



**EDMONTON  
TRIBUNALS**

*Subdivision &  
Development  
Appeal Board*

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Date: May 31, 2019  
Project Number: 272328170-001  
File Number: SDAB-D-19-067

**Notice of Decision**

- [1] On May 16, 2019, the Subdivision and Development Appeal Board (the “Board”) heard an appeal that was filed on **April 16, 2019**. The appeal concerned the decision of the Development Authority, issued on March 28, 2019 to refuse the following development:

**To construct a Single Detached House with front attached Garage, Unenclosed Front Porch, front balcony, Renewable Energy Device (solar photovoltaic system), Basement development (NOT to be used as an additional Dwelling), and to demolish an existing Single Detached House and Accessory Building (rear detached Garage).**

- [2] The subject property is on Plan 4556HW Blk 3 Lot 6, located at 5230 - Ada Boulevard NW, within the (RF1) Single Detached Residential Zone. The Mature Neighbourhood Overlay applies to the subject property.

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

- A copy of the Development Permit application with attachments, proposed plans, and the refused Development Permit;
- The Development Officer’s written submissions;
- A Subdivision Planning (Transportation) memorandum;
- The Appellant’s written submissions;
- One online response in support of the proposed development; and
- Revised drawings from the Appellant that were reviewed by the Development Officer and submitted to the Board on May 15, 2019.

**Preliminary Matters**

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

- [5] The Chair outlined how the hearing would be conducted, including the order of appearance of parties, and no opposition was noted.
- [6] The appeal was filed on time, in accordance with section 686 of the *Municipal Government Act*, RSA 2000, c M-26.

### Summary of Hearing

*i) Position of the Appellant, Mr. S. Ritchie:*

- [7] It was his opinion that the neighbourhood consultation speaks volumes about how the neighbourhood feels about the proposed development. Of the 23 houses located within the notification radius, 14 neighbours, including both of the immediately adjacent neighbours provided support for the proposed development.
- [8] He has been working extensively with the Development Officer and Transportation in an attempt to comply with the technical requirements relative to the proposed development. Revised drawings for the proposed driveway were submitted to the Development Officer after the appeal was filed which moved the curb inwards and narrowed the driveway to account for the worst case scenario.
- [9] There is only one house on this block face that has a front driveway but approximately 34.4 percent of houses on Ada Boulevard, between 50 Street and 67 Street have front facing driveways and of those houses, 76 percent also have front facing garages.
- [10] This lot is one of the longest lots in the neighbourhood and lends itself to a unique design. The front setback will be similar to the front setback of the houses located east and west of the subject site. The development was designed in order to maintain the views of the river valley from all of the houses along this block.
- [11] The use of two driveways is the result of the unusual lot dimensions and it will add great aesthetic and functional value to the property and the neighbourhood. It will provide on-site parking and eliminate the need to park their vehicles on the street.
- [12] Mr. Ritchie provided the following information in response to questions from the Board:
- a) He is agreeable to all of the recommended conditions provided by the Development Officer and is working with the Development Officer and Transportation to address their concerns. The slope of the driveway has been changed to ensure the safe egress and exit of vehicles and the width of the driveway closest to the road has been reduced from 7.1 metres to 4.0 metres to accommodate a storm drain that will be located on the west side of the proposed driveway.
  - b) A driveway to accommodate the development of a garage suite in the future has to be from the street because of physical site limitations that will not allow access from the

- lane. EPCOR has advised that an existing power pole with Telus facilities cannot be relocated and is the reason for the required variance.
- c) The proposed house will be sited closer to Ada Boulevard than the houses located east of the subject site.
  - d) Community consultation was completed and submitted to the Development Officer.
- ii) *Position of the Development Officer, Mr. K. Yeung and the position of Mr. W. Gong and Mr. W. Alaeddine, representing Subdivision Planning (Transportation):*

- [13] The proposed development was refused based on variances that are required for the front access and the attached garage. The primary reason for refusal has been amended based on new information provided by Building Great Neighbourhoods (Transportation) which shows that the curb will be shifted 1 to 2 metres north which will affect the slope of the driveway. This resulted in a change in the slope and the Appellant was able to provide revisions that have been reviewed. The revised plans reduced the width of the driveway to 4.0 metres which should mitigate conflicts with the planned raised crosswalk and provide sufficient clearance to the catch basin. However, the top of curb elevation cannot be determined until the field design is completed in the summer of 2019. Because of the lack of information it is difficult to determine if the new curb elevation will be the same as the existing grade and therefore, the proposed access could not be supported.
- [14] Mr. Alaeddine confirmed that it is difficult to determine the slope percentage in relation to the curb line which affects the slope into the site and they want to ensure that vehicles do not bottom out. The width of the driveway has been reduced but the slope is still a concern. The curb line will be determined when the Neighbourhood Renewal Plan is finalized for this area and the proposed access cannot be supported by Transportation without that information.
- [15] Mr. Gong advised that as a result of neighbourhood engagement, the decision was made to add a shared use path along the south side of Ada Boulevard. The existing road width is limited and that is why the curb is being shifted closer to the property line. Ada Boulevard is not scheduled for renewal until 2021 but because there will be an impact on landscaping to the curb line, the field design work will start this summer. However, until the field design is complete, it is impossible to determine how far the curb line will be shifted and what the elevation will be between the new top of curb elevation and what is existing.
- [16] Mr. Yeung, Mr. Gong, and Mr. Alaeddine provided the following information in response to questions from the Board:
- a) The curb line will tie into the sidewalk on the west side of the subject site but without the completion of the field design it is impossible to determine where the tie-in will be.

