



**EDMONTON
TRIBUNALS**

*Subdivision &
Development
Appeal Board*

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Date: April 11, 2019
Project Number: 177755353-001
File Number: SDAB-D-19-026

Notice of Decision

February 28, 2019 Hearing:

[1] The Subdivision and Development Appeal Board made and passed the following motion:

“That SDAB-D-19-026 be postponed until March 27, 2019 at the written request of Legal Counsel for the Appellant and with the consent of the Development Authority.”

Reasons For Decision:

[2] Postponing the hearing until March 27, 2019 will allow Legal Counsel to appear and represent the interests of the Appellant.

March 27, 2019 Hearing:

Motion:

“That SDAB-D-19-026 be raised from the table.”

[3] On March 27, 2019, the Subdivision and Development Appeal Board (the “Board”) heard an appeal that was filed on **February 5, 2019**. The appeal concerned the decision of the Development Authority, issued on January 16, 2019, to refuse the following development:

To construct a four Dwelling Row House building with underground parking and rear uncovered decks.

[4] The subject property is on Plan 2857HW Blk 18 Lot 11, located at 10347 - 160 Street NW, within the (RF3) Small Scale Infill Development Zone. The Mature Neighbourhood Overlay and the Jasper Place Area Redevelopment Plan apply to the subject property.

[5] 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 reasons for appeal;
- A written submission from Legal Counsel for the Appellant, including revised drawings; and
- One online response in opposition to the proposed development.

Preliminary Matters

[6] 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.

[7] The Presiding Officer outlined how the hearing would be conducted, including the order of appearance of parties, and no opposition was noted.

[8] 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, J. Murphy, Q.C., Ogilvie LLP, representing the property owner, B. Suchora, and T. Ziola, Architect:*

[9] The City is moving towards the development of higher density housing in redeveloping older neighbourhoods to take advantage of the available land.

[10] Several photographs were referenced to illustrate the location of the subject site and the surrounding area. There are schools and a church located north of 104 Avenue, across from the subject site. There is an older single detached house with a large detached garage located on the adjacent lot to the south.

[11] Row Housing is a permitted use in the (RF3) Small Scale Infill Development Zone and the general purpose of the Zone provides that up to four principal dwellings may be accommodated on a site.

[12] The proposed development complies with the locational requirements for Row Housing and the subject site is not overdeveloped in terms of scale or density. The subject lot is a 50 feet by 150 feet rectangular lot that meets the lot width requirement and exceeds the

lot depth requirement. The proposed development is 8.8 metres in Height which is less than the maximum allowable Height and meets the maximum allowable Site Coverage requirement of 45 percent.

- [13] Row Housing consisting of four dwelling units must align east/west on the subject site, facing 104 Avenue.
- [14] The *Edmonton Zoning Bylaw* (the *Bylaw*), pursuant to section 6, contains the following definitions:

Front Lot Line means the property line separating a lot from an abutting public roadway other than a Lane. In the case of a Corner Lot, the Front Line is the shorter of the property lines abutting a public roadway, other than a Lane.

Front Setback means the distance that a development or a specified portion of it, must be setback from a Front Lot Line. A Front Setback is not a Front Yard, Amenity Space or Separation Space.

Rear Lot Line means either the property line of a lot which is furthest from and opposite the Front Lot Line, or, where there is no such property line, the point of intersection of any property lines other than a Front Lot Line which is furthest from and opposite the Front Lot Line.

Rear Setback means the distance that a development or a specified portion of it, must be setback from a Rear Lot Line. A Rear Setback is not a Rear Yard, Amenity Space or Separation Space.

Side Lot Line means the property line of a lot other than a Front Lot Line or Rear Lot Line

Side Setback means the distance that a development or a specified portion of it, must be setback from a Side Lot Line. A Side Setback is not a Side Yard, Amenity Space or Separation Space.

- [15] In this circumstance, these definitions cause considerable confusion because the front of the development faces 104 Avenue, the “front lot line” is deemed to be the shorter boundary that faces 160 Street and the “rear lot line” is deemed to be the shorter boundary facing the alley to the east.
- [16] The RF3 Zone regulations recognize the front and side lot line issues for Row Housing of the type of building orientation being proposed.
- [17] Section 814.3(3)(b) of the Mature Neighbourhood Overlay states “where a Site Width is greater than 12.0 m and less than 18.3 m, the Side Setback requirements of the underlying Zone shall apply.”

Section 140.4(14)(c) and (d) of the RF3 Zone state:

Side Setbacks shall be established on the following basis:

- (c) on a Corner Site where the building faces the flanking Side Lot Line, the minimum Side Setback abutting the flanking Side Lot Line shall be 2.0 m. However, if a building facing the flanking Side Lot Line has an attached Garage that faces the flanking Side Lot Line, the Side Setback from the flanking Side Lot Line to the Garage shall be a minimum of 4.5 m; and
- (d) on a Corner Site where the building faces the flanking Side Lot Line, Row Housing, Stacked Row Housing and Apartment Housing shall provide a minimum interior Side Setback of 3.0 m.

