



**EDMONTON
TRIBUNALS**

*Subdivision &
Development
Appeal Board*

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Date: December 8, 2017
Project Number: 220576173-002
File Number: SDAB-D-17-229

Notice of Decision

- [1] On November 23, 2017, the Subdivision and Development Appeal Board (the “Board”) heard an appeal that was filed on November 6, 2017. The appeal concerned the decision of the Development Authority, issued on October 27, 2017, to refuse the following development:

Construct exterior alterations to a Single Detached House (Driveway extension, east, 2.98m x 10.38m; west 1.22m x 6.02m)

- [2] The subject property is on Plan 0622910 Blk 18 Lot 66, located at 6007 - 164 Avenue NW, within the RF1 Single Detached Residential Zone. The Matt Berry Neighbourhood Structure Plan and the 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:

- Copies of the refused permit and permit application with attachments;
- Registered mail receipt confirming delivery of the refusal decision on October 30, 2017;
- Development Officer’s written submissions dated November 7, 2017; and
- Appellant’s written submissions with supporting materials.

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

- Exhibit “A” – Petition of support for the development

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.

Summary of Hearing

i) Position of the Appellant, McAllister LLP

[8] Mr. E. Davies appeared on behalf of the previous owners of the home, the Maliks. At the time of sale in June 2016, a solicitor's undertaking was provided to attempt to obtain a permit for the existing Driveway extension.

[9] Mr. Davies provided an overview of the property's history from the original development of the lot to the time of purchase by the current owners.

[10] No affected parties in the sixty metre notification area have voiced their opposition to the proposed development. Nearly one third of the affected properties within this notification area have Driveway extensions similar to that of the subject property. Photographs of these properties, including the subject property, are provided in Schedule A of his supporting materials.

[11] Schedule B contains photos of properties outside of the 60 metre notification area but within walking distance of the subject site. The photos illustrate that concrete Driveway extensions are characteristic of the neighbourhood as a whole.

[12] The driveway extension existed prior to his clients' purchase of the property and predates the current bylaw by three or more years. This extension appears to have been professionally contracted sometime between June 2008 and June 2009, and an effort was made to match the finish of the existing Driveway. Mr. Davies does not know what regulations were in place at the time the extension was poured.

[13] He submitted that the Development Officer made a number of unfair assumptions. The extension existed prior to the Maliks or the Forsters (the current owners) purchasing the property, and the Development Officer cannot assume the current owners will park on the extension. The purpose of Driveway extensions are not always for parking, and some owners install them as they do not have the time, finances or physical ability to maintain landscaping such as grass or ornamental rock. Mr. Davies suggested the Board could impose a condition that no parking be permitted on the extension.

[14] The Development Officer mentioned the unsightly appearance of the development and that it sets a negative precedent for the neighbourhood. The current owners would not have purchased the property if they considered it to be unsightly. Schedule C contains examples of homes in the neighbourhood with no Driveway extensions but with unkempt yards with dead grass, shale rock gardens with dead shrubs and overgrown weed. By comparison, the concrete on the subject Site is more attractive and more practical than these properties.

- [15] Schedule D contains a decision of the Board (SDAB-D-15-201) which approved similar development two doors down from the subject Site. In that decision, the Board required that no parking be permitted on the Driveway extension.
- [16] Mr. Davies believes the requirement for the subject development permit was triggered when the Real Property Report was prepared at the time of sale.
- [17] He has reviewed the recommended conditions of the Development Officer should this development be approved. While he does not have any objections to the imposition of any conditions, this question would be better addressed to the current home owners. He also questioned if it is appropriate to prescribe that someone install a bench or plant a shrub to prevent parking, whereas a simple prohibition against parking on the extension would suffice.

ii) Position of Affected Property Owners, G. Forster and R. Forster

- [18] The Forsters have owned the subject property since 2016. While it was not their decision to pour the large Driveway it was a big selling feature and they find the lot attractive.
- [19] An extended Driveway is not uncharacteristic of the neighbourhood and they submitted a petition of support from surrounding neighbours (Exhibit "A").
- [20] The Forsters each have a vehicle which they park in the Garage. They confirmed that the boat parked on the Driveway as shown in the Appellant's supporting materials belongs to the previous homeowner. A friend who lives with them parks on the Driveway and accesses the home through the front door.
- [21] Although there are a number of Driveway extensions in the area, there is still adequate street parking available. He was unable to confirm whether the neighbours park on their Driveway extensions but he believes they do.
- [22] They have not had any issues with snow removal or drainage during the time they have owned this home.
- [23] They would be willing to abide with conditions such as the addition of a bench or planters to make the extension look more like a Walkway. They can comfortably fit all three vehicles at the property within the Garage or on the legal Driveway portion.
- [24] The cost of removing the extensions has not been explored.

iii) Position of the Development Officer, M. Ziober

- [25] The Development Officer did not attend the hearing and the Board relied on her written submission.