- b) If this house is built and the driveway exists before the Neighbourhood Renewal begins, an engineering solution will have to be found to make the project work.
- c) None of the neighbours provided any feedback regarding the proposed access. Initially there was a front setback variance but a recent amendment to the Mature Neighbourhood Overlay removed that variance.
- d) Mr. Yeung indicated that he was satisfied with the community consultation provided.
- e) The first three required variances are related to the proposed access. The first two variances required the approval of Transportation. The third variance is related to the proposed two driveways. However, because of the site constraints, the physical hardship created by the power pole and Telus facilities, he would be prepared to grant the variance to allow access from 53 Street. The fourth variance is related to a design feature.
- f) There is a separate application for a detached Garage with a Garden Suite. This development permit application includes the house and the attached Garage.
- g) Mr. Gong reiterated that if the driveway exists at the time of the Neighbourhood Renewal project, the subject site would be forced to meet the slope and that could require removing the driveway and re-grading the entire front yard.

*iii) Rebuttal of the Appellant:*

- [17] Mr. Ritchie reiterated that he is very comfortable working with the City to ensure that the technical requirements are met. The curb line is a mystery but the design is based on the worst case scenario and has been revised several times based on discussions with the Development Officer and Transportation.
- [18] The upcoming Neighbourhood Renewal does create some complications but it should not unduly affect the ability to develop the lot given that the neighbours are supportive and the development is in keeping with the unique character of Ada Boulevard.
- [19] He acknowledged that there are some engineering challenges and that he may wait to finish the driveway until the Neighbourhood Renewal program has been completed.
- [20] Mr. Ritchie asked if the Board could approve the development permit subject to the imposition of a condition that all technical requirements be met.

**Decision**

[21] 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. **The development shall be constructed in accordance with the stamped and approved drawings, including the Revised Plot Plan that was submitted and approved by the Board on May 31, 2019;**
2. 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);
3. Platform Structures located within a Rear Yard or interior Side Yard, and greater than 1.0 m above the finished ground level, excluding any artificial embankment, shall provide Privacy Screening to prevent visual intrusion into Abutting properties. (Reference Section 814.3.9.);
4. Landscaping shall be installed and maintained in accordance with Section 55;
5. The applicant must provide a cross-section of the driveway with the revised distance showing slope to ensure it meets The City of Edmonton Complete Street Design and Construction Standards;
6. Required separation distance from the catch basin must be maintained, 1.5 metres preferred, minimum 1 metre separation distance is required;

**ADVISEMENTS:**

1. The driveway access must maintain a minimum clearance of 1.5 metres from all surface utilities;
2. Lot grades must match the Edmonton Drainage Bylaw 16200 and/or comply with the Engineered approved lot grading plans for the area. Contact Drainage Services at 780-496-5576 or lot.grading@edmonton.ca for lot grading inspection inquiries;
3. Unless otherwise stated, all above references to "section numbers" refer to the authority under the Edmonton Zoning Bylaw 12800;
4. A Building Permit is required for any construction or change in use of a building. Please contact the 311 Call Centre for further information.

TRANSPORTATION CONDITIONS:

1. The proposed 4.0 metre residential crossing accessing the below grade driveway from the site to Ada Boulevard located 1.2 metres from the east property line, as shown on Enclosure I, must be constructed as a private crossing as per the City of Edmonton Street Design and Construction Standards. The owner/applicant must obtain a crossing permit, available from Development Services, second floor, Edmonton tower, 10111 – 104 Avenue;
2. The proposed below grade driveway slope must not exceed 10 percent for a minimum distance of 3.2 metres inside the property line and the ramp must be at grade at the property line, as shown on Enclosure I. The applicant must contact Loli Fernandez of Development Inspections at 780-944-7683 for inspection 48 hours prior to and following construction of the driveway.
3. The proposed retaining wall bordering the driveway ramp must not exceed a height of 0.3 metres for a distance of 3.0 metres from the property line and no portion of the wall may encroach onto road right-of-way to ensure adequate sight lines can be met.
4. Heated driveways are not permitted within road right-of-way;
5. 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 (1-888-344-7429; [www.digshaw.ca](http://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;
6. Any hoarding or construction taking place on road right-of-way requires an OSCAM (On-Street Construction and Maintenance) permit. The OSCAM permit applications require Transportation management Plan (TMP) information. The TMP must include:
  - The start/finish date of project;
  - Accommodation of pedestrian connectivity during all phases of construction for access to the adjacent roadways and intersections;
  - Confirmation of lay down area within legal road right of way if required;
  - And to confirm if crossing the sidewalk and/or boulevard is required to temporarily access the site.

It should be noted that the hoarding must not damage boulevard trees. The owner or Prime Contractor must apply for an OSCAM online at:

[https://www.edmonton.ca/business\\_economy/licenses\\_permits/oscam-permit-request.aspx](https://www.edmonton.ca/business_economy/licenses_permits/oscam-permit-request.aspx) and, [https://www.edmonton.ca/documents/Construction\\_Safety.pdf](https://www.edmonton.ca/documents/Construction_Safety.pdf)

7. Any alley, sidewalk or boulevard damage occurring as a result of construction traffic must be restored to the satisfaction of Development Inspections, as per Section 15.5(f) of the Zoning Bylaw. The sidewalks and boulevard will be inspected by Development Inspections prior to construction, and again once construction is complete. All expenses incurred for repair are to be borne by the owner.

