

## EDMONTON SUBDIVISION AND DEVELOPMENT APPEAL BOARD

Citation: Stella & Uriel Barak v Development Authority of the City of Edmonton, 2019  
ABESDAB 10205

Date: December 5, 2019  
Project Number: 341976428-001  
File Number: SDAB-D-19-205

Between:

Stella & Uriel Barak

and

The City of Edmonton, Development Authority

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### Board Members

Ian Wachowicz, Chair  
Gwen Harris  
Debby Kronewitt Martin  
Art Peterson  
Elaine Solez

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### DECISION

[1] On November 21, 2019, the Subdivision and Development Appeal Board (the “Board”) heard an appeal that was filed on November 3, 2019 for an application by Franken Holdings Ltd. The appeal concerned the decision of the Development Authority, issued on October 15, 2019, to approve the following development:

Construct a front uncovered deck and to install a stationary mechanical system in the Side Yard (right side) of a Single Detached House, existing without permits (deck, 2.67 metres by 2.51 metres @ 0.53 metres in Height; air conditioner, 0.74 metres by 0.88 metres)

[2] The subject property is on Plan 1820090 Blk 59 Lot 22, located at 10505 - 132 Street NW, within the RF1 Single Detached Residential Zone. The Mature Neighbourhood Overlay applies 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; and
- The Appellant's reasons for appeal.

### **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 Appellants, S. and U. Barak*

[7] The Appellants advised they will not be attending the hearing and requested the Board to proceed in their absence.

[8] The following reasons were provided at the time the appeal was filed:

- a. The external air conditioning unit box at the right side of the property should be placed at the rear of the property.
- b. The external air conditioning unit box is too close to my property and I am concerned of the noise pollution.
- c. The external air conditioning unit box is hazardous to my family.
- d. I am concerned that the external air conditioning box was permitted by the Edmonton development board without my prior knowledge and approval.

If we allow a permit in this instance, post-facto, we are awarding this developer for his illegal act.

#### *ii) Position of the Development Officer, R. Zhou*

[9] The Development Authority did not attend the hearing and the Board relied on his written submission.

*iii) Position of the Permit Holder, Franken Holdings Ltd.*

- [10] S. Franken appeared on behalf of Franken Holdings Ltd.
- [11] Franken Holdings has installed many air conditioners on the sides of houses in the past without any issues and did not realize a permit is required for this.
- [12] There is not much room in the backyards of skinny houses and the mechanical room is usually on the side of the house.
- [13] Franken Holdings had spoken to the Appellants during construction and the only objection they received was that the brackets for the air conditioning unit were sticking out too far. This problem was rectified.
- [14] Mr. Franken provided the following responses to questions from the Board:
- a. The house is already completed and occupied.
  - b. Franken Holdings has not received any noise complaints; however, since the house was only occupied a month ago, the air conditioning unit has not yet been operational.
  - c. It is up to the new occupants to decide if a privacy fence will be erected between the two properties. It does not appear as if any of the Appellants' bedroom windows face the air conditioning unit.
  - d. The HVAC installer advised that this air conditioner runs at 70 decibels. Mr. Franken does not believe that this is overly loud.

## **Decision**

- [15] 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**

- [16] Single Detached Housing is a Permitted Use in the RF1 Single Detached Residential Zone.
- [17] The matter before the Board dealt with the location of a stationary mechanical system, namely an air conditioner unit. On lots that are 9 metres or less in Width, stationary mechanical systems are not to be located in the Side Yard. Section 45.8 of the *Edmonton Zoning Bylaw* states:
8. On a Site in a residential Zone, any component of a stationary mechanical system that:

- a. emits noise or is designed to emit noise outside of a building that is audible on any Abutting Site in a residential Zone; and
- b. is located on, or Abutting, a Site in a residential Zone that has a Site Width of less than 9.0 metres;

shall be located in a Rear Yard.

[18] The Development Authority granted a variance waiving that requirement. The Board upholds that variance and confirms the Development Authority's decision for the following reasons:

- a. The proposed development complies with all other development requirements.
- b. The air conditioner is an accessory function and does not change the footprint of the building.
- c. The air conditioner is a small unit within the Side Yard and its visual impacts are minimal from the street.

[19] The Board heard no evidence of any deleterious effect being occasioned by the existence of this stationary mechanical system.

[20] For all of these reasons, the Board finds that the variance granted will not unduly interfere with the amenities of the neighbourhood nor materially interfere with or affect the use, enjoyment or value of neighbouring properties.

[21] The Appeal is denied.

