

Edmonton Subdivision and Development Appeal Board

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Date: April 1, 2016
Project Number: 185720143-002
File Number: SDAB-D-16-076

Notice of Decision

[1] On March 17, 2016, the Subdivision and Development Appeal Board heard an appeal that was filed on **February 18, 2016**. The appeal concerned the decision of the Development Authority, issued on **February 17, 2016** to refuse the following development:

Leave as built a 4 Dwelling Row House

- [2] The subject property is on Plan RN52 Blk 1 Lot 50, located at 10104 - 120 AVENUE NW, within the RF3 Small Scale Infill Development Zone. The Mature Neighbourhood Overlay applies to the subject property.
- [3] The following documents, which were received prior to the hearing and are on file, were read into the record:
- Drawings of the subject Site;
 - E-mail correspondence between the Development Officer and the Appellant;
 - A Leave as Built Development Permit Application;
 - A Plot Plan of the subject Site;
 - The refused development permit;
 - A response from Transportation Services;
 - The Development Officer's written submissions; and
 - Two online responses in opposition to the development.

Summary of Hearing

- [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 appeal was filed on time, in accordance with Section 686 of the *Municipal Government Act*, R.S.A 2000, c. M-26.

i) *Position of the Appellants, Mr. A. Liaw & Ms. G. Vilamonovich, the designer*

- [6] The Appellants appeared at the hearing and reiterated the arguments made in the Grounds for Appeal included in the Notice of Appeal.
- [7] Mr. Liaw stated that, once the construction mistakes had been brought to his attention, it was too late to fix them. The foundation had already been poured. He is a new developer, and he hired a construction manager to arrange for the contractors to perform the work. He has since made inquiries to this manager regarding how these mistakes could have happened but has not received an explanation.
- [8] He stated that the contractor had not dug the hole for the basement deeply enough. Therefore, the basement elevation is higher than originally proposed, which also affected the overall Height of the building. The contractor also asked him about having a nine-foot ceiling in the basement, which also added to the overall Height.
- [9] He stated that, before he undertook to make changes to the building plans, he spoke to his adjacent neighbour to get his input. The neighbour takes no issue with the proposed changes to the development.
- [10] Ms. Vilamonovich identified herself as the designer of the project. In response to questions regarding whether or not she had considered that the proposed development would place a relatively large structure next door to a small bungalow, she stated that this was something that would have been considered in the past. However, she expects that this area is in transition and that the older bungalows will be replaced at some point. Therefore, the discrepancy in size between the adjacent buildings is now less of a concern.
- [11] She also explained that many of the deficiencies associated with the proposed development, as indicated in the Development Officer's reasons for refusal, are not significant. The front setback is deficient by a minimal amount and the Side Yard is deficient by approximately one metre.
- [12] She also proposed plans to eliminate some of the deficiencies identified by the Development Authority. By lowering of the back deck by one metre, she stated that the proposed development's Site Coverage would then comply with the requirements of the *Zoning Bylaw*, and this would remove the necessity of privacy screening. Her plan to wall off a portion of the slope of the top-half storey of the structure would also resolve the floor-area issues.
- [13] With respect to the outdoor amenity area, she acknowledged that the Site would not have room for landscaping. At the front of the building, there would only be enough space for a sidewalk. However, because there are plans in place to add a rooftop-balcony amenity space, some of this concern should be alleviated.

[14] She stated that, while they are attempting to minimize the number of variances required for the subject Site by revising the plans for the development, there are some issues that cannot be addressed by revising the plans. There is nothing that can be done about the basement elevation, front setback, rear-yard amenity space and overall Height of the structure.

ii) Position of the Development Officer, Ms. K. Bauer

[15] The Development Officer confirmed that the Front Yard was deficient by approximately 0.7 metres and that the overall Height of the structure was approximately one foot too high. However, she stated that she would have to review the Appellants' revised plans to have a more accurate idea of how they would affect required variances.

[16] She stated that the proposed lowering of the deck could very well allow the development to be compliant with Site Coverage requirements, but the proposed walling off of the upper-half storey of the building would have no effect on floor area. The area of this upper-half storey had not been determined in the original plans.