CURB CROSSING ADVISEMENT:

1. Building Great Neighbourhoods is conducting neighbourhood renewal in Highlands for 2019-2021 construction seasons and upgrading Ada Boulevard. Should the development be successfully approved at the Subdivision and Development Appeal Board, the owner/applicant should contact Richard Hai, Delivery Construction Manager, Building Great Neighbourhoods ([Richard.hai@edmonton.ca](mailto:Richard.hai@edmonton.ca)) or Adam Akram (780-423-6728) to ensure the front access/driveway does not conflict with the proposed design for the improvements to Ada Boulevard.

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

1. The requirement of section 814.3(17) is waived to allow vehicular access from Ada Boulevard instead of the Lane.
2. The requirement of section 53.1 is waived to allow vehicular access from Ada Boulevard and 53 Street.
3. The requirements of section 54.1(4) are waived to allow two Driveways instead of one.
4. The requirements of section 814.3(18) are waived to allow the proposed 2.5 metre projection of the front garage beyond the front wall of the principal building and a garage width of 7.07 metres.

**Reasons for Decision**

[23] Single Detached Housing is a Permitted Use in the (RF1) Single Detached Residential Zone.

[24] The proposed vehicular access to the subject Site requires the following variances to development requirements pursuant to the *Edmonton Zoning Bylaw*.

Section 53.1 states:

All access locations and curb crossings shall require the approval of Transportation Services.

Section 814.3(17) states:

Where the Site abuts a Lane, vehicular access shall be from the Lane and no existing vehicular access from a public roadway other than a Lane shall be permitted to continue.

Section 54.1(4) states:

The front Yard of any ground level Dwelling in any Residential Zone, or in the case of a corner Site, either the Front Yard or the flanking Side Yard in any Residential Zone, may include a maximum of one Driveway.

Section 814.3.18 states:

Attached Garages shall be developed in accordance with the following:

- a) A Garage may protrude beyond the front or flanking wall of the principal building a distance that is characteristic of existing Garages on the blockface;
- b) A Garage may have a maximum width that is characteristic of the width of existing attached Garages on the blockface; ....

[25] The Board has granted all of the required variances for the following reasons:

Access to the Site

- a) Both the Development Authority and the representatives from Subdivision Planning (Transportation) acknowledged that the Site constraints, specifically an existing power pole with Telus facilities cannot be relocated which makes access to the Site from the Lane impossible. Therefore, the proposed access from 53 Street is supported because of the resulting hardship that is created for the owner to develop the lot.
- b) The Applicant wants to develop a Garden Suite in the future and although the development permit cannot be approved prior to the Single Detached House, the Board finds that a Garden Suite at this location will further the goals of the Municipal Development Plan, "The Way We Grow", specifically policy 4.4.1 "to ensure that neighbourhoods have a range of housing choice to meet the needs of all demographic and income groups and create more socially sustainable communities" and policy 4.4.1.1 "to provide a broad and varied housing choice, incorporating housing for various demographic and income groups in all neighbourhoods". The Development Officer did not oppose a variance to allow two Driveways and advised the Board that this variance would have been granted if the proposed development did not require any further variances.



- c) Allowing this variance should not be construed in any way as an approval from the Board for any Accessory Buildings on this Site. Subsequent development permit applications are required and could be approved or refused by the Development Authority or ultimately by the Board if future development permits are appealed.

#### Driveway Access

The remaining variances all relate to the existence of a front facing Driveway leading to a front facing Garage which extends beyond the front façade of the Principal Dwelling and were granted for the following reasons:

- d) Based on the evidence provided, approximately one-third of the houses along Ada Boulevard, between 50 Street and 67 Street already have front Driveway access. Therefore, the proposed front access is characteristic of Ada Boulevard.
- e) As previously noted above, rear access to the lot from the Lane creates a hardship situation because of an existing power pole and Telus facilities which EPCOR has advised cannot be removed or relocated.
- f) One of the primary motivations for discouraging front access in mature neighbourhoods is the existence of sidewalks, boulevards between the sidewalks, and the curb and boulevard trees. However, none of these situations exist at this location. Based on a review of the evidence provided, the Board notes that there is no boulevard, boulevard trees or public sidewalk along the north side of Ada Boulevard.
- g) While the proposed front Driveway will increase the amount of hardsurfacing in the front yard, this is a corner lot that will contain extensive landscaping along the large flanking side yard abutting 53 Street and on all but 4.0 metres of the front yard. This will significantly mitigate any landscaping deficiency that is typically created by front facing Driveways.
- h) It is acknowledged that issues related to the slope of the Driveway may result from the planned reconstruction of Ada Boulevard and the curb line. However, the details of the planned neighbourhood renewal are not known at this time and should not prevent the development of this lot. This is, in fact, a construction issue and as conceded by the Development Authority and the representatives from Transportation, if the Driveway exists when neighbourhood renewal begins, an engineering solution will have to be found to address the situation at this Site as well as every other lot along Ada Boulevard with a front facing Driveway.

#### Projection of the Attached Garage:

- i) The variance required in the protrusion of the proposed attached Garage beyond the front wall of the Principal Building will be mitigated by the proposed design. A portion of the attached Garage will be built below grade and the predominant portion of the Garage that is above grade is a two storey veranda which not only significantly

mitigates the visual impact of a front facing attached Garage but also provides an extensive amenity space in the front yard. This is in keeping with the General Purpose of the Mature Neighbourhood Overlay "... to maintain the pedestrian-oriented design of the streetscape...".

- j) The Board notes that the Appellant undertook an extensive community consultation and that the proposed development with the required variances received overwhelming support from the affected neighbours.

[26] Based on all of the above, the Board finds that the proposed development with the required variances 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. Therefore, the appeal is allowed and the development is granted.

