



**EDMONTON
TRIBUNALS**

*Subdivision &
Development
Appeal Board*

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Date: June 3, 2016
Project Number: 177926024-016
File Number: SDAB-D-16-125

Notice of Decision

[1] On May 19, 2016, the Subdivision and Development Appeal Board heard an appeal that was filed on **April 25, 2016**. The appeal concerned the decision of the Development Authority, issued on April 13, 2016, to refuse the following development:

Construct exterior alterations to an existing Semi-Detached House (change roof structure, add eaves and ridge to roof)

[2] The subject property is on Plan I23 Blk 141 Lot 18, located at 10958 - 80 Avenue NW, within the RF3 Small Scale Infill Development Zone. The Mature Neighborhood Overlay and Garneau Area Redevelopment Plan apply to the subject property.

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

- A Development Permit Application, including the plans of the proposed Development;
- The refused Development Permit;
- The Development Officer's written submissions;
- The Appellants' written submissions, including letters of support; and
- Three letters of opposition.

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

- Exhibit A – Copy of the original Development Permit for a Duplex House;
- Exhibit B – Excerpt from the Garneau Area Redevelopment Plan; and
- Exhibit C – Additional letter of support

Preliminary Matter

[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 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 Appellant, Kevin Haldane, on behalf of Arthouse Residential*

[7] The Appellant stated that the owner of the property has lived in the Strathcona/ Garneau area for several years and currently lives a few blocks north of the proposed development. Building a Duplex allows her to rent to a tenant and supplement her income. A Duplex development is ideal for a young family but also a multi-generational family, who can all live together, but with separate spaces. This type of development is supported by City Council as set out in Policy G.1 of the Garneau Area Redevelopment Plan, which states

It is the Policy of Council that:

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.

[8] The Board is bound to comply with statutory plans as per Section 687(3)(a.1) of the *Municipal Government Act*. Further, the Appellant argued that the proposed development meets the variance test set out in Section 687(3)(d), that is whether the proposed development would unduly interfere with the amenities of the neighbourhood, or materially interfere with or affect the use, enjoyment or value of neighbouring parcels of land.

[9] The Appellant provided a history of the development on the subject site.

[10] Under Tab 1, the Appellant provided a copy of the refused Development Permit which forms the basis of this appeal. The required variance is an excess of 0.38 metres in maximum allowable Height, measured from the midpoint to the ridgeline of the roof, as set out in Section 52.2(c). This amounts to a value of just under 16 inches. Under Tab 5 is an illustration of the how minute this variance is compared the entire development.

[11] The Appellant submitted Exhibit A, a Copy of the original Development Permit for a Duplex House. This application was made on August 20, 2015 and approved as a Class A Permit with no variances on October 22, 2015. The plans submitted for that application are located under Tab 2. As shown on the west elevation, the plans include a variety of roof styles, both hip and gable. The gables are facing east/west. The proposed design called for a

walk-out balcony on the north side of the lot. During construction, it was determined that the design could be improved if the gables are facing north/south and the balcony was moved to the south. This would make the home less imposing from 80 Avenue and reduce the intrusion into the adjacent neighbour's yard.

[12] The Appellant submitted under Tab 3 a copy of those redesigned plans. The south elevation now shows the walk-out balcony. The builder reasonably assumed as there was only a change in orientation of the house and no change in Height, no variance would be required. This was supported by a comparison of the south elevation of both the original and proposed redesign. The measurements on both plans were equal. Unfortunately, the house was now slightly in excess of the maximum allowable Height from midpoint to the ridge line of the roof, by the Development Officer's calculation.

[13] When it became apparent that a variance would be required for the redesigned plans, the builder wanted to find a solution, as going back to the original plans would take considerable effort and expense at this point in building process so proposed a "flat" roof versus a "peaked" roof. Those plans are located under Tab 4 and were approved in February 2016 with no variance. However, the builder and client ultimately decided they were not happy with this solution and proceeded with the application currently before the Board.

[14] With regards to the community consultation performed, the Appellant stated that his client went door-to-door explaining the variance in detail with accompanying documents. He spoke to a mixture of tenants/owners. Many members of the community supported the minimal increase in height, as evidence under Tab 9. The Appellant also provided an additional letter of support today, Exhibit C, which he wanted to ensure the Board was aware that it was from his client, who also resides in the 60 metres notification radius.

