



**EDMONTON
TRIBUNALS**

*Subdivision &
Development
Appeal Board*

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Date: March 9, 2018
Project Number: 257514590-002
File Number: SDAB-D-18-038

Notice of Decision

- [1] On March 1, 2018, the Subdivision and Development Appeal Board (the “Board”) heard an appeal that was filed on January 29, 2018. The appeal concerned the decision of the Development Authority, issued on January 17, 2018, to refuse the following development:

Convert an existing Semi-detached House to (4) Dwellings of Apartment Housing.

- [2] The subject property is on Condo Common Area (Plan 1323298), located at 12119C - 124 Street NW, within the (RF3) Small Scale Infill Development 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:
- Copies of the application, refused development permit with attachments and plans;
 - Correspondence from Fire Rescue Services, Waste Management and Drainage Services; and
 - The Development Officer’s written submissions.

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, Mr. J. Cai*

- [7] When he purchased the property in 2013, he was not aware that basement suites are not allowed in Semi-detached Houses. At that time, the developer informed him that the building could be converted from two condominium units into four units with the basement suites. The building had been converted into two condominium units on the one lot, prior to his purchase and the basement suites already existed when he purchased the property.
- [8] All four Dwellings are currently occupied by tenants, and it was his view that he was providing affordable housing with reasonable rents. The tenants maintain the property and to his knowledge, there have not been any complaints from neighbouring property owners. Parking is not an issue, as the building provides for eight parking spaces to the rear. However, only two or three of these spaces are occupied, and the majority of the tenants use public transportation.
- [9] There are other Apartment Houses in the area. The immediately abutting properties are Semi-detached Houses. In his opinion, Apartment Housing is characteristic of the neighbourhood.
- [10] When questioned by the Board, he agreed that the building is a Semi-detached House. However, due to basement suites not being permitted in Semi-detached Houses, he would like the existing development to be approved as an Apartment House. He confirmed that the basement suites have their own entrance on the side of the building, separate from the entrance for the main floor tenants. Both the basement suites and the ground floor Dwelling have full kitchens.
- [11] It was his understanding that each unit has its own heat control, but the utility and heating costs are split between the ground floor and basement tenants.
- [12] He had a meeting with the Development Officer and discussed the recommended conditions for the property if his appeal is successful and agreed to comply with them.

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

- [13] The Development Authority provided written submissions and did not attend the hearing.

Decision

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

Reasons for Decision

[15] The proposed development is for a four Dwelling Apartment House. Although Apartment Housing is a Permitted Use in the RF3 Small Scale Infill Development Zone, the proposed Apartment House requires four variances to regulations in the *Edmonton Zoning Bylaw* (the *Bylaw*). In determining whether to grant a variance, the Board is bound by section 687(3)(d) of the *Municipal Government Act* (the *Act*), which states:

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

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

(i) the proposed development would not

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

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

and

(ii) *the proposed development conforms with the use prescribed for that land or building in the land use bylaw.* [Emphasis added]

[16] In short, although the Board has discretion to vary the *Bylaw* regulations, it has no authority to vary Use Class definitions and pursuant to subsection 687(3)(d)(ii) of the *Act*, the Board must be satisfied that “the proposed development conforms with the use prescribed”.

[17] The existing prescribed Use for the subject building is a Semi-detached House, which is defined under section 7.2(7) of the *Bylaw* as follows:

Semi-detached Housing means development consisting of a building containing only two Dwellings joined in whole or in part at the side or rear with no Dwelling being placed over another in whole or in part. Each Dwelling has separate, individual, and direct access to Grade. This type of development is designed and constructed as two Dwellings at the time of initial construction of the building. *This Use does not include Secondary Suites or Duplexes.* [Emphasis added]

[18] Section 6.1(31) of the *Bylaw* states:

Dwelling means a self contained unit comprised of one or more rooms accommodating sitting, sleeping, sanitary facilities, and a principal kitchen for food preparation, cooking, and serving. A Dwelling is used permanently or semi-permanently as a residence for a single Household.

