



**EDMONTON
TRIBUNALS**

*Subdivision &
Development
Appeal Board*

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Date: May 19, 2016
Project Number: 187211303-001
File Number: SDAB-D-16-110

Notice of Decision

- [1] On May 4, 2016, the Subdivision and Development Appeal Board heard an appeal that was filed on April 8, 2016. The appeal concerned the decision of the Development Authority, issued on March 29, 2016, to refuse the following development:

Construct a Residential Sales Centre (West Block) [unedited from Development Permit refusal]

- [2] The subject property is located as follows:

- Plan 1653Z Blk C Lot 8, municipal description 14304 Stony Plain Road NW;
- Plan 1653Z Blk C Lot 9, municipal description 14302 Stony Plain Road NW; and
- Plan 1653Z Blk C Lots 6-7, municipal description 14314 Stony Plain Road NW.

- [3] The subject property is located within the RF3 Small Scale Infill Development Zone. The Mature Neighbourhood Overlay applies to the subject property.

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

- Appellant's written submissions, including community consultation, received May 3, 2016;
- Copy of the Development Application, Plans, and Refused Permit;
- Copy of the Canada Post receipt confirming delivery of the Refused Permit Decision;
- Development Officer's Written Submissions, dated April 19, 2016; and
- One online response and five letters from neighbouring property owners in opposition to the development.

Summary of Hearing

[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*, RSA 2000, c M-26.

i) *Position of the Appellant, InHouse by Beaverbrook (“Beaverbrook”)*

[7] The Appellant was represented by Ms. S. Kheraj, Mr. P. Osborne, and Mr. R. Smith.

Background Information

[8] Ms. Kheraj explained that the Residential Sales Centre (West Block) project is located along Stony Plain Road NW and 143 Street. It is a mixed Use project which was recently rezoned by Council.

[9] The Appellant is looking to advance to the first phase of the West Block project, which is why a development application was made for a Residential Sales Centre. The first phase of the project would include an urban square and residential tower of 60 units.

[10] The proposed Residential Sales Centre is not a typical trailer-type sales centre; rather, it will encompass a model suite, presentation area, and design gallery. The model suite will be an exact duplicate of one of the suites that will be available in the 60-unit residential tower, with high ceilings and floor-to-ceiling windows.

[11] The Appellant submitted that the variances needed for the proposed development will result in not only a better presentation and design when compared to a temporary sales trailer, but provide a more pleasing exterior aesthetic.

Discretionary Use

[12] A Residential Sales Centre is a Discretionary Use in the RF3 Small Scale Infill Development Zone (“RF3 Zone”). The Appellant submitted that several factors weigh in favour of why the proposed Discretionary Use should be allowed.

[13] First, the Site is owned by the City and will be leased by Beaverbrook, therefore, the Appellant is required to return the Site to its present condition. This requirement has guided some of the design choices, which is why the variances have been requested.

- [14] The Site is located along a major east-west arterial road. There is existing multi-family housing to the north and east of the Site, vacant land for future Light Rail Transit expansion to the west, and commercial development to the east. Other sites were considered and determined less appropriate because they were either privately-owned or residential in nature. Outside of the subject Site, no other commercial sites exist within several blocks.
- [15] When questioned about the development timelines, the Appellant stated that if the appeal is successful, the Residential Sales Centre could be operating by late summer 2016, and with appropriate sales, the larger project could begin on Site activity by fall 2016.
- [16] The Board noted that the lease with the City expires in two years, as would the development permit, if granted. With the earliest activity for the West Block development planned for Fall 2016, the Appellant would effectively have approximately only a year and a half to use the sales centre to market the West Block Phase One development. In response, the Appellant explained that there is the option to extend the land lease with the City, in which case, a new development application would need to be processed.

