



**EDMONTON
TRIBUNALS**

*Subdivision &
Development
Appeal Board*

10019 – 103 Avenue NW
Edmonton, AB T5J 0G9
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November 24, 2017

RE: Project No. 227352371-003 / SDAB-D-17-050 – to construct a Single Detached House with a front attached Garage, front veranda, front second storey balcony, rooftop deck, three rear covered balconies, rear covered patio, three fireplaces and a Basement Development (NOT to be use as an additional dwelling), located at 10066 - 90 Avenue NW.

A discrepancy in the original written decision, specifically in regards to the rear covered porch variance, was brought to the attention of SDAB Administration. The Board has confirmed they intended to approve the actual variance shown on the plans, which is consistent with the evidence presented at the hearing, and not a lesser variance that was reflected in the initial written decision. As such, please find attached a copy of the amended Notice of Decision which includes the following corrections:

...

[16] The proposed rear covered porches project into the rear setback.

...

[49] The rear covered porches project into the required rear yard. Any uncovered Platform Structure can project up to 2.0 metres in the required rear yard pursuant the Projection regulations in Section 44.3 of the *Edmonton Zoning Bylaw*.

[50] He did not consider the rear covered porches to be Platform Structures because each porch has an overhead cover supported by posts that can be enclosed with screens. Section 44.1.a of the *Edmonton Zoning Bylaw* was applied to the proposed rear covered porches which allows a 0.6 metre projection into the rear yard, meaning they project further than allowed.

...

[106] In granting the Development the following variances to the *Edmonton Zoning Bylaw* are allowed:

1. The maximum allowable projection for the rear covered porches of 0.6 metres as per Section 44.1(a) is waived to allow an excess in accordance with the stamped and approved drawings.



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...

[128] The Board grants a variance to the maximum allowed projection of a veranda or porch into a required Setback, pursuant to Section 44.1.a of the *Edmonton Zoning Bylaw* for the following reasons:

- a) Section 44.1.a states that verandas, porches, eaves, shade projections, unenclosed steps, chimneys, belt courses, sills, together with any other architectural features which are of a similar character, may project into a required Setback of Separation Space, provided such projections do not exceed 0.6 metres in the case of Setbacks or Separation Spaces of 1.2 metres or greater. Where enclosed steps extend into Side Setbacks which are not used for vehicular access, such steps shall not exceed a Height of 1.0 metres above Grade.
- b) Although the immediately adjacent neighbours who reside east of the subject site appeared at the hearing and expressed concerns regarding the loss of privacy and negative impact on the view of the river valley and the downtown skyline, the Board notes that the required projection variance into the rear Setback is only as per the approved drawings.
- c) The proposed rear covered porches are located on the west side of the proposed house not on the side of the house closest to this property. Based on the evidence provided, the support columns are narrow and will not significantly impact the views from adjacent properties.
- d) The Board is of the opinion that the loss of privacy for the property owners to the east will be minimal. It would only be possible for someone standing on the proposed rear covered porches to have a view into the windows of the immediately adjacent house to the east if they were standing close to the edge of the rear covered porches and looking back towards the house to the east. The variance will not make a significant difference in the degree to which privacy is impacted.
- e) Based on a review of the photographic evidence provided, there are a number of new houses on this block that have similar structures. Therefore, the Board finds that the proposed rear covered porches are not uncharacteristic of this neighbourhood.
- f) The provision of Privacy Screening is not necessary and could negatively impact the view for neighbouring property owners.

...

Yours truly,

Ms. Chelsey Hammett, Supervisor
Subdivision and Development Appeal Board



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Date: March 24, 2017
Project Number: 227352371-003
File Number: SDAB-D-17-050

REVISED NOTICE OF DECISION

- [1] On March 9, 2017, the Subdivision and Development Appeal Board (the “Board”) heard an appeal that was filed on **February 9, 2017**. The appeal concerned the decision of the Development Authority, issued on February 8, 2017, to refuse the following development:

To construct a Single Detached House with a front attached Garage, front veranda, front second storey balcony, rooftop deck, three rear covered balconies, rear covered patio, three fireplaces and a Basement Development (NOT to be use as an additional dwelling)

- [2] The subject property is on Plan 8057R Blk 2 Lot 15, located at 10066 - 90 Avenue NW, within the RF2 Low Density Infill Zone. The Mature Neighbourhood Overlay and Strathcona Area Redevelopment Plan apply to the subject property.

- [3] The following documents were received prior to the hearing and form part of the record:

- Copy of the Development Permit application with attachments, proposed plans, Geotechnical Reports and the refused Development Permit;
- The Development Officer’s written submissions;
- The Appellant’s written submissions, including Community Consultation; and
- Online responses.

- [4] The following exhibits were presented during the hearing and form part of the record:

- Exhibit A – Aerial photographs of existing houses located east of the subject site
- Exhibit B – Real Property Report for 10062 – 90 Avenue NW
- Exhibit C – Aerial photograph of existing houses on the blockface
- Exhibit D – Photographs of existing houses located east of the subject site
- Exhibit E – Written submission of Mr. M. Cooper
- Exhibit F – Main Floor Comparison of 10062-90 Avenue NW/10066 – 90 Avenue NW

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*, R.S.A 2000, c. M-26 (the "*Municipal Government Act*").

