



**EDMONTON
TRIBUNALS**

*Subdivision &
Development
Appeal Board*

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Date: November 16, 2017
Project Number: 220102379-005
File Number: SDAB-D-17-204

Notice of Decision

- [1] On November 1, 2017, the Subdivision and Development Appeal Board (the “Board”) heard an appeal that was filed on **October 4, 2017**. The appeal concerned the decision of the Development Authority, issued on September 21, 2017, to refuse the following development:

Construct exterior alterations (driveway extension, 0.8 metres by 8.29 metres) to an existing Single Detached House, existing without permits

- [2] The subject property is on Plan 0724456 Blk 54 Lot 120, located at 5843 - 166 Avenue NW, within the RSL Residential Small Lot Zone. The Hollick Kenyon Neighbourhood Structure Plan and Pilot Sound Area Structure 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.

Preliminary Matters

- [4] At the outset of the appeal hearing, the Presiding Officer confirmed with the parties in attendance that there was no opposition to the composition of the panel.
- [5] The Presiding Officer outlined how the hearing would be conducted, including the order of appearance of parties, and no opposition was noted.
- [6] The appeal was filed on time, in accordance with Section 686 of the *Municipal Government Act*, RSA 2000, c M-26 (the “*Municipal Government Act*”).

Summary of Hearing*i) Position of the Appellant, Mr. Saleh, representing Vivid 1 Concept Ltd.*

- [7] The house was built by Vivid 1 Concept Ltd. The new property owner does not want to remove the driveway extension.
- [8] The subject Site is a pie-shaped lot. The front portion of the Site is narrow. There is room in the double attached garage to park two vehicles. Without the extension, there would not be sufficient room to park two vehicles in front of the garage, due to how the Site narrows on the southwest side. The driveway was extended to allow space for two vehicles to park – the extended portion runs parallel to the northeast property line.
- [9] He confirmed that the extended driveway will be used only for parking.
- [10] In response to questions by the Board, the Appellant stated that he received a Final Grade Certificate and that there are no drainage issues. Space was left between the property lines for proper drainage. This buffer is landscaped.
- [11] Snow removal will be piled to the side of the garage along the fence as there is a four foot Side Yard in this area.
- [12] With regard to the suggested conditions by the Development Officer, he does not agree to the first condition that would prohibit parking in the Front Yard. He is agreeable to the remaining suggested conditions.
- [13] In his opinion, the extended driveway does not impact the neighbouring property. With regard to Community Consultation, he stated that he spoke to the neighbour northeast of the subject Site who was not opposed to the extended driveway.
- [14] There is a gate on the northeast side of the house, where the driveway meets the Side Yard, allowing access to the Side Yard.

ii) Position of the Development Officer, Ms. Echo Lai

- [15] The Development Authority provided written submissions and did not attend the hearing.

Decision

- [16] The appeal is ALLOWED and the decision of the Development Authority is REVOKED. The development is GRANTED as applied for to the Development Authority.

- [17] In granting the development the following variances to the *Edmonton Zoning Bylaw* are allowed:
- i. Section 54.1(4)(a) is waived to permit a Driveway extension that does not lead directly to the Garage.
 - ii. Sections 54.1(4)(c) is waived to permit the Driveway extension to increase the maximum allowable width of the Driveway.
 - iii. The landscaping requirements contained in Section 55 are waived for the existing concrete extension.

Reasons for Decision

- [18] The proposed development is Accessory to Single Detached Housing, which is a Permitted Use in the RF1 Single Detached Residential Zone.
- [19] The Board heard evidence that the lot is pie-shaped and the Driveway extension was required to facilitate tandem parking at the front of the lot.
- [20] The Board heard evidence that the Development Officer gave consideration to the small extension that acts as a walkway to the entrance on the southwest side of the driveway and felt that an additional extension was unnecessary. The Board notes that the extension on the southwest side provides pedestrian access to the house. The extension on the northeast side provides for parking for 2 vehicles, and is necessitated by the shape of the lot.
- [21] The Board heard evidence that the Appellant received a Lot Grading Certificate while the driveway extension was in place, and consequently the Board is satisfied that drainage will not be an issue.
- [22] The Appellant received verbal support from the most affected neighbour, who lives immediately to the northeast of the subject Site.
- [23] The extended portion of the Driveway now constitutes part of the Driveway. Consequently, a variance is not required to Section 54.2(2)(e).