Height

- [17] Referring to the Appellant's written submissions, Mr. Osborne noted that the maximum Height for Permanent Uses under the Mature Neighbourhood Overlay is 8.60 metres, while the maximum Height for Residential Sales Centres is 4.00 metres. The temporary Residential Sales Centre proposes a maximum Height of 5.30 metres,
- [18] In addition to the Appellant's desire to duplicate a suite with high ceilings and floor-to-ceiling windows, the use of a nearly one metre high crawl space contributes to the excess Height. Mr. Osborne explained that this crawl space allows for screw piles rather than a slab-on-grade foundation. A screw pile foundation simplifies the conversion process when the leased land is returned to the City, minimizing the environmental impact and making it easier to return the land to its original state.
- [19] The Appellant also submitted that the greater parapet Height permits better screening of roof-top equipment, and creates articulation and a sense of massing to the structure. Mr. Osborne noted that without the added parapet, there would be no screening of the roof-top equipment. The equipment would not contribute to the Height calculation, but it would be unsightly without the parapet to screen it. Although the parapet increases the Height of the proposed development, it integrates the screening into the architectural feature of the project.

Rear Setback

- [20] Referring to the Rear Setback diagram from the Appellant's written submissions, Mr. Osborne noted that a Single Detached House is a permitted residential use within the RF3 Zone.

A Garage or Accessory could be built within the required Rear Setback, which would have an impact similar to the proposed development. As well, the proposed development could have extended much further toward the Side Setback to the west. Instead, the proposed temporary Residential Sales Centre is well within the maximum site coverage limits of what could have been built.

- [21] The Appellant submitted that the reduced Rear Setback allows for a site configuration wherein the majority of parking spaces are at the side of the property, with only two barrier-free parking spaces and two standard parking spaces placed at the rear. If they were to comply with the Rear Setback requirement, the site would need to be reconfigured, and more parking spaces would need to be placed to the rear of the property, increasing potential impact on adjacent properties to the north.
- [22] In response to questioning by the Board, Mr. Osborne explained that rear laneway access is required. As one of the conditions of the Development Permit, the existing curb cut along Stony Plain Road will be blocked off by planter boxes, thereby preventing direct access to and from Stony Plain Road.
- [23] Ms. Kheraj submitted that the required rear laneway access and the proposed parking will not have a negative impact upon neighbours to the north of the subject Site. The operating hours of the Residential Sales Centre would initially be by appointment only, moving toward restricted show home hours of noon to 8:00 p.m. on weeknights (closed on Fridays), and noon to 5:00 p.m. on weekends. During the hours of operation, two staff members would utilize two of the off-street parking spaces. As such, despite the requirement to provide rear laneway access, impact upon neighbouring properties to the north would be minimal.

Community Consultation

- [24] Mr. Osborne explained that door-to-door canvassing was conducted between 5:00 p.m. to 6:30 p.m. on April 18, 2016, and again from 2:30 p.m. to 4:00 p.m. on April 23, 2016.
- [25] If a resident could not be reached, a community consultation package would be left at the property. The package included information about the proposed development, including the variances that would be needed.
- [26] The Board noted that the consultation forms provided only information about variances required under the Mature Neighbourhood Overlay (“MNO”), and made no mention of the required variance to Height for Residential Sales Centres.

- [27] Mr. Osborne stated that the forms were provided by the City of Edmonton. The Development Officer had explained to him that community consultation was required only for variances to the MNO, which was the Rear Setback. Since the Height requirement was regulated outside the MNO, the community consultation did not need to address the Height variance. However, Mr. Osborne noted that the consultation package did include information about all required variances.
- [28] When questioned by the Board about the contents of the community consultation package, Mr. Osborne clarified that the package was dropped off only at those properties where they were unable to speak with an owner or resident. In cases where they were able to speak with someone, the option was provided for the individual to retain a consultation package. The information in the package was effectively the same as that which was provided to the Board, excluding the page that summarized the results of the community consultation.
- [29] The Board observed that the community consultation summary did not include the Community League's response. The Appellant clarified that approximately two to three weeks prior to the appeal hearing, they attended one of the Grovenor Community League's Board meetings, where the League appeared supportive of the proposed development. The Appellant also emailed the Community League with various correspondence relating to the development, but did not receive any written replies.
- [30] The Appellant noted that, although those in opposition to the development were all from the townhomes located to the north of the subject property, expressions of support were obtained from other townhome owners during the community consultation. The Appellant submitted that the letters of opposition were not representative of all townhome owners residing to the north of the development.
- [31] Upon questioning by the Board, the Appellant acknowledged an apparent discrepancy between the community consultation summary and one of the letters of opposition. The summary indicated that the owner of 10180 – 143 Street NW expressed support for the development, whereas the Board received a letter of opposition from the same owner. The Appellant explained that the community consultation was conducted in April, whereas the letter was dated May 3, 2016. It was possible that the owner had changed his mind after the initial consultation.
- ii) *Position of the Development Officer, Mr. C. Lee*
- [32] Mr. Lee confirmed the Appellant's explanation for why the community consultation forms mention only the Rear Setback. He explained that following the recent decision of the Alberta Court of Appeal in *Thomas v Edmonton (City)*, 2016 ABCA 57, he facilitated the community consultation, which included the provision of the consultation forms used by the Appellant.

