



**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](mailto:sdab@edmonton.ca)  
edmontonsdab.ca*

Date: March 15, 2018  
Project Number: 269439558-001  
File Number: SDAB-S-18-003

**Notice of Decision**

- [1] On March 7, 2018, the Subdivision and Development Appeal Board (the “Board”) heard an appeal that was filed on **February 12, 2018**. The appeal concerned the decision of the Subdivision Authority, issued on February 1, 2018, to refuse the following application:

**Create one (1) additional Single Detached Residential Lot.**

- [2] The subject property is on Plan 3079EO Blk 2 Lots 1-2, located at 10905 - 74 Street NW, within the (RF1) Single Detached Residential Zone. The Cromdale/Virginia Park Area Redevelopment Plan applies to the subject property.
- [3] The following documents were received prior to the hearing and form part of the record:
- A copy of the Subdivision Authority’s refusal letter; and
  - The Subdivision Authority’s written submission and PowerPoint presentation.

**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 678 of the *Municipal Government Act*, RSA 2000, c M-26.

## Summary of Hearing

### *i) Position of the Appellant, Mr. R. Shinkaruk*

- [7] Mr. Shinkaruk has lived at the subject site for over 30 years in a fairly large house which was recently destroyed in a fire. He no longer requires such a large house and wishes to split the lot and build two smaller houses.
- [8] The Subdivision Authority indicated they would approve a subdivision to create two skinny houses facing west; however, he dislikes the design of typical skinny houses and feels they all look the same. Splitting the site to create two south facing houses is his preferred option and it would allow him to build more creatively. He has spoken to several builders that also agree with a north to south centreline lot split.
- [9] Splitting the lots to face south would provide both lots equal driveway access to 109 Avenue and they would face the same direction as the driveway immediately south of the school.
- [10] West facing driveways would only allow for a five-foot entranceway and a windowless living room. He would have to locate the living room on the second floor to accommodate a window.
- [11] House plans have not been prepared yet. If the subdivision is approved he will work with the City to design two houses that meet all of the requirements of the *Edmonton Zoning Bylaw* (the *Bylaw*). He indicated that each proposed lot would be 5,000 square feet and designing a house to meet the *Bylaw* would not be difficult.
- [12] Mr. Shinkaruk has not consulted with Transportation Services regarding driveway access abutting 109 Avenue. There is no lane and the original house had driveway access abutting 109 Avenue.
- [13] He does not object to the recommended conditions and advisements by the Subdivision Authority.

### *ii) Position of the Subdivision Authority, Ms. S. Mah, who was accompanied by Mr. B. McDowall*

- [14] When Ms. Mah reviewed the proposed subdivision she reviewed the Cromdale/Virginia Park Area Redevelopment Plan, formally the Stadium Station Area Redevelopment Plan (the “ARP”) pursuant to section 654(1) of the *Municipal Government Act* (the *Act*):

654(1) A subdivision authority must not approve an application for subdivision approval unless

- (b) the proposed subdivision conforms to the provisions of any growth plan under Part 17.1, any statutory plan and, subject to subsection (2), any land use bylaw that affects the land proposed to be subdivided, [...]

- [15] The ARP came into effect in 1983 and the plan recognizes the subject site as an Urban Services site, which is intended for schools, parks, churches, institutions and utilities.
- [16] The subject site is unusual as it is adjacent to the southern portion of a school site. Although the proposed application does not conform to an Urban Services Use, the proposed subdivision could meet the residential intent of the ARP, which is to support and maintain low density residential housing. She acknowledged that the subject site was created in 1930, well before the ARP was implemented.
- [17] The main reason for refusal was that the proposed lots would not meet the minimum 30.0-metre site depth requirement for Single Detached Housing per section 110.4(2)(c) of the *Bylaw*. The proposed site depths are 20.12 metres, resulting in a 9.88-metre deficiency, which is not compatible with the lots in the immediately surrounding area, which have site depths between 36.58 metres to 46.94 metres.
- [18] The proposed subdivision would create non-conforming lots, which could create uncertainty for future property owners and it would force the Development Authority to grant a variance in site depth. She had consulted with a Development Officer and was advised that if site depth was the only variance in the *Bylaw*, it would most likely be granted. However, house drawings have not been submitted and it is possible there are further development variances, which could result in a refusal.
- [19] If the subdivision was split on a centreline east to west, the lots would comply with the site regulations of the *Bylaw*. Ms. Mah indicated that other options have been discussed with the Appellant, including building a semi-detached house or applying to have the site re-zoned.
- [20] Ms. Mah and Mr. McDowall provided the following responses to questions from the Board:
  - a. With regard to section 654(2) of the *Act*, which states:

654(2) A subdivision authority may approve an application for subdivision approval even though the proposed subdivision does not comply with the land use bylaw if, in its opinion,

    - (a) the proposed subdivision would not
      - (i) unduly interfere with the amenities of the neighbourhood, or
      - (ii) materially interfere with or affect the use, enjoyment or value of neighbouring parcels of land, [...]

Ms. Mah indicated that the proposed subdivision is not compatible with the neighbourhood as the proposed lots would be visually smaller than the other existing lots. In her opinion, it is difficult to determine whether there would be an undue or material interference at this time as no plans have been submitted.

- b. Ms. Mah agreed that no matter which way the lots are oriented on the subject site, the lot size would remain the same and a subdivision would still result in significantly large lots with green space.
- c. Mr. McDowall explained that the policy of the Subdivision Authority is to not approve subdivisions that would create lots less than 7.5 metres in width or less than 30 metres in depth as that is the direction they have received from City Council.
- d. Transportation Services reviewed the proposed subdivision and had no objections.

*iii) Rebuttal of the Appellant, Mr. R. Shinkaruk*

[21] Mr. Shinkaruk indicated that the subject site is a unique lot and he is unaware of any similar lots in the city that are located adjacent to a school.

[22] He reiterated that building two south facing houses would not look unusual as the adjacent school also faces south.

**Decision**

[23] The appeal is **ALLOWED** and the decision of the Subdivision Authority is **REVOKED**. The subdivision is **GRANTED** as applied for to the Subdivision Authority despite the non-compliance with section 110.4(1)(c) of the *Edmonton Zoning Bylaw*. This approval is subject to the following **CONDITIONS**:

1. That the owner constructs a storm sewer main extension to proposed Lot B, to the satisfaction of EPCOR Drainage and Subdivision and Development Coordination, and
2. That the owner pay all outstanding property taxes prior to the endorsement of the plan of survey.

Next Steps for Subdivision Approval

- The next step in the subdivision process is to have a legal instrument prepared (ie. Plan of Survey) in order to register the approved subdivision. The legal instrument is then forwarded to the City for endorsement along with the endorsement fee (\$662.00 - 2018 Fees Schedule) and subsequently released to the applicant for registration at the Land Titles Office.

### Transportation

- There are existing boulevard trees adjacent to the site on 74 Street and 109 Avenue that must be protected during construction. For information about tree protection please refer to the City of Edmonton's web site (Trees and Construction).
- Any proposed access for proposed Lot A must maintain a minimum clearance of 2.4 m from all boulevard trees. For further information the owner/applicant may contact George Szilagyi (780-496-4990) of Parks and Road Services.

### Building / Site

- The owner shall ensure that any change in property boundaries does not cause any structures on site to become non-compliant with the Safety Codes Act and Alberta Building Code. Permits may be required for such changes. Please contact 311 for more information.

### Servicing

- The owner is required to make satisfactory arrangements for, and pay all costs associated with separate servicing to each lot, as well as the modification, relocation and/or removal of existing services. For further information, please contact: EPCOR Distribution & Transmission Inc. (780-412-4000), TELUS Communications (Edmonton) Inc. (Real Estate Division [Rights of Way] 780-508-2456), ATCO Gas (780-424-5222) and EPCOR Drainage (water and sewer servicing 780-496-5444).
- Water service enters the proposed subdivision approximately 4.1 m north of the north property line of 109 Avenue off of 74 Street. Sanitary Service enters the proposed subdivision approximately 24.8 m east of Manhole #270019. As per the Drainage and Waterworks Bylaws, these services cannot cross the proposed property line.
- If power service crosses the proposed property line the owner may be required to provide a blanket easement in favour of EPCOR Distribution & Transmission Inc. If required, said easement shall be registered prior to or concurrent with the final plan of survey (contact EPCOR Land Administration Group at 780-412-3252).

