

Edmonton Subdivision and Development Appeal Board

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Date: March 23, 2016
Project Number: 170550535-002
File Number: SDAB-D-16-072

Notice of Decision

[1] On March 9, 2016, the Subdivision and Development Appeal Board heard an appeal that was filed on **February 10, 2016**. The appeal concerned the decision of the Development Authority, issued on **February 9, 2016**, to refuse the following development:

construct 4 Dwellings of Row Housing with a rear detached Garage

[2] The subject property is on Plan 747AF Blk 15 Lots 9-10, located at 12305 - 114 AVENUE NW, within the RF3 Small Scale Infill Development Zone. The Mature Neighbourhood Overlay and the West Ingle Area Redevelopment Plan apply to the subject property.

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

- A Canada Post confirmation of delivery;
- A response from Fire Services;
- A Development Application with attached plans;
- The Development Officer's written submissions;
- An additional e-mail submitted by the Development Officer;
- Plans submitted by the Appellant;
- An online response in support of the development; and
- The West Ingle Area Redevelopment Plan.

Summary of Hearing

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

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

i) *Position of the Appellants, Mr. Wilbert and Mr. Gupta*

- [6] The Appellants reiterated the Grounds for Appeal included in the Notice to Appeal.
- [7] They stated that the proposed development was denied due to the Development Officer's misapplication of Section 52(1)(d) of the *Zoning Bylaw*. The midpoint of the roof is to be calculated by selecting the appropriate subsection within that provision that balances development rights against the land use impact on neighbouring properties. The Bylaw does not state that the Development Officer should choose a calculation based on the appearance of the development. In this case, the correct Height calculation was the distance between the roof ridge and the gutter. The Development Officer used only the top portion of the roof when making his calculations, and this was not representative of the entire roof.
- [8] The Appellants confirmed that they sought the approval of the neighbourhood and received no objection to the proposed development. They made the neighbourhood aware of what the development would look like and the variances being sought. They further explained what was being done to address any potential privacy issues. The only concern voiced by the neighbours had regard to parking, but this issue was addressed on the Site plans showing a full garage space and two full parking spaces for every residential unit.
- [9] With respect to privacy issues, the Appellants stated that they could install frosted glass along the rail of the rooftop deck to alleviate any concerns. Further, as the subject property is on the north side of the block, on a corner lot and separated from adjacent properties by trees, there would be no issue with respect to sun-shadowing or overlook.
- [10] Concerns regarding any massing effect were also taken into account by the plans. This was addressed by having the rooftop deck recessed into the roof. The Appellants stated that, as opposed to a higher roof, the roof proposed would serve to avoid massing because it is staggered and respects the articulation goals contained in the *Zoning Bylaw*. With respect to the dormers, while one is oversized, all others comply with the regulations of the *Zoning Bylaw*.
- ii) Position of the Development Officer, Mr. Bacon*
- [11] In response to questions regarding how he made his roof-Height calculations, the Development Officer stated that there is a break in elevation that separates the roof types. Half of the roof was gambrel, and the other half was gable. Therefore, he measured the roof as part gambrel and part gable, keeping in mind that dormers also visually impact the overall massing effect and one of the dormers was oversized. In assessing the overall appearance of massing, he determined that the gambrel roof calculation made the most sense.
- [12] He stated that, while Height seemed to be the Appellants' primary issue, the rear setback deficiency and the oversized dormer also influenced his concern regarding massing.
- [13] He also confirmed that the maximum vertical distance on a pitch roof in the RF3 Zone is 10.1 metres and that the proposed development was at that maximum.

iii) Rebuttal of the Appellants

[14] In rebuttal, the Appellants stated that, as the mid-point on the gable portion of the roof is 8.4 metres, there should not be any concern regarding massing and the appearance of the proposed development from the street.

Decision

[15] The Appeal is ALLOWED and the decision of the Development Authority is REVOKED. The development is GRANTED with the following condition:

i) the screening on the south side of the balconies shall be done with frosted glass.

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

i) The maximum Height of 8.6 metres prescribed by Section 814.3 is varied by 1.3 metres to 9.9 metres.

ii) The Rear Setback minimum is varied 0.9 metres (1.9%) from 18.3 metres (40%) to 17.4 metres (38.1%) (Section 814.3(5)).

iii) The maximum Dormer Width is varied 0.9 metres from 3.1m to 4.0m (Section 814.3(15)).

