



**EDMONTON
TRIBUNALS**

*Subdivision &
Development
Appeal Board*

*10019 – 103 Avenue NW
Edmonton, AB T5J 0G9
P: 780-496-6079 F: 780-577-3537
sdab@edmonton.ca
edmontonsdab.ca*

Date: June 7, 2019
Project Number: 274203217-013
File Number: SDAB-D-19-077

Notice of Decision

- [1] On May 30, 2019, the Subdivision and Development Appeal Board (the “Board”) heard an appeal that was filed on **May 1, 2019**. The appeal concerned the decision of the Development Authority, issued on May 1, 2019 to refuse the following development:

To construct exterior alterations to a Single Detached House (increase finished floor height), existing without permits.

- [2] The subject property is on Plan 1821662 Blk 22 Lot 20, located at 10808 - 129 Street NW, within the (RF1) Single Detached Residential Zone. The Mature Neighbourhood Overlay and the West Ingle 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 proposed plans and the refused Development Permit;
 - The Development Officer’s written submission;
 - A written submission from the agent for the Appellant;
 - Three emails in opposition to the proposed development from one adjacent property owner; and
 - One online response in support of the development.

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. S. Randhawa, representing Norcap Investments Ltd. and his agent, Mr. K. Cooper:*

- [7] Mr. Cooper is an Urban Planner and has worked as a consultant on many infill developments in Edmonton.
- [8] Mr. Cooper reviewed his written submission and why the required height variance would not unduly interfere with the amenities of the neighbourhood or materially affect the use, enjoyment or value of neighbouring parcels of land.
- [9] The existing house complies with the General Purpose of the RF1 Zone which is to “Provide for Single Detached Housing while allowing other forms of small scale housing in the form of Secondary Suites, Garden Suites, Semi-detached Housing and Duplex Housing”.
- [10] Photographs were referenced to illustrate that the built form of the existing single detached house is consistent with the surrounding neighbourhood context because it is one of nine new single detached houses, out of a total of 12 houses on the block face, that are all of a similar height. The remaining three houses on the block face are split level or one and a half-storey houses that are not adjacent to the subject site.
- [11] Every property within a 60-metre radius is a single detached house. There are two-storey houses on each side of the subject site and two-storey houses within the 60-metre radius that are adjacent to houses that are significantly smaller in massing and height. It is likely that the proportion of two-storey houses of a similar height will increase into the future.
- [12] The required variance is minor in nature, 0.3 metres from average grade of the lot to the midpoint of the roof and 0.2 metres from the average grade of the lot to the ridge of the roof (roof peak). It is extremely difficult for the human-eye to identify a variance in height from the roadway. Photographs of the subject house and the other four new houses on the block face illustrate that the height difference is indistinguishable. In fact, some of the architectural features used on the other houses actually make them appear higher than the subject house from the roadway.
- [13] Mr. Randhawa undertook community consultation with property owners who reside within the 60-metre notification radius and received eight signatures of support as well as a letter of support from the immediately adjacent (south) property owner.
- [14] Mr. Cooper acknowledged the three emails from the adjacent (north) property owner received by the Board in opposition to the required variance. However, it was Mr. Cooper’s opinion that the concerns expressed by this neighbour had very little to do with the variance that is being requested.

- [15] It was his opinion, based on his experience with other infill developments in Edmonton, that Mr. Randhawa has done his best to address the concerns of the neighbour in opposition. This neighbour expressed concern that because the ridge is in the centre of the roof, it will have more of an impact on sun shadowing. However, it was his opinion that this is not the case because the ridge is in the centre of the house and it does not run parallel down the entire roof. Because the ridge is focused in the centre of the roof, any shadow created by the requested eight-inch height variance will be cast on the roof of the adjacent house. It was also noted that the subject house is setback significantly from the rear property line and that the existing house already casts a shadow onto the rear yard of the neighbouring property to the north. It was his opinion that the required variance will not increase the shadowing that already exists because of existing house. The subject house and the (north) adjacent house both have east to west facing yards and both properties will obtain sun in the morning and the evening. The subject house is not being built in front of a south facing yard.
- [16] The Board previously approved a semi-detached house that required a height variance even though it was opposed by an adjacent property owner. This house has turned out to be one of the most praised houses on the infill tour in Edmonton and is used as an example of good infill development.
- [17] It is important to encourage developers to continue infill development by determining that a variance of eight inches is not significant enough to refuse a development.
- [18] Mr. Cooper and Mr. Randhawa provided the following information in response to questions from the Board:
- a) It was acknowledged that neither the Residential Infill Guidelines nor the Municipal Development Plan (“The Way We Grow”) contains policies that endorse a height variance.
 - b) Mr. Randhawa advised that his company built the subject house and the house at 10806 – 129 Street. This is the first development that height has been an issue. They relied on the expertise of Stantec. The subject house was 70 percent complete when in December 2018, a development permit inspection report was completed for both of the houses. The adjacent house at 10806 complied with the maximum allowable height requirement and the subject house did not. Stantec was contacted to determine how this had happened because he was not aware that the house was over height. This was not done intentionally. A conscious choice was made to work within the parameters of the *Edmonton Zoning Bylaw* in order to avoid the construction delays that would result from the need to seek a variance. The City subsequently contacted Stantec to discuss how to avoid this problem in the future. They also pushed back on Stantec because they want to avoid this type of situation.
 - c) The plot plan was referenced and it was confirmed that the (north) adjacent house has a front driveway and a garage in the rear yard.

d) The ridgelines on both houses run north to south.

ii) *Position of the Development officer, Mr. R. Zhou:*

[19] Mr. Zhou did not attend the hearing but provided a written submission that was considered by the Board.