[19] The Board heard from the Appellant that he purchased the subject property in 2013 from the developer as a Semi-detached House with two Dwellings, each with a basement Secondary Suite.

[20] The Appellant several times referred to this building as a Semi-Detached House with Secondary Suites in the basement. In trying to change the Use to Apartment Housing he did not propose any changes to the interior or exterior of the building but stated it worked well as it had been designed and he would like to keep it as it is.

[21] Section 7.2(6) of the *Bylaw* defines Secondary Suite as follows:

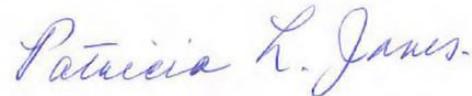
Secondary Suite means development consisting of a Dwelling located within, and Accessory to, a structure in which the principal use is Single Detached Housing. A Secondary Suite has cooking facilities, food preparation, sleeping and sanitary facilities which are physically separate from those of the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

[22] The Board reviewed the floor plans for the subject development and finds that the existing building contains two Dwellings joined in whole at the side. Each of these Dwellings is a self-contained unit that complies with the definition of Dwelling under section 6.1(31) of the *Bylaw*. Accordingly, the Board finds that the principal use is a Semi-detached House per the Use Class definition under section 7.2(7) of the *Bylaw*.

[23] Based on the floor plans and elevation drawings, it is also evident that the two basement Dwellings constitute Secondary Suites per section 7.2(6) of the *Bylaw*, as they have separate cooking facilities, food preparation, sleeping and sanitary facilities, and also have separate entrances from the principal Dwelling via a side entrance.

- [24] However, the *Bylaw* contemplates basement Secondary Suites only in Single Detached Houses, per section 7.2(6) of the *Bylaw*. The Use Class definition for Semi-detached Housing under section 7.2(7) of the *Bylaw* also expressly states that “This use does not include Secondary Suites”.
- [25] The Board finds that notwithstanding the Appellant’s belief that he was purchasing a Semi-detached House with legal basement Secondary Suites, the Use Class definitions under the *Bylaw* do not permit Secondary Suites to be located within a Semi-detached House. It is illegal to have Secondary Suites in Semi-detached Houses.
- [26] The Board heard that when the Appellant learned that Secondary Suites are illegal in Semi-detached Houses, he sought to comply with the *Bylaw* by applying for the subject development permit for a four Dwelling Apartment House. Section 7.2(1) of the *Bylaw* defines Apartment Housing as follows:
- Apartment Housing** means development consisting of one or more Dwellings contained within a building in which the Dwellings are arranged in any horizontal or vertical configuration, *which does not conform to the definition of any other Residential Use*. [Emphasis added]
- [27] During the course of the hearing, the Board heard from the Appellant that there is one furnace for each of the principal Dwellings in the Semi-detached House. This furnace provides heat for both the basement Secondary Suite and the principal ground floor Dwelling. Heating costs are shared between both the ground floor and basement tenants. The Board finds that this type of setup is consistent with a Secondary Suite located within and Accessory to a principal Use, and atypical of Apartment Housing.
- [28] Furthermore, the definition for Apartment Housing requires that the development “does not conform to the definition of any other Residential Use.” Having found that the proposed development is in fact a Semi-detached House with illegal Secondary Suites, it would be incorrect to characterize the proposed development as Apartment Housing. The subject development therefore does not conform to the use class definition of Apartment Housing.
- [29] Accordingly, the Board is unable to exercise its discretionary powers under section 687(3)(d)(i) of the *Act* to grant the required variances to the proposed Apartment House Use, as the proposed development does not conform with the Use Class definition of Apartment Housing.

