

EDMONTON SUBDIVISION AND DEVELOPMENT APPEAL BOARD

Citation: AB Design Inc. v Development Authority of the City of Edmonton, 2019 ABESDAB 10209

Date: December 13, 2019
Project Number: 341268346-001
File Number: SDAB-D-19-209

Between:

David Bulloch

and

The City of Edmonton, Development Authority

Board Members

Shari LaPerle, Presiding Officer
Vincent Laberge
Chris Buyze
Don Fleming
Lyll Pratt

DECISION

[1] On November 28, 2019, the Subdivision and Development Appeal Board (the “Board”) heard an appeal that was filed on November 10, 2019 for an application by David Bulloch. The appeal concerned the decision of the Development Authority, issued on November 7, 2019, to refuse the following development:

To construct a Single Detached House with balcony, fireplace and Secondary Suite in the Basement.

[2] The subject property is on Plan Q Blk 3 Lot 19, located at 9538 - 100A Street NW, within the RF3 Small Scale Infill Development Zone. The Mature Neighbourhood Overlay, North Saskatchewan River Valley and Ravine System Protection Overlay, Floodplain Protection Overlay, Rossdale Area Redevelopment Plan, and North Saskatchewan River Valley Area Redevelopment Plan apply to the subject property.

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

- Copy of the Development Permit application with attachments, proposed plans, and the refused Development Permit;
- The Development Officer's written submissions;
- The Appellant's written submissions;
- Two emails from affected property owners in opposition; and
- One Online response in opposition to the proposed development.

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

- Exhibit A – Photograph EA25-35 from City of Edmonton Archives submitted by the Appellant
- Exhibit B – Elevation Drawings and Sun Shadow Study submitted by the Appellant

Preliminary Matters

[5] At the outset of the appeal hearing, the Presiding Officer confirmed with the parties in attendance that there was no opposition to the composition of the panel.

[6] The Presiding Officer outlined how the hearing would be conducted, including the order of appearance of parties, and no opposition was noted.

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

Summary of Hearing

i) Position of the Appellant, D. Bulloch and A. Bourgeois, Designer:

[8] Mr. Bulloch is the owner of the property and plans to reside in the proposed house. He currently lives and owns another property on the same block. When he moved back to Edmonton in 2013, he specifically chose the Rosssdale neighbourhood because of its proximity to the river, the downtown core and the style variety of developments in the community. He has enjoyed seeing several new modern houses being built in the area and fully supports the City's redevelopment plans for Rosssdale. The development of modern three storey houses in this neighbourhood fit his taste and style and that of current market trends. This is a responsible way to develop a marketable house in an area with two significant challenges, specifically the fact that most of the lots in the community are small lots and the area itself is located in a 1:100 year floodplain.

[9] He purchased the subject site in February 2019. The existing house could not be saved and renovated because it was in disrepair and contained asbestos and lead paint which had to be professionally removed before the house could be demolished. The house was demolished in the spring and the lot is now vacant.

[10] The proposed design is the result of months of planning with Mr. Bulloch's designer. Their objectives were to: develop a property that met all of his personal objectives while being flexible for the needs of all types of potential future owners (singles, families, those

with roommates and those requiring rental income or secondary suites for aging parents or nannies), while being considerate to the neighbours, the context of the neighbourhood, the desire of the City to see additional density and development in the downtown core, and to minimize the property's hardship as it relates to being on the 1:100 year floodplain. He approached his designer with his wish list and was advised that the house he was considering building would be too large for the neighbourhood. The designer provided Mr. Bulloch with several options to reduce the size of the development.

- [11] A pre-application meeting was held with the Development Officer who provided information regarding the required variances for this development. They specifically addressed the excess height, which the Officer said she could not approve, even though at least one development had already been built at a height of 11.0 metres.
- [12] When Mr. Bulloch was advised that community consultation would be required, an email explaining the required variances was sent to the President of the Rosedale Community League. He received a response indicating that the Community League Board did not get involved in development permits unless neighbours have major concerns.
- [13] An introductory letter with exterior renderings was placed in the mailboxes of the adjacent neighbours to the north, south, west and east of the Site between October 16 and 18, 2019. A letter of support was subsequently provided by one of the neighbours (to the east) and another neighbour indicated that they would not oppose the development. A letter of support was received from a resident across the street. In total, 8 letters of support were received. One letter of objection was received from the property owners who reside immediately north of the site and that resident, Mr. McGinnis, is in attendance today. Mr. Bulloch subsequently met with Mr. McGinnis to review the proposed development and discuss their concerns regarding massing and sun shadowing impacts. Mr. Bulloch explained that the original design was much larger than the proposed development. The third floor was made smaller. It made sense to have a rear balcony so that the sun shadowing would have less impact on their property. They also discussed the placement of the house on the site.
- [14] As a result of that meeting, the plans were revised to reduce the front setback from 5.0 metres to 3.0 metres and provide a planter on the north side of the rear lot where trees will be planted to compensate for the trees that had to be removed.
- [15] A Sun Shadow Study was prepared by the Appellant and designer and it was referenced with the panel to illustrate that two conforming houses would create more shadowing on the property to the north than the proposed house.
- [16] This will be his personal residence and Mr. Bulloch wanted to ensure that the development met his needs and was characteristic of the neighbourhood.
- [17] This project is within the 1:100 year floodplain and the Appellant's intention was to make sure that when the area floods again that all of the expensive equipment, specifically HVAC equipment and the entire main floor, are above the floodplain line. If there is a flood, he would still be able to live in the principal dwelling above. His insurance

company has advised him that he cannot get overland water coverage so he wants to invest as little as possible in the proposed basement development. All of the mechanical systems will be located on the main floor or higher. This equipment takes up a lot of space and as much space as possible has been allocated on the main floor while still having a functional main floor. There is room in the design to make adjustments as required when the equipment is actually installed. The placement of these features on the main floor creates a hardship for this development, as does the small lot. Amenity space in this design is provided by balconies, a rear yard and a front yard that are complimentary to the neighbours. The interior floor plan has not yet been finalized. The variance is the maximum allowable site coverage necessary in order to accommodate all of the mechanical that can be located above the floodplain line and minimize any damage.

- [18] The requested variance to the Mature Neighbourhood Overlay's maximum height requirement is necessary in order that the basement can be pushed as far as possible out of the ground because of the floodplain. The Appellant wants to make sure that the proposed secondary suite is as flood proof as possible. Design guidelines contained in the Rosedale Area Redevelopment Plan recommend that all mechanical be located above the floodplain line and that basements be waterproofed as much as possible.
- [19] The Mature Neighbourhood Overlay applies to all of the mature neighbourhoods in the City and Area Redevelopment Plans have been established for special areas. Rosedale is unique in that it is located on the floodplain which requires additional design considerations to ensure responsible development. City Council has invested time and energy to ensure the development of Rosedale and the proposed development is in keeping with that vision.
- [20] Several sections of the Rosedale Area Redevelopment Plan demonstrate that the proposed development fits the Plan's context. Specifically, that the maximum site coverage shall not exceed 35 percent and developments not exceed 3 ½ storeys. Houses have been developed in Rosedale that are higher than the proposed height of 11.0 metres. The house has been designed to minimize impacts on neighbours who reside north and south of the subject site. The rear balcony on the third floor will not obstruct a window on the house to the south and the size of the balcony has been reduced in order to minimize shadowing impacts on the property owner to the north.
- [21] Every attempt has been made to minimize any impacts on the immediately adjacent neighbours throughout the design process. A letter of support was received from a neighbour to the east and a letter of opposition from the neighbour to the north.
- [22] Context elevations and the sun shadow study were commissioned and shared with the Development Officer to ensure that the proposed development does not look out of place on the street or in the neighbourhood.
- [23] In the written submission provided by the Development Officer, she acknowledged that there is hardship and that the proposed development will not materially affect adjacent neighbours; this Mr. Bulloch considered as the Officer's support for the development.