Mr. I. Wachowicz, Chair  
Subdivision and Development Appeal Board

Board members in attendance: Mr. W. Tuttle, Mr. L. Pratt, Mr. J. Jones, Ms. L. Gibson

**Important Information for the Applicant/Appellant**

1. This is not a Building Permit. A Building Permit must be obtained separately from the Sustainable Development Department, located on the 2nd Floor, Edmonton Tower, 10111 – 104 Avenue NW, Edmonton, AB T5J 0J4.
2. Obtaining a Development Permit does not relieve you from complying with:
  - a) the requirements of the *Edmonton Zoning Bylaw*, insofar as those requirements have not been relaxed or varied by a decision of the Subdivision and Development Appeal Board,
  - b) the requirements of the *Alberta Safety Codes Act*,
  - c) the *Alberta Regulation 204/207 – Safety Codes Act – Permit Regulation*,
  - d) the requirements of any other appropriate federal, provincial or municipal legislation,
  - e) the conditions of any caveat, covenant, easement or other instrument affecting a building or land.
3. When an application for a Development Permit has been approved by the Subdivision and Development Appeal Board, it shall not be valid unless and until any conditions of approval, save those of a continuing nature, have been fulfilled.
4. A Development Permit will expire in accordance to the provisions of Section 22 of the *Edmonton Zoning Bylaw, Bylaw 12800*, as amended.
5. This decision may be appealed to the Alberta Court of Appeal on a question of law or jurisdiction under Section 688 of the *Municipal Government Act*, RSA 2000, c M-26. If the Subdivision and Development Appeal Board is served with notice of an application for leave to appeal its decision, such notice shall operate to suspend the Development Permit.
6. When a decision on a Development Permit application has been rendered by the Subdivision and Development Appeal Board, the enforcement of that decision is carried out by the Sustainable Development Department, located on the 2nd Floor, Edmonton Tower, 10111 – 104 Avenue NW, Edmonton, AB T5J 0J4.

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



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Date: May 31, 2019  
Project Number: 304850157-001  
File Number: SDAB-S-19-003

**Notice of Decision**

- [1] On May 16, 2019, the Subdivision and Development Appeal Board (the “Board”) heard an appeal that was filed on **April 22, 2019**. The appeal concerned the decision of the Subdivision Authority, issued on April 11, 2019 to refuse the following subdivision:

**To create one (1) additional single detached residential lot from Lot 2,  
Block 1, Plan 162 1549.**

- [2] The subject property is on Plan 1621549 Blk 1 Lot 2, located at 8343 - Saskatchewan Drive NW, within the (RF2) Low Density Infill Zone. The Mature Neighbourhood Overlay applies to the subject property.
- [3] The following documents were received prior to the hearing and form part of the record:
- A copy of the refusal letter and tentative plan of subdivision;
  - The Subdivision Authority’s written submission;
  - The Appellant’s written submission and attachments; and
  - One online response in opposition to the proposed subdivision.
- [4] The following exhibit was presented during the hearing and forms part of the record:
- Exhibit A – Photographs submitted by the Windsor Park Community League.

**Preliminary Matters**

- [5] At the outset of the appeal hearing, the Chair confirmed with the parties in attendance that there was no opposition to the composition of the panel. Mr. Maghee indicated that he had some legal dealings with the Chair several years ago but did not have any objection to the Chair hearing this appeal.

- [6] The Chair 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 678 of the *Municipal Government Act*, RSA 2000, c M-26.

### Summary of Hearing

i) *Position of the Appellant, Mr. A. Maghee:*

- [8] The property was purchased in 2012 with the intention of living in the neighbourhood with his wife and child. He is not a real estate developer or builder but has experience with real estate through his job as a commercial banker.
- [9] It was his opinion that the deficiency of seven centimetres in site width is minimal.
- [10] The current lot is zoned RF2 and the proposal is to subdivide the lot to build two single detached houses. Prior approval was issued by the Subdivision Authority to allow the development of a semi-detached house with separate titles.
- [11] Mr. Maghee has invested a lot of financial resources and time into this project which all comes down to economics.
- [12] The recent *Edmonton Zoning Bylaw* amendments have affected his decisions regarding the development of this lot.
- [13] The original lot was 30 metres in width and it did not make economic sense to develop. Subdividing the lot would make more economic sense and help him achieve his goal to live in this neighbourhood. The current subdivided lot complied with the development regulations for semi-detached housing as a Discretionary Use in the RF1 Zone. He rezoned the lot to RF2 because semi-detached housing was listed as a Permitted Use. The rezoning application was approved in 2018 and it was his intention to build a semi-detached house, live on one side and rent the other side. However, construction quotes, the economic downturn and stress test changes in banking would have resulted in risks that he was not willing to take. It was difficult to find a buyer or renter for the other half of the semi-detached house and the decision was made to list the property for sale.
- [14] He then discovered amendments that were made to the *Edmonton Zoning Bylaw* in 2018, including semi-detached housing and secondary suites listed as a Permitted Uses in the RF1 Zone. Based on these changes and the inquiries that he received, the decision was made to proceed with this subdivision application.
- [15] It was his opinion that density is not a concern because these amendments would allow a 30 foot lot in an RF1 Zone to be subdivided with two semi-detached houses each with

secondary suites could be built which would result in the development of eight dwelling units.