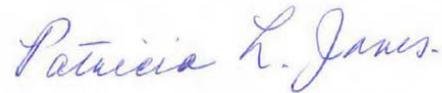
Decision

- [26] 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. The Board is imposing the following condition to Section 55.3(1)(e): To provide permanent landscaping features so as to comply with the landscaping bylaw such that no parking can occur on the extension on the east side of the driveway.
 2. Absolutely no parking is allowed within the required front yards/setbacks other than what was approved in the original Development Permit #168682951-001 (Reference Section 54.2 of the Edmonton Zoning Bylaw No 12800)
 3. 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.
 4. Lot grades must match the Engineered approved lot grading plans for the area. Contact Drainage Services at 780-496-5500 for lot grading inspection inquiries.
 5. This neighbourhood was constructed with roll faced curb; therefore a Curb Crossing Permit is not required for this access.
- [27] In granting the development the following variances to the Zoning Bylaw are allowed:
1. Section 54.1(4)(c) is varied to permit the Driveway width to be 9.84 metres instead of the maximum allowable width of 6.76 metres.

Reasons for Decision

- [28] A Driveway is Accessory to a Permitted Use in the RF1 Single Detached Residential Zone.
- [29] The Board finds that the proposed development, which has been characterized as a Driveway extension by the Development Authority, is more accurately described as a Walkway. Under section 6.1(122) of the Zoning Bylaw, Walkway is defined as “a path for pedestrian circulation that cannot be used for vehicular parking”. Based on the plans and photographic evidence, the eastern portion of the subject development leads directly to the front door, thereby facilitating “pedestrian circulation” per section 6.1(122). The current property owners indicated that they do not intend to park on the Walkway.
- [30] The remaining portion on the west side by itself is too narrow to accommodate a vehicle.

- [31] In addition, with the conditions imposed by the Board, the current homeowners will be allowed to park only on the legal Driveway. The Board's conditions prevent parking on the largest part of the extension on the east side which leads to the front door and is deemed to be the Walkway. Additional parking, other than on the legal Driveway, is prohibited in this area.
- [32] Finally, the subject Driveway has been in existence since 2008 and based on the photographic evidence, is similar to many of the Driveways in this area. This type of development appears to be characteristic of the neighbourhood. The present owners submitted a petition signed by neighbouring property owners indicating support for allowing the extension to remain. The Board notes that no one appeared in opposition to the development, and no written opposition was received.
- [33] Accordingly the Board permits this application and 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.



Patricia Jones, Presiding Officer
Subdivision and Development Appeal Board

Board Members in Attendance:

Mr. L. Pratt; Ms. G. Harris; Ms. K. Thind; Mr. J. Wall

Important Information for the Applicant/Appellant

1. This is not a Building Permit. A Building Permit must be obtained separately from the Sustainable Development Department, located on the 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: December 8, 2017
Project Number: 256822720-001
File Number: SDAB-D-17-230

Notice of Decision

- [1] On November 23, 2017, the Subdivision and Development Appeal Board (the “Board”) heard an appeal that was filed on November 3, 2017. The appeal concerned the decision of the Development Authority, issued on November 1, 2017, to refuse the following development:

Construct a Single Detached House with a front veranda, rear attached
Garage and Secondary Suite in the Basement

- [2] The subject property is on Plan ND Blk 24 Lot 3, located at 10712 - 95 Street NW within the RA7 Low Rise Apartment Zone. The Boyle Street / McCauley Area Redevelopment Plan applies to the subject property.
- [3] The following documents were received prior to the hearing and form part of the record:
- Copies of the refused permit and permit application with attachments;
 - Development Officer’s written submissions dated November 20, 2017;
 - Copy of the refused drawings and plans; and
 - Appellant’s supporting materials, including community consultation information.
- [4] The following exhibits were presented during the hearing and form part of the record:
- Exhibit “A” – Photos of recent properties constructed by the Appellant

Preliminary Matters

- [5] At the outset of the appeal hearing, the Presiding Officer confirmed with the parties in attendance that there was no opposition to the composition of the panel.
- [6] The Presiding Officer outlined how the hearing would be conducted, including the order of appearance of parties, and no opposition was noted.

[7] The appeal was filed on time, in accordance with section 686 of the *Municipal Government Act*, RSA 2000, c M-26.

Summary of Hearing

i) Position of the Appellant, Royal Canada Homes

[8] Mr. L. Saggi and Mr. V. Saggi appeared to represent Royal Canada Homes.

[9] The Saggus have owned the subject lot for one year. It has been vacant for three years. There have been ongoing problems with homeless people frequenting the lot and leaving drug paraphernalia behind. They have removed garbage from the vacant lot at least three times. Their proposal would remove these nuisances and be a benefit to the community.

[10] Royal Canada Homes is a new company and intends to sell the subject development once it is completed. They referenced photos of two Semi-detached Houses they have recently completed in this area to illustrate the high quality of their projects. (Appendix A)

[11] They do not own the adjacent properties. There is an older home to one side and an empty parking lot on the other. Across the lane to the rear is a large building which may be a church. The subject Site is zoned RA7 Low Rise Apartment Zone and they believe this entire block has the same zoning.

[12] No objections to the proposed development were received by the Development Officer when he conducted the community consultation. The Appellants submitted feedback from six surrounding properties indicating support.

[13] The only reason there is a deficiency in the Rear Setback is because of the proposed rear attached Garage. If the Garage were detached they would be in compliance. The third house next to their property also has an attached Garage so the Appellant assumed that the subject development would be approved as well.

[14] At the time they submitted their application, attached Garages were permitted; however, the regulations changed on September 1, 2017. The Saggus understand that a variance must now be granted to allow the attached Garage.

