

Edmonton Subdivision and Development Appeal Board

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Date: May 27, 2016
Project Number: 182443977-001
File Number: SDAB-D-16-121

Notice of Decision

[1] On May 12, 2016, the Subdivision and Development Appeal Board heard an appeal that was filed on **April 15, 2016**. The appeal concerned the decision of the Development Authority, issued on April 15, 2016, to refuse the following development:

construct a Semi-Detached House

[2] The subject property is on Plan RN43A Blk 43 Lot 16, located at 9203 - 114 AVENUE NW, within the RF3 Small Scale Infill Development Zone. The Mature Neighbourhood Overlay applies to the subject property.

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

- The Appellant's written submissions and revised written submissions;
- The refused development permit with plans attached;
- A Minor Development Permit Application; and
- The Development Officer's written submissions.

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 Appellant, Mr. T. Fernandes

[6] The Appellant reiterated the Grounds for Appeal included in the Notice of Appeal.

[7] He stated that he cannot remedy the proposed development's Site Area deficiency. It would be impossible for him, or anyone else, to comply with the *Zoning Bylaw's* regulations for Semi-detached Housing on corner lots in the RF3 Zone.

- [8] He referred to an overhead map of the area identifying similar developments in the area. He indicated that all of these developments were built and not one of them would comply with the minimum Site Area of 442.2 square metres prescribed by Section 140.3(3)(a) of the *Zoning Bylaw*.
- [9] With respect to the proposed development's deficiency in Site Width, he does not understand why he is able to build the same development on an interior lot, but he cannot build it on a corner lot. To require so much more Site Width on a corner lot does not make sense. He referred to photos of similar structures within walking distance of the proposed development and indicated that they were all much narrower than the 14.8 metres in Site Width required by the *Zoning Bylaw*. There is not one front-to-back structure in the neighbourhood that complies with that 14.8-metre requirement.
- [10] After some initial confusion, he now understands that Section 47(4), which prohibits Private Outdoor Amenity Areas in the Front Yard, applies to the subject Site. Nevertheless, he does not believe that having a Private Outdoor Amenity Area in the Front Yard, as proposed, would do anything to negatively affect the surrounding neighbourhood. The proposed development will be consistent with the other properties in the neighbourhood that have fenced-off amenity areas in their Front Yards. He spoke to residents of the neighbourhood and showed them pictures of what he would be building. Everyone that he spoke to was pleased that something was being done to replace what is currently on the subject Site. He got signatures of support from everyone who opened their door for him. The most affected neighbours were very supportive of the proposed development.
- [11] He referred to photos showing similar amenity areas associated with two neighbouring developments but acknowledged that neither of them were Single-detached Housing. However, he believes there is enough room on the subject Site to allow the proposed development as it is. The other developments in the area have the same dimensions on their respective lots. The proposed development would not be out of step with existing developments in the area.
- [12] He stated that he lives in the neighbourhood and builds things that he thinks will improve the neighbourhood. His developments are intended to attract other young families to the area.

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

- [13] The Development Officer confirmed that the subject Site's Front Yard is the yard facing east. As stated in the *Zoning Bylaw*, the Front Yard always faces the shorter of the two lot lines abutting the street and represents the space between the Front Lot Line and the building.

- [14] The minimum Site Area of 442.2 square metres prescribed by Section 140.4(3)(a) is meant to allow for enough space to accommodate the interior side yard and the Private Outdoor Amenity Area. That is why, for a corner lot, the requirement is wider than it is for an interior lot. It was designed to ensure that the lot meets all necessary regulations.
- [15] He also stated that there are ways to make the front amenity area proposed by the Appellant more private. Landscaping and the placement of hedges could be added to a standard four-foot-high fence to enhance privacy. However, Section 47 of the *Zoning Bylaw* still prohibits Private Outdoor Amenity Areas in the Front Yard. While it may not be out of step with how other people are using their spaces in the neighbourhood, it would still require a variance to the *Zoning Bylaw*.
- [16] With respect to new regulations recently added to the RF3 zoning provisions in the *Zoning Bylaw* requiring individually defined facades on Semi-detached Housing, the Development Officer stated that the south elevation is a bit blank and causes a massing effect on the adjacent neighbour. These regulations were not in place at the time the application was submitted. However, had the application been submitted subsequent to the introduction of those regulations into the *Zoning Bylaw*, he would have required the Appellant to make some changes. These regulations can be complied with by providing different building materials, colours or architectural treatments. Any of these methods could be used to improve the appearance of that particular elevation.

iii) Rebuttal of the Appellant

- [17] The Appellant stated that changing the appearance of the elevation facing south would not be a problem. He can do so by changing the direction of the siding on each Dwelling.
- [18] In any event, the house on the property immediately south of the subject Site is also a two-storey structure, and, when he consulted the owner of that property, that neighbour took no issue with the proposed appearance of that elevation.

Decision

- [19] The appeal is **ALLOWED** and the decision of the Development Authority is **REVOKED**. The development is **GRANTED** with the following conditions:
- i)* This Development Permit authorizes the development of a Semi-Detached House. The development shall be constructed in accordance with the stamped and approved drawings.
 - ii)* The height of the principal building shall not exceed 8.6 metres in accordance with Section 52 of the Edmonton Zoning Bylaw 12800 (Reference Section 814.3.13).

