.
- [9] They referred to the photographs in their submission showing the orientation of the houses and the view of the skyline from their property.
- [10] In 2005/06, they were the first to redevelop along the block face, constructing a 2,582 square feet house which required a six inch variance for the garage. They do not object to redevelopments or variances, but to the cumulative scope of the variances under consideration on the subject site. The Respondent plans to construct a 5,978 square foot single family dwelling which requires five variances, several of which are significant in scale.
- [11] If permitted, the house, with a covered rear deck extension, will sit 12 feet further back than allowed. The house will sit 4.5 feet further forward than allowed with a three car garage. The house will be 66.5 inches closer to their property line and is uniformly taller than the existing house on the subject site. Each individual variance being asked for may not be beyond what might be considered generally permissible, but in combination, its shadow effect, mass and location will diminish the use and enjoyment of their property. It is not sensitive in scale or positioning of their home.

- [12] The front and rear variances amount to more than 20 percent of the building pocket. They are not objecting to the covered deck projection or the eave projection as they believe they will not have an adverse impact. They understand the importance of deck space for the use and enjoyment of the home.
- [13] Objection #1: Reduced Rear Setback of 3.61 meters (11.84 feet). The request for this magnitude of variance is excessive. Because the lots are not rectangles, the portion of the proposed house with a variance of 11.84 feet actually equates to over 12 feet of wall along the east side of the structure (seen in previous photos), as the variance is the shortest distance to the rear property line. The 12 feet comprises three floors making it a substantial architectural mass.
- [14] The additional structure would block the prized northeast ravine and city view sight-lines that all houses along this blockface are oriented to and seek to maximize. The subject site's large dimensions (80 by 200 feet.) allow for design options that would lessen the impact on their property and that of the neighbours. In order to maximize the Respondents' benefit, a choice has been made to reduce the rear setback by a significant amount, thereby negatively affecting one of the most valued aspects of their property, the ravine and city view.
- [15] They provided a photograph of the view facing east from the property line they share with the subject site. If the rear variance is allowed, they will have a wall to look at that is at least as high as the highest point on the existing home, extending 96.5 feet toward the street, and with much less architectural relief than currently exists. By constraining the view and diminishing sunlight, the proposed extra 11.8 feet of rear variance will negatively affect the enjoyment of their backyard, garden and decks.
- [16] The location of the existing house on its lot should be irrelevant to this argument because the proposed house will be a new build, not a renovation. The regulatory environment today is not the same as it was in the 1950s when the current structure was permitted, and there is no grandfathering clause to guarantee any portion of the original footprint. They feel this is an argument that the Respondents want to pursue and that has to be addressed. They look at a 2-3 storey wall that is approximately 36 feet long, but that does not compare to the proposed wall that extends almost 90 feet (acknowledging that the first few feet of the proposed garage is not 2 storeys high) and built close to the maximum allowable height. The footprint of the proposed house may be similar, but the effect will be very different.
- [17] Given that the new house is approaching the maximum allowable height, coupled with bringing the structure closer to their property line, the height difference will be visually exaggerated, cutting off the current views, and increasing the shadowing effect. The rear variance will amplify that.

- [18] They referred to photographs taken in 2004, showing the difference in height between the two yards. The height difference exacerbates the architectural mass, decreasing the feeling of openness that currently exists.
- [19] They referred to the Proposed Internal Lot Grading diagram for the subject property, and noted that the northwest corner elevation is 65.28 metres, versus the northeast corner at 66.38 metres. They explained that the soil was built up for proper drainage, and to construct a rock garden which matches the level of the concrete retaining wall belonging to the subject lot, with permission from the previous owners. The elevation of the rest of their backyard remained at 65.28 metres, more than 3 feet below the subject site.
- [20] A Google map shows the shadowing effect during a mid-summer morning when the sun is at its highest angle. During the rest of the year, when the angle of the sun is lower, the shadowing effect will be magnified. Extend the line of the shadow to represent a mostly uniform two storey structure, factor in the closer proximity to the property line, and you can see more clearly how the shadow effect is increased in scale.
- [21] This is a large change from what they have had and come to expect due to the way they situated their house in relation to their neighbour when it was constructed in 2005.
- [22] The existing residence on the subject site does not block direct sunlight to their east facing living room windows as seen in the photographs submitted. The proposed house will.
- [23] The east windows were designed specifically to provide light and celestial views adding to the daily enjoyment of their home. Part of the reason they situated their house forward was to clear the roofline of the subject property so they would have east facing views. The proposed structure will take away these established sight-lines and sunlight from the living and dining rooms, as well as the upper hallway, and be replaced by a view of the side of their house. The proposed development will also result in the removal of mature evergreen trees.
- [24] There will be plants in their yard that will no longer thrive because of the reduced light and they will be forced to re-landscape some areas. They situated their residence forward on this lot to maximize the full use and enjoyment of the back yard. They are avid gardeners who take pride in creating a beautiful landscape to enhance the views from the house and decks. The Respondents' plans do not constitute minimal interference.
- [25] They referred to a photograph taken from their kitchen. They entertain and dine outside on their deck frequently. The proposed house will block out the east views from that deck, kitchen and bedroom above, as it is 2 storeys high, since the current structure is only one story on the south side. They do not want to give up any more view than they have to, and they want to keep as much sunlight as they can. The only way to compensate

for this loss is to deny the rear variance and open up the sight-lines that it would otherwise block.

