

Edmonton Subdivision and Development Appeal Board

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Date: October 22, 2015
Project Number: 173763033-002
File Number: SDAB-D-15-225

Notice of Decision

This appeal dated September 11, 2015, from the decision of the Development Authority for permission to:

Park an Overweight Vehicle in the Side yard of a Single Detached House, existing without permits

On Plan 1307P Blk 9 Lots 20-21, located at 12032 - 69 Street NW, was heard by the Subdivision and Development Appeal Board on October 7, 2015.

Summary of Hearing:

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.

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

The Board heard an appeal of the decision of the Development Authority to refuse an application to park an Overweight Vehicle in the Side yard of a Single Detached House, existing without permits, located at 12032 – 69 Street NW. The subject site is zoned RF3 Small Scale Infill Development Zone and is within the Mature Neighbourhood Overlay and the Montrose/Santa Rosa Area Redevelopment Plan.

The development permit application was refused because the outdoor storage of a commercial vehicle is considered a Temporary Storage Use, and Temporary Storage is neither a Permitted nor Discretionary use in the RF3 Small Scale Infill Development Zone. In addition, a commercial vehicle having a maximum gross vehicle weight exceeding 4,500 kg is not permitted in any residential zone.

Prior to the hearing the following information was provided to the Board, copies of which are on file:

- A written submission from the Development Officer on October 1, 2015; and
- A written submission from the Appellant on October 2, 2015.

The Board heard from the Appellant, Daniel Bella, and his brother Vern who provided the following information in support of the appeal:

1. They submitted a coloured photograph of the subject vehicle, marked Exhibit "A", as well as 23 additional photographs, marked Exhibit "B", to show the condition of the subject vehicle.
2. The truck has been parked in their large double Garage in the past but it has recently been parked outside because the Garage is being used for equipment repair.
3. None of their neighbours have ever complained about the truck being stored on their Site.
4. Their property is one of the best kept properties in this neighbourhood, which although zoned residential, abuts Northlands and has the appearance of an industrial or commercial zone.
5. The truck is an antique that has great sentimental value and is not used as a commercial vehicle.
6. The tare weight of the truck is only 7500 kilograms although it does exceed the maximum allowable weight of 4500 kilograms.
7. Their lot is 50 feet wide compared to the standard 33 feet lots in the area.
8. There is adequate space in which to park the truck.
9. They submitted five signatures from neighbouring property owners who support their development permit application.

They provided the following responses to questions:

1. The truck is not visible from the front of their property.
2. The truck is parked 17 feet from the rear lane.
3. They do not have any alternative storage options and do not want to sell the truck.
4. They did list the truck on Kijiji this spring, but did not receive any offers.
5. One of their neighbours is storing heavy equipment on their property.

The Board then heard from Mr. Benny Liang, representing the Sustainable Development Department, who provided the following information:

1. A Violation Notice directing the property owner to remove all commercial vehicles with a Gross Vehicle Weight exceeding 4500 kilograms from the property was issued in June 2015.
2. Instead of removing the truck to comply with the Violation Notice, the property owner applied for a Development Permit to allow storage of the truck on the property.
3. It was his opinion that the truck is a commercial vehicle even though the Applicant states that it is an antique 1967 Dodge truck that is being restored.
4. He refused the development permit because the truck exceeds the maximum allowable weight for a commercial vehicle that can be kept on a residential site, and because the proposed Use is Temporary Storage which is neither a Permitted nor a Discretionary Use in the RF3 Small Scale Infill Zone.
5. Even if the truck is parked inside the Garage, it still exceeds the maximum allowable weight.

Mr. Bella provided the following information in rebuttal:

1. The truck has been covered with a tarp in the past and is not visible to any of his neighbours.
2. They have not yet registered the truck as an antique.

Decision:

The appeal is **DENIED** and the decision of the Development Authority **CONFIRMED**. The development is **REFUSED**.

