



**EDMONTON
TRIBUNALS**

*Subdivision &
Development
Appeal Board*

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Date: May 24, 2019
Project Number: 300999240-001
File Number: SDAB-D-19-065

Notice of Decision

- [1] On May 9, 2019, the Subdivision and Development Appeal Board (the “Board”) heard an appeal that was filed on April 12, 2019. The appeal concerned the decision of the Development Authority, issued on April 1, 2019 to refuse the following development:

Construct a Single Detached House with Secondary Suite, Uncovered deck (3.7 metres by 4.0 metres), rear covered decks (3.6 metres by 2.7 metres), fireplaces, walkout Basement, uncovered front deck and to demolish an existing Single Detached House

- [2] The subject property is on Plan 8057R Blk 3 Lot 12, located at 10038 - 91 Avenue NW, within the RF2 Low Density Infill Zone. The 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 Development Permit application with attachments, proposed plans, and the refused Development Permit;
- The Development Officer’s written submissions; and
- The Appellant’s written submissions.

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

- Exhibit A – Copy of an email between the Development Officer and the City’s General Supervisor of Geotechnical Engineering, submitted by the Appellant.

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 (the “*Municipal Government Act*”).

Summary of Hearing

i) Position of the Appellant, Mr. Ochman

[8] Mr. Ochman is acting on behalf of the property owners, who have lived in the Lavigne neighbourhood since 2001.

[9] He referenced a photograph of the existing house that was built prior to 1911.

[10] The house and the foundation are beyond any renovations or additions that could be done.

[11] The proposed development is designed to comply with the requirements of the Mature Neighbourhood Overlay and does not require any variances.

[12] They spoke to neighbouring property owners within the 60 metre notification radius and reviewed the proposed plans with them. They did not receive any opposition from neighbouring property owners.

[13] In his opinion, the main issue is that City’s Geotechnical Engineer refuses all applications in the Lavigne neighbourhood.

[14] Mr. Lach, the City’s Geotechnical Engineer, stated in an email to Ms. Bauer, the Development Officer, that:

“Based on the location of the subject site, there were no obvious indications of active instability at the immediate location of the property and I would not anticipate that *local* slope stability will be a significant issue for the proposed development.”

[15] Although a slope stability study was not required, the Appellants hired Shelby Engineering Ltd. to address the foundation design and drainage. The Engineering study was submitted to the Development Officer, who subsequently refused it on the basis of the City’s Geotechnical Engineer’s directions for the Lavigne neighbourhood.

[16] The proposed Lot Grading Plan for the subject Site has been submitted and approved by Development & Zoning Services.

[17] The proposed development would be consistent with previous developments that were approved in the Lavigne neighbourhood by the Board.

[18] Since 1985, there were 22 development permit applications approved in the Lavigne neighbourhood.

[19] Mr. Ochman provided the following information in response to questions by the Board:

- a. He provided the Board a copy of an email between the Development Officer and the City's General Supervisor of Geotechnical Engineering (stamped Exhibit A).
- b. He reiterated that a slope stability study was done even though it was not required.
- c. He does not have any concerns with the suggested conditions of the Development Officer.

ii) Position of the Development Officer, Ms. Bauer

[20] The Development Officer did not appear at the hearing and the Board relied on Ms. Bauer's written submission.

Decision

[21] 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. **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. No Swimming Pool shall be constructed or installed, where Swimming Pool refers to a swimming pool, ornamental pond, or other structure designed to retain water.
3. No permanent sprinkler or irrigation systems shall be constructed or installed.
4. Roof leaders, downspouts, and sump pump discharge spouts should not be allowed to discharge onto the ground surface. They should be connected to the sewer system. Grading of the site must not allow any ponding of water or the focused discharge of water toward the slopes.
5. The applicant/owner shall obtain a Curb Crossing Permit to 'fill-in' the existing front access.

6. Landscaping shall be installed and maintained in accordance with Section 55.
 - a. shall be generally landscaped with permeable landscaping material (section 55.10).
 - b. shall not contain Impermeable Materials in either the Rear Yard or the Side Yard that exceed a total area of greater than 12 square metres respectively 811.3(7(b)).
 - c. The applicant shall provide manufacture's specifications and build as per the specifications of the impermeable landscaping, to the satisfaction of the Development Officer.
7. Frosted or opaque glass treatment shall be used on windows as required on the side elevation(s) to minimize overlook into adjacent properties (Reference Section 814.3(8)).
8. The colours and finishing materials on all facades shall comply with the stamped and approved elevation plans (Reference Section 814.3.15).
9. Privacy Screening is required on decks over 1 metres in height.
10. Any future deck enclosure or cover requires a separate development and building permit approval.
11. Secondary Suite:
 - a. For the Secondary Suite, 1 on-site parking space in addition to the parking requirements for the Principal Dwelling shall be provided. (Reference Section 54.2 Schedule 1)
 - b. All required parking shall be clearly demarcated, have adequate storm water drainage and storage facilities, and be Hardsurfaced. (Reference Section 54.6(1)(a)(i))
 - c. A Secondary Suite shall be developed in such a manner that the exterior of the principal Dwelling containing the Secondary Suite shall appear as a single Dwelling from a public roadway other than a Lane (Reference Section 86)
 - d. Only one of a Secondary Suite or a Garden Suite may be developed in conjunction with a principal Dwelling. (Reference Section 86)