[15] With regards to the letters of opposition received by the Board, the Appellant suggested these individuals appeared more concerned with "bylaws", "rules", and "processes" being followed, but not necessarily addressing the Board's test under Section 687(3)(d) if the *Municipal Government Act*, as set out above.

[16] Under Tab 10, the Appellant provides pictures of the neighbourhood. It was his opinion that the proposed development is in keeping with the neighbourhood, specifically tall, imposing homes. Some houses do appear even higher, but this could be a result of their age and the fact that grades have been calculated differently over time.

[17] Upon questioning from the Board, the Appellant stated there has been only a change in the layout of the floorplan, but no increase in space. He stated that the peaked roof looks better than a flat roof and probably provides better water run-off and air circulation. The exterior of the proposed development is a mixture of cedar siding and metal siding.

ii) *Position of the Development Officer, Brandon Langille*

- [18] The Development Officer confirmed the Duplex House was originally approved with no variances.
- [19] The Development Officer confirmed that revised plans were submitted because of a design change, not because of any neighbor complaint.
- [20] The Development Officer confirmed the Height of the proposed development to midpoint is 8.51 metres and does not violate the maximum allowable height found in Section 814.3(13) of the Mature Neighbourhood Overlay.
- [21] The Development Officer has no power to vary Height as set out in Section 11 of the Edmonton Zoning Bylaw.
- [22] The Development Officer asked the Board to include two standard conditions found in his written submission if they approved the Development Permit.
- [23] The Development Officer also asked the Board to change the scope of the Development Permit “to construct exterior alterations to an existing Duplex House (change roof structure, add eaves and ridge to roof)”, as opposed to a Semi-Detached House. The original application was for a Duplex house and the development meets the definition of Duplex House under the Edmonton Zoning bylaw.
- [24] The Development Officer did not consider the question of whether the proposed development would unduly interfere with the amenities of the neighbourhood, and materially interfere with or affect the use, enjoyment or value of neighbouring parcels of land.

iii) Rebuttal of the Appellant

- [25] The Appellant confirmed with the Board the timeline of the various Development Permits approvals and refusals and accompanying plans.
- [26] The Appellant confirmed that new plans were submitted to the Sustainable Development Department when it became apparent that the original plans were not going to match what was being built.
- [27] The Appellant agreed with the conditions suggested by the Development Officer and agreed with the Use Classification of a Duplex House.

Decision

[28] The Board find that the proposed development is a Duplex House as per the definition set out in the Edmonton Zoning Bylaw, and with the agreement of both parties.

[29] Therefore, the Board amends the scope of the Application to:

To construct exterior alterations to an existing Duplex House (change roof structure, add eaves and ridge to roof)

[30] Based on the amended application, the Board decides that the appeal is ALLOWED and the decision of the Development Authority is REVOKED. The development is GRANTED, subject to the following CONDITIONS:

1. Immediately upon completion of the exterior alterations, the site shall be cleared of all debris.
2. As far as reasonably practicable, the design and use of exterior finishing materials used shall be similar to, or better than, the standard of surrounding development.

In granting the development the following variances to the Zoning Bylaw are allowed:

1. The excess 0.38 metres in maximum allowable Height, measured from the midpoint to the ridgeline of the roof, as set out in Section 52.2(c).

Reasons for Decision

[31] Duplex Housing is a Permitted Use in the RF3 Small Scale Infill Development Zone.

[32] The Board finds, based on the pictorial evidence provided, that the proposed roof line is consistent with neighbouring properties. Further, most houses are large and already have a massing effect. Therefore, there will be minimal impact on the visual effect on the community.

[33] Although three letters of objection were received, the Board accepts, with the numerous letters of support received, that the majority of the neighbourhood supports the proposed development.

[34] The Board finds, based on the evidence submitted, the proposed development would not unduly interfere with the amenities of the neighbourhood, nor materially interfere with or affect the use, enjoyment or value of neighbouring parcels of land.