- iii)* The Basement elevation shall be no more than 1.2 m above Grade. The Basement elevation shall be measured as the distance between Grade level and the floor of the first Storey (Reference Section 814.3.16).
- iv)* There shall be no vehicular access from the front or flanking public roadway (Reference Section 814.3.10).
- v)* The Semi-Detached Dwelling including driveway shall be located in accordance with the stamp approved site plan.
- vi)* The area hard surfaced for a driveway, not including the area used for a walkway, shall be constructed in accordance with the approved site plan.
- vii)* A minimum of 4 off-street parking spaces shall be used for the purpose of accommodating the vehicles of residents and visitors in connection with the Semi-Detached House (Reference Section 54.1.1.c, 54.2.1.a). Parking shall be provided generally in accordance with the approved site plan.
- viii)* The owner of the property, or the owner's successors or assignees, shall be responsible for the placement and proper maintenance of landscaping on the Site (Section 55.2.4.a).
- ix)* All yards visible from a public roadway, other than a lane, shall be seeded or sodded within 18 consecutive months of the occupancy of the development. Alternate forms of Landscaping, including hard decorative pavers, washed gravel, shale or similar treatments, flower beds or cultivated gardens, may be substituted for seeding or sodding, provided that all areas of exposed earth are designed as either flower beds or cultivated gardens (Section 55.24.b).
- x)* Landscaping shall be implemented as a component of such new development in order to replace vegetation removed during construction, to reinforce an established Landscaping context in the area and to soften edges and transitions between the street and structure (Reference Section 140.4.19).
- xi)* There shall be a maximum of 2 Dwellings on this site (Reference Section 140.4.20.b).
- xii)* Second floor bathroom windows on the south façade shall use translucent glass, to minimize overlook onto adjacent properties (Reference Section 814.3.4).
- xiii)* In accordance with 140.4(21), the Applicant shall, with respect to the south elevation of the proposed building, use building materials and colours, to the satisfaction of the Development Officer, in such a way as to cause each Dwelling within the proposed structure to be individually defined.

- [20] In granting the development, the following variances to the *Zoning Bylaw* are allowed:
- i) The minimum Site area prescribed by Section 140.4(3)(a) is varied from 442.2 square metres to 368.0 square metres.
 - ii) The minimum Site width on a Corner lot prescribed by Section 140.4(3)(c) is varied from 14.8 metres to 10.1 metres.
 - iii) The requirements of Section 140.4(15) prohibiting a Private Outdoor Amenity Area in the Front Yard are waived.

Reasons for Decision

- [21] Semi-detached Housing is a Permitted Use in the RF3 Small Scale Infill Development Zone.
- [22] The general purpose of the RF3 zone is "...to provide for Single Detached Housing and Semi-detached Housing while allowing small-scale conversion and infill redevelopment to buildings containing up to four Dwellings, and including Secondary Suites under certain conditions."
- [23] The issue before the Board was whether or not to grant three variances dealing with the lot width, the lot area and the lack of a private amenity area for one of the Dwellings that were caused by the narrowness of the subject lot. All of these variances stem from the Applicant's request to place a semi-detached structure on a lot that is less than 14.8 metres in width.
- [24] The Board has decided to grant these variances for the following reasons:
- i) The Board was shown evidence from the Appellant that semi-detached structures were characteristic of this neighbourhood and, indeed, that several semi-detached structures in this neighbourhood already exist on lots narrower than 14.8 metres. Accordingly, allowing the variances would be in accordance with the character of the existing housing in the Norwood neighbourhood.
 - ii) The Board also heard evidence from the Appellant that the housing needs of the Norwood area are greatest for young families seeking affordable housing. The municipal development plan encourages the development of housing to meet the needs of all demographic and income groups. This is stated in section 4.4.1 of City of Edmonton's municipal development plan. Specifically, it is encouraged by policy 4.4.1.1, which is a policy to "...provide a broad and varied housing choice, incorporating housing for various demographic and all income groups in all neighbourhoods." Granting the

variances in this case allows for the creation of two Dwellings, both of which will be more affordable than Single Detached Housing that would otherwise have to be built on this lot due to its width.

iii) The Board notes that the proposed development complies with all of the development regulations in the Mature Neighbourhood Overlay. The Board also notes that, despite that, a neighbourhood consultation was still undertaken, and the proposed development has broad neighbourhood support. The Board received no letters in opposition to the development, and no one appeared before the Board to oppose the appeal. The Development had the support of the most affected neighbour, the one immediately to the south of the subject Site.

iv) The Board was concerned with the monolithic nature of the south elevation of the proposed structure, and, to bring the façade of that elevation into compliance with Section 140.4(21) of the *Zoning Bylaw*, condition number *xiii* was imposed. This will allow both Dwellings in the proposed development to be individually defined, and there will be a reduction in the massing effect created by the straight vertical façade of the south elevation.

[25] For these reasons, the Board finds that granting the three variances 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. I. Wachowicz, Chairman
Subdivision and Development Appeal Board

Board Members in Attendance

Mr. V. Laberge; Ms. N. Hack; Mr. A. Nagy, Ms. C. Chiasson

Advisements

1. WITHIN 14 DAYS OF APPROVAL, prior to any demolition or construction activity, the applicant must post on-site a development permit notification sign (Section 20.2).
2. Any future deck development greater than 0.6m (2ft) in height will require development and building permit approvals.
3. Any future deck enclosure or cover requires a separate development and building permit approval.
4. Any future basement development may require development and building permit approvals.
5. Lot grades must comply with the Edmonton Drainage Bylaw 16200. Contact Drainage Planning and Engineering at 780-496-5576 or lot.grading@edmonton.ca for lot grading inspection inquiries.

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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SDAB-D-16-122

Application No. 186283015-006

An appeal to construct an Accessory Building (Garage Suite 14.02m x 7.62m) located at 17 – Riverside Crescent NW, all appeals were **WITHDRAWN**.