[15] In the Saggus' view, an attached Garage is the best utilization of this lot for the following reasons:

1. Parking is not permitted on the front street, and the proposed development provides for more off-street parking.
2. The lots on this block are very short (less than 100 feet) in length and there would only be one to two feet of separation space between the principal building and a detached Garage. Such a small space is unusable and difficult to keep clean. They

referenced a photo of the adjacent property, which showed the close proximity of that Garage to the principal Dwelling.

- [16] During their conversations with the Development Officer they were never advised that the Site was not large enough to accommodate a Secondary Suite. They would not have included a basement suite if they had known it was not permitted. The access to the Secondary Suite would be from a side entry as per the request of the Development Officer. They confirmed that they are seeking a variance to allow this suite.
- [17] They are willing to plant more trees and improve the landscaping to address the deficiency in the Amenity Area. They feel the front verandah, which is approximately 10 feet by 4.625 feet, can be considered an Amenity Area.

iv) Position of the Development Officer, Mr. B. Langille

- [18] The Development Officer did not attend the hearing and the Board relied on his written submission.

Decision

- [19] 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. This Development Permit authorizes the development of a Single Detached House with a front veranda, rear attached Garage and Secondary Suite in the Basement. The development shall be constructed in accordance with the approved drawings and is subject to the following conditions:
 2. The Height of the principal building shall not exceed 8.9m as per the Height definition of Section 6.1(49) of the Edmonton Zoning Bylaw 12800.
 3. Parking shall be provided in accordance with the stamped and approved drawings.
 4. All required parking shall be clearly demarcated, have adequate storm water drainage and storage facilities, and be Hardsurfaced. (Reference Section 54.6(1)(a)(i))
 5. A Secondary Suite shall be developed in such a manner that the exterior of the principal building containing the Secondary Suite shall appear as a single Dwelling. (Reference Section 86.5)
 6. Only one of a Secondary Suite or a Garden Suite may be developed in conjunction with a principal Dwelling (Reference Section 86.5).

7. A Secondary Suite shall not be developed within the same principal Dwelling containing a Group Home or Limited Group Home, or a Major Home Based Business, unless the Secondary Suite is an integral part of a Bed and Breakfast Operation in the case of a Major Home Based Business; (Reference Section 86.6)
8. Notwithstanding the definition of Household within this Bylaw, the number of unrelated persons occupying a Secondary Suite shall not exceed three. (Reference Section 86.7)
9. The Secondary Suite shall not be subject to separation from the principal Dwelling through a condominium conversion or subdivision. (Reference Section 86.8)

Dwelling means a self contained unit comprised of one or more rooms accommodating sitting, sleeping, sanitary facilities, and a principal kitchen for food preparation, cooking, and serving. A Dwelling is used permanently or semi-permanently as a residence for a single Household. (Reference Section 6.1(31))

Locked separation that restricts the nonconsensual movement of persons between each Dwelling unit shall be installed.

Secondary Suites shall not be included in the calculation of densities in this Bylaw. (Reference Section 86.9)

10. The Basement elevation of structures of two or more Storeys in Height shall be no more than 1.5 m above Grade. The Basement elevation shall be measured as the distance between Grade level and the floor of the first Storey.
11. Platform Structures greater than 1.0 m above Grade shall provide privacy screening to the satisfaction of the Development Officer to prevent visual intrusion into adjacent properties.
12. All unenclosed steps shall not project more than 0.60m into required Setbacks of 1.20m or greater (Reference Section 44.1(a))
13. All yards, visible from a public roadway other than a lane, shall be seeded or sodded within eighteen (18) consecutive months of the issuance of an Occupancy Certificate for the development. Alternative forms of landscaping may be substituted for seeding or sodding as specified in Section 55.2(4)(b).
14. Landscaping shall be developed in accordance with Section 55 and Section 140.4(16) of the Edmonton Zoning Bylaw 12800.
15. a. Landscaping shall be provided on a Site within 18 months of the occupancy of the Single Detached House. Trees and shrubs shall be maintained on a Site for a minimum of 42 months after the occupancy of the Single Detached House (Reference Section 55.2.1).

- b. Two deciduous trees with a minimum Caliper of 50 mm, one coniferous tree with a minimum Height of 2.5 m and Six 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).
- c. 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).

Development Advisements:

- i. Lot grades must comply with the Edmonton Drainage Bylaw 16200. Contact Drainage Services at 780-496-5500 for lot grading inspection inquiries.
- ii. Any future deck development greater than 0.6m (2ft) in height will require development and building permit approvals
- iii. Any future deck enclosure or cover requires a separate development and building permit approval.
- iv. The driveway access must maintain a minimum clearance of 1.5m from any service pedestal and all other surface utilities.
- v. Any hoarding or construction taking place on road right-of-way requires an OSCAM (On-Street Construction and Maintenance) permit. It should be noted that the hoarding must not damage boulevard trees. The owner or Prime Contractor must apply for an OSCAM online at:
http://www.edmonton.ca/bylaws_licences/licences_permits/oscam-permit-request.aspx
- vi. Unless otherwise stated, all above references to "section numbers" refer to the authority under the Edmonton Zoning Bylaw 12800.
- vii. 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.