Reasons for Decision

[17] The proposed development is a Permitted Use in the RF3 Small Scale Infill Development Zone.

[18] While the Board acknowledges that the Development Officer's Height calculations were consistent with the requirements of the *Zoning Bylaw*, the Board finds that the visual midpoint of the roof on the north side of the building on the streetscape, and to a lesser extent on the south side of the building, is in fact the difference between the gutter and the ridge and is unaffected by the breaks in the mansard portions or the dormers imposed on the roof.

[19] The Board notes that the maximum Height in the RF3 Small Scale Infill Development Zone is 10.1 metres and that the proposed development complies with that regulation.

[20] The Board notes the substantial support of the surrounding property owners outlined in the neighbourhood consultations marked as exhibit A. No one appeared in opposition to the appeal and only one letter of opposition was received from a property owner of unknown address.

- [21] The Board further notes that sun-shadowing is not an issue since the proposed development is on the north end of block and that concerns of oversight have been addressed by the setback of the building from the south property line.
- [22] The articulation of the roof surfaces, on both the front and rear elevations, also serves to reduce massing of the proposed development.
- [23] The Board is satisfied that the proposed development will not unduly interfere with the amenities of the neighbourhood, nor will it materially affect the use, enjoyment or value of neighbouring parcels of land.

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

CC:

Important Information for the Applicant/Appellant

1. This is not a Building Permit. A Building Permit must be obtained separately from the Sustainable Development Department, located on the 5th Floor, 10250 – 101 Street, Edmonton.
2. Obtaining a Development Permit does not relieve you from complying with:
 - a) the requirements of the *Edmonton Zoning Bylaw*, insofar as those requirements have not been relaxed or varied by a decision of the Subdivision and Development Appeal Board,
 - b) the requirements of the *Alberta Safety Codes Act*,
 - c) the *Alberta Regulation 204/207 – Safety Codes Act – Permit Regulation*,
 - d) the requirements of any other appropriate federal, provincial or municipal legislation,
 - e) the conditions of any caveat, covenant, easement or other instrument affecting a building or land.
3. When an application for a Development Permit has been approved by the Subdivision and Development Appeal Board, it shall not be valid unless and until any conditions of approval, save those of a continuing nature, have been fulfilled.
4. A Development Permit will expire in accordance to the provisions of Section 22 of the *Edmonton Zoning Bylaw, Bylaw 12800*, as amended.
5. This decision may be appealed to the Alberta Court of Appeal on a question of law or jurisdiction under Section 688 of the *Municipal Government Act*, R.S.A. 2000, c. M-26. If the Subdivision and Development Appeal Board is served with notice of an application for leave to appeal its decision, such notice shall operate to suspend the Development Permit.
6. When a decision on a Development Permit application has been rendered by the Subdivision and Development Appeal Board, the enforcement of that decision is carried out by the Sustainable Development Department, located on the 5th Floor, 10250 – 101 Street, Edmonton.

NOTE: The City of Edmonton does not conduct independent environmental checks of land within the City. If you are concerned about the stability of this property for any purpose, you should conduct your own tests and reviews. The City of Edmonton, when issuing a development permit, makes no representations and offers no warranties as to the suitability of the property for any purpose or as to the presence or absence of any environmental contaminants on the property.

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Date: March 23, 2016
Project Number: 148392678-003
File Number: SDAB-D-16-049

Notice of Decision

[1] On March 9, 2016, the Subdivision and Development Appeal Board heard an appeal that was filed on **January 15, 2016**. The appeal concerned the decision of the Development Authority, issued on **January 6, 2016**, to refuse the following development:

develop a Parking Area Accessory to an existing Apartment House

[2] The subject property is on Plan NB Blk 4 Lot 82, located at 9922 - 104 STREET NW, within the HDR High Density Residential Zone. The Special Area Downtown Overlay and the Capital City Downtown Plan apply.

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

- Site Plans of the subject property;
- A memo from transportation services;
- The Development Officer's written submissions;
- The refused development permit;
- Three letters in opposition to the development;
- An online response in opposition to the development;
- Handouts from the Appellant including a modified version of the plans that had been refused; and
- The Capital City Downtown Plan.

