



**EDMONTON
TRIBUNALS**

*Subdivision &
Development
Appeal Board*

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Date: December 13, 2016
Project Number: 224039369-001
File Number: SDAB-D-16-284

Notice of Decision

November 10, 2016 hearing

- [1] On November 10, 2016, the Subdivision and Development Appeal Board (the “Board”) heard an appeal that was filed on **October 20, 2016**. The appeal concerned the decision of the Development Authority, issued on October 12, 2016, to refuse the following development:

Construct a Single Detached House with veranda, front deck (7.47 metres by 2.44 metres) front balcony (2.13 metres by 3.35 metres), rear uncovered deck (7.01 metres by 2.90 metres), rear balcony (1.52 metres by 4.53 metres), Basement Development NOT to be used as an additional Dwelling, and an Accessory Building (rear detached Garage, 5.94 metres by 6.10 metres).

- [2] The subject property is on Plan Q Blk 11 Lot 14, located at 9443 - 100A Street NW, within the (RF3) Small Scale Infill Development Zone. The Mature Neighbourhood Overlay, Floodplain Protection Overlay, North Saskatchewan River Valley and Ravine System Protection Overlay and the Rossdale Area Redevelopment Plan apply to the subject property.

- [3] The following documents were received prior to the hearing and form part of the record:

- A copy of the Development Permit application with attachments, proposed plans, and the refused Development Permit;
- The Development Officer’s written submissions; and
- The Appellant’s submissions.

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

- Exhibit A – Community consultation documents submitted by the Development Officer.
- Exhibit B – Community consultation documents 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*, R.S.A 2000, c. M-26 (the “*Municipal Government Act*”).
- [8] The Presiding Officer raised several preliminary issues with the parties. First of all, the Board will need to address whether there has been proper community consultation pursuant to *Thomas v Edmonton (City)*, 2016 ABCA 57. Secondly, the parties should cite all dimensions uniformly in metric. Thirdly, the Board must assess a reason for each variance and the cumulative variances, pursuant to *Yew v Edmonton (City)*, 2016 ABCA 207. Lastly, this is an appeal of the refused plans. The Appellant has indicated he has revisions and the Board wants to clarify if the revisions are minor revisions or whether they require a new set of plans and potentially an entirely new application. It is not the Board’s function to assess a new application that has not proceeded through the established vetting procedure under the *Edmonton Zoning Bylaw*.

Summary of Hearing*i) Position of the Appellant, Mr. A. Nystad representing Tri-Stad Designs*

- [9] Mr. Nystad indicated that there was some confusion regarding the proposed plans. Several Development Officers were involved in the review process over time and plans were misplaced. He re-sent the plans and after not hearing back from the Development Officer for some time, he asked for the plans to be refused.
- [10] The minor revisions being proposed to the refused plans include:
1. the south side cantilever section by the kitchen will be reduced in length from 6.22 metres to 4.24 metres.
 2. the front second floor balcony will be pulled back 2 feet towards the house, resulting in a reduction in width from 1.5 metres to 0.9 metres.
 3. the rear second floor balcony will be pulled back 2 feet, resulting in a reduction in width from 1.52 metres to 0.91 metres and an increase in the distance to the proposed detached garage from 9.73 metres to 10.34 metres.

[11] There will not be any changes to the Height. The revisions do not make the development larger and will not add to the one required variance in the Mature Neighbourhood Overlay.

iii) Position of the Development Officer, Mr. G. Robinson

[12] The reduction in the balcony will result in a Site Coverage issue if the deck is above 1.0 metres. The reduction in the cantilever may change the Floor Plan. These changes require a further technical review and re-examination of the variances. He suggested that the Board could proceed in 1 of 3 ways:

1. The appeal could proceed on the basis of the refused plans.
2. The appeal could be adjourned so revised plans could be submitted and reviewed.
3. The appeal could be withdrawn and the processes begin again with a new application on the basis of the revised plans.

iii) Position of the Appellant, Mr. A. Nystad representing Tri-Stad Designs

[13] Mr. Nystad requested an adjournment so that revised plans could be submitted.

iv) Position of the Development Officer, Mr. G. Robinson

[14] Given limited nature of the proposed revisions and the file history, which included a number of revised plans and staff changes, Mr. Robinson agreed to the Appellant's request and to review the revised plans and provide the Board with a revised list of variances.

The Presiding Officer asked the parties to include the new Site Coverage calculations. Further, community consultation requirements would need to be addressed if the revisions affect the Mature Neighbourhood Overlay variances. Mr. Robinson provided the Board with the letter that was sent from Sustainable Development and the form that was used for community consultation, ("Exhibit A"). Mr. Nystad indicated that the variances will not increase; therefore, the community consultation will not change. He provided the Board with the complete community consultation ("Exhibit B").