- [24] The Rossdale Area Redevelopment Plan was adopted in 1986. City Council recently passed the River Crossing project in September 2019 which demonstrates that they still want to see density in this neighbourhood. This is relevant because it further endorses the principles that were contemplated when the Area Redevelopment Plan was adopted.
- [25] Two comparable developments were referenced to illustrate that the proposed development is characteristic of the neighbourhood. One of the existing houses is a three storey flat roof house with front and rear balconies, located one block south of the subject site. This house is 11.0 metres high, the lot size is identical to the size of the subject lot and the square footage is larger than what is being proposed on this Site. The comparable house was approved by the Subdivision and Development Appeal Board upon appeal and was used as a benchmark for this proposed development. The second comparable is located across the street from the first comparable. It is a three storey house with front and rear balconies and was built in 2017. It is also 11.0 metres high on a similar sized lot. The exterior colours of the proposed house are intentional and were picked to complement neighbouring houses.
- [26] An MLS real estate listing was referenced to illustrate that the proposed square footage of this proposed development is less than the square footage of the house located immediately to the south.
- [27] Mr. Bulloch disagrees with the opinion of one of the neighbours who oppose the development regarding whether the variances requested are in conflict with several principles of the Rossdale Area Redevelopment Plan, specifically 2.4; 2.4.3; 2.4.23, 3.3 and 3.3.1. These principles address the type and size of housing contemplated in the rehabilitation of the area. It was his opinion that the proposed development complies with these objectives. There are houses of a similar design, height and size already existing in Rossdale. The house located immediately south of the subject site is similar in size and all of the lot sizes are very similar.
- [28] The house on the lot to the north is setback 2.95 metres from the front and the proposed house is setback 3.0 metres. The 3.0 metre setback complies with the MNO.
- [29] There is a wide variety of housing stock in this neighbourhood including historic houses, three storey modern houses, houses with peaked roofs and flat roofs. It is a neighbourhood that has evolved over time. An MLS graph was referenced to illustrate that the majority of construction in this area occurred between 1981 and 2016. Seventy-four percent of the neighbourhood was developed after 1985. Therefore 'historic' has to be taken in that context and the proposed development does match the existing housing stock.
- [30] The house that previously existed on this lot could not be saved and renovated because it was in a state of disrepair and contained hazardous materials.
- [31] The proposed development is sympathetic to the overall character of Rossdale.

- [32] The River Crossing project to rehabilitate the area was recently approved by City Council. Low to mid-rise housing is proposed in west Rosedale which borders south Rosedale. The west side of 101 Street is located within 60 metres of the subject site and four to six storey buildings will be developed there.
- [33] Mr. Bourgeois is a house designer who has worked on infill developments throughout Alberta and B.C. for the past 21 years.
- [34] Based on his past experience with infill developments, he was aware that the proposed development would be refused. However, it was his opinion that the Development Authority is supportive of the proposed development.
- [35] Mr. Bourgeois would never come to the Board with an outrageous proposal. They have worked with the Development Officer to ensure that the proposed development is in keeping with the vision of the City through the Mature Neighbourhood Overlay and the Rosedale Area Redevelopment Plan.
- [36] Hardship has been referenced for many years when justifying variances for development. A photograph of houses and businesses that were flooded in Rosedale in 1915 was submitted and marked *Exhibit A*. The Appellant's site has the most hardship of any site that he has been involved with.
- [37] Elevation drawings were submitted and marked *Exhibit B* to illustrate that the floodplain creates a domino effect because the freeboard elevation requires the main floor to be 1.5 metres above the floodplain. This then creates an additional hardship for barrier free design because anyone who is physically disabled will have a hard time living in this house because of the raised main floor.
- [38] The Site Area requirements, freeboard height and challenges to providing inclusive design create three hardships for this site.
- [39] A diagram created by Mr. Bourgeois was referenced to illustrate that the proposed house is of a similar height to neighbours' homes.
- [40] It was noted that the objections of neighbours could be the result of the wording used in the notification letters. A photograph of what could be developed on the site without variances was referenced to illustrate that such a home would be much more impactful than the proposed development.
- [41] The Sun Shadow Study was referenced to illustrate that overhangs on a house can have a significant impact on sun shadowing. The proposed house was designed without overhangs so that it will have less shadowing impact on neighbouring properties.
- [42] It was his opinion that removing the Rosedale neighbourhood from the Mature Neighbourhood Overlay would be reasonable to encourage development because it would allow the height calculation to be taken from the freeboard line.

- [43] The Area Redevelopment Plan states “It is clear that the redevelopment of Rosssdale under flood protection guidelines will have a significant impact on existing houses and the character of the area. Any new housing while projecting above grade substantially must contain all habitable areas above designed flood levels which will mean larger site coverages and greater building heights”. It will aggravate the issue of compatibility.
- [44] The Area Redevelopment Plan states that “the criteria for infill development are to introduce a variety to the streetscape”. It was his opinion that the proposed development is in keeping with that vision.
- [45] Mr. Bulloch and Mr. Bourgeois provided the following information in response to questions from the Board:
- a) The house was moved forward to a 3.0 metre front setback. The front entry has been recessed to provide a covered area at the front door.
 - b) The balcony has not been stepped back to reduce the impact on the neighbour to the south.
 - c) The finished floor height is 624.04. Finished grade at all four corners is 622.82. The average grade is 622.7. The main floor cannot be any higher than 1.5 metres and proposed is 1.34 metres. Floor would be dropped to grade. The main floor would be brought down.
 - d) The proposed 9 foot ceiling height on the main floor is required to accommodate HVAC and other mechanical systems.
 - e) Flexibility has been built into the plans to address changes that may be required at the building permit stage. Based on the MLS listings and other comparable developments in this neighborhood, there is a market for 9 foot ceiling heights on the main and higher floors.
 - f) The third storey is step backed 0.3 metres.
 - g) The owners of the houses located south of the subject site and across the lane did not respond to his letter or the community consultation.
- ii) *Position of Affected Property Owners in Opposition to the Appellant, L. McGinnis:*
- [46] Mr. McGinnis and his family have lived in Rosssdale since 2016 and reside immediately north of the subject site.
- [47] He has been involved in the planning meetings for west Rosssdale.
- [48] He is not opposed to the development of this lot or reasonable variance requests. He recognized that compromises are necessary because of the small lots. However,

overbuilding often occurs because of the small lots and this does have an impact on neighbouring property owners.

- [49] It was his opinion that the requested variances are excessive for the lot and the community and are the result of design choices by the builder to maximize values and his personal desires rather than actual hardship issues.
- [50] The proposed house will have material impacts on the enjoyment and value of Mr. McGinnis' house because the size and massing of it will block sunlight and views from their rear yard.
- [51] The proposed development's size is uncharacteristic of the neighbourhood. Mr. McGinnis did meet with the Applicant to express their concerns. However, it was his opinion that there was an opportunity to find common ground before the appeal process which was not explored.
- [52] The proposed size, shape, site coverage and height will block sunlight and obstruct views from their rear yard.
- [53] The proposed house is a full three storey structure and will be the tallest house in the neighbourhood.
- [54] The proposed house is more than 2 metres above the maximum allowable height and it is more than one metre above the height regulations in the RF3 Zone.
- [55] Photographs of large houses that have been built to comply with the guidelines were referenced. Two storey and two and a half storey houses with peaked roofs are more in line with the character of the neighbourhood.
- [56] The elevation drawing was referenced to illustrate the scale of the proposed development in comparison to their house.
- [57] This house is large and the proposed full third floor impacts sun and views to his property. Moving the house forward does address some of their concerns. The north face is not stepped back, in fact the design elements jut out further blocking views and creating sun shadow impacts.
- [58] Photographs taken from Mr. McGinnis' rear yard were referenced to show the impact of neighbouring developments. They have young children and purchased this house because of the size of the rear yard. If the proposed house had already been built, they would not have purchased this property.
- [59] The Sun Shadow Study was done in the month of June when the impact on this property will be the least. It was his opinion that the study is misleading because the other houses referenced do not comply with the site coverage regulations contained in the RF3 Zone. It does not address the impact of the blockage of views and is not a reliable document.

