



**EDMONTON
TRIBUNALS**

*Subdivision &
Development
Appeal Board*

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Date: May 29, 2018
Project Number: 273104732-001
File Number: SDAB-D-18-072

Notice of Decision

- [1] On May 17, 2018, the Subdivision and Development Appeal Board (the “Board”) heard an appeal that was filed on **April 19, 2018**. The appeal concerned the decision of the Development Authority, issued on April 16, 2018, to refuse the following development:

To construct a Single Detached House with rear attached Garage, Basement development (NOT to be used as an additional Dwelling), fireplace, uncovered deck and veranda.

- [2] The subject property is on Plan 1275HW Blk 2 Lot 16, located at 11650 - 74 Avenue NW, within the (RF1) Single Detached Residential Zone. The Mature Neighbourhood Overlay and the McKernan / Belgravia Station Area Redevelopment Plan apply 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 submission including a subdivision plan;
- The Appellant’s written submission with photographs; and
- One on-line response in opposition to the proposed development and one neutral response.

Preliminary Matters

- [4] At the outset of the appeal hearing, the Presiding Officer confirmed with the parties in attendance that there was no opposition to the composition of the panel.
- [5] The Presiding Officer outlined how the hearing would be conducted, including the order of appearance of parties, and no opposition was noted.
- [6] The appeal was filed on time, in accordance with section 686 of the *Municipal Government Act*, RSA 2000, c M-26.

Summary of Hearing*i) Position of the Appellant, Mr. T. Sharif*

- [7] Mr. Sharif referenced his written submission and referred to photographs showing developments in the area that are similar to the proposed development.
- [8] He referred to the points in his submission and stated that he will still meet the minimum amenity area requirement with a rear attached garage. In his opinion, the garage is not completely attached to the house and the connecting structure will be used more like a pedway or breezeway.
- [9] He purchased the property because it is a corner lot. It would be difficult to construct a narrow house on a corner lot without a setback variance. He would not have purchased the lot if he was unable to subdivide it and build a narrow house without a setback variance.
- [10] The house will be developed with a large open-to-above living room in the front elevation with a glass wall bedroom/office overlooking the living room to the outside. Even with the rear attached garage there will be an approximately 14 feet by 14 feet amenity area.
- [11] He spoke to neighbouring property owners and received verbal support for the proposed development. The most affected neighbour is his brother and he is the owner and will be the occupier of the proposed house on the abutting lot.
- [12] One neighbour was in opposition to the requested variances. In his opinion, the setback variance will not negatively impact that neighbour as he lives across the rear lane.
- [13] He referred to the photographs showing houses that are under construction in the area, some with rooftop patios, and some that are on corner lots.
- [14] He referred to photographs of other yards to show how they would like to landscape the subject site.
- [15] In response to questions by the Board, he stated that he would like to develop the house with a living wall so as to incorporate the feel of the neighbourhood by including greenery.
- [16] With regard to community consultation, he stated that he spoke to some neighbours but not everyone within the notification radius. He stated that the neighbour in opposition does not live at his property as that house has been abandoned and clarified that there is tall metal fencing surrounding that property that would indicate the house will be torn down.
- [17] He showed the proposed plans to the neighbours during community consultation but does not have anything in writing to support the development.

- [18] He confirmed that while some of his photos are of houses in the neighbourhood, the majority of the photographs in his submission are outside of the neighbourhood. He confirmed that none of the houses on the street have rear attached garages.
- [19] He acknowledged that building on this specific lot once the subdivision approval is registered will make the proposed development non-conforming.
- [20] He agreed that the proposed development could create a massing effect on neighbouring properties. In his opinion, the living wall facing the street would reduce the massing effect.
- [21] In response to questions posed by the Board, he was not aware what the measurements were for the Utility Right-of-Way along the west side of the property shown on the Plot Plan.
- [22] He clarified that the subdivision of the subject site has been approved but has not been registered. Once he gets approval to build on the subject site, they will register the subdivision. His reason for not registering was that his brother is not ready to develop his lot yet and registration would result in increased taxes to the property.

ii) Position of the Development Officer, Mr. B. Langille

- [23] The Development Authority provided a written submission and did not attend the hearing.

Decision

- [24] The appeal is **DENIED** and the decision of the Development Authority is **CONFIRMED**. The development is **REFUSED**.

Reasons for Decision

- [25] The proposed Single Detached House is a Permitted Use in the (RF1) Single Detached Residential Zone.
- [26] The Board notes that the proposed development was refused based on three variances:
- a. The proposed development violates section 814.3(19) of the *Edmonton Zoning Bylaw* that states that Rear attached Garages shall not be allowed in the Mature Neighbourhood Overlay.

- b. Section 814.3(4) of the Mature Neighbourhood Overlay states that the minimum Rear Setback shall be 40 percent of Site Depth and the proposed development is deficient by 7.63 metres (20.78 percent).
- c. Section 814.3(3)(b) of the Mature Neighbourhood Overlay states where a Site Width is greater than 12.0 metres and less than 18.3 metres, the Side Setback requirements of the underlying Zone shall apply.

Section 110.4(11)(c) of the (RF1) Single Detached Residential Zone states on a Corner Site where the building faces the Front Lot Line or the Side Lot Line, the minimum Side Setback abutting the flanking Side Lot Line shall be 20 percent of the Site Width, to a maximum of 4.5 metres. The proposed development is deficient by 2.12 metres in the (west) Side Setback.

- [27] The Board finds that based on the submitted elevation drawings, the two-storey development with a rear attached Garage, and deficient Rear Setback with minimal articulation in the (west) side elevation will create a massing effect along 118 Street.
- [28] The Board does not accept the Appellant's submission that the reason he wanted to build a rear attached Garage was for safety reasons as this can apply to any Single Detached House in the Mature Neighbourhood Overlay. There was no planning reason or hardship submitted to the Board to justify allowing a rear attached Garage.
- [29] The Board notes that although the subdivision of the subject Site has been approved but not registered, the proposed development on the subject Site will create an escalated non-conforming building due to an additional (east) Side Setback variance. Further, based on the evidence submitted, there was no written community support for the proposed development and community consultation was not carried out regarding the additional (east) Side Setback variance that the subdivision would create if the proposed development was approved.
- [30] The Appellant did not address the Development Officer's concerns outlined in the McKernan / Belgravia Station Area Redevelopment Plan, specifically policy 4.4.6(2) that states under *Neighbourhood Infill*, "Ensure that new development respects the character and scale of existing development through the retention of the Mature Neighbourhood Overlay."

Based on the evidence provided, there are no developments in the neighbourhood that are similar in scale or design with the proposed development.

[31] Based on the above, it is the opinion of the Board that the proposed development will unduly interfere with the amenities of the neighbourhood, and materially interfere with or affect the use, enjoyment or value of neighbouring parcels of land.

A handwritten signature in blue ink, appearing to read 'B. Gibson', with a long horizontal flourish extending to the right.

Mr. B. Gibson, Presiding Officer
Subdivision and Development Appeal Board

Board Members in Attendance

Mr. V. Laberge; Mr. J. Kindrake; Ms. M. McCallum; 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.
2. When a decision on a Development Permit application has been rendered by Development & Zoning Services, 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.