- e. A Secondary Suite shall not be developed within the same principal Dwelling containing a Group Home or Limited Group Home, Child Care Services 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)
- f. A maximum of one Household shall occupy a Secondary Suite (Reference Section 86).
- g. Dwelling means a self contained unit comprised of one or more rooms accommodating sitting, sleeping, sanitary facilities, and a principal kitchen for food preparation, cooking, and serving. A Dwelling is used permanently or semi-permanently as a residence for a single Household. (Reference Section 6.1).
- h. Locked separation that restricts the nonconsensual movement of persons between each Dwelling unit shall be installed.
- i. Secondary Suites shall not be included in the calculation of densities in this Bylaw. (Reference Section 86).

Transportation Conditions

1. The existing 3.0 metres wide access to 91 Avenue located on the west property line must be removed as per the City of Edmonton Complete Streets Design and Construction standards. The owner/applicant must obtain a Permit to remove the access, available from Development Services, 2nd floor, Edmonton Tower, 10111-104 Avenue.
2. The proposed retaining walls bordering the driveway must not exceed a height of 0.3 metres for a distance of 3 metres from the property line and no portion of the wall may encroach onto road right-of-way. Should the owner/applicant wish to increase this height, adequate sight line data must be provided to ensure vehicles can exit safely.
3. 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 (1-866-344-7 429; 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.

4. Any sidewalk or boulevard damage occurring as a result of construction traffic must be restored to the satisfaction of Development Inspections, as per Section 15.5(f) of the *Zoning Bylaw*. The alley and boulevard will be inspected by Development Inspections prior to construction, and again once construction is complete. All expenses incurred for repair are to be borne by the owner.
5. 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:
 - the start/finish date of project;
 - accommodation of pedestrians and vehicles during construction;
 - confirmation of lay down area within legal road right of way if required;
 - 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:

https://www.edmonton.ca/business_economy/licences_permits/oscam-permit-request.aspx
and <https://www.edmonton.ca/documents/ConstructionSafety.pdf>

Zoning Advisements

1. Lot grades must match the *Edmonton Drainage Bylaw 18093* and/or comply with the Engineered approved lot grading plans for the area. Contact Lot Grading at 780-496-5576 or lot.grading@edmonton.ca for lot grading inspection inquiries.
2. Unless otherwise stated, all above references to "section numbers" refer to the authority under the *Edmonton Zoning Bylaw 12800*.
3. 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. (Reference Section 5.2)
4. A Building Permit is required for any construction or change in use of a building. Please contact the 311 Call Centre for further information.

Transportation Advisements

1. Building Great Neighbourhoods is conducting neighbourhood renewal in Strathcona for the 2019 construction season. It is recommended that this access fill in construction be coordinated with the renewal project. Subdivision Planning recommends that the owner/applicant contact Terrence Gosine of Building Great Neighbourhoods at Terrence.Gosine@edmonton.ca or 780-944-0266 for further information.
2. The proposed access for the garage is to the alley, as shown on the Enclosure. An alley access does not require a curb crossing permit.

Reasons for Decision

- [22] The proposed development, a Single Detached House, is a Permitted Use in the RF2 Low Density Infill Zone.
- [23] The Development Officer listed the following under the Reason for Refusal:
- The Development Officer shall seek the advice of Transportation Services with respect to the application and may approve the conditions or refuse such application accordingly (Reference Section 811.3(3)). Transportation Services recommends to refuse the application.
- [24] The Development Officer did not list any variances required from the *Edmonton Zoning Bylaw*.
- [25] The Board adopts its reasons from SDAB-D-17-050 and SDAB-D-17-088, as set out below.
- [26] The subject Site is falls within the North Saskatchewan River Valley and Ravine System Protection Overlay. Pursuant to Section 811.1 of the *Edmonton Zoning Bylaw*, the General Purpose of this Overlay is to provide a development Setback from the North Saskatchewan River Valley and Ravine System.
- [27] Section 811.3(3) of the *Edmonton Zoning Bylaw* states that:
- “any development permit application on a Site that abuts or is partially or wholly contained within the North Saskatchewan River Valley and Ravine System shall be accompanied by a report prepared by a registered Professional Engineer, and as set out in subsection 14.1 of this Bylaw, and that also details the minimum Setback for structures on the Site and any development conditions for the property required to prolong the stability of the bank.”