- [24] For all of 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. A. Lund, Presiding Officer
Subdivision and Development Appeal Board

Important Information for the Applicant/Appellant

1. This is not a Building Permit. A Building Permit must be obtained separately from the Sustainable Development Department, located on the 2nd Floor, Edmonton Tower, 10111 – 104 Avenue NW, Edmonton, AB T5J 0J4.
2. Obtaining a Development Permit does not relieve you from complying with:
 - a) the requirements of the *Edmonton Zoning Bylaw*, insofar as those requirements have not been relaxed or varied by a decision of the Subdivision and Development Appeal Board,
 - b) the requirements of the *Alberta Safety Codes Act*,
 - c) the *Alberta Regulation 204/207 – Safety Codes Act – Permit Regulation*,
 - d) the requirements of any other appropriate federal, provincial or municipal legislation,
 - e) the conditions of any caveat, covenant, easement or other instrument affecting a building or land.
3. When an application for a Development Permit has been approved by the Subdivision and Development Appeal Board, it shall not be valid unless and until any conditions of approval, save those of a continuing nature, have been fulfilled.
4. A Development Permit will expire in accordance to the provisions of Section 22 of the *Edmonton Zoning Bylaw, Bylaw 12800*, as amended.
5. This decision may be appealed to the Alberta Court of Appeal on a question of law or jurisdiction under Section 688 of the *Municipal Government Act*, RSA 2000, c M-26. If the Subdivision and Development Appeal Board is served with notice of an application for leave to appeal its decision, such notice shall operate to suspend the Development Permit.
6. When a decision on a Development Permit application has been rendered by the Subdivision and Development Appeal Board, the enforcement of that decision is carried out by the Sustainable Development Department, located on the 2nd Floor, Edmonton Tower, 10111 – 104 Avenue NW, Edmonton, AB T5J 0J4.

NOTE: The City of Edmonton does not conduct independent environmental checks of land within the City. If you are concerned about the stability of this property for any purpose, you should conduct your own tests and reviews. The City of Edmonton, when issuing a development permit, makes no representations and offers no warranties as to the suitability of the property for any purpose or as to the presence or absence of any environmental contaminants on the property.



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Date: November 16, 2017
Project Number: 255117896-001
File Number: SDAB-D-17-205

Notice of Decision

- [1] On November 1, 2017, the Subdivision and Development Appeal Board (the “Board”) heard an appeal that was filed on **October 5, 2017**. The appeal concerned the decision of the Development Authority, issued on September 21, 2017, to approve the following development:

Construct a Stacked Row Housing Development (8 buildings, 81 Dwellings)

- [2] The subject property is on LDA14-0431 Block 21 Lot 54, located at 1332 - Watt Drive SW, within the RF6 Medium Density Multiple Family Zone. The Southeast Area Structure Plan and Walker Neighbourhood Structure 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 approved Development Permit;
 - The Development Officer’s written submissions;
 - The Appellant’s written submissions;
 - The Respondent’s written submissions;
 - Online responses in opposition to the proposed development; and
 - Emails in opposition to the proposed development.
- [4] The following exhibits were presented during the hearing and form part of the record:
- Exhibit A –Map from Bylaw 17065 submitted by the Appellant.
 - Exhibit B – Hand drawn diagram submitted by the Respondent.

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*”).
- [8] The Presiding Officer indicated to the parties that the Board needed to determine:
- a. Whether the Development Officer correctly exercised his power under section 7.1(3)(b) of the *Edmonton Zoning Bylaw* when he deemed the proposed development to be Stacked Row Housing and not Apartment Housing,
 - b. Whether the proposed development is reasonably compatible with the surrounding neighbourhood, having regard to planning considerations. Because the Development Officer exercised his power under section 7.1(3)(b) of the *Edmonton Zoning Bylaw*, the Use was to be assessed as though it were a Discretionary Use, and,
 - c. Whether the variances should be granted having regard for the Board’s variance power under section 687 of the *Municipal Government Act*.

