



**EDMONTON  
TRIBUNALS**

*Subdivision &  
Development  
Appeal Board*

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Date: June 15, 2017  
Project Number: 175066162-002  
File Number: SDAB-D-17-093

**Notice of Decision**

- [1] On May 31, 2017, the Subdivision and Development Appeal Board heard an appeal that was filed on May 9, 2017. The appeal concerned a Stop Order issued by the Development Authority on May 4, 2017, as follows:

Revert the building back to its approved use as a Semi-detached House. This will require removing the keyed lock separation between the upstairs and downstairs floors; removing all cooking facilities from the basement level, including the stoves, the 220 volt electrical outlets which connect to the stoves, and the 220 breakers from the electrical panels associated with the stoves; reducing the occupancy of the building to a single Household for each side of the Semi-detached House. This Order is to be complied with on or before June 8, 2017.

- [2] The subject property is on Plan 290AB Blk 22 Lot 6, located at 12824 - 123A Street NW, within the RF2 Low Density Infill Zone. The Mature Neighbourhood Overlay and the Calder Neighbourhood Improvement 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 Stop Order;
- Development Officer's written submission; and
- Supporting materials of the Appellant, including a map, various correspondence and a CBC article.

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

- Exhibit A – A PowerPoint presentation from the Development Officer

**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*, RSA 2000, c M-26.

### **Summary of Hearing**

#### *i) Position of the Appellant, F. Carnovale*

- [8] Mr. F. Cappellano accompanied Mr. Carnovale and made a presentation on his behalf.
- [9] Mr. Cappellano referenced two documents which had been submitted to the Board:
- A letter to City Councillor McKeen dated May 24, 2017, which outlines their position today; and
  - A CBC news article dated June 21, 2016, quoting City Councillor Esslinger discussing illegal secondary suites in Edmonton duplexes. The article states that City staff are preparing amendments to the bylaw to allow duplexes to contain legal basement suites.
- [10] The subject property was built in the mid 1970s and a permit was issued in 1979 to build some rooms in the basement. However, two basement suites were developed. Mr. Cappellano assumed the finished work would have been inspected by the City of Edmonton. The previous owner operated the property as four separate suites from 1980 until 1997.
- [11] The current owner, Mr. F. Carnovale, purchased the property in 1997 on the understanding that it was an income property with four suites. He operated the property as such for twenty years with no enforcement from the City. He made no alterations to the property other than to perform regular maintenance. He only became aware that the basement suites were illegal at the time of the inspection.
- [12] The suites have large windows, separate entrances to the basement, their own furnaces and utilities. No safety concerns have been raised. Sufficient parking is available in the garages for all four suites and there have never been any complaints regarding parking.
- [13] The inspection by the City and the subsequent Stop Order are a result of a complaint from a person who does not live in the area and just wants to create problems.
- [14] The CBC article refers to 150 illegal duplex suites currently being investigated by the City. He suspects there are actually several thousand operating in the City. The Stop Order should be overturned until City Administration decides what to do with these suites

in a uniform fashion, not on a complaint basis. The Appellant just wants to be treated fairly.

- [15] The Appellant is aware of the law but feels the issue should be looked at from an engineer's perspective as opposed to a political perspective. Technology and Planning/Engineering standards have changed over time; the development regulations changed in 2007 or 2008 and again in 2011. Suites used to be allowed on corner lots, but are no longer permitted.
- [16] Practically speaking, the RF2 Low Density Infill Zone does not really exist anymore because basement suites are now allowed in the RF1 Single Detached Residential Zone. The RF2 Low Density Infill Zone no longer serves a purpose.
- [17] The City is happy to collect higher taxes on this property because of its fourplex status. The Appellant owns other properties in Londonderry and Calder but pays more taxes on the subject property despite the Londonderry property being in a more desirable location.
- [18] The law requires a Landlord to provide three months' notice to tenants if he is requesting them to vacate.
- [19] No application for re-zoning has been made and he does not know if such an application would be permitted by the City.
- [20] The Appellant believes the Stop Order was issued correctly and that the Development Compliance Officer was doing his job. However, there is a disconnect between Administration and Enforcement and a further disconnect between Treasury and Enforcement.