The proposed development flanks onto 104 Avenue and each Side Setback is 3.0 metres, which meets the minimum required Side Setback regulations.

[18] As noted by the Development Officer, the only great concern is the impact of the Mature Neighbourhood Overlay on the determination of the Rear Setback. It is their opinion that the impact results in an unfair and ironic hardship being placed on the developer because the lot is too large.

[19] Section 140.4(13) of the RF3 Zone states:

The minimum Rear Setback shall be 7.5 metres, except on a Corner Site, where a Dwelling with an attached Garage faces the flanking public roadway, it may be reduced to 4.5 metres.

The proposed development complies with the required 7.5 metre Rear Setback although it would likely qualify for the reduced Rear Setback of 4.5 metres.

[20] Section 814.3(4) of the Mature Neighbourhood Overlay requires the Rear Setback to be 40 percent of the Site Depth for all forms of development without any regard to the fact that the Overlay applies to Row Housing developments in the RF3 Zone. The result is that the easterly 60 foot portion of the lot would be rendered undevelopable except for a single storey garage structure. This is simply not supportable in terms of the redevelopment of the area as envisioned in the Jasper Place Area Redevelopment Plan (the "ARP"); the location of the site relative to the school and other institutional uses located north of the site; the waste of density opportunities otherwise provided by the RF3 Zoning; nor in terms of increased land costs that purchasers of the proposed housing units would have to bear.

[21] The Mature Neighbourhood Overlay was initially adopted for a specific area located off Whyte Avenue as well as some lots along 126, 127 and 128 Street, north of Stony Plain Road. Houses in these areas were oriented towards the street with garages at the rear of the lots taking access off the lane. The rear yard requirement made sense for single detached housing but it does not for the subject site which is a corner lot that is large enough to accommodate a row housing development and is in keeping with the ARP. It was their opinion that applying this requirement to Row Housing developments was an oversight.

- [22] The subject site is located in an area that has been identified for Active Edge Housing in the ARP. The purpose of Active Edge Housing is to support a safe neighbourhood by focusing on a variety of ground-oriented housing opportunities around parks and open spaces to increase overlook in these areas, and to create strong neighbourhood frontages along key community corridors and across from multi-family housing.
- [23] It was noted that the only response received from an affected property owner addressed a concern regarding increased crime in the neighbourhood. However, this concern will be addressed by developing more affordable housing that will attract young families.
- [24] Three row housing units with a one storey garage could be developed on this site instead of the four proposed units but it would not be in keeping with the ARP which is to revitalize the street and improve the character of the neighbourhood. Reducing the number of dwelling units would also increase the cost of carrying the land which would have to be split between three units instead of four units and would raise the price of each unit by \$75,000.00.
- [25] The Development Officer determined that a relaxation in the Rear Setback would allow for an extension of the proposed development along the south boundary of the site which would be detrimental to the neighbour to the south. A private lane is proposed on the south side of the site to accommodate double car garages for each dwelling unit. This will allow all parking to occur on site instead of on the street.
- [26] The initial intention of the developer was to have vehicles access the below ground garages from the alley to the east and take egress onto 160 Street to the west which would comply with the requirements of section 814.3(17) of the Mature Neighbourhood Overlay. Subsequently, Transportation Services advised that they preferred that access be taken from 160 Street with egress occurring through the alley to address traffic safety issues. The Appellant obliged and revised the plans to accommodate this request
- [27] In most cases, the Development Officer would have granted this variance in light of the circumstances and to address the traffic safety concerns identified by Transportation Services. However, in this case, the Development Officer determined that he could not grant a variance because the “lane access only” provisions of the Mature Neighbourhood Overlay are repeated in the applicable section of the ARP and he was bound to comply with the provisions of the statutory plan.
- [28] Section 687(3)(a.2) of the *Municipal Government Act* also requires the Board to comply with any applicable statutory plans.
- [29] The Alberta Court of Appeal has addressed this circumstance where a restriction contained in a land use bylaw that might otherwise be varied by the Board through the authority provided under section 687(3)(d) of the *Municipal Government Act* is repeated in a statutory plan.

The Court of Appeal case, *Bridgeland Riverside Community Association v. Calgary (City)*, 1982 ABCA 138 determined that the Board's variance powers are, in effect, sacrosanct and cannot be sterilized by repeating an otherwise variable land use bylaw development standard in a statutory plan. In such a circumstance, the plan is to be "read down" to the land use bylaw.