Summary of Hearing

- i) *Position of the Appellant, Mr. L. Liske representing Liske Developments and the property owner, Mr. S. Laurion:*
- [8] Parkland Geo was contracted to conduct a slope stability assessment and provide recommendations for the proposed development on October 25, 2016. In response to a request for further information from the City's Engineering Services branch, a final report was submitted in January 2017.
- [9] Parkland Geo has reviewed and countersigned the final architectural drawings and site grade plan to confirm that the drawings and site grade plan reflect the recommendations contained in the Geotechnical Report.
- [10] The guidelines and restrictions contained in Section 5.2 of the Geotechnical Report deemed necessary by the Supervisor, Geotechnical Engineering will be adhered to as well as the inspection recommendations outlined in Section 6.0 of the Geotechnical Report.
- [11] Neighbouring properties, structures and infrastructure will be protected from any adverse impacts during construction. All of the recommendations related to shoring will be undertaken.
- [12] Strict compliance to the development restrictions outlined in the Geotechnical report will be adhered to during the design, construction and future use of the property.
- [13] The property owner is aware that global instability arising from renewed movement of the ancient deep-seated landslide mass remains a possibility and assumes the risk in developing at this location.
- [14] Mr. Liske asked the Board what further information would be required in order to approve the Geotechnical Report.
- [15] The Presiding Officer advised that it is not the function of the Board to gather information. The Board makes decisions based on the information provided.

- [16] The proposed rear covered porches project into the rear setback.
- [17] The attraction and value of the development is the view of the river valley and downtown skyline. The porches are a feature of the house that will allow the owners to enjoy the property to its fullest potential. In order to maximize the view for all neighbouring properties, the rear setback of the house is the same as the setback on neighbouring properties.
- [18] The rear porches are open rather than enclosed and have narrow pillars such that the views of neighbours are not impeded.
- [19] Several revisions have been made to the drawings to ensure that the required rear setbacks are maintained.
- [20] Mr. Liske referenced photographs, marked Exhibit "A", to illustrate that several houses located east of the subject site have decks that project into the rear yard. He estimated that the existing decks project between 10 and 12 feet into the rear yard while the proposed rear porches will project only six feet into the rear yard.
- [21] The plans were designed to ensure that the rear facade of the proposed house aligned with the rear facades of the existing houses to preserve a 180 degree view of the river valley and downtown skyline for all of the houses on this block.
- [22] He felt the projection of the proposed rear porches would not impact the privacy of the neighbours who reside immediately east of the subject site at 10062 – 90 Avenue. The house to the east was designed to provide a 220 degree view of the river valley. Mr. Liske referenced diagrams contained in the submission of the agent for the property owners of the house to the east to illustrate that the proposed rear porches will have very little impact on their view or privacy.
- [23] The proposed rear porches are covered and will have pillars to allow bug screening to be installed. The retractable screens will only be down when the rear porches are in use.
- [24] Mr. Laurion advised that the plans have been revised several times to ensure that the rear façade of his house lines up the rear facades of the neighbouring houses to the east.
- [25] The neighbours to the east will still have an amazing view and will be able to see through the proposed open rear porches.
- [26] All he wants is to be treated fairly and be provided with a 180 degree view just like all of the other property owners on this block.

- [27] With respect to the front vehicular access variance required, he advised that this is a unique lot because the Grade at the front of the lot is approximately 11 metres higher than the Grade at the rear of the lot. Therefore, not allowing front vehicular access would create an unnecessary hardship for the property owner.
- [28] Nine of the fourteen houses on this block have front attached garages with front access. Therefore, the proposed front attached garage is not uncharacteristic of this neighbourhood.
- [29] All of the conditions set out by Transportation regarding front vehicular access will be complied with.
- [30] With respect to the variances required for the rooftop terraces, he advised that the rear rooftop terrace provides a 1.0 metre Stepback from the rear façade and a 1.0 metre Stepback from the west façade rather than the 2.0 metres required. The lot is not typical in that the rear yard is almost 11 metres lower than the front street.
- [31] Allowing a 1.0 metre Stepback from the rear façade will not create any overlook concerns for the neighbours across the rear alley.
- [32] The width of the house is only 7.5 metres. Therefore, providing the required 2.0 metre Stepback to the west façade would make the rooftop terrace unusable.
- [33] Two of the neighbours who reside to the rear of the subject site as well as the most affected neighbour to the west are aware of the proposed Stepbacks.
- [34] The proposed development fits the scale and context of the community and will not unduly interfere with the amenities of the neighbourhood nor materially affect the use, enjoyment or value of neighbouring property owners.
- [35] They have worked closely with the Development Officer over the course of this application process and revisions were made to the plans as issues were identified. The Development Officer agrees that the proposed development will not materially affect the use, enjoyment or value of neighbouring property owners.
- [36] In response to a question, Mr. Liske stated that two of the windows on the east façade will be translucent to address any privacy concerns.

ii) *Position of Development Officer, Mr. B. Liang:*

- [37] This property is located in the Lavigne neighbourhood, adjacent to the North Saskatchewan River Valley and Ravine System Protection Overlay. Section 811.3(3) of the *Edmonton Zoning Bylaw* requires the Development Officer to seek the advice of Transportation Services and may approve the conditions or refuse such applications accordingly.