- [33] Mr. Lee also confirmed the Appellant's statement that there was a possibility of a lease extension for use of the property, which would also require a new development permit application.
- [34] The primary reason for refusal was the Height deficiency, since Development Officers cannot vary Height. If he had the authority to vary Height, he would have considered allowing the variances required because the proposed development is of a temporary nature. He would have required neighbourhood consultation to comply with the Mature Neighbourhood Overlay.
- [35] Mr. Lee opined that Residential Sales Centres have a more stringent Height limit of 4.0 metres as compared to residential-related permanent structures because sales centres are often trailer-type structures and a two-storey sales centre trailer in the middle of undeveloped land would be inappropriate.
- [36] Mr. Lee stated that the proposed parking spaces meet Bylaw requirements and no variance is required. Allowing the curb cut and access onto Stony Plain Road would have required a variance, which Transportation Services did not support.

iii) Rebuttal of the Appellant

- [37] The Appellant declined to provide a rebuttal.

Decision

- [38] The appeal is **ALLOWED** and the decision of the Development Authority is **REVOKED**. The development permit, to expire on May 19, 2018, is **GRANTED** as applied for to the Development Authority, subject to the following conditions:
- 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 including, but not limited to, the Municipal Government Act, the Safety Codes Act or any caveats, restrictive covenants or easements that might be attached to the Site.
 - 2) The approval shall expire two (2) years from the date of this decision (Section 82(7)). A new application for a Development Permit must be submitted for any subsequent validity extensions.
 - 3) All required parking areas shall be Hardsurfaced in accordance with Section 54.6.

- 4) All required parking and loading facilities shall only be used for the purpose of accommodating the vehicles of clients, customers, employees, members, residents or visitors in connection with the building or Use for which the parking and loading facilities are provided, and the parking and loading facilities shall not be used for driveways, access or egress, commercial repair work, display, sale or storage of goods of any kind (Section 54.1(1)(c)).
- 5) Landscaping shall be developed and maintained in accordance with Section 55.
- 6) The existing wooden bollards on the west side of 143 Street are encroaching onto road right-of-way and must be removed.
- 7) The applicant must install barriers, such as permanent landscape planters and curb stops, within private property, to eliminate direct access to Stony Plain Road.
- 8) There is an existing power pole with Telus facilities in the alley that may interfere with access to a proposed parking stall/access to the site. Should relocation of the pole/guy-wire be required, all costs associated with relocation must be borne by the owner/applicant. The applicant should contact Ron Hewitt (780-412-3128) of EPCOR Customer Engineering and Lillian Liu (587-985-8574) of Telus for more information.
- 9) 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) 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.
- 10) There are existing boulevard trees adjacent to the site that must be protected during construction. Prior to construction, the owner/applicant must contact to arrange for hoarding and/or root cutting. All costs shall be borne by the owner/applicant. Please contact Bonnie Fermanuik of Community Services (780-496-4960).
- 11) Any hoarding or construction taking place on road right-of-way requires an OSCAM (On-Street Construction and Maintenance) permit. 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/bylaws/licences/licences_permits/oscam-permit-request.aspx

- 12) 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, sidewalks 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.

Reasons for Decision

[39] Residential Sales Centre is a Discretionary Use in the RF3 Small Scale Infill Development Zone.