*ii) Position of the Development Compliance Officer, Mr. B. Bolstad*

- [21] Mr. Bolstad was accompanied by Ms. K. Lamont, the Supervisor of the Residential Compliance Team. Mr. Bolstad summarized the material he had previously submitted to the Board using a PowerPoint presentation (marked Exhibit A).
- [22] An inspection of the property was conducted on May 3, 2017, at which time it was verified there are four suites in the subject property.
- [23] A series of photos was shown depicting:
- An Aerial view of the property from the front and the rear;
  - The front of the building showing four mailboxes (two per side) which is a common indication of basement suites; and

- The interiors of the separate upstairs and downstairs suites on both sides of the dwelling. There are clearly separate kitchens, bathrooms, living areas, and bedrooms in each of the four suites. The upstairs and downstairs suites on each side are physically separated by locking doors.
- [24] There are no Development Permits in the current City of Edmonton database. Several historical documents were shown which had been scanned from the records vault:
- A Permit dated November 27, 1980, authorizing the construction of rooms in the basements of the Semi-detached house, subject to conditions. The stamp on the Permit states “not to be used as a suite”.
  - Two prior applications to convert the Semi-detached dwelling into a four dwelling Apartment Housing, both of which were refused
- [25] The definitions of *Semi-detached Housing*, *Apartment Housing* and *Household* were displayed. A Semi-detached House can only have one household’s worth of people on either side of the building. Secondary Suites are only permitted in Single Detached Housing within the RF2 Low Density Infill Zone and Apartment Housing is not a listed use.
- [26] He researched the Land Use Bylaws in place in 1980 and 1997. Apartment Housing was not a listed use in 1980, the date of the oldest development permit on record, nor was it a listed use in 1997 when the current owner purchased the property.
- [27] In summary, a four Dwelling Apartment House has been developed without a permit. The last approved use was for a Semi-detached House. A Development Permit may not be issued for Apartment Housing at this location. The Stop Order is asking that the property revert back to the last approved Use as a Semi-detached House.
- [28] It is current practice to allow one month to comply with a Stop Order. Time extensions can be granted if progress has been made toward compliance.
- [29] Alberta’s *Residential Tenancies Act* governs contracts between the owner of a property and the tenants. If an Owner fails to give sufficient notice to a tenant to vacate premises, it is up to the owner and the tenants to work out an arrangement such as covering moving costs or providing a month of free rent.
- [30] Mr. Bolstad agreed that the Board has the authority to vary the compliance date shown on an Order.
- [31] The Stop Order was served using regular mail and Mr. Carnovale was present at the May 3, 2017 inspection. Mr. Bolstad explained the Stop Order to Mr. Carnovale at that time.
- [32] Mr. Bolstad confirmed that under the *Municipal Government Act*, he is an authorized officer with the power to issue a Stop Order.

*iii) Rebuttal of the Appellant*

- [33] The Appellants do not intend any disrespect and acknowledge that the Development Compliance team is doing its job. They agree that the Order was issued correctly and its contents were understood at the time of the inspection.
- [34] There appears to be an ambiguity in that the City of Edmonton has one mandate and the *Residential Tenancies Act* has another mandate. There is a disconnect among the different branches of the City.
- [35] The decision to issue the Stop Order was politically motivated as opposed to a decision made based on engineering practices. They just want to be treated like everyone else.

**Decision**

- [36] The appeal is DENIED and the Stop Order is UPHeld. The compliance date of the Stop Order is VARIED from June 8, 2017 to **October 15, 2017**.