[17] With respect to the proposed development's proximity to the adjacent property, there is concern with respect to how the size of the structure will affect snow and ice accumulation between properties. Because the proposed structure is so large, it will not allow the sun to shine through to melt any accumulation.

iii) Position of the Compliance Officer, Mr. J. Norberg

[18] Mr. Norberg confirmed that there is not any room available for an amenity area. The north side of the development has been built extremely close to the adjacent parcel of land. Because of this, a stop order was issued to the Appellants in mid-January, which remains in effect. Each door on this side has a landing at a Height enabling residents to look over a six-foot fence into the neighbour's yard, affecting their privacy.

[19] He stated that the *Zoning Bylaw* does not comment on roof decks as amenity areas.

iv) Rebuttal of the Appellant

[20] In rebuttal, the Appellants stated that, once they realized their proximity to the property to the north, they created a side exit way that moves access to the proposed development away from the adjacent neighbour.

[21] With respect to the stop order, they confirmed that no further work was done once the order was issued.

Decision

[22] The appeal is ALLOWED and the decision of the Development Authority is REVOKED. The development is GRANTED as applied for to the Development Authority subject to the following conditions:

- i) Privacy Screening shall be provided on all decks higher than 1.0 metres.
- ii) A new Landscaping Plan must be submitted to the satisfaction of the Development Authority.

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

- i) the Maximum Height is varied 0.23 metres from 8.6 metres to 8.83 metres (Section 814.3(13)).
- ii) The Basement Elevation is varied 0.38 metres from 1.2 metres to 1.58 metres (Section 814.3(16)).
- iii) Site Coverage is varied 1.8% from 32% to 33.8% (19.65 m²) (Section 140.4(10)(e)).
- iv) The Maximum Ridge Height is varied 0.37 metres to 10.47 metres (Section 52.2(c)).
- v) The Floor Area of the upper half storey is varied from the requirements of Section 814.3(14). The Floor Area of the upper half storey interior suites will be 30.1 m², which is a variance of 2.6 m². The Floor Area of the upper half storey exterior units shall be 31.3 m², which is a variance of 3.3 m².
- vi) The Front Setback on the south side of the property will be varied 0.49 metres from 5.79 metres to 5.3 metres (Section 814.3(1)).
- vii) The Rear Yard on the north side of the property is varied 1.6 metres from 18.28 metres to 16.68 metres (Section 814.3(5)).
- viii) The northern flanking setback is varied from 3.1 metres to 2.08 metres (a variance of 1.02 metres) in compliance with the developer's drawings.

Reasons for Decision

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

- [25] This development was previously approved with three variances. However, it was not built according to those original plans. The basement was placed higher than required and a nine-foot ceiling was approved for the basement by the Appellant, adding to the Height of the building.
- [26] The Height difference between the approved and the proposed building is minimal and will not have a significant impact. The net effect of the basement change results in an overall Height exceeding the maximum by approximately one foot or 0.3 metres. Similarly, the Ridge Line was exceeded by 0.37 metres, again, partially due to the Height of the basement.
- [27] The Site Coverage is dependent on the size of the decks that are proposed at the front and the rear of the building. At present, the Site Coverage exceeds the maximum allowed under the *Zoning Bylaw* by 1.8%. However, the Appellants proposed to lower the decks and, therefore, they would be within Site Coverage restrictions. In any event, 1.8% is not a significant deviation from the maximum.
- [28] The half storey area of the two and a half storey building was approved with the original design for both the interior and exterior units. The Front Setback had an original variance allowing 5.79 metres, and the proposal is for 5.3 metres, which is less than one-half metre of difference. Again, the Board has determined that these variances will not have a significant impact.
- [29] The Rear Yard Setback was previously varied to 18.28 metres and the proposed is to 16.68 metres, which represents a deficiency of 1.60 metres. However, there will be a Garage in this area supplying Parking for the four units and, again, it will not have a significant impact.
- [30] The Board has determined that, because of the building's location on the lot, a new landscaping plan should be developed to enhance the area around the building as there is little amenity space.
- [31] The Board also has determined that there should be additional screening on the north flanking side to give additional privacy to neighbours.
- [32] Though not presented as a ground for refusing the revised development permit application before the Board, there was evidence presented that the flanking north side Setback was smaller than approved. It was approved at 3.1 metres and that was what is in fact shown on the Hagen Real Property Report. However, the Board heard evidence from the Compliance Officer that the actual Setback is 1.8 metres, which resulted in him issuing a stop order, which is not before us today.