Decision

[15] The Board made and passed the following motion with consent of all parties:

“That the hearing for SDAB-D-16-284 be tabled to November 28, 2016 at 1:00 p.m. on the conditions that the Appellant provide a new Plot Plan and revised

Plans for evaluation to the Development Officer no later than November 17, 2016 and the Development Officer provide the reviewed plans to the SDAB Office and indicate the consequential changes to required variances no later than November 24, 2016.”

Reasons for Decision

- [16] The Appellant outlined three revisions to the refused proposed plans, which he believes will reduce and eliminate some of the required variances.
- [17] The Development Officer, George Robinson, indicated that he was not the Development Officer that reviewed the refused plans.
- [18] Mr. Robinson requested that Appellant provide him with a surveyor’s Plot Plan and a full set of plans to enable him time to review the revisions and identify any consequential changes to required variances.

November 28, 2016 Hearing

- [19] On November 28, 2016, the Board made and passed the following motion:

“That SDAB-D-16-284 be raised from the table.”

- [20] The following documents were received prior to the hearing and form part of the record:

- A copy of the revised plans; and
- The Development Officer’s revised reasons for refusal and revised written submission.

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

- Exhibit C1 and C2 – two previous SDAB decisions submitted by the Appellant;
- Exhibit D – photographs of adjacent properties and other three Storey, developments in neighbourhood submitted by the Appellant;
- Exhibit E – photographs of listed nearby properties with background information submitted by the Development Officer
- Exhibit F – a rendering of the proposed development and pictures of the House on Abutting corner Lot to the North and the Appellants’ other House located two lots to the south of the Subject Site with marked Heights submitted by the Appellant.

Preliminary Matters

- [22] 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.
- [23] The Presiding Officer outlined how the hearing would be continued, including the order of appearance of parties, and no opposition was noted.

Summary of Hearing*i) Position of the Appellant, Mr. A. Nystad representing Tri-Stad Designs*

- [20] The 39 percent Site Coverage calculation by the Development Officer included architectural features such as cantilevers, columns and fin walls that are not used for livable space. In his opinion, these architectural features are never used to calculate the Site Coverage.
- [21] The architectural features enhance the visual appearance of the House and they do not interfere with adjacent neighbours. These features are within their Side Yards.
- [22] Although the Development Officer classified these architectural features as cantilevers in his written submission, they really are not used for livable space.
- [23] Both adjacent properties to the north and south have decks over 1.5 metres in Height that look into the subject property.
- [24] The renderings demonstrate that the projecting architectural features are 0.31 metres off the face of the foundation of the building.
- [25] Other than the Site Coverage calculations, he agrees with all of the calculations determined by the Development Officer.
- [26] The submitted photographs show other similar three Storey developments in the neighbourhood.
- [27] Ms. J. Wong, representing the property owners of the subject Site introduced two previous SDAB decisions. (“Exhibit C1 and C2”).
- [28] He has not communicated with any Development Officer about the change in plans or the amended variances.

- [29] The rear second floor balcony was recessed and now the Rear Setback variance is eliminated.

The Development Officer, Mr. Liang confirmed that there is no longer a Rear Setback variance and the list of variances submitted on Friday, November 25, 2016 to the SDAB office is complete.

- [30] If the cantilevered projections were not included in the Site Coverage calculation, the total Site Coverage would be 33.63 percent. This is still over the (RF3) Small Scale Infill Development Zone Site Coverage, but within the maximum allowable Site Coverage in the Rosedale Area Redevelopment Plan.

- [31] The platform structure requiring a Front Setback variance has no railings and there will be a 2.7 metre strip of landscaping in the Front Yard, plus a 1.5 metre wide City sidewalk, and a 1.5 metre wide treed boulevard. In his opinion, there is adequate space in the front.

- [32] While the House requires a Height variance, if they were to propose a pitched roof, they would be able to have a higher roof compared to their flat roof design.

- [33] The portion of the House which exceeds 8.6 metres is less than 50% of the floor area and the rooftop decks are set back 2 metres from the front and over 1.0 metres on all but one side elevation. The third floor is flush with the north elevation of the House. It has a 1.2 metre Stepback from the south elevation of the House and 3.5 metres Stepbacks on both the front and rear elevations.

- [34] The rooftop terrace meets the required Setbacks.

- [35] To satisfy the community consultation requirements, they performed a double circulation of the neighbourhood and received overwhelming support for the proposed development.

ii) Position of Ms. J. Wong, representing the property owners

- [36] Ms. Wong's parents are the property owners. The proposed House was designed with seniors in mind. The design allows room for wheelchairs and an elevator, which is why there is a third Storey.