[40] Section 814.3(24) states:

When a Development Permit application is made and the Development Officer determines that the proposed development does not comply with the regulations contained in this Overlay:

- a. the applicant shall contact the affected parties, being each assessed owner of land wholly or partly located within a distance of 60.0 m of the Site of the proposed development and the President of each affected Community League;
- b. the applicant shall outline, to the affected parties, any requested variances to the Overlay and solicit their comments on the application;
- c. the applicant shall document any opinions or concerns, expressed by the affected parties, and what modifications were made to address their concerns; and
- d. the applicant shall submit this documentation to the Development Officer no sooner than twenty-one calendar days after giving the information to all affected parties

[41] The Court of Appeal recently provided some direction regarding this section in the case of *Thomas v Edmonton (City)*, 2016 ABCA 57. The essence of the Court's ruling is that compliance with the community consultation requirements in the Mature Neighbourhood Overlay is a condition precedent to the issuance of a development permit and that the Board does not have the power to waive these requirements. The Board does, however, have the power to grant a development permit if there has been substantial compliance with the requirements.

- [42] Although the community consultation required by Section 814.3(24) of the *Edmonton Zoning Bylaw* was not conducted before the Development Officer refused to issue a Development Permit, the Appellant did carry out community consultation prior to the appeal hearing before the Board.
- [43] Having considered the scope of the consultation, the information provided to the affected parties, the documentation of opinions and concerns and the timing of the submission of this information to the Board, the Board is satisfied that the community consultation carried out prior to the appeal hearing substantially complies with the requirements of Section 814.3(24).
- [44] The only variance under the MNO relates to Section 814.3(5), which requires a Rear Setback of 40% of site depth. In this case, the required Rear Setback would be 15.25 metres, whereas the proposed Rear Setback is 8.25 metres. The Board is of the opinion that allowing this variance will not result in any significant impact to the neighbourhood or to neighbouring parcels of land for the following reasons:
- a. The proposed setback of 8.25 metres is substantial and, in the opinion of the Board, will provide an adequate buffer in regards to the townhomes across the back alley to the north.
 - b. The proposed development is temporary and the Site will be restored to its present condition at the end of the lease.
 - c. The proposed Site configuration, including the Rear Setback, allows most of the parking spaces needed to meet Bylaw requirements to be located to the west of the building, rather than along the rear of the building in close proximity to the townhomes to the north. This configuration will reduce the impact on the residents of those townhomes.
- [45] The other variance required relates to Height. Section 82(3)(b) of the *Edmonton Zoning Bylaw* requires that a Residential Sales Centre be no more than 4.0 metres in Height. The proposed Height is 5.5 metres. The Appellant provided the following three reasons for why the Height variance should be granted:
- a. The Residential Sales Centre will be built on screw piles rather than slab-on-grade construction. Screw piles will minimize the impact on the Site and make it easier to restore it to its original condition when the sales centre is demolished and the Site returned to the City. However, the use of screw piles means that there will be a crawl space under the structure, which results in an increase in Height.

- b. There is a parapet on top of the structure, which will shield roof top equipment from view, thereby making the structure more attractive. Although the parapet could be removed and the calculated Height of the building reduced, it would not minimize the visual impact and would, in fact, make the structure less attractive due to the exposure of equipment.
- c. The Appellant intends to reproduce an exact duplicate of the type of unit they will be selling, including architectural elements such as high ceilings and large floor-to-ceiling windows. The Appellant is of the view that it is very important to the successful marketing of their development to have an exact duplicate to show prospective buyers.

[46] The Board is satisfied that this variance in Height will not have a significant impact. The increase is only 1.3 metres greater than the allowed 4.0 metres for a Residential Sales Centre Use. Comparatively, the maximum allowable Height of a residential structure on this Site is 8.6 metres, which is considerably taller than the proposed development.

[47] The Board is also of the view that regulations with respect to Residential Sales Centres are intended to regulate a more typical trailer-type sales centre, whereas the proposed structure will have the appearance of a more permanent building.

[48] It is, therefore, not appropriate to apply the normal regulations governing the Height of Residential Sales Centres to this particular structure. In granting this variance to Height under Section 82(3), the Board takes notice of the fact that the permit is only for two years, and that the lease with the City requires the Site to be restored to its original condition at the end of the lease.

[49] The Board notes that the only members of the community in opposition to the development were some of the individuals residing in a condominium development to the north of the Site. These properties are separated from the subject Site by a back lane. These individuals expressed through their written submissions that they were primarily upset by the loss of green space and the potential noise during the construction phase of this development.