- [30] Since the Board has determined that the proposed development does not conform to the Apartment Housing Use, it need not pursue further analysis as to whether the proposed development would unduly interfere with the amenities of the neighbourhood or materially interfere with or affect the use, enjoyment or value of neighbouring parcels of land. The Board simply notes that it concurs with the Development Authority's opinion in page two of the Development Officer's written submission: "There is nothing peculiar about the Use, character, or situation of the land or building. Therefore, it is the opinion of the Development Officer that there is no unnecessary hardship or practical difficulty which would require apartment housing to be approved on this site."
- [31] The Board also notes that in one of the reasons for refusal, the Development Officer stated that "This structure no longer conforms to current zoning rules, which may have changed since it was originally constructed". The Board heard that the subject property was purchased by the Appellant in 2013, when the current *Bylaw* regulations with respect to Semi-detached Housing and Secondary Suites were already in effect. Accordingly, the Board finds that there is no issue with respect to legal non-conformity.
- [32] For the above reasons, the appeal is denied and the development is refused.



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

Board Members in Attendance

Mr. M. Young; Mr. C. Buyze; Ms. S. LaPerle; Mr. L. Pratt

Important Information for the Applicant/Appellant

1. This decision may be appealed to the Alberta Court of Appeal on a question of law or jurisdiction under section 688 of the *Municipal Government Act*, RSA 2000, c M-26.
2. When a decision on a Development Permit application has been rendered by the Subdivision and Development Appeal Board, the enforcement of that decision is carried out by Development & Zoning Services, located on the 2nd Floor, Edmonton Tower, 10111 – 104 Avenue NW, Edmonton, AB T5J 0J4.



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Date: March 9, 2018
Project Number: 258728819-001
File Number: SDAB-D-18-039

Notice of Decision

- [1] On March 1, 2018, the Subdivision and Development Appeal Board (the “Board”) heard an appeal that was filed on January 31, 2018. The appeal concerned the decision of the Development Authority, issued on January 23, 2018, to refuse the following development:

Construct a Single Detached House with front attached Garage, veranda, fireplace, rear covered deck, balcony, and Basement development (NOT to be used as an additional Dwelling).

- [2] The subject property is on Plan 2128MC Blk 2 Lot 12, located at 8504 - 134 Street NW, within the (RF1) Single Detached Residential Zone. The Mature Neighbourhood Overlay applies to the subject property.
- [3] The following documents were received prior to the hearing and form part of the record:
- Copies of the application with attachments, refused permit and plans;
 - A Canada Post confirmation of delivery; and
 - The Development Officer’s written submissions dated February 26, 2018.
- [4] The following exhibits were presented during the hearing and form part of the record:
- Exhibit A – SLIM Map of the 60 metre notification area.
 - Exhibit B – Photograph showing the entrance of the rear lane.
 - Exhibit C – Google Map aerial view of the neighbourhood.
 - Exhibit D – Google Map street view of the rear lane.
 - Exhibit E – Google Map street view of the rear lane and one detached garage.
 - Exhibit F – Google Map street view of the rear lane.

Preliminary Matters

- [5] At the outset of the appeal hearing, the Presiding Officer confirmed with the parties in attendance that there was no opposition to the composition of the panel.

- [6] The Presiding Officer outlined how the hearing would be conducted, including the order of appearance of parties, and no opposition was noted.
- [7] The appeal was filed on time, in accordance with section 686 of the *Municipal Government Act*, RSA 2000, c M-26.