- [16] The proposed subdivision will not increase density because the proposed subdivision will allow the development of two single detached houses.
- [17] The lot is zoned RF2 and is 7.43 metres wide when measured 4.5 metres from the front property line and is deficient by 7 centimetres pursuant to the requirements of section 120.4(1)(b). This 7 centimetres deficiency will not result in any material adverse distress to the visual appeal of the neighbourhood or the optics of the block relative to a lot that would conform to the site width.
- [18] There is a service road that separates the lot from the arterial road which has approximately 20,000 vehicles per day. Seven centimetres is an insignificant deficiency.
- [19] Most property owners are of the opinion that the development of semi-detached housing results in a reduction in property value and the construction of two single detached houses are generally more acceptable.
- [20] There are many different housing styles in this neighbourhood, including bungalows and new two storey houses. Appraisals are based on comparable listings and square footage.
- [21] The Subdivision Authority based the refusal on section 41.1(3) of the *Edmonton Zoning Bylaw* which states that “the Subdivision Authority may not approve the subdivision of a Lot zoned RF1, as it existed on March 16, 2015, into more than two lots”. However, this lot is zoned RF2 not RF1 and therefore, section 41.1(3) is irrelevant.
- [22] Neighbours have been contacted over the years regarding previous subdivision applications. However, they were not consulted on this matter in an effort to avoid confrontation and because they would have the opportunity to voice their opinion through the appeal process.
- [23] Mr. Maghee provided the following information in response to questions from the Board:
- a) He defined character primarily as Use and families living in a semi-detached house or two single detached houses. It was his opinion that character is also achieved through the use of exterior articulation and finishing materials. There are many different housing styles along this block. He reiterated his opinion that character is defined by Use.
  - b) He did not rezone the lot from RF1 to RF2 in an attempt to circumvent the requirements of section 41 of the *Edmonton Zoning Bylaw*. The rezoning application was the result of his desire to live in the neighbourhood, economic changes and amendments that were made to the *Edmonton Zoning Bylaw*.

- c) The purpose of this subdivision is to construct family dwellings that are suitable for the purpose of the zone and in character with the other six family dwellings on the block. The development of either a semi-detached house or two single detached houses on this lot will not negatively impact the use and enjoyment of neighbouring yards and will not change the density. Mr. Maghee reiterated that these large lots hypothetically could be subdivided once and that subdivision could result in the development of eight dwelling units that comply with all of the development regulations.
- d) Section 41.1(3) is not applicable and without the 7 centimetre site width deficiency, the proposed subdivision would have been approved. This lot is zoned RF2 and this section does not apply.
- e) He acknowledged that there may be some development challenges but it was his opinion that the deficiencies required would be minimal and would not affect the construction of each house.
- f) The requirements of section 11.4 were acknowledged. However, it was his opinion that the subject lot is not a true rectangle because the lot is wider at the rear than at the front and according to the dictionary definition it is not a rectangle. The RF2 zone measures the width at 4.5 metres from the front lot line but the Mature Neighbourhood Overlay measures the width according to the block face average and in this case would be 7.45 metres where the house would be sited. Therefore, the majority of the lot is 7.5 metres wide.
- g) Previous decisions of the Subdivision and Development Appeal Board were referenced to support the granting of variances in site width.
- h) This is a residential subdivision which complies with the purpose of the RF2 zone.

ii) *Position of Affected Property Owners in Opposition to the Appellant:*

**Mr. R. Stuvie:**

- [24] He owns the lot at 8345 Saskatchewan Drive and is currently building a house that will be sold.
- [25] Parking will be a concern because on street parking is limited.
- [26] Lot splitting was allowed to increase density in mature neighbourhoods. The development of a semi-detached house will provide more density and larger dwelling units.
- [27] The Appellant did not split the lot properly initially and should not be rewarded for that mistake. It his view that the Appellant has no intention to live in this neighbourhood.

- [28] Mr. Stuvie acknowledged that the concept of character is subjective but Council has set the minimum standard for the lot size to accommodate the development of skinny houses and it should be maintained.

**Ms. B. Moon, representing the Windsor Park Community League:**

- [29] Ms. Moon serves on the Development Committee which was established to monitor subdivision and development applications in the neighbourhood.
- [30] The Development Committee has been involved with this property since the subdivision application was made in 2016. Comments were provided but they did not oppose the subdivision. In 2017 they reviewed the development application for 8345 Saskatchewan Drive. Feedback was provided and the rezoning application made in 2018 to rezone the lot from RF1 to RF2 was discussed. The Community League supports the refusal of the Subdivision Authority as well as the reasons for refusal.
- [31] When neighbours were notified of the rezoning application for the subdivided lot, the Community League reached out to the Appellant and was advised that it was his long term goal to live in the neighbourhood. It was his intent to build a semi-detached house on the remaining lot. The Community League has advocated including semi-detached housing as a Permitted Use rather than a Discretionary Use in the RF1 Zone.
- [32] At the time of the rezoning application, semi-detached housing was a Discretionary Use in the RF1 Zone and Mr. Maghee did not want to have to deal with community consultation. The Community League assured him that they would support the development of semi-detached housing and offered to conduct the community consultation. Mr. Maghee advised them that he did not want to take the risk and had to make the numbers work. The Community League began to question his motives and concluded that the real reason for the rezoning application was to facilitate a further subdivision.
- [33] The Community League opposed the rezoning application because semi-detached housing was allowed as a Discretionary Use and was supported by the Community League as well as the neighbours. Council supported the rezoning application based on information provided by the Appellant that a semi-detached house would be developed. However, shortly after the rezoning was approved the lot went up for sale.
- [34] Photographs were submitted to illustrate the context of the neighbourhood and the existing houses which are primarily well maintained bungalows, some of which have been renovated over the years (*Exhibit A*). The newly created lots are less than 7.5 metres wide, do not fit the context of the neighbourhood and will require variances in order to be skinny houses that are not characteristic of the neighbourhood.