- [60] The top floor of the house to the south of this site is not a full storey, the dormers are small. The height of that house would be measured to the midpoint of the peaked roof. There is a small balcony but not on the front of the house.
- [61] The comparable developments provided by the Appellant only represent two or three of the largest houses in Rosssdale and the Appellant's proposed house is larger. None of the comparable homes referenced have a full third storey.
- [62] This will be the largest house in Rosssdale. The vast majority of houses are two to two-and-one-half storeys. Flat roof houses represent a handful of houses. At what point do you stop granting variances?
- [63] The house across the lane is being used as a rental property.
- [64] There are existing houses like the proposed development that are more in line and scale with the neighbourhood.
- [65] The proposed development does not fit in with the historic character of Rosssdale. It is not respectful of the scale and character of existing housing stock. Maintaining the character is important, it is why Mr. McGinnis moved into the neighbourhood and it is why the builder wants to live in Rosssdale.
- [66] He is not opposed to the granting of variances but is concerned about the size and justification for the variances being sought. The builder wants the variances to maximize resale value and granting them pushes the personal choices of the Appellant onto the rest of the neighbours.
- [67] There is an opportunity to reduce the height of this house by reducing the ceiling heights. It is not clear why the HVAC has any impact on the total height of the house. A personal choice has been made to add a third storey. Every house in this neighbourhood is in the floodplain and that factor is not an excuse to build a three storey house.
- [68] He contacted his insurer and was advised that he could obtain flood insurance. It was his opinion that this is not a reason to request a variance.
- [69] The request for a full third floor may result from the proposed secondary suite in the basement. He supports the development of the basement suite to increase density, but it was the builder's choice to develop three 10 foot storeys on top of the basement and that does not justify the required variances.
- [70] This is an example of overbuilding that will have an immediate impact on the use, enjoyment and value of his property and will have long term impacts on Rosssdale if these types of developments continue to be approved.
- [71] He has talked to several other neighbours who have concerns but did not want to get involved.

- [72] It was his opinion that the combined variances are in conflict with the Mature Neighbourhood Overlay and the Rosedale Area Redevelopment Plan.
- [73] Policy 3.3 of the Area Redevelopment Plan states “South Rosedale has many qualities which give it a village-like atmosphere including the period and style of homes, the quiet tree-lined streets and relatively isolated river valley location. It is to be rehabilitated by retaining its low density character and promoting this village-like atmosphere. To accomplish rehabilitation, existing housing should be retained where practical, and compatible infill housing encouraged. ...New house styles should be sympathetic to the historic character of existing housing”
- [74] These guidelines have been established for a reason. Some exceptions should be made but they need to be reasonable. If this development is approved, when does it stop and what does that say about the Mature Neighbourhood Overlay.
- [75] The builder has options but Mr. McGinnis’ only option is to express his concerns.
- [76] In response to a question, it was confirmed that he did not speak to the neighbour who resides immediately south of the subject site.

iii) Position of the Development Officer, M. Bernuy

- [77] The Development Authority did not appear at the hearing and the Board relied on Ms. Bernuy’s written submission.

iv) Rebuttal of the Appellant:

- [78] Stepping the third floor back from the front of the house would have more of an impact on the neighbour to the north because of the shadowing of the rear yard. It is currently pulled forward to reduce the sun shadowing and have less of an impact on the view of the neighbour to the south. This design choice was made deliberately as was the decision to site the house further to the front property line.
- [79] Feedback from the neighbours and the appeal process is appreciated.
- [80] Many hours were spent on the design before the development permit application was submitted. The front corner balcony on the south side and the rear balcony were design choices made to ensure that the views from the house on the immediately adjacent lot to the south were not impacted. The third floor has not been stepped back in order to minimize shadowing on the property to the north. It was his opinion that the sun shadow study supports that decision.
- [81] The original design was changed by moving the house forward to minimize shadowing impacts on the property to the north.
- [82] Every attempt has been made to address the concerns of his neighbours. Seven letters of support were received as well as three letters of objection. One letter of support was

received from an adjacent neighbour and one letter of objection was submitted by an adjacent neighbour.

- [83] This is not the largest house in Rosedale. There are existing houses that are 11.0 metres high with more square footage. He would like to retain the proposed ceiling heights to accommodate the HVAC and other mechanical systems.
- [84] It was acknowledged that there is an opportunity to reduce the overall height but that is not the project that he wants to develop. He has compromised as much as possible given the costs of construction and probably will not proceed if this development permit is refused.
- [85] He knew that he would have to seek the required variances through the appeal process. This will be his personal residence and he asked the Board to approve the development based on the evidence provided. He has been as considerate as possible to the concerns of his neighbours and the letters of support demonstrate that.
- [86] In response to a question, it was acknowledged that the sun shadow study was done on June 21 which is the best case scenario and that the shadowing will increase at other times of the year.
- [87] The recommended conditions provided by the Development Officer have been reviewed and are acceptable to the Appellant.

Decision

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

Reasons for Decision

- [89] The Board was presented with this Appeal of a three storey Single Detached House development, with front and rear yard balconies, and a Secondary Suite in the Basement. Under section 140.2(8), Single Detached Housing is a Permitted Use in the (RF3) Small Scale Infill Development Zone.
- [90] The Mature Neighbourhood Overlay, North Saskatchewan River Valley and Ravine System Protection Overlay, Floodplain Protection Overlay, Rosedale Area Redevelopment Plan, and North Saskatchewan River Valley Area Redevelopment Plan all apply to the site.
- [91] The Board received submissions from the Development Authority, the Appellant, several neighbours in response to community consultation and an abutting neighbor who is in opposition to the permit. From all of these parties, the Board received lengthy submissions regarding the neighborhood amenities and context of this development.

- [92] The General Purpose of the RF3 Zone, as noted in Section 140.1 of the *Edmonton Zoning Bylaw*, is “to provide for a mix of small scale housing.” The Board also has regard to Section 814.1 of the *Bylaw* which states that the General Purpose of the Mature Neighbourhood Overlay is “to regulate residential development in Edmonton’s mature residential neighbourhoods, while responding to the context of surrounding development, maintaining the pedestrian-oriented design of the streetscape, and to provide an opportunity for consultation by gathering input from affected parties on the impact of a proposed variance to the Overlay regulations.”
- [93] The proposed development application presented to the Board was determined by the Development Officer to require two variances. The first variance identified was to the Mature Neighbourhood Overlay, where the maximum Height of the proposed Single Detached House is 11.1 metres high, instead of 8.9 metres (Section 814.3(5))
- [94] The Board noted that the Mature Neighborhood Overlay (MNO) supersedes the underlying RF3 Zone provisions regarding Height. While the RF3 Zone in Section 140.4(6) states that “The maximum Height shall not exceed 10.0 metres”, the MNO requires a Height of no more than 8.9 metres. Regardless, the proposed Height of this development was in excess of both requirements.
- [95] The second variance identified was to the maximum Site Coverage of the Principal Dwelling/building (Single Detached House), which is proposed to cover 35 percent of the site, instead of 28 percent (Section 140.4(7)), as set out in the RF3 zoning requirements.
- [96] The Board heard evidence from the abutting property owner to the north. It was the submission of this affected party that the combination of this development’s design, scale, siting, and overages in the maximum requirements to both Height and Site Coverage would have a substantial effect on their property. The party provided lengthy submissions to the Board regarding the potential impacts to their sunlight, view and use of their outdoor amenity space, given the design and massing effect of the north elevation of this development.
- [97] In regard to the Development Officer’s report, the Board reviewed the following statement:
- ...there is no significant difference between the impact of the proposed house vs a house that fully complies with the Zoning Bylaw. A compliant house can have a gable roof where the ridge is of the same height as the flat roof of the proposed. A ridge can extend up to 1.5m above the maximum permitted building height (Edmonton Zoning Bylaw section 52.2(c)). A compliant house can also have a flat roof projection feature such a elevator housing or a roof stairway with no height limitations and would create similar sunshadows and view obstructions (Edmonton Zoning Bylaw Section 52.2(a)).*
- [98] The Board did not share this opinion. Based upon the submissions before it, the Board finds that the effect of the proposed development is greater than a similar development that is fully compliant with the *Bylaw*. Due to the flat roof design and the combination of

the two variances, there is a significant massing effect, particularly on the north elevation, from the scale of development at that Height which is full throughout the Storey. The placement of the front and rear balconies does not sufficiently offset the increased development on the third Storey of the building, as the Height is uniform across the flat roof. The Board finds that this creates a monolithic wall facing the north abutting property with a significant sunshading effect.