Ian Wachowicz, Chair  
Subdivision and Development Appeal Board

CC: Franken Holdings Ltd.  
Development & Zoning Services – Z. Rowley / A. Wen

**Important Information for the Applicant/Appellant**

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

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

## EDMONTON SUBDIVISION AND DEVELOPMENT APPEAL BOARD

Citation: 1847915 AB Ltd v Development Authority of the City of Edmonton, 2019 ABESDAB 10206

Date: December 5, 2019  
Project Number: 326697311-001  
File Number: SDAB-D-19-206

Between:

1847915 AB Ltd

and

The City of Edmonton, Development Authority

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### Board Members

Ian Wachowicz, Chair  
Gwen Harris  
Debby Kronewitt Martin  
Art Peterson  
Elaine Solez

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### DECISION

[9] On November 21, 2019, the Subdivision and Development Appeal Board (the “Board”) heard an appeal that was filed on November 5, 2019 for an application by Franken Holdings Ltd. The appeal concerned the decision of the Development Authority, issued on October 25, 2019, to approve the following development:

Construct a 4 Dwelling unit Row House with Unenclosed Front Porch(s), balconies

[10] The subject property is on Plan 5456AH Blk 11 Lot 20, located at 12220 - 112 Avenue NW, within the RF3 Small Scale Infill Development Zone. The Mature Neighbourhood Overlay and West Ingle Area Redevelopment Plan apply to the subject property.

[11] 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;
- The Appellant's written submissions and PowerPoint presentation; and
- Online responses, e-mails and signatures in opposition.

### **Preliminary Matters**

- [12] 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.
- [13] The Presiding Officer outlined how the hearing would be conducted, including the order of appearance of parties, and no opposition was noted.
- [14] 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*").
- [15] Prior to commencing the hearing the Board confirmed with the Development Officer, J. Angeles, that this development permit application was reviewed based on the current bylaw.

### **Summary of Hearing**

*i) Position of the Appellant, 1847915 AB Ltd.*

- [16] K. Herrick and J. Herrick appeared on behalf of 1847915 AB Ltd., a small Edmonton-based development company. They have successfully built and sold two other fourplex projects in the Inglewood neighbourhood.
- [17] The current home on this corner lot was built in 1930 and is in tear down condition.
- [18] They chose Inglewood due to its proximity to downtown, the businesses on 124 Street, and because it is within 150 metres of a Transit Avenue so it qualifies for a parking relaxation of 50 percent.
- [19] Their goal is to make infill more affordable and build well designed "Missing Middle" projects of fourteen to fifteen hundred square feet in the \$450,000 range. Their previous eight units were well received and were purchased by young professional couples or single people within 6 months of completion. Photos of their previous two builds were shown.
- [20] The real estate market in Edmonton is in a decline and there is a need for attractive properties at an affordable price. New skinny homes with a similar square footage are going for \$525,000 to \$630,000 in this area.
- [21] This project will help revitalize a mature neighbourhood and the design will be consistent with the upscale / esthetic design of new infill properties and row housing in the

surrounding area. The City is pro-development in this area; a 46 unit apartment building has been approved half a block away, and numerous skinny homes and six fourplexes have recently been developed.

- [22] The appellants have worked hard to develop positive relationships with adjacent neighbours in their previous two builds.
- [23] A map and photos were displayed to show the location and style of the six fourplexes that have been approved or constructed in the immediate vicinity.
- [24] The Appellants are proposing a Front Setback of 4.0 metres rather than the minimum required 7.17 metres and a Rear Setback of 15.7 metres which is only slightly less than the required 17.2 metres. The other projects in the area have been granted similar variances and it would be impossible to build a fourplex without them.
- [25] A plot plan was shown of the proposed development in relation to the neighbour's property to the north. Moving the proposed development further forward aligns the backyards with that of the north neighbour. The garages of the proposed development will be one storey.
- [26] The adjacent neighbour to the north has very large evergreen trees on the south side of her property which are taller than the proposed development. These trees currently block more sun from the yard than their proposed building would.
- [27] The façade facing the front has varied rooflines, variations in building setbacks, doors and windows have been placed to eliminate massing and landscaping has been designed to create visual interest.
- [28] In response to a question from the Chair regarding massing on the north façade, the appellants advised a 6 foot high fence will be constructed on that side. Columnar aspens and other shrubbery will be planted along the fence and the trees will line up with the windows as much as possible to add privacy.
- [29] The distance between the proposed development and the neighbour to the north is over 30 feet. Based on the standard lot size of 25 feet for a skinny lot, a whole house would fit in between the two buildings.
- [30] The variations for the cantilevers are being sought to allow the bedrooms to be of a useable size. An approved building currently under construction at 12604 – 116 Avenue has a similar cantilever to what they are proposing.
- [31] They tried to speak with as many neighbours as possible but had difficulty reaching everyone. The two immediate neighbours to the south signed letters of support.
- [32] The Appellants summarized their presentation as follows:



- a. Row housing is a Permitted Use in the RF3 Small Scale Infill Development Zone; however, it is rare to find row housing that complies with the required front and rear setbacks in this zone.
- b. The Appellants are confident that the proposed development will not unduly interfere with the amenities of the neighbourhood or materially interfere with or affect the use, enjoyment or value of neighbouring parcels of land.
- c. The proposed development supports Edmonton's initiative to provide affordable infills.

[33] The Appellants provided the following responses to questions from the Board:

- a. The Appellants believe the proposed development fits in with the character of the neighbourhood because there is already a large amount of existing infill in the neighbourhood.
- b. The difference between the east and west side of Inglewood is significant. Their first two fourplexes were in the west portion of Inglewood which has less new housing; therefore the designs of those builds were less modern. The current proposed development is in the east side of Inglewood which has many newer style homes so it has been designed to fit in with these new homes.
- c. Pushing the home further to the front of the lot helps alleviate the loss of sunlight penetration for the neighbour to the north. The trees currently on the lot to the north create more of a shading concern than the proposed fourplex.
- d. They acknowledged that the home to the north has many south facing windows; however the large separation between the buildings will help mitigate this.
- e. They did not have any discussions with the neighbour to the north prior to starting this project.
- f. They would be open to conditions from the Board such as stipulating colour variations or different cladding orientations on the north façade to add interest and alleviate the massing effect. They pointed out the dormer windows which break up the roof line.
- g. They confirmed that their other two fourplexes were on 150 foot lots; the current lot is only 140 feet.
- h. They did consider reducing to three units but found it is not financially feasible.

*iii) Position of the Development Officer, J. Angeles*

[34] Mr. Angeles appeared to answer questions from the Board.

- [35] He believes the 23 metre long cantilever along the whole length of the building makes the building much more massive and negatively impacts the neighbour to the north.
- [36] He agreed that a mix of vertical and horizontal siding or colour variations along this north façade would help mitigate the massing effect but would not totally alleviate it.
- [37] A 3 metre proposed setback is a bit too large when compared to the other buildings in the area. Most of the other buildings where the front setback does not comply have a deficiency of approximately 1 metre as opposed to the 3.17 metres being requested here. The minimum front setback requirement is to ensure uniformity in front setback of the whole block.
- [38] The difficulty is not with the lot – the difficulty is with how the units can sell.
- [39] When considering if a development reflects the character of the neighbourhood, Mr. Angeles has to look at both the existing buildings as well as the current ones being constructed. There has to be a balance between modern and traditional buildings and the proposed development is in character with the mixture in West Inglewood.

*iv) Position of an Affected Property Owner Opposed to the Development*

- [40] F. Maaskant owns the property immediately to the north of the proposed development. She referred to the letter she had submitted outlining her concerns as well as the signatures she had collected from over 28 neighbours. 99 percent of the people she spoke with felt that developers need to follow the regulations that the City has put in place.
- [41] The bylaws have already been relaxed a lot to allow for higher density developments. Asking for these kinds of variances goes beyond what adds to the quality of life in the neighbourhood.
- [42] Increasing the footprint on this lot adds to congestion in terms of balance between open space and buildings.
- [43] She will be greatly affected by the loss of sun exposure from the south. She has a sun room at the back of her house as well as a flourishing garden. The proposed 6 foot tall fence will would block even more light.
- [44] Perhaps this development needs to be on a 150 foot lot.
- [45] Ms. Maaskant provided the following responses to questions from the Board:
- a. The existing large evergreens are only located at the front of the property and there are no trees where her house starts. The trees are in the southwest corner of her lot so the only shading impact is in the late afternoon.
  - b. The impact of the proposed development would be worse if it were set back further to the east.

- c. She lives in an older two storey home with windows along the south side. There are currently no infills on the east side of 123 Street.
- d. All of the homes towards the north are set back approximately the same distance. The new development will stick further out than the rest of the homes on the block.
- e. Her major concerns are shadowing and loss of sunlight as well and the solid cantilevered wall which would make quite an impact. This results in an expansion of the building footprint without technically being called that because it does not touch the ground.