- [26] Their final concern regarding the rear variance is that the northwest corner of the proposed development will sit less than 4 metres away from the top of the slope on their property. This is the most fragile area of their property; the elevation drops off quickly and has shown evidence of erosion since 2004.
- [27] Thurber Engineering Ltd. conducted a geotechnical survey and report on their property in November, 2004. They recommended a minimum development set back of 15 metres from the top of the existing slope, a total of 25 metres from the rear property line. They referred to the "Proposed Internal Lot Grading" diagram, stating that this particular area is steeply sloped, an 18.6 percent grade near the property line.
- [28] They believe that any new house to be built should have to comply with a setback of at least 7.5 metres from this area, as is stated in section 811 of the *Edmonton Zoning Bylaw*, in order to preserve the integrity of the top of the bank. Denying the rear variance will help to protect their lot stability.
- [29] The City issued a House Development and Building Permit on September 6, 2005, which clearly states the following: "The applicant/property owner shall strictly adhere to the various recommendations for management of the site and the general development guidelines contained within the geotechnical report dated November 4, 2004, which was prepared by Thurber Engineering Ltd."
- [30] The fact that the subject property has an 8 metre setback from the top of its bank should not override the analysis that was done for their property. Mr. P. Lach, the head Engineer with the City, told them that the top of their bank is not a concern to them; that it is "dispensable". They do not think it is fair that their neighbours are allowed to build 4 metres from the top of their bank, but they were prohibited from doing so?
- [31] The back of the current house is approximately 2 lengths of grey frost fence away from what most would call the top of the slope in the backyard of the subject Site, roughly 19 feet. This permanent fence follows the slope and shows the elevation very well. Erosion is evident along the fence on their side and the top of their slope is less than 4 metres away from the northwest corner of the proposed structure, which will be located at the same position of the current one.
- [32] The neighbor's engineer has placed the "existing top of the slope" approximately 3.5 metres down the ravine, according to the City Engineer's memorandum, and it has been accepted. In September 2016, Mr. E. Hammermeister, the architect for the proposed house, showed its location close to where the current red fence is, and the proposed top of the bank about 3 metres down the slope.

- [33] They referred to a photograph taken in April 2004 showing a hedge that they maintain, which acts as a barrier to erosion. The removal of the mature trees on the subject site contributed to the deterioration of the bank, and they are concerned that excavation for the new house so close to the top of the slope will further damage the area.
- [34] This is the reason the first set of plans was rejected by the City Engineer. After it was pointed out that this was not in compliance with section 811, the next set of plans simply renamed the "proposed top of the bank" with "existing top of the bank". The net result was that the rear variance was only reduced by 0.1 metres.
- [35] Mr. Hammermeister pointed out to them that another property being redeveloped, located next door, at 13908 Valleyview Drive, was allowed to build on the original home's footprint and was granted large front and rear setback variances. The difference is, 13912 was sold AFTER the approval was given for 13908, so that should not be a factor in this hearing. In fact, the first development approval for 13908 was given in August of 2015, then rescinded, followed by a second approval in March of 2016. The block face average drawings were already done for the subject property by January 13, 2016. The first set of plans were drawn up on May 17, 2016, and according to Title Transfers pdf from the City's Assessment Office, the title for 13912 transferred on June 9, 2016. The new owners of 13912 should have done their due diligence and thoroughly investigated these matters. Mr. Andrews, the owner of the property, is a residential developer, so he cannot claim he is not aware of these issues. Further, after Mr. Andrews took possession, in August of 2016, another variance was granted to 13908, for a third storey roof-top deck/room. He did not contest the variance. Instead, he expects to transfer the consequences of his situation onto the Appellants by designing a house that minimizes the negative effects of the placement of the new house at 13908, thereby necessitating the need for variances along their property. The Appellants feel that they shouldn't have to pay the price for Mr. Andrews' mistakes.
- [36] By rescinding the decision on the rear variance, it will lessen the impact on the top of their slope, which is located less than 4 metres from the northwest corner of the house, the portion that is not in compliance.
- [37] Objection #2: Three Car Garage: the garage and second floor above would be situated approximately 6.5 feet closer to their property line than the existing structure, blocking out direct sunlight and views from the Appellant's living room and dining room. The third bay of the garage is the reason for requiring a front variance. Of the 51 houses located on Valleyview Drive, 27 have attached double garages, accounting for 53 percent of the homes. 4 have triple garages, (including 1 under construction on lot 11) and 1 has a 4 car garage, accounting for only 10 percent does not constitute "a characteristic representation... of the neighbourhood", as Mr. Hammermeister states in his cover letter dated September 22, 2016. Further, this particular design will stand out, fully exposed from the street, given that it is linear and that the lot is not perpendicular to Valleyview

- Drive (they meet at about 72 degrees at the southwest corner). It would be the only non-conforming garage that protrudes from the main house that is almost entirely covered by a second storey, making it out of character in the neighbourhood and out of proportion to other garages.
- [38] As all trees and vegetation has been removed from the front of lot 15, the proposed linear 3 car garage will be seen far down the street.
- [39] Lots 12, 13 and 15 are all new developments; theirs being the oldest. All three homes complied with the 2 car garage rule. They hide their 31 foot bay with a tandem. There are other design options available for the subject lot as well if a three bay garage is important to the owners. Some new homes in the area, for example, have incorporated underground parking to lessen the impact on their street.
- [40] Lot 19 - bungalow at 13788 - Valleyview Drive, so the three car garage still allows open sight lines. Lot 18 - the anomalous 4 car garage, seen below, constructed to visually reduce its appearance to that of a 2 car garage.
- [41] 14028 - Valleyview Drive - this is the closest in design to that of the proposed garage, but this one has no structure above, so does not block sight-lines. It is not on the main drive and set well back from the west neighbour.
- [42] Lot 11- bungalow, in construction, with open sight-lines and it is also around the corner of the blockface.
- [43] The 3 car garage at 9112 - Valleyview Drive is the only original home with a 3 car garage on the street. The lot is double the width of others and the house is a bungalow, with the garage below. It is not a predominant feature of the property.
- [44] Objection #3: Front Variance. The front variance of 2.855 metres (or 9.4 feet) is significant, as it allows for the development of the third bay of the garage, adding to the massive feel of the structure. Even if you subtract 1.5 metres they may be allowed in the bylaw, it still gives a variance of 1.35 metres (or 4 feet, 5 inches). Note that all the plans show only the blockface average setback line of 9.63 metres and not the abutting average setback line at 11.58 (or with the -1.5 metres, 10.08 metres), which is misleading.
- [45] Calculation of the Blockface Average: In the calculation of the Blockface average, the property to the east located at 13908 Valleyview Drive has not been included. At a meeting downtown on January 16, 2017, the Appellant asked for information regarding the procedures that need to be followed for this calculation. As stated on the drawings provided, an error may be present.

