



**EDMONTON
TRIBUNALS**

*Subdivision &
Development
Appeal Board*

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Date: June 2, 2017
Project Number: 228214332-002
File Number: SDAB-D-17-089

Notice of Decision

- [1] On May 18, 2017, the Subdivision and Development Appeal Board heard an appeal that was filed on April 24, 2017. The appeal concerned the decision of the Development Authority, issued on April 5, 2017, to approve the following development:

Convert a Single Detached House to a Lodging House (maximum of 4 Sleeping Units; maximum of 6 residents)

- [2] The subject property is on Plan I23 Blk 141 Lot 29, located at 10925 - 81 Avenue NW, within the RF3 Small Scale Infill Development Zone. The Mature Neighbourhood Overlay and Garneau 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, and the approved Development Permit;
- The Development Officer's written submissions;
- Written submissions and supporting materials from both Appellants; and
- One e-mail and one letter in opposition to the proposed Development

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

- Exhibit A – E-mail from B. Kropf to K. Bruce-Kavanaugh dated May 15, 2017

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.

Summary of Hearing

i. Position of the Appellants, Ms. K. Bruce-Kavanaugh and Ms. M. J. Dawson

- [8] The Appellants made a joint presentation to the Board. They are both long-term Garneau residents.
- [9] The previous owner proceeded to do renovations to the subject property and only applied for a permit when he was challenged by the Appellants. He led them to believe that the house was going to remain as a single family home and the scope of work on the permit issued on February 9, 2016, was “to construct interior alterations to an existing Single Detached House, - basement development (not to be used as an additional Dwelling).” The construction value was stated as \$8,000 on the application and there was no mention of the addition of extra bathrooms.
- [10] Realtor information prior to renovations presented the house as a single family home with three bedrooms on the main floor, 2 bedrooms on the upper floor, two bathrooms and a partially finished basement. After renovations the house had 10 bedrooms and 10 bathrooms with a kitchenette in the basement. An advertisement was taken out by the current owner offering 10 bedrooms for rent.
- [11] The previous owner of the house never obtained the required final inspection. A complaint triggered an inspection of the property on November 9, 2016. This inspection showed that the building was being operated as a lodging house and a Development Permit application was subsequently made by the current owner to convert the Single Detached House to a Lodging House. The permit was approved, with notices, for a maximum of four Sleeping Units and a maximum of six residents.
- [12] The Development Officer failed to correctly apply Policy Number 1.2 of the Garneau Area Redevelopment Plan when making his decision of approval, in particular the direction that future residential development in this area of Garneau was to be family oriented. She quoted the reasons for the policy:

These areas at present provide mainly family oriented housing. A major issue here has been the intrusion of high density redevelopment into predominantly single family residential areas. This policy will protect these residential areas by ensuring that residential redevelopment is compatible with the existing character of the area. Encouraging family oriented housing in this area of Garneau supports General Municipal Plan Policy 5B.

- [13] Section 11.2 of the *Edmonton Zoning Bylaw* gives the Development Officer authority to grant a variance for an application that does not comply with the Bylaw if 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. The Development Officer failed to apply this section correctly, as neighbouring property owners are adversely affected by the proposed development. This is demonstrated by the two affected property owners appearing today in opposition to the development as well as the eight letters of opposition contained in Ms. Dawson's submission under Tab 6 of her materials.
- [14] Section 11.3 of the *Edmonton Zoning Bylaw* was also not applied correctly as there is no "unnecessary hardship or practical difficulties peculiar to the Use, character, or situation of land or a building, which are not generally common to other land in the same Zone" associated with the proposed development. The Development Officer granted the variance as the site area was not large enough for a lodging house; however, having a lot size less than 800 square metres is not unusual for south Garneau and should not be considered an unnecessary hardship. Tab 4 of Ms. Dawson's materials shows that the average lot size along this block is just over 400 square metres.
- [15] Tab 5 of her materials provides examples of properties with a site area greater than 800 square metres in South Garneau. This illustrates that there are properties in the Garneau neighbourhood where a discretionary use Lodging House could be applied without the requirement for such a large variance.
- [16] The size of the relaxation granted to the site area from 800 square metres to 404 square metres cannot reasonably be described as a variance, but instead represents an effective change to the zoning requirements themselves.
- [17] Enforcing a non-compliant development is difficult and costly; therefore it is important to get things right from the start. If not for complaints, the City would not have known about this illegal Lodging House.
- [18] The configuration of the house exceeds the development limit of four sleeping units. Had the previous owner not circumvented the correct process, the Development Officer would have addressed any issues before construction happened. Houses in Garneau flip often and there is nothing to stop a future owner from renting out all 10 rooms.
- [19] Garneau is one of the oldest communities in Edmonton, and its central location makes it popular with a mix of young families, seniors, young professionals and students. Family oriented development is especially encouraged in the Garneau Area Redevelopment Plan Policy Number G.1: "Future residential development in Garneau will, where possible, provide for a mix of unit types as defined by size, amenity space and access and family oriented housing will be especially encouraged".