*vi) Rebuttal of the Appellant*

- [46] The Appellants are not asking for a variance to the site coverage as the maximum permitted square footage is complied with. It is not possible to fit a building on the lot that meets that maximum permitted site coverage without getting variances for setbacks.
- [47] There will be no traffic congestion as the proposed development is located on a corner lot on a dead end road. There is only one house to the east and the 122 Street utility corridor is located to the east of this house. Further to the east there is an industrial area. No cars are coming through this area to get to other areas of the City. Parking will not be an issue with the garage and four proposed parking stalls.
- [48] The front façade (along 123 Street) has been designed to make it feel as if you are coming up to an entrance. The proposed landscaping will make a big difference and the plan is to keep the very large evergreen tree on the southwest of the property if at all possible.
- [49] Regarding the massing effect of the north façade, the Appellants are very open to the Board imposing a condition to alter the configuration of the siding. They can also add shutters to the upstairs windows to break up the look of the building. They feel that four different colours may be more jarring. All of the units come with nice window coverings for privacy. The fourplex approved at 12604 – 116 Avenue has a very similar north façade as to what has been approved here.
- [50] The proposed development has not been refused based on site coverage or height. It is extremely unique to have a house 30 feet away from the neighbouring house as is the case here. Skinny home developments are being built less than 10 feet apart.

**Decision**

- [51] 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. On the north façade of the structure, each unit shall be distinguished from the adjacent units by alternating colour, materials, or orientation of cladding, to the satisfaction of the Development Officer.
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 20.6)
3. Amenity Area shall be permanently retained as open space, unencumbered by enclosed Accessory Buildings or future additions, where it is provided outdoors (Section 46.3(b)).
4. Dwelling shall incorporate design techniques, such as, but not limited to, translucent window treatment, window location, raised windows, or Privacy Screening, to reduce direct line of sight into the windows of the Dwelling on the Abutting property.
5. Waste Enclosure stand location should be no further than 3 meters (10 feet) from the rear property line. Space to deposit waste without interference from parked cars/walls shall be 1.0 metres.
6. PRIOR TO THE RELEASE OF DRAWINGS FOR BUILDING PERMIT REVIEW, the applicant or property owner shall pay a Development Permit Inspection Fee of \$518.00.
7. PRIOR TO THE RELEASE OF DRAWINGS FOR BUILDING PERMIT REVIEW, the applicant or property owner shall apply for a Fill-In Permit and pay the fee of \$50.00.
8. Landscaping shall be in accordance with the approved Landscape Plan, and Section 55 of the *Edmonton Zoning Bylaw*, to the satisfaction of the Development Officer.
9. Any changes to an approved Landscape Plan require the approval of the Development Officer prior to the Landscaping being installed.
10. Landscaping shall be installed within 18 months of receiving the Final Occupancy Permit. Landscaping shall be maintained in a healthy condition for a minimum of 24 months after the landscaping has been installed, to the satisfaction of the Development Officer.
11. A Landscape Security shall be provided to the City of Edmonton at the time of initial Landscape Inspection, to the satisfaction of the Development Officer. The initial Landscape Inspection shall be requested within 14 days of the Landscape installation being completed ([www.edmonton.ca/landscapeinspectionrequest](http://www.edmonton.ca/landscapeinspectionrequest)).
12. Upon determination that landscaping has been installed in compliance with the approved Landscape Plan, 20% of the full Landscape Security value as determined by the Development Officer shall be collected. The Landscape Security shall be retained for a period of 24 months from the date of the initial Landscape Inspection.

13. Sites that are not completed or are not compliant with approved Landscape Plans at the initial Landscape Inspection shall, in addition, be required to submit a Security for incomplete work; up to the full value of the Landscape Security, as determined by the Development Officer.

TRANSPORTATION/FILL IN PERMIT CONDITIONS:

1. The existing residential access to 112 Avenue, approximately 3.5 metres wide, located approximately 0.50 metres from the east property line must be removed and filled in with curb and gutter constructed and the boulevard restored as per the City of Edmonton Complete Streets Design and Construction Standards. The “fill-in” of the existing access must be included as requirement of the development permit. The owner/applicant must obtain a permit to remove the access, available from the Development and Zoning Services Branch, 2nd Floor, 10111-104 Avenue.
2. The removal of the residential access will result in the requirement for the construction of the flare on the west side of the adjacent north-south alley crossing. This flare must be constructed to match the existing flare on the east side of the alley crossing as per the City of Edmonton Complete Streets Design and construction Standards. The owner/applicant must contact Loli Fernandex (780-944-7683) a minimum of 72 hours prior to construction to arrange for an inspection.
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 (1-866-344-7429; [www.digshaw.ca](http://www.digshaw.ca)) should be contacted at least two weeks prior to the work beginning to have utilities located. Any costs associated with relocations and/or removals shall be at the expense of the owner/applicant.
4. There are existing boulevard trees adjacent to the site that must be protected during construction. Prior to construction, the owner/applicant must contact to arrange for hoarding and/or root cutting. All costs shall be borne by the owner/applicant. Please contact [citytrees@edmonton.ca](mailto:citytrees@edmonton.ca).
5. Garbage enclosures must be located entirely within private property and gates and/or doors of the garbage enclosure must not open or encroach into road right-of-way, as shown on the Enclosure.
6. 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](https://www.edmonton.ca/business_economy/licences_permits/oscam-permit-request.aspx)  
and,  
<https://www.edmonton.ca/documents/PDF/ConstructionSafety.pdf>