This was confirmed by the proposed development's designer in today's proposed plans, which show the Setback as 2.08 metres. Given that the only actual representation before the panel is that shown on the designer's drawings, the Board will grant a variance to 2.08 metres (a variance of 1.02 metres) to the northern flanking setback.

- [33] The Board notes that there was no formal objection to the proposed development by the neighbour most affected immediately to the North.
- [34] As this is an older area and is believed to be in transition, a development of row housing on this block is not believed to be detrimental to this area. The Board finds that it will not unduly interfere with the amenities of the neighbourhood or materially interfere with or affect the use, enjoyment or value of neighbouring parcels of land.

Ms. P. Jones, 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 5th Floor, 10250 – 101 Street, Edmonton.
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*, R.S.A. 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 5th Floor, 10250 – 101 Street, Edmonton.

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: April 1, 2016
Project Number: 185707771-003
File Number: SDAB-D-16-077

Notice of Decision

[1] On March 17, 2016, the Subdivision and Development Appeal Board heard an appeal that was filed on **February 22, 2016**. The appeal concerned the decision of the Development Authority, issued on **February 9, 2016**, to refuse the following development:

Adding an additional Dwelling unit to an 8 suite Apartment House (9th Dwelling existing without permits)

[2] The subject property is on Plan B3 Blk 15 Lot 97, located at 10223 - 116 STREET NW, within the RA7 Low Rise Apartment Zone. The Medium Scale Residential Infill Overlay and Oliver Area Redevelopment Plan apply to the subject property.

[3] The following documents, which were received prior to the hearing and are on file, were read into the record:

- The Appellant's additional electronic submissions;
- A community consultation;
- A letter from the local community league;
- A package of documents including letters of support for the development;
- Cana Post confirmation of delivery;
- The refused development permit;
- The Development Officer's written submissions; and
- The Oliver Area Redevelopment Plan.

Summary of Hearing

[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 appeal was filed on time, in accordance with Section 686 of the *Municipal Government Act*, R.S.A 2000, c. M-26.

i) *Position of the Appellants, Mr. J Kjenner and Ms. C. Hyshka*

- [6] The Appellants reiterated the arguments made in the Grounds for Appeal included in the Notice of Appeal.
- [7] They stated that the additional suite has existed since the building was constructed in 1968. This is corroborated by a 1968 Inspector's Report classifying the structure as a nine-unit building. Although the building permit was issued for an eight-suite apartment, the ninth suite has been there since the building was constructed.
- [8] In response to the density issue cited by the Development Officer in his reasons for refusal, the Appellants referred to a map of the neighbouring properties that listed their respective densities. Most of the properties in the area are similar in character to the subject Site, and, on average, each property has a density of 137.8 Dwellings/ha. This building's proposed density of 129.29 Dwellings/ha exceeds the 125 Dwellings/ha maximum by a small margin, approximately 3%, and is not out of step with the surrounding neighbourhood.
- [9] With respect to parking, the Appellants advised that the amount of parking currently provided on the subject Site has proven to be sufficient for as long as the building has been operating and has never produced any complaints. This level of parking is also consistent with similar buildings in the area. The proposed spacing is one space per unit, which is above the average spacing per unit of all of the multi-suite buildings in the area. There is also on-street parking available on adjoining streets, and the neighbourhood is well-served in terms of alternative transportation opportunities. There are bus services on two major thoroughfares within a couple of blocks of this Site as well as a shared car service.
- [10] With respect to the outdoor amenity area, the Appellants acknowledged that three of the Site's suites do not have direct outdoor access. However, as every other apartment building of a similar vintage in the neighbourhood is in the same situation, this is characteristic of the surrounding area. There are also several major greenspaces (parks) close to the subject Site, and the river valley is also within walking distance.
- [11] The Appellants included a number of letters in support of the proposed development with their submissions. They stated that the building has been operated conscientiously and that the proposed development would not negatively impact the amenities of the neighbourhood.

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

- [12] The Development Officer confirmed that the subject Site is non-conforming. It complied with the old *Zoning Bylaw*, and there were no deficiencies noted in its original approval. However, because the Appellants are now applying for an additional Dwelling, that Dwelling must be viewed in light of the current *Zoning Bylaw*.