- [35] The Community League accepts the fact that the subdivision of lots and redevelopment will occur but there is no land use reason to subdivide a lot that does not meet the minimum requirements.
- [36] The development of a semi-detached house is supported because it would be of a similar size to the existing single detached houses. Two tall, narrow houses will be in stark contrast to the neighbouring bungalows and it will be apparent to everyone who passes by that they are different from the pattern of existing houses.
- [37] The subject lot is rectangular to the naked eye and the fact that it is a little bit wider at the rear than at the front is irrelevant.
- [38] The development of two skinny houses on the subdivided lots will impact the use and enjoyment of neighbours because of the visual disruption that it will create.
- [39] Subdividing the lot and building two skinny houses is not the only way to achieve increased density. The development of a semi-detached house will also allow an increase in density, the house will be more energy efficient and it is a better use of the land.

**Mr. G. Allam:**

- [40] Mr. Allam has lived two doors down from the subject site for seven years and supports all of the reasons for refusal provided by the Subdivision Authority and the Community League.
- [41] His house is a bungalow and is typical of other existing houses in the neighbourhood. He purchased his house because of the mature trees and landscaping and he expressed concern that the proposed subdivision will create lots and allow development that is not characteristic of the neighbourhood.

*iii) Position of the Subdivision Authority, Mr. T. van den Brink and Ms. K. Rutherford:*

- [42] This lot is zoned (RF2) Low Density Infill Zone and is surrounded predominantly by lots that are zoned (RF1) Single Detached Residential Zone.
- [43] The lot is currently vacant and the lot to the north has a structure that is currently under construction.
- [44] The subject lot is 14.82 metres wide along the road and 15.21 metres wide along the lane.
- [45] Photographs taken from Saskatchewan Drive and the rear lane were referenced to illustrate the context of the subject lot and the surrounding development.
- [46] Six neighbouring property owners were notified of the proposed subdivision.

- [47] In March 2016, the original lot that was zoned RF1 was subdivided into two lots. In May 2018, the parent lot was rezoned from RF1 to RF2. In July 2018, the Subdivision Authority approved LDA-18-0292 to create separate titles for a semi-detached house. In March 2019 an application was received with the intent to subdivide for two skinny houses. LDA-18-0292 was withdrawn by the Applicant. In April 2019 the Subdivision Authority refused LDA-19-0084.
- [48] There were four main reasons for refusal, specifically, the deficiency in the minimum required site width, the potential for future development hardships, upholding the decision of Council to rezone the lot from RF1 to RF2 with the stated intent of building a semi-detached house and preserving the character of the neighbourhood.
- [49] The minimum site width in the RF2 Zone was amended to 7.5 metres on June 12, 2017. The Subdivision Authority and the Development Authority received clear direction from Council that this was the absolute minimum site width that could be approved. A firm 7.5 metre site width was intended to provide certainty for developers and the public regarding acceptable “skinny” single detached residential development. It is important to enforce the minimum required site width even though in this case the deficiency is only 7 centimetres because it is important to preserve the overall lot layout of the neighbourhood. Allowing this variance may open the door for the creation of even skinnier lots in the future.
- [50] The proposed subdivision will create two non-conforming lots that do not meet the site width development regulation. This will create unnecessary hardship for existing and future landowners. The insufficient site width will result in uncertainty for existing or future landowners wishing to redevelop the proposed lots. A variance will be required which could trigger the need for community consultation or an appeal to the Subdivision and Development Appeal Board. Section 11.4(1)(c) of the *Edmonton Zoning Bylaw* limits the ability of a Development Officer to grant variances to the minimum required site width and if subdivided the development potential for the lot may be limited by the discretion of the Development Officer.
- [51] It is noted that other development options are available to the Appellant, including the development of a semi-detached house with two secondary suites, single detached housing with a secondary suite or single detached housing with a garden suite.
- [52] The history of this file was a relevant consideration when the Subdivision Authority refused this application. The parent parcel was subdivided into two parcels of land in March 2016. The previous subdivision of this RF1 lot has an important implication for this application. Because the parent parcel had been subdivided once, section 41.1(3) of the *Edmonton Zoning Bylaw* had to be considered. This restricts the number of lot splits that may occur on a parcel of land zoned RF1. It prohibits the subdivision of RF1 lots, as they existed on March 16, 2015 into more than two lots.

- [53] Given that the original parcel of land had already been subdivided in 2016, the Applicant decided to rezone the lot from RF1 to RF2 to allow for an additional subdivision. At the public hearing for the proposed rezoning, Council was lead to believe that the intent was to build a semi-detached housing on the lot. The RF2 Zoning would allow the Applicant to have separate titles for each unit of the semi-detached house. Council's decision to allow the rezoning was based on the intent of the Applicant and deviating from that calls the motive of the Applicant into question. If Council had been presented with the true intent of the Applicant at the Public Hearing it is possible that the rezoning application would have been refused. It is noted that the Windsor Park Community League spoke at the Public Hearing in opposition to the possible development of two skinny houses and 11 neighbouring property owners did not support the rezoning application.
- [54] The lots in this neighbourhood that face the North Saskatchewan River are wide, ranging from 27.42 metres to 30.48 metres, to take advantage of the natural viewpoints of the ravine. The lot widths begin to gradually narrow as you move further into the neighbourhood. Neighbours spoke out against the proposed rezoning because they were concerned that it would alter the appearance and character of the neighbourhood. The Subdivision Authority therefore, concluded that the development of two single detached houses would significantly alter the appearance of the block because most of the houses are quite wide. A semi-detached house would not alter the character of the neighbourhood as drastically, would maximize the development potential of the land and would more closely resemble the built-form of neighbouring houses.
- [55] Section 5.2.1.1 of the Municipal Development Plan ("The Way We Grow") supports the preservation of neighbourhood character and the intent to "require development to fit with the existing and planned neighbourhood context, to respect the scale, form, massing, style and materials of the neighbourhoods and to incorporate other design elements that create a transition between the new development and the existing neighbourhood".
- [56] Photographs were referenced to illustrate the width of some of the surrounding lots.
- [57] The Subdivision Authority has approved 25 lot split applications in Windsor Park, many of which are located closer to the centre of the neighbourhood in areas that are characterized by narrower lot widths, with development that respects the scale, form and massing of the immediate area.
- [58] This subdivision application does not respect the scale, form and massing of the block. If the refusal is overturned, the proposed lots will be approximately four times smaller than surrounding lots which will negatively affect the aesthetics of the streetscape and diminish the unique character of the block.
- [59] Mr. Van den Brink and Ms. Rutherford provided the following information in response to questions from the Board:
- a) The Subdivision Authority did use discretion to vary the site width requirement when it was 7.6 metres. However, Council amended this requirement and set the minimum