7. Any alley, 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. All expenses incurred for repair are to be borne by the owner.

#### ADVISEMENTS:

1. Building Great Neighbourhoods has recently completed neighbourhood renewal in Inglewood adjacent to this site. The removal and replacement of the curb should be done without cutting into the road structure as this is under warranty. The owner/applicant should contact Matthew Mohr of Building Great Neighbourhoods (780-495-9963) for more information.
  2. The proposed connector sidewalks from the property line of the subject site to tie into the City sidewalk, as shown on the Enclosure, are acceptable to Subdivision Planning.
- [52] In granting the development, the following variances to the *Edmonton Zoning Bylaw* are allowed:
1. The minimum required Front Setback of 7.17 metres as per Section 814.3(2)(c) is varied to allow a deficiency of 3.17 metres, thereby decreasing the minimum required Front Setback to 4.0 metres.
  2. The minimum required Rear Setback of 40 percent of Site Depth, or 17.2 metres as per Section 814.3(4) is varied to allow a deficiency of 3 percent or 1.5 metres, thereby decreasing the minimum required Rear Setback to 15.7 metres.
  3. The maximum allowed projection of cantilever into the Rear Setback of 0.6 metres as per Section 44.2(a) is varied to allow an excess of 1.5 metres, thereby increasing the maximum allowed to 2.1 metres.
  4. The maximum allowed projection of cantilever, including eaves, into the interior Side Setback of 0.6 metres as per Section 44.2(a) is varied to allow an excess of 0.6 metres, thereby increasing the maximum allowed to 1.2 metres.

5. The maximum length of any one projection in a Side Setback of 3.1 metres as per Section 44.2(b) is varied to allow an excess of 20.2 metres, thereby increasing the maximum allowed to 23.3 metres.

### **Reasons for Decision**

[53] Multi-unit Housing is a Permitted Use in the RF3 Small Scale Infill Development Zone. The purpose of the RF3 Small Scale Infill Development Zone is to provide for a mix of small scale housing.

[54] The Appellant requests variances to the Front Setback, Rear Setback, cantilever projections and length of cantilevers.

[55] The Development Officer also raised issues with compliance with Section 140.4(21) which states:

On Corner Sites, where Multi-unit Housing faces the flanking Side Lot Line, the Façade of the principal building facing the interior Side Lot Line shall include design techniques including, but not limited to, the use of varied rooflines, variations in building Setbacks and articulation of building Façades, in order to minimize the perception of massing, eliminate large uninterrupted expanses of wall and provide visual interest when the structure is viewed from an adjacent Lot.

[56] With respect to variances to Front Setback and Rear Setback, the main concern of Development Authority as well as the neighbour immediately to the north would be that the variances allow a structure that would appear to be more massive on the lot. The Board notes that the structure does not exceed the Site Coverage limitations on the lot, does not exceed the Height restrictions on the lot, and has a front façade that the Development Authority acknowledged was heavily articulated and contains several architectural features.

[57] The primary concern of the neighbour to the north dealt with sunlight penetration. The Board finds that while there may be a small decrease in sunlight penetration to the immediately north lot, the change in sunlight penetration will not significantly impact the lot to the north for following reasons:

- a. As the proposed development is not over Height, a deficiency of only 1.5 metres to the rear and 3.17 metres to the front of the house are at issue. There are very large trees that will obscure the front portion of the house from the neighbour to the north, significantly reducing the effect of the variance on any change in sunlight penetration.
- b. The principal dwelling on the lot immediately to the north is significantly set back from the property line, further mitigating the impact of the variance on sunlight penetration.
- c. The location of the proposed structure is such that it will not significantly affect sunlight penetration into the back yard and garden of residents to the north.

d. For these reasons, the Board finds that the Front Setback and Rear Setback required variances will not significantly or materially impact sunlight penetration relieving the central concern raised by the neighbour to the north to those two variances.