- [46] Mr. Wen, the Senior Development Officer, stated that empty lots are not included in the average, even if development has been approved and they know what the front setback is supposed to be. But the average of 9.632 metres was dated June 2016, apparently after 2 revisions to the house plans. They have no access to what the average was in January 2016 when it was originally done, but assuming that no new measurements were taken since then). That lot is no longer empty. Construction started in the fall of 2016, so Mr. Wen agreed that it could be included, but because it is so far set back, it should be considered an outlier and therefore omitted.
- [47] They believe it is important to note that the block face average calculated for the property next door at 13908 in February, 2016 was 17.336 metres (or 56 feet, 7/8 inches). This number was confirmed by J. Kim with the Development Branch on January 25, 2017.
- [48] Given that these averages are so significantly different and they were calculated within months of each other, something seems very wrong here. The structures on Lots 12, 13, 14, 16 and 17 had not been altered between the timeframes of the two surveys. Are there any rules that are followed consistently? One development officer allows the use of all setback distances, another says no. Both allow the use of the existing home, but 13912 does not include its neighbour.
- [49] According to section 814.3(1) Front Setback, it currently states that... "The Front Setback shall be a minimum of 3.0 metres and shall be consistent within 1.5 metres of the Front Setback on Abutting Lots and with the general context of the blockface." It does not say here that lots with large setbacks should be excluded. What it APPEARS to say is that the abutting average is more important than the blockface average.
- [50] Further, "The existing approach of using the blockface average to determine the front setback is uncertain, costly and open to interpretation, thus lacking in consistent application of the regulation." This is the conclusion drawn and the rationale given for why changes are needed to section 814.3(1) Front Setback. This clearly supports their feeling that something is wrong with the process.
- [51] The abutting average the City is using is 11.58 metres, the average of lots 13 and 16. Lot 16 does not abut the subject property. Why consider the new house at 13908 an outlier when it was just approved, less than one year ago, under the same set of regulations? If 13908 was not considered an outlier, the block face average would change significantly, to 12.0 metres, which would be consistent with lots in the block face and the respondents' home would still be closer to the street than three of its closest neighbours (lots 12, 13 & 15). Requiring the setback to be a minimum of 12.0 metres from the front property line would also ensure that some direct sunlight be returned to our living and dining rooms.

- [52] The Respondents consider the placement of the house at 13908 to be very significant in their argument for granting the rear set back, but they want to ignore it completely in relation to the front setback. If the front setback of 13908 is an outlier, then the rear setback should be as well, and this property should have no bearing on any decision made today. When this property was mentioned during our meeting with City representatives on January 16th, Mr. Wen stated that he could not talk about it. There were too many abnormalities in the development, and full disclosure regarding its approval was not forthcoming.
- [53] They referred to another view of Lots 13, 14, and 15 which shows how the new house will block the side view of their home and the impact it creates for them and its exposure on the streetscape.
- [54] The request to deny the rear variance, the front variance, and the three car garage does not substantially interfere with the overall design of the home. Based on the plans provided, the areas of the house that are within the variances are not critical to its overall functionality. The denial of the rear variance would involve changes to a closet, a fitness centre and one of three dining areas. The denial of the front variance/garage might require a small change to the size of the 2 bedroom, 2 bathroom separate guest suite. Making those changes would alleviate many of the concerns they have raised.
- [55] They understood that the Mature Neighbourhood Overlay was implemented, in part, to maintain consistency of what is allowable in order to lessen conflict over such redevelopments. They invested a great deal of time and money in the building of their home and took the Mature Neighbourhood Overlay seriously when doing so. They are adamant that there is no justification in granting three substantial variances, the cumulative effect of which is not only a detriment to the use and enjoyment of their property, but subverts the spirit and rule of the *Edmonton Zoning Bylaw*.
- [56] In response to questions by the Board, they stated that they did not speak to the property owners but only the Mr. Hammermeister who showed them the plans and discussed potential changes to ease their concerns.
- [57] They suggested that if the rear variance was made to comply with the *Edmonton Zoning Bylaw*, they would withdraw their appeal. Mr. Hammermeister spoke to the property owners who were not open to compromising on this point.
- [58] They confirmed that Mr. Hammermeister stated that the top of bank is in the ravine even if their top of bank is not. They agreed that their house is farther away from the top of bank. The property lines go into the ravine so that developable portion is smaller.
- [59] The northeast corner of the proposed development will be in the same location.

- [60] They spoke to the neighbours in opposition to the proposed development and corresponded by e-mail regarding their concerns.
- [61] The main concern of the property owner across the street is the front setback and the three car garage.
- [62] They confirmed that their property has a top of bank restrictive covenant and so does the subject site.
- [63] They were the first property to redevelop in the area that had a slope analysis done.
- [64] They do not object to the covered deck as it does not affect them.

ii) Position of the Development Officer, Mr. B. Langille

- [65] Mr. Langille referred to his revised submission and indicated that he had a lot of discussion with various stakeholders since the permit application, which has led to multiple revisions in the plans. He felt the latest plans were approvable.
- [66] He provided a grade elevation example that was submitted by the applicant to demonstrate how grade can shift drastically along a block abutting a ravine. He clarified that the top of bank line in the example was not the actual top of bank.
- [67] He sent the latest plans to Drainage Services, Transportation Services, and Geotechnical Engineering for review, and they all approved the application.
- [68] With respect to community consultation, in his view, the applicant fulfilled the Mature Neighbourhood Overlay requirements.
- [69] He referenced a rear setback illustration to show that there was no change in the sight-lines between the existing house on the subject Site to the proposed house.
- [70] In his opinion, if the applicant built a Class 'A' Development with no variances, there would be very little difference in impact from the development that is being proposed.
- [71] With regard to the front setback variance, he reviewed the block face with his supervisor and they determined to exclude Lot 15 to the east because it was built so far into the rear yard, that it skewed the front setback average of the abutting lots. They felt the average front setback of the two abutting lots was an extreme burden so they used the Appellants' lot to the west to determine the front setback requirement.