- [99] The Board noted that the Sun Shadow Study presented by the Appellant represented a 'best case' scenario by using a June 20 sunshine effect date. The general sunshadow effect on the neighbours outdoor amenity area is at all other times of the year going to be greater than what was shown in the Study. The Board was also concerned about the relevance of some of the alternatives shown in the study which seem to not conform with RF3 Site Coverage requirements, and the Board was not persuaded by them that the effect was minimal.
- [100] The excess proposed Site Coverage is also of concern to the Board. An extra 7 percent in Site Coverage exists on each of the three above grade Storeys, roughly 232 square feet on each level. The effect of this overage is compounded by the small lot. The perception of greater massing and scale is magnified given the small lot the development is contained in and the increase in Height is accompanied by increased Site Coverage at that Height.
- [101] There are no Stepbacks or depth variations in the development's northern elevation where it faces the abutting property and is seen from that site. This creates a monolithic effect and contributes to massing.
- [102] The Board considered the submissions made by the Appellant regarding his opinion that he was guided to making certain design choices due to the design guidelines in the applicable Area Redevelopment Plans. He stated his regard for those plans and a desire to follow their recommendations. The Board was presented with Rosssdale ARP 3.5, for example, which states "housing forms which are close to the street are encouraged up to 3 1/2 storeys" and also the ARP 3.3.1 South Rosssdale Land Use Policies, among others.
- [103] The Board further heard from the Appellant and his designer that they believe the development to be designed within the ARP guidelines with respect to Site Coverage and Height. However, the Board notes that Area Redevelopment Plans can be aspirational policy documents.
- [104] The Board also notes that there are other features in the Area Redevelopment Plans that would contradict some of the designed features of the proposed development, including for example "flat roofs and low slope roofs with large overhangs should be avoided" (pg. 26/35, Design Guidelines Rosssdale ARP) .
- [105] The Board considered the hierarchy of the planning authority of the various guidelines, Plans and Overlays pertinent to this site. Given that consideration, the Board did not agree with the Appellant's argument that the 35 percent allowable Site Coverage found in the ARP 5.3.4. (c) means that the proposed variance is appropriate or characteristic of the neighbourhood.

- [106] The Board also had regard to the North Saskatchewan River Valley and Ravine System Protection Overlay and the Floodplain Protection Overlay affecting this site. Section 812.1 states that the General Purpose of the Floodplain Protection Overlay is:

to provide for the safe and efficient use of lands which may be within the defined floodplains of the North Saskatchewan River and its tributaries within the City of Edmonton. The Overlay regulates building Height, the location and geodetic elevation of openings into buildings, the Use in portions of buildings, the design Grade of the Site, and Landscaping, to mitigate the potential negative effects of a flood event.

- [107] The Appellant made submissions that the practical effect of this site being in the Overlays, as well as recommendations in the ARP, necessitated the inclusion of design features that lead to the two required variances to Height and Site Coverage. It was the Appellant's opinion that these variances come from the need for all basement windows and egress points to be above the 1:100 year floodplain, in order to minimize flooding impacts, as well as the entire main floor. Additionally, all HVAC, electrical and water heating is placed on the main floor, as such additional vertical space is required to house ducting and mechanical services which would otherwise exist in basement ceilings/bulkheads below the main floor.
- [108] The Board was not persuaded by the Appellant's position that the Height of 11.1 metres was necessitated by the floodplain. The Board notes that the average finished grade is above the 100-year flood line. Additionally, the Board was unconvinced by the Appellant's submission that the freeboard Height required the main floor Height to remain as high as it is. The Board notes that the proposed ceiling Height inside each of the three floors above grade of the home are approximately 10 feet, 9 feet and 9 feet respectively.
- [109] The Board also received City of Edmonton Geotechnical review of the development which indicated no objections to the proposed development, while recommending the developer be aware of flood risks and geotechnical risk during construction.
- [110] The Board received the Development Officer's report, as well as the Appellant's submissions, which were in some agreement that the two identified variances were necessitated by a variety of hardships related to the site. These included: the small lot size; the floodplain risk; and floodplain design considerations as found in Section 14.4(2)(b) of the *Edmonton Zoning Bylaw* particularly in relation to the desire to create a basement Secondary Suite.
- [111] The Board was not persuaded that the perceived hardships of the site necessitate variances, and notes that lot hardships are of greater relevance to the Development Authority than the Subdivision and Development Appeal Board. The Board notes that it is required to evaluate proposed developments according to the Section 687 of *Municipal Government Act*, as follows:

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,

and

(ii) the proposed development conforms with the use prescribed for that land or building in the land use bylaw.

[112] The Board finds, based on the neighbourhood context submissions presented to it, that the impacts of both the relatively small residential lots and being sited on a floodplain are common characteristics shared by most of the developments of the area.

[113] With regard to the general development context of the Rosssdale neighbourhood, the Board heard a variety of submissions. The Board appreciates the fact that development continues to evolve under the guidance of Area Redevelopment Plans. The Board received contradictory information from the parties about how characteristic the Appellant's proposed development would be of the area. The Board noted that the comparable developments presented to it by the Appellant were difficult to give consideration to, as the prevalence of that building style, their actual heights and any required variances were unknown.

[114] The Board noted the Appellant did canvass some of the neighbouring property owners regarding his development plans. The Development Officer also conducted Community Consultation as a result of the required Height variance to the Mature Neighbourhood Overlay, and the Board found it was sufficient, according to Section 814.5(1) of the *Bylaw*. As a result, the Board is in receipt of several responses in support and several in opposition to this development. There was no comment regarding this application from the Rosssdale Community League for the Board to consider.

[115] The Board finds that the abutting property located to the north of the site would be materially affected by the proposed development. The size, massing, scale, and sunshadowing effects have been shown to be in excess of what a fully compliant Single Detached Home development would be.

[116] Overall, the Board found that property owner to be the most affected neighbor by this development and agreed with their stated impacts regarding how the design choices of this development would affect the use and enjoyment of their property.

[117] Based on the submissions presented to it and the reasons listed above, it is the opinion of the Board that the proposed development will unduly interfere with the amenities of the neighbourhood and materially interfere with or affect the use, enjoyment or value of neighbouring parcels of land. The Appeal is denied.



Shari LaPerle, Presiding Officer
Subdivision and Development Appeal Board

Important Information for the Applicant/Appellant

1. This decision may be appealed to the Alberta Court of Appeal on a question of law or jurisdiction under Section 688 of the *Municipal Government Act*, RSA 2000, c M-26. If the Subdivision and Development Appeal Board is served with notice of an application for leave to appeal its decision, such notice shall operate to suspend the Development Permit.
2. When a decision on a Development Permit application has been rendered by the Subdivision and Development Appeal Board, the enforcement of that decision is carried out by the Sustainable Development Department, located on the 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: Hodgson Schilf Evans Architects Inc. v Development Authority of the City of Edmonton, 2019 ABESDAB 10146

Date: December 13, 2019
Project Number: 325100871-001
File Number: SDAB-D-19-146

Between:

Hodgson Schilf Evans Architects Inc.

and

The City of Edmonton, Development Authority

Board Members

Shari LaPerle, Presiding Officer
Vincent Laberge
Chris Buyze
Don Fleming
Lyll Pratt

DECISION

September 11, 2019 Hearing:

[1] On September 11, 2019, the Subdivision and Development Appeal Board (the “Board”) heard an appeal that was filed on August 13, 2019. The appeal concerned the decision of the Development Authority, issued on August 9, 2019, to refuse the following development:

To construct an addition (4.6 square metres) created by the exterior alteration to an existing Apartment House building (balcony enclosure on the 15th floor) (Carlisle).

[2] The subject property is on Condo Common Area (Plan 8222325), located at 11826 - 100 Avenue NW, within the DC1 Direct Development Control Provision (Area 7 of the Oliver Area Redevelopment Plan (“DC1”). The Oliver Area Redevelopment Plan applies to the subject property.

- [3] The following documents were received prior to the hearing and form part of the record:
- A copy of the Development Permit application with attachments, proposed plans, and the refused Development Permit;
 - The Development Officer's written submission;
 - A submission from the Appellant's Agent;
 - One online response in support of the proposed development; and
 - One email in support of the proposed development.