- [30] In *Planning Law and Practice in Alberta*, Professor F. Laux agreed with this decision and concluded that ostensibly mandatory provisions contained in a municipal statutory plan are not necessarily binding on planning authorities.
- [31] It was Mr. Murphy's opinion that the *Bylaw* considers access and egress differently because egress is not addressed at all.
- [32] His client is willing to accept an approval with either access/egress configuration, but would prefer to accommodate the configuration suggested by Transportation Services.
- [33] The proposed four front patios are 0.5 metres from the flanking Side Lot Line along 104 Avenue instead of 1.5 metres. The patios front onto 104 Avenue and face only the roadway and the frontage of the school building located across the Avenue. The proposed configuration supports the revitalization of the flanking roadway and is in keeping with the "Active Edge" housing principles of the ARP. The Development Officer did not address this variance requirement in his written submission because it will not impact the use, enjoyment or value of neighbouring properties and will not detract from the amenities of the neighbourhood. The patios, with the proposed landscaping will enhance the streetscape along 104 Avenue and therefore, enhance the amenities of the neighbourhood.
- [34] The four proposed decks on the south façade project 2.0 metres into the required 3.0 metre interior Side Setback and the proposed Privacy Screens on the four interior south side decks are 1.8 metres in height when measured from the surface of the decks. The intent of increasing the height of the Privacy Screening on the rear decks from 4 feet to 6 feet is to offset the extension of the decks into the required side yard and to provide added privacy protection to the lot to the south. The requested variances in combination with the extensive landscaping proposed along the south boundary of the site will ensure that there is limited or no privacy impacts on the property to the south. It was noted that no objections to the required variances were raised by neighbouring property owners.
- [35] The plans have been revised to correct an error that was made on the originally submitted plans. It was the architect's intention to create a structure that would have the visual impact of a typical six foot high fence with interior landscape screening behind it for the neighbour to the south. However, the submitted drawings indicated that the fence structure would sit on top of the required retaining wall resulting in a 10 foot high structure along the south boundary.
- [36] His client spoke with the most affected neighbour to the south when this development was first being contemplated and asked if they were interested in selling their property.

This neighbour is aware that a Row House is being developed on the site and has been informed on two different occasions that the development permit process is moving forward. No objections have ever been raised by this property owner and the only objection received is from a neighbour who resides some distance away and has a general concern about the development of Row Housing.

[37] His client has addressed the Development Officer's concerns regarding the neighbouring lot to the south by reducing the number of habitable rooms on the south façade from eight to four (50 percent of the bedrooms were relocated from the south façade to the north and were replaced with closets and bathroom facilities that only require higher and smaller dimension windows); and Privacy Screening will be provided as well as an extraordinary level of vegetative screening as indicated on the Landscaping Plan.

[38] Section 11.1(1)(f) of the *Bylaw* states that "the Development Officer shall receive all applications for development and may relax a regulation in a Zone or other Section of this Bylaw in accordance with the regulations contained in that Zone or Section, or may relax regulations in accordance with Sections 11.3 and 11.4, and in such case, the development applied for shall be a Class B Discretionary Development".

This section does not say that it becomes a Discretionary Use, it is a Class B Discretionary Development which means it retains its character as a Permitted Use that requires variances.

[39] A Court of Appeal decision, *Chrumka v. Calgary (Development Appeal Board)*, 1981 ABCA 282 was referenced. In its decision, the Court determined that a development cannot be a Permitted Use and a Discretionary Use at the same time. Even though this case was heard in 1981 it is still relevant and relied upon by the Court of Appeal.

[40] The variances required have to be assessed pursuant to section 687(3)(d) of the *Municipal Government Act* and the test is whether or not 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.

[41] The property owner has been working on this development since 2015 in order to create the best outcome for the neighbourhood while providing affordable infill housing. The property owner and the Architect have worked with the Development Officer in an attempt to reduce any negative impacts of the required variances.

[42] Mr. Murphy and Ms. Ziola provided the following information in response to questions from the Board:

- a) Each unit has a front porch and a rear patio which provides amenity space that complies with the *Bylaw* requirements.
- b) There is a school yard located across the street which is in keeping with the policies for Active Edge Housing to develop higher density housing close to open spaces.

- c) The school is currently operating and attracting young families to the neighbourhood.
- d) The proposed drive aisle along the southern boundary is located on private property and is not meant to be a public thoroughfare. A gate can be installed if required.
- e) The rear patios are raised four feet off the ground and will extend over several columns in order to accommodate driveway access below.
- f) Privacy Screening will encompass the entire rear patio for each unit and extensive landscaping will be provided along the south property line.
- g) The City has been supportive of the development of four units on this site and has worked with the Architect to make improvements to the proposed development.
- h) The revised plans have reduced the height of the fence along the south property line to six feet and the height of the fence in the front yard to four feet. It was noted that the front yard is considered to be the area between the front lot line and front façade of the building and that the height of the fence in this area will not exceed four feet.
- i) The fence revisions to the proposed plans are *de minimis* and can be considered by the Board.
- j) The recommended conditions provided by the Development Officer have been reviewed and are acceptable.

