



**EDMONTON  
TRIBUNALS**

*Subdivision &  
Development  
Appeal Board*

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Date: October 28, 2016  
Project Number: 229907368-001  
File Number: SDAB-D-16-253

**Notice of Decision**

- [1] On October 13, 2016, the Subdivision and Development Appeal Board heard an appeal that was filed on September 20, 2016. The appeal concerned the decision of the Development Authority, issued on September 19, 2016, to refuse the following development:

To operate a Major Home Based Business (Administration office for General Contractor - Darshall Construction Ltd.)

- [2] The subject property is on Plan 7721465 Blk 13 Lot 18, located at 3852 - 51 Street NW, within the RF1 Single Detached Residential Zone. The Mature Neighbourhood Overlay applies to the subject property.
- [3] The following documents were received prior to the hearing and form part of the record:
- Copy of the Development Permit application and the refused Development Permit decision;
  - Development Officer's written submissions, dated September 21, 2016;
  - Appellant's appeal package, including emails, photographs, and information about the proposed development; and
  - One online response from a neighbouring property owner in opposition to the 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 the procedure for the hearing, including the order of appearance of parties. 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, Darshall Construction Ltd.*

[7] The Appellant was represented by Mr. D. Hlushak, who was accompanied by Ms. A. Hlushak.

[8] Mr. Hlushak runs his company, Darshall Construction, as a part-time operation. He has a full-time day job. He wishes to store his company's 14 feet enclosed trailer on the asphalt parking pad within the fenced area of his side yard to deter theft of the construction tools stored within it. Storing materials behind locked gates, in a trailer with door locks and a hitch lock, is more secure than storing them in a shed.

[9] The trailer is primarily used for on-site storage, though approximately three to four times a year, he takes it off his property for larger renovation jobs. He hopes to get more contracts for longer-term projects, so that he can occasionally store the trailer at a secured construction site. Since the trailer is not frequently used, the potential for damage to his lawn is minimal. If damage does occur, then he repairs it promptly, unlike neighbouring properties.

[10] Upon questioning by the Board, he clarified that the existing attached Front Garage has a depth of approximately 20 feet, which will not fit the company's Chevrolet  $\frac{3}{4}$  ton truck with hitch attached. Due to existing shelving and the Garage's low height, the second truck must also be parked on the Driveway. Only Ms. Hlushak's smaller vehicle can fit inside the Garage.

[11] Mr. Hlushak reviewed several pictures of nearby properties. The pictures demonstrate that it is common for trailers and recreational vehicles to be parked in plain sight in the front or side yards of their respective properties. Many recreational vehicles remain parked on their respective properties year-round. Some are moved off-site or further back onto the property behind locked fences.

[12] Upon questioning by the Board, the Appellants confirmed that they have conducted a form of community consultation with neighbours within the 60 metre notification area. The neighbours whom they were able to contact did not oppose either the development in general or the storage of the enclosed trailer on the asphalt pad in particular. They submitted Exhibit "A", a map of the properties within the notification area, with a legend illustrating whether property owners expressed support, opposition, and/or no response.

[13] The Appellants reviewed the Development Officer's recommended conditions and confirmed that they are seeking an exemption from Condition #6, the prohibition on outdoor storage. With respect to Conditions #10 and #11, the Appellant confirmed that his company truck is not a commercial vehicle. Further, neither the truck nor the enclosed trailer is over the 4,500 kg maximum gross vehicle weight limit.

*ii) Position of the Development Officer, Ms. K. Bauer*

[14] Ms. Bauer submitted Exhibit "B", a screenshot of an overhead view of the subject property and surrounding homes. It shows what appeared to be two sheds and a recreational vehicle (parked on asphalt pad) in the rear yard of the subject property. She confirmed that the *Edmonton Zoning Bylaw* does permit the parking of recreational vehicles on a property, so long as they are not parked on the front lawn.