- [72] He showed a red highlighted portion of the subject site plan to demonstrate the portion of the front attached garage that exceeds the minimum front setback requirement. He determined that the property line of the proposed new home would comply with the front setback requirement.
- [73] With regard to the three car garage variance, he provided an aerial photograph that showed other three car garages on the block face and indicated that there are three, four and five car garages in the neighbourhood with multiple driveways and layouts. In his opinion, the side angle access of the proposed driveway will reduce hardsurfacing in the front yard.
- [74] With respect to questions from the Board, he provided the following:
- [75] The proposed house is two storeys. The portion with a walkout basement in the rear yard might be perceived as being three storeys tall, but it is still considered a two storey structure.
- [76] He used the abutting lot elevations to determine the height of the proposed house and it is under the maximum allowed.
- [77] With regard to the wall on the (west) side elevation of the proposed House, based on the original community consultation, there was concern with the lack of articulation and massing. The applicant revised the drawings to provide architectural treatment to the façade to break the massing effect.
- [78] The proposed house has approximately a total site coverage of 30 percent, which is under the maximum allowed.
- [79] The proposed House complies with the recommendations of the geotechnical report. If Mr. Lach, the Geotechnical Engineer is satisfied with the proposed plans and the applicant is complying with the Geotechnical Study's recommendations, then he is satisfied.
- [80] With respect to the Appellants' concerns about the rear 12-foot building extension cutting into their view, he indicated that the *Edmonton Zoning Bylaw* does not regulate or protect views necessarily and felt that it would not negatively impact the Appellants.
- [81] With respect to granting the three car garage, he looked at the context of the lots on the block face and determined that one additional car space would not have a negative impact. He indicated that he has the authority to waive regulations in the Mature Neighbourhood Overlay. The other garages highlighted previously in his submission were all granted variances.

- [82] He agreed that section 814.3(1) contemplates restricting the front setback having regard to both the front setback of abutting Lot, and to “the general context of the block face.” His normal practice, when determining whether the proposed front setback is “consistent within 1.5 metres of the front setback on abutting lots” is to measure the proposed front setback as against the average of the front setbacks on the abutting lots. In this case, the Development Officer excluded Lot 15 from his calculation, and calculated the variance using only the front setback on Lot 13. He agreed that the size of the variance granted would have been much larger if Lot 15 was not excluded from this calculation.
- [83] With respect to the Appellants’ submission on page 15 that showed two different sets of block face numbers (March 2016 and February 2017); he indicated that the numbers are provided by the surveyor. The Applicant for the subject appeal used a surveyor and he could not explain where the Appellants received their numbers, nor why there might be such a large discrepancy between the two sets of measurements.
- [84] He agreed that if the three car garage was reduced to a two car garage there likely would not be a front setback variance. He reiterated that the placement of the garage facing east toward the side yard makes it less noticeable compared to if it faced the front yard.
- [85] He confirmed that the conditions issued by Mr. Lach in the Geotechnical memorandum were based on the most up-to-date renderings and numbers from the surveyor.
- [86] He reiterated that there was a lot of community consultation and the Applicant went out and discussed the proposed development with neighbours. He indicated that Legal Counsel for the applicant has outlined the results in her submission.
- [87] He agreed that if the average Front Setbacks of the Abutting lots was used for the minimum requirement, it would be impossible to comply because of the extreme difference in the Setbacks.
- [88] He confirmed that if you travel east on the block face, the Front Setbacks gradually become smaller.
- [89] He confirmed that the southwest corner of the subject Garage complies with the general block face average.
- [90] Upon questioning by the Board with respect to the setback of the second storey over the garage, he confirmed that it is seven feet and six inches back from the front edge of the attached garage below, and further confirmed that that the corner of the second storey is fully compliant with the Front Yard Setback.

[91] He indicated that the Edmonton Zoning Bylaw does not really address articulation in the elevations to mitigate massing, but he feels that the applicant has done a lot in revisions to mitigate the massing with architectural features.

iii) Position of the Respondent, Ms. J. Agrios, Legal Counsel for Graphtec Design

[92] Ms. Agrios referred to her submission (Tabs 1 to 16) and indicated that she has lived in this neighbourhood for almost her entire life and has been down Valleyview Drive thousands of times. She has witnessed the changes to the neighbourhood for approximately 25 years.

[93] Most houses in the neighbourhood were originally built in the 1960s and some the 1950s, but most have been renovated, torn down or rebuilt.

[94] Under Tab 3, the stretch of Valleyview Drive affected by this appeal has 8 houses that back onto the ravine. The north side houses that back the ravine are much larger and are on much larger lots compared to the south side houses that do not back onto the ravine. The north side houses have front attached garages as there is no lane and the south side houses have rear garages as there is a lane.

[95] She referred to photographs in Tab 3 to show a mix of housing styles that include older traditional, some two storeys, and some bungalows that are around 1200 square feet. The newer houses tend to be larger and very modern.

[96] She referred to photographs to show other three car garages and a four car garage and show the construction to the east of the subject site and demonstrate how the Front setback is atypical for the block face. Ms. Agrios indicated that the Appellants supported the application for a development permit to construct a house on Lot 15, despite the fact it required several variances.

[97] There proposed development does not require variances to the RF1 Zone, height, site coverage, and the side setback requirements.

[98] She characterized the Appellants' main concerns as being the change from the existing house, which was one storey in the front and two storeys in the rear, to the proposed development, which will be two storeys in the front. She understands there will be some impact, however a two storey house is allowed.

- [99] Under Tab 7, page 1, the shaded area shows the existing house, the dashed lines show the rear setback requirement and the front setback block face average. Because of the angle of the proposed house, the front setback of the southwest corner of the site abutting the Appellants' property complies with the minimum requirement.
- [100] There is a rear setback variance in the northwest corner of the proposed house, but it follows the footprint of the existing House.
- [101] The (west) side setback is roughly 5 ½ feet more than what is required and the House could be much closer to the Appellants' property.
- [102] The front setback block face average of 9.26 metres was determined by the surveyor without Lot 15 because of the atypical front setback of that house. The 8.73 metre proposal is pretty consistent with the block and it only needs a variance because of the 1.5 metre abutting lot requirement.
- [103] With the extreme front setback variations between the abutting lots, there will be a variance no matter what. If you were to average both lots, the proposed front setback would have to be pushed back by 20 percent and then to comply with the rear setback would allow a very small pocket of building. In her opinion, probably nothing could be built on the subject site.
- [104] At the Appellants' request, the garage was oriented and set up to align with the Appellants' house. If the southeast portion of the garage were to comply with the front setback block face average, it would not change a thing. She reiterated that the Appellants' issue is not the front setback but the two storey nature of the house, which is allowed.
- [105] The newer homes being built almost all have three car garages with one four car garage. The Appellants have a three car garage, although one space in tandem.
- [106] There is no impact of a three car garage on the Appellants and it is consistent with the development on this stretch of Valleyview Drive.
- [107] The rear setback variance is due to the siting of the house to the east of the subject site being built. The subject house will be on the existing footprint of the existing house.
- [108] Almost every house protrudes into the 40 percent rear setback requirement. The lots along this stretch are very deep compared to typical RF1 Zone lots, which is why almost all of the houses protrude so deeply into the rear setback. The absence of a rear lane requires these houses to have a front attached garage, which pushes the houses further into the rear.