- [20] Ms. Bruce-Kavanagh presented statistics from the 2016 Municipal Census which shows that 12.72 percent of the properties in Garneau are owner occupied, 56.27 are rented and 31.01 provided no response. This is a ratio of four rental properties to every owner occupied property. Rentals should be treated differently as they are not family oriented ownership.
- [21] The Development Officer stated that there is a capacity for up to 29 Congregate Living Facilities in the Garneau neighbourhood as per the threshold regulations of Section 96 of the *Edmonton Zoning Bylaw*. Current records show approval for only eight Congregate Living Facilities within the neighbourhood (no addresses were provided).
- [22] These records are seriously out of date and many congregate living facilities exist in Edmonton without proper permits. There is already an excess of congregate living facilities on this block with two on the north side and one on the south side and the Appellants believe there are two additional facilities operating on the south side of the block. They do not know if there are permits in place for any of these facilities. It is incumbent on the City of Edmonton to establish the actual number of congregate living facilities on the block prior to approving another permit. Compliance with section 96 of the *Edmonton Zoning Bylaw* is not possible unless the City's records are complete.
- [23] The Development Officer stated that the maximum occupancy of the proposed Lodging House is the same as a Single Detached House with a Secondary Suite. These are both Permitted Uses in the RF3 Small Scale Infill Development Zone and could house six unrelated persons with a required site area of only 360 square metres. The Appellants feel the two types of developments cannot be compared. A lodging house is not family oriented. A Secondary suite owner generally lives on the property and maintains it to higher standards. A Lodging House does not have the owner present. The renters change from year to year and do not care about the condition of the property.
- [24] Ms. Bruce-Kavanaugh lives directly next door to the proposed development and feels that a Lodging House affects the enjoyment of her property. Her experience is there are problems associated with Lodging Houses such as drug and other crime issues, lack of maintenance, snow not being cleared and lawns not being maintained. Police are often called to these types of facilities. Lodging House tenants are more transient in nature and have no commitment to the community.
- [25] Parking is another real problem on this block and is restricted to those with parking passes during certain times of the day. Lodgers can obtain parking passes, adding to the problem, and often keep using the passes even after they move away.
- [26] While this application is for six people, their main concern is that if a house is configured to support ten people there is nothing to prevent ten rooms from being rented out in the future. Their experience is that this property has been operating as a ten person Lodging House in the past. They are concerned if this development is approved, a precedent will be set. The overall density of the block is already a concern.