- site width at 7.5 metres which was absolute. The Subdivision Authority then committed to uphold the minimum 7.5 metres site width requirement in accordance with the direction of Council and to provide certainty regarding the expectation in mature neighbourhoods.
- b) There is no definite direction contained in the *Edmonton Zoning Bylaw* which states that 90 degrees at all corners defines a rectangular lot but it is approached as such. The Subdivision Authority is erring on the side of treating this as a rectangular lot and it is deficient in the minimum requirement. It would be interesting to see how a Development Officer would classify this lot when reviewing a permit application.
  - c) Reasons for refusal 1, 2 and 4 consider this site in isolation. Reason number 3 deals with the history of the site. It was acknowledged that *Bylaw* regulations have changed but the regulation that an RF1 lot can only be split once has not changed. Council has not removed section 41.1 in order to provide some certainty in older neighbourhoods and it has been the decision of the Subdivision Authority to uphold this vision so that everyone can understand what to expect going forward.
  - d) Council amended the RF1 zone to include semi-detached housing as a Permitted Use but did not remove section 41.1. The Applicant had the option to pursue the development of a semi-detached house as a Discretionary Use in the RF1 Zone but the intent of the rezoning was to create a separate title which was not possible for a lot zoned RF1.
  - e) A semi-detached house on an RF1 lot could be subdivided to create separate titles.
  - f) The lot widths and the width of existing houses define the character of a neighbourhood. If this subdivision is approved, the maximum width of each house would be 5.05 metres in contrast to the width of the house to north which is 25.2 metres. The result of the proposed subdivision would be that the houses on the newly created lots would be five times smaller than the other houses on the block. The surrounding RF1 zoned lots could be subdivided once without circumventing section 41.1 and the lots and building pockets would maintain the character of the neighbourhood.
  - g) A semi-detached house would have a floor area of approximately 2,400 square feet and the floor area for a skinny house would be approximately 1,000 square feet which is much smaller than the houses on the surrounding lots. Maintaining the character of the neighbourhood is much more than complying with the general purpose of the zone to provide single family housing.

*iv) Rebuttal of the Appellant:*

- [60] Mr. Maghee reiterated his opinion that the primary reason for refusal cited by the Subdivision Authority, pursuant to section 41.1(3) of the *Edmonton Zoning Bylaw* is not relevant to this appeal because this lot is zoned RF2 and not RF1.
- [61] The proposed subdivision mitigates the risk involved in developing this land and will allow him to reside in this neighbourhood with his family.
- [62] The interpretation of character is subjective and some residents in this neighbourhood may be of the opinion that the development of a semi-detached house is not in character with the existing houses on this block. The use of different building and finishing materials also has an effect on character.
- [63] The proposed subdivided lots will comply with the minimum site area requirement, and the site depth requirement pursuant to section 120.4(1) of the *Edmonton Zoning Bylaw*. The only deficiency is 7 centimetres in the minimum required site width.
- [64] He reiterated his opinion that this deficiency is minimal and will not have a negative impact on any of the neighbouring property owners. A service road separates the subject lot from the arterial road and it will be impossible for a passerby to identify the insignificant deficiency of 7 centimetres.
- [65] M. Maghee provided the following information in response to questions from the Board:
- a) Numerous other lots in this neighbourhood have been subdivided to allow the development of skinny houses.
  - b) Character is subjective but the proposed development of two houses that will provide housing for two families is characteristic of this neighbourhood.
  - c) This block is currently going through a transition which will change the character. It was his opinion that the intent of section 41.1(3) is to preserve the character of a neighbourhood and not a specific block.
  - d) It was conceded that a semi-detached house could have been allowed as a Discretionary Use in the RF1 Zone. However, the decision was made to rezone the lot because semi-detached housing was allowed as a Permitted Use in the RF2 Zone and he needed the financial certainty that this would provide. This would have been the first semi-detached house built in this neighbourhood.

**Decision**

- [66] The appeal is **DENIED** and the decision of the Subdivision Authority is **CONFIRMED**. The subdivision is **REFUSED**.

**Reasons for Decision**

[67] The subject Site is zoned (RF2) Low Density Infill Zone.

[68] The Subdivision Authority refused the subdivision application for four reasons:

- a) The proposed subdivision does not comply with section 120.4(1)(b) of the *Edmonton Zoning Bylaw* which states:

The minimum Site Width for Single Detached Housing shall be 7.5 metres.