[15] Upon questioning by the Board, Ms. Bauer expressed the view that outside of the asphalt parking pad, there are no alternative suitable parking spaces for the trailer other than the front driveway.

[16] To prevent damage to the front lawn, she suggested the installation of two tire treads leading from the street to the fence line. This potential second access point is facilitated by the rolled curb along the blockface, and no curb cut will be necessary. However, in her experience, a second access point with tire treads can encourage illegal parking on the front lawn. Front lawn parking might be prevented by requiring that shrubs or other greenery be planted. Landscaping also has the benefit of making the yard look more visually appealing. Other forms of landscaping could be installed which are less likely to be damaged by moving the trailer across the front lawn.

[17] The property came to the City's attention due to a complaint about parking on the front yard. There is a history of complaints about parking on the front yard for this property. She submitted Exhibit "C", a 2012 photograph from a Community Standards investigation showing a car parked on the front lawn, and Exhibit "D", information about the most recent complaint from 2015 which involved a trailer parked in the Front Yard, partially on the front driveway and partially on the lawn.

*iii) Rebuttal of the Appellant*

[18] The Appellant confirmed that the recreational vehicle is currently parked on gravel, behind the asphalt parking pad. He intends to sell the recreational vehicle in the future.

- [19] Although the Appellant had no objections to installing tire treads, he did not believe they would be aesthetically pleasing. He expressed confusion about the Development Officer's suggestion that shrubs be planted, as that would prevent access to his yard and to the parking pad. Should the Board require some sort of landscaping to facilitate the access to the Side Yard, he would be amenable to a different alternative.
- [20] Due to the width of the enclosed trailer, if the Board requires that it be parked on the Driveway, then Ms. Hlushak's vehicle will not be able to access the Garage. She would then have to park her vehicle on the Driveway, and the other two trucks would need to be parked on the street.

### **Decision**

- [21] 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 business owner must live at the site. The business use must be secondary to the residential use of the building and shall not change the residential character of the Dwelling or Accessory Building (Section 7.3(7)).
  - 2) There shall be no exterior display or advertisement other than an identification plaque or sign a maximum of 20 cm (8") x 30.5 cm (12") in size located on the dwelling (Section 75.1).
  - 3) The Major Home Based Business shall not generate pedestrian or vehicular traffic, or parking, in excess of that which is characteristic of the Zone in which it is located (Section 75.3).
  - 4) The site shall not be used as a daily rendezvous for employees or business partners.
  - 5) The site shall not be used by employees or business partners as a parking or storage location.
  - 6) There shall be no outdoor business activities or outdoor storage of material or equipment associated with the business, with the exception of the storage of one enclosed 14 feet trailer weighing less than 4,500 kg gross vehicle weight. This trailer is to be stored only on the existing asphalt pad located behind the fence in the Side Yard directly adjacent to the east of the principal Dwelling. This asphalt pad shall be reserved exclusively for the storage of the 14 feet trailer and for no other vehicle.
  - 7) No offensive noise, odour, vibration, smoke, litter, heat or other objectionable effect shall be produced.
  - 8) Fabrications of business related materials are prohibited.
  - 9) Subject to Condition 6, all commercial and industrial equipment, including but not limited to Bobcats, are not permitted at the site. The equipment shall be stored at an approved storage facility.

- 10) All commercial, industrial and overweight vehicles shall be parked at an approved storage facility. The Development Permit may be revoked if any commercial, industrial and overweight vehicles are parked or stored at the residential site.
  - 11) All parking for the Dwelling and Home Based Business must be accommodated on site, unless a parking variance has been granted for this Major Home Based Business.
  - 12) This Development Permit may be cancelled at any time if the Home Based Business as stated in the Permit Details changes (Section 17.2).
  - 13) Parking on the Front Yard is prohibited (Section 45(7)).
  - 14) This approval is for a 5 year period from the date of this decision. A new Development Permit must be obtained to continue to operate the business from this location. This Development Permit expires on October 28, 2021.
- [22] In granting the development, the following VARIANCE to the *Edmonton Zoning Bylaw* is allowed:
- 1) Section 75(5) is relaxed to permit the outdoor storage of one, 14 feet trailer associated with the Major Home Based Business as specified in CONDITION 6, above.