- [109] The rear two storey addition of the existing house was built in the last 20 years and Ms. Agrios is certain it happened in 1997. This addition was approved when the Mature Neighbourhood Overlay was in effect.
- [110] These are north facing lots with huge trees, typically with not a lot of sun. She referred to their Sunshadow Study; the only impact on the Appellants is in the morning in the east in the spring and the fall. By noon, afternoon, and the evening there is no impact and in the summer there will be no impact as the sun is up at 5am.
- [111] If they complied with the rear setback requirement, there would be almost no difference in sunlight with what is being proposed. If the house was moved further to the (west) property line, the sunshadow could potentially have a more pronounced impact on the Appellants' yard.
- [112] Tab 13 was referenced. The Geotechnical Study conducted by Shelby Engineering (Shelby) was signed off by the City. The Shelby Study also reviewed the Appellants' Geotechnical Study conducted by Thurber Engineering (Thurber).
- [113] The Shelby Study was given to the Appellants and the City and there was a lot of communication and an in-person meeting to discuss concerns before the City signed off on it. The City is liable when it comes to top of bank and they would never sign off on the Geotechnical Study if it was not properly reviewed.
- [114] Ms. Agrios clarified that the Parkview Community League letter had not taken a position on this proposed development.
- [115] Under Tab 14, the community consultation summary was reviewed to show the feedback from adjacent property owners conducted by Mr. Hammermeister.
- [116] Mr. Hammermeister indicated that he revised the plans based on consultation with neighbours. He applied for the development permit in June and has had discussions and made revisions since then. The three car garage was never a concern.
- [117] The west side wall was a concern so they revised the renderings with new façade material and articulation, increased the side setback, and they also proposed landscaping and new fencing to mitigate the concerns.
- [118] In his opinion, the community consultation process has been done well.
- [119] With respect to the concerns of the Appellants in their written submission, he referred to Tab 16 to show that the responses in red font have been summarized by Ms. Agrios.

- [120] With respect to questions from the Board, Ms. Agrios and Mr. Hammermeister provided the following:
- [121] Mr. Hammermeister stated if the rear 12 feet was cut from the proposal; it would mean a full design change after months of consulting. They redesigned the (west) elevation for a staggered approach to mitigate the side wall. They realize not everyone will be satisfied, but felt everyone compromised reasonably.
- [122] Mr. Hammermeister was asked about the fairness of excluding Lot 15's front setback, for the purposes of assessing the proposed front setback on Lot 14, but then using Lot 15's rear setback to justify the proposed rear setback on Lot 14. Mr. Hammermeister's responded that he had designed the garage on Lot 14 - the portion of the building which will extend the furthest towards the front lot line - to line up with the front of the house on Lot 13. He was of the view that this placement minimized the impact on the Appellants' property. He had designed the house on Lot 14 to maintain the existing rear setback, which will sit midway between the rear setbacks of the abutting lots.
- [123] Ms. Agrios reiterated that they compromised their proposal by shortening the wall to have it align with the existing structure on the Appellants' lot. The footprint of the house on Lot 14 existed before the Appellants' built their house. The Appellants wanted to maximize their rear yard and they could have built further into the rear yard if they wanted to.

iv) Rebuttal of the Appellant

- [124] Ms. P. Elder referred back to her Addendum that was submitted prior to the hearing.
- [125] She disagrees with the Development Officer stating that there is a five car garage along Valleyview Drive. She traveled the entire street and did not see a five car garage.
- [126] There was no variance for their Garage and the tandem stall was allowed.
- [127] She referred to the Development Officer's aerial map displaying other three car garages and indicated that the house to the east of the subject site has a two car garage. There are five new houses in the area that have two car garages and the older houses have two car garages.
- [128] The subject site was sold in 1985 and it did not take long for the new owners to put the second storey addition on. However, they built up and did not extend the house. She disagrees with Ms. Agrios that it was in 1997 and in her opinion, was definitely built earlier.

- [129] They had questions with regard to the lines on the lot maps shown in the Development Officer's submission. They asked him in advance of the hearing what the lines meant but he never got back to them with an answer.
- [130] The idea that the setback deficiencies will not impact them is ridiculous.
- [131] With regard to the 40 percent rear setback line, houses built in the 1950s and 60s are passed that line because they did not have those regulations back then. The newer houses comply with this rear setback requirement. Lots 11, 12, 13, and 20 are all in compliance with the Mature Neighbourhood Overlay regulation. The only houses not in compliance are on Lot 15 and Lot 19.
- [132] She referenced Tab 9 of the Ms. Agrios' submission and reiterated that the front attached garage variance will have an impact on them.
- [133] Page 70 of Ms. Agrios submission showing the top of bank is completely wrong.
- [134] Page 74 of the Sunshadow Study clearly supports their claim, as the shadow hits their windows and the proposed structure will never give them sunlight at breakfast again and will negatively impact them.
- [135] The 40 percent line will take away sunlight from their vegetable garden and June is the growing season so this will impact them.
- [136] She does not understand why December was excluded from the Sunshadow Study as sunlight at this time of year is when it is most important.
- [137] With respect to supporting the house on Lot 15, this is true but only because they were told that the foundation of the previous house would be preserved to keep the top of bank line with no disruption. However, in the fall they took out that foundation and they were very upset. They called the City to have a Compliance Officer measure the site but have not heard back.
- [138] The Applicant's house will affect their property way more than the house on Lot 15.
- [139] The variances that the Respondents call small are small to them but not to the Appellants. The 12-foot extension in the rear with a three storey walkout in the rear is very large.
- [140] The amount of hardsurfacing of the proposed garage will be evident based on the plans of the subject site.

- [141] With respect to property values, they contacted a Senior Appraiser who indicated that with so many variables, it would be impossible to sign something to say how much something will be worth until after it is built.
- [142] They are not interested in a new fence and the Applicant has never talked to them about landscaping.