Summary of Hearing

i) Position of the Appellant, Mr. Csaba, who was accompanied by Mr. Mielczarek

- [8] When they started designing the house, they sought to develop a progressive house that was compatible with the adjacent properties and maximized the use of the lot. One of the immediate hurdles was the rear laneway that services the subject property. It is unpaved, and due to its condition, is not regularly used by property owners. To ensure consistency with the surrounding houses, and in keeping with their goal to develop a progressive house, they proposed a front attached garage. It is this front attached garage that gives rise to two variances relating to the rear setback.
- [9] The majority of homes in the Laurier Heights area have front attached garages, and in their view, the design of the house is characteristic of the neighbourhood. They submitted *Exhibit A*, a SLIM Map printout of the 60-metre notification area. They had marked off all the houses within the notification area with front attached garages. Only the immediately abutting property to the south has a rear garage. A Google Map aerial view of the neighbourhood (*Exhibit C*) was submitted to demonstrate that the majority of homes in the area have front driveways.
- [10] They submitted Exhibits B and D, E and F, which further demonstrated the neglected condition of the rear laneway.
- [11] Another reason justifying the front Driveway is that a curb cut already exists. The proposed front Driveway would therefore not change or have any differing impact on the availability of on-street parking. The property fronts onto 134 Street, which is not busy and has no parking bans.
- [12] The Dwelling is positioned on the lot to maintain the block face average of the two abutting properties. The design of the house maximizes the site coverage and still remains under the allowable for the Mature Neighbourhood Overlay.
- [13] Although the house is setback farther to the rear of the property, there is still a large amenity space in the rear yard. The garage runs the full length of the house but does not have vehicle access to the rear yard. The rear overhead door is to provide easy access for lawn and sports equipment.

- [14] They have worked with the Development Officer regarding the design. The Development Officer initially supported a front attached garage. They revised the plans to address any privacy issue for community consultation. It was their understanding that the Development Officer would approve the development if the community consultation demonstrated neighbourhood support for the development. However, although they did not receive any opposition, the development was still refused.
- [15] Upon questioning by the Board, Mr. Csaba stated that he attempted to speak with both abutting neighbours but was only able to contact one of them. No opposition was received.
- [16] In summary, they are trying to develop a house that is consistent with the community. Both older and newer houses in the neighbourhood have front attached garages, and they have full support from the community. If the rear lane was paved and well-maintained, they might have considered a rear garage.
- [17] They are agreeable to the suggested conditions of the Development Officer.

ii) Position of the Development Officer, Mr. G. Robinson

- [18] The Development Authority provided written submissions and did not attend the hearing.

Decision

- [19] 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**:
1. The Height of the principal building shall not exceed 8.9 m (Reference Sections 6.1(49) and 52).
 2. Platform Structures greater than 1.0 m above Grade shall provide Privacy Screening to prevent visual intrusion into adjacent properties. (Reference Section 814.3(9)).
 3. 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.
 4. The area hard surfaced for a Driveway shall comply with Section 54.6 of the Zoning Bylaw 12800.

5. Except for the hard surfacing of Driveways and/or Parking Areas approved on the site plan for this application, the remainder of the site shall be landscaped in accordance with the regulations set out in Section 55 of the Zoning Bylaw 12800.
6. 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).
7. Two deciduous trees with a minimum Caliper of 50 mm, two coniferous trees 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).
8. The requirement to provide trees and shrubs may be satisfied either through planting new or preserving existing trees and shrubs (Reference Section 55.6.2).
9. 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).
10. All access locations and curb crossings shall have the approval of the City Transportation prior to the start of construction. The rear facing Garage door shall be for Rear Yard maintenance access only, no Driveway to the rear lane is permitted (Reference Section 53(1)).
11. WITHIN 14 DAYS OF APPROVAL, prior to any demolition or construction activity, the applicant must post on-site a development permit notification sign (Section 20.2).

ADVISEMENTS:

1. Lot grades must comply with the Edmonton Drainage Bylaw 16200. Contact Drainage Planning and Engineering at 780-496-5576 or lot.grading@edmonton.ca for lot grading inspection inquiries.
2. Any future deck development greater than 0.6m (2ft) in height will require development and building permit approvals.
3. Any future deck enclosure or cover requires a separate development and building permit approval.

4. 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: www.edmonton.ca/transportation/on_your_streets/on-street-construction-maintenance-permit.aspx
5. Unless otherwise stated, all above references to "section numbers" refer to the authority under the Edmonton Zoning Bylaw 12800.