### **Reasons for Decision**

- [23] The proposed development is a Major Home Based Business, a Discretionary Use in the RF1 Single Detached Residential Zone.
- [24] Based on the evidence, it is not uncharacteristic for lots in this area to have second vehicle access points and sizeable Side Yards which are frequently used to accommodate recreational vehicles or other large vehicles.
- [25] The Appellant seeks a variance to the Bylaw to allow him to park a 14 feet enclosed trailer with a gross vehicle weight under 4,500kg in his Side Yard on an asphalt pad which has been in existence for many years. The storage area is located behind a 6 feet high fence complete with a locked double door gate.
- [26] The Board accepts the evidence of the Appellant that the locked trailer is more secure than an Accessory building, and that it will be moved from the storage area in the Side Yard infrequently (approximately four times per year).
- [27] The trailer will be screened by the fence at the front, and by large mature trees to the rear. This location is less visually impactful than allowing the trailer to be stored on the front Driveway.

- [28] The Appellant canvassed many of the potentially affected property owners in the notification area that are located along the same street and would therefore be the most affected. Eleven of these neighbours had no opposition to the proposed development. Although the Appellant was unable to reach all property owners in the notification area, those owners who he was able to contact, including the most affected adjacent neighbours, expressed no concerns about storage of the trailer in the Side Yard. The Board received only one letter of objection from a neighbour who lives on the opposite side of the block. That neighbour objected specifically to parking of the trailer on the front Driveway.
- [29] Two of seven complaints associated with this property relate to the current owner. Those objections centre on parking on the Front Yard. This concern is addressed by the imposition of Condition 6 above. In addition, Condition 13 has been added as authorized by section 15 of the *Edmonton Zoning Bylaw* as a reminder to the Appellant that this permit in no way alters the prohibition on parking in a Front Yard under section 45(7).
- [30] For the above reasons, the Board concludes that the proposed development will not unduly interfere with the amenities of the neighbourhood, nor materially interfere with or affect the use and enjoyment of neighbouring parcels of land. The appeal is therefore allowed and the development is granted.

Ms. K. Cherniawsky, 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 5<sup>th</sup> Floor, 10250 – 101 Street, Edmonton.
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 5th Floor, 10250 – 101 Street, Edmonton.

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



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Date: October 28, 2016  
Project Number: 186165557-002  
File Number: SDAB-D-16-254

**Notice of Decision**

- [1] On October 13, 2016, the Subdivision and Development Appeal Board heard an appeal that was filed on September 19, 2016. The appeal concerned the decision of the Development Authority, issued on August 31, 2016, to approve the following development:

To construct a Single Detached House with a front attached Garage, a front veranda, fireplace, covered deck (irregular shape, 4.72 metres by 10.21 metres) with a second floor balcony above (4.72 metres by 3.96 metres) and sunken patio, Basement Development (NOT to be used as additional Dwelling), and to demolish a Single Detached House.

- [2] The subject property is on Plan 5508MC Blk 6 Lot 3, located at 99 - Fairway Drive NW, within the RF1 Single Detached Residential Zone.
- [3] The following documents were received prior to the hearing and form part of the record:
- Copy of the Development Permit application with proposed plans and the approved Development Permit;
  - Appellant's appeal package, consisting of photographs;
  - Respondent's appeal package, consisting of photographs, newly revised proposed plans and information about the development; and
  - Development Officer's written submissions, dated October 12, 2016.