[16] In granting the development the following variances to the Zoning Bylaw are allowed:

1. Section 814.3(4) is waived to permit a deficiency of 5.73 metres in the minimum Rear Setback, thereby decreasing the minimum allowed to 6.46 metres (21% of site depth) instead of 12.19 metres (40% of site depth).
2. Section 814.3(19) is waived to allow the rear Garage to be attached.
3. Section 86(1) is varied to allow a Site deficiency of 53.42 square metres, thereby decreasing the minimum allowed to 306.58 square metres instead of the 360 square metres required for a Single Detached Dwelling containing a Secondary Suite.
4. Sections 47 and 150.4(12) regarding Private Outdoor Amenity Area for a Single Detached House are waived.

Reasons for Decision

[17] The proposed development is for a Single Detached House, which is a Discretionary Use in the RA7 Low Rise Apartment Zone.

[18] The subject property is located in an area that is in transition. The lot has been empty for some time and the proposed development would improve the area. An attached Garage would provide more security for the individuals living in the house or the Secondary Suite.

[19] There is no parking on either side of the street in front of the site; therefore parking for the principal Dwelling and Secondary Suite are required at the rear.

[20] This lot is small. A detached garage would comply with the back yard requirements but would not provide any amenity space in the rear yard. The attached garage provides not only covered parking spaces but room on the driveway for parking additional vehicles.

[21] The entrance to the Single Detached House is at the front, while the entrance to the Secondary Suite is at the side. According to the drawings it does not appear that the development is overbuilt on a lot of this size. Therefore, the Board is varying the Site Area requirements for a Single Detached House with a Secondary Suite.

[22] The drawings for the building show that there is a front veranda which could be considered as part of the Amenity Area. However, the area map shows that there is a school located nearby with a large park, as well as an additional park approximately two blocks away which alleviate some of the concerns with respect to the lack of an on-site Amenity Area.

- [23] Six letters of support were provided from neighbouring property owners, and no one appeared at the hearing in opposition, nor did the Board receive any written opposition to the development.
- [24] The Board finds that this development will add to the positive transition that is occurring in this area and 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.



Patricia Jones, Presiding Officer
Subdivision and Development Appeal Board

Board Members in Attendance:

Mr. L. Pratt; Ms. G. Harris; Ms. K. Thind; Mr. J. Wall

Important Information for the Applicant/Appellant

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 - 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: December 8, 2017
Project Number: 260207633-001
File Number: SDAB-D-17-231

Notice of Decision

- [1] On November 23, 2017, the Subdivision and Development Appeal Board (the “Board”) heard an appeal that was filed on October 31, 2017. The appeal concerned the decision of the Development Authority, issued on October 6, 2017 to approve the following development:

Change the use of a Semi Detached House to a Child Care Service (maximum 50 children) and to construct interior alterations.

- [2] The subject property is on Plan 1870P Blk 49 Lot 26, located at 10531 - 74 Avenue NW, within the RF3 Small Scale Infill Development 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:

- Copies of the approved permit, permit application with attachments;
- Copy of the approved drawings and plans, including revised site plan;
- Appellant’s written submissions with supporting materials, including a petition;
- Respondent’s written submissions with supporting materials, including a petition;
- Development Officer’s written submissions dated November 16, 2017;
- Correspondence between the Board Officer, Development Officer and neighbouring property owner in opposition to the development;
- Two letters and one online response in opposition to the development; and
- One online response expressing neither support nor opposition.

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

- Exhibit “A” – Email chain between an affected property owner and 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 Board was in receipt of written submissions from both the Appellant and other affected property owners, indicating that the Development Officer failed to provide proper notice to affected residents. There was no home mail service during October 2017 due to road and sidewalk construction. Documents submitted to the Board indicated that during this period, mail was rerouted to a mail depot that residents could access during limited operating hours.
- [8] The Presiding Officer reviewed the relevant sections of legislation with respect to notification. Section 685 of the *Municipal Government Act* sets out who has standing to file an appeal to the Board. Section 686(1) provides that persons affected by a decision of the Development Authority (outside of the Applicant) may file an appeal within 21 days after notice of the Development Authority's decision is given in accordance with the land use bylaw (i.e. the Edmonton Zoning Bylaw 12800).
- [9] The proposed development is for a Child Care Service, which is a Discretionary Use in the RF3 Zone. Section 20.2 of the Edmonton Zoning Bylaw governs the notice criteria for Class B Discretionary Developments. Under this section, the Development Officer must provide notice to various parties within a 60 metre radius. These parties include the Community League, the Business Revitalization Zone, the property owner of the subject Site and landowners within the radius. This section also outlines what information must be included in the notice, as well as a requirement for newspaper publication of the notice.
- [10] Section 20.4 further provides guidance about notification during the cessation of mail delivery, such as when Canada Post is on strike.
- [11] In this particular instance, based on the documents provided to the Board, mail delivery did not cease. Mail continued to be delivered, albeit to a mail depot which residents could access during specific operating hours. Documents from the Development Officer indicate that notice of the development was also published in a daily newspaper. Accordingly, the Board finds that the Development Authority provided notice of the development in accordance with the statutory requirements and the land use bylaw.
- [12] The appeal was filed on time, in accordance with section 686(1)(b) of the *Municipal Government Act*, RSA 2000, c M-26.

Summary of Hearing

i) Position of the Appellant, Mr. B. Kusiek

- [13] Mr. Kusiek and his family reside kitty corner to the proposed development. He and his family are active in the community, and his wife runs a community play group.