- [37] The House will be built tastefully. She wanted all details to be shown on the plans and to be upfront with the neighbours.

- [38] None of the neighbours she consulted with had any issues with their proposal. She showed the materials to the President of the Community League who took it to an executive meeting and they had no issues with the proposed development.

- [39] The second neighbourhood consultation was based on new variances and information that the Development Officer required them to include. She consulted the immediately adjacent neighbours and they had no concerns as noted in Exhibit B.
- [40] The balconies of the two adjacent houses project right to the side property lines. Almost every house on the block has a second floor balcony.
- [41] In her opinion, approximately 80 percent of the existing houses in the neighbourhood would require variances if they were built today.
- [42] She provided additional photographs of the neighbourhood and the adjacent properties to demonstrate what the existing Side Yard space looks like. (“Exhibit D”). She showed other wrap-around verandas in the neighbourhood to show that these are common.
- [43] The rear balcony is proposed to facilitate observing the river valley to the east. There is only a Lane and greenspace to the rear of the property.
- [44] Exhibit C2 is an SDAB decision from 2013 about a similar house located across the street from the subject Site located at 9442 – 100A Street. There was a lot of opposition to that house because it was not built according to the approved plans and it was designed differently too.
- [45] Mr. Nystad provided the following information in response to questions from the Board:
- a. He believes that the aforementioned architectural features are considered cornices, which are excluded from the Site Coverage calculation based on the definition of Site Coverage in the *Edmonton Zoning Bylaw*.
 - b. The massing effect attributable to the Height and Site Coverage variances would not be noticeable from the street, as the adjacent house to the north is higher. It has a pitched roof and a large gable facing the Front Lot Line.
 - c. They provided the proposed plans, the Mature Neighbourhood Overlay variances and a City of Edmonton letter to meet the community consultation requirement.
 - d. They talked to the President of the Rosssdale Community League, and the Community League had no issue with the proposed development.
 - e. Three of the cantilevered projections (architectural features) hold amenities such as a fire place, kitchen cupboards and appliances, and a closet. The other two columns are not used for any internal space.
 - f. They have no issues with the imposition of the Development Officer’s proposed conditions if the development is approved.

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

- [50] Mr. Liang referenced his written submission, dated November 25, 2016 to explain how the revised variances were calculated.
- [51] The Site Coverage numbers were taken from the numbers shown on the revised Plot Plan. The balconies and cantilevers were all included in the Site Coverage calculation.
- [52] Any space between the exterior walls above 1.0 metres in Height is calculated with the Site Coverage in accordance with the clearly written definition of Site Coverage in the *Edmonton Zoning Bylaw*.
- [53] The proposed Site Coverage exceeds the maximum allowable in the *Edmonton Zoning Bylaw* and the Rossdale Area Redevelopment Plan.
- [54] The front balcony does not project into the required 3.0 metre Front Setback. The front deck exceeds the maximum allowed projection into the required Front Setback by 0.4 metres.
- [55] The cantilever length requirements only apply to projections into the Side Yards, but not into the Front or Rear Yards.
- [56] He used the 4 corners of the Lot to determine the Grade and then measured to the midpoint of the parapet of the roof to determine the Height of the House. The Height of the parapet is 0.28 metres.
- [57] The front and rear decks have been lowered, the Garage no longer has a Rooftop Terrace, the Height of the House has been slightly lowered, and the kitchen cantilever on the (south) elevation of the House has been reduced.
- [58] He still feels that the reductions shown in the revised plans are not substantial enough to grant variances. In his view, the Height and Site Coverage variances remain concerning.
- [59] In his view, the intent of the Rossdale Area Redevelopment guidelines is to provide reasonable variance power to the *Edmonton Zoning Bylaw*. Because the Site Coverage also exceeds the more lenient Site Coverage allowance contained in the Rossdale Area Redevelopment Plan, this House is an overdevelopment of the Site.
- [60] He conducted a search for Real Property Reports for houses that were approved in the area ("Exhibit E"). He determined that most of the properties complied with the Site Coverage policy of the Rossdale Area Redevelopment Plan, except for two properties that were approved by the SDAB.