### **Reasons for Decision**

- [24] Pursuant to section 680(2)(f) of the *Municipal Government Act* (the *Act*), the Board is delegated the same authority that the Subdivision Authority had when making the original decision. This authority is found in section 654 of the *Act*, of which states:

(1) A subdivision authority must not approve an application for subdivision approval unless

- (a) the land that is proposed to be subdivided is, in the opinion of the subdivision authority, suitable for the purpose for which the subdivision is intended,
- (b) the proposed subdivision conforms to the provisions of any growth plan under Part 17.1, any statutory plan and, subject to subsection (2), any land use bylaw that affects the land proposed to be subdivided,
- (c) the proposed subdivision complies with this Part and Part 17.1 and the regulations under those Parts, and
- (d) all outstanding property taxes on the land proposed to be subdivided have been paid to the municipality where the land is located or arrangements satisfactory to the municipality have been made for their payment pursuant to Part 10.

(1.1) A decision of a subdivision authority must state

- (a) whether an appeal lies to a subdivision and development appeal board or to the Municipal Government Board, and
- (b) if an application for subdivision approval is refused, the reasons for the refusal.

(1.2) If the subdivision authority is of the opinion that there may be a conflict or inconsistency between statutory plans, section 638 applies in respect of the conflict or inconsistency.

(2) A subdivision authority may approve an application for subdivision approval even though the proposed subdivision does not comply with the land use bylaw if, in its opinion,

- (a) the proposed subdivision would not
  - (i) unduly interfere with the amenities of the neighbourhood, or
  - (ii) materially interfere with or affect the use, enjoyment or value of neighbouring parcels of land,

and

- (b) the proposed subdivision conforms with the use prescribed for that land in the land use bylaw.

The Board finds that it has jurisdiction to hear this appeal.

- [25] The Board notes that a subdivision application to split the lots along an east to west centre line would completely comply with the site regulations of the *Edmonton Zoning Bylaw* (the *Bylaw*). However, although the proposed subdivision application splits the lots along a north to south centreline; both the proposed and aforementioned orientations would result in the same lot area.
- [26] While the Board acknowledges that the proposed subdivided lots are not compliant with regard to Site Depth, the Board finds that, pursuant to section 654(2) of the *Act* the proposed subdivision is justified for the following reasons:
- a) Since the proposed lots are the only residential properties fronting south onto 109 Avenue, there is no incompatibility with the block face requirements of the Mature Neighbourhood Overlay.
  - b) The Board notes that the proposed lots are in excess of the minimum Site Area requirements and accepts the Appellant's contention that each lot can accommodate reasonably sized Single Detached Houses that are fully compliant with the minimum required Yard, Amenity Area, Setbacks and Site Coverage requirements of the *Bylaw*.
  - c) The Board was provided no evidence to support the suggestion in the Subdivision Authority's written submission that variances additional to that for Site Depth would be required to achieve development.
  - d) The Board further notes that there is open green space, a parking lot, and a school abutting the proposed lots. Based on this fact and the overall proposed lot dimensions the Board finds non-compliant Site Depth will not create a material impact on any residential properties.
- [27] While the Subdivision Authority contended that the proposed subdivision is uncharacteristic of the area, the Board notes that the subject site is unique in location, the only abutting property being the school grounds, and that the proposed subdivision will provide for two south-facing houses that will be compatible with the orientation of the adjacent school on 109 Avenue.
- [28] The Board finds that a subdivision on the east to west centreline would require at least one of the lots to require a front access garage which, as the Appellant noted, would be uncharacteristic along 74 Street.
- [29] While the Cromdale/Virginia Park Area Redevelopment Plan (the "ARP") refers to the subject site as Urban Services Land Use, the Board notes it was subdivided and used for residential purposes prior to the implementation of the ARP and remains under the (RF1) Single Detached Residential Zone despite the ARP. The Board therefore concludes that the proposed subdivision conforms with the Single Detached Housing Use prescribed for this land in the *Bylaw*.
- [30] The Appellant agrees with the recommended conditions and advisements by the Subdivision Authority.

[31] The Board concludes that the proposed subdivision 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.



Mr. N. Somerville, Presiding Officer  
Subdivision and Development Appeal Board

Board Members in Attendance:

Ms. K. Cherniawsky; Ms. E. Solez; Ms. G. Harris; Mr. R. Hachigian



**Important Information for the Applicant/Appellant**

1. When an application for a subdivision 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.
2. 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.