[14] He supports a Child Care Service at this location but believes the intensity proposed for this Site is too great. The number of children should be reduced for the reasons outlined below.

Parking

[15] The conversion of the two existing single car width Driveways off 74 Avenue into pick-up/drop-off stalls should not be allowed for the following reasons:

- a) Patrons will have to back out of these stalls onto 74 Avenue. This is a safety issue because of the new bike lanes on 106 Street, close proximity to an intersection, and the street parking that occurs along 74 Avenue.
- b) There is no sidewalk along 74 Avenue and no sidewalk from the Avenue to the daycare. Children and parents will use the driveways for pedestrian access and the vehicles backing out present a safety concern for these pedestrians.
- c) Once the garages are removed, these driveways would be considered parking stalls in contravention of section 54.2(2)(e)(ii) which prohibits parking stalls on the side yard of a corner lot, and section 54.2(2)(a) which requires parking stalls to be wholly located on the Site.

[16] The four tandem parking stalls (eight stalls in total) are poorly located, unsafe and inappropriate for the following reasons:

- a) There is no Walkway from the rear parking to the main entrance located at the front of the building. Parents would be more likely to use the front street parking, potentially parking too close to the intersection, blocking Driveways and handicap parking which is across the street as well as the fire hydrant.
- b) People will not want to use the front four tandem stalls as they could get boxed in; therefore, these stalls will be underutilized.
- c) Children will be required to walk behind and in between parked cars which is unsafe during the busy pick-up and drop-off times.
- d) Tandem parking is not permitted to be used as visitor parking per section 54.1(1)(f) of the Zoning Bylaw.
- e) These stalls will be heavily used and should be hard-surfaced to prevent dust generation per section 54.6(2)(a).

[17] Available street parking is very limited and inappropriate for pick-up and drop-off.

- a) There are at best four-on street stalls along the north side of 74 Avenue and less on the opposite side because of restricted handicap parking.

- b) There will possibly be one on-street stall along 106 Street once the new bicycle lanes are completed and this stall will most likely be restricted. There is no street parking on the opposite side of 106 Street and this street is subject to seasonal parking bans.
- c) During consultations for the 106 Street bike lane project currently under construction, residents were advised that they were expected to be able to accommodate all parking requirements on their own properties. He felt that the available street parking is for everyone's use and should not be allocated to the daycare to satisfy its parking requirements.
- d) As there is no sidewalk along 74 Avenue, children being picked up and dropped off may walk on the road. This is not safe as 74 Avenue has only a single, narrow driving lane when cars are parked on both sides.

Traffic Congestion

- [18] As census data for Queen Alexandra shows there are only 127 children between the ages of 0 and 4 years old who reside in the community; the majority of daycare customers would come from other areas. This would add to the present volume of traffic related to students coming from other communities to attend the local schools that offer special programming.
- [19] Unreasonable congestion will occur at the north end of the narrow lane during the morning rush when residents try to exit but are blocked by daycare traffic. The lane has a second exit two blocks to the south, but 106 Street southbound and 72 Avenue westbound are not accessible from that exit.
- [20] Vehicles parked on both sides of 74 Avenue create a high potential for traffic jams and collisions as daycare customers attempt to enter and exit the rear daycare parking stalls. A 2015 study showed the daily volume of vehicles on 74 Avenue between 105A Street and 106 Street is 400. A 50 child daycare could potentially increase this level by 100 cars. This is a material change that unduly interferes with his home.
- [21] There is increased density coming into the area. Photos show there is quite a bit of infill occurring in the neighbourhood. A 25% increase in traffic would be too much. Reducing the number of children permitted to 20 – 25 would result in an associated 12.5% increase in traffic, which would be more manageable.
- [22] An overhead Google Maps image was shown to demonstrate the constrained north lane access because of a power pole on one side and trees on the other.

On-Street Parking Restrictions / Reductions

- [23] The new bike lanes have resulted in a significant loss of parking along 106 Street. Residents now rely more heavily on side street parking and the back lane. There will be a few parking bays available along 106 Street and the hours will be restricted.

Outdoor Play Space

- [24] The proposed 1.85 metre fence should not be permitted for the following reasons:
- a) Variances would be required which were not identified on the notice sent to affected residents.
 - b) Such a fence would materially change the character of the property.
 - c) The Development Officer stated that existing trees on the Site would hide this fence; however, the majority of these trees have been removed or aggressively pruned.
 - d) The plan incorrectly shows the existing south fence on the property as 1.85 metres high when it is currently much lower and consistent with other Front Yard fences in the neighbourhood.
 - e) Such a high fence is a safety concern at the northwest corner of the property as daycare customers and residents will be unable to see northbound cyclists, especially if people are parked too close to the intersection.
- [25] The Appellant stated he is not opposed to a daycare – just to the intensity of the proposed development. He would feel more comfortable if the number of children were limited to between 20 and 25 children. He canvassed his neighbours to determine what they thought was an appropriate number and presented the results to the Board. The starred names indicated they had spoken with someone associated with the daycare; however, none of these five people were aware that the proposal was for 50 children.
- [26] The Appellant's consultation showed that a majority of residents are opposed to a daycare with a 50 child maximum but would support a daycare if the intensity is reduced to 25 children. A reduction in the maximum number of children to 25 would be consistent with a previous decision of the Board – SDAB-D-15-120 where the Board reduced the maximum number of children allowed from 37 to 25.
- [27] The Appellant contacted a similar daycare nearby, Little Learners Daycare in the Parkallen community, which is also located on a collector road. He found that they have capacity for 28 children.
- [28] He cannot explain why the immediately adjacent property owner to the south of the daycare first opposed the development and then sent a subsequent letter of support. He submitted copies of e-mail correspondence between himself and this resident. (Exhibit "A")
- [29] The Appellant outlined additional conditions he would like the Board to impose should the development be approved:

- a) The main entrance for the daycare should be re-located to the northeast corner to encourage the use of the rear parking stalls.
- b) The two existing Driveways should not be used for parking vehicles and should be permanently blocked with bollards. This would provide additional street parking available to everyone and would eliminate the safety risk of cars backing onto 74 Avenue.
- c) The rear parking should only be counted as six stalls and the front four stalls should be designated as employee parking only.
- d) The proposed fence should be lowered in the triangular zone located at the corner of 74 Avenue and 106 Street so that bikes are more visible to drivers. The Appellant confirmed that there is a stop sign at this location.
- e) The daycare should provide clear parking and safety guidelines for parents.
- f) Motorized snow clearing should only be permitted between 7:00 a.m. and 9:00 p.m.

[30] The Appellant confirmed he had received the Respondent's updated petition but the three new signatures are from outside of the notification area. He could also have obtained more signatures in opposition if he had petitioned outside the notification area.

ii) Position of the Development Officer, Mr. N. Shah

[31] The Development Officer did not attend the hearing and the Board relied on his written submissions.

iii) Position of the Respondents, Ms. K. Lim and Mr. V. Lim

[32] The Lims are invested in the community and own a number of other properties in the neighbourhood. Their sons attend neighbourhood schools and Ms. Lim originally started the community league play group mentioned by the Appellant.

[33] Although currently on maternity leave, Ms. Lim has been an elementary school teacher with Edmonton Public Schools since 2004 and has also tutored and operated a day home. She understands the need for high quality community daycares which the area lacks. It has taken two years to find a suitable Site with a large outdoor space for her vision of a high quality daycare.

[34] The Lims were on vacation at the time of the appeal filing period, but have attempted to address the Appellant's concerns regarding parking and traffic. They agree with his suggestions regarding re-locating the main entrance of the daycare and reconfiguring the

northwest corner of the fence to form a triangle so as not to obstruct the view of drivers. They are always open to working with neighbours to address concerns.

- [35] When they first applied for the development permit, they worked very closely with the Development Officer to ensure all procedures were followed. They had originally applied for Child Care Services for 70 children but reduced it to 50 at the Development Officer's request. They took every suggestion made by the Development Officer and incorporated each one into their plans. Renovations will convert the Semi-detached Houses into one building and the outside façade will remain to match the character of the neighbourhood.
- [36] There will be no shuffling of cars in the rear tandem parking stalls. The front stalls will be occupied by employees who will arrive before the children. These employee vehicles will not leave until after the children have departed. Parents will only be using the rear stalls.
- [37] They are completely flexible with regard to the height of the fence as long as it meets Alberta Government regulations. Additional fencing is required as they are planning two separate outdoor playgrounds. The one in the front would be for younger children and the larger playground along 106 Street would be for an older age group. For safety reasons they want to keep the two age groups separated as older children can be rougher than the younger ones.
- [38] Neighbours indicated that traffic and parking were more of a concern than the maximum number of children. There will not necessarily be one vehicle per child as some families may have more than one child attending the daycare. This is meant to be a community daycare and some clients may arrive on foot, by bike or on the bus. They are also considering having a daycare van for school pick-ups and drop-offs, but that is not included in the current scope of application.
- [39] Regarding the previous Board decision (SDAB-D-17-120) where the Board reduced the maximum permitted number of children from 37 to 25, that daycare was located in one house. The subject development proposes to convert two Semi-detached Houses, which in essence is two houses. Also, the daycare referred to in that decision is not in operation because the reduced number of children makes the business unfeasible.
- [40] The Little Learners Daycare in Parkallen with 28 children has an area of 1,750 square feet and they are at full capacity. The subject development will have double the square footage at approximately 3,640 square feet, as removing the interior adjoining wall unifies both houses as one useable space.
- [41] Some of the signatures from neighbours appear on both the Respondents' petition as well as the Appellant's petition. Once the Respondents spoke with neighbours and addressed their concerns, they were supportive. The immediately adjacent neighbour to the south initially sent in a letter in opposition as she misunderstood what the proposal involved. She subsequently submitted a letter of support after the Respondents spoke with her.