- [61] Most of the listed houses were built with a gable roof and all were within the maximum Height requirement. In his view, the proposed Height of this development is substantially higher than those houses, and it will unduly interfere with the amenities of the neighbourhood.
- [62] He believes that the community consultation required under section 814.3(24) of the *Edmonton Zoning Bylaw* was met.
- [63] There were 21 individual responses in support of the proposed development and 2 individual responses in opposition. He did not have the responses in front of him. He could not reveal their personal information as they directly contacted him, but he believed that they had size and Height concerns. He could not recall if either of the adjacent neighbours to the north or south had indicated opposition, but he has no reason to doubt the Appellant's statement that these immediately adjacent neighbours were contacted and were supportive of the development.
- [64] If he calculated the Grade of the subject Site based on the average of the two adjacent lots and the required variance was slightly reduced, his opinion about the propriety of the Height variance would not change.
- [65] The Presiding Officer acknowledged the work Mr. Liang put in to re-reviewing this application, however she indicated she was concerned that the list of properties in Exhibit E had missed information on the adjacent property and did not consider other houses on both sides of the street and along the block face. Particularly absent were other similar flat roof designs.
- Mr. Liang explained that some of the properties did not have Real Property Reports and therefore could not be included in Exhibit E.
- [66] While he acknowledged that based on the photographic evidence, the two adjacent houses have a similar massing impact, that fact did not change his opinion because the proposed House does not match the character of the entire streetscape.
- [67] Based on the photographic evidence, he agreed that the length of the cantilever projections into the required Side Setbacks did not have a material adverse impact on the adjacent properties. The projections were less than allowed and there was unimpeded space sufficient to access the rear of the property along both the north and south elevations.
- [68] In his view, the intent of the cantilever length regulations is to allow some space, but to prevent developers from taking advantage of the cantilever exceptions. Setbacks also relate to Fire Codes issues. He is not as concerned with this aspect of the proposal.
- [69] He is most concerned about the Height and the Site Coverage of the proposed development.

v) *Rebuttal of the Appellant*

[24] Based on the photographic evidence: the adjacent house to the north is higher than the proposed House with a dormer peak at 10.314 metres, the Appellants' house two doors to the south is of a similar Height with a peak at 33 feet and a flat portion at 30 feet; and the approved house across the street is higher, therefore in terms of massing, there will not be any impact. The Height to the front façade of their house is 6.9 metres, the higher third Storey is recessed 3.5 metres.

[25] He submitted new drawings demonstrating what their proposed House would look like in relation to the two adjacent houses. ("Exhibit F").

Mr. Liang indicated that it is difficult to compare the Houses without their plans, but he does not dispute the numbers indicating Height shown in Exhibit F.

[26] The Appellant had no further rebuttal.

Decision

[73] The appeal is **ALLOWED** and the decision of the Development Authority is **REVOKED**. The development is **GRANTED** as per the revised and resubmitted plans that were submitted to the Development Authority and dated November 16 and 18, 2016, and subject to the following **CONDITIONS**:

1. This Development Permit authorizes the development of a Single Detached House with veranda, front deck (7.47 m x 2.44 m), front balcony (1.47 m x 3.35 m), rear uncovered deck (7.01 m x 2.44 m), rear balcony (0.91 m x 4.53 m) and basement Development, and an Accessory Building (rear detached garage, 5.94 m x 6.10 m). The development shall be constructed in accordance with the stamped and approved drawings.
2. 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).
3. The Height of the principal building shall not exceed 10.6 m in accordance with Section 52 of the Edmonton Zoning Bylaw 12800.
4. The Basement elevation shall be no more than 1.2 m above Grade. The Basement elevation shall be measured as the distance between Grade level and the floor of the first Storey (Reference Section 814.3.16).

5. There shall be no vehicular access from the front public roadway (Reference Section 814.3.10).
6. A minimum of 2 off-street parking spaces [2 parking spaces are located inside the rear detached garage] shall be used for the purpose of accommodating the vehicles of residents in connection with the Single Detached House (Reference Section 54.1.1.c, 54.2.1.a, 54.2.4).
7. Landscaping shall be provided on the subject Site within 18 months of the occupancy of the Single Detached House. Trees and shrubs shall be maintained on the subject Site for a minimum of 42 months after the occupancy of the Single Detached House (Reference Section 55.2.1).
8. 2 deciduous trees with a minimum Caliper of 50 mm, 1 coniferous tree with a minimum Height of 2.5 m and 6 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 (Reference Section 55.2.1).
9. 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).
10. The proposed Basement development shall NOT be used as an additional Dwelling.
11. Lot grades must comply with the Edmonton Drainage Bylaw 16200. Contact Drainage Planning and Engineering at 780-496-5576 or lot.grading@edmonton.ca for lot grading inspection inquiries.

NOTES:

- A. Any future deck development greater than 0.6m (2ft) in height will require development and building permit approvals
- B. Any future deck enclosure or cover requires a separate development and building permit approval.
- C. The applicant is advised that there may be complications in obtaining a Development Permit for a future covered or uncovered deck because of excess in Site Coverage.

- D. Unless otherwise stated, all above references to "section numbers" refer to the authority under the Edmonton Zoning Bylaw 12800.
- E. An approved Development Permit means that the proposed development has been reviewed only against the provisions of the Edmonton Zoning Bylaw. It does not remove obligations to conform with other legislation, bylaws or land title instruments such as the Municipal Government Act, the ERCB Directive 079, the Edmonton Safety Codes Permit Bylaw or any caveats, covenants or easements that might be attached to the Site.