Summary of Hearing

i) Position of the Appellant, Mr. Dave who was accompanied by Mr. Shah

- [9] They outlined the concerns of the residents regarding the impact of the proposed development.
- [10] Their main concern was that the zoning of the property changed from RF5 Row Housing Zone to RF6 Medium Density Multiple Family Zone. They also voiced concerns regarding inconsistencies in the zoning of nearby properties. In particular, they referred to a property southwest of the subject site that has the same address as the subject Site, but which is zoned differently. There is a sign on the property east of the subject Site advertising that there is a zoning change pending for the property. He referred to a zoning map showing the different zonings surrounding the subject Site (Exhibit A).
- [11] The Presiding Officer indicated that the Board does not have jurisdiction to reconsider the zoning decisions of City Council.

- [12] The Appellants are concerned that the increase in the Density will increase traffic and parking in the area.
- a. If each of the 81 Dwellings has two vehicles, there will be 162 new vehicles in the neighbourhood. Additionally, visitors will travel by vehicle to visit residents of the proposed developments.
 - b. There are schools in the area and many children travel through the neighbourhood on foot. The Appellants are concerned that the increase in traffic will create a safety hazard for the children in the neighbourhood. In particular, the traffic access to the proposed development is located at the north end of the Site, near to existing school bus stops.
 - c. The Appellants submitted that the 11 visitor parking spaces provided in the proposed development will be insufficient to provide parking for all the people who visit the development. On-street parking is already congested and if there are visitors for each of the 81 units, on-street parking will become more of an issue.
- [13] The Appellants are concerned that the increase in Density will lead to an increase in crime in the neighbourhood.
- [14] The balconies on the building that face their property will interfere with their privacy.
- [15] When they purchased their properties, their expectation was that no high density developments would be allowed in this area. They would support low density developments in this area.
- [16] The Appellants indicated that their concerns were shared by many neighbouring property owners.
- [17] In response to questions by the Board regarding the Use Class, they stated that the definition does not outline a specific number of balconies for each unit. They would not have a concern if the balconies did not face their properties.
- [18] They Appellants are concerned that the development might negatively impact their property values, but they did not have any evidence to support this contention.
- ii) *Position of Affected Property Owners in Support of the Appellant, Mr. Desai goudar*
- [19] He reiterated the Appellant's concern that the proposed development will increase the traffic in the neighbourhood which will be a safety concern for children walking to school.

- [20] He would like to see a stop sign or traffic light added to the area to address the safety concern.
- [21] In response to questions by the Board, he stated that vehicle access on the west side of the proposed development would be better option than access on the north side.

iii) Position of the Development Officer, Mr. Bacon

- [22] The property was rezoned from RF5 Row Housing Zone to RF6 Medium Density Multiple Family Zone in 2015.
- [23] The proposed Density is under the maximum allowed in the RF6 Medium Density Multiple Family Zone.
- [24] There are 173 on-site parking spaces and the proposed development is required to have 132 parking spaces.
- [25] With regard to privacy concerns, he stated that the subject Site abuts a park to the east, a collector road to the north, and a multi-use trail to the south. There are no privacy concerns with respect to these properties. To the west, the subject Site abuts residential housing. It is separated by a lane to the adjacent RF5 Row Housing site and is set back farther than what is required from the abutting RF4 residential properties, with one exception.
- [26] The corner of one building is set back from the west property line by 5.1 metres. Although a minimum Setback of 7.5 metres is required, the Development Officer may reduce this Setback to a minimum of 3.0 metres if the proposed façade is a flanking wall and an acceptable landscaped buffer is provided. The Development Officer confirmed that the proposed façade is a flanking wall and an acceptable landscaped buffer has been provided, so he reduced the required setback from 7.5 metres to 5.1 metres.
- [27] There are balconies on the west side of the property, but overlook concerns are mitigated by the large Setbacks and the significant landscaping in that Setback. Additionally, the size of the second storey balconies has been reduced, further mitigating their impact.
- [28] The balconies on the upper level are approximately five feet deep and are too shallow to be used as an Amenity Area.
- [29] The proposed development is 11 metres in Height and they are allowed to build up to 16 metres in Height.
- [30] He stated that the proposed development *generally* conforms with the definition of Stacked Row Housing. The proposed development also conforms with the definition of Apartment House.