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

Board Members: Mr. Somerville, Mr. Nagy, Ms. McCallum, Mr. Wall

Important Information for the Applicant/Appellant

1. This is not a Building Permit. A Building Permit must be obtained separately from the Sustainable Development Department, located on the 5th Floor, 10250 – 101 Street, Edmonton.
2. Obtaining a Development Permit does not relieve you from complying with:
 - a) the requirements of the *Edmonton Zoning Bylaw*, insofar as those requirements have not been relaxed or varied by a decision of the Subdivision and Development Appeal Board,
 - b) the requirements of the *Alberta Safety Codes Act*,
 - c) the *Alberta Regulation 204/207 – Safety Codes Act – Permit Regulation*,
 - d) the requirements of any other appropriate federal, provincial or municipal legislation,
 - e) the conditions of any caveat, covenant, easement or other instrument affecting a building or land.
3. When an application for a Development Permit has been approved by the Subdivision and Development Appeal Board, it shall not be valid unless and until any conditions of approval, save those of a continuing nature, have been fulfilled.
4. A Development Permit will expire in accordance to the provisions of Section 22 of the *Edmonton Zoning Bylaw, Bylaw 12800*, as amended.
5. This decision may be appealed to the Alberta Court of Appeal on a question of law or jurisdiction under Section 688 of the *Municipal Government Act*, R.S.A. 2000, c. M-26. If the Subdivision and Development Appeal Board is served with notice of an application for leave to appeal its decision, such notice shall operate to suspend the Development Permit.
6. When a decision on a Development Permit application has been rendered by the Subdivision and Development Appeal Board, the enforcement of that decision is carried out by the Sustainable Development Department, located on the 5th Floor, 10250 – 101 Street, Edmonton.

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



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Date: June 3, 2016
Project Number: 187084010-001
File Number: SDAB-D-16-126

Notice of Decision

[1] On May 19, 2016, the Subdivision and Development Appeal Board heard an appeal that was filed on **April 25, 2016**. The appeal concerned the decision of the Development Authority, issued on April 4, 2016 to approve the following development:

Park a boat in the required Front Yard (1.83 metres by 6.71 metres) on hardsurfaced separated tire tracks

[2] The subject property is on Plan 9322287 Blk 26 Lot 76, located at 15611 - 59 Street NW, within the RF1 Single Detached Residential Zone. The Pilot Sound Area Structure Plan and Hollick Kenyon Neighbourhood Structure Plan apply to the subject property.

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

- A Development Permit Application, including the plans of the proposed Development;
- The approved Development Permit;
- The Development Officer's written submissions;
- The Appellants' written submissions; and
- The Respondents' written submissions.

Preliminary Matter

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

[5] The appeal was filed on time, in accordance with Section 686 of the *Municipal Government Act*, R.S.A 2000, c. M-26.

Summary of Hearing

i) Position of the Appellants, Duane & Fatima Grzyb

[6] The Board received correspondence from the Appellants that they were unable to attend the hearing, but asked the Board to proceed on the basis of their written submission. The Board reviewed the Appellant's submissions:

We are concerned that having a boat parked on the front lawn of the property that is located as the first property of our street will look rather trashy. This person has the biggest property on the block and numerous vehicles already parked in his driveway and on the street. So many, in fact, that it is doubtful that he uses his three car garage for vehicles. There are boats, trucks, vans, construction equipment there regularly. Several of us on this same street rent storage space for our RV's and cars. Personally, I rent 3 parking stalls, an RV stall and a boat space. He should have to do the same. Bylaw visits my house on a regular basis as someone on my street complains that I park a vehicle on the street. Surely parking a boat in one's front yard is not acceptable.

I do not think it is appropriate to park a motor boat on one's front lawn. This person has already been parking his truck on his front lawn, perhaps in an effort to "try it out". Not acceptable." [Unedited]

ii) Position of the Development Officer, Fiona Hetherington

[7] The Development Officer stated that although the proposed development did not meet certain sections of the Bylaw, she exercised her variance power to approve the development for several reasons.

[8] The Development Officer felt that a variance was warranted because the proposed development would 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.

[9] Further, it was the Development Officer's opinion, that there was a hardship associated with the site because it is a side drive garage. The boat can be parked on the driveway without a permit; however, this would limit access to the garage and remove extra spaces on the driveway. The boat would not fit in the garage because it was 6.71 metres long and the garage is only 6.6 metres long. The site exceeds the required number of parking spaces and has the appropriate space for a proper turning radius. It was her belief that it would be more aesthetically pleasing to have the boat parked in the Front Yard hidden by landscaping rather than on the driveway.

[10] Lastly, the Development Officer approved the Development Permit with several conditions. The approval was granted for only the size of the current boat. A new permit would need to be applied for if a larger boat was obtained. Landscaping is to be done in accordance with the stamped and approved landscaping plan. The type of shrubbery proposed is intended to provide privacy and screening. A Russian olive tree currently on site is to remain. The Development Officer did not specify the minimum allowable height of the proposed shrubbery and conceded it may take a few years before the screening would occur.