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.
- [7] The Presiding Officer explained that, because the proposed development is located within a Direct Development Control Zone, the authority of the Board is limited by section 685(4) of the *Municipal Government Act*, which states:

685(4) Despite subsections (1), (2) and (3), if a decision with respect to a development permit application in respect of a direct control district

(a) ...

(b) is made by a development authority, the appeal is limited to whether the development authority followed the directions of council, and if the subdivision and development appeal board finds that the development authority did not follow the directions it may, in accordance with the directions, substitute its decision for the development authority's decision.

Accordingly, the Appellant was asked to address during the hearing how the Development Authority failed to follow Council's directions, specifically with respect to the Floor Area Ratio ("F.A.R.") variance.

Summary of Hearing*i) Position of the Appellant, M. Hodgson, representing A. Olson:*

- [8] Mr. Olson purchased this condominium unit a few months ago and would like to enclose the small balcony as part of a renovation project.
- [9] The development permit application was refused on a technicality because a Development Officer does not have the authority to vary the F.A.R. However, this building has an F.A.R. that is already significantly larger than the maximum 3.0 allowed.
- [10] The subject building contains a number of balcony enclosures that were previously approved. The proposed enclosure will not increase the footprint of the building and will not have a negative impact on any of the adjacent property owners.
- [11] A photograph of the building was referenced to illustrate that the proposed balcony enclosure will match the existing enclosures that have been installed on the floor above and below the subject unit. The unit will be constructed with modern materials and is a permanent structure.
- [12] Mr. Hodgson provided the following information in response to questions from the Board:
- a) He acknowledged the restrictions place on the Board by section 685 of the *Municipal Government Act*. However, during his discussions with the Development Officer he was advised that the Development Officer had no choice but to refuse the development permit application because they do not have the authority to waive or vary F.A.R. However, in a previous similar circumstance the Subdivision and Development Appeal Board had varied the F.A.R. requirements upon appeal.
 - b) It was his opinion that the variance required to the maximum allowable F.A.R. for this building is insignificant.
 - c) It was his opinion that it was never Council's intent to prevent owners from enclosing their balconies when this DC1 was adopted.
- [13] Mr. Hodgson asked that the hearing be postponed. He was not aware of the legal issues associated and raised by discussion with this appeal. He would like more time to thoroughly review the development regulations contained in the DC1, consider the calculations for F.A.R. provided by the Development Officer, and to seek the direction of his client who may or may not retain Legal Counsel.

Decision

- [14] That the appeal hearing be postponed to a date to be determined. This will allow additional time for the Appellant to seek the advice of Legal Counsel. The hearing will be

scheduled to a date based on the availability of Legal Counsel and the other affected parties.

Reasons for Decision:

[15] This is the first postponement request regarding this matter. It is required in order to allow the Appellant to retain Legal Counsel. There is no undue prejudice suffered by any affected parties.

November 28, 2019 Hearing:

[16] On November 28, 2019, the Board made and passed the following motion:

“That SDAB-D-19-146 be raised from the table.”

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

- A copy of the Development Permit application with attachments, proposed plans, and the refused Development Permit;
- The Development Officer’s written submission;
- A submission from the Appellant’s Agent;
- One online response in support of the proposed development;
- One email in support of the proposed development; and
- A submission from Legal Counsel for the Appellant.

Preliminary Matters

[18] 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.

[19] The Presiding Officer outlined how the hearing would be conducted, including the order of appearance of parties, and no opposition was noted.

[20] 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 Legal Counsel for the Appellant, J. Agrios (Kennedy Agrios LLP) who was accompanied by M. Hodgson (Hodgson Schilf Evans Architects Inc.)*

[21] The actual footprint or area of the building is not being expanded; an existing balcony is being enclosed.

[22] The Oliver Area Redevelopment Plan was adopted in December 1997 and the Carlisle building was built in 1981. The building as it exists exceeds the maximum Floor Area Ratio (F.A.R.) for the DC1 zoning and from the Development Officer's report, the total F.A.R. is 4.93 or 9,675.6 square metres. To meet the minimum F.A.R. of 3.0, the building would have to be 5,883.4 square metres. The building as it currently exists is over F.A.R. by almost 3,800 square metres.

[23] The proposed balcony enclosure is 4.6 square metres. The way the Development Officer has written the decision, it is definitely not the proposed balcony enclosure that is causing the excess in F.A.R. The building already exceeded the F.A.R. by the time the DC1 zoning was created by City Council in 1997. The proposed balcony enclosure is actually increasing the building's F.A.R. by 0.003 or 0.004. If you rounded to more than two decimal places, it actually does not change the F.A.R. This is just a rounding situation in terms of what is actually being added to the F.A.R.

[24] The Carlisle building is a non-conforming building. Section 616(q) of the *Municipal Government Act* states:

“non-conforming building” means a building

(i) that is lawfully constructed or lawfully under construction at the date a land use bylaw affecting the building or the land on which the building is situated becomes effective, and

(ii) that on the date the land use bylaw becomes effective does not, or when constructed will not, comply with the land use bylaw;

[25] Section 643(5) of the *Municipal Government Act* states:

A non-conforming building may continue to be used but the building may not be enlarged, added to, rebuilt or structurally altered except

- (a) to make it a conforming building,
- (b) for routine maintenance of the building, if the development authority considers it necessary, or
- (c) in accordance with a land use bylaw that provides minor variance powers to the development authority for the purposes of this section.

[26] Because of the size of the balcony (4.6 square metres), the enclosure is not increasing the F.A.R. What is being done is not enlarging, adding to, rebuilding, or structurally altering but is simply an enclosure of an existing balcony.

Section 11.3(2) of the *Edmonton Zoning Bylaw* states:

The Development Officer may approve, with or without conditions as a Class B Discretionary Development, an enlargement, alteration or addition to a non-conforming building if the non-conforming building complies with the Uses prescribed for that land in this Bylaw and the proposed development would not, in their opinion:

- a. unduly interfere with the amenities of the neighbourhood; or
- b. materially interfere with or affect the use, enjoyment or value of neighbouring properties.

[27] It is her submission that the actual variance power is in section 11.3(1) of the *Edmonton Zoning Bylaw* and section 11.3(2) is technically not a variance. This section simply sets out when a non conforming building can be altered. When you take section 643(5) of the *Municipal Government Act* with a combination of section 11.3(2), the Development Officer and the Board can approve a non conforming building in this DC1.

[28] Section 11.4 (Limitation of Variance) of the *Edmonton Zoning Bylaw* only applies when dealing with a variance. Therefore, the Board has jurisdiction to allow this appeal pursuant to section 643(5) and 11.3(2).

[29] The enclosed balcony will be identical to the floor above and floor below which also have similar balcony enclosures. It will not affect any neighbours or neighbouring properties; the enclosure is aesthetically similar to what is existing; and the condominium board has no concerns.

[30] Ms. Agrios provided the following information in response to questions from the Board:

- a) The Development Officer missed that this is a non conforming building; therefore, this is not a variance, it is an alteration. The Development Officer should have looked at section 643(5) and 11.3(2), and he did not.
- b) With respect to section 11.4(1)(b) and the F.A.R. variance limitation, Ms. Agrios stated that the Board and the Development Officer are not bound by this limitation because an alteration can be made to a non conforming building and there is no variance. The F.A.R. excess of 1.93 is the existing building, and the 1.93 F.A.R. excess will be the same with the balcony enclosure.
- c) Ms. Agrios agreed that if there was indeed a variance to the F.A.R., the Development Officer and the Board cannot approve a F.A.R. variance.

Decision

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

Reasons for Decision:

[32] The Board considered this application to construct an addition (4.6 square metres) created by the exterior alteration to an existing Apartment House building (balcony enclosure on the 15th floor) (Carlisle building).

[33] The Carlisle building was built in 1981 prior to the establishment of the Floor Area Ratio (F.A.R.) regulation under section 15.8.4(a) in the DC1 Direct Development Control Provision (Area 7 of the Oliver Area Redevelopment Plan (“DC1”).

[34] Under section 6.1 of the *Edmonton Zoning Bylaw*, Floor Area Ratio means:

the numerical value of the Floor Area of the building or structure relative to the Site upon which it is located, excluding:

- a. Basement areas used exclusively for storage or service to the building, or as a Secondary Suite;
- b. Parking Areas below ground level;
- c. Walkways required by the Development Officer;

- d. Floor Areas devoted exclusively to mechanical or electrical equipment servicing the development, divided by the area of the Site; and
- e. indoor Common Amenity Area, divided by the area of the Site.