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

- [43] It is not impossible to develop a four dwelling Row House in a RF3 Zone. In most instances it results in narrower dwelling units, between 17 ½ and 18 feet wide. In this case the proposed dwelling units are between 22 and 24 feet wide and that is part of the reason why the structure projects into the Rear Setback.
- [44] The intent of the Mature Neighbourhood Overlay when it was implemented in 2001 was quite general. Council wanted new development in older neighbourhoods to respect the development pattern that existed, particularly the fact that there was no vehicular access from the front roadway. Most properties had rear detached garages that were accessed from the lane. The Overlay addressed the problem that resulted with the development of two car front attached garages and a driveway through the front yards that allowed vehicles to back out over City sidewalks.
- [45] The following information was provided in response to questions from the Board:

- a) He had an opportunity to briefly review the revised plans and it was his opinion that the revision to include a six foot high fence along the south side lot line is an improvement. He confirmed that the front yard is the area between the front lot line and the front façade of the dwelling. Therefore, the fence in the front yard should be a maximum of 1.2 metres in height.
- b) His main concerns are the proposed access from 160 Street and the deficiency in the minimum required Rear Setback.
- c) The proposed Rear Setback variance means that the south side façade of the proposed Row House facing the abutting lot is 10.8 metres longer than allowed. In addition, this extra 10.8 metres of building is two storeys high. The retaining wall and fence along the south property line will create a 45-metre long wall for the neighbour to the south. The longer façade will also result in additional windows overlooking into the abutting site to the south which creates privacy concerns. It was noted that the developer has tried to ameliorate this issue through the provision of landscaping.
- d) The Mature Neighbourhood Overlay requires that vehicular access be from a lane where a lane exists. This requirement was re-affirmed in Charter Bylaw 18637 which was passed on December 10, 2018. The amendment states “where the Site abuts a Lane, vehicular access shall be from the Lane and no existing vehicular access from a public roadway other than a Lane shall be permitted to continue”.
- e) This site abuts a lane along the east property line and a new front driveway off of 160 Street is proposed where a front driveway currently does not exist. The driveway will break up the pedestrian sidewalk and the environment along 160 Street.
- f) BYU Policy 1 of the ARP, *Active Edge Housing*, requires the Development Officer to ensure that parking access is from the laneway.
- g) Several options to provide access and egress from the lane were explored but the cost was prohibitive.
- h) The proposed development provides amenity areas that comply with the *Bylaw* requirements and it was noted that the subject site is located across the street from a school and a park.
- i) Consultation with neighbours was done in reference to the variances required to the Mature Neighbourhood Overlay. Property owners who reside within 60 metres of the subject site and the Community League were notified. He did not receive any calls from affected property owners regarding the proposed development. Only one e-mail response was received in opposition to the development. However, the concerns did not address the variances of the Mature Neighbourhood Overlay. A response was not received from the Community League.
- j) It is common to see Row Housing developments on corner lots in RF3 Zones.

- k) The adjacent lot to the south is not large enough to accommodate Apartment Housing or Row Housing but it would be possible to develop a Semi-detached House with Secondary Suites.
- l) The 40 percent Rear Setback requirement will allow amenity space in the rear yard as well as the construction of a rear detached garage which has to be contained within the rear 12.8 metres of the lot. This leaves between four to five metres between the house and the garage that can be used as outdoor space.
- m) The raised patios are required because of the proposed driveway along the south property line. It was his opinion that the inclusion of privacy screening will address any overlook and privacy concerns for the neighbour to the south.
- n) An aerial photograph was referenced and it was noted that the Semi-detached House on the lot located across the lane to the east has a driveway that leads to the street. Mr. Bacon confirmed that this development was originally refused and approved through appeal to the Subdivision and Development Appeal Board.

iii) Rebuttal of the Appellant:

- [46] It would be possible to develop four dwelling units on this lot and comply with the Rear Setback requirement but some of the design features would have to be given up including the width of the dwelling units.
- [47] The proposed three-bedroom units will attract families as will the school and the park facilities located across the Avenue.
- [48] Even if the dwelling units were reduced in width there would be eight bedroom windows along the south façade overlooking the lot to the south. One bedroom has been moved to front onto 104 Avenue which reduces the windows on the south façade by 50 percent.
- [49] The intent of the Mature Neighbourhood Overlay was to remove the development of front drive garages.
- [50] If it is the decision of the Board that a variance cannot be granted to allow vehicular access from 160 Street, vehicular access will be provided from the lane but it is their preference to comply with the request of Transportation Services.
- [51] The Landscaping Plan was reviewed in detail to describe the number and types of trees proposed.