Reasons for Decision:

The Board finds the following:

1. Section 7.5(5) of the *Edmonton Zoning Bylaw* defines Temporary Storage as follows:

[D]evelopment used exclusively for temporary outdoor storage of goods and materials where such storage of goods and materials does not involve the erection of permanent structures or the material alteration of the existing state of the land. Typical Uses include pipe yards, or vehicle or heavy equipment storage compounds.

2. Based on the evidence provided, the truck is parked temporarily outside the Garage on the subject Site and no permanent structure has been erected to provide sheltered storage of the dump truck. Typical Temporary Storage Uses include vehicle storage compounds.
3. Pursuant to Section 7.5(5) of the *Edmonton Zoning Bylaw*, the proposed development proposes a Temporary Storage Use on this Site.
4. Section 140 of the *Edmonton Zoning Bylaw* states that a Temporary Storage Use is neither a Permitted nor a Discretionary Use within the RF3 Small Scale Infill Development Zone.
5. Section 45(1)(a) of the *Edmonton Zoning Bylaw* states that “No person shall keep in any part of a Site in any Residential Zone any commercial vehicle, loaded or unloaded, having a maximum gross vehicle weight (G.V.W.) exceeding 4500 kilograms”.
6. Based on the evidence provided, the dump truck weighs 20,500 kilograms. Dump trucks are also commonly used for commercial transport of materials, and are typically stored in an industrial area.
7. Based on the above, the Board finds that the proposed Use does not meet the development requirements set out under the *Edmonton Zoning Bylaw*. The Board also finds that allowing an overweight vehicle to be parked on the Site will unduly interfere with the amenities of the neighbourhood and materially interfere with the use, enjoyment and value of neighbouring properties.

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 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.

Mr. B. Gibson, Presiding Officer
Subdivision and Development Appeal Board

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Date: October 22, 2015
Project Number: 169471411-001
File Number: SDAB-D-15-226

Notice of Decision

This appeal dated September 14, 2015, from the decision of the Development Authority for permission to:

Construct a Single Detached House with a front attached Garage, rear balcony (2.13m x 5.89m), front balcony (1.52m x 3.45m), roof top decks (6.10m x 5.87m; 4.27m x 7.14m), third Storey loft (7.62m x 6.74m) and Basement development (NOT to be used as an additional Dwelling)

On Plan 1555CL Lot 4, located at 9373 Cameron Avenue NW, was heard by the Subdivision and Development Appeal Board on October 7, 2015.

Summary of Hearing:

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.

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

The Board heard an appeal of the decision of the Development Authority to refuse an application to construct a Single Detached House with a front attached Garage, rear balcony (2.13m x 5.89m), front balcony (1.52m x 3.45m), roof top decks (6.10m x 5.87m; 4.27m x 7.14m), third Storey loft (7.62m x 6.74m) and Basement development (NOT to be used as an additional Dwelling), located at 9373 Cameron Avenue NW. The subject site is zoned RF2 Low Density Infill Zone and is located within the Mature Neighbourhood Overlay and the Riverdale Area Redevelopment Plan.

The development permit application was refused because of an excess in the maximum allowable Height and a deficiency in the minimum required Rear Setback, that being 40 percent of the Site Depth.

Prior to the hearing, the following information was provided to the Board, copies of which are on file:

- A written submission from the Appellant received on September 14, 2015; and
- An email from an adjacent property owner in opposition to the proposed development received on October 7, 2015.

The Board heard from the Appellant, Mr. Nick Browett, who provided the following information in support of the appeal:

1. This lot is approximately 36 metres deep.
2. The lot tapers from a width of 10.06 metres at the front to 8.25 metres at the rear.
3. This makes it difficult to fit within the building pocket. In order to comply with the minimum required Rear Setback of 14.43 metres, the house plans would have to be reduced by 34 square metres, which reduces the proposed site coverage from 39 percent to 28 percent.
4. He referenced photographs to illustrate how the lot width tapers, and that both immediate neighbours to the south have a rear yard Setback that is less than 40 percent.
5. The proposed Height to the top of the roof parapet exceeds the maximum allowable Height requirement by 3 inches. However the proposed roof top access increases the required variance to 2.34 metres.
6. He referenced photographs to illustrate that the immediately adjacent house to the south has a similar roof top access and loft concept.
7. He referenced elevation drawings to demonstrate that the massing of the front elevation will be broken up with a recessed window, bricks and other architectural features.
8. The proposed design is architecturally distinct from all immediate neighbours, but is characteristic of the neighbourhood, particularly because of the similar roof top lots on the houses located immediately south of the subject site.
9. Limited windows are proposed on the side elevations in order to maintain privacy for neighbouring property owners.
10. Using a gambrel style roof design would increase the overall Height of the roof top access and increase shading onto neighbouring properties to the north.
11. This lot has been vacant for 5 years.
12. Previous owners have attempted to design and build on the lot, but were met with extreme difficulties especially because of the existing mature elm tree on the front boulevard which must be retained and impedes access to the site.
13. He went door to door to talk to his neighbours and received numerous texts and emails in support of the proposed development, marked Exhibit "A".
14. There are many houses of a similar design in this neighbourhood.
15. He likes this neighbourhood and community and wants to live here for a long time.

Mr. Browett provided the following responses to questions:

1. He has had discussions with his neighbour to the north about building a retaining wall and shared street access for Driveways and Parking.
2. He acknowledged the concerns of his neighbour to the north as outlined in an email sent to the Board and conceded that there will be a sun shadow affect but it will be more evident on the front of the lot and not the rear yard.
3. He confirmed that the existing mature elm tree is located on city property but does impede access to his lot.
4. He could not confirm when the photographs contained in his submission were taken because the source of the photos was Google Maps.

5. His neighbour to the north has told him that he is waiting to see how the subject Site is developed before he decides on the future development of his lot.
6. The Geotechnical studies were undertaken by a previous property owner and only confirm slope stability.
7. None of the neighbours that he contacted, except his neighbour to the north, objected to the proposed development.

The Board then heard from Mr. Martin Pawlina, an affected neighbour, who appeared in support of the proposed development and provided the following information:

1. He lives across the street and north of the subject Site and is very involved in this community.
2. He takes an interest in new infill developments and their value to the neighbourhood.
3. His house is small and he is aware of the impacts of living next to large new infill developments.
4. The proposed development does not distress him and it was his opinion that the proposed development will increase property values in the neighbourhood.
5. The proposed new development does not impede his view.
6. He is happy to have someone who loves the neighbourhood and is eager to become involved in neighbourhood improvements as a neighbour.
7. The Appellant has been diligent in communicating and consulting with the neighbours about the proposed design and construction plans.

The Board then heard from Mr. Sheahan, representing the Sustainable Development Department, who provided the following responses to questions:

1. Grade was determined by using all four corners of the subject site.
2. He was not sure how much higher the Grade on the property to the north was in comparison to the subject site.
3. He agreed that the property to the north will have sun shadowing from mid-morning to earlier afternoon.
4. The immediately adjacent neighbour to the north is on the higher end of the slope of the street.
5. It was his opinion that the General Purpose of the Mature Neighbourhood Overlay requires community consultation particularly when a development is over Height and should be considered accordingly. Particularly in this case, as the Height of the development affects the most affected neighbours which in this case is the neighbour to the north.
6. He confirmed that the subject lot does create a hardship because it narrows to the rear and because of the existing mature elm tree at the front of the lot which impedes access to the front of the Site.
7. It was his opinion that the characteristics of existing houses within a neighbourhood and the character of the street and individual lots should be taken into consideration when reviewing a development permit application that requires a Height variance.

Mr. Browett provided the following information in rebuttal:

1. The house has been designed to be compatible with new developments located south of the subject site.
2. Through conversations with his neighbour to the north, he concluded that the neighbor would develop his lot similarly to this development and other similar developments to the south.
3. Developing this lot will help reduce the amount of garbage in this neighbourhood.
4. He is anxious to move into this neighbourhood and contribute in a positive way.
5. This is a mixed and unique street with different sized houses and character.