[58] Of greater concern to the Board was the structure's north face. The north façade, as currently presented, does contain significant risk of creating a structure with an excessive massing appearance. This is caused by the lack of physical articulation of the north façade with the exception of only two dormered windows, as well as the fact that the cantilevered portion of the north façade extends for almost the entire length of the structure. The Board does note that there is significant vegetation between these buildings and there will be increased vegetation when the proposed landscaping plan is put into effect. The existing vegetation as well as landscaping plan will go a long ways to obscure and reduce the massing effect of proposed structure.

[59] In addition, the Board has imposed condition No. 1 upon this permit which states:

On the north façade of the structure, each unit shall be distinguished from the adjacent units by alternating colour, materials, or orientation of cladding, to the satisfaction of the Development Officer.

This condition will ameliorate the massing effect of the proposed north façade by breaking up the continuity of the cladding of the north façade into four separate areas of alternating cladding styles, materials and colour. The massing effect of the structure will be reduced.

[60] After the imposition of Condition 1, the Board is satisfied that granting the variances will not unduly interfere with the amenities of the neighbourhood nor materially interfere with or affect the use, enjoyment or value of neighbouring parcels of land and the requirements of Section 140.4(21) will be met.

[61] The Board also notes that this development furthers the goal of 4.4.1.1 of the Municipal Development Plan, The Way We Grow, which states:

4.4.1.1 Provide a broad and varied housing choice, incorporating housing for various demographic and income groups in all neighbourhoods.

[62] The Board did not consider any economic impacts of the development.

[63] For these reasons the appeal is allowed and the development is granted.

Ian Wachowicz, Chair  
Subdivision and Development Appeal Board

CC: Development & Zoning Services – J. Angeles / A. Wen



**Important Information for the Applicant/Appellant**

7. 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.
8. Obtaining a Development Permit does not relieve you from complying with:
  - f) 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,
  - g) the requirements of the *Alberta Safety Codes Act*,
  - h) the *Alberta Regulation 204/207 – Safety Codes Act – Permit Regulation*,
  - i) the requirements of any other appropriate federal, provincial or municipal legislation,
  - j) the conditions of any caveat, covenant, easement or other instrument affecting a building or land.
9. 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.
10. A Development Permit will expire in accordance to the provisions of Section 22 of the *Edmonton Zoning Bylaw, Bylaw 12800*, as amended.
11. 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.
12. 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.*

## EDMONTON SUBDIVISION AND DEVELOPMENT APPEAL BOARD

Citation: Carmela Vizza v Subdivision Authority of the City of Edmonton, 2019 ABESDAB 20006

Date: December 5, 2019  
Project Number: 293696358-001  
File Number: SDAB-S-19-006

Between:

Carmela Vizza

and

The City of Edmonton, Subdivision Authority

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### Board Members

Ian Wachowicz, Chair  
Gwen Harris  
Debby Kronewitt Martin  
Art Peterson  
Elaine Solez

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### DECISION

[64] On November 21, 2019, the Subdivision and Development Appeal Board (the “Board”) heard an appeal that was filed on November 4, 2019 for an application by Alberta Geomatics Inc. The appeal concerned the decision of the Subdivision Authority, issued on October 17, 2019, to refuse the following subdivision:

**Create two (2) additional single detached residential lots.**

[65] The subject property is on Plan 4606NY Blk 34 Lot 37, located at 5923 - 148 Avenue NW, within the (RF1) Single Detached Residential Zone. The McLeod (West) Neighbourhood Area Structure Plan applies to the subject property.

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

- Copy of the decision of refusal from the Subdivision Authority

- The Subdivision Authority's written submissions;
- The Appellant's written submissions:
  - E-mail – Permission for Mary Lyseng to Represent Carmela Vizza at Appeal;
  - Written Appeal Response (six pages);
  - Attachments: 1, 2, 3, 4, 5A, 5B, 6A, 6B, 7, 8, 9, and 10; and
- Online responses. Five e-mails in opposition to the proposed Subdivision.

### **Preliminary Matters**

- [67] At the outset of the appeal hearing, the Chair confirmed with the parties in attendance that there was no opposition to the composition of the panel.
- [68] The Chair outlined how the hearing would be conducted, including the order of appearance of parties, and no opposition was noted.
- [69] The appeal was filed on time, in accordance with section 678 of the *Municipal Government Act*, RSA 2000, c M-26.