Decision

[52] The appeal is **ALLOWED** and the decision of the Development Authority is **REVOKED**. The development is approved as applied for to the Development Authority, subject to the following **CONDITIONS**:

1. The development is approved subject to revised Fence plans that were submitted and reviewed to include a reduction in the maximum allowable Height of the Fence in the south interior Side Yard to comply with section 49.1(e)(iii), and the reduction in the maximum allowable Height of a Fence in the Front Yard abutting 160 Street, from the Front Lot Line to the edge of the building Façade, to comply with section 49.1(e)(i).
2. Unless otherwise stated, all references to "section numbers" refer to the authority under the Edmonton Zoning Bylaw #12800, as amended.
3. All access locations and curb crossings shall have the approval Subdivision Planning (Transportation) prior to the start of construction. Reference Section 53(1).
4. The proposed 5m one-way inbound access from 160 Street located approximately 1.2 m from the south property line must be constructed as a commercial crossing access to City of Edmonton Complete Street Design and Construction Standards. The proposed one-way inbound directional access must be properly signed indicating the operation of the access. All signage must be provided on private property.
5. There currently is no sidewalk along the south side of 104 Avenue adjacent to the site. A 1.5m concrete sidewalk must be constructed along 104 Avenue from 160 Street to the alley to facilitate the development, and to meet City of Edmonton Complete Street Design and Construction Standards. Specific details relative to the construction and alignment of the sidewalk will be reviewed at the engineering drawing stage.
6. The owner must enter into an Agreement with the City for the following improvements:
 - a) construction of a 5m commercial crossing to 160 Street located 1.2m from the south property line; and
 - b) construction of a 1.5m concrete sidewalk along the south side of 104 Avenue from 160 Street to the alley for an approximate length of 45m.

The Agreement must be signed **PRIOR** to the release of the drawings for Building Permit review. Please email Development.coordination@edmonton.ca to initiate the required Agreement. Following this, any further questions regarding this

Agreement may be directed to Esther Anderson (780-944-7773) of the Development Servicing Agreements Unit.

Once signed by the land owner, the Agreement must be returned to Development Servicing Agreements to the attention of Esther Anderson including an irrevocable Letter of Credit in the amount of \$45,500.00 to cover 100% of construction costs and 30% for engineering drawing approval. The owner is also required to have a Civil Engineer submit stamped engineering drawings for approval by Development Engineering and Drawing Review.

Upon engineering drawing approval, security will be reduced to 100% of the construction costs of \$35,000.00. The difference of \$10,500.00 shall be returned to the land owner.

The applicant must contact Loli Fernandez (780-944-7683) 48 hours prior to removal or construction within city road right-of-way.

7. The proposed 5m one-way outbound access to the alley is acceptable to Subdivision Planning. The proposed alley access must be properly signed indicating the operation of the access and all signage must be provided on private property. A Curb Crossing Permit is not required for alley access.
8. The underground driveway ramp must not exceed a slope of 10% for a minimum distance of 5m inside the property line and the ramp must be at grade at the property lines. The proposed ramp slope submitted by the applicant, as shown on the cross section, is acceptable to Subdivision Planning.
9. All parking stalls perpendicular to the alley must be a minimum length of 5.5m.
10. The proposed retaining walls bordering the underground driveway ramps must not exceed a height of 0.3m for a distance of 3m from the property line and no portion of the wall may encroach onto road right-of-way. The proposed railing above the retaining wall must be designed with open vertical pickets or glass to maintain adequate sightlines between the parkade ramp and alley to ensure vehicles can exit safely.
11. Permanent objects, including railings, concrete steps, planters etc. must NOT encroach into or over/under road right-of-way. All required landscaping for the development must be provided on site.
12. There is an existing power pole along 104 Avenue that may interfere with construction of the proposed sidewalk. The sidewalk must not conflict with the power pole. The applicant should contact Ron Hewitt (780-412-3128) of EPCOR Customer Engineering for more information. Should relocation of the pole/guy-wire be required, all costs associated with relocation must be borne by the owner/applicant.

13. The proposed connector sidewalks from the entrances of the subject site to tie into the public sidewalk are acceptable.
14. Garbage enclosures must be located entirely within private property and gates and/or doors of the garbage enclosure must not open or encroach into road right-of-way.
15. Any alley, sidewalk and/or boulevard damage occurring as a result of construction traffic must be restored to the satisfaction of Development Inspections, as per Section 15.5(f) of the Zoning Bylaw. All expenses incurred for repair are to be borne by the owner.

Subdivision Planning (Transportation) Advisements:

1. The applicant is advised that more than a 12% difference in the ramp slope may result in vehicles “bottoming out” at the break-over point.
2. 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.
3. Any hoarding or construction taking place on road right-of-way requires an OSCAM (On-Street Construction and Maintenance) permit. 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:

https://www.edmonton.ca/business_economy/licences_permits/oscam-permit-request.aspx and, https://www.edmonton.ca/documents/Construction_Safety.pdf;

PRIOR TO THE RELEASE OF DRAWINGS FOR BUILDING PERMIT REVIEW, the applicant or property owner shall pay a Sanitary Sewer Trunk Fund fee of \$4,744.00 (based on 2019 rates). All assessments are based upon information currently available to the City. The SSTF charges are quoted for the calendar year in which the development permit is granted. The final applicable rate is subject to change based on the year in which the payment is collected by the City of Edmonton.

PRIOR TO THE RELEASE OF DRAWINGS FOR BUILDING PERMIT REVIEW, the applicant or property owner shall pay a Development Permit Inspection Fee of \$518.00.