- [31] Section 7.1.3(b) of the *Edmonton Zoning Bylaw* states where specific purposes or activities generally conform to the wording of two or more Use definitions, the Development Officer may, at their discretion, deem that the purposes or activities conform to and are included in that Use which they consider to be the most appropriate. In such a case, the Use shall be considered a Discretionary Use, whether or not the Use is listed as a Permitted Use or Discretionary Use within the applicable Zone. He applied this section by deeming the proposed development to be Stacked Row Housing.
- [32] He determined that the Stacked Row Housing use class was the most appropriate use class in light of the following features of the proposed development:
- a. The proposed development meets the built form of a Stacked Row House. The units in the proposed development are stacked two deep vertically and horizontally.
 - b. Each Dwelling in the proposed development has its own entrance and there are no common hallways. Dwellings in Apartment Housing often share one common entrance and common hallways.
 - c. Like other Row Housing developments, the proposed development is pedestrian oriented.
- [33] The Development Officer noted that this Site could be developed in a manner that would have significantly more impact on surrounding properties. For example, a four storey Stacked Row Housing development with balconies could be developed on the subject Site.
- [34] With regard to traffic concerns, he stated that Transportation provided him with a written response which was included with the approved permit. Transportation is in support of the proposed development and its recommendations have been included as conditions in the Permit.
- [35] The only possible vehicle access to the proposed development is on the north side of the subject Site. Moving the access point to the west side is not feasible because of abutting residential development.
- iv) *Position of the Respondent, Mr. Dauk, representing Rohit Communities, who was accompanied by Mr. Poudyal*
- [36] The maximum Density available in an RF6 Medium Density Multiple Family Zone is 80 dwelling units per hectare and the proposed development has a Density of 70 dwellings per hectare.
- [37] The building will be 10 metres in Height and they are allowed to build up to 16 metres in Height. He rejected the Appellants' characterization of the proposed development as being a "high rise".

- [38] He referred to a diagram in his submission showing examples of what buildings could be built on the Subject Site.
- [39] A Stacked Row House development in the RF6 Medium Density Multiple Family Zone can be built as a two storey with another two storey on top with a balcony on the fourth floor. He referred to what a Row Housing development in an RF5 Zone would look like and indicated that the proposed development is similar in Height.
- [40] He referred to a diagram showing the Setback along the West property line and stated that there is a Setback in excess of the 7.5 metres required.
- [41] There is a utility lot to the south of the proposed development, separating it from neighbouring properties.
- [42] The development will be built as stacking units and there will be significant landscaping so there will be less of an impact on the neighbourhood.
- [43] They are required to have 133 parking spaces and the proposed development will have 150 parking spaces. If they count the extra tandem parking spaces, the proposed development has 173 spaces.
- [44] He referred to a hand drawing showing the orientation of the dwelling units and parking spaces in the buildings. Two dwelling units are stacked vertically in the front of the building. These two units are attached, in the rear, to a third dwelling unit stacked over a parking area. He noted that the definition of Stacked Row Housing contemplates that dwellings can be placed over others, or beside another dwelling.
- [45] The horizontal and vertical stacking of the Dwelling units allowed the developer to design a development with larger Setbacks and therefore less impact on neighbouring property owners.
- [46] They have developed buildings in the RA7 Low Rise Apartment Zone that are similar to the proposed development. The question of whether these developments are Apartment Buildings or Stacked Row Housing has been of little concern, because both uses are permitted in the RA7 Zone.
- [47] Each unit will have direct, at grade access out of the building. There is no common entrance.
- [48] There is a large open Amenity space around the boundary of the subject Site which is heavily landscaped with trees and will have a walk through area lined with benches. He referred to the landscaping plan and outlined the type of trees that will be planted around the boundary of the subject Site. Several of the trees will exceed the Height of the building and will mitigate any privacy concerns on neighbouring properties.

v) *Rebuttal of the Appellant, Mr. Dave, who was accompanied by Mr. Shah*

[49] They referred to the *Edmonton Zoning Bylaw* definition for Stacked Row Housing developments and reiterated their concerns.