- [27] No community consultation was conducted prior to the approval of the Development Permit.
- [28] Ms. Bruce-Kavanagh referred to an e-mail from B. Kropf, who has 43 years of City planning practice in Edmonton, 26 of those as a Planning Manager with the City of Edmonton. (marked Exhibit A). She read the following statement from this Exhibit: “Finally, it is generally accepted practice in Professional Planning that a variance should not be used to permit a “Use” which is otherwise not permitted. A semi-detached development is not permitted on a lot that is too small, and to allow a semi-detached development on the same size lot as a duplex “use” is tantamount to changing the zoning regulation, not simply modifying or easing it”. While the development referred to is a duplex, the principle outlined in the e-mail applies here as well.
- ii. Position of Affected Property Owner, Laura Siemens in Support of the Appellant*
- [29] Ms. Siemens is an affected property owner within the 60 metre notification zone and has lived in the neighbourhood for three years.
- [30] She has read the City of Edmonton Redevelopment Plan extensively and praised the family oriented housing plan. She is happy to see young families and baby carriages in the neighbourhood, which shows the plan is working, and encouraged the Board to “stay the course”.
- [31] A Lodging House is a revenue-generating venture which requires a business licence to operate. It is not family oriented and that is not the intention of this area.
- [32] She spoke from the point of view of a developer who does the research and commits to investing within the community. It is important to ensure the same rules apply to all. If a feeling of uncertainty is created by allowing large variances, business and investment will slow down, and smaller developers will not want to come into Garneau.
- [33] Parking is already at a premium and the Lodging House will result in more parking permits being issued. Patrons of businesses along 82 Avenue often park along 81 Avenue during the evenings to avoid paying for parking, which exacerbates the parking situation. Ms. Siemens is often unable to find nearby parking for her own vehicle. Despite providing ownership documents to the City, she has been unable to obtain a parking permit because her vehicle has British Columbia licence plates.
- [34] It is difficult for contractors to park in the neighbourhood and she provided an example of a Telus service vehicle which was ticketed despite having flashing lights on. A home owner has to watch for a bylaw officer to prevent contractors from getting ticketed.
- [35] From a psychological point of view, she feels the logic for requiring a site area of 800 square metres is to avoid putting too many people in “pigeon holes”. If there are four separate units, each resident could have a guest on a Saturday afternoon and all need areas to relax. If people are packed in like mice it is too stressful.

- [36] She does not believe the back yard amenity area is adequate. There is not enough space for four sets of people wanting to enjoy the day. One person may want to listen to a radio while conversing with friends while someone else may want to have a quiet spot to sit and read. There is not enough personal bubble space and tenants will be pushed right up to neighbouring property lines.
- [37] The above are small things that affect the neighbouring residents but each one adds another layer of difficulty.
- iii. *Position of the Development Officer, Mr. K. Bacon*
- [38] Mr. Bacon confirmed that the Development Permit Application complies with all the *Edmonton Zoning Bylaw* requirements, other than the Site Area. There are no other approved congregate living facilities on this block.
- [39] The Development Officer then proceeded to answer questions from the Board.
- [40] The proposed development would have the same impact as a Single Detached House with a Secondary Suite. These are both Permitted Uses within the RF3 Small Scale Infill Development Zone and would require a Site Area of only 360 square metres and could allow six unrelated tenants. The proposed Site Area for this Lodging House is 404 square metres. The conditions of the permit allow for only four bedrooms with a maximum occupancy of six people.
- [41] Any rental situation is a business, and this point of concern is not limited to Lodging Houses.
- [42] In terms of being family oriented, he considered the advice to the Development Officer contained within the Garneau Area Redevelopment Plan regarding Discretionary Uses within the RF3 Small Scale Infill Development Zone. The proposed development preserves the Single Detached Housing form and has individual access to Grade and access to an at Grade outdoor amenity area (private rear yard). The development is completely compatible with the surroundings.
- [43] No community consultation was required as the required variance to the Site Area stems from the underlying RF3 Small Scale Infill Development Zone rather than the Mature Neighbourhood Overlay.
- [44] There is a hardship associated with this Site as there is no way to make the Site larger.
- [45] The *Edmonton Zoning Bylaw* does not regulate a required square footage for the amenity area. The proposed Lodging House, with conditions, would have the same impact on the neighbouring property owners as a permitted Single Detached House with a Secondary Suite.