Landscaping shall be in accordance with the approved landscaping plan and Section 55 of the Zoning Bylaw, to the satisfaction of the Development Officer.

-- Any changes to an approved Landscape Plan require the approval of the Development Officer prior to the Landscaping being installed.

-- Landscaping shall be maintained in a healthy condition for a minimum of 24 months after the landscaping has been installed, to the satisfaction of the Development Officer.

-- A Guaranteed Landscaping Security shall be provided to the City of Edmonton at the time of Development Permit Inspection, to the satisfaction of the Development Officer.

NOTES:

1) Upon the first Development Permit Inspection and determination that landscape construction has been completed in compliance with the approved Landscape Plan, 20% of the approved Guaranteed Landscape Security shall be collected and retained for a period of 24 months from the date of first Development Permit Inspection.

2) Sites that are not completed or are not compliant with approved Landscape Plans at the first Development Permit Inspection, shall be required to submit a Security for incomplete work, up to and including the full value of the approved Guaranteed Landscape Security value.

The proposed visitor parking space shall be developer shall be clearly identified as visitor parking to the satisfaction of the Development Officer. Reference Section 54.2, Schedule 1A(1).

Exterior lighting shall be developed to provide a safe lit environment in accordance with Sections 51 and 58 and to the satisfaction of the Development Officer.

The off-street parking, loading and unloading (including aisles or driveways) shall be hardsurfaced, curbed, drained and maintained in accordance to Section 54(6).

All outdoor trash collection areas shall be located and screened to the satisfaction of the Development Officer in accordance with Sections 55(4) & (5).

VariANCES

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

1. The minimum Rear Setback pursuant to section 814.3(4) is waived.
2. The Driveway access requirement pursuant to section 815.3(17) is waived.
3. The minimum separation distance between the flanking Side Lot Line and the front Platform Structures pursuant to section 814.3(11) is waived.
4. The maximum projection of the Platform Structures from the south façade of the building pursuant to section 44.3(c) is waived.
5. The maximum Height of the Privacy Screens on the south Platform Structures pursuant to section 49.2(c) is waived.

Reasons for Decision

[54] The proposed development, Row Housing, is a Permitted Use in the (RF3) Small Scale Infill Development Zone (the “RF3 Zone”).

[55] Section 7.2(5) of the *Bylaw* defines Row Housing as:

development consisting of a building containing a row of three or more Principal Dwellings joined in whole or in part at the side only with none of these Dwellings being placed over another in whole or in part. Each principal Dwelling has separate, individual, and direct access to ground level. This Use does not include Stacked Row Housing or Blatchford Townhousing.

[56] Section 140.1 of the *Bylaw* states that the General Purpose of the RF3 Zone is:

to provide for Single Detached Housing and Semi-detached Housing while allowing small-scale conversion and infill redevelopment to buildings containing up to four principal Dwellings under certain conditions, including Secondary Suites and Garden Suites.

[57] Although the proposed Row Housing development consisting of four Dwelling units is a Permitted Use in the RF3 Zone, the necessity to align the building east/west on the subject Site has resulted in a number of required variances to the development regulations which are the subject of this appeal.

[58] The Board grants the required variances for the following reasons:

- a) The proposed development complies with the maximum allowable Site Coverage requirements, the minimum Site Width and Site Depth requirements, the minimum Side Setback requirements, the maximum allowable Height requirements and the minimum Amenity Area requirements.

- b) The Development Officer noted that the most significant variance for this development is the impact of the development regulation contained in section 814.3(4) of the Mature Neighbourhood Overlay that requires the minimum required Rear Setback to be 40 percent of the Site Depth. The proposed Rear Setback is 7.5 metres (16.4 percent of the Site Depth) and is deficient by 10.8 metres.

The Board agrees with the submission of the Appellant that it is unreasonable to apply this development regulation to a four Dwelling Row Housing development in the RF3 Zone as the orientation of the proposed development could be viewed as an unfair and ironic hardship on the developer because 18.3 metres of the eastern portion of the lot will be rendered undevelopable except for a single storey detached Garage.

This does not support the policies of the Jasper Place Area Redevelopment Plan to promote redevelopment, strong neighbourhood frontages, and multi-family housing.