- [38] The Applicant provided a Slope Stability Assessment, a revised Slope Stability Assessment and a Drawings Review Letter to Geotechnical Engineering Services. Geotechnical Engineering Services provided comments on September 13, 2016, November 22, 2016 and January 24, 2017.
- [39] Geotechnical Engineering Services advised the Development Officer that the Geotechnical Report provided an engineering assessment and recommendations that would appear to appropriately mitigate and reduce local geotechnical risk for the development. However, the entire Lavigne neighbourhood is located on an ancient deep-seated landslide mass, as was previously identified in a geotechnical report prepared by EBA Engineering Consultants in 1986. The level of risk that is posed to development in this neighbourhood has not been quantified, and the possibility of determining this information is considered to be well beyond the means of any individual property owner to address. Since enough information has not been provided to adequately evaluate the geotechnical risk to development in Lavigne, all applications in this neighbourhood must be rejected and forwarded to the Subdivision and Development Appeal Board for a final ruling.
- [40] The development permit application was refused based solely on this information.
- [41] The Applicant has addressed all of the development issues raised during the permit review and he does not have any concerns about the design of the proposed development.
- [42] The Presiding Officer commented that it was troubling that Geotechnical Engineering Services indicated that they did not have the information required to adequately evaluate the geotechnical risk to development in this neighbourhood and that the application must be forwarded to the Board for a final ruling. The Presiding Officer questioned how the Board, with no geotechnical expertise and with no additional information, could be expected to make a final ruling about the geotechnical risk to development in the neighbourhood.
- [43] Mr. Liang agreed with the concerns of the Presiding Officer. It was his understanding that Geotechnical Engineering Services reviewed the geotechnical reports provided by the Applicant and found that the reports were prepared by a qualified professional engineer and that the site itself can be used safely for the proposed development, provided that the development restrictions and recommendations of the geotechnical report are followed. The main concern is that the entire Lavigne neighbourhood is located on an ancient deep-seated landslide mass as identified in a Geotechnical Report prepared in 1986.
- [44] It was his opinion that this specific development will not have any impact on the deep-seated landslide mass if all of the geotechnical recommendations are followed.

- [45] Mr. Liang agreed that the City has been aware of the issues in this neighbourhood since 1986 but has not changed the zoning or development requirements to limit development in this neighbourhood. Geotechnical Engineering Services is dealing with issues involving the entire neighbourhood while he is focused on the development of this lot in a very unique neighbourhood
- [46] In the initial review a variance was required in the minimum rear setback requirement. However, in response to the concerns of neighbouring property owners about excessive massing and sunlight penetration, the Applicant revised the plans to comply with the minimum rear setback requirement. It was, therefore, his opinion that the proposed house would not impact privacy or impact the views of neighbouring property owners.
- [47] The proposed rear covered porches are located on the west side of the house. There is very little direct line of sight between the corner of the windows and the upper deck of the house on the immediately adjacent lot to the east because the northeast corner of the proposed house is located between them.
- [48] The Applicant has agreed to use frosted or translucent glass on three large windows on the main and upper floor, as indicated on the stamped plans. This will prevent overlook into corresponding windows and the deck on the house on the immediately adjacent property to the east. This house has a two-storey glass brick wall and two angled windows and therefore there is no direct sight line into a window.
- [49] The rear covered porches project into the required rear yard. Any uncovered Platform Structure can project up to 2.0 metres in the required rear yard pursuant the Projection regulations in Section 44.3 of the *Edmonton Zoning Bylaw*.
- [50] He did not consider the rear covered porches to be Platform Structures because each porch has an overhead cover supported by posts that can be enclosed with screens. Section 44.1.a of the *Edmonton Zoning Bylaw* was applied to the proposed rear covered porches which allows a 0.6 metre projection into the rear yard, meaning they project further than allowed.
- [51] He did not consider the rear covered porches to be Platform Structures because each porch has an overhead cover supported by posts that can be enclosed with screens. Section 44.1.a of the *Edmonton Zoning Bylaw* was applied to the proposed rear covered porches which allows a 0.6 metre projection into the rear yard, meaning they project further than allowed.
- [52] In response to a question, Mr. Liang could not provide any information regarding whether or not variances were required for the decks on the existing houses located east of the subject site.

- [53] There is overlook from the proposed covered rear porches to the lower deck on the immediately adjacent property to the east. Overlook and privacy concerns resulting from Platform Structures are normally addressed using Privacy Screening, but he received a letter from a neighbour indicating that privacy screening would limit the views of adjacent property owners.
- [54] In response to a question, Mr. Liang stated that there is potential for overlook onto the neighbouring property to the west but the house is small and located towards the front of the lot. Also, there are mature trees on the lot that would mitigate privacy concerns. This property owner has provided a written response indicating that they are aware and approve of the installation of clear glass railing on all of the rear covered decks.
- [55] The Applicant has provided a 1.0 metre Stepback for the proposed front Rooftop Terrace over the front attached garage and it will have stepped walls on the side to provide privacy for adjacent neighbours. This terrace overlooks the street which is public space. It was his opinion that this variance would not have any impact on neighbouring property owners.
- [56] The rear Rooftop Terrace will also have 1.0 metre Stepbacks which will reduce overlook onto the neighbouring property to the west and the properties located across the rear lane while maintaining usable space for the Terrace. The property owner to the west does not have any concerns. There are no overlook concerns for the property owner to the east because this Terrace is located on the west side of the building and 4.0 metres from the east façade. It was his opinion that this variance would not have any impact on neighbouring property owners.
- [57] The Applicant completed the community consultation and none of the neighbours objected to the proposed front attached Garage. There is a 11-metre elevation change between the front and rear of the lot and the rear lane is an unimproved gravel trail. Therefore, a rear detached garage is impractical. None of the new houses on 90 Avenue have rear detached garages and it was his opinion that this variance would not have any impact on neighbouring property owners.
- [58] The height of the house was measured from Grade which was calculated to be the average elevation of the front corners of the lot and along the side property lines 6.0 metres from the front property line to the midpoint of the gable roof above the upper floor. The proposed house is 7.9 metres in Height.
- [59] An interior stairwell is located within the roof projection to provide access to the rear Rooftop Terrace. This is the only interior space on the roof floor and is the required hallway linking the stairwell to the rooftop terrace. There are no other rooms on the roof floor.

- [60] Section 52.2 of the *Edmonton Zoning Bylaw* states that roof stairways shall not be considered for the purpose of calculating height. Therefore, the proposed roof projection was not considered as part of the height calculation.
- [61] The roof projection is located in the middle of the house and will be barely visible from the street or from properties located to the rear of the subject site.
- [62] Mr. Liang provided the following responses to questions:
- a) Mr. Liang could not elaborate on the findings in the geotechnical report prepared by EBA Engineering Consultants in 1986.
 - b) Numerous developments have been allowed in this neighbourhood since 1986.
 - c) Every time a development permit application is received for this neighbourhood, it is refused by Geotechnical Engineering Services and referred to the Board for the same reasons as given for this appeal.
 - d) All of the new developments on this block have been approved by Board notwithstanding the statements by Geotechnical Engineering Services.
 - e) Mr. Liang asked the City's Geotechnical Engineer to attend the hearing but he declined.
 - f) The Applicant has done everything reasonably possible to ensure privacy for neighbouring property owners. Overlook issues have been addressed by agreeing to use three translucent or frosted windows on the east façade.
 - g) A variance was required for the proposed front vehicular access because there is technically a rear lane.
 - h) All of the new houses built on this block have front vehicular access.
 - i) It was his opinion that the rooftop projection will be hard to see from the immediately adjacent property to the west.
 - j) He is not aware of any City policies that have been developed regarding geotechnical issues in this neighbourhood since the 1986 geotechnical report determined that the entire neighbourhood is located on an ancient landslide mass.
 - k) Geotechnical Engineering Services provides the same response for all development permit applications in this neighbourhood. They do not necessarily support or agree with the Geotechnical Reports submitted by the Applicant but simply state that the development permit itself must be rejected.
 - l) Section 811.3(3) of the *Edmonton Zoning Bylaw* requires the Development Officer to seek the advice of Transportation Services and may approve the conditions or refuse such applications accordingly.
 - m) The Geotechnical Engineer indicated that the Geotechnical Report submitted by the Applicant and the mitigating actions met the requirements for the specific site but refusal of the permit was recommended because of insufficient information regarding the risk to the entire neighbourhood because of the ancient deep-seated landslide.
 - n) The Development Officer is responsible for approving or refusing the development permit application.

iii) Position of affected property owners in opposition to the proposed development:

Mr. Ochman, agent for Mr. & Mrs. Margolus:

- [63] It was Mr. Ochman's opinion that the diagram of the proposed rear porches marked as Appendix B in the Development Officer's report is inaccurate. Therefore, the Development Officer's assessment of the view and privacy impacts on neighbouring property owners is also inaccurate.
- [64] He referred to a Real Property Report of the subject site, marked as Exhibit "B", to illustrate that the proposed house, without the proposed rear porches, is 69 feet, 1 inch long. He referenced a drawing containing both the proposed house and Mr. & Mrs. Margolus' house (the house immediately to the east) to illustrate that the front attached garages line up as do the rear of the houses which was not reflected in the diagram used by the Development Officer. Therefore, the impact of the proposed rear porches is much greater than was determined by the Development Officer.
- [65] He referred to the photographs of the Margolus residence submitted by the Respondent to illustrate the primary concern, which is the impact that the proposed rear covered porches on the second and third levels of the house would have on views and privacy.
- [66] It was his opinion that the required variance will maximize the opportunity for a panoramic view and therefore increase the value of the subject property. However, this would negatively impact the view and create privacy issues for the Margolus residence.
- [67] The *Edmonton Zoning Bylaw* does not address the issue of views directly. However, it is addressed indirectly by requiring development to be contained within a building envelope. If everyone adheres to the Bylaw requirements, then there is certainty that all property owners will be able to enjoy a view.
- [68] The six-foot extension of the proposed rear covered porches beyond the north wall of the proposed residence presents a significant impact to the privacy of the Margolus residence. He referenced Drawings 1 and 2 contained in his written submission to illustrate how sight lines from the proposed rear covered porches afford clear visual access into the master bedroom and bathtub, living room and living room deck areas.
- [69] Views of the river valley and downtown skyline from the proposed development are not impacted if the rear covered porches conform with the requirements of Section 44.1.a of the *Edmonton Zoning Bylaw*. The requested variance to increase the size of the proposed rear porches impacts the privacy of neighbours as well as the future development of the immediately adjacent property to the west.

- [70] The proposed 12-inch by 12-inch support columns and proposed screening creates three additional living spaces which will impact the view of the river valley and downtown skyline from the upper floor living room and deck of the immediately adjacent property to the east.
- [71] It was his opinion that complying with the Bylaw requirements does not cause practical difficulties or unnecessary hardship for the property owner.
- [72] Section 6.1(82) of the *Edmonton Zoning Bylaw* defines Privacy Screening as a feature that obscures direct and otherwise unimpeded sightlines. Common examples include: vegetative screening, such as shrubs and trees, lattice, masonry or wooden walls, parapet walls, translucent glass or any combination of these or like features. Privacy Screening does not include a balustrade railing or similar railing system.
- [73] Section 814.3(8) of the *Edmonton Zoning Bylaw* states that Platform Structures greater than 1.0 metres above Grade shall provide privacy screening to prevent visual intrusion into adjacent properties.
- [74] The Presiding Officer noted that the Development Officer considered the proposed projections into the rear yard as porches pursuant to Section 44.1.a of the *Edmonton Zoning Bylaw* and not Platform Structures, pursuant to Section 44.3 of the *Edmonton Zoning Bylaw*.
- [75] Mr. Ochman stated that neighbouring property owners are being impacted because privacy screening is not required.
- [76] He noted that the Applicant is prepared to frost windows on the east façade to address any privacy concerns.
- [77] Clarification is required from the Development Officer regarding the location along the north façade at which the Applicant is determining that the requested 1.0 metre setback from the Rooftop terrace be taken.
- [78] To support his position, Mr. Ochman submitted an aerial photograph of existing houses on the blockface, marked Exhibit C, and photographs of existing houses located east of the subject site, marked Exhibit D.
- [79] Mr. Ochman provided the following responses to questions:
- a) Variances were not required for the Margolus property.
 - b) The windows in the master bedroom are quite large.
 - c) It would be their preference to have privacy screening installed on the proposed rear covered porches because privacy is more important than the view.
 - d) If the Board approves the development, they would like to have a condition imposed that privacy screening be provided on the rear covered porches.

- e) Bug screening does not provide the same level of privacy as the required privacy screening.
- f) There are no privacy concerns for the properties located north of the subject site because they are approximately 30 feet lower than the subject site and there are large mature trees between those houses and the subject site.

- [80] Mr. Margolus stated that this is an emotional issue for him and his wife. They chose to live in this unique part of the City because of its close proximity to the river valley and other amenities.
- [81] The curved windows were included in the design for architectural purposes but they would have the same concerns if square windows had been used.
- [82] He is not opposed to new development in this area. He reiterated that the primary concern is the impact of the proposed rear covered porches on their privacy. He also expressed a concern that the covered porches may be closed in to develop additional living space at some future time.
- [83] Choosing between privacy and a view of the river valley is difficult but they would choose privacy over the view.
- [84] All of the houses on the north side of 90 Avenue line up because of the minimum required rear setback requirements. All of the houses will have the same setback except for the proposed new house with the rear covered porches.
- [85] Mrs. Margolus stated that the proposed rear covered porches have the appearance of an addition to the house that will impact views from their property.

Mr. & Mrs. Cooper:

- [86] Mr. Cooper submitted his written submission, marked Exhibit E.
- [87] Mrs. Cooper advised that she has lived in this neighbourhood for many years.
- [88] She is concerned that the development of large new houses on 90 Avenue is impacting the slope stability.
- [89] Many of the large mature trees are being removed which also weakens the stability of the soil.
- [90] Mr. Cooper expressed concern for the entire neighbourhood which is located on ancient deep-seated landslide mass.
- [91] They were not contacted by the Applicant during the community consultation process.

- [92] Mrs. Cooper indicated that one of the existing houses on 90 Avenue recently had work done to address some stability issues.
- [93] Mr. Cooper stated that the proposed new house will block sunlight to their property.
- [94] He is not confident that all of the recommendations contained in the Geotechnical Report will be followed.
- [95] He questioned whether the recommendations contained in the Geotechnical Report are mandatory or can they be selected for convenience.
- [96] The required variance for the one-metre extension of the proposed rear covered porches will add weight to the structure which will place more strain on slope stability.
- [97] It was his opinion that the requirements of the *Edmonton Zoning Bylaw* should be followed to prevent the development of larger and larger houses in this area.

iv) *Position of Development Officer, Mr. B. Liang:*

- [98] The Development Officer provided the following responses to questions:
- a) He measured the 1.0 metre Stepback for the proposed rear Rooftop Terrace from the line of the lower floor deck. A portion of the Rooftop Terrace is the roof of the covered porch below. It was his opinion that the edge of the deck will block any downward view onto adjacent properties.
 - b) The Plot Plan contains the required number of coniferous and deciduous trees required and most will be planted in the rear yard.
 - c) He acknowledged that the Real Property Report used by Mr. Ochman to determine the location of the proposed house in relation to the house located at 10062 – 90 Avenue is more accurate than the Pictometry diagram that he used to consider sight lines. He acknowledged that there is a minimal sight line onto the neighbouring property but that his conclusions regarding privacy impacts have not changed substantially.
 - d) He acknowledged that it would be possible to see into the bedroom in the immediately adjacent house to the east from the covered porch if you stand at the rear edge of the porch and look back towards the house.
 - e) Mr. Liang marked a Site Plan, Drawing 7, Exhibit F to illustrate where the rear porch would be allowed to extend without a variance to Section 44.1 of the *Edmonton Zoning Bylaw*.

v) *Rebuttal of the Appellant, Mr. Liske and Mr. Laurion:*

- [99] Mr. Liske referenced a plan of the Rooftop Terrace to illustrate that there will be no overlook from the terrace onto the immediately adjacent property to the east.

- [100] The proposed columns for the rear covered porches will not have a significant visual impact on the property to the east because they are located approximately 10 metres away.
- [101] All of the new houses located east of the subject site have multi-tiered rear decks and some are covered.
- [102] The plans have been revised four times to address the concerns of neighbouring property owners. A meeting was held with Mr. Ochman, agent for the immediately adjacent property owners to the east. As a result of the meeting the size of the columns for the proposed covered rear porches was reduced and glass railings were specified.
- [103] They have tried to address all of the concerns raised by the neighbours. It was their opinion that property owners need to take some responsibility for their own privacy.
- [104] Mr. Laurion wanted to ensure that there are no geotechnical issues and to that end both of the lower floors will be constructed of concrete. He just wanted to be treated like everyone else on the block and build a house that they love.

Decision

- [105] 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. This Development Permit authorizes the development of a Single Detached House with a front attached Garage, front veranda, front second-storey balcony, rear Rooftop Terrace, three rear covered porches, rear covered patio, three fireplaces and a Basement Development (NOT to be used as an additional Dwelling). The development shall be constructed in accordance with the stamped and approved Drawings;
 2. Within 14 days of the approval, prior to any demolition or construction activity, the Applicant must post on site a development permit notification sign (Section 20);
 3. The Height of the Principal Building shall not exceed 8.6 metres in accordance with Section 52 (Reference Section 814.3.13);
 4. The Basement elevation shall be no more than 1.2 metres above Grade. The Basement elevation is measured as the distance between Grade level and the floor of the first Storey (Reference Section 814.3.16);
 5. Private Outdoor Amenity Area shall be provided in accordance with Section 47 of the *Edmonton Zoning Bylaw*;
 6. A minimum of two off-street parking spaces (2 parking spaces are available inside the front attached garage) shall be used for the purpose of accommodating the vehicles of residents in connection with the Single Detached House (Reference Section 54.1.1.c and 54.2.1.a);

7. The area hardsurfaced for a driveway, not including the area used for a walkway, shall comply with Section 54.6 of the *Edmonton Zoning Bylaw* 12800;
8. Except for the hardsurfacing of driveways approved on the Site Plan, the remainder of the site shall be landscaped in accordance with the regulations set out in Section 55 of the *Edmonton Zoning Bylaw* 12800;
9. 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). Landscaping shall be provided in accordance with the approved Site Plan;
10. 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);
11. Windows on the east Elevation shall use translucent glass, in accordance with the stamped approved plans.

Transportation Conditions:

1. The proposed residential access to 90 Avenue located 1.3 metres from the east property line, is acceptable to Urban Transportation and must be constructed as a private crossing access to current City of Edmonton standards. The owner/applicant must obtain a crossing permit, available from Development Zoning Services, 2nd Floor, 10111 – 104 Avenue NW, Edmonton, AB;
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 sidewalk or boulevard damage occurring as a result of construction traffic must be restored to the satisfaction of Transportation Planning and Engineering, as per Section 15.5(f) of the *Edmonton Zoning Bylaw*. The sidewalks and boulevard will be inspected by Transportation Planning and Engineering prior to construction, and again once construction is complete. All expenses incurred for repair are to be borne by the owner;
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. 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: http://www.edmonton.ca/transportation/on_your_streets/on-street-construction-maintenance-permit.aspx.

Geotechnical Conditions:

1. The General Geotechnical Conditions found in Section 5.2 and the Inspection Recommendations found in Section 6.0 of the Slope Stability Assessment Report dated January 3, 2017, prepared by Parkland Geo-Environmental Ltd., shall be followed and adhered to during the following construction to manage inherent geotechnical risk;
2. The proposed hot tub shall only be permitted, where subject to the detailed recommendations of the geotechnical consultation, outlined in their January 18, 2017 Drawings Review, and to preclude the potential for any leakage or discharge to the ground surface;
3. Any required temporary shoring structures and other structural elements and foundations for the proposed development shall be designed by a qualified Professional Engineer. Excavations and backfill, temporary shoring, and the sequence of construction phases and activities, shall also be carried out in accordance with the recommendations of the geotechnical consultant;
4. The responsible Engineer shall provide review of the design of any proposed temporary shoring and shall ensure that adequate retaining structures are constructed both for the proposed development and to suitably protect neighbouring properties, structures and infrastructure from any adverse impacts during construction;
5. The recommendations of the geotechnical consultant shall also be followed with respect to surface and groundwater drainage at the site as part of design and construction, as well as ultimately for site grading and roof leaders, sumps and other collection structures established as part of the development. Where possible, roof leaders, downspouts, and sump pump discharge spouts shall not be allowed to discharge onto the ground surface. They shall be connected to the storm water system;
6. Grading of the site shall not allow any ponding of water or the focused discharge of water toward or along the slopes. Surface runoff shall be directed away from the slopes and into the storm drainage system where possible.

Geotechnical Advisements

1. The Applicant is fully responsible for suitably protecting surrounding properties, structures and infrastructure from any adverse impacts during construction.

2. Global instability arising from renewed movement of the ancient deep-seated landslide mass remains a possibility, and the Applicant is assuming this risk in developing at this location.

[106] In granting the Development the following variances to the *Edmonton Zoning Bylaw* are allowed:

1. The maximum allowable projection for the rear covered porches of 0.6 metres as per Section 44.1(a) is waived to allow an excess in accordance with the stamped and approved drawings.
2. The minimum allowable Stepback for Rooftop Terraces of 2.0 metres from any building Façade facing a Rear Lot Line as per Section 61.1(a)(ii) is varied to allow a deficiency of 1.0 metres, thereby decreasing the minimum allowed to 1.0 metres.
3. The minimum allowable Stepbacks for Rooftop Terraces of 2.0 metres from any building Façade facing a Side Lot Line as per Section 61.1(a)(iv) is varied to allow a deficiency of 1.0 metres, thereby decreasing the minimum allowed to 1.0 metres.
4. The requirement that there shall be no vehicular access from the front or flanking public roadway where an abutting lane exists and a Treed Landscaped Boulevard is present along the roadway adjacent to the property line; the Site Width is less than 15.5 metres; or fewer than 50 percent of principal Dwellings on the blockface have vehicular access from the front or flanking roadway, as per Section 814.3(10), is waived.

Reasons for Decision

[107] Single Detached Housing is a Permitted Use in the RF2 Low Density Infill Zone.