- [46] The approved plans clearly show four bedrooms and doors have been removed from the re-labelled rooms. The permit has been conditioned appropriately and the owner will require a building permit followed up with a final inspection to ensure the development is up to code. Any complaints would be handled by Bylaw Enforcement.
- [47] The *Edmonton Zoning Bylaw* does not regulate the number of bathrooms. As long as the rest of the house is being used as conditioned, the bathrooms may remain.
- [48] In his view, the proposed development meets the definition of “Family Oriented Dwelling” as defined in Section 6.1(36) of the *Edmonton Zoning Bylaw*.
- [49] Future residential development, as referred to in Policy No. G1 and Policy 1.2 of the Garneau Area Redevelopment Plan, applies to any type of development that requires a permit. It could be a redevelopment of an existing building or a tear-down and reconstruction. When these policies were written both the built form and the Use were contemplated.
- iv. Position of the Respondent, Mr. R. Lister*
- [50] Mr. Lister would like to provide some clarity about the history of the house.
- [51] The advertisement for 10 rooms was placed prior to the purchase of the home and was intended to act as a feeler to test out rental prospects. Only one reply was received in response to this ad.
- [52] He does not personally plan to live in the home and purchased it as a rental property. His intent was to generate some income by providing student housing. He wrongly assumed that everything was approved and he could legally rent out 10 suites. He is now taking steps to correct the issues.
- [53] The house is currently rented out to Mr. Lister’s cousin who has sublet it to two of his children and various other relatives. There are currently eight renters in the house with two downstairs bedrooms, two main floor bedrooms and three upstairs bedrooms being occupied. He acknowledges that the two downstairs renters will have to move out and that at one point, there were ten renters in the property for approximately two months.
- [54] Parking will likely not be an issue as the property is in close walking and biking distance to the University of Alberta, so the tenants will not require vehicles.
- [55] There was some confusion as to the type of permit he should apply for. He did not apply for Single Family Housing with a Secondary Suite as there is no kitchen in the basement – only a wet bar. Also all the basement windows would have to be changed to meet safety codes. He intends to remove the doors from the basement rooms and revert the rooms back to living room and/or study areas.

- [56] There could be up to six unrelated people living within the house at any one time so he went ahead and applied to develop a Lodging House. His intent is to have only four bedrooms; he has no intention of turning this property into a rooming house for ten people.
- [57] Mr. Lister formerly resided in Summerside and there were four related adults and eight children living in his neighbour's house. He could rent this property out as a Single Family Dwelling and end up with 12 people living in the house.
- [58] He is not in partnership with the former owner and he is the sole owner of the property. The Development Permits were applied for prior to the sale of the house and he had no knowledge of these outstanding permits.
- [59] At the time of purchase, this property was newly renovated and he would like to maintain that level of quality. He does not want to deal with complaints from neighbours and will personally look after the upkeep including snow removal and lawn maintenance.

v) *Rebuttal of the Appellants*

- [60] The appellants declined the opportunity for rebuttal.

Decision

- [61] The appeal is ALLOWED and the decision of the Development Authority is REVOKED. The development is REFUSED.

Reasons for Decision

- [62] Lodging Houses are a Discretionary Use in the RF3 Small Scale Infill Development Zone. The Board must therefore consider whether the proposed discretionary development is (a) compatible with the surrounding neighbourhood, and (b) the variance in Site Coverage will not result in undue interference with the amenities of the neighbourhood, nor materially interfere with or affect the use, enjoyment or value of neighbouring parcels of land, pursuant to section 687(3)(d) of the *Municipal Government Act*.
- [63] In considering the compatibility with the area, the Board has found the following:
- a) The evidence is inconclusive that there may or may not be legally existing Lodging Houses on the block and in the area, however the Development Officer, from their internal review, indicated that there were no other approved congregate living facilities on this block thus making this, if the Appeal was granted, the only approved congregate living facility on the block.

- b) The Board did not rely on the previous plans for the development that indicated more bedrooms and bathrooms than would normally be associated with four sleeping units for a maximum of six unrelated residents but dealt with the application as applied for.
- c) The Board considered the Garneau Area Redevelopment Plan with its emphasis on family oriented housing when considering redevelopment of a site. Section 6.1(36) of the *Edmonton Zoning Bylaw* defines Family Oriented Dwellings as:

Family Oriented Dwelling means a Dwelling suitable as a residence for a Household with children and meeting the following criteria:

- a. the lowest Storey of the Dwelling is no higher than the third Storey of the building;
 - b. the Dwelling has two bedrooms or more, and the average number of bedrooms per Dwelling is not less than 2.25 for all such Dwellings in a development;
 - c. the Dwelling has individual and private access to Grade, except that in the case of Stacked Row Housing access to Dwellings above the first Storey may be shared by two Dwellings; and in the case of Apartment Housing, access to Dwellings above the first Storey may be shared, provided that entrances to not more than six Dwellings are located on any one Storey or landing; and
 - d. the Dwelling has direct access to a Private Outdoor Amenity Area;
- d) Upon review of the plans, the Board could not agree with the Development Officer's conclusion that this Lodging House meets the definition of a Family Oriented Dwelling.
 - e) The Board heard, notwithstanding that there are no parking variances, that parking is stressed in the neighbourhood. On-street parking is restricted and resident parking permits are required. The more occupants at a specific address, the more parking passes are handed out and the Board finds that the proposed development will contribute to the stressed parking and would have a material impact on the neighbourhood.
 - f) The Board received written submissions from two affected neighbours, one of whom appeared before the Board today, in support of the appeal. One of the Appellants is a directly adjacent neighbor and would be considered one of the most affected by this development. The Board accepts that the increased intensity of the Lodging House use indicated by the Appellant would have a material impact in the neighbourhood. The Board was also provided with eight further written letters supporting this appeal. No one, other than the Respondent, appeared in person and no written representations were received in support of this development.

[64] In considering the requested variance in Site Area, the Board has found that:

- a) The site is 404 square metres. The deficiency in the Site Area is 396 square metres. While this variance represents an almost 50% deficiency in the regulation, the Board did not consider the size of the variance but what impact there would be on the neighbourhood should this variance be granted.
- b) The majority of sites on this block are all approximately the same size.
- c) Notwithstanding that there is full compliance with all other zoning regulations and this development is built to look like a single family dwelling, the Board finds that the proposed use would create an increase in intensity of use by the occupants of the property given that there is the potential for up to six unrelated residents who may reside in this development.
- d) Section 140.4(25)(b) of the *Edmonton Zoning Bylaw* states that a minimum of 200m² of Site Area be provided for each sleeping unit in the Lodging House. With respect to this application, which is for four Sleeping Units, the minimum Site Area required would be 800m². While a Lodging House is a listed Discretionary Use, it requires a minimum Site Area to provide for any increase of intensity in the use by ensuring the Site Area is sufficient to ensure that there is no impact on the neighbourhood. The smaller size of this Site does have an impact on the occupant's enjoyment of the property, due to the use of a more confined space on the property. Therefore, the Board has determined that a Lodging House on the smaller lot will have a negative impact on the community.

[65] Under section 687(3)(a.1) of the *Municipal Government Act*, the Board must also comply with the statutory plans in effect. In the case of the subject development, the Garneau Area Redevelopment Plan (the "ARP") is applicable.

[66] With respect to General Policy No. 1 and Policy 1.2 of the ARP, the Board does not accept the Development Officer's interpretation that Lodging Houses meet the objective of these policies, which focus on family oriented character and development. The policies state:

Policy Number G1

Future residential development in Garneau will, where possible, provide for a mix of unit types as defined by size, amenity space, and access and family oriented housing will be especially encouraged.

Policy Number 1.2

Future residential development in the area north of 87 Avenue and south of Whyte Avenue will be encouraged to be compatible with existing structures in the following ways:

- i) Be family oriented.
- ii) Be low rise structures
- iii) Will be compatible with the siting, grade elevations, height, building types and materials characteristic of surrounding single detached development.

The Board agrees with the Development Officer that the two policies deal not only with built form but also to Use. It is the increase in intensity of Use that the Board has determined to have a material impact on the neighbourhood.

- [67] Although the Board acknowledges that a Lodging House provides for “a mix of unit types” in the area as per Policy Number G1, the Board also finds that based on the information presented and for the reasons set out in paragraph 63, the proposed development is not “family oriented housing”. Given that Policy Number 1.2 also stresses that future residential development in this area “be family oriented”, the Board finds that the ARP has placed an emphasis on family oriented development, and that the proposed Lodging House is not compatible with this policy.
- [68] The Board finds that the proposed development will unduly interfere with the amenities of the neighbourhood and will materially interfere with or affect the use, enjoyment or value of neighbouring parcels of land.

Vincent Laberge, Presiding Officer
Subdivision and Development Appeal Board

Board Members Present

Ms. P. Jones; Ms. N. Hack; Mr. J. Kindrake; Ms. G. Harris

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. 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.
2. 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.