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

1. The maximum Site Coverage for a Principal Building of 28 percent (87.03 square metres) allowed per section 140.4(10)(a) is varied to permit an excess of 11 percent (34.92 square metres), thereby increasing the maximum allowed Site Coverage to 39 percent (121.95 square metres).
2. The maximum Total Site Coverage of 40 percent (124.33 square metres) allowed per section 140.4(10)(a) is varied to permit an excess of 11 percent (33.85 square metres), thereby increasing the maximum allowed Site Coverage to 51 percent (158.18 square metres).
3. The minimum distance of 3.0 metres between a single Storey Platform Structure and the Front Lot Line is varied to permit a deficiency of 0.3 metres, thereby decreasing the minimum distance to 2.7 metres.
4. The maximum Height of 8.6 metres allowed per section 814.3(13) is varied to permit an excess of 2.0 metres, thereby increasing the maximum Height to 10.6 metres.
5. For a flat roof type, the maximum Height of the parapet above the maximum Height allowed in the Mature Neighbourhood Overlay is 0.4 metres per section 52.1(b) and is varied to allow an excess of 1.7 metres, thereby increasing the maximum Height to 10.7 metres from Grade to the top of the parapet.
6. The requirements in section 44(2)(a) and 44(2)(b) regarding the maximum length of cantilevered projections into interior Side Setbacks are varied as follows:
 - a. One cantilevered projection on the north elevation may exceed the 3.1 metres maximum per section 44(2)(a) by 1.1 metres for a total of 4.2 metres.

- b. The maximum total length of projections of one third of the length of the side wall on the north elevation per section 44(2)(b) is varied to allow a total length of all projections of 39 percent or 6.6 metres.
- c. One cantilevered projection on the South Elevation may exceed the 3.1 metres maximum per section 44(2)(a) by 1.2 metres for a total of 4.3 metres.
- d. The maximum total length of projections of one third of the length of the side wall on the south elevation per section 44(2)(b) is varied to allow a total length of all projections of 49 percent or 15.2 metres.

Reasons for Decision

- [25] The proposed development, Single Detached House, is a Permitted Use in the RF3 Small Scale Infill Development Zone.
- [26] The subject Site is an Interior Lot located on a block face of a uniform series of rectangular Lots. They are all a standard width, but shallower by approximately 30 metres (and therefore smaller in Site Area) than typical Lots located within the Rossdale ARP. There are no neighbouring developments to the rear of these shallow Lots. They back onto a lane and a green park space.
- [27] The Appellant asked the Board to make its determination based on revised drawings which reduced and eliminated some of the variances listed in the refusal of the Development Officer. The revised plans were provided to the Development Officer who assessed them and determined the consequential revised variances. The revised plans:
- i)* reduced the required variances for the Principal Building and Total Site Coverage,
 - ii)* reduced the length of a cantilevered projection on the south and north elevations,
 - iii)* reduced the aggregate total cantilevered projections on the north and south elevations,
 - iv)* eliminated the Setback variances for the front balcony and the rear balcony
 - v)* reduced the required Setback variance for the rear platform structure
 - vi)* reduced the required Height variance
 - vii)* eliminated the Rooftop Terrace variance associated with the detached Garage.
- [28] These revisions did not significantly alleviate the Development Officer's concerns about the excess in Height and Site Coverage. In his view, the proposed development is still significantly over the massing intended by the *Edmonton Zoning Bylaw*, the Mature Neighbourhood Overlay and the Rossdale ARP.

- [29] The Board accepts the evidence of the Appellants, including the evidence in Exhibit A and B and the opinion of the Development Officer that the Appellants have satisfied the requirements for community consultation per section 814.3(24) of the *Edmonton Zoning Bylaw*.
- [30] Overall the results of community consultation favour granting the variances to the Mature Neighbourhood Overlay. A great majority of the feedback was positive. The Appellants stated that they received overwhelmingly positive feedback and the Development Officer believed that he received only two responses opposed to the variances, but he could not elaborate on their concerns.
- [31] In addition, the Board accepts the Appellant's evidence that they consulted with the most affected neighbours on the Abutting Lots to the north and south and showed them the refused plans. The abutting neighbours are aware of the variances and have no concerns with the proposed development or the variances in particular.
- [32] No one appeared to oppose the development and the Board received no letters of opposition to the proposed development.
- [33] The variances to the maximum Site Coverage and Total Site Coverage are granted for the following reasons:
- a. The Board accepts the Development Officer's calculation of Site Coverage, Total Site Coverage and the required variances. The architectural features, including the columns and the cantilevered sections built to accommodate the kitchen, closet and fireplace all fall within the definition of Site Coverage and do not fall within the exceptions listed under section 6.1(97) of the *Edmonton Zoning Bylaw*.
 - b. The Development Officer provided examples of six houses along 100A Street to demonstrate that the proposed variances to Site Coverage and Height are not usual for this area. Four of the examples were located on similar sized shallow Lots along the block face. However, the Development Officer recognized he had relied on incomplete information about the properties on this block face.
 - c. He also agreed that the Site Coverage listed in Exhibit E for the abutting property to the south did not include a large existing deck above 0.6 metres in Height which wraps around the residence and extends from the residence to the property line along the shared Side Lot Line. Further, the Site Coverage for the abutting Corner Lot to the north was not considered because it was approved before the enactment of the Mature Neighbourhood Overlay. Based on the photographic evidence, the Site Coverage of the abutting corner Lot to the north is significant.

