



**EDMONTON
TRIBUNALS**

*Subdivision &
Development
Appeal Board*

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Date: November 14, 2018
Project Number: 154012920-002
File Number: SDAB-D-18-177

Notice of Decision

- [1] On October 31, 2018, the Subdivision and Development Appeal Board (the “Board”) heard an appeal that was filed on October 9, 2018. The appeal concerned the decision of the Development Authority, issued on October 1, 2018, to refuse the following development:

Construct exterior alterations to a Single Detached House, existing without permits (Driveway extension, 5.18 metres by 7.62 metres)

- [2] The subject property is on Plan 7922524 Blk 28 Lot 65, located at 16336 - 99 Street 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 attachments, proposed plans, and the refused Development Permit;
 - The Development Officer’s written submissions;
 - The Appellant’s written submissions;
 - One email in opposition to the proposed development; and
 - One online response in opposition to the proposed development.
- [4] The following exhibit was presented during the hearing and form part of the record:
- Exhibit A – Signatures of support and photographs 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, Ms. R. Eltassi & Mr. A. Eltassi:

[8] Mr. Eltassi explained that the driveway was extended nine years ago to accommodate numerous personal vehicles instead of parking them on the street.

[9] There is a detached garage and driveway located at the rear but they are both used exclusively for their business vehicles. A condition of the approval of the development for their home based business was that all of the business related equipment had to be stored inside the rear detached garage.

[10] He noted that there was a dispute with one of his neighbours several years ago and this is the neighbour who files complaints with Bylaw Enforcement on an ongoing basis.

[11] Photographs marked Exhibit A were submitted to illustrate the existence of other similar driveway extensions on their crescent and a neighbouring crescent. The photographs also illustrated several mature trees and some landscaping in the front yard.

[12] He believed that it is unfair for Bylaw Enforcement to target his driveway, while several others exist in the immediate neighbourhood.

[13] Mr. and Mrs. Eltassi provided the following information in response to questions from the Board:

- a) There is room to accommodate snow clearing at the side of his driveway. His neighbours assume that he is shoveling snow onto the street but he has witnessed this being done by the contractors hired by the City of Edmonton and advised the Bylaw Enforcement Officers that this was being done.
- b) He would like to keep the driveway because it prevents their personal vehicles from being parked on the street.
- c) They own four personal vehicles and a holiday trailer.
- d) The attached front garage is quite small and can only accommodate one small personal vehicle. Stairs into the house are located at the front of the garage which limits the length of a vehicle that can be parked inside. Their other personal vehicles are too long to be parked inside the garage.
- e) They were not aware that a development permit was required when they poured the concrete to extend the driveway.

- f) It is not convenient to park their personal vehicles at the rear because the detached garage and driveway are used for their business related vehicles.
- g) The holiday trailer will be stored at a storage facility over the winter months.
- h) A Violation Notice was issued for the driveway extension in 2014 and they subsequently applied for a development permit for the driveway extension as directed by the City.
- i) Residents are extending their driveways for convenience because street parking is inadequate.
- j) As illustrated in the photographs submitted, extended driveways are common in this neighbourhood.
- k) Several of the driveway extensions shown in the submitted photographs are located on their crescent but are not included in the aerial photograph that was submitted by the Development Officer.
- l) It was their opinion that the driveway extension does not negatively impact drainage from their property.

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

[14] The Development Officer did not attend the hearing and the Board relied on Mr. Zhou's written submission.

Decision

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

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

1. The maximum allowable width of the Driveway of 6.16 metres as per section 54.1(4)(c) is varied to allow an excess of 5.14 metres, thereby increasing the maximum allowed width to 11.3 metres.
2. The requirements of Section 45.7 and Section 54.2(2)(e)(i) are waived to allow parking spaces within the Front Yard.
3. The requirements of Section 55.3(1)(e) that the Front Yard shall be landscaped are waived.

Reasons for Decision

- [17] The proposed development is Accessory to Single Detached Housing which is a Permitted Use in the (RF1) Single Detached Residential Zone.
- [18] Based on evidence provided by the Appellant, the driveway was extended nine years ago based on the assumption that a development permit was not required. However, a development permit application was submitted after a Violation Notice was received from the City in May, 2014. The Appellant submitted a development permit application on June 17, 2014.
- [19] The Board finds that numerous amendments have been made to the *Edmonton Zoning Bylaw* regarding the development requirements for driveway extensions since the driveway was extended in 2009 and the development permit application was submitted in 2014, most notably in 2011.
- [20] Based on the photographic evidence provided, several similar driveway extensions exist in this neighbourhood and therefore the proposed development is characteristic of the area.
- [21] In response to a concern submitted by an adjacent neighbour, the Appellant advised the Board that he has never cleared snow from his driveway onto the street and that there is sufficient space at the side of the driveway to accommodate snow removal.
- [22] The Appellant advised that the holiday trailer shown in the photographs submitted will be stored off site during the winter months to comply with section 45 of the *Edmonton Zoning Bylaw*.
- [23] The submitted photographs illustrate that there is some landscaping in the front yard, specifically four large cedar trees located on the south side of the driveway and several shrubs under the front window at the front entrance of the principal dwelling which help mitigate the impact, if any, of the oversized extended driveway.
- [24] The Board finds that a portion of the driveway provides direct access to the front door of the principal dwelling and therefore can be considered a walkway. The Board also finds that even if the extended portion of the driveway was removed, there would not be enough space to accommodate an additional on street parking space.
- [25] The Board notes that there is both support and opposition to the proposed development. Two affected property owners responded in opposition based on concerns regarding snow clearing, the development of the detached garage and driveway at the rear of the subject site, and a Home Based Business permit, which are outside the scope of this development permit application. However, the Appellant submitted signatures of support from two adjacent property owners, including the most affected property owner to the north.