- [42] Hours of operation would be from 7:00 a.m. to 6:00 p.m. Not all parents drop-off and pick-up their children at the same time, and parents rarely take more than five to ten minutes as they are often in a hurry. The window of drop-off and pick-up is between 2 to 2.5 hours. This means that the children will arrive or leave in a staggered fashion and not all at one time. This should alleviate some of the parking and traffic concerns.
- [43] They have not applied for a provincial child care licence, as the usual procedure is to obtain a Development Permit first. The number of children permitted is dictated by square footage. Alberta Government regulations are very stringent and quarterly inspections are conducted to ensure compliance.
- [44] There are four schools located directly along 106 Street between Whyte Avenue and 50 Avenue. Three of these schools are program specific and many parents drive their children from outside the neighbourhood to attend these schools.
- [45] There are three daycares within five to ten blocks of the proposed development. The closest one is a Montessori program at Queen Alexandra School which is completely full and is more of a school than a daycare. Paradise Daycare is located among houses and is not full. They were unable to obtain enrollment numbers for the recently opened daycare on Calgary Trail at 60 Avenue.
- [46] A lot of daycares are program specific and her program will be based on a balanced offering, with a combination of Yoga, outdoor activities, music and art. Her research has shown there is demand for the type of high quality daycare programming she will be offering.
- [47] At full capacity, they would require eight staff members, which dictates four employee parking stalls as per the bylaw. Mr. Lim feels he could possibly add a fifth employee parking stall at the rear if required. Ms. Lim would be one of the employees and she would be walking to work.
- [48] They do not fully understand the reasons for the Appellant's request to have the Driveways blocked off. Previous renters who used these Driveways never expressed problems backing onto 74 Avenue and a neighbour currently using the Driveway has also expressed no concerns. The Development Officer advised them it would be better to have the parking contained on their lot as opposed to utilizing street parking, and they designed the parking plan accordingly.
- [49] There is quite a bit of street parking available on 74 Avenue. Their building runs from 106 Street to the alley and there is only one other residential property on their side of the Avenue between 106 Street and 105A Street.

vi) Rebuttal of the Appellant

- [50] The Appellant questioned where parking would be provided for a daycare van. One of the bylaw requirements for a daycare is a loading zone. If there is going to be a van, waiving the loading zone requirement would not be appropriate.
- [51] He expressed concerns about the currently designated employee stalls being replaced by drop-off/pick-up stalls in the future, resulting in employee parking being moved off-site.
- [52] Adding a fifth parking stall in the back, as suggested by Mr. Lim, is not realistic as this would leave no room for garbage.
- [53] The Appellant questioned the need for a community daycare with a capacity for 50 children as such intensity makes it difficult for neighbourhood residents. Several other daycares in the neighbourhood are currently not operating at capacity.
- [54] It is not realistic that people will arrive at the daycare on foot, by bike or by public transit. There is no bike parking, no sidewalk along 74 Avenue and bus service is limited. One of the two routes serving the area only runs eight months out of the year and the other bus only runs once every half hour.
- [55] Conflicting information has been provided to neighbours; therefore, some names appear on both petitions. He strongly disagrees with the comments of the adjacent neighbour to the south.
- [56] In his view, most families will only enroll one child in a daycare. Enrolling more than one child may not make economic sense to that family.

Decision

- [57] The appeal is DENIED and the decision of the Development Authority is CONFIRMED. The development is GRANTED as approved by the Development Authority, subject to the CONDITIONS as set out in Permit 260207633-001, issued on October 6, 2017 by the Development Authority. In addition, the Board imposes the following condition:
- 1) The first four parking stalls next to the fence must remain designated for staff parking.
- [58] In granting the development, the following VARIANCES to the Edmonton Zoning Bylaw are allowed:
- 1) Section 54.2 Schedule 1(A)(32) is waived to permit a deficiency of two parking stalls, resulting in eight total parking stalls provided instead of the required ten. Specifically, four passenger pick-up/drop-off spaces are allowed instead of the required six.

Reasons for Decision

[59] The proposed development is for a Child Care Services Use, which is a Discretionary Use in the RF3 Small Scale Infill Development Zone.

[60] The proposed development requires only one variance to parking under Section 54.2 Schedule 1(A)(32) of the Zoning Bylaw. The Appellant submitted that this variance should not be granted for various reasons. When determining whether to grant a variance to the land use bylaw regulations, the Board is bound by the statutory test provided under section 687(3)(d) of the *Municipal Government Act*, which states in part:

687(3) In determining an appeal, the subdivision and development appeal board

...

(d) may make an order or decision or issue or confirm the issue of a development permit even though the proposed development does not comply with the land use bylaw if, in its opinion,

(i) the proposed development would not

(A) unduly interfere with the amenities of the neighbourhood, or

(B) materially interfere with or affect the use, enjoyment or value of neighbouring parcels of land...

[61] The Board has considered the reasons provided by the Appellant, and finds that although the subject development may have an impact upon both the Appellant's property and the neighbourhood, the impact does not rise to the degree of "undue interference" or "material interference" as contemplated under section 687(3)(d), which would otherwise justify refusing the required variance.

[62] The Board grants the required parking variance for the following reasons:

a. *On-Site Parking:*

i) The Appellant identified various concerns with respect to the deficiency in on-site parking. The Site has eight parking spaces instead of the required ten. Based on the maximum number of eight employees, four employee parking spaces are required and this requirement has been met. There are four designated parking stalls along the fence line for staff. Based on the square footage of the development, six drop-off/pick-up stalls are required, and only four have been provided in-tandem behind the staff parking stalls, resulting in the deficiency of two parking spaces.