It includes a large deck structure over 0.6 metres in Height extending from the first Storey of the house into the Rear Yard over the driveway leading to the attached rear Garage. Based on this photographic evidence, the immediately abutting developments include significant Principal Building and Total Site Coverages which appear very similar to the Site Coverages associated with the proposed development.

- d. While the Site Coverage of the Principal Building and the Total Site Coverage exceeds maximum under the RF3 Zone and the additional allowance under the Rosedale ARP, the development complies with the Side Setbacks and the requirements for a Private Outdoor Amenity Area. The development does require a 0.30 metre variance to accommodate the front deck, but the Development Officer did not feel that this Front Setback variance would have a material adverse impact. In reality, the majority of the excess in Site Coverage has been taken from the potential Private Outdoor Amenity Area available in the Rear Yard between the House and the detached Garage. Accordingly, the variance has no material visual impact on the front streetscape. The reduction of potential Private Outdoor Amenity Area in the Rear Yard is ameliorated by the existence of adjacent green park space across the rear lane.
- e. Given that the subject Site is significantly shallower than Lots typical to the area, the excess in Site Coverage does not result in a materially larger development, out of scale with newer infills in the area or on the block.
- f. The most affected abutting neighbours to the north and south have no objection to the Site Coverage variances. There are no adjacent neighbours to the rear of the property.

[84] The variances to the maximum Height are granted for the following reasons:

- a. The excess in Height is attributable to a third Storey which is significantly smaller in floor area than the other Storeys. The front, south, and rear elevations incorporate significant articulation and include recessed Stepbacks for the smaller third Storey that reduce the observable impact and massing effects of the Height.
- b. The front façade of the House nearest to 100A Street sits at 6.9 metres in Height. The third Storey has a 3.5 metre Stepback from the front façade lessening the visual impact from street level. The third Storey also has a 3.5 metre Stepback from the rear façade.
- c. The 3.5 metres Stepback on the south elevation lessens the impact of the variance in Height for the 2 and one half Storey house on the abutting Lot to the south.

- d. As shown in Exhibit F, the visual impact of the Height on the front façade is mitigated in part by the design of the house on the abutting corner Lot to the north. It has a unique double peaked roof and a large dormer to accommodate a partial third Storey on the front elevation creating a Height similar to the proposed development.
 - e. The unique peaked and partially flat roof design of the house on the abutting corner Lot to the north, and its second floor rooftop terrace and first floor attached rear deck which extends toward the rear Lot Line also limits the observable impact and massing effects of the proposed House viewed from the flanking roadway.
 - f. The Appellant argued that the Height variance should be allowed because the Board previously approved a similar design with a 2.41 metres variance in Height to accommodate a recessed third Storey on a Lot facing the subject Site. The Board has taken its decision concerning that development into consideration regarding the neighbourhood context, but the Board is not bound by precedent and considers each case individually on its own merits.
 - g. In this case, the Board heard mixed evidence about the Height of nearby houses. The Development Officer cited nearby examples of houses with compliant Heights, but also acknowledged that the abutting property to the North appeared to have a greater Height and that Height variances have been granted by the Board.
 - h. The Board accepts the Appellant's photographic evidence that recessed third Storeys and flat roof developments of comparable Heights are characteristic of more recent infill developments in this neighbourhood.
- [85] The variances to the maximum length of the cantilevered projections are granted for the following reasons:
- a. The foundation for the House along both the north and south elevations fully comply with the required Side Setbacks.
 - b. While the projections on the north and south elevations exceed the allowable length, they project 0.28 metres from the foundation. This projection is just less than half of the 0.60 metres maximum allowable projection. The parties agree that there is a continuous, clear 0.91 metres passage on both sides of the House and that these side yard passages are sufficient for access and maintenance.