- c) The Appellant has amended the plans during the application review process to address the Development Officer's concerns regarding the impact that this variance will have on the neighbour to the south. The number of habitable rooms on the south face of the proposed development have been reduced from eight to four, (50 percent of the bedrooms were relocated from the south face to the north face and were replaced with closets and bathroom facilities with higher, smaller windows). Privacy Screening will be erected on the rear Platform Structures and an extraordinary level of vegetative screening will be planted along the south lot line. The Board notes that the variance granted in the Rear Setback requirement along the south boundary of the Site will not be detrimental to the neighbour to the south as any overlook will occur over the detached Garage on that Site. The Board notes that the neighbour to the south has not objected to the proposed development.
- d) The proposed development complies with the proposed land uses for the Britannia Youngstown neighbourhood identified in the Jasper Place Area Redevelopment Plan. The site is located on 104 Avenue which has been identified as an area for the development of Active Edge Housing. The purpose of Active Edge Housing is to:
- support a safe neighbourhood by focusing a variety of ground-oriented housing opportunities around parks and open spaces to increase overlook in these areas, and to create strong neighbourhood frontages along key community corridors and across from multi-family housing.
- e) Section 814.3(17) requires vehicular access to be from the Lane when a Site abuts a Lane. The proposed Driveway providing vehicular access is located off of 160 Street as well as the Lane. The Board grants the required variance based on the recommendation of Transportation Services that it is, indeed, safer to provide vehicular access from 160 Street and have egress occur through the Lane. The proposed Driveway does not lead to a double car Garage that fronts onto 160 Street. The Driveway will provide vehicular access to Garages that are below grade. Therefore, it is in keeping with the intent of the Mature Neighbourhood Overlay to discourage the development of front attached Garages and Driveways and the need

for vehicles to back out over public sidewalks. In this case, providing egress through the Lane completely eliminates the need for vehicles to back out over the front sidewalk.

- f) Counsel for the Appellant identified a conflict of laws situation between the Mature Neighbourhood Overlay and the *Bylaw*. Accordingly, the Board accepts the submission of Counsel for the Appellant as it relates to the Court of Appeal decision, *Bridgeland Riverside Community Association. v. Calgary (City)*, 1982 ABCA 138 that determined that the variance powers of a Subdivision and Development Appeal Board cannot be sterilized by repeating a development regulation that can be varied in the land use bylaw in a statutory plan. In such a circumstance, the statutory plan has to be “read down” to the land use bylaw.
 - g) The Development Officer did not specifically address the variance required pursuant to section 814.3(11) of the Mature Neighbourhood Overlay resulting from the fact that the proposed Platform Structures on the first storey of the Dwellings are located 0.5 metres from the flanking Side Lot Line along 104 Avenue instead of 1.5 metres. Based on a review of the plans, there is a wide boulevard existing between the property line and the street that will mitigate any negative impacts of allowing the Platform Structures to project further into the flanking Side Yard.
 - h) Revised Fence plans were submitted to reduce the maximum Height of the Fence along the south Side Yard to 1.85 metres to comply with the requirements of section 49.1(e)(iii) of the *Bylaw*. The Height of the proposed Fence along the Front Yard abutting 160 Street has been reduced to 1.2 metres in a portion of the Front Yard to comply with section 49.1(e)(i). These revisions to the Fence Height are imposed as a condition of approval.
 - i) The variance to allow an increase in the maximum allowable Height of a Privacy Screen constructed on a Platform Structure within a required Side Setback, pursuant to section 49.2(c) will mitigate the impact of the extension of the Platform Structures into the required Side Yard to provide more privacy protection for the lot to the south.
 - j) The variances granted for the proposed Privacy Screening in combination with the extensive landscape treatment proposed on the south boundary of the subject Site will ensure that there is limited or no privacy impact on the property owner to the south who has not raised any objection to the proposed development.
 - k) The Board accepts that the proposed design allows for the density sought by the RF3 Zone and provides all of the required parking on Site.
- [59] The Board notes that no one attended the hearing in opposition to the proposed development and that only one online response was received from an affected property owner who expressed general opposition to the development of Row Housing but did not object to the required variances.

[60] Based on all of the foregoing, it is the opinion of the Board that the proposed development, with the conditions imposed and 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.

W. Tuttle, Presiding Officer
Subdivision and Development Appeal Board

Board members in attendance: M. Young, A. Bolstad, J. Jones, R. Hobson

c.c. City of Edmonton, Development & Zoning Services, Attn: K. Bacon / H. Luke

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.



**EDMONTON
TRIBUNALS**

*Subdivision &
Development
Appeal Board*

**10019 – 103 Avenue NW
Edmonton, AB T5J 0G9
P: 780-496-6079 F: 780-577-3537
sdab@edmonton.ca
edmontonsdab.ca**

March 27, 2019

RE: Project No. 277937618-003, to Change the Use from Personal Service Shop to Restaurant (40.1 m2 Public Space) and to construct interior alterations. (Pizza Restaurant)

The Subdivision and Development Appeal Board made and passed the following motion on March 27, 2019:

“That the appeal hearing be postponed until April 17, 2019.”

Reasons For Decision:

1. The Respondent did not appear and SDAB administration was not able to contact him.
2. This is the first postponement of this matter. The proposed development is currently not operating; therefore, there is no prejudice to the Appellant or any affected parties by granting the postponement.
3. The Appellant was present and agreed to the postponement.

The time and location of the hearing will be provided in future correspondence.

Should you require further information in this regard, please contact the Subdivision & Development Appeal Board Office at 780-496-6079.