Decision:

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

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

Section 814.3(13) of the *Edmonton Zoning Bylaw* has been relaxed to allow a Height of 10.94 metres which exceeds the maximum allowable Height requirement by 2.34 metres

Section 814.3(5) of the *Edmonton Zoning Bylaw* has been relaxed to allow a Rear Setback of 9.16 metres which is deficient by 5.27 metres.

Reasons for Decision:

The Board finds the following:

1. Single Detached Housing is a Permitted Use in the RF2 Low Density Infill Zone.
2. The proposed development is in keeping with the General Purpose of the RF2 Low Density Infill Zone which “is to retain Single Detached Housing, while allowing infill on narrow lots, including Secondary Suites under certain conditions”, pursuant to Section 120.1 of the *Edmonton Zoning Bylaw*.
3. The variance in the minimum required Rear Setback, that being 40 percent of the Site Depth has been granted based on the evidence provided that the subject lot tapers from the front to the rear which makes development of the lot challenging and creates a hardship for the property owner.
4. Section 11.4(1) of the *Edmonton Zoning Bylaw* states that “a variance shall be considered only in cases of unnecessary hardship or practical difficulty peculiar to the Use, character, or situation of land or a building, which are not generally common to other land in the same Zone”.
5. Based on a review of the photographic evidence provided, the proposed development is in keeping and characteristic of existing new infill development in this neighbourhood.
6. The Board acknowledges the opposition of the property owner who resides immediately north of the subject Site regarding sun shadowing and a loss of sunlight. However, the Board finds that any sun shadowing will be mitigated by the northeast alignment of the lots

on this block and because the elevation of the immediately adjacent lot to the north is higher than the subject Site.

7. The Appellant undertook extensive community consultation. With the exception of the neighbor to the north, none of the neighbours objected to the development. In addition, the Appellant submitted evidence indication written support from four property owners within the notification area.
8. Based on the above, the Board finds that the proposed development will not unduly interfere with the amenities of the neighbourhood, nor materially interfere with the use, enjoyment or value of neighbouring properties.

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 5th 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*, RSA 2000, c S-1;
 - c) the requirements of the *Permit Regulation*, Alta Reg 204/2007;
 - d) the requirements of any other appropriate federal, provincial or municipal legislation; and
 - 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 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.

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Mr. B. Gibson, Presiding Officer
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Date: October 22, 2015
Project Number: 173194290-002
File Number: SDAB-D-15-227

Notice of Decision

This appeal dated September 15, 2015, from the decision of the Development Authority for permission to:

Construct a Single Detached House with a front attached Garage, front veranda, fireplace, second floor balcony (2.24m x 4.88m) rear partially covered deck (irregular shape, 5.33m x 2.15m x 6.86m) and Basement development (NOT to be used as an additional Dwelling) and to demolish an existing house and detached Garage

On Plan 4820KS Blk 1 Lot 47, located at 183 - Quesnell Crescent NW, was heard by the Subdivision and Development Appeal Board on October 7, 2015.

Summary of Hearing:

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.

The appeal was filed on time, in accordance with Section 686 of the *Municipal Government Act*, R.S.A 2000, c. M-26.

The Board heard an appeal of the decision of the Development Authority to refuse an application to construct a Single Detached House with a front attached Garage, front veranda, fireplace, second floor balcony (2.24m x 4.88m) rear partially covered deck (irregular shape, 5.33m x 2.15m x 6.86m) and Basement development (NOT to be used as an additional Dwelling) and to demolish an existing house and detached Garage, located at 183 Quesnell Crescent NW. The subject site is zoned RF1 Single Detached Residential Zone and is within the Mature Neighbourhood Overlay.

The development permit application was refused because of a deficiency in the minimum required Front Setback, a deficiency in the minimum required Rear Setback, that being 40 percent of the Site Depth, an excess in the maximum allowable Height and an excess in the maximum allowable Basement elevation for a structure of two or more Storeys in Height.

Prior to the hearing the following information was provided to the Board:

- Development application and plans
- A Slope Stability Report
- A Memorandum from Transportation Services dated July 14, 2015.

- A written submission from the Development Authority dated October 6, 2015