- c. The Board accepts the Development Officer's statement that apart from the impact on Site Coverage, he believes there will be no adverse impacts for the abutting neighbours due to the variances in maximum length associated with these projections.

[86] The variance to the minimum distance between the Front Lot Line and the front Platform Structure is granted for the following reason:

- a. The Board accepts the evidence of both parties that landscaping will be provided and adequate screening and separation will exist between the deck and the sidewalk.
- b. The Board accepts the submissions of both parties that given these Site conditions, the impact on passersby will be minimal.

[87] The variance to the rear cantilevered projection is granted for the following reasons:

- a. The foundation of the House fully complies with the 40 percent Rear Setback requirement of the Mature Neighbourhood Overlay.
- b. While the second floor cantilever projects 0.4 metres into the required Rear Setback; the second floor rear balcony is the portion of the House located closest to the Rear Lot Line and its depth has been cut back to comply with the *Edmonton Zoning Bylaw*.
- c. The immediately abutting neighbours have no concerns with loss of privacy attributable to this second Storey and there are no adjacent developments to the rear of the subject Site.
- d. While the proposed variance to accommodate the cantilevered second Storey may negatively impact ground floor amenity space between the House and detached Garage, this impact is alleviated by the existence of the rear balcony and by the green space located to the rear of the property.

[88] The Appellants have agreed to the imposition of Conditions and advisements as proposed by the Development Officer.

[89] For 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.

Ms. K. Cherniawsky, Presiding Officer
Subdivision and Development Appeal Board



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Date: November 24, 2016
Project Number: 178289946-005
File Number: SDAB-D-16-285

Notice of Decision

- [1] On November 10, 2016, the Subdivision and Development Appeal Board (the “Board”) heard an appeal that was filed on **October 19, 2016**. The appeal concerned the decision of the Development Authority, issued on October 12, 2016, to refuse the following development:

Convert a Single Detached House to a Professional, Financial, and Office Support Service (107.5 square metres - main floor only) and one-dwelling Apartment House

- [2] The subject property is on Plan 4423AJ Blk 20 Lot 27, located at 12018 - 102 Avenue NW, within the DC1 Direct Development Control Provision. The Mature Neighbourhood Overlay and the Oliver 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; and
 - The Development Officer’s written submissions.
- [4] The following exhibit was presented during the hearing and form part of the record:
- Exhibit A – The Appellant’s written submission

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*, R.S.A 2000, c. M-26 (the “*Municipal Government Act*”).
- [8] The Presiding Officer referred the parties to its authority under Section 641(4) of the *Municipal Government Act*, RSA 2000, c. M-26, which states:
- Despite section 685, if a decision with respect to a development permit application in respect of a direct control district
- (a) is made by a council, there is no appeal to the subdivision and development appeal board, or
- (b) is made by a development authority, the appeal is limited to whether the development authority followed the directions of council, and if the subdivision and development appeal board finds that the development authority did not follow the directions it may, in accordance with the directions, substitute its decision for the development authority’s decision.

Summary of Hearing

i) Position of the Appellant, Mr. J. Campbell

- [9] The Appellant reviewed his written submission, marked Exhibit A.
- [10] The Appellant believes that City Council is supportive of this use. By the enactment of the Oliver Area Redevelopment Plan in 1997 and subsequent amendments, City Council is moving the Oliver area towards a particular character involving mixed used developments. City Council is also trying to protect the Single Family Homes through historical designation. Nearby properties have been rezoned to accommodate the type of mixed-use building that the Appellant is proposing.
- [11] The property is located in Sub Area 2 of the Oliver Area Redevelopment Plan. Under the Area 2 DC1 Zoning, Apartment Housing is a listed use. In their view the terms Sub Area 2 and DC1 Area 2 are interchangeable. This is indicative of Council’s intent to include Apartment Housing in Area 2 zoning, despite the underlying DC1 Area 1 zoning.
- [12] Upon questioning from the Board, the Appellant confirmed that the subject site is located within the *Area of Application* in DC1 Oliver Area Redevelopment Plan – 15.2 (Area 1), a portion of Sub Area 2, located at 121 Street and 102 Avenue.
- [13] Upon questioning from the Board, the Appellant confirmed that under the *Area of Application* from the DC1 Oliver Area Redevelopment Plan – 15.3 (Area 2), the listed use is “Apartment Housing (east of 112 Street only).”