Decision

- [143] 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 **CONDITIONS**:

1. The proposed Basement development(s) shall NOT be used as an additional Dwelling. Proposed wet bar shall only be used by the household which uses the principal kitchen on the main floor. A Secondary Suite shall require a new development permit application.
2. All yards, visible from a public roadway other than a lane, shall be seeded or sodded within eighteen (18) consecutive months of the issuance of an Occupancy Certificate for the development. Alternative forms of landscaping may be substituted for seeding or sodding as specified in Section 55.2(4)(b).
3. Landscaping shall be developed in accordance with Section 55 and Section 140.4(16) of the Edmonton Zoning Bylaw 12800.
4. A. Landscaping shall be provided on a Site within 18 months of the occupancy of the Single Detached House. Trees and shrubs shall be maintained on a Site for a minimum of 42 months after the occupancy of the Single Detached House (Reference Section 55.2.1).

B. Two deciduous trees with a minimum Caliper of 50 mm, Two coniferous tree with a minimum Height of 2.5 m and Eight shrubs shall be provided on the property. Deciduous shrubs shall have a minimum Height of 300 mm and coniferous shrubs shall have a minimum spread of 450 mm (Reference Section 55.2.1).

C. All Yards visible from a public roadway, other than a Lane, shall be seeded or sodded. Seeding or sodding may be substituted with alternate forms of ground cover, including hard decorative pavers, washed rock, shale or similar treatments, perennials, or artificial turf, provided that all areas of exposed earth are designed as either flower beds or cultivated gardens (Reference Section 55.2.1).

5. The various development restrictions and site management guidelines outlined in the geotechnical report and addenda must be followed in any development of the site. The owner is also encouraged to become familiar with the site management guidelines and to fully adhere to them. Such restrictions are proposed not to be punitive, but rather to improve the long term viability of the property and reduce risk. In this regard, the supplemental geotechnical addenda prepared by Shelby Engineering dated August 31, 2016, November 9, 2016, and January 23, 2017 must be read and interpreted in conjunction with the Slope Stability and Building Setback Assessment Report for the subject property prepared by Shelby Engineering, dated May 2016. (Reference Section 811.3(8))
6. Recommendations pertaining to the management of water at the site and adherence to the related restrictions concerning the prohibition of water retention structures, irrigation, and water features (pools, ponds, fountains, permanent underground sprinklers or irrigation systems, etc.) will be of high importance in order to reduce the risk of erosion and instability. Failure to comply with any of the recommendations of the geotechnical consultant could either hasten or increase the severity of any slope instability which could ultimately threaten the property and residence. (Reference Section 811.3(8))
7. Past experience has shown that stripping of vegetation and significant re-grading, in addition to negating the significant positive aspects of vegetative cover, can also lead to negative changes in the surface water regime and slope hydrology which may adversely impact stability. The minimization of such disturbance is of high importance in proximity to the sensitive top-of-bank area. I would therefore recommend that only minimal lot disturbance be permitted, and only as required to construct the residence. (Reference Section 811.3(8))
8. Grading of the site must not involve the direction or channeling of water toward the slopes. In addition, the retention of existing vegetation during site development is considered highly desirable, and all vegetation on or near the slopes should be maintained. (Reference Section 811.3(8))
9. Any proposed excavation and re-grading, as well as any significant removal of vegetation, must only be undertaken in accordance with the recommendations of the consultant, and with their inspection, to confirm that the recommendations presented in the geotechnical report have been properly interpreted. (Reference Section 811.3(8))
10. The final lot grading and landscaping plans must be reviewed by the geotechnical consultant to ensure their recommendations are met and risks related to site disturbance are properly mitigated through the proposed design and construction plans for the lot. (Reference Section 811.3(8))

11. The architectural drawings showed that two retaining walls will be installed to extend northwards from the northeast and northwest corners of the proposed building and will replace existing concrete retaining walls on site. It is understood the new walls will be concrete to the setback line and then landscaped block or segmented, and considered sacrificial beyond the building setback line. Shelby Engineering has confirmed that since the retaining walls will be replacing existing retaining walls and therefore there will be little to no additional site disturbance to the top-of bank area. The retaining structures will provide consistency with the grading of the adjacent properties and overall they were confirmed by the geotechnical consultant to be in compliance with the recommendations of the geotechnical report. To ensure geotechnical compliance during construction, construction quality and ensure disturbance to the sensitive top-of-bank area is minimized, inspection of the retaining wall construction should also be conducted by Shelby Engineering. (Reference Section 811.3(8))

12. The geotechnical report consisted of a slope stability and building setback assessment and did not include recommendations for site preparation, basement construction, and foundation design and construction for the new residence. The developer and owner should also be aware that obtaining these site-specific geotechnical recommendations from the geotechnical consultant will further reduce risk to the development. It is recommended that additional inspections by qualified geotechnical personnel be undertaken during construction to confirm the removal of fill and any deleterious materials and to verify that any recommended foundation design and construction procedures are followed. (Reference Section 811.3(8))

13. The applicant must be aware that they are fully responsible to suitably protect surrounding properties, structures and infrastructure from any adverse impacts during construction. (Reference Section 811.3(8))

14. The developer and owner must be aware that there remains some residual risk of instability of the slopes below and within the subject property that could lead to a loss of property within the life span of the proposed development. The owner must also recognize that the City of Edmonton will assume all erosion and regression of the slopes to be of natural origin and that we will not undertake any remedial repairs, irrespective of the ownership of the land between the development and the ravine slopes. (Reference Section 811.3(8))

Development Advisements:

- i.) Lot grades must comply with the Edmonton Drainage Bylaw 16200. Contact Drainage Services at 780-496-5500 for lot grading inspection inquiries.