As a result, there are deficiencies with respect to parking, the Side Setback, the Site Area and the Private Outdoor Amenity Space. The biggest issue, however, is the excessive density of the proposed development. He has no authority to approve a variance for density.

- [13] He also confirmed that other properties in the area would be non-conforming and have the same issues.

iii) Rebuttal of the Appellant

- [14] In rebuttal, the Appellants confirmed that the biggest obstacle before them was the non-compliance with the density requirement, as it could not be varied by the Development Officer.

Decision

- [15] The appeal is **ALLOWED** and the decision of the Development Authority is **REVOKED**. The development is **GRANTED** as applied for to the Development Authority, subject to the following conditions:

i) The Site shall be developed in accordance with the stamped and signed drawings.

- [16] In granting the development, the following variances are allowed:

i) the maximum allowed density of 125 Dwellings/ha prescribed by Section 210.4(1) is varied to 129.29 Dwellings/ha, a variance of 3% or one additional rental unit;

ii) the minimum number of parking spaces prescribed by Section 54.2, Schedule 1(A)(1) is varied from 14 spaces to nine, a variance of five spaces;

iii) The minimum parking stall width prescribed by Section 54.2(4)(i) is varied 0.1 metres from 2.6 metres to 2.5 metres;

iv) The visitor parking requirement of Section 54.2, Schedule 1(A) is waived;

v) The minimum Site Area prescribed by Section 210.4(2) is varied 103.87 m² from 800 m² to 696.13 m²;

vi) The minimum Side Setback prescribed by Section 823(1)(d) is varied 1.17 metres from 3.0 metres to 1.83 metres; and

vii) The minimum Private Outdoor Amenity Area prescribed by Section 823.3(3)(a) is waived.

Reasons for Decision

- [17] The proposed development is a Permitted Use in the RA7 Low Rise Apartment Zone.
- [18] The Board has determined that a variance from the maximum allowed density of 125 Dwellings/ha prescribed by Section 210.4(1) to 129.29 Dwellings/ha, a variance of 3% or one additional rental unit, is appropriate in the circumstances. In comparison to other dwellings in the area, the Board considers the variance in density of the proposed development to be minimal.
- [19] The Board grants the variance of five parking spaces from the minimum number of 14 spaces prescribed by Section 54.2, Schedule 1(A)(1) to nine spaces. The Board also recognizes that the parking-stall width is required to be 2.6 metres, as noted in Section 54.2(4)(i), and the proposed parking width is 2.5 metres. Therefore, a variance is granted for 0.1 metres on each parking stall. The Board has also determined that granting a variance waiving the visitor parking requirement of Section 54.2, Schedule 1(A)(1) is appropriate. The subject Site is in close proximity to bus stops on two major routes. Although there is not any street parking located on 116th street, there is street parking on adjoining streets and transportation-sharing services are offered in the area.
- [20] The Board also grants a variance to the minimum Site Area from 800 m² to 696.13 m². According to the Development Officer, the building, as constructed in 1968, met the requirements of the zoning bylaw in effect at that time. As this is now a non-conforming structure, the variance is appropriate.
- [21] The minimum Side Setback prescribed by Section 823.3(1)(d) is varied from 3.0 metres to 1.83 metres. Again, the Board is satisfied that this structure was built according to a prior zoning bylaw and met its requirements. Therefore, the variance is granted.
- [22] There is little amenity area provided for any of the units and none for the additional unit or for those in the lower level of the proposed dwelling. However, the subject Site is within walking distance of three parks as well as the river valley. Accordingly, the Board grants a variance waiving the minimum Private Outdoor Amenity Area requirements prescribed by Section 823.3(3)(a).
- [23] The Appellants have written support from their community league as well as other residents in the area. The Board notes that no objections to the proposed development are on file.

- [24] The subject Site has been acknowledged as a nine-unit walk-up apartment since it was built in 1968 and the Appellants have been paying taxes for a nine-unit building since it was purchased in 1971. Further, the present owner has received no complaints about the property since it was purchased.
- [25] For those reasons, the Board finds that the proposed development will not unduly interfere with the amenities of the neighbourhood, nor will it materially affect the use, enjoyment or value of neighbouring parcels of land.

Ms. P. Jones, Presiding Officer
Subdivision and Development Appeal Board

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