The proposed Site Width is 7.43 metres and is deficient by 7 centimetres when measured 4.5 metres from the front property line in accordance with section 120.4(8) of the *Edmonton Zoning Bylaw*.

- b) The proposed subdivision will create two non-conforming lots that do not comply with development regulations pursuant to the *Edmonton Zoning Bylaw*. This will create unnecessary hardship for existing and future landowners pursuant to section 11.4(1)(c) which states:

On rectangular shaped Lots, there shall be no variance from the minimum Site Width, for new Single Detached Housing in the RF1, RF2, RF3 and RF4 Zones for all Sites which received subdivision approval after June 12, 2017.

- c) The current subdivision application, when considered in conjunction with a previous subdivision would create a total of three lots since the original subdivision. Section 41.1(3) states:

The Subdivision Authority may not approve the subdivision of a Lot zoned RF1, as it existed on March 16, 2015 into more than two lots, notwithstanding the Site Width in the RF1 Zone. Subdivision into more than two Lots may only be approved where the proposed subdivision:

- a. is supported by one or more City Council approved Statutory Plans or City Council approved Policies; or
  - b. has a Site Width deemed by the Subdivision Authority to be in character with Lots on the same block.
- d) The development that would be necessitated by the proposed subdivision is contrary to the Policy set out in 5.2.1.1 of the Municipal Development Plan, “The Way We Grow”, which states:

Require development to fit with the existing and planned neighbourhood context, to respect the scale, form, massing, style and materials of the neighbourhoods and to incorporate other design elements that create a transition between the new development and the existing neighbourhood.

- [69] The Board has denied the appeal based on two of the reasons of refusal provided by the Subdivision Authority.
- [70] The primary reason is that the proposed subdivision is not in keeping with Policy 5.2.1.1 of the Municipal Development Plan. The proposed subdivision is not respectful of the existing neighbourhood because it does not respect the scale, form or massing of the existing housing choices.
- [71] Second, the proposed subdivision has the potential to create two lots that will require a variance to the Site Width development requirement that can only be granted by the Subdivision and Development Appeal Board through a subsequent appeal.
- [72] Section 680(2)(a.1) of the *Municipal Government Act* states:
- In determining an appeal, the board hearing the appeal must have regard to any statutory plan.
- [73] The Municipal Development Plan was prepared as a requirement of the *Municipal Government Act* and is the overriding Statutory Plan that directs development and growth in the City of Edmonton. Policy 5.2.1.1 of the Municipal Development Plan states:
- Require development to fit with the existing and planned neighbourhood context, to respect the scale, form, massing, style and materials of the neighbourhoods and to incorporate other design elements that create a transition between the new development and the existing neighbourhood.
- [74] The evidence before the Board is that although there are some smaller lots within the planned neighbourhood context, the proposed two lots with a Site Width of 7.43 metres will be significantly different than those in the rest of the neighbourhood. Based on a review of the photographic evidence provided as well as maps submitted by the Subdivision Authority, the vast majority of the lots in this neighbourhood context are large and contain large low profile bungalows. The building pockets created by the proposed subdivision will necessitate the development of two tall, narrow houses which would result in a completely incongruous look on this block and in this neighbourhood.
- [75] As a result, the Board finds that the resulting development will not be respectful of the scale, form and massing style of the neighbourhood context and is not in keeping with Policy 5.2.1.1 of the Municipal Development Plan.
- [76] The Board was also concerned about the potential of creating two non-conforming lots that do not comply with development regulations contained in the *Edmonton Zoning Bylaw* and which has the potential to create unnecessary hardship for existing and future land owners.

[77] Section 11.4(1)(c) states:

In approving a Development Permit Application pursuant to Section 11.3, the Development Officer shall adhere to the following:

on rectangular shaped Lots, there shall be no variance from the minimum Site Width, for new Single Detached Housing in the RF1, RF2, RF3, and RF4 Zones for all Sites which received subdivision approval after June 12, 2017.

- [78] Pursuant to section 11.4(1)(c), the Development Authority could not approve development on the newly created lots which are 7.43 metres wide and do not comply with the minimum required Site Width of 7.5 metres. This could create significant hardship for any future owner because the required variance could only be considered by the Subdivision and Development Appeal Board upon appeal.
- [79] The Board finds that it is generally undesirable to create a lot that cannot be developed in some form as a right by the property owner.
- [80] The Board relied upon the above noted reasons to deny the appeal and refuse the proposed subdivision.
- [81] The Board did not consider the submissions of the Subdivision Authority or any of the other parties who attended the hearing, regarding the intentions of Council when Charter Bylaw 18390, to rezone the subject Site from (RF1) Single Detached Residential Zone to (RF2) Low Density Infill Zone was passed in May 2018.
- [82] The Board accepts the submission of the Appellant and agrees that section 41.1(3) of the *Edmonton Zoning Bylaw* is not applicable to the subject Site and therefore, has no bearing on this appeal. The subject Site is currently zoned (RF2) Low Density Infill Zone and the Board determined the appeal based on that zoning. Furthermore, the Board did not rely, in any way, on the evidence provided regarding the intention of Council when Charter Bylaw 18390 was passed. That Bylaw speaks for itself and was interpreted based on the language of the Bylaw alone. The Board did not consider the intent of Council when they approved this Bylaw.



[83] Based on all of the above, the appeal is denied and the subdivision is refused.

Mr. I. Wachowicz, Chair  
Subdivision and Development Appeal Board

Board members in attendance: Mr. W. Tuttle, Mr. L. Pratt, Mr. J. Jones, Ms. L. Gibson

**Important Information for the Applicant/Appellant**

1. 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.