ii) Position of the Development Officer, Mr. I. Welch

- [14] The Development Officer stated that the Oliver Area Redevelopment Plan is divided into Sub-Areas which includes policy discussion and also into Areas with specific zoning. This property is zoned DC1 Oliver Area Redevelopment Plan – 15.2 (Area 1). Apartment Housing is not a listed use. Notwithstanding various amendments to this Area Redevelopment Plan, City Council has chosen to keep this property zoned as is. City Council intended that this property be kept as a house or completely converted to a commercial use, but not both.
- [15] The Development Officer stated that *Land Use Bylaw 5996* applies, but even under the *Edmonton Zoning Bylaw*, it would make no difference as the definition of Apartment Housing remains the same.
- [16] The Development Officer cross-referenced all the various bylaw amendments (including Bylaw 11619) to the Oliver Area Redevelopment Plan to confirm that although the subject property is located within the boundaries of Sub-Area 2, it is zoned DC1 Oliver Area Redevelopment Plan – 15.2 (Area 1). Contrary to the Appellant’s argument, the subject property does not fit into the *Area of Application* for DC1 Oliver Area Redevelopment Plan – 15.3 (Area 2). Further, under that DC1, Apartment Housing (east of 112 Street only) is the listed use, but the proposed development is located west of 112 Street.
- [17] The Appellant needs to rezone the property to allow this type of use.

iii) Rebuttal of the Appellant

- [18] The Appellant had nothing to add in rebuttal.

Decision

- [19] The appeal is DENIED and the decision of the Development Authority is CONFIRMED. The development is REFUSED.

Reasons for Decision

- [20] As per *Bylaw 11618*, the subject Site is located within a Direct Control District.

- [21] The Board is governed by Section 641(4)(b) of the *Municipal Government Act* which states in part, “if a decision with respect to a development permit application in respect of a direct control district is made by a development authority, the appeal is limited to whether the development authority followed the directions of council, and if the subdivision and development appeal board finds that the development authority did not follow the directions it may, in accordance with the directions, substitute its decision for the development authority’s decision.”
- [22] The Appellant argued the Development Officer failed to follow the directions of City Council because he incorrectly applied the DC1 (Area 1) zoning in making his decision. The Appellant further argued that the development should be allowed because:
- i) the property fell within Sub Area 2 identified in Map 8 of the Oliver Area Redevelopment Plan and it is consistent with policies applicable to Sub Area 2; and,
 - ii) per Section 15.3.3(1), Apartment Housing is a listed Use under DC1 Oliver Area Redevelopment Plan – 15.3 (Area 2).
- [23] The Board disagrees based on a plain reading of the Oliver Area Redevelopment Plan.
- [24] The terms Sub Area and Area are not used interchangeably in the Oliver Area Redevelopment Plan.
- [25] The Oliver Area Redevelopment Plan divided the neighbourhood into 8 Sub Areas. The Subject site is located within a Sub Area 2. Section 6 of the Oliver Area Redevelopment Plan outlines the location, characteristics, demographic profile, current issues and policies applicable to all of Sub Area 2. Section 15 of the Oliver Area Redevelopment Plan implements the previously articulated policies by setting the zoning for the neighbourhood. It creates a single RF6 Medium Density Multiple Family Zone and 14 separate DC1 Direct Control Districts complete with unique provisions for area of application, rationale, uses and development criteria.
- [26] The subject Site is located within a small portion of Sub Area 2 designated DC1 (Area 1) (Oliver Area Redevelopment Plan, Map 8). The parties confirmed that the subject Site falls within the written description in the *Area of Application* set out in Section 15.2(1) (Area 1).
- [27] This was also supported by the evidence submitted the Development Officer that he cross-referenced *Bylaw* 11619 and its subsequent amendments to confirm the subject site zoning.
- [28] Therefore, the Development Officer properly followed the directions of Council by assessing the application under the DC1 (Area 1) Zone provisions.

- [29] Under Section 15.2(3) of the DC1 (Area 1) Zone, Apartment Housing is not a listed use. Therefore, the Development Officer also properly followed the directions of Council by refusing the application on the basis that the proposed use was not a listed use in the applicable Direct Control District.
- [30] The Board notes that the definition of Apartment Housing is substantially unchanged from the *Land Use Bylaw* to the *Edmonton Zoning Bylaw* and, therefore, regardless of the applicable Bylaw, the results of the case remain the same.
- [31] Based on the evidence provided, the Board finds that the Development Authority applied the correct sections of the *Bylaw* and, therefore, did follow the direction of City Council in refusing the proposed development. Therefore, in accordance with Section 641(4)(b) of the *Municipal Government Act*, the Board may not substitute its decision for the development authority's decision and the appeal is denied.

Ms. K. Cherniawsky, Presiding Officer
Subdivision and Development Appeal Board

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. 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.



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SDAB-D-16-286

Application No. 176858707-001

An appeal by Stephen Hesse VS Kennedy to construct 36 Dwellings of Apartment Housing (4 Storey with underground parking) and to demolish 4 existing Single Detached Houses and 3 detached Garages was **TABLED TO NOVEMBER 16, 2016.**