**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] Due to the multiple sets of revised plans that were submitted to the Board for the purposes of this appeal, the Board requested that the Respondent, Graphtec Design, first confirm which plans it wished the Board to consider. The Respondent confirmed that they are presenting new plans to the Board which had not been approved by the Development Officer. These new proposed plans contained some errors, and should indicate the following:
- i) Front Setback of 6.15 metres (from the approved 6.09 metres);
  - ii) Northwest Rear Setback of 22.8 metres (from the approved 22.86 metres);
  - iii) Northeast Rear Setback of 16.81 metres (from the approved 16.87 metres);
  - iv) Southeast Front Side Setback of 2.61 metres (from the approved 2.00 metres);
  - v) Removal of cantilevers; and
  - vi) Inclusion of a sloped roof.
- [6] The Presiding Officer outlined the procedure for the hearing, including the order of appearance of parties. 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, Ms. T. McCloskey and legal counsel, Ms. K. Brookes.*
- [8] The subject Site is large enough that a house can be built on it without requiring variances. Her own home is approximately 2000 square feet, which is less than half the size of the proposed development.
- [9] The main entrance to her home is located on the side of her house facing the proposed development. Based on her review of the plans, it appears that the proposed development will be built closer to her home and will therefore affect her use of the side entrance. She questioned whether the development could be located more centrally on the lot.
- [10] She will be negatively impacted in several ways. First, her view toward the west, where a spruce tree currently exists, will be negatively impacted because the tree will be replaced by a portion of a wall. Her view is also affected by cantilever sections on this wall which project into the required setback. Upon questioning by the Board, she confirmed that her view to the west is currently partially blocked by the existing wall. However, the proposed development will have a wall that projects much further toward the Rear Lot Line, is located closer to her property, and generally contributes to a greater massing effect. She would like it moved closer to the adjacent neighbours to the north who have no windows on the wall facing the proposed development. Her main entrance, patio area and a frosted bathroom window face the proposed development.

- [11] Her view of the golf course to the north, through her neighbour's Rear Yard, will also be negatively impacted by the reduced setback of the proposed development. Upon questioning by the Board, she acknowledged that the golf course view through her own Rear Yard remains unchanged.
- [12] Her use and enjoyment of her Rear Yard is further impacted by the two above Grade patios, and one sunken patio, proposed for the subject development. Individuals standing on the above Grade patios will be able to look into her yard. The Board noted that the above Grade patios do not extend the entire length of the rear wall, and appear to be located closer toward the other adjacent neighbour. Ms. McCloskey submitted that the impact upon her privacy still exists.
- [13] Ms. McCloskey cited Section 814.1 of the *Edmonton Zoning Bylaw*, which sets out the General Purpose of the Mature Neighbourhood Overlay. This provision provides, in part, that the purpose of the Overlay is to ensure "privacy and sunlight penetration onto adjacent properties" located next to low density development in mature residential neighbourhoods. Not only is her privacy negatively impacted, but the massing impact of the projecting patios and cantilevers also negatively affect sunlight penetration onto her property. On questioning, the Appellant explained that sunlight is not necessarily her greatest concern. She agreed that as the development is northwest of her property and since the sun rises in the east and sets in the west, the shadowing from the proposed development onto her property would be minimal, except near sunset.
- [14] To support her submissions, Ms. McCloskey reviewed her submitted photographs. She provided a new photograph, entered as Exhibit "A." It showed her house relative to the existing neighbouring property. The photographs conveyed a sense of the view from her Rear Yard, as well as the privacy and sunlight penetration she currently enjoys in her Rear Yard. In response to an observation by the Board that her photographs show the shadow from her home falling onto the Respondent's property, the Appellant indicated that she believes privacy and sunlight penetration will nonetheless be negatively impacted by the proposed development.
- [15] For the most part, Ms. McCloskey did not have significant concerns about the two variances related to the front attached Garage as they would not impact her use and enjoyment of her Rear Yard. However, she noted that the proposed three-car Garage appears significantly different from neighbouring properties with three-car Garages. The other variances have a direct and dramatic impact.
- [16] Ms. Brookes noted that variances are considered exceptions to the general development regulations under the *Edmonton Zoning Bylaw*.