[11] When asked by the Board if the Development Officer would approve something similar for the neighbour to the west, she indicated probably not because the subject site was unique in its circumstances.

iii) Position of the Respondents, Thomas & Angela Hawrylak

[12] The Respondents provided a detailed written submission which the Board reviewed. They also agreed with the Development Officer's submissions.

[13] To the north of the subject site is a walking path/park area with access to the Storm Water Pond. The Respondents do not have access to the rear of their property. There are postal mailboxes located in front of the public park area. They have 4 licensed drivers in their home.

[14] The Respondents purchased their home this past August. Since then, they have undertaken extensive repairs in an effort to restore the property. The proposed area where the boat is to be parked is in a state of disrepair. They planned to hire a professional landscaping company and re-do it to make it more aesthetically pleasing, which included the installation of crushed gravel.

[15] The Respondents currently rent space to store their recreational vehicle. Loading and unloading this vehicle is already cumbersome because of the garage orientation. They did not want to obtain storage for the boat as legally they are allowed to store it on the driveway, but would rather not, as it limits the use of the garage. Plus, they are able to better maintain the boat if located at the home. They intend to provide significant landscaping to hide the boat and agreed with the Development Officer that it would be more aesthetically pleasing to have the boat parked in the Front Yard hidden by landscaping rather than on the driveway.

[16] The Respondents would accept a condition which specified the height of the proposed shrubbery.

Decision

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

Reasons for Decision

[18] The Board does not accept the submission that the orientation of the garage creates a hardship as the boat can still be legally parked on the driveway, and maintain the minimum required number of parking spaces and appropriate turning radius, albeit with not the easiest of use.

[19] The Board does not accept the submission that the boat would be more aesthetically pleasing in the Front Yard, in violation of Section 54.2(2)(e)(i) and Section 45.7, than on the driveway.

[20] The Board finds the conditions imposed, including the landscaping conditions, do not adequately mitigate any potential adverse effect from the proposed development.

[21] The Board finds, based on the evidence submitted, that the proposed development would unduly interfere with the amenities of the neighbourhood, and materially interfere with and affect the use, enjoyment and value of neighbouring parcels of land.

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

Board Members: Mr. Somerville, Mr. Nagy, Ms. McCallum, Mr. Wall

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 - c) the *Alberta Regulation 204/207 – Safety Codes Act – Permit Regulation*,
 - d) the requirements of any other appropriate federal, provincial or municipal legislation,
 - e) the conditions of any caveat, covenant, easement or other instrument affecting a building or land.
3. When an application for a Development Permit has been approved by the Subdivision and Development Appeal Board, it shall not be valid unless and until any conditions of approval, save those of a continuing nature, have been fulfilled.
4. A Development Permit will expire in accordance to the provisions of Section 22 of the *Edmonton Zoning Bylaw, Bylaw 12800*, as amended.
5. This decision may be appealed to the Alberta Court of Appeal on a question of law or jurisdiction under Section 688 of the *Municipal Government Act*, R.S.A. 2000, c. M-26. If the Subdivision and Development Appeal Board is served with notice of an application for leave to appeal its decision, such notice shall operate to suspend the Development Permit.
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Date: June 3, 2016
Project Number: 218781092-001
File Number: SDAB-D-16-127

Notice of Decision

[1] On May 19, 2016, the Subdivision and Development Appeal Board heard an appeal that was filed on **April 16, 2016**. The appeal concerned the decision of the Development Authority, issued on April 11, 2016, to approve the following development:

Erect a Fence higher than 1.2 metres in a Front Yard to 1.83 metres in the Front Yard

- [2] The subject property is on Plan ND Blk 20 Lot 32, located at 9544 - 106 Avenue NW, within the RF6 Medium Density Multiple Family Zone. The Boyle Street/McCauley Area Redevelopment Plan applies to the subject property.
- [3] The following documents, which were received prior to the hearing and are on file, were read into the record:
- A Development Permit Application, including the plans of the proposed Development;
 - The approved Development Permit;
 - The Development Officer's written submissions; and
 - The Respondent's written submissions.

Preliminary Matter

- [4] At the outset of the appeal hearing, the Presiding Officer confirmed with the parties in attendance that there was no opposition to the composition of the panel.
- [5] The appeal was filed on time, in accordance with Section 686 of the *Municipal Government Act*, R.S.A 2000, c. M-26.