Decision

[50] The appeal is DENIED and the decision of the Development Authority is CONFIRMED. The development is GRANTED as approved by the Development Authority.

Reasons for Decision

Use Class Definition

[51] The Board considered whether the Development Officer properly exercised his discretion under section 7.1(3)(b) to classify the proposed development as Stacked Row Housing and not Apartment Housing. Stacked Row Housing is a Permitted Use in a RF6 Medium Density Multiple Family Zone. Apartment Housing is neither a Permitted nor a Discretionary Use in this Zone.

[52] The Board notes that the definition of Stacked Row Housing contains at least two criteria:

- a. Each Dwelling unit has separate and individual access. This proposed development fits in with this element of the definition.
- b. The building can contain three or more dwellings arranged two deep. The definition specifies they can be arranged two deep vertically, placed over one another, or horizontally and attached at the rear or the side. The Board notes two possible interpretations from the wording in the definition. It could be that the Dwellings in a Row House can be stacked vertically or horizontally, but not both. Alternatively, one could read the definition as meaning that the Dwellings cannot be more than two deep, whether measuring vertically or horizontally. This development contains more than three Dwellings and they are stacked two deep, both horizontally and vertically.

[53] The Development Officer was satisfied that the proposed development *generally* conformed with the definition of Stacked Row Housing or Apartment Housing. The Board notes that section 7.1(3)(b) of the *Edmonton Zoning Bylaw* does not require a development to conform exactly with a Use definition, but rather, the section is triggered when a development conforms *generally* with a Use definition.

- [54] The Development Officer exercised his discretion in Section 7.1(3)(b) and determined that the proposed development is more appropriately classified as Stacked Row Housing, rather than Apartment Housing. In making this determination, the Development Officer noted that the proposed development complies with key features of the definition of Stacked Row Housing: each unit has individual access at grade, and the units are stacked two deep, whether measured horizontally or vertically. Additionally, the development has other design features that make it more appropriate to classify it as Stacked Row Housing than Apartment Housing: this is a pedestrian oriented development that lacks the features commonly seen in Apartment Housing, such as a common entrance and common hallways. The Board is satisfied that the Development Officer properly exercised his authority under section 7.1(3)(b).
- [55] Section 687(3)(d)(ii) of the *Municipal Government Act* specifies that this Board does not have jurisdiction to grant variances regarding Use. In the recent decision *Edmonton (City) v Edmonton (Subdivision and Development Appeal Board)*, 2017 ABCA 140, the Court of Appeal confirmed that this Board must not deem developments to be a Use if the development does not conform with key aspects of the Use class definition. In that case, the Board overturned the Development Officer's determination that the proposed development was a General Industrial Use, and instead the Board classified the development as a Major Home Based Business. The Court of Appeal reversed the Board, holding that the development did not comply with key features of the definition of a Major Home Based Business, see *ibid*, paras 8-12. In that case, the Development Officer had not exercised its authority under section 7.1(3)(b) of the *Edmonton Zoning Bylaw*, and consequently neither the Board nor the Court of Appeal considered this provision.
- [56] The Board is satisfied that this present case is distinguishable from *Edmonton (City) v Edmonton (Subdivision and Development Appeal Board)* because the development generally conforms with the key features of the definition of Stacked Row Housing and the Development Officer made use of his power under section 7.1(3)(b).
- [57] Section 7.1(3)(b) provides Development Officers with some discretion to select a Use class when a development generally conforms with two or more Use class definitions. By incorporating this provision into the *Edmonton Zoning Bylaw*, City Council has injected some flexibility into its Use class definitions. The Board is not granting a variance to Use, but rather is applying the Use class definitions as formulated by City Council, including both the definition of Stacked Row Housing in section 7.2(9) and the Development Officer's discretion when applying those Use Class definitions as articulated in section 7.1(3)(b).