- [28] The Appellants complied with these requirements and provided the appropriate Geotechnical Engineering report outlining the conditions that had to be met in order to ensure slope stability at the site of the proposed development.
- [29] A City of Edmonton Senior Geotechnical Engineer stated in his response to the geotechnical report submitted by the Appellants that:
- “the design and construction recommendations and development restrictions presented in the geotechnical report must be adhered to in order to manage the inherent geotechnical risks present locally at this site.”
- [30] However, the Senior Geotechnical Engineer also referred to a geotechnical report that was prepared in 1986 by EBA Engineering Consultants Ltd. (a copy of which was not provided to the Board). That report indicated that the entire Lavigne neighbourhood is located on an ancient deep-seated landslide mass. The Senior Geotechnical Engineer stated that:
- “The level of risk that is posed to development in this neighbourhood has not been quantified, and the possibility of determining this information is considered to be well beyond the means of any individual property owner to address.”
- Since the City’s administration do not have the information required to adequately evaluate the geotechnical risk to development in Lavigne, all applications in this neighbourhood must be rejected and forwarded to the Subdivision and Development Appeal Board (SDAB). I would therefore recommend that this application also be forwarded to the SDAB for a final ruling.”
- [31] Based on this information, the Development Officer made the decision to refuse this development permit application. It is the Board’s understanding that the Geotechnical Engineering department makes the same recommendation for all proposed developments in this neighbourhood because of the uncertainty posed by the ancient landslide.
- [32] The Board is of the view that the Development Officer should not have refused the development application based solely on the statement provided by the Senior Geotechnical Engineer. If the proposed development was not refused based on the Geotechnical Report, the proposed development would have been approved as a Class A permit.
- [33] The Senior Geotechnical Engineer is essentially saying that residential development should not be permitted in this neighbourhood. However, the City has known since 1986 that this entire neighbourhood is located on an ancient deep-seated landslide. Notwithstanding this knowledge, City Council has not taken any steps to restrict residential development in the neighbourhood and large parts of the neighbourhood are zoned RF2 Low Density Infill Zone, where Single Detached Housing is a Permitted Use.

- [34] The Development Officer's function is to evaluate development applications for Permitted Uses and to approve them, with or without conditions, provided they comply with the *Edmonton Zoning Bylaw* or provided any required variances do not unduly or materially interfere with the amenities of the neighbourhood or with neighbouring parcels of land as outlined in Sections 11.1(1)(e) and 11.2 of the *Edmonton Zoning Bylaw*.
- [35] In this case Section 811.3(3) of the *Edmonton Zoning Bylaw* requires a Professional Engineer's report setting out, among other things, any development conditions for the property required to prolong the stability of the bank. Section 811.3(8) requires consultation with Integrated Infrastructure Services (the department where Geotechnical Engineering is located) with respect to conditions required to minimize erosion and stabilize soil conditions. The Senior Geotechnical Engineer did not have any concerns about the local geotechnical risk of the proposed development provided the restrictions in the Appellants' geotechnical report were adhered to. As well, the Appellants have acknowledged that they are aware of the ancient landslide and they accept the risk associated with it.
- [36] The Board finds that the proposed development is a Permitted Use that complies with Section 811 of the *Edmonton Zoning Bylaw*. The Development Officer should not have refused the proposed development on the basis that there are uncertainties regarding the potential stability of the entire neighbourhood. If there are such issues that are serious enough to restrict residential development, it is the function of City Council, with the advice of City Administration, to address them by way of zoning changes.
- [37] The Senior Geotechnical Engineer did not have the required information to evaluate the proposed development and the information was provided to the Board to make the decision regarding geotechnical risk to development in the neighbourhood. The Board has not been provided with all of the geotechnical reports that are relevant, notably the 1986 report that identified the ancient landslide, nor does it have the expertise to make such a determination. In any event, it is beyond the mandate of this Board to make such decisions.
- [38] The Board finds that there is no indication that the proposed development will have any impact on the ancient landslide. Accordingly, any concerns with respect to the ancient landslide are beyond the purview of this Board. In dealing with this appeal, this Board expresses no opinion about whether residential development should be allowed to take place in this neighbourhood because of the ancient landslide.
- [39] The Board accepts the assessment from the Senior Geotechnical Engineering that the local geotechnical risk associated with the proposed development will be appropriately mitigated provided that there is strict compliance with the development restrictions outlined in the Appellants' Geotechnical Report.

- [40] Further, as outlined in Exhibit A, the City's General Supervisor of Geotechnical Engineering provided his opinion that "there were no obvious indications of active instability at the immediate location of the property and [he] would not anticipate that local slope stability will be a significant issue for the proposed development."
- [41] Although it was not required, the Appellant completed Community Consultation and received support from neighbouring property owners. No letters were received in opposition and no one appeared in opposition at the hearing.
- [42] The Appeal is allowed and the Development is Granted.

Mr. V. Laberge, Presiding Officer
Subdivision and Development Appeal Board

Board Members in Attendance:

Mr. B. Gibson; Ms. L. Delfs; Ms. G. Harris; Mr. A. Peterson

CC: City of Edmonton, Development & Zoning Services, Attn: Ms. Bauer / Mr. Wen

Important Information for the Applicant/Appellant

1. This is not a Building Permit. A Building Permit must be obtained separately from Development & Zoning Services, 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 Development & Zoning Services, 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.