### **Summary of Hearing**

#### *i) Position of the Appellant, C. Vizza*

- [70] M. Lyseng appeared to represent C. Vizza the property owner. She provided her submissions in advance and was in attendance to answer questions.
- [71] She commented on the length of time it has taken for the subdivision application to be processed as it was started in September 2018.
- [72] A representative of the City originally indicated to them that it may be possible to divide the subject site into three lots.
- [73] She feels like some of their submitted documents for the option to split the site into two lots rather than three lots have gone missing and they feel that it has been difficult to obtain required information from the City.
- [74] Ms. Lyseng provided the following responses to questions from the Board:
- a. She believes that diagrams were submitted in conjunction with their original application that showed two options: a three lot split and a two lot split. A surveyor had been hired to prepare these drawings. She believes it was the surveyor who submitted the subdivision application.
  - b. After submitting the initial application they never heard anything back from the City until the recent refusal letter was received. They were told that the person originally dealing with this application was on an extended leave.

- c. The Appellant would be in agreement if the Board allowed the subject site to be split into two lots rather than three lots.

*iv) Position of the Subdivision Authority, J. Vos and T. Foster*

[12] J. Vos, Subdivision Planner and T. Foster, Transportation Technician, appeared to represent the Subdivision Authority.

[13] The application originally submitted by Alberta Geomatics Inc. was to create two additional lots (total of three lots) while retaining the existing home. The option to split the site into one additional lot (total of two lots) was not received until after the letter refusing the subdivision into three lots was issued.

[14] The subject site is a corner lot located in the McLeod Neighbourhood and is zoned (RF1) Single Detached Residential Zone. The existing home would be on the lot furthest to the north and would face 148 Avenue. The other two lots would face onto 59A Street. There is no lane.

[15] The Subdivision Authority's refusal was issued on October 17, 2019, for the following reasons:

1. The proposed subdivision does not comply with the development regulations identified in section 41.1(3) of the *Edmonton Zoning Bylaw* which states that in the RF1 Zone you can only subdivide to create one additional lot.
2. The proposed subdivision does not comply with the minimum development regulations identified in section 110.4(1) due to deficient site depth and site area.
  - a. The minimum site depth identified in the RF1 Zone for Single Detached Housing is 30.0 metres. The site depths of the proposed lots are 16.8 metres (remainder of Lot 37) and 18.3 metres (Lots 37A and 37B), which are therefore deficient by 13.2 metres and 11.7 metres or 44 percent and 39 percent.
  - b. The minimum site area identified in the RF1 Zone for Single Detached Housing is 250.8 square metres. The site areas of the proposed Lots 37A and 37B are 181.0 square metres which are therefore deficient by 69.8 square metres (28 percent).
3. This proposal will result in a site depth and lot size that is uncharacteristically small when compared to properties on the adjacent block faces.
  - a. The site depths on the adjacent block faces are approximately 36.6 metres as opposed to the proposed 16.8 metres and 18.3 metres.
  - b. Site areas of surrounding properties are approximately 613 square metres. The proposed site areas of 181 square metres for lots 37A and 37B are 70

percent less than the average of the lots on the block face. The proposed site area of 289 square metres for the remainder of Lot 37 is 53 percent less than most of the lots on the block face.

4. This proposal creates an unnecessary development hardship for existing and future landowners. Three non-conforming lots will be created that do not meet development regulations found in the *Edmonton Zoning Bylaw*. Any future developments on the lots would require a development permit variance and there is no guarantee that such a variance would be provided.
  5. Site driveway access to the proposed north lot will result in an unsafe intersection due to the proposed configuration of the driveway access through the corner cut and its proximity to the uncontrolled intersection of 148 Avenue and 59A Street.
    - a. Corner cuts must be free of obstructions that might restrict sightlines and which may create safety issues for pedestrians, cyclists or drivers.
    - b. There is insufficient space to construct a three metre driveway access for proposed Lots 37 and 37A and meet the required separation distances from the existing curb ramp (one metre), boulevard trees (three metres) and fire hydrant (1.8 metres). Removal of boulevard trees would be required.
  6. The creation of two additional front driveways instead of one additional front driveway perpetuates undesirable design.
    - a. Pedestrian walkability and safety would be compromised.
    - b. The amount of additional hard surfacing along the boulevard would break up the streetscape and the removal of boulevard trees would decrease public landscaping.
    - c. Front landscaping opportunities for the proposed lots would be limited.
    - d. There would be a loss of on-street parking.
- [16] The Subdivision Authority provided the following responses to questions from the Board:
- a. A. Seltz, a Development Officer, provided numerous examples of variances that would be required for any future developments on the three proposed lots due to the large deficiencies in site area and site depth.
  - b. It would be possible to construct semi-detached housing on the original single site without the requirement of any variances.