[50] However, the evidence is that the construction of the Residential Sales Centre will be completed relatively quickly, possibly by late summer 2016. Once the construction is complete, the concerns regarding construction noise will be eliminated. The Board also notes that the green space has been earmarked for Light Rail Transit development, and therefore, was never intended to be permanent green space.

- [51] The development is required to have access from the back lane for parking. While this access will cause some disruption to the condominium residents to the north, the Board notes that the sales centre will have restricted hours and initially, will be open for appointment-only visits. The Board is satisfied that the disruption caused by people coming and going to the Site will be minimal. Also, this disruption will cease when the lease ends and the Site is restored to its present condition.
- [52] For the above reasons, the Board is of the opinion that the 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. As such, the appeal is allowed and the development is granted.

Mr. M. Young, Presiding Officer
Subdivision and Development Appeal Board

Board Members in Attendance

Mr. J. Kindrake; Ms. N. Hack; Mr. A. Nagy; Mr. J. 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*, RSA 2000, c S-1;
 - c. the requirements of the *Permit Regulation*, Alta Reg 204/2007;
 - d. the requirements of any other appropriate federal, provincial or municipal legislation; and
 - 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 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 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: May 19, 2016
Project Number: 188115415-001
File Number: SDAB-D-16-111

Notice of Decision

- [1] On May 4, 2016, the Subdivision and Development Appeal Board heard an appeal that was filed on April 6, 2016. The appeal concerned the decision of the Development Authority, issued on March 23, 2016, to refuse the following development:

Construct exterior alterations to an existing Accessory Building (converting flat roof to truss roof of existing garage for maintenance purposes) [unedited from Development Permit refusal]

- [2] The subject property is on Plan 4625MC Blk 16 Lot 1, located at 8409 - 169 Street NW, within the RA7 Low Rise Apartment Zone. The Medium Scale Residential Infill Overlay 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:
- Appellant's written submissions;
 - Copy of the Development Application, Plans, and Refused Permit;
 - Copy of the Canada Post receipt confirming delivery of the Refused Permit Decision; and
 - Development Officer's Written Submissions, dated April 28, 2016.

Summary of Hearing

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

i) Position of the Appellant, Midwest Property Management

[6] The Appellant was represented by Mr. R. Zukiwski, Project Manager.

Site Context

[7] The proposed development is an Accessory Building located on 84 Avenue, directly across from the Misericordia Hospital, and kitty corner from West Edmonton Mall. Forty-two low rise apartment townhomes with flat roofs are adjacent to the Accessory Building.

[8] These townhomes are aging, and Development Permits have been granted to add sloped truss roofs to some of these units. The Accessory Building is not as tall as the adjacent townhomes, and the proposed reroofing will not have an additional impact upon the adjacent properties.

Proposed Development

[9] Mr. Zukiwski explained that the owners considered truss roofs as the most appropriate option, despite the higher costs when compared to flat roofs. Some of the adjacent principal buildings have already undergone reroofing using sloped truss roofs, and the feedback from residents and passersby have been overwhelmingly positive.

[10] The reroofing of the Accessory Building will result in a top of ridge Height of 22 feet and 3 inches, which is lower than some of the adjacent townhomes that have already been reroofed. The top of ridge Height of these reroofed townhomes range from 26 feet and 7.5 inches, to 28 feet and 4 inches.

[11] Referring to photographs from his written submissions, Mr. Zukiwski compared the existing flat roofs to the sloped truss roof design, showing that the reroofed properties are more aesthetically pleasing and give the appearance of a new construction. Another positive aspect of the new design is that it will allow for more energy-efficient insulation, which will positively impact the residents' heating bills.

ii) Position of the Development Officer, Mr. C. Lee

[12] Mr. Lee stated that he did not have oral submissions, and was prepared to answer questions from the Board. The Board was satisfied with his written submissions, and had no further questions for Mr. Lee.

Decision

- [13] The appeal is ALLOWED and the decision of the Development Authority is REVOKED. The development is GRANTED as applied for to the Development Authority.
- [14] In granting the development, the following variance to the *Edmonton Zoning Bylaw* is allowed:
- 1) Section 50.3(2) is varied to permit an excess of 2.49 metres in Height. The Accessory Building is therefore permitted to be 6.79 metres in Height instead of 4.3 metres.