[26] Based on all of the above, it is the opinion of the Board, that the proposed development will not unduly interfere with the amenities of the neighbourhood nor materially interfere with or affect the use, enjoyment or value of neighbouring parcels of land.



Mr. W. Tuttle, Presiding Officer
Subdivision and Development Appeal Board

Board members in attendance: Mr. V. Laberge, Ms. M. McCallum, Mr. A. Peterson, Ms. E. Solez

Important Information for the Applicant/Appellant

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

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



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Date: November 14, 2018
Project Number: 275363097-001
File Number: SDAB-D-18-178

Notice of Decision

- [1] On October 31, 2018, the Subdivision and Development Appeal Board (the “Board”) heard an appeal that was filed on October 9, 2018. The appeal concerned the decision of the Development Authority, issued on September 20, 2018 to refuse the following development:

Construct a four Dwelling Row House with Unenclosed Front Porches, uncovered decks, Basement developments (NOT to be used as additional Dwellings), and to demolish an existing Single Detached House and Accessory Building (rear detached Garage)

- [2] The subject property is on Plan 1916HW Blk 36 Lot 1, located at 11627 - 122 Street NW, within the RF3 Small Scale Infill Development Zone. The Mature Neighbourhood Overlay and West Ingle 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 PowerPoint Presentation; and
 - One online response in opposition to the proposed development.
- [4] The following exhibit was presented during the hearing and form part of the record:
- Exhibit A – A diagram sketched 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, Mr. J. Huang, representing Eastern Horizon Construction Ltd.:

- [8] Mr. Huang referenced a map from the West Ingle Area Redevelopment Plan to illustrate that the subject site is located in an area designated for Infill and Small Lot Housing.
- [9] The Area Redevelopment Plan states that “Small-scale Infill Housing (duplexes, three-plexes and four-plexes) and new single detached homes on re-subdivided 25 foot lots are encouraged throughout the rest of the neighbourhood with the exception of existing apartment areas”.
- [10] A photograph of the subject site was referenced to illustrate that the current house is more than 60 years old, outdated and unattractive. The proposed modern four-plex will improve the subject site as well as the neighbourhood.
- [11] The architectural design will incorporate exterior finishes including vertical siding and stone that are in keeping with the existing architectural style of the neighbourhood.
- [12] Photographs of other existing four-plexes that have been developed on interior lots located within a few blocks of the subject site were referenced. It was his assumption that these lots are a similar size, although specific lot dimensions could not be provided.
- [13] It was his opinion that the proposed development is in keeping with the spirit and intent of the West Ingle Area Redevelopment Plan, the characteristics of the neighbourhood and will improve the amenities of the neighbourhood.
- [14] Mr. Huang provided the following information in response to questions from the Board:
- a) His client owns another four-plex at 12215 – 117 Street and plans to rent these row housing units to her employees because they will provide private, affordable housing for their families.
 - b) He acknowledged that the lot is deficient in site area and site width but reiterated that other four-plex developments have been approved on similar sized lots that are not corner sites in the neighbourhood.
 - c) They have applied for another four-plex development in the neighbourhood on a lot of the same size.

- d) The proposed development is in keeping with the policies of the West Ingle Area Redevelopment Plan and will improve the entire community.
- e) The plans were referenced to illustrate that one of the entrances with a swing door fronts onto 122 Street but access will be provided from a sidewalk to the lane. This change was made at the request of the Development Officer.
- f) Page A1 of the architectural drawings was referenced to confirm that the original plan was similar to another development with a patio door for the end unit. Because one of the entrances had to face the street, the patio door was replaced with a swing door. It can be used as the primary entrance by the owner or the renter.
- g) This subject lot is not considered a corner Site according to the definition contained in the *Edmonton Zoning Bylaw*.
- h) The minimum required site width for this development is 22.4 metres. However, ninety-five percent of the lots in this area are not more than 15 metres wide.
- i) The Appellant sketched a diagram, marked Exhibit A, to illustrate that the Development Officer did not consider that the front entrances of the proposed dwelling units are orientated towards the lane when the site width was calculated.
- j) Other four-plex developments have been constructed on long narrow lots that are not corner sites with different configurations for the front entrances.
- k) If necessary, the entrance to the proposed front unit that faces the lane can be removed so that the only entrance will be orientated towards 122 Street.
- l) The only variances required are outlined in the agenda.