Summary of Hearing*i) Position of the Appellant, Barbara Laidlaw*

[6] After filing her appeal online, the Appellant received a letter in the mailbox from the Respondent, which provided her with more detail regarding the proposed development. The Respondent suggested to the Appellant, in this letter, that the Appellant consider withdrawing her appeal as it was an unnecessary endeavor and an ineffective use of time for all parties involved. The Respondent took offence as it was her right to appeal if a variance had been granted, which, in her opinion, had an effect on her.

[7] The Appellant clarified that she was nominated for a “Front Yards in Bloom” award, but won an award for a bird feeder.

[8] The Appellant suggested that the house built on the proposed site is already tall, and she was concerned that the proposed fence would block her sunlight even more. Infill development is supposed to rejuvenate but also match a neighbourhood. This fence does not match the characteristics of the neighbourhood. She did not appeal the approval of the house.

[9] The Appellant stated that a murder did take place in the area last week, but suggested that murders take place throughout Edmonton. She has lived at this property for several years and she has had minimal security concerns.

[10] The Appellant did clarify that originally she thought it might be a wooden fence, but has since learned it is wrought iron and conceded that it would have less of an effect on sunlight penetration.

ii) Position of the Development Officer, Stacy Watts

[11] The Development Officer felt there was some hardship with the property. It is located on a busy road and there are some security concerns. The proposed fence design allows sunlight penetration and maintains open sightlines. The fence materials used exceeds the neighbourhood standard. The approval of the overheight fence is supported by the Boyle Street/McCauley Area Redevelopment Plan.

[12] Upon questioning from the Board, the Development Officer was of the opinion even a small increase in height prevents individuals from stepping over the fence into the yard.

iii) Position of the Respondent, Cameron Grayson

[13] The Respondent asked the Board to review her submission. She agreed with the position of the Development Officer. Her neighbourhood is listed as one of the top 5 criminal regions. She enjoys the diversity of the neighbourhood. She is planning on using the fence materials as depicted in her photo. She would like a fence that is aesthetically pleasing that does not cut her off from the rest of the community, while providing enhanced security.

iv) Rebuttal of the Appellant, Barbara Laidlaw

[14] The Appellant does agree that a fence that complies with the maximum allowable height requirement can be just stepped over.

Decision

[15] The appeal is DENIED and the decision of the Development Authority is CONFIRMED. The development is GRANTED as applied for to the Development Authority, subject to the following CONDITIONS:

The development shall be constructed in accordance with the stamped and approved drawings. This Development Permit Authorizes the construction of an over height fence in the front yard (increase from 1.2 metres to 1.83 metres in height).

1. The fence shall be installed entirely on or within property lines.
2. The fence shall not impede any sightlines for vehicular or pedestrian traffic.
3. The fence shall not exceed 1.83 metres in height as approved in this permit.
4. The materials of the fence shall be similar to, or better than, the standard of surrounding development (Section 57.2).

Notes:

1. An approved Development Permit means that the proposed development has been reviewed against the provisions of this bylaw. It does not remove obligations to conform with other legislation, bylaws or land title instruments such as the *Municipal Government Act*, the Edmonton Building Permit Bylaw or any caveats, covenants or easements that might be attached to the Site (Section 5.2).
2. A variance was granted for this Development Permit pursuant to Sections 11.3 and 11.4. Subject to the right of appeal the permit is NOT VALID until the required Notification Period expires (date noted below) in accordance with Sections 21.1 and 17.1.

In granting the development the following variances to the Zoning Bylaw are allowed:

1. The excess of 0.63 metres in the maximum allowable Height of the fence in the Front Yard.

Reasons for Decision

[16] A fence is Accessory to a Discretionary Use in the RF6 Medium Density Multiple Family Zone.

[17] The Board finds that the fence materials being proposed are aesthetically pleasing, non-intrusive, and will allow sunlight penetration.

[18] The Board finds that there is no standard of fencing used in the area and thus the proposed development is characteristic of the neighbourhood.

[19] The Board finds the proposed fence addresses the security concerns outlined in the Boyle Street/McCauley Area Redevelopment Plan.

[20] The Board finds, based on the evidence submitted, that the proposed development would not unduly interfere with the amenities of the neighbourhood, nor materially interfere with or affect the use, enjoyment or value of neighbouring parcels of land.

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

Board Members: Mr. Somerville, Mr. Nagy, Ms. McCallum, Mr. Wall

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