Discretionary Use

- [58] Because the Development Officer exercised his authority under section 7.1(3)(b) of the *Edmonton Zoning Bylaw*, the Board is directed to assess the proposed development as a Discretionary Use even though Stacked Row House is a Permitted Use in the RF6 Medium Density Multiple Family Zone. Consequently, the Board must determine whether or not the proposed development is reasonably compatible with its surroundings.
- [59] Based on the evidence submitted regarding the Density, the proposed development will have 70 units per hectare which falls below the allowable Density for a development in the RF6 Medium Density Multiple Family Zone.
- [60] The Board heard concerns about the privacy impact to the houses located on the west side of the proposed development. The Board finds that these concerns have been addressed in the design of the proposed development.
- a. The evidence submitted shows that the proposed development was designed to minimize the impact on the neighbouring properties including Setbacks in excess of what is required on the west side of the subject Site.
 - b. The proposed development will have significant landscaping comprised of bushes and trees that – when fully grown – will exceed the proposed development in Height and mitigate the Appellants' concerns regarding overlook.
 - c. Privacy concerns do not arise with respect to the properties on the other three sides of the subject Site: the proposed development borders a road on the north side, a park on the east side, and a public trail on the south side.
- [61] The Board heard concerns that the proposed development might cause an increase in crime in the neighbourhood but was provided with no evidence from which it could draw this conclusion.
- [62] The Board heard concerns regarding traffic volume and safety. Transportation reviewed the proposed application and outlined suggested conditions that were incorporated into the approved Development Permit. Transportation did not have any concerns regarding traffic safety or volume. The Board was not provided with sufficient evidence that would allow it to arrive at a different conclusion than Transportation.
- [63] Mr. Desaigoudar proposed that the access to the proposed development should be relocated to the west side of the subject Site. However, that is not possible given the configuration of the surrounding developments on the west and a lack of road access on that side.
- [64] The Board heard concerns regarding the Height of the proposed development. The Height of the proposed development (11.0 metres) is similar to the maximum Height that would be allowed in the abutting RF4 Semi-detached Residential Zone (10.0 metres) and is below the allowable Height in the RF6 Medium Density Multiple Family Zone.

- [65] The Board heard concerns regarding the impact of on-street parking in the area and visitor parking spaces. The proposed development provides on-site parking well in excess of what is required under the *Edmonton Zoning Bylaw*. The proposed development is required to have 132 parking spaces and the proposed development will have 173 parking spaces. Additionally, the proposed development will have 11 visitor parking spaces which meet the requirements under the *Edmonton Zoning Bylaw*.
- [66] The Board notes that the Neighbourhood Structure Plan for this area calls for family oriented development and the proposed development provides for two and three bedroom dwellings, thereby advancing the goal of family oriented developments.
- [67] The Board notes that proposed development complies fully with the Parking, Density and Height regulations under the *Edmonton Zoning Bylaw*. The Appellants' concerns with respect to these issues flow from their primary concern, namely that the subject Site was rezoned from RF5 Row Housing Zone to RF6 Medium Density Multiple Family Zone in 2015. City Council has the power to rezone properties. These decisions can be challenged by way of a judicial review application to the Alberta Court of Queen's Bench. The Board, however, does *not* have jurisdiction to set aside or vary a zoning decision of City Council.
- [68] The Board is satisfied that the proposed development is compatible with the surrounding neighbourhood and no evidence was provided to the Board of any planning reasons that would lead the Board to conclude that this development is incompatible.

Variances

- [69] The proposed development requires four variances, all of which were granted by the Development Officer:
- a. With regard to varying the required Separation Space between two buildings, as provided in Section 48.3(1) and 48.4(1) of the *Edmonton Zoning Bylaw*, the Board heard no concerns from the residents regarding the impact of this variance. The Board finds that the Separation Space between two buildings located on site will have an immaterial impact on neighbouring properties.
 - b. The private outdoor Amenity Area has been reduced from 15 square metres to 7.5 square metres and from 3 metres in depth to 2.1 metres in depth. Thereby, a variance is required to Section 170.4(9) and 47(5) of the *Edmonton Zoning Bylaw*. The Development Officer provided his rationale for granting the variance: the proposed development will provide a common, outdoor Amenity Area and there is a park located directly east of the proposed development. The Board finds that this variance will have an immaterial effect on neighbouring properties.