- ii.) Any future deck development greater than 0.6m (2ft) in height will require development and building permit approvals.
- iii.) Any future deck enclosure or cover requires a separate development and building permit approval.
- iv.) The driveway access must maintain a minimum clearance of 1.5m from any service pedestal and all other surface utilities.
- v.) Any hoarding or construction taking place on road right-of-way requires an OSCAM (On-Street Construction and Maintenance) permit. It should be noted that the hoarding must not damage boulevard trees. The owner or Prime Contractor must apply for an OSCAM online at: http://www.edmonton.ca/bylaws/licences/licences_permits/oscam-permit-request.aspx

Transportation Advisements

1. The proposed 6.5 m residential access to Valleyview Drive located approximately 7 m from the east property line, as shown on Enclosure I is acceptable to Transportation Planning and Engineering and must be constructed as a private crossing access to current City of Edmonton Design and Construction Standards. The owner/applicant must obtain a crossing permit, available from Development and Zoning Services, 5th floor, 10250-101 Street.
2. The existing 6 m residential access to Valleyview Drive located approximately 1.5m from the east property line, must be removed and filled in with curb and gutter constructed as per City of Edmonton Design and Construction Standards and boulevard restored to grass, as shown on Enclosure II. The "fill-in" of the existing access must be included as a requirement of the crossing permit.
3. There is an existing boulevard tree adjacent to the existing access that must be protected during construction, as shown on Enclosure II. Prior to construction, the owner/applicant must contact Bonnie Fermanuik of City Operations, Parks and Roadways (780-496-4960) to arrange for hoarding and/or root cutting. All costs shall be borne by the owner/applicant.
4. There may be utilities within road right-of-way not specified that must be considered during construction. The owner/applicant is responsible for the location of all underground and above ground utilities and maintaining required clearances as specified by the utility companies. Alberta One-Call (1-800-242-3447) and Shaw Cable (1-866-

344-7429; www.digshaw.ca) should be contacted at least two weeks prior to the work beginning to have utilities located. Any costs associated with relocations and/or removals shall be at the expense of the owner/applicant.

5. Any sidewalk or boulevard damage occurring as a result of construction traffic must be restored to the satisfaction of Transportation Planning and Engineering, as per Section 15.5(f) of the Zoning Bylaw. The sidewalks and boulevard will be inspected by Transportation Planning and Engineering prior to construction, and again once construction is complete. All expenses incurred for repair are to be borne by the owner.

6. Any hoarding or construction taking place on road right-of-way requires an OSCAM (OnStreet Construction and Maintenance) permit. It should be noted that the hoarding must not damage boulevard trees. OSCAM permit applications require Transportation Management Plan (TMP) information. The TMP must include:

- the start/finish date of project;
- accommodation of pedestrians and vehicles during construction;
- confirmation of lay down area within legal road right of way if required;
- and to confirm if crossing the sidewalk and/or boulevard is required to temporarily access the site.

It should be noted that the hoarding must not damage boulevard trees. The owner or Prime Contractor must apply for an OSCAM online at: <http://www.edmonton.ca/transportation/onyourstreets/on-street-construction-maintenance-permit.aspx>

Should you require any additional information please contact Chintan Shah at 780-944-0129.

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

1. Section 814.3(5) is varied to permit a reduced Rear Setback from the House to the Rear Lot Line of 19.84 metres instead of the required 23.44 metres.
2. Section 814.3(1) is varied to permit a reduced Front Setback from the House to the Front Lot Line of 8.73 metres instead of the required 11.58 metres.
3. Section 44.3 is varied to permit a distance from the Covered Deck to the Rear Lot Line of 18.26 metres instead of 21.44 metres.
4. Section 44.1(a) is varied to permit a distance from the Eaves on the Covered Deck to the Rear Lot Line of 17.40 metres instead of 22.84 metres.

5. Section 814.3(19)(a) is varied to permit three vehicle parking spaces in the front attached Garage instead of a maximum of two parking spaces.

Reasons for Decision

- [145] The proposed development, a Single Detached House, is a Permitted Use in the (RF1) Single Detached Residential Zone.
- [146] Pursuant to section 814.3(24) of the Mature Neighbourhood Overlay, the Board has determined that the community consultation was sufficient and in full compliance with the regulation. The Board reached this conclusion based on the confirmation by the Development Authority that it was satisfactory to them and by way of the presentations made by the Respondents.
- [147] The proposed development is on a large site comparatively speaking when compared to other sites in the neighbourhood but is similar in size to other lots on the same side of Valleyview Drive. However, a significant portion of this site is contained within the banks of the ravine and not useable for any kind of development. It should be further noted that the overall Site Coverage proposed is well under the maximum allowed.
- [148] The Board acknowledges that this site is subject to section 811, the North Saskatchewan River Valley and Ravine System Protection Overlay. The Board is satisfied that all the requirements have been met within section 811.
- a) This is evidenced by the Geotechnical Reports provided by the Applicant and accepted by the City Engineers.
 - b) The Board accepts the calculation provided by the Geotechnical Engineer of the required Rear Setback of 8.0 metres as prescribed in the Report.
- [149] Notwithstanding the variances as noted above the proposed development meets all other requirements of the *Edmonton Zoning Bylaw*. Particularly Height and Side Setbacks are in compliance with the regulations.
- [150] The Board accepts the review of the Development Officer and accepts the numbers or calculations in his review with respect to the variances waived above.
- [151] Reasons for granting the variances:
- 1) *Rear Setback*
- [152] Section 814.3(5) of the Mature Neighbourhood Overlay states that a 40 percent or 23.44

metres Setback is required for the Rear Yard and the Board has varied this requirement to allow a deficiency of 3.6 metres, thereby decreasing the minimum allowed to 19.84 metres and has granted this variance for the following reasons:

- a. The Board accepts through photographic evidence and other documentation presented at the hearing that the point of the proposed development will be at the exact historical location of the existing House that has been there for some time.
 - b. The west elevation at its most northerly point has been stepped back to this historical point.
 - c. The Board accepts that the location of the structure on the abutting property to the East (Lot 15) has been set very far back. This property required significant variations from the regulations of the *Edmonton Zoning Bylaw*. The Board has determined that this has had some impact on achieving reasonable sightline expectations for the subject property.
 - d. The Board heard from the Appellants that this variance should not be allowed as it should follow the regulations of the day and that the fact that it has been in place for many years is irrelevant. The Board accepts the conclusions of the Development Authority and Respondent that there is no material impact nor would it unduly interfere with the use, value and enjoyment of the neighbourhood. The Board was provided with evidence that there will be no additional impact beyond what already exists.
 - e. With the Rear Setback being held at its historical location, the proposed development will not have a significantly different impact on shadowing or sunlight on neighbouring properties than the impact caused by the existing house. The Board agrees with the Appellants that sunlight and shadow effects on neighbouring properties will change, but primarily because of the increased amount of second floor and bringing it closer to the Appellants' east property line both of which are in full compliance with the *Edmonton Zoning Bylaw*.
 - f. The Board also accepts that the almost all of the properties located on this block of Valleyview Drive do not comply with the required 40 percent Rear Setback requirement. The Board further finds that this variance is consistent within this block face.
- 2) *Front Setback*