Reasons for Decision

- [15] Apartment Housing is a Permitted Use in the RA7 Low Rise Apartment Zone (“RA7 Zone”).
- [16] Section 50.1(2) states: “Accessory Uses and buildings are permitted in a Zone when Accessory to a principal Use which is a Permitted Use in that same Zone and for which a Development Permit has been issued.” It follows that the proposed development, the construction of exterior alterations to an existing Accessory Building, is a Permitted Use in the RA7 Zone.
- [17] The only variance required relates to Height, as Section 50.3(2) restricts the Height of an Accessory building to 4.3 metres.
- [18] The Board is satisfied that granting this variance will not have a negative impact upon neighbouring parcels of land or the neighbourhood.
- [19] The Accessory Building is located within a large complex of 42 low rise apartment townhouses. These townhouses were originally built with flat roofs. Now, the owners are in the process of reroofing the various units within the complex, and believe that a truss style roof is more appropriate.
- [20] Some of the neighbouring townhouses have been re-roofed and have heights in excess of 26 feet. This proposed development will result in a roof just over 22 feet in Height, which is significantly lower than the new truss-roofed buildings nearby. The new roof style will also make this structure more attractive and more in line with the other new roofs within the complex. The Accessory building is located in the centre of the complex well away from public roads and developments outside the complex.
- [21] No neighbours within the 60 metre notification area appeared in opposition to the development, and the Board notes that the Development Officer’s written report states that “if [he] had the authority to vary/relax height, further consideration would have been made to approve the application”.

[22] For the above reasons, the Board is satisfied 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. As such, the appeal is allowed and the development is granted.

Mr. Mark Young, Presiding Officer
Subdivision and Development Appeal Board

Board Members in Attendance

Mr. J. Kindrake; Ms. N. Hack; Mr. J. Wall; Mr. A. Nagy

Important Information for the Applicant/Appellant

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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*, RSA 2000, c S-1;
 - c. the requirements of the *Permit Regulation*, Alta Reg 204/2007;
 - d. the requirements of any other appropriate federal, provincial or municipal legislation; and
 - 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 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 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: May 19, 2016
Project Number: 179265233-002
File Number: SDAB-D-16-112

Notice of Decision

- [1] On May 4, 2016, the Subdivision and Development Appeal Board heard an appeal that was filed on April 12, 2016. The appeal concerned the decision of the Development Authority, issued on March 11, 2016, to refuse the following development:

Construct a Semi-Detached House with a veranda [unedited from
Development Permit refusal]

- [2] The subject property is on Plan 2463AE Blk 5 Lot 8, located at 12070 - 94 Street NW, within the RF3 Small Scale Infill Development Zone. The Mature Neighbourhood Overlay and Alberta Avenue/Eastwood Area Redevelopment Plan apply to the subject property.

Preliminary Matter

- [3] 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.
- [4] The Presiding Officer explained to the parties that the Board's jurisdiction to hear appeals is derived, in part, from Section 686(1)(a)(i) of the *Municipal Government Act*, RSA 2000, c M-26, which states:

686(1) A development appeal to a subdivision and development appeal board is commenced by filing a notice of the appeal, containing reasons, with the board within 14 days,

(a) in the case of an appeal made by a person referred to in section 685(1), after

(i) the date on which the person is notified of the order or decision or the issuance of the development permit...

- [5] The Board must therefore determine whether the Appellant filed his appeal within the 14 day limitation period. If the appeal was filed late, the Board has no authority to hear the matter.
- [6] In this instance, the decision of the Development Officer was dated March 11, 2016. In his written submission, the Development Officer indicated that he had notified the Appellant by email on March 11, 2016 that his application had been refused. Further, the decision had been mailed to the Appellant and the Canada Post receipt confirmed delivery of the decision on March 15, 2016.
- [7] Since the Appellant filed his Notice of Appeal on April 12, 2016, it would appear that the appeal was filed outside the 14 day limitation period.
- [8] The Presiding Officer invited the Appellant to provide submissions in this regard.

i) Position of the Appellant, Vida Nova Homes Ltd.