**Reasons for Decision**

- [37] The Stop Order was issued pursuant to Section 645(1) of the *Municipal Government Act*.
- [38] The Board finds that the Stop Order was properly issued by a duly authorized Officer of the City of Edmonton.
- [39] The Board further notes that the Appellant has acknowledged receipt and full understanding of the issued Stop Order.
- [40] The Board heard evidence that the existing structure was inspected by various municipal officials and there were no safety concerns identified by the City.
- [41] The Board accepts the Appellant's presentation that the current tenants in the two basement suites lease on a month to month basis and further accepts that, pursuant to the *Residential Tenancies Act*, there is a specific time requirement for notice to vacate that is to be provided to the Tenant by the Landlord. It is the Board's understanding, through the Appellant's presentation, that the tenants must be provided with 90 days clear notice to vacate.
- [42] The compliance date of June 8, 2017, indicated on the Stop Order, pre-dates the issuance of this decision. Given that the decision of this Board is being issued on June 15, 2017, the 90 days notice to vacate under the *Residential Tenancies Act* would run from July 1, 2017 to September 30, 2017. The Board therefore amends the compliance date from June 8, 2017, to October 15, 2017, which will provide the landlord a full three months to

ensure that the tenants have vacated the suites, and that all work required to decommission the suites is completed.

- [43] In varying the compliance date for this Stop Order, the Board reiterates that the subject development, as it currently exists, consists of a four Dwelling Apartment House, which is not a listed use in the RF2 Low Density Infill Zone and no Development Permit has ever been issued. This decision in no way authorizes such a Use.

Vincent Laberge, Presiding Officer  
Subdivision and Development Appeal Board

Board Members in Attendance:

Ms. K. Cherniawsky; Ms. M. McCallum; Mr. R. Handa; Mr. L. Pratt

**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 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.



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## **SDAB-D-17-094**

Application No. 242478845-001

An appeal to Replace an existing Fascia On-premises Sign (Comfort Inn & Suites), located at 10425 – 100 Avenue NW was **WITHDRAWN**.





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1770338 Alberta-JD Custom Homes  
16912 - 54 Street NW  
Edmonton AB T5Y 0R2

Date: June 15, 2017  
Project Number: 238169195-001  
File Number: SDAB-D-17-095

**Notice of Decision**

[1] On May 31, 2017, the Subdivision and Development Appeal Board heard an appeal that was filed on May 9, 2017. The appeal concerned the decision of the Development Authority, issued on May 9, 2017, to refuse the following development:

Construct a Single Detached House with front veranda, front balcony, rear uncovered deck, rear attached garage, fireplace, a Secondary Suite in the Basement and to demolish a Single Detached House and Accessory building (detached Garage)

[2] The subject property is on Plan 4798EO Blk 1 Lot 28, located at 9633 - 99A Street NW, within the RF3 Small Scale Infill Development Zone. The MNO Mature Neighbourhood Overlay and the Strathcona 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 permit application, refused permit with attachments, and revised drawings;
- Development Officer's written submissions;
- Memorandum from Transportation Planning and Engineering;
- Appellant's written submissions and supporting materials, including results of community consultation; and
- One online response in opposition to 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, JD Custom Homes Ltd.*

[7] The Appellant was represented by Mr. E. Bule, the property owner. He was accompanied by Ms. D. Coles, Design Consultant.

[8] Ms. Coles reviewed the various deficiencies and provided reasons for why variances to these deficiencies should be granted. In addition to the points raised in the written submissions, she provided the following information:

- a) The reduced front setback will not result in any obstructions. Old houses along the blockface that are near the end of their lifespans skew the setbacks substantially. To demonstrate, she referenced photographs from page four of the Appellant's supporting materials.
- b) The third storey bedroom window on the right elevation, which overlooks the rear yard of the abutting property at 9629 – 99A Street NW, will be obscured, which should mitigate any privacy concerns. This window is necessary to provide fresh air and extra lighting to the master suite.
- c) The reduced rear setback will not negatively affect the adjacent property's view of the river valley. Many homes in this community extend further back in their rear yards. The rear alley also has many shrubs and trees.
- d) Although the roof deck exceeds the allowable projection limit, the deck serves as the roof of the garage. A reduction in the deck's projection would make the garage unusable. Shrubbery will be introduced to mitigate the roof deck's impact upon privacy.
- e) The increased Height is needed to allow the addition of greenery and solar panels, as well as an elevator shaft. The proposed Height will not be taller than the other houses on the blockface. Due to the way that the street is sloped, it is difficult to maintain a basement elevation of less than 1.2 metres. Numerous houses in the area share a similar situation.
- f) The prohibition against rear attached garages under the MNO does not capture the nuances of this particular neighbourhood, as there are already three attached garages on this street. The proposed rear attached garage will be easier to access, particularly during winter months, and also provides for a more useable Front Yard.
- g) The overage in Site Coverage is caused in part by the rear deck being above 1.2 metres, resulting in its inclusion in the Site Coverage calculation. Due to the subject site's location, and its view of the river valley, the deck is integral to the use and enjoyment of the property. There are other homes in this community that have Site Coverage overages, while maintaining compatibility with the surrounding area. She noted that architectural and design elements will be a good fit for the neighbourhood.

- h) The proposed development falls short of the required Site Area of 360 square metres for a Single Detached Dwelling with a Secondary Suite. This Secondary Suite is necessary to generate income and will serve as a future in-law suite or nanny suite. The added space in the front area provides for a mudroom. The proposed design for access to this mudroom and the Secondary Suite will not detract from the front facade. Many homes along this street already have a Secondary Suite.
- i) With respect to the deficiency of one parking space caused by the deep slope of the driveway, she referenced on-street photographs, demonstrating that it is common for cars to be parked on the sloped driveways of the houses along the street.
- j) The bylaw regarding stepback requirements for rooftop terraces and privacy screening was passed recently, and compliance with these new regulations would result in an inconsistent flow with the other homes in the neighbourhood, which were constructed prior to these regulations coming into place.

[9] Upon questioning by the Board, the Appellant confirmed the following information:

- a) The proposed development was designed specifically for the subject lot.
- b) The design was not intended to result in a Height variance. However, due to the sloped garage, the Height needed to be increased, otherwise the garage would become unusable. In addition, the rear of the proposed house faces 99 Street and MacDonald Bridge, so maximizing the front use of the house will provide for a better view of the river valley.
- c) Although the proposed attached rear garage does contribute to the Height variance, the Appellant noted that a detached garage would result in a larger Site Coverage variance.
- d) The phrase “green technologies” as referenced in the submissions includes the greenery and cedar trees that will be placed on the rooftop terrace, as well as some solar panel technologies.
- e) Consultation with property owners within the 60 metre notification area included sit-down conversations where each variance, including the variance to Height regulations, was reviewed. Building plans were also available for owners to view.
- f) It is unclear why the owner of 9625 – 99A Street NW subsequently submitted an online comment in opposition to the development. To the Appellant’s recollection, the consultation with that property owner was approximately 45 minutes, and probably one of the best conversations with owners in the notification area.
- g) Attempts were made to speak with all owners in the notification area. He was unable to reach the property owner of 9637 – 99A Street, though it was his understanding that the property was owned by a young individual who intends to tear down the

home for redevelopment at a future date. The Appellant speculated that the new development would likely result in similar variances to the proposed development.

- h) The owner of 9269 – 99A Street NW expressed that he was amenable to the subject development, so long as the Appellant was prepared to purchase the property at 9269 – 99A Street NW.
- i) The Appellant expressed no concerns with the recommended conditions of the Development Officer, should this development permit be approved. Obscuring windows to mitigate privacy concerns was not specifically discussed with property owners, but the Appellant is amenable to this option, should it be required for this permit to be approved.