Summary of Hearing

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

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

[6] With respect to the submission of a modified plan, the Presiding Officer noted that the Board's normal function is to rule on the decision of the Development Authority and asked the Development Officer if he had been consulted on the new plan. The Development Officer confirmed that he had been consulted but had not made a ruling on the changes because a new application had not been filed.

i) Position of the Appellants, M. Figuera, T. Kennedy, S. McCartney, D. Brown

[7] The Appellants had developed a revised Site plan to mitigate the number of variances required for the proposed development. While the new plan did not fully comply, it reduced the number of variances required to two. Initially three setbacks were deficient, but those deficiencies were eliminated by the new plan. There was also an issue with respect to two parking spaces in the Front Yard. This was also addressed by the revised plan. Additionally, the issue regarding the existing access off of 104th Street had been resolved.

[8] The revised plan allows for additional parking for current and potential tenants. The Appellant has difficulty securing tenants because of the lack of parking spaces available on the adjacent Site. When the building was built, other parking was available, but there are now limited opportunities for parking in the area due to redevelopment. Further, as it is unfeasible for the subject Site to ever develop as a High Density Residential Site, the proposed parking development is the best Use of the property in question at this time.

[9] With respect to the location of the surface parking in the area, the Appellants referred to examples of parking lots on the same block and, more specifically, along 104th street. These examples showed lots providing parking to existing buildings in the Side Yard with limited landscaping for screening. Much like the subject Site, these parking lots would not be in compliance with the requirement to have surface parking in the rear of the building only.

[10] Regarding the required 50:50 split between deciduous and coniferous trees on Site, the Appellants stated that the *Zoning Bylaw* indicates that coniferous trees are not to be situated on the edge of 104th Street. Therefore, the 50:50 requirement does not apply to the subject Site.

ii) Position of the Development Officer, M. Harrison

[10] The Development Officer reviewed the revised plans and noted two required variances that remained: side parking and landscaping.

[11] In addressing the side parking issue, he stated that the examples shown of other surface parking lots in the area only serve to further the Development Authority's justification for refusal. The City acknowledges that there are many parking lots in that area and it does not want to encourage the development of more. The Capital City Downtown Plan aims to stop the proliferation of surface parking.

[12] He also stated that it is not a certainty that the subject Site could not be developed to adapt to the High Density Residential Zoning. There are options available such as re-zoning and variances that could potentially apply to the Site.

iv) Rebuttal of the Appellant

[13] In rebuttal, the Appellants stated that re-zoning may be possible in other areas within Edmonton, but it is not a possibility downtown.

[14] They further stated that the building on the adjacent Site has a high tenancy turnover rate, and the building always receives requests for more parking.

Decision

[24] The appeal is **ALLOWED** and the decision of the Development Authority is **REVOKED**. The development is **GRANTED** in accordance with the **REVISED** Site plan. In granting the development, the following variances to the *Zoning Bylaw* are allowed:

- i) Section 910.4(1)(e)(i), which requires surface parking to be located only at the rear of the building, is waived; and
- ii) Section 55.8(3)(a), which requires the proportion of deciduous to coniferous trees and shrubs to be approximately 50:50, is waived.

Reasons for Decision

[25] The Board accepts that proposed development is Accessory to a Permitted Use in the HDR High Density Residential Zone.

[26] The Board notes that the proposed Accessory parking is well integrated into the design of the existing apartment house building, which has existing Side Yards both north and south. It is a legal non-conforming building with respect to the access from 104th street.

[27] The Board finds that, while the proposed Accessory parking does not comply with regulations requiring parking to be behind the building only, the proposed Accessory parking is, in the Board's opinion, the highest and best Use that can currently be made of the property north of the existing development. The Board notes that this property has been an empty lot for two years since the demolition of the structure it initially accommodated.

[28] The Board further notes that the Appellant has eliminated a number of deficiencies contained in their initial submission, including the Front Setback, a deficiency in landscaping requirements and a deficiency in parking in the Front Yard. The proposed development now requires two rather minor variances.

- [29] The Board notes the letter of opposition from the downtown community league and acknowledges the concerns with regard to non-compliance with s.910 of the *Zoning Bylaw*. Nonetheless, the Board feels that this development is a reasonable compromise under the circumstances.
- [30] The Board is satisfied that the proposed Accessory parking development will not unduly interfere with the amenities of the neighbourhood or materially affect the use, enjoyment or value of the neighbouring parcels of land.

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

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