[35] The DC1 for the subject site was established in December 1997, which means that the subject building is a non-conforming building per section 616(q) of the *Municipal Government Act* that states:

“non-conforming building” means a building

- i. that is lawfully constructed or lawfully under construction at the date a land use bylaw affecting the building or the land on which the building is situated becomes effective, and
- ii. that on the date the land use bylaw becomes effective does not, or when constructed will not, comply with the land use bylaw;

[36] The Board was presented with submissions that in general, enclosing a balcony to create an addition would increase the F.A.R, according to the definition in section 6.1.

[37] The Board was also presented with submissions from the Architect working for the Appellant that the Carlisle building is currently more than 3,800 square metres over the maximum allowed F.A.R. This is a long-standing excess in the maximum F.A.R. due to the non-conformity of the subject building. According to the Development Authority’s written submission, the calculation of the current F.A.R is 4.93, while the maximum requirement is 3.0.

[38] The Board was also required to consider its authority when reviewing a DC1 appeal pursuant to section 685(4) of the *Municipal Government Act* which states:

Despite subsections (1), (2) and (3), if a decision with respect to a development permit application in respect of a direct control district

(a) ...

(b) is made by a development authority, the appeal is limited to whether the development authority followed the directions of council, and if the subdivision and development appeal board finds that the development authority did not follow the directions it may, in accordance with the directions, substitute its decision for the development authority’s decision.

- [39] The Board therefore considered whether the Development Authority followed the directions of Council in this matter. The Board found that it was presented with sufficient evidence from the Appellant that the Development Officer did err in considering the directions of Council, due to their error in calculating the F.A.R. in this specific application.
- [40] The Board accepted the submissions before it that enclosing 4.6 square metres created an enlargement of 0.003 or 0.004 to the F.A.R.
- [41] According to section 3.6(1) of the *Edmonton Zoning Bylaw*, unless specified elsewhere in this Bylaw, units shall be rounded to the tenth decimal place. The Board finds that this F.A.R. calculation is in fact 0.00. For this reason, the Board finds the Development Authority erred in calculating the F.A.R. and failed to follow the directions of Council as required in section 685(4).
- [42] The Board finds therefore that according to section 685(4), it would have the authority to substitute its own decision for that of the Development Authority.
- [43] However, due to the increase in F.A.R. being in fact 0.00, no variance is required to allow this specific balcony enclosure.
- [44] For the above reasons, the appeal is allowed and the development is granted.



Shari LaPerle, Presiding Officer
Subdivision and Development Appeal Board

Important Information for the Applicant/Appellant

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

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

EDMONTON SUBDIVISION AND DEVELOPMENT APPEAL BOARD

Citation: Group2 Architecture Interior Design Ltd. v Development Authority of the City of Edmonton, 2019 ABESDAB 10210

Date: December 13, 2019
Project Number: 325820880-002
File Number: SDAB-D-19-210

Between:

Group2 Architecture Interior Design Ltd.

and

The City of Edmonton, Development Authority

Board Members

Shari LaPerle, Presiding Officer
Vincent Laberge
Chris Buyze
Don Fleming
Lyll Pratt

DECISION

[1] On November 28, 2019, the Subdivision and Development Appeal Board (the “Board”) heard an appeal that was filed on November 12, 2019 for an application by Group2 Architecture Interior Design Ltd. The appeal concerned the decision of the Development Authority, issued on November 8, 2019, to refuse the following development:

Construct a Public Education Service Building (GARTH WORTHINGTON K-9 SCHOOL).

[2] The subject property is on Plan 1420393 Blk 3 Lot 1MR, located at 351 - Chappelle Drive SW, within the (AGU) Urban Reserve Zone. The Chappelle Neighbourhood Area Structure Plan applies to the subject property.

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

- A copy of the Development Permit application with attachments, proposed plans, and the refused Development Permit;
- The Development Officer's written submission;
- The Appellant's written submission; and
- One online response in opposition to the proposed development.

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.

Summary of Hearing

- i) *Position of the Appellant, A. Fris, representing Group2 Architecture Interior Design and R. Labbe, representing the Edmonton Public School Board:*

- [7] The school site was identified in the Chappelle Neighbourhood Area Structure Plan that was adopted by Council in 2008. The site is currently zoned (AGU) Urban Reserve Zone. Edmonton Public Schools has been working with the City of Edmonton since April 2019 when a request was made to Civic Properties Services to begin its rezoning process from (AGU) Urban Reserve Zone to (US) Urban Services. It is anticipated that the rezoning application will come before Council in January or February 2020 but no date has been confirmed.
- [8] Public Education Services where a Site is designated as a school/park Site by a Neighbourhood Structure Plan is a Discretionary Use in the (AGU) Urban Reserve Zone. However, according to the provisions of the Zone, the maximum building Height cannot exceed 10.0 metres and the minimum Site Area shall be a minimum of 8 hectares.
- [9] The current AGU Zone does not allow the Development Officer any variance powers on building height. However, if, as is anticipated, the property were to be rezoned to the US Zone, the Development Officer would have the authority to vary the height restriction.
- [10] Most new school projects in Edmonton require a height variance to accommodate the gymnasium. This issue has been raised with Development & Zoning Services in an attempt to find a long term solution.
- [11] The minimum required site area of 8.0 hectares is specific to the current AGU Zone while the proposed US Zone does not have a minimum site area requirement.

- [12] The current construction schedule for the school is reliant on foundation work beginning in February 2020 in order to meet the required opening date of September 2021. It is therefore important to obtain the proposed development permit with the required variances in height and site area at this time even though it is anticipated that the rezoning application may be approved in January or February 2020.
- [13] A minimum clear height of 8.0 metres to the underside of the structure is required for volleyball competition to take place in the gymnasium. The proposed school design is 8.5 metres to the underside of the structure in the gymnasium and 8.0 metres to the underside of the required gymnasium divider curtain. This dimension allows the requisite height for volleyball competition and also provides adequate height for the adjacent mechanical room equipment and services connections.
- [14] The final maximum parapet height used to determine building height is the result of truss depth; the requirement of Alberta Infrastructure to provide sloped trusses; insulation thickness; the parapet height required to meet code requirements for drainage; warranty and the internal clearance of the ceiling structure required to play volleyball and other sports.
- [15] Mr. Labbe and Ms. Fris provided the following information in response to questions from the Board:
- a) Families and community members were presented with a preliminary concept of the school design and a site plan. They were invited to provide feedback through a public meeting and an online survey. One or two residents expressed concern regarding increased traffic from the development, which is typical. However, the majority of residents are eager for the school to be built.
 - b) Discussions with the Development Officer have been ongoing and the recommended conditions have been reviewed and are acceptable.

iii) Position of the Development Officer, C. Li:

- [16] Ms. Li did not attend the hearing but provided a written submission that was considered by the Board.

Decision

- [17] 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**:

Lot Grading Conditions:

1. PRIOR TO THE RELEASE OF DRAWINGS FOR BUILDING PERMIT REVIEW, the applicant or property owner shall pay a Lot Grading Fee of \$447.81.

Drainage Services Conditions:

1. PRIOR TO THE RELEASE OF DRAWINGS FOR BUILDING PERMIT REVIEW, the applicant or property owner shall pay a Sanitary Sewer Trunk Charge fee of \$15,770.12.

Based on our record, this property was never assessed for SSTC.

SSTC is applicable to the property for the proposed area of 1.8975 ha at \$8,311/ha under the current DP#325820880-002. The property area is obtained from the drawings submitted with this application for Major Development Permit.

For information purposes, the year 2019 rate is \$8,311/ha commercial. However, the final SSTC is based on the prevailing rate at the time the applicant/owner makes payment at 2nd Floor cashiers, Edmonton Service Centre, 10111 – 104 Avenue NW.