*ii) Position of Affected Property Owners in Support of the Appellant*

- [10] Two property owners provided oral submissions in support of the development: Mr. W. Milley of 9624 – 99A Street, and Mr. M. Compri of 9610 – 99A Street.
- [11] Mr. Milley confirmed the Appellant’s submission that the subject site is located in a unique location, due in part to the slope of the street. In addition, the neighbourhood is undergoing redevelopment and seeing an increase in attached garages. The proximity of the neighbourhood to the downtown core makes it a prime neighbourhood, but also increases demand on on-street parking.
- [12] Mr. Compri acknowledged that he is located outside the 60 metre notification area. However, he is an affected property owner because this neighbourhood is a fairly closed community, with only 24 houses in total on both sides of the street. He currently lives within this neighbourhood, and also built a home within the 60 metre notification area about five years ago. He is also constructing the home located at 9610 – 99A Street, and will be moving into that house when construction is completed.
- [13] He expanded upon the curve and slope of the street. In his experience, the proposed development plan prevents potential construction difficulties with drainage lines. He supports environmental sustainability, and the proposed development will allow for solar panels to be installed. He confirmed that the property owner of 9630 – 99A Street intends to demolish the home for redevelopment in the near future.

*iii) Position of the Development Officer*

- [14] The Development Authority was represented by Mr. J. McArthur.
- [15] He acknowledged that there are homes in the neighbourhood that are designed similarly to the proposed development. However, the proposed Height is quite a bit over the maximum allowable, though he might consider granting a variance, if he had the discretion to do so.

- [16] With respect to the comparable properties submitted by the Appellant, he noted that many were appealed to this Board due to required variances to setbacks and height, similar to the subject property. It was his understanding that the subject development is the first within this neighbourhood to be reviewed against the new rooftop terrace regulations passed by Council in August 2016.
- [17] He considered a number of factors when assessing the development's impact, including the following:
- a) The bedroom windows are generally oriented to the rear. When there are concerns about overlook into neighbouring properties, the Development Authority typically asks the neighbour to sign off on the windows. Transom windows may also be required.
  - b) The over-height development raised concerns about massing and sun-shadowing.
  - c) Transportation Planning and Engineering limits Driveway slopes to 10%, and in this case, the proposed Driveway has a 12% slope. Such a deep slope would not typically be considered for parking spaces. That being said, the proposed development is located within the inner city with greater access to transportation. He would be more inclined to grant a parking variance on that basis.
  - d) He clarified that all required parking spaces must be free of ramps, columns, etc., and that a seven metre turning radius to access the garage would be required. Parking spaces are not permitted within this radius or on a ramp. The access to the garage is considered as a ramp.
  - e) With respect to the Appellant's submissions that the subject development is located in a "unique" location, he noted that no matter how the driveway is realized, some sort of variance will be required. The only alternative would be to convert the ground floor into a garage.
  - f) He acknowledged that the attached rear garage does result in a smaller footprint than if the garage were detached.
  - g) He acknowledged that the bylaw with respect to new rooftop terrace regulations was passed recently in 2016, and that the most directly affected neighbour by this terrace did not express concerns.
  - h) During the consultation phase, he communicated with two property owners who expressed concerns about the development. One did not wish to be on the record, and the second is located kitty-corner from the development.
  - i) A geotechnical engineer was consulted and no geotechnical report was required.

*iv) Rebuttal of the Appellant*

[18] The Appellant had attempted to speak with the property owner located kitty-corner from the development. However, perhaps due to cultural reasons, the woman consulted explained that she could not comment on the development without her husband's input. It was the Appellant's understanding that they were also planning to move to Vancouver.