- ii) The Board notes that there are two existing Driveways along 74 Avenue which provide for an additional two drop-off/pick-up stalls, and there is street parking in front of the building along 74 Avenue to accommodate five drop-off/pick-up spaces. The Board accepts the Respondent's submissions that parents will not drop-off/pick-up their children at the same time, as each family's schedules differ.
- iii) The Board considered the proposed location of this Child Care Service. Specifically, it is located on a corner lot with both laneway and roadway access, and was chosen by the Respondents precisely for the lot's suitability to accommodate a Child Care Service with associated parking demands.
- iv) Given the proposed development's location on a corner lot with two possible points of access from 74 Avenue and the lane, four on-site drop-off/pick-up stalls, the availability of up to five off-site and two front driveway drop-off/pick-up stalls, and that parents may drop-off/pick-up their children at any time, the Board finds that the provided on-site parking is sufficient.

b. Rear Lane Parking Spaces

- i) As mentioned above, the first four parking spaces along the east fence line will be designated for staff. As the staff will arrive before the Child Care Service opens in the morning, and will stay until the last child has left in the evening, the potential that cars parked in-tandem will need to be shuffled will be alleviated. This parking arrangement provides for greater safety for both parents and children. The Board also notes that to address community concerns, the Respondents were amenable to moving the main entrance of the daycare to the northeast section of the building which is closer to the on-site tandem parking.

c. On-street Parking and Traffic Congestion

- i) As there are bicycle lanes on both sides of 106 Street, no parking is allowed. However, the proposed Site is a large property that extends the entire east-west portion of 74 Avenue from the 106 Street intersection toward the rear laneway. This large stretch of road allows several on-street parking spaces in front of the proposed Child Care Service.
- ii) The hours of operation are also from approximately 7.00 a.m. to 6.00 p.m. The Respondents expect that the drop-off and pick-up window will be two to two and a half hours. Not all children will arrive at once, thereby alleviating the impact on street traffic, parking along 74 Avenue and laneway access.

d. Intensity of the Site

- i) Physical space requirements for day care programs are governed under provincial legislation, namely the *Child Care Licensing Regulations*, Alta Reg 143/2008. The Board accepts that the proposed development will be subject to further assessment by provincial regulators, based on regulations that are outside the purview of this Board.
- ii) The subject Site contains Semi-detached Houses, both sides of which will be used for the Child Care Service. The Appellant referenced SDAB-D-15-120, a previous decision of this Board wherein the intensity of use was addressed by decreasing the maximum permitted number of children.. However, in that decision, only one Dwelling (a Single Detached House) was proposed for the Child Care Service. In this case, with the removal of the interior wall that separates the two Semi-detached Houses, the two Dwellings will become joined as one, resulting in larger square footage of useable space. In effect, each Dwelling is caring for 25 children, whereas in SDAB-D-15-120, the Dwelling proposed to care for 39 children.
- iii) Furthermore, in SDAB-D-15-120, the Applicant provided only two parking spaces when nine were required, resulting in a deficiency of seven parking spaces. In this instance, the Respondents have provided eight parking spaces, with a deficiency of two spaces. In the Board's view, the intensity of use in the present case is distinguishable, and the Board finds that a Child Care Service for 50 children is appropriate for the subject Site.
- iv) Finally, the Board notes that City Council passed Bylaw 17643 on May 25, 2016, after SDAB-D-15-120 was rendered. Bylaw 17623 sought to reduce barriers to Child Care Services, recognizing the need to expand the availability of Child Care Service facilities in Edmonton.

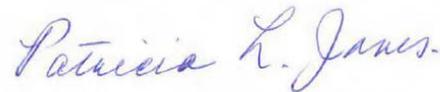
e. Petitions of Support and Opposition

- i) There were petitions from neighbours both for and against the Child Care Service, with a few neighbours signing both petitions.
- ii) Due to the inconsistencies in the petitions, and the varying interpretations that one might draw from both the Appellant's and the Respondents' petitions, the Board places less weight on the petitions themselves. The Board does acknowledge the neighbouring property owners' concerns with respect to the increased intensity in use of the subject site, as well as impacts upon traffic and parking. However, for the reasons already cited above, the Board is of the view that while there may be some resulting impacts, such impacts do not meet the test of "undue" or "material" interference with neighbourhood amenities or neighbouring parcels of land.

f. Front Fencing

- i) During the course of the hearing, the Board heard submissions from both the Appellant and the Respondents with respect to six foot tall fencing along the Front Yard. Substantively, the Appellant was not in favour; however, the Respondent noted that the placement and height of fencing for Child Care Services is regulated by provincial legislation, and they have no control over what will be required. Within the confines of provincial regulation, they would be willing to cooperate with neighbours as much as possible.
- ii) This Board is a development appeal board with expertise in planning law and regulations. Assessments of the minimum standards required in a licensed child care program, as well as the monitoring and enforcement of regulations under the *Child Care Licensing Act*, is beyond the purview of this Board. For this reason, the Board takes no stand on the subject of fencing in the Front Yard for the purposes of protecting the health and well-being of children in a child care facility. Such determinations are more appropriately considered under the relevant provincial authority.

[63] The Board finds that this Child Care Service 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.



Patricia Jones, Presiding Officer
Subdivision and Development Appeal Board

Board Members in Attendance:

Mr. L. Pratt; Ms. G. Harris; Ms. K. Thind; Mr. J. Wall

Important Information for the Applicant/Appellant

1. This is not a Building Permit. A Building Permit must be obtained separately from the Sustainable Development Department, located on the 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.