Additional Notes

- The above assessment is made based on information currently available to our Department. Should such information change in the future, a new assessment may be made.
- In addition to the above items, the applicant/owner may need to pay for the installation cost of sewer services to the property line. For details, please contact EPCOR Drainage.
- More information about the above charges can be found on the City of Edmonton's website:

Permanent Area Contributions

https://www.edmonton.ca/city_government/utilities/permanent-area-contributions.aspx

Sanitary Servicing Strategy Expansion Assessment

https://www.edmonton.ca/city_government/utilities/expansion-assessment-charge-ea.aspx

Arterial Roadway Assessment

https://www.edmonton.ca/projects_plans/roads/design_planning/arterial-roadway-assessments.aspx

Sanitary Sewer Trunk Charge

https://www.edmonton.ca/city_government/utilities/sanitary-sewer-trunk-charge-sstc.aspx

Landscaping Conditions:

1. 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 (this can be paid by phone with a credit card - 780-442-5054).
2. Landscaping shall be in accordance with the approved Landscape Plan, and Section 55 of the Zoning Bylaw, to the satisfaction of the Development Officer.
3. Any changes to an approved Landscape Plan require the approval of the Development Officer prior to the Landscaping being installed.
4. 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.

Parkland Management Conditions:

Parkland Management, Parks and Roads supports this development with the following conditions:

1. Please follow The City of Edmonton Landscape Design and Construction Standards Volume 5 – Landscaping when designing any new landscape for this area.
2. Any chain-link fence installed on COE property must have 9 gauge wire, before any plastic coating as per Standard 2.1.2 - Nominal wire diameter: 3.5mm (9-gauge).
3. Please ensure site drainage is not affected by this project and water moves efficiently and quickly and does not allow ponding for several days post rain event.
4. Any damaged turf areas related to this project shall be re-sodded as required and maintenance (watering and mowing) of restored turf areas will be the responsibility of the proponent until the sod is established.
5. All other damages to parkland inventory (shrub beds, etc) must be restored to pre-existing conditions and COE Construction Standards and City Operations satisfaction.
6. The City of Edmonton will not maintain the frontage/flankage or school envelope landscaping in this design.
7. Any lay down/staging area must be approved and fenced, with NO vehicular or project activity outside of the fenced area.
8. A pre-construction inspection prior to accessing the site and a post-construction inspection once parkland restoration has occurred will be conducted by Land Development. Email: parkslandscapeinventory@edmonton.ca to request inspections.

9. All work is subject to the requirements of the Parkland Bylaw (C2202) and the Joint Use Agreement.

Transportation Planning Conditions:

1. The Edmonton Public School Board must enter into an Agreement with the City for the following improvements:
 - a) construction of a 6 m one-way inbound curb return access with curb ramps to City of Edmonton Complete Street Design and Construction Standards from Chappelle Drive SW located approximately 107 m from the west property line and aligned with the southbound lanes of Carpenter Landing SW, including one way directional signage located on private property;
 - b) construction of an 7.5 m one-way outbound curb return access with curb ramps to City of Edmonton Complete Street Design and Construction Standards to Chappelle Drive SW located approximately 54 m from the east property line and aligned with Carpenter Landing SW, including one way directional signage located on private property;
 - c) installation of two (2) zebra marked crosswalks with pedestrian signage on Chappelle Drive SW located on the west side of the 6 m inbound access and Carpenter Landing SW and the east side of the 7.5 m outbound access and Carpenter Landing SW;
 - d) removal of the existing southwest curb ramp at the most westerly intersection of Chappelle Drive SW and Carpenter Landing SW and reconstruction of the curb ramp with the proposed 6 m inbound access to facilitate the required most westerly zebra marked crosswalk;
 - e) removal and reconstruction of three (3) existing curb ramps at the easterly intersection of Chappelle Drive SW and Carpenter Landing SW to reorient the direction and facilitate the required most easterly zebra marked crosswalk with the proposed 7.5 m outbound access;
 - f) payment for and the submission of a street lighting assessment as well as payment for and completion of any required upgrades to street lights in the vicinity of the required zebra marked crosswalks along Chappelle Drive SW as a result of the assessment;
 - g) removal/relocation of three (3) boulevard trees along Chappelle Drive SW and payment of tree compensation of \$6,200.00 as stated in the Corporate Tree Management Policy C456A; and
 - h) relocation of any above ground or underground utilities impacted by the proposed school site construction.

The Agreement must be signed PRIOR TO THE RELEASE OF DRAWINGS FOR BUILDING PERMIT REVIEW. Please email development.coordination@edmonton.ca to initiate the required Agreement. Following this, any further questions regarding this Agreement may be directed to Esther Anderson (780-944-7773) of the Development Servicing Agreements Unit.

- This Agreement will require a deposit to act as security on this Agreement. The City requires a Letter of Credit in the amount of \$84,500.00 to cover 100% of construction costs and 30 % for Engineering Drawing approval. However, based on the City's "GUIDELINES FOR ESTABLISHING SECURITY IN SERVICING AGREEMENT" the amount may be adjusted based upon the owner's previous development history with the City.
 - Engineering Drawings are required for the Agreement. The owner is also required to have a Civil Engineer submit stamped engineering drawings for approval by the City of Edmonton.
 - The applicant must contact Annie Duong (780-442-0251) 72 hours prior to removal or construction within City road right-of-way.
2. The installation of appropriate on-street signage (including but not limited to passenger loading, school bus loading, 'no stopping') along Chappelle Drive SW will be paid for and installed by the City of Edmonton. The installation of the signage must coincide with the opening of the school to facilitate the increased traffic and as such the Edmonton Public School Board must contact Tazul Islam (780-496-5910) of Traffic Safety to initiate the installation in a timely manner.
 3. 'No stopping' zones are required along portions of Chappelle Drive SW within 10 m of an access and marked crosswalk.
 4. The on-site one-way directional drive aisle, on-site parent drop off stalls and staff parking must be properly signed and all signs must be provided on private property. Appropriate signage for these areas must be provided at the Edmonton Public School Boards expense as part of the school development.
 5. On-site curb ramps and pedestrian signage must be provided at the main access along the internal one-way roadway to accommodate the required pedestrian connection from the sidewalk/bus zone to the school building. The proposed sidewalk connections from the public sidewalk to the building must not impact the existing boulevard trees. A minimum clearance of 3 m must be maintained between the proposed sidewalk connection and the trunk of the tree.
 6. A 1.2 m ornamental fence must be installed on private property along Chappelle Drive SW to mitigate any possible conflict between pedestrian and vehicle movement.

7. Further to Condition 1(f) above, Traffic Operations has advised that a street lighting assessment is required to be completed at the full length of the improvement area along Chappelle Drive SW to ensure that the street lighting meets the City Of Edmonton Road and Walkway Lighting Standards. The Edmonton Public School Board is responsible to pay for all costs associated with this assessment as well as any required off-site improvements identified in the assessment. These improvements would encompass, but not limited to, installation of new or modification of streetlight infrastructure (poles, luminaires, bases, cabling, etc.) to achieve:
 - Intersection horizontal lighting levels to meet medium pedestrian activity
 - Vertical lighting levels at marked crosswalks to meet medium pedestrian activity
 - Roadway luminance to meet medium pedestrian activity at each direction of travel

The assessment, lighting design report and any plans associated to be circulated via standard City process (Eplan). For further information and requirements regarding streetlights please refer to the City's Road and Walkway Lighting Standards.

8. Permanent objects must NOT encroach into or over/under road right-of-way. All required landscaping for the development must be provided on site.
9. There are existing boulevard trees adjacent to the site that must be protected during construction. Prior to construction, the owner/applicant must contact City Operations, Parks and Roads Services (citytrees@edmonton.ca) to arrange for hoarding and/or root cutting. All costs shall be borne by the owner/applicant.

Any boulevard tree removal(s) must follow the live tree removal guidelines as follows at: https://www.edmonton.ca/programs_services/landscaping_gardening/live-tree-removal-guidelines.aspx

10. 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) 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.
11. Any hoarding or construction taking place on road right-of-way requires an OSCAM (On-Street Construction and Maintenance) permit. OSCAM permit applications require Transportation Management Plan (TMP) information. The TMP must include:
 - the start/finish date of project;

- accommodation of pedestrians and vehicles during construction;
- confirmation of lay down area within legal road right of way if required;
- and to confirm if crossing the sidewalk and/or boulevard is required to temporarily access the site.