[108] Pursuant to Section 811.1 of the *Edmonton Zoning Bylaw*, the General Purpose of the North Saskatchewan River Valley and Ravine System Protection Overlay is to provide a development Setback from the North Saskatchewan River Valley and Ravine System.

[109] Section 811.3(3) of the *Edmonton Zoning Bylaw* states that “any development permit application on a Site that abuts or is partially or wholly contained within the North Saskatchewan River Valley and Ravine System shall be accompanied by a report prepared by a registered Professional Engineer, and as set out in subsection 14.1 of this Bylaw, and that also details the minimum Setback for structures on the Site and any development conditions for the property required to prolong the stability of the bank.”

[110] The Appellant complied with these requirements and provided the appropriate geotechnical reports outlining the conditions that had to be met in order to ensure slope stability at the site of the proposed development.

[111] The City of Edmonton Supervisor of Geotechnical Engineering stated in his response to the geotechnical reports submitted by the Appellant that:

“Strict compliance to the development restrictions outlined in the geotechnical report shall be adhered to during the design, construction and future use of these lands. Although there will remain some residual risk to the developer and owner, the geotechnical report documented an engineering assessment and recommendations that would appear to appropriately mitigate and reduce local geotechnical risk for this development.”

[112] However, the Supervisor of Geotechnical Engineering also referred to a geotechnical report that was prepared in 1986 by EBA Engineering Consultants Ltd. (a copy of which was not provided to the Board). That report apparently indicated that the entire Lavigne neighbourhood is located on an ancient deep-seated landslide mass. The Supervisor of Geotechnical Engineering stated that:

“The level of risk that is posed to development in this neighbourhood has not been quantified, and the possibility of determining this information is considered to be well beyond the means of any individual property owner to address.

Since the City’s administration do not have the information required to adequately evaluate the geotechnical risk to development in Lavigne, all development permit applications in this neighbourhood must be rejected and forwarded to the Subdivision and Development Appeal Board (SDAB). I would therefore recommend that this application also be forwarded to the SDAB for a final ruling”.

[113] Based on this information, the Development Officer made the decision to refuse this development permit application even though he did not have any concerns regarding the other variances required. The Development Officer advised the Board that the Supervisor of Geotechnical Engineering makes the same recommendation for all proposed developments in this neighbourhood because of the uncertainty posed by the ancient landslide. In response to questions from the Board, the Development Officer confirmed that he is not aware of any City policies to limit or restrict development in the Lavigne neighbourhood arising from the findings identified in the Geotechnical Report prepared by EBA Engineering Consultants Ltd. in 1986.

[114] The Board is of the view that the Development Officer should not have refused the development application based solely on the statement provided by the Supervisor of Geotechnical Engineering.

- [115] The Supervisor of Geotechnical Engineering is essentially saying that residential development should not be permitted in this neighbourhood. However, the City has known since 1986 that this entire neighbourhood is located on an ancient deep-seated landslide. Notwithstanding this knowledge, City Council has not taken any steps to restrict residential development in the neighbourhood and large parts of the neighbourhood are zoned RF2 Low Density Infill Zone, where Single Detached Housing is a Permitted Use.
- [116] The Development Officer's function is to evaluate development applications for Permitted Uses and to approve them, with or without conditions, provided they comply with the *Edmonton Zoning Bylaw* or provided any required variances do not unduly or materially interfere with the amenities of the neighbourhood or with neighbouring parcels of land. (*Edmonton Zoning Bylaw*, Sections 11.1(1)(e) and 11.2)
- [117] In this case Section 811.3(3) of the *Edmonton Zoning Bylaw* requires a Professional Engineer's report setting out, among other things, any development conditions for the property required to prolong the stability of the bank. Section 811.3(8) requires consultation with Integrated Infrastructure Services (the department where Geotechnical Engineering is located) with respect to conditions required to minimize erosion and stabilize soil conditions. The Supervisor of Geotechnical Engineering did not have any concerns about the local geotechnical risk of the proposed development provided the restrictions in the Appellant's geotechnical report were adhered to. As well, the Appellant has acknowledged that he is aware of the ancient landslide and he accepts the risk associated with it.
- [118] In short, the proposed development is a Permitted Use that complies with Section 811 of the *Edmonton Zoning Bylaw*. The Development Officer was wrong to refuse to issue a development permit on the basis that there are uncertainties regarding the potential stability of the entire neighbourhood. If there are such issues that are serious enough to restrict residential development, it is the function of City Council, with the advice of City Administration, to address them by way of zoning changes.
- [119] The Supervisor of Geotechnical Engineering purported to have this matter forwarded to this Board for a final ruling on the geotechnical risk to development in the neighbourhood because he does not have the information required to adequately evaluate it. This Board has not been provided with all the geotechnical reports that are relevant, notably the 1986 report that identified the ancient landslide, nor does it have the expertise to make such a determination. In any event, it is beyond the mandate of this Board to make such decisions.
- [120] The mandate of this Board with respect to development appeals is set out in Section 687(3) of the *Municipal Government Act*. The Board is required to comply with the land use bylaw in effect (Section 687(3)(a.1)) but it may issue a development permit that does not comply with the land use bylaw if it is of the opinion that the proposed development

would not unduly interfere with the amenities of the neighbourhood or materially interfere with the use, enjoyment or value of neighbouring parcels of land and the proposed development conforms with the use prescribed in the land use bylaw.

- [121] In short, this Board focuses on ensuring that proposed development will not significantly interfere with the neighbourhood or neighbouring parcels of land.
- [122] There is nothing to indicate that the proposed development in this case will have any impact on the ancient landslide. Accordingly, any concerns with respect to the ancient landslide are beyond the purview of this Board. In dealing with this appeal, this Board expresses no opinion about whether residential development should be allowed to take place in this neighbourhood because of the ancient landslide. Rather, this Board focuses on the impact the proposed development will have on the neighbourhood and on neighbouring parcels of land.
- [123] The Board accepts the Supervisor of Geotechnical Engineering's assessment that the local geotechnical risk associated with the proposed development will be appropriately mitigated provided that there is strict compliance with the development restrictions outlined in the Appellant's geotechnical report.
- [124] The Board is satisfied that the Appellant has substantially complied with the necessary community consultation required by the Mature Neighbourhood Overlay, Section 814.3(24) of the *Edmonton Zoning Bylaw*.
- [125] The Board grants the variance to Section 814.3(10) of the *Edmonton Zoning Bylaw* to allow vehicular access from the front public roadway for the following reasons:
- a) Section 814.3(10) states that "regardless of whether a Site has existing vehicular access from the front or flanking public roadway, there shall be no such access where an abutting Lane exists, and a treed landscaped boulevard is present along the roadway adjacent to the property line; the Site Width is less than 15.5 metres or fewer than 50 percent of Principal Dwellings on the blockface have vehicular access from the front or flanking public roadway".
 - b) All of the new houses built on this street have attached front garages with front access with the result that nine of the fourteen houses on this block have vehicular access from the front public roadway.
 - c) The front of the lot is approximately 10 metres higher than the rear of the lot, which makes the development of a rear detached garage problematic.
 - d) No one who appeared at the hearing in opposition to the proposed development had any objections to allowing vehicular access from the front public roadway.
 - e) Transportation Services had no objection to allowing front access as long as the recommended conditions were met.

[126] The Board grants a 1.0 metre variance in the minimum required Stepback requirements for the proposed front Rooftop Terrace, pursuant to Section 61.1 of the *Edmonton Zoning Bylaw* for the following reasons:

- a) No one who appeared in opposition to the proposed development objected to the variance required for the proposed front rooftop terrace.
- b) The front rooftop terrace overlooks the street, which is public space, and it has walls on the sides which will mitigate the impact of the reduced Stepback.

[127] The Board grants 1.0 metre variances in the minimum required Stepback requirements to the west side and rear of the proposed rear Rooftop Terrace, pursuant to Section 61.1 of the *Edmonton Zoning Bylaw* for the following reasons:

- a) The immediately adjacent neighbour to the west indicated that they do not object to the required variance or the proposed glass railing.
- b) The house on the immediately adjacent property to the west is setback further from the rear property line and is on a heavily treed lot, which will mitigate the impact of the required variance.
- c) The rear Rooftop Terrace is located on the west side of the proposed house. Although the adjacent property owner to the east was concerned about the variance, the Board notes that there is a considerable expanse of roof between the proposed rear Rooftop Terrace and that property that will largely mitigate the impact of the variance.
- d) The properties to the rear of the proposed development are located at a much lower elevation than the proposed development with heavily treed lots, which will mitigate the impact of the variance.

[128] The Board grants a variance to the maximum allowed projection of a veranda or porch into a required Setback, pursuant to Section 44.1.a of the *Edmonton Zoning Bylaw* for the following reasons:

- a) Section 44.1.a states that verandas, porches, eaves, shade projections, unenclosed steps, chimneys, belt courses, sills, together with any other architectural features which are of a similar character, may project into a required Setback of Separation Space, provided such projections do not exceed 0.6 metres in the case of Setbacks or Separation Spaces of 1.2 metres or greater. Where enclosed steps extend into Side Setbacks which are not used for vehicular access, such steps shall not exceed a Height of 1.0 metres above Grade.
- b) Although the immediately adjacent neighbours who reside east of the subject site appeared at the hearing and expressed concerns regarding the loss of privacy and negative impact on the view of the river valley and the downtown skyline, the Board notes that the required projection variance into the rear Setback is only as per the approved drawings.
- c) The proposed rear covered porches are located on the west side of the proposed house not on the side of the house closest to this property. Based on the evidence provided,

the support columns are narrow and will not significantly impact the views from adjacent properties.

- d) The Board is of the opinion that the loss of privacy for the property owners to the east will be minimal. It would only be possible for someone standing on the proposed rear covered porches to have a view into the windows of the immediately adjacent house to the east if they were standing close to the edge of the rear covered porches and looking back towards the house to the east. The variance will not make a significant difference in the degree to which privacy is impacted.
- e) Based on a review of the photographic evidence provided, there are a number of new houses on this block that have similar structures. Therefore, the Board finds that the proposed rear covered porches are not uncharacteristic of this neighbourhood.
- f) The provision of Privacy Screening is not necessary and could negatively impact the view for neighbouring property owners.

[129] Although some concerns were raised that the Height of the proposed house resulted in too much massing and a loss of sunlight, the Board is satisfied that the Height complies with the *Edmonton Zoning Bylaw* and that a variance is not required.

[130] For all of the above reasons, the Board is of the opinion that 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.



Mr. M. Young, Presiding Officer
Subdivision and Development Appeal Board

Board members in attendance: Ms. P. Jones, Mr. R. Hobson, Ms. D. Kronewitt Martin, Mr. J. Wall

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, 10111 - 104 Avenue NW, 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*, 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, 10111 - 104 Avenue NW, 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.



**EDMONTON
TRIBUNALS**

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SDAB-D-17-051

Application No. 180369757-011

An appeal to change the Use from a General Retail Stores Use to a Major Alcohol Sales Building was **TABLED** to April 5 or 6, 2017