[153] Section 814.3(1) of the Mature Neighbourhood Overlay states that the following:

The Front Setback shall be a minimum of 3.0 m and shall be consistent

within 1.5 m of the Front Setback on Abutting Lots and with the general context of the blockface. Separation Space and Privacy Zone shall be reduced to accommodate the Front Setback requirement where a Principal Living Room Window faces directly onto a local public roadway, other than a Lane. On a Corner Site, in the (RF3) Small Scale Infill Development Zone, where Row Housing, Stacked Row Housing or Apartment Housing faces the flanking Side Lot Line, the following regulations shall apply:

- a. For Lots where the Front Setback of the Abutting Lot is 9.0 m or less, the Front Setback shall be a maximum of 6.0 m.
- b. For Lots where the Front Setback of the Abutting Lot is greater than 9.0 m and less than 11.0 m, the Front Setback shall be consistent within 3.0 m of the Front Setback of the Abutting Lot, to a maximum of 7.0 m.
- c. For Lots where the Front Setback of the Abutting Lot is 11.0 m or greater, the Front Setback shall be within 4.0 m of the Front Setback of the Abutting Lot.

[154] The Board recognizes that this development cannot comply with this regulation given the existing Setbacks on the abutting lots. Specifically, the Appellants House has a Front Setback of 13.08 metres and the property to the east has a Front Setback of 29.56 metres. As there is no way to meet this regulation, the calculation provided within the application was set at 11.58 metres by the Development Authority. This would mean the variance required to the Front Setback would be 2.85 metres. This conclusion was reached by the Development Officer at the time of the decision.

[155] However, subsequent presentations during the Hearing were provided by the Development Officer that the average block face calculation should be 9.63 metres and the variance required would then be 0.9 metres. Based on this new evidence, the Board has made a finding that the block face average calculation of 9.63 metres is more reasonable.

[156] Once the Front Setback requirement was determined and the actual size of the variance calculated the Board then considered the impact of granting the variance.

[157] The Board granted the variance to the Front Setback for the following reasons:

- a. The subject Site has a proposed Front Setback at 8.73 metres at its closest point to the Front Lot Line. It is important to understand that the maximum portion of this variance is in the middle of the lot and is the furthest away from the Appellants' property. The Board accepts the conclusions of both the Development Officer and

the Respondent that at the point where the House is closest to the Appellants' east property line fully complies with the Front Setback regulations.

- b. The subject Site, as well as the balance of the lots on the north side of Valleyview Drive are trapezoidal in shape which explains why the variance is at its' closest point in the middle of the lot and complies at the east property line of the Appellants.
 - c. When analyzing the drawings, the Board notes that the second floor has been stepped back 2.29 metres from the exterior edge of the attached Garage below. This step back pushes the second Storey in compliance with the required Front Setback.
 - d. The Board when viewing the block face average as it appears in the Development Officer's presentation indicates clearly that the Front Setbacks decrease as you proceed further east from Lot 12 to Lot 20. The Board finds that this Front Setback is in line with the general context of this block face.
- [158] The Board while concluding that the required Front Setback is 9.63 metres and not 11.58 metres as indicated in the reasons for refusal and therefore granting a variance of 0.9 metres instead of 2.85 metres should it be proven incorrect that the Board would have granted the larger variance of 2.85 metres for the same reasons as above.

3) *Projection of the Platform Structure (covered deck) - section 44.3 and Eave Projection – section 44.1(a)*

[159] With respect to the projection of the covered deck into a Setback as prescribed in section 44.3, the 21.44 metres Setback that is required for the distance between the projection and the property line the Board has varied this requirement to allow a deficiency of 3.18 metres, thereby decreasing the minimum allowed to 18.26 metres.

[160] With respect to the eave projection of the covered deck into a Setback as prescribed in section 44.1(a) the 22.84 metres Setback that is required for the distance between the eave projection and the property line, the Board has varied this requirement to allow a deficiency of 5.44 metres, thereby decreasing the minimum allowed to 17.40 metres.

[161] The Board has granted these two variances for the following reasons:

- a. The Board heard directly from the Appellants that they had no objections in any way to these two variances.

- b. The Board notes that a letter of opposition by way of e-mail was received from a resident of Valleyview Drive further east of the Appellants indicating that they had concerns with privacy into their rear yards created by allowing these variances. The Board has concluded given the photographic evidence, the covered deck is located deeper in the yard and angled away from the property identified which should mitigate the concerns raised.
- c. No other presentations were received with respect to these variances.
- d. The Board confirms the justifications reached by the Development Officer with respect to these two variances.

4) *Garage (vehicle parking spaces)*

[162] With respect to the vehicle parking as prescribed in section 814.3(19)(a) that a maximum number of 2 vehicle parking spaces are required the Board has varied this requirement to allow an increase of 1 vehicle parking spaces, thereby increasing the maximum allowed to 3.

[163] The Board has granted the variance for the following reasons:

- a. There was photographic evidence as well presentations provided that indicated a three car or larger Garage is not unusual in the neighbourhood and particularly in close proximity to this proposed development.
- b. The alignment of the Garage to a side access helps mitigate any streetscape concerns with respect to looking directly at overhead Garage doors.
- c. The courtyard concept purported by the Respondent and the staggered approach to the overall site layouts will help mitigate any impact on the neighbourhood.

[164] Overall and in addition, the Respondent through meetings and discussions with the Development Officer and the Appellants made several amendments to help mitigate some of the concerns raised. These included making windows opaque, focusing on articulation and color change on the west wall to help mitigate impact of the long wall. It is important to note that the west wall of the proposed development, except for the Rear Setback variance fully complies with the Setback and Height requirements.

[165] The Board also accepts the conclusions made by the Respondent that a large amount of the impact as it relates to sun and shadow would naturally occur given the previous single Storey design to a newer two Storey design that is compliant.

- [166] The Board could not find that there was significant impact on sunshine and shadows that would be created by granting the Rear Setback variance. There may be a change in sunshine and shadow from what currently exists but the majority of the difference is because of the new compliant two Storey changes to the proposed development.
- [167] For all of the above reasons, the Board finds that the proposed development with the variances granted 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.

Mr. V. Laberge, Presiding Officer
Subdivision and Development Appeal Board

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.