*ii) Position of the Respondent, Graphtec Design.*

- [17] The Board suggested that the Development Officer speak after the Respondent, due to the potential changes to the plans proposed by the Respondent at the start of the hearing. The Development Officer agreed and the parties expressed no opposition.
- [18] The Respondent was represented by Mr. E. Hammermeister. He was accompanied by the property owners, Mr. D. Hansen and Ms. G. Hansen. The Respondent performed the required community consultation and revised the plans to meet concerns of neighbours including the Appellant's concerns.
- [19] The subject lot is deeper than properties to the south, including the Appellant's lot. This allows for developments with larger footprints. The proposed development is at 32.57% Site Coverage, well within the maximum allowable of 38%. The primary foundation of the proposed development is fully compliant. Only the patio areas protrude 1.94 metres into the 40% required Rear Setback.
- [20] With respect to the Appellant's concerns about the impact upon her view, Mr. Hammermeister noted that there are currently large mature trees that already screen her view of the golf course. The most recent proposed plans include the removal of cantilevers, which should help to mitigate some of the Appellant's concerns about the impact upon her view.
- [21] The property owners want privacy for themselves and for both of their neighbours. Several features of the proposed development mitigate privacy concerns. First, on the wall facing the Appellant's property, they have proposed transom windows set at six feet or higher so that there are no direct sightlines onto her property. The windows also have the added benefit of providing a visual break and take away from the blank wall appearance that now exists.
- [22] Second, they have already planted the tallest trees available (20 feet in height) along the property line. They intend to plant more tall trees to provide more privacy screening.
- [23] Third, the above Grade balconies were designed to prevent direct sightlines between the patios and the two adjoining properties. Although the sunken patio and above grade balconies protrude slightly beyond the required 40% Rear Setback line, the Appellant would have to stand on her rear property line for a direct view of these structures.
- [24] The projecting balconies were designed with an open plan to mitigate the Appellant's concerns about massing and sunshadowing.

- [25] Upon questioning by the Board, the Respondent explained that the last minute proposal to replace the flat roof with a sloped roof was in response to the Appellant's concerns about a flat roof being uncharacteristic of the neighbourhood. He acknowledged that the proposed change in roof type could result in a subsequent change to Height calculations, and that the Development Officer would need to review the revised plans.
- [26] The Board reminded the parties that this is a quasi-judicial appeal of the approved plans. The Board expressed concerns that the most recently amended plans proposed by the Respondent include numerous substantial changes including a change to Height and the floor plans. These changes could lead to other required variances, including potential variances under the MNO. The new plans have not been reviewed by the Development Officer.
- [27] The Respondent wished to move forward with the appeal based on the stamped approved plans. He was prepared to remove the three cantilever sections, while leaving the remainder of the plans as they were approved by the Development Officer.

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

- [28] The Respondent performed the community consultation requirements of the MNO and met the intent of the consultation process.
- [29] Although the cantilever on the main floor may be redlined without impact, the cantilever on the second floor contains a functional portion of the bathroom space. As such, the Board may wish to consider only the removal of the main floor cantilever.
- [30] The remainder of his comments were restricted to the stamped approved plans.
- [31] The portion actually being relaxed is for the amenity feature. If the sunken patio was removed or reduced in size, the primary foundation of the structure below would actually be within the 40% Rear Setback.
- [32] With respect to privacy concerns, he noted that a number of trees will be planted as per the submitted landscaping plan. Elevation drawings also show privacy screening will be constructed on the top patio. As well, the subject property's rear lot line tapers toward the Appellant's lot, so there would be no sightlines onto the Appellant's yard, even if an individual stood on the corner of the balcony closest to the Appellant's property. It was his view that notwithstanding the submissions of the parties, based on the landscaping and proposed privacy screening, privacy should not be a concern.
- [33] Mr. Robinson confirmed that the community consultation resulted in no opposition to the development. The adjacent neighbour to the north expressed no privacy concerns with the rear decks.