- [9] The Appellant was represented by Mr. T. Fernandes, who was also accompanied by Mr. J. Seitz.
- [10] Mr. Fernandes stated that he had appeared before the Board many years ago, so he is unfamiliar with the current appeal process. He then provided the following timeline of events:
- a. Prior to the March 11, 2016 refusal decision, Mr. Fernandes spoke with the Development Officer, who indicated that should the development application be refused, Mr. Fernandes would have the right to appeal to the Subdivision and Development Appeal Board (“SDAB”).
 - b. As a result of that conversation, Mr. Fernandes understood that it would take approximately two to three weeks for the Board to hear the matter. In his mind, this timing was ideal as he would be away in Asia for about three weeks, and he would be able to appear before the Board immediately upon returning from his trip. He did not realize that there was an additional step he had to undertake, which was the requirement to file his appeal within 14 days of receiving notice of the refusal decision.
 - c. On March 11, 2016, at approximately 3:18 p.m., he received an email with an attachment from the Development Officer. The email and attachment reiterated information he had spoken to the Development Officer about, including the three reasons that the Development Officer denied his application (i.e. deficiencies in Site Area, Site Width and Front Setback).

- For this reason, and partially due to his belief that the email simply served as notification that the refusal decision had been automatically forwarded to the SDAB for its consideration, Mr. Fernandes did not completely read the email or its attachment. He did not see the statement that he had to file his appeal within 14 days of notification.
- d. When questioned by the Board about the contents of the email, Mr. Fernandes was able to produce the attachment, which was a copy of the Development Permit refusal, but was unable to produce the email itself. Mr. Fernandes acknowledged that at the bottom of the refusal decision, there was a statement that explained his right to appeal the decision to the SDAB within 14 days. The Board was satisfied with the verbal information Mr. Fernandes provided with respect to the email and attachment.
 - e. Mr. Fernandes subsequently left for an extended holiday to Asia on March 11, 2016.
 - f. While he was away, a copy of the Development Permit refusal decision was mailed to his office. Mr. Fernandes explained that one of his employees likely signed off on the Canada Post package on March 15, 2016, but he did not read this letter at the time because he was overseas. He did read the letter after discovering that he had missed the filing deadline. He confirmed that the information provided in the letter was the same information provided via email.
 - g. On April 4, 2016, Mr. Fernandes returned to work. Following a week wherein he addressed various work matters which had arisen during his holiday, he realized that he had not heard from the Development Officer, and therefore contacted him for an update on the application.
 - h. At that time, he learnt that he would need to file an appeal.

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

- [11] Mr. Liang agreed with the Appellant's information regarding the email and its content. The email explained that the Development Officer had refused the application, gave the reasons for the refusal, set out the 14 day appeal period, and provided a link to the SDAB website. Attached to the email was the Development Permit refusal, which was an exact duplicate of the information provided via registered mail.

Decision

- [12] The appeal was filed outside the 14 days statutory time limit under Section 686(1)(a)(i) of the *Municipal Government Act*, and the Board therefore has no jurisdiction to hear the matter.

Reasons for Decision:

[13] Section 686(1)(a)(i) of the *Municipal Government Act* states:

686(1) A development appeal to a subdivision and development appeal board is commenced by filing a notice of the appeal, containing reasons, with the board within 14 days,

(a) in the case of an appeal made by a person referred to in section 685(1), after

(i) the date on which the person is notified of the order or decision or the issuance of the development permit...

[14] The Appellant acknowledged that he was notified of the Development Officer's decision on March 11, 2016 via email. The email and its attachment set out the grounds for refusal, and included an attached copy of the actual refusal decision. The Board finds that the Appellant was notified, as that term is used in Section 686(1)(a)(i), on March 11, 2016. Accordingly, the appeal period began to run on that date.

[15] The Board appreciates the Appellant's candor in explaining why he did not take the time to read the notification in the email. When he received the email on March 11, 2016, he believed he was already familiar with the contents. He was under the mistaken impression that he did not have to take any steps to initiate the appeal process. He made an honest mistake.

[16] Unfortunately, this Board does not have the power to extend the 14-day limitation period imposed by Section 686(1) of the *Municipal Government Act*, even in cases where an appellant has made an honest mistake. The Board is bound by the legislation and does not have the jurisdiction to hear appeals that are filed outside the 14-day period.

Mr. M. Young, Presiding Officer
Subdivision and Development Appeal Board

Board Members in Attendance

Mr. J. Kindrake; Ms. N. Hack; Mr. J. Wall; Mr. A. Nagy

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*, 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.
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 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.