**Decision**

[19] 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 two master bedroom windows shall be opaque.
- 2) Platform Structures greater than 1.0 m above Grade shall provide privacy screening to prevent visual intrusion into adjacent properties. (Reference Section 814.3(8))
- 3) The area hard surfaced for a driveway, not including the area used for a walkway, shall comply with Section 54.1(4).
- 4) Except for the hardsurfacing of driveways and/or parking areas approved on the site plan for this application, the remainder of the site shall be landscaped in accordance with the regulations set out in Section 55 of the Zoning Bylaw.
- 5) All Yards visible from a public roadway, other than a Lane, shall be seeded or sodded. Seeding or sodding may be substituted with alternate forms of ground cover, including hard decorative pavers, washed rock, shale or similar treatments, perennials, or artificial turf, provided that all areas of exposed earth are designed as either flower beds or cultivated gardens (Reference Section 55.2.1).
- 6) Landscaping shall be provided on a Site within 18 months of the occupancy of the Single Detached House. Trees and shrubs shall be maintained on a Site for a minimum of 42 months after the occupancy of the Single Detached House (Reference Section 55.2.1).
- 7) Two deciduous trees with a minimum Caliper of 50 mm, one coniferous tree with a minimum Height of 2.5 m and six shrubs shall be provided on the property. Deciduous shrubs shall have a minimum Height of 300 mm and coniferous shrubs shall have a minimum spread of 450 mm.
- 8) 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)

- 9) Immediately upon demolition of the building, the site shall be cleared of all debris.
- 10) A Secondary Suite shall not be developed within the same principal Dwelling containing a Group Home or Limited Group Home, or a Major Home Based Business, unless the Secondary Suite is an integral part of a Bed and Breakfast Operation in the case of a Major Home Based Business. (Reference Section 86.6)

NOTES:

- 1) The applicant must be aware that they are fully responsible to mitigate all geotechnical risks to the development and surrounding properties and structures. Notably, all design and construction measures including retaining structures and any proposed temporary shoring to support the basement excavation must suitably protect neighbouring properties and structures from any adverse impacts, both during and after construction.
- 2) The proposed retaining walls bordering the underground driveway must not encroach into road right-of-way.
- 3) Guard rails located on the driveway retaining walls must not obstruct sight lines of vehicles backing out of the driveway, and must not encroach onto road right-of-way.
- 4) Heated driveways are not permitted within road right-of-way.
- 5) The grading for the driveway must slope up from the paved portion of the alley at 2% up to the property line. The slope for the underground driveway may begin at the property line.
- 6) The owner/applicant is responsible to contact Annie Duong of Transportation Planning and Engineering at 780-496-1799 for inspection 48 hours prior to and following construction of the underground driveway.
- 7) 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 (1-866-344-7429; [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.
- 8) Any alley, sidewalk or boulevard damage occurring as a result of construction traffic must be restored to the satisfaction of Transportation Planning and Engineering, as per Section 15.5(f) of the Zoning Bylaw. The alley, sidewalk, and boulevard will be inspected by Transportation Planning and Engineering

prior to construction, and again once construction is complete. All expenses incurred for repair are to be borne by the owner.

- 9) Any hoarding or construction taking place on road right-of-way requires an OSCAM (On-Street Construction and Maintenance) permit. OSCAM permit applications require Transportation Management Plan (TMP) information. The TMP must include:
- a. the start/finish date of project;
  - b. accommodation of pedestrians and vehicles during construction;
  - c. confirmation of lay down area within legal road right of way if required;
  - d. 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: [http://www.edmonton.ca/transportation/on\\_your\\_streetslon-street-construction-maintenance-permit.aspx](http://www.edmonton.ca/transportation/on_your_streetslon-street-construction-maintenance-permit.aspx)

- 10) A 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](http://lot.grading.edmonton.ca) for lot grading inspection inquiries.

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

- 1) Section 814.3(5) is varied to permit a distance of 7.24 metres (24% site depth) from the Single Detached House to the rear property line instead of the required 12.19 metres (40% of site depth).
- 2) Section 44(3) is varied to permit a distance of 6.63 metres from the rear uncovered deck to the rear lot line, instead of the required 10.19 metres.
- 3) Sections 52.1(a) and 814.3(13) are varied to permit an overall Height of 11.59 metres to the midpoint of the roof, instead of 8.6 metres; and a Height of 11.47 metres to the peak of the roof instead of the required 10.1 metres.
- 4) Section 814.3(18) is varied to allow the proposed rear garage to be attached to the Single Detached House.
- 5) Section 140.4(10(a)) is varied to permit a Site Coverage of 48% for the principal building with attached garage, instead of 40%.
- 6) Section 86(1) is varied to permit a Site Area of 306.58 square metres instead of the required 360 square metres.