*iv) Rebuttal of the Appellant*

- [34] Ms. McCloskey recognized that she does not have the right to a view across her neighbour's property and that there were mature trees in her Rear Yard that may also impact her view, but the view was not her primary concern. She emphasized that her privacy will be impacted by the proposed balconies and sunken patio which projects into the required Rear Setback.
- [35] Upon questioning by the Board, Ms. McCloskey explained that redlining the cantilevers would help to address some of her concerns about massing and impact upon her view. However, she remains unclear as to the measurements for the Rear Setback.
- [36] At this point, the Board requested that Mr. Robinson return to clarify the Rear Setback calculation. He explained that although the line drawn by the surveyor provides a more accurate representation of the Rear Setback, the actual calculations average out two site depths to determine the required variance number.
- [37] Having heard the Respondent's submissions, Ms. McCloskey acknowledged that it was unlikely that an individual standing on the balconies would have a sightline to her main entrance located on the side of her home. However, both the balconies still have a sightline toward her Rear Yard, rear patio and fire pit.

**Decision**

- [38] 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 the Development Permit for Project Number 186165557-002, issued on August 31, 2016.
- [39] In granting the development, the following VARIANCES to the *Edmonton Zoning Bylaw* are allowed:
- 1) Section 814.3(5) is relaxed to permit a reduction of 1.94 metres to the required Rear Setback, resulting in a reduced Rear Setback of 16.81 metres (35.9% of Site depth) instead of the required 18.75 metres (40% of Site depth).
  - 2) Section 814.3(11) is waived to permit the front Garage, which is 9.75 metres wide, to protrude 6.71 metres from the front wall of the house.
  - 3) Section 814.3(19)(a) is relaxed to permit the front Garage to accommodate three vehicles instead of a maximum of two vehicles.
  - 4) Section 44(2)(b) is relaxed to permit the total width of the cantilevers on the south side wall to be 5.03 metres (36.7% of the length of that house side wall), instead of the maximum of 4.53 metres (33% of the length of that house side wall).

**Reasons for Decision**

- [40] The proposed development is a Single Detached House, a Permitted Use in the RF1 Single Detached Residential Zone.
- [41] On the day of the hearing, the Respondent submitted an entirely new set of plans to the Board. As these new plans were discussed, it became evident that they involved substantial revisions including revised floor plans, a revised footprint and a change in the roof slope, which could impact Height calculations. The Development Officer did not have the opportunity to provide a technical review of these plans. It was unclear whether these changes would result in new variances, particularly under the Mature Neighbourhood Overlay (“MNO”), which would require fresh community consultation.
- [42] The Board has not considered these new plans. Its decision is based on the plans stamped as approved by the Development Officer and issued August 31, 2016. The Board notes that the Respondent remains free as always to reapply to the Development Authority to approve any new plans in accordance with the normal process.
- [43] The proposed development requires three variances to development regulations under the MNO. Accordingly, the Appellant was required to complete community consultation pursuant to Section 814.3(24) of the MNO.
- [44] The Respondent consulted property owners within the 60 metres notification area about the proposed variances. As a result of these consultations, the plans were amended to reduce or eliminate variances. Based on information submitted by the parties and the Development Officer, the Board finds that the Respondent completed the required community consultation.
- [45] The Board also notes that the Respondent sought to address neighbourhood concerns by adding transom windows and screening for privacy, bringing the building forward, and including other architectural details.
- [46] The Development Officer and the Respondent’s materials indicate that the results of the community consultation were favourable and only the Appellant (who is located directly south of the proposed development) expressed opposition. Her main concern was that the variances resulted in loss of privacy and negative massing impacts. She was concerned, to a lesser degree, with a loss of sunlight penetration. The neighbour directly north of the proposed development expressed no concerns with any of the four variances.
- [47] Variances allowing the Garage to accommodate three vehicles and to project as indicated on the approved plans are permitted for the following reasons:
- i) Based on photographic evidence presented by the Appellant, both three-car Garages and projecting Garages are found in the immediate area. The proposed development is therefore not uncharacteristic of the neighbourhood.