It should be noted that the hoarding must not damage boulevard trees. The owner or Prime Contractor must apply for an OSCAM online at: https://www.edmonton.ca/business_economy/licences_permits/oscam-permit-request.aspx and, <https://www.edmonton.ca/documents/ConstructionSafety.pdf>

12. Any sidewalk, boulevard and/or shared use path 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.

Zoning Review Conditions:

1. Exterior lighting shall be developed to provide a safe lit environment in accordance with Sections 51 and 58 and to the satisfaction of the Development Officer.
2. All required parking and loading facilities shall only be used for the purpose of accommodating the vehicles of clients, customers, employees, members, residents or visitors in connection with the building or Use for which the parking and loading facilities are provided, and the parking and loading facilities shall not be used for driveways, access or egress, commercial repair work, display, sale or storage of goods of any kind. (Reference Section 54.1(1.c))
3. Parking spaces for the disabled shall be provided in accordance with the Alberta Building Code in effect at the time of the Development Permit application, for which no discretion exists and be identified as parking spaces for the disabled through the use of appropriate signage, in accordance with Provincial standards. (Reference Section 54.1(3))
4. All access locations and curb crossings shall require the approval of Transportation Services. (Reference Section 53(1))
5. Signs require separate Development Application.

Fire Rescue Services Advisements:

Upon review of the noted development, Edmonton Fire Rescue Services has no objections to this proposal, however, has the following advisements for your implementation and information.

1. Ensure that a Fire Safety Plan is prepared for this project, in accordance with the EFRS Construction Site Fire Safety Plan Template:

https://www.edmonton.ca/programs_services/fire_rescue/fire-safety-planning-for-const.aspx

A formal submission of your Fire Safety Plan will be required for a Building Permit to be issued (please do not forward your Fire Safety Plan at this time). If you have any questions at this time, please contact Technical Services at cmsfpts@edmonton.ca. Reference: 5.6.1.3. Fire Safety Plan

- 1) Except as required in Sentence (2), prior to the commencement of construction, alteration or demolition operations, a fire safety plan, accepted in writing by the fire department and the authority having jurisdiction, shall be prepared for the site and shall include...
2. If the building is sprinklered and equipped with a Sprinkler Fire Department Connection (FDC), ensure that the location of the FDC is not compromised by either the proposed addition or exterior alterations. The building's FDC (if any) shall be located in accordance with ABC 3.2.5.15. Reference: ABC 3.2.5.15. Fire Department Connections
- 2) The fire department connection referred to in Sentences (1) and (2) shall be located no closer than 3 m and no further than 15 m from the principal entrance to the building.
3. Ensure that the hydrants identified on the site plan are fully functional prior to construction.
4. Ensure that an all-weather access road is constructed prior to construction.

Reference: AFC 5.6.1.4. Access for Firefighting

- 4) Access routes for fire department vehicles shall be provided and maintained to construction and demolition sites.
5. Confirm that the Fire Alarm Annunciator panel is located in close proximity to the building entrance that faces a street or emergency access route. A remote Fire alarm panel will be required to be ins
6. Ensure that emergency access route/fire lane signage is posted as per the 2014 AFC 2.5.1.5 (3). Reference: 2.5.1.5. Maintenance of Fire Department Access
- 3) Signs posted in conformance with Sentence (2) shall be permanently installed not more than 20 m apart and not more than 2.3 m above surrounding ground level to ensure that they are clearly visible to approaching vehicles.
7. Partial Occupancy Conditions as per AFC 5.6.1.12. For additional information please see:

Occupancy of Buildings Under Construction STANDATA –
http://www.municipalaffairs.alberta.ca/documents/ss/STANDATA/building/bcb/06B/CB00_2.pdf

Reference: 5.6.1.12. Fire Separations in Partly Occupied Buildings

- 1) Where part of a building continues to be occupied, the occupied part shall be separated from the part being demolished or constructed by a fire separation having a fire-resistance rating of not less than 1 h.

Reference: 5.6.1.21.(3) Occupied Buildings

Required exits from the occupied area shall be maintained or alternate means of egress shall be provided.

For additional information please contact our office. Swapnil Brahmhatt (cmsfpts@edmonton.ca)

Parkland Management Advisements:

1. It is the responsibility of the project manager to ensure the appropriate level of engagement takes place in the community, It is the responsibility of the project manager to ensure notification and information is provided to residents and key stakeholders. If needed, ask the NRC for who the stakeholders are in the community., If it is related to/has impact on fields, discussion with bookings, Ensure there is on site notification (ie. signage).

Transportation Planning Advisements:

1. Subdivision Planning strongly advises the Edmonton Public School Board to provide a communication plan to educate the parents and students to access the school in a safe manner.
2. Vehicular and bicycle parking should meet the requirements of the Zoning Bylaw.

Zoning Review Advisements:

1. The Development Permit shall NOT be valid unless and until the conditions of approval, save those of a continuing nature, have been fulfilled; and no notice of appeal from such approval has been served on the Subdivision and Development Appeal Board within the time period specified in subsection 21.1 (Ref. Section 17.1).
2. This Development Permit is not a Business Licence. A separate application must be made for a Business Licence.

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

1. The minimum required Site Area of 8.0 hectares per section 620.4(1) is varied to allow a deficiency of 2.82 hectares, thereby decreasing the minimum required to 5.18 hectares.
2. The maximum allowable Height of 10.0 metres per section 620.4(5) is varied to allow an excess of 1.30 metres, thereby increasing the maximum allowed to 11.30 metres.

Reasons for Decision

[19] Public Education Services, where the Site is designated as a school/park Site by a Neighbourhood Structure Plan, is a Discretionary Use in the (AGU) Urban Reserve Zone.

[20] The Development Officer refused the application because of variances required to the minimum required Site Area and the maximum allowable Height.

[21] Section 620.4(5) of the *Edmonton Zoning Bylaw* states:

Height is not restricted for Buildings or structures for Agricultural and Natural Resource Development Uses. Excluding buildings or structures for Agricultural and Natural Resource Development Uses, the maximum building Height shall not exceed 10.0 m, in accordance with Section 52.

The proposed Building Height is 11.30 metres and exceeds the maximum allowed by 1.3 metres.

[22] Section 620.4(1) of the *Edmonton Zoning Bylaw* states “The minimum Site Area shall be 8 hectares.”

The proposed Site Area is 5.18 hectares and is deficient by 2.82 hectares.

[23] The Board grants the required variances for the following reasons:

- a) This school site has been planned for a significant time period. It was identified in the Chappelle Neighbourhood Area Structure Plan (NASP) that was adopted by City Council in 2008. The Board believes that development of this Public Education Building has likely been anticipated by surrounding land owners.
- b) The variance in the maximum allowable Height is only required for a portion of the building. The final maximum parapet height of 11.30 metres is required to provide adequate Height to play volleyball in the gymnasium and for the adjacent mechanical room equipment and service connections.
- c) The provision to include sloped trusses is required by Alberta Infrastructure and the parapet Height is required to meet building code requirements for roof drainage and warranty.

- d) The Sun Shadow Studies conducted at 12:00 p.m. on June 21 and at 12:00 p.m. on December 21, determined that all of the shadowing created by the new building will occur on the subject Site and will not impact any of the adjacent residential properties.
 - e) The Board finds that the proposed development is reasonably compatible with the residential zone located immediately north of the subject Site. The sports fields planned by the City on the southern boundary of the Site will provide a much needed amenity in this neighbourhood.
 - f) The Board notes that one online response in opposition to the proposed development was received but it did not identify any specific concerns.
 - g) No valid planning reasons were provided to persuade the Board that there would be impacts from this development on the use of any nearby property.
 - h) Based on the evidence provided, an application to rezone the subject Site to (US) Urban Services Zone has been submitted and it is anticipated that it will likely be heard by City Council in January or February 2020. If the application to rezone the Site to (US) Urban Services Zone is approved by Council, the Development Officer would then have the discretion to grant a variance in the maximum allowable Height. Also, there is no minimum Site Area requirement contained in the development regulations for the Urban Services Zone.
- [24] Based on all of the evidence and reasons listed above, the Board concludes that the proposed development with the conditions imposed is reasonably compatible with the neighbourhood and is of the opinion that granting the required 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.



Shari LaPerle, Presiding Officer
Subdivision and Development Appeal Board

Important Information for the Applicant/Appellant

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

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