- 7) Section 61.1(a)(iv) is varied to permit a Rooftop Terrace Stepback of 1.0 metres instead of 2.0 metres (facing the Side Lot Line) and a Stepback of 0.46 metres for the 1.5 metre high privacy screen, instead of the required 2.0 metres.

### **Reasons for Decision**

- [21] The proposed development is for a Single Detached House with rear attached garage, and a Secondary Suite in the basement, both of which are Permitted Uses in the RF3 Small Scale Infill Development Zone.
- [22] The Development Authority refused this development application, and identified a number of variances that would be required to approve this development. One of these variances included a deficiency of one parking space. The Board has determined the proposed development does in fact provide for sufficient off-street parking for the following reasons:
- a) The Board heard that the sloped Driveway access to the Garage is considered a ramp, and that no parking spaces can be located on a ramp. The Board is not convinced by this argument.
  - b) Section 6.1(29) of the *Edmonton Zoning Bylaw* defines Driveway as “an area that provides access for vehicles from a public or private roadway to a Garage or Parking Area and does not include a Walkway.” Based on the information presented to this Board, the proposed access to the Garage falls under this definition.
  - c) In addition, the proposed Driveway is of sufficient length and width to accommodate the parking space requirement for the additional Secondary Suite. For this reason, no variance is required.
- [23] A variance to section 814.3(4), which requires minimization of overlook into abutting properties, was also determined unnecessary. The Board has conditioned that the two master bedroom windows be made of opaque glass, thereby mitigating privacy concerns regarding overlook into neighbouring properties. No variance to section 814.3(4) is required.
- [24] The Board accepts the Development Officer’s conclusion that pursuant to Section 814.3(24) of the *Edmonton Zoning Bylaw* that all necessary community consultation was completed in accordance with this Section of the Mature Neighbourhood Overlay.
- [25] The Board grants the variances for the remaining deficiencies for the following reasons:
- a) The Site Area is small, with a shallow site depth, resulting in design difficulties should full compliance with all regulations be required.

- b) Based on the photographic evidence and submissions of the parties, this type of development is consistent with sites in the neighbourhood. The Board received community consultation feedback that was positive in nature with respect to the acceptance of the number of variances needed for this kind of development.
- c) Regarding the Height variance, the Board was provided with information indicating that the proposed development is located on the lower end of the sloping street, and that the Height variance has the most effect on one property along this street. That property owner did not express concerns about the proposed Height. Based on the photographic evidence, the Board accepts that over-height Single Family Housing in this neighbourhood is common.
- d) The Board notes that all the requirements with respect to regulations – including parking – governing Secondary Suites have been met, notwithstanding the deficiency in Site Area.
- e) The City has conducted extensive neighbourhood consultation prior to passing Bylaw 17727 in August 2016 regarding Rooftop Terrace regulations. Part of this consultation determined that various threshold requirements would be appropriate for minimum Stepbacks. In granting the Rooftop Terrace variances, the Board does not make any determinations as to the appropriateness of these thresholds, but simply notes that no neighbours expressed opposition to this variance, and in particular, the most directly affected neighbour did not express concern.

[26] The Board notes that two residents within the neighbourhood appeared in support of the development with full knowledge of the number of variances being granted. The balance of the community consultation indicated broad support. The development is also located in a unique community, given its location between two major arterial roads on the south river bank. There are a small number of homes located here, which provide for a coordinated approach to development, allowing for greater flexibility than would otherwise be the case.

[27] For all the above reasons, the Board finds that 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 appeal is allowed.

Vincent Laberge, Presiding Officer  
Subdivision and Development Appeal Board

**Board Members Present:**

Ms. K. Cherniawsky; Ms. M. McCallum; Mr. R. Handa; Mr. L. Pratt

cc: City of Edmonton Sustainable Development – J. McArthur / A. Wen

**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.*