Decision

[20] 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 **CONDITION**:

1. The development shall be constructed in accordance with the stamped and approved drawings.

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

1. The maximum allowable Height of 8.9 metres per section 814.3(5) is varied to allow an excess of 0.3 metres, thereby increasing the maximum allowed to 9.2 metres.

2. The maximum allowable ridge line Height of 10.4 metres per section 52.2(c) is varied to allow an excess of 0.2 metres, thereby increasing the maximum allowed to 10.6 metres.

Reasons for Decision:

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

[23] A (Class A) Development Permit (City File 274203217-001) was originally issued for a Single Detached House on March 27, 2018. The approved Height to midpoint was 8.9 metres and the approved ridge line Height was 10.3 metres. However, based on the evidence provided, an error occurred during the construction process which resulted in an increase in the finished floor Height. As a result, the existing Single Detached House is over Height and requires two variances to the *Edmonton Zoning Bylaw*.

[24] Section 814.3(5) states:

The maximum Height shall not exceed 8.9 metres.

The existing Single Detached House is 9.2 metres and exceeds the maximum allowable height by 0.3 metres.

[25] Section 52.2(c) states:

In determining whether a development conforms to the maximum Height permissible in any Zone, the following regulations shall apply:

...

- c. Where the maximum Height as determined by Section 52.1 is measured to the midpoint, the ridge line of the roof shall not extend more than 1.5 m above the maximum permitted building Height of the Zone or overlay, or in the case of a Garden Suite the maximum permitted building Height in accordance with Section 87 of this Bylaw.

The maximum allowable ridge line Height is 10.4 metres and the existing ridge line Height is 10.6 metres which exceeds the maximum allowed Height by 0.2 metres.

[26] The Board grants the variances for the following reasons:

- a) Based on a review of the photographic evidence provided, the built form of the subject Single Detached House is consistent with the surrounding neighbourhood context given that this house is one of nine new Single Detached Houses all of similar Heights on this block face that contains 12 houses in total.
- b) There are two-storey houses on both sides of the subject Site as well as two-storey houses within the 60-metre radius that are adjacent to houses that are significantly smaller in massing and Height. Based on the amount of redevelopment that is occurring in this neighbourhood, the proportion of two-storey houses of a similar Height will likely increase into the future.
- c) The requested Height variances are *de minimis* within the context of the entire built form and it would be extremely difficult for the human-eye to identify from the roadway that the subject house exceeds the maximum allowable height requirements.
- d) With the exception of one objection, the proposed development received overwhelming community support. The Appellant consulted with all property owners who reside within the 60-metre notification radius and received eight signatures of support as well as a letter of support from the immediately adjacent property owner who resides south of the subject Site.
- e) The Board acknowledges the concerns of the property owner who resides immediately north of the subject Site. However, based on a review of the plans, the roof ridge lines of the subject house and the (north) adjacent house both run north to south. There is a detached garage in the rear yard of the (north) adjacent property which will also create some shadowing in the rear yard. The Board was not persuaded that the requested variance of eight inches would exacerbate any sun shadowing that already occurs because of the existing two-storey house. Further, the Board was not provided any planning evidence that the variances would unduly interfere with the

amenities of the neighbourhood, nor that it would materially interfere with or affect the use, enjoyment or value of neighbouring parcels of land.

- f) The Board notes that a (Class A) Development Permit was originally issued to construct a Single Detached House on this site. The Appellant relied on the expertise of a reputable Surveyor during the construction process and was not aware that the building exceeded the maximum allowable Height requirements until the construction of the building was almost complete. The Board finds that the Appellant did not intentionally exceed the Height requirements and the variances are the result of an error that occurred during the construction process.

[27] Based on all of the above, the Board concludes 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.



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

Board members in attendance: Mr. V. Laberge, Mr. D. Fleming, Ms. S. McCartney, Ms. E. Solez

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.



**EDMONTON
TRIBUNALS**

*Subdivision &
Development
Appeal Board*

*10019 - 103 Avenue NW
Edmonton, AB T5J 0G9
P: 780-496-6079 F: 780-577-3537
sdab@edmonton.ca
edmontonsdab.ca*

SDAB-D-19-078

Project Number: 257883235-010

To leave as built a Single Detached House (increase building height), located at 10620 - 69 Street NW was **TABLED** to June 26 or June 27, 2019.



**EDMONTON
TRIBUNALS**

*Subdivision &
Development
Appeal Board*

*10019 - 103 Avenue NW
Edmonton, AB T5J 0G9
P: 780-496-6079 F: 780-577-3537
sdab@edmonton.ca
edmontonsdab.ca*

SDAB-D-19-079

Project Number: 257884965-010

To leave as built a Single Detached House (increase building height), located at 10622 - 69 Street NW was **TABLED** to June 26 or June 27, 2019.