- c. The building is being developed as Family Oriented Housing and one of the requirements is that each dwelling shall have two bedrooms. Based on the evidence submitted, 24 of the 81 dwellings only have one bedroom. However, the Development Officer was prepared to grant a variance to Section 170.4(11) and 6.1(37)(b) of the *Edmonton Zoning Bylaw* because a number of the other dwellings have in excess of two bedrooms and the average bedroom per dwelling is 2.37, exceeding the minimum required average of 2.25 bedrooms per dwelling. The Board heard no concerns regarding this variance and finds that any impact on neighbouring properties will be immaterial.
- d. With regard to the variance in the West Setback in Section 170.4(12)(a), there is a requirement for a 7.5 metre Setback which can be reduced to a 3.0 metre Setback where the proposed façade is a flanking wall and an acceptable landscaped buffer is provided. The Development Officer provided for a smaller Setback with regard to one corner of the building in the southwest edge of the development. The Development Officer noted that this was a flanking wall without any balconies and he was satisfied that there was adequate landscaping between this building and the neighbouring properties. All of the other Setbacks on the west edge were in excess of the minimum required offsetting some of the impacts potentially caused by this reduced Setback. The Board is satisfied that the reduction in the Setback at the one corner of the building will have an immaterial impact on any neighbouring properties.

- [70] Under Section 687(3)(d) of the *Municipal Government Act*, the Board may confirm a development permit even though the proposed development does not comply with the land use bylaw if the Board is satisfied that, “the proposed development would not interfere with the amenities of the neighbourhood, or materially interfere with or affect the use, enjoyment or value of neighbouring parcels of land.”
- [71] The Appellant stated that the proposed development may impact the value of their properties, but provided no evidence to support this contention.
- [72] The Board heard from a number of neighbouring property owners in opposition to the proposed development and received written submissions with concerns including rezoning of the site from RF5 Row Housing Zone to RF6 Medium Density Multiple Family Zone, which the Board cannot address.
- [73] The Board was satisfied, based on the evidence presented, that the proposed development has been designed to minimize any impact, including massing and privacy, on neighbouring properties and is a smaller, less dense use than what the Respondents could build on the Site, without any variances.

[74] The Board finds 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.

A handwritten signature in blue ink, appearing to read 'A. Lund', is positioned above the typed name.

Ms. A. Lund, Presiding Officer
Subdivision and Development Appeal Board

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*,
 - c) the *Alberta Regulation 204/207 – Safety Codes Act – Permit Regulation*,
 - d) the requirements of any other appropriate federal, provincial or municipal legislation,
 - e) the conditions of any caveat, covenant, easement or other instrument affecting a building or land.
3. When an application for a Development Permit has been approved by the Subdivision and Development Appeal Board, it shall not be valid unless and until any conditions of approval, save those of a continuing nature, have been fulfilled.
4. A Development Permit will expire in accordance to the provisions of Section 22 of the *Edmonton Zoning Bylaw, Bylaw 12800*, as amended.
5. This decision may be appealed to the Alberta Court of Appeal on a question of law or jurisdiction under Section 688 of the *Municipal Government Act*, RSA 2000, c M-26. If the Subdivision and Development Appeal Board is served with notice of an application for leave to appeal its decision, such notice shall operate to suspend the Development Permit.
6. When a decision on a Development Permit application has been rendered by the Subdivision and Development Appeal Board, the enforcement of that decision is carried out by the Sustainable Development Department, located on the 2nd Floor, Edmonton Tower, 10111 – 104 Avenue NW, Edmonton, AB T5J 0J4.

NOTE: The City of Edmonton does not conduct independent environmental checks of land within the City. If you are concerned about the stability of this property for any purpose, you should conduct your own tests and reviews. The City of Edmonton, when issuing a development permit, makes no representations and offers no warranties as to the suitability of the property for any purpose or as to the presence or absence of any environmental contaminants on the property.