Ms. W. Tuttle, Presiding Officer
Subdivision and Development Appeal Board

cc: PM Property Holdings – J. Papay / K. Miller
Development & Zoning Services – P. Adams / H. Luke



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sdab@edmonton.ca
edmontonsdab.ca

Date: April 11, 2019
Project Number: 301997306-001
File Number: SDAB-D-19-042

Notice of Decision

- [1] On March 27, 2019, the Subdivision and Development Appeal Board (the “Board”) heard an appeal that was filed on **February 27, 2019**. The appeal concerned the decision of the Development Authority, issued on February 7, 2019, to approve the following development:

Operate a Major Home Based Business (Administration office and storage for general contractor - BERG BUILDERS), expires February 09, 2024.

- [2] The subject property is on Plan 4999TR Blk 4 Lot 72, located at 8530 - 10 Avenue NW, within the (RF1) Single Detached Residential Zone.
- [3] The following documents were received prior to the hearing and form part of the record:
- A copy of the approved Development Permit;
 - The Development Officer’s written submission;
 - The Appellant’s reasons for appeal;
 - The Respondent’s written submission; and
 - One online response in support of the proposed development.

Preliminary Matters

- [4] At the outset of the appeal hearing, the Presiding Officer confirmed with the parties in attendance that there was no opposition to the composition of the panel.
- [5] The Presiding Officer outlined how the hearing would be conducted, including the order of appearance of parties, and no opposition was noted.
- [6] The appeal was filed on time, in accordance with section 686 of the *Municipal Government Act*, RSA 2000, c M-26.

Summary of Hearing

i) Position of the Appellant, P. Kruczko

- [7] The Appellant did not appear and SDAB administration was not able to contact him. The Board relied on the Appellant's reasons for appeal:

Discretionary Permit issued for garage warehouse on property which is located in an upscale family designated residential area RF1.

Although according to Mark Winget he states limited use this approval has been given to general contractor Berg Builders. However, there are many commercial sites available for storage. Berg Builders should do storage in commercial area. The cost is not excessive and by not allowing storage in garage it would not cause disruptions for families in this residential area.

The proposed development would affect the use, enjoyment and value of the neighbouring residential homes.

ii) Position of the Development Officer, M. Winget

- [8] The Development Authority was not in attendance and the Board relied on Mr. Winget's written submission.

iii) Position of the Respondent, J. Berg

- [9] Mr. Berg was not able to attend the hearing and was represented by Mr. A. Chell.
- [10] Mr. Chell provided a detailed written submission including a letter of support from a neighbour directly across the street along with a series of photographs.
- a) Mr. Berg's business is contained entirely within the residence and attached garage and is secondary to the residential use. There will be no business-related traffic, no outdoor storage of materials or equipment, and no non-residents using the site as a workplace. The proposed use will not change the residential character of the site.
 - b) The construction aspect of Mr. Berg's business is conducted at his job sites, not at his residence, and he commutes to those job sites using his vehicle. The aspects of his business operations that are conducted at his residence are administrative and contained entirely within the residence, aside from the occasional loading and unloading between the garage and his truck.

- c) The truck associated with the business is also used by Mr. Berg as his personal vehicle. As his business will generate no visits to his residence, a second parking space is not required.

Decision

- [11] The appeal is **DENIED** and the decision of the Development Authority is **CONFIRMED**. The development is **GRANTED** as applied for to the Development Authority.
- [12] In granting the development the following variance to the *Edmonton Zoning Bylaw* (the *Bylaw*) is allowed:
 - a) The requirement for one parking space in addition to parking required for the principal Dwelling as per section 54.2, schedule 1(A)(8) is waived.

Reasons for Decision

- [13] A Major Home Based Business is a Discretionary Use in the (RF1) Single Detached Residential Zone. The proposed development meets the definition of a Major Home Based Business as per section 7.3(7) of the *Bylaw* and complies with all of the requirements listed in section 75 of the *Bylaw*.
- [14] The Appellant did not attend the hearing and SDAB administration was not able to contact him. The Board decided to proceed with the appeal as scheduled and relied on the Appellant's reasons for appeal and on the detailed submission from Mr. Chell, the Respondent's representative.
- [15] There will be no business-related traffic, no outdoor storage of materials or equipment, and no non-residents using the site as a workplace. The proposed use will not change the residential character of the site.
- [16] The variance to the required parking was granted as there would be no staff or client visits to the business; thus parking would be limited to the same vehicle that Mr. Berg would be using without the home based business. Insufficient parking was not stated as a reason for appeal.
- [17] Written support of the proposed development was received from a neighbour directly across the street and from the directly abutting neighbour to the west. No letters of opposition were received and no one appeared at the hearing to oppose the development.

[18] The Board finds that the proposed development is reasonably compatible with the surrounding neighbourhood and 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.

W. Tuttle, Presiding Officer
Subdivision and Development Appeal Board

Board Members in Attendance

M. Young, A. Bolstad, R. Hobson, J. Jones

cc: P. Kruczko
Development & Zoning Services – M. Winget / A. Wen

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