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

- 1) Section 814.3(4) is varied to permit a reduced Rear Setback of 29.9 percent Site Depth (11.4 metres) instead of the required 40 percent (15.24 metres).
- 2) Section 814.3(17) is varied to permit the proposed front Driveway access off 134 Street instead of the Abutting Lane to the rear.
- 3) Section 44(1) is varied to permit the distance of 10.03 metres from the eave to the Rear Lot Line instead of the required 14.64 metres.

Reasons for Decision

[21] The proposed development is for a Single Detached House, which is a Permitted Use in the (RF1) Single Detached Residential Zone.

[22] The Development Officer identified three variances required for this development.

Section 814.3(17) of the Mature Neighbourhood Overlay states: "Regardless of whether a Site has existing vehicular access from a public roadway, other than a Lane, no such access shall be permitted to continue where an Abutting Lane exists." The Development Officer determined that the proposed Driveway is located off of 134 Street NW instead of the rear Lane. The Board grants the required variance to section 814.3(17) for the following reasons:

- a) The Board reviewed Exhibit "C", a Google Maps aerial view of the subject property and the surrounding area, and finds that almost all the houses in the area have front Driveways. The Board also reviewed Exhibits "D" through "F" and finds that there are almost no Garages that access the rear Lane.
- b) The Board heard from the Appellant that the rear Lane is mainly used for garbage collection by City vehicles and other utility vehicles. It is not used for general access by the residents. The Board accepts the Appellant's submissions, and finds that the subject area is fairly stable, with front attached Garages being the norm.

- c) A curb cut for a two-car Driveway already exists on this Lot. According to the plans and the submissions of the Appellant, this curb cut will continue to be access for the front attached Garage.
- d) The existing curb cut and proposed front Driveway access will not alter on-street parking along 134 Street, nor will there be any change in impact on the streetscape.

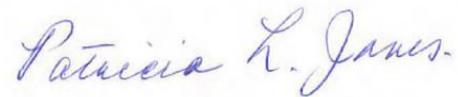
[23] Section 814.3(4) of the Mature Neighbourhood Overlay states that “The minimum Rear Setback shall be 40 percent of Site Depth.” The Development Officer determined that the distance from the House to the Rear Lot Line is at 29.9 percent Site Depth instead of the required 40%. The Development Officer also determined that the distance from the eaves to the rear property line was 10.03 metres instead of the 14.64 metres required under section 44(1). The Board grants the required variances to sections 814.3(4) and 44(1) of the *Edmonton Zoning Bylaw* for the following reasons:

- a) The development is positioned so that the block face average between the two Abutting Houses is maintained, but this necessitates a variance to the Rear Setback to accommodate the Rear Yard Amenity Area.
- b) The Rear Setback variance has no impact upon the total Site Coverage, which remains below the maximum allowance for a Single Detached House.
- c) This is a wide lot and which will mitigate part of the loss of depth ensuring a sizeable Amenity Area at the rear of the Dwelling. The positioning of the Dwelling affects the encroachment of the eaves towards the rear which will be of immaterial impact to the use and enjoyment of neighbouring parcels of land.

[24] The Board notes that per section 814.5, Tier 1 of the Mature Neighbourhood Overlay, community consultation was required and was conducted by the Development Authority. The Board finds that there was general acceptance for the development. Although the Appellant was only able to reach one of the Abutting neighbours, that neighbor supported the development.

[25] The Appellant submitted that the unpaved rear Lane played a significant role in the decision to develop a front attached Garage. However, the condition of the rear Lane was not a factor in the Board’s decision. Rather, the Board focused on whether the proposed development was in keeping with the Houses in this area.

[26] For the above reasons, the Board finds that this development, with a front attached Garage, is consistent and compatible with the neighbourhood. The proposed development 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. The appeal is allowed.



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

Board Members in Attendance

Mr. M. Young; Mr. C. Buyze; Ms. S. LaPerle; Mr. L. Pratt

Important Information for the Applicant/Appellant

1. This is not a Building Permit. A Building Permit must be obtained separately from Development & Zoning Services, 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 Development & Zoning Services, 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.