- ii) The front façade of the house has been designed with a 70/30 split and architectural details which ameliorate the impact of the larger garage. Based on the front elevation, the Garage is in proportion to the house and overall the development meets all applicable Site Coverage and Height regulations.
- iii) The Appellant expressed no objection to either the projection or the size of the Garage. The Appellant indicated that she would have preferred pushing the property even further forward on the lot in lieu of allowing the variance to the Rear Setback.

[48] The variance allowing a 0.5 metres excess in width of the cantilevered sections on the south side wall is permitted for the following reasons:

- i) The south side wall complies with the required setback and the cantilever sections are located within the permitted projection toward the Side Lot Line.
- ii) The proposed design includes three separate single storey cantilever sections: two sections project only from the first Storey, and a third offset section projects only from the second Storey. While the total width exceeds the allowed maximum, this three-part, single storey design ameliorates the overall impact.
- iii) The cantilever sections along the side wall act in concert with the transom windows and other architectural details to provide visual interest and reduce the massing impact cited as a concern by the Appellant.
- iv) It is the two cantilevers projecting from the first Storey that result in a total width of 5.03 metres, which exceeds the maximum allowable width by 0.5 metres. The cantilever section on the second floor is under the maximum allowable width.
- v) Although the Appellant expressed concerns about sunshading, no evidence was provided to establish that the 0.5 metre variance in cantilever width would materially impact sunlight penetration given that the cantilevers are located toward the east end of the side wall and the Appellant's property is located to the south and further west of the subject Site.

[49] The variance to the required Rear Setback is allowed for the following reasons:

- i) The primary foundation of the proposed house (including the portion of the proposed house closest to the Appellant's property) complies with the 40% Rear Setback requirement.
- ii) The only portions of the house which encroach by 1.94 metres into the required Rear Setback are the proposed sunken patio and two above Grade balconies (collectively, the "Amenity Features").
- iii) The Amenity Features were purposely centered on the subject property and include frosted glass to preserve privacy for the Respondents and for both adjacent neighbours.
- iv) The impacts of the excess protrusion of the Amenity Features are reduced as these portions of the house are located more than 6.5 metres from the Side Lot Line adjacent to the Appellant's property and more than 4.5 metres back from the south east corner of the house.
- v) Due to the shape of the subject lot, the Rear Setbacks of the proposed development and the Appellant's property are offset from each other. This offset also reduces the line of vision into the Appellant's patio area and side entry.

- vi) The Respondent has already added significant landscaping in the Rear Yard. This landscaping includes fourteen 20-foot tall trees. Six of these trees are located directly along the Side Lot Line adjacent to the Appellant's lot. They add screening and privacy for the Respondent and the Appellant.
  - vii) Six feet high privacy screening along the south side of the second Storey patio also reduces oversight into the Appellant's property.
  - viii) Rather than an enclosed space with solid, opaque walls, the Amenity Features incorporate open spaces and clear materials, which will help to minimize any sunshadowing and massing effects of the 1.93 meters variance.
- [50] The Board also heard submissions from the Appellant regarding the impact of the reduced Rear Setback upon her view of the golf course through the Rear Yard of the subject Site. However, the Appellant subsequently recognized that this view of the golf course is a shared vista, and that her own view is impacted by the mature vegetation in her own Rear Yard.
- [51] For the above reasons, the Board concludes that the proposed development, with four variances, will not unduly interfere with the amenities of the neighbourhood, nor materially interfere with or affect the use and enjoyment of neighbouring parcels of land. The appeal is therefore denied and the development is granted.

Ms. K. Cherniawsky, 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 5<sup>th</sup> Floor, 10250 – 101 Street, Edmonton.
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 5th Floor, 10250 – 101 Street, Edmonton.

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