v) *Position of Affected Property Owners Opposed to the Subdivision*

- [17] Mr. J. and Mrs. J. Charchun, who live a few houses to the south across 59A Street have lived in the area for 51 years. They received notification of the appeal but did not receive any notice of the original subdivision application. It was explained that the Subdivision Authority is only required to notify the immediately adjacent land owners. In this case, the Board chose to notify all neighbours within a 60-metre radius.
- [18] They agree with the City that the proposed subdivision would result in traffic safety hazards. There is an elementary school just to the east of the subject site and many vehicles make a U-turn at this intersection to access the school. There is significant traffic when school opens and closes for students.
- [19] The loss of street parking would be a problem. There are always a minimum of three vehicles at the subject property and the property directly across the street to the east has an occupied secondary suite and there are up to four vehicles at that property.
- [20] It is already difficult for the City to plough around parked vehicles; more parked vehicles would aggravate the issue.
- [21] They are concerned with the impact to the general appearance of the subdivision. While they realize that a two-lot split can be done, it would not be appealing to have a total of three lots with two very skinny houses on the newly created lots.
- [22] The loss of boulevard trees is also concerning.

vii) *Rebuttal of the Appellant*

- [23] M. Lyseng reiterated that she does not understand what happened to the application and associated documents for splitting the site into two lots rather than three lots.
- [24] The grey area on the Real Property Report, submitted as Attachment 4 in her materials, is all concrete and would allow for access to both the existing house and the lot immediately to the south. She does not understand why one parking space is shown on the tentative subdivision plan to the east of the existing house as the original driveway can be used. This is the first time she has seen the tentative plan showing this parking space.
- [25] The existing house is a very high bi-level as per the photo submitted as Attachment 9 in her materials; it is almost pushing two storeys. There is enough land on the subject site that another house exactly the same as the existing house could be built.

**Decision**

- [26] The appeal is **DENIED** and the decision of the Subdivision Authority is **CONFIRMED**. The subdivision is **REFUSED**.

**Reasons for Decision**

- [27] The Appellant applied to subdivide a Site in the (RF1) Single Detached Residential Zone into two additional lots for a total of three lots. The appeal is denied for the following reasons.
- [28] The subdivided lots would not comply with the minimum development regulations identified in section 110.4(1) of the *Edmonton Zoning Bylaw*. The Site Depth would be deficient for all three lots and the minimum Site Area would be deficient for two of the three lots. The deficiencies are significant.
- [29] To allow the subdivision would create hardship lots which could not be developed as a right but would have to have variances granted for any residential development. It is not desirable to create three lots which cannot be developed without the granting of significant variances by the Development Authority. The Development Authority could choose to decline the required variances.
- [30] The proposed subdivision would create lots that are uncharacteristically small when compared to properties on adjacent block faces. With respect to Site Depth, the lots that would be created would be 46 to 50 percent smaller than the average Site Depth of the neighbouring lots. With respect to Site Area, on the remainder of Lot 37 it would be 53 percent smaller and two of the proposed lots would be a full 70 percent smaller than the average Site Area of neighbouring lots. These lots would be completely uncharacteristic of the neighbourhood.
- [31] The Site access to the proposed north lot would result in an unsafe intersection due to the proposed configuration of the driveway access and proximity to the uncontrolled intersection at 148 Avenue and 59A Street. The driveway would go through an existing corner cut which was initially created to allow for proper sight lines for that uncontrolled intersection. In addition, the proposed driveway access to all three proposed lots would require vehicles to back into or out of driveways across a municipal sidewalk and into traffic, which is potentially dangerous and undesirable.
- [32] In addition, given the absence of a lane, two of the proposed lots would be accessed by additional front driveways which would have to cross a boulevard that currently contains mature trees which further limits the sight lines for egress if the trees remain, or else would require the removal of the mature trees from the City's boulevard. Neither situation is desirable.
- [33] Finally, to grant the subdivision would require a variance waiving the requirement of section 41.1(3) which limits subdivision of lots in the (RF1) Single Detached Residential Zone into only one additional lot and not two.

[34] For all of the above reasons, allowing this subdivision would unduly interfere with the amenities of the neighbourhood and materially interfere with or affect the use, enjoyment or value of neighbouring parcels of land.

Ian Wachowicz, Chair  
Subdivision and Development Appeal Board

CC: Subdivision Authority – B. McDowall / J. Vos  
City of Edmonton Law Branch – M. Gunther



**Important Information for the Applicant/Appellant**

13. 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.