ii) *Position of an Affected Property Owner in Opposition to the Appellant, Ms. M. Adler:*

- [15] As a neighbour, Ms. Adler welcomes development on this site but would prefer to see a single family house or a semi-detached house built on this lot.
- [16] The development of four dwelling units means that more vehicles will be accessing the site which will increase traffic.
- [17] She is also concerned that the proposed four-plex will be used as a rental property.

iii) Position of the Development Officer, Mr. K. Yeung:

[18] The Development Authority did not appear at the hearing and the Board relied on Mr. Yeung's written submission.

Decision

[19] The appeal is **DENIED** and the decision of the Development Authority is **CONFIRMED**.

Reasons for Decision

[20] Row Housing is a Permitted Use in the (RF3) Small Scale Infill Development Zone. The site is located within the West Ingle Area Redevelopment Plan and falls within the Mature Neighbourhood Overlay.

[21] The proposed development was refused by the Development Authority due to non-compliance with *Site location* and *Dwelling orientation* and a deficiency in both *Site Area* and *Site Width*. The Board notes that Community Consultation was not a requirement because the proposed development complies with the development regulations contained in the Mature Neighbourhood Overlay. However, one affected property owner attended the hearing to express concerns regarding increased traffic, voicing concerns regarding difficulty that vehicles will have accessing the site and privacy concerns for adjacent property owners.

[22] The Board was not persuaded to grant the required variances and agrees with the Development Authority's decision for the following reasons:

Site location and Dwelling orientation

[23] Section 140.4(6) of the *Edmonton Zoning Bylaw* states:

Row Housing shall be located:

- a. on Corner Sites,
- b. on Sites Abutting an arterial or service road, or
- c. where a minimum of one Side Lot Line Abuts a Site where a Commercial Use, or Apartment Housing with a maximum Height greater than four Storeys, is a Permitted Use.

[24] Section 140.4(23) states:

Except for Garden Suites and Secondary Suites, each Dwelling that has direct access at ground level shall have an entrance door or entrance feature facing a public roadway, other than a Lane. On Corner Sites, the entrance door or entrance feature may face either the Front Lot Line or the flanking Side Lot Line. However, Row Housing and Stacked Row Housing shall orient a minimum of one entrance door or entrance feature towards each adjacent public roadway, other than a Lane. Sliding patio doors shall not serve as the entrance door or entrance feature.

[25] The subject site is an interior lot that abuts a lane to the north. The principal building contains three Dwellings that front onto the north lane and one Dwelling that fronts onto 122 Street in a neighbourhood that is predominately characterized by Single Detached Houses with Dwellings that face onto 122 Street.

[26] Based on the Appellant's photographic evidence, the majority of the identified Row Housing properties are located on corner lots that face public roadways other than a lane.

[27] For the above reasons, the Board finds that the proposed development is not characteristic of the neighbourhood.

Site Area and Site Width

[28] Section 140.4(4)(a) of the *Edmonton Zoning Bylaw* states:

The minimum Site area shall be equal to the sum of:

- i. 186 square metres for each end Dwelling, plus
- ii. 150 square metres for each internal Dwelling.

[29] Section 140.4(4)(b) of the *Edmonton Zoning Bylaw* states:

On a non-Corner Site the minimum Site Width shall be equal to the sum of:

- i. 6.2 metres for each end Dwelling, plus
- ii. 5.0 metres for each internal Dwelling;

[30] Although the Board acknowledges that the proposed development complies with the maximum Height, maximum Site Coverage and minimum Setbacks, the Board finds the following:

- a) The Board considered the West Ingle Area Redevelopment Plan which states that "Small-scale Infill Housing (duplexes, three-plexes and four-plexes) and new single detached homes on re-subdivided 25 foot lots are encouraged throughout the rest of the neighbourhood with the exception of existing apartment areas".

- b) Based on a review of the proposed plans and the evidence provided, the Board finds that the proposed four dwelling Row House is substantially overbuilt for this location. Based on the number of Dwellings and location of the subject lot, it would be more conducive to the development of a housing choice with fewer dwelling units to minimize large deficiencies that would still be in keeping with the direction of the West Ingle Area Redevelopment Plan. For instance, the Site Width is approximately 35 percent deficient. This indicates, *prima facie*, that the proposed development is an over development of the site.
- [31] Based on all of the 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 and affect the use, enjoyment and value of neighbouring parcels of land. Therefore, the appeal is denied.



Mr. W. Tuttle, Presiding Officer
Subdivision and Development Appeal Board

Board members in attendance: Mr. V. Laberge, Ms. M. McCallum, Mr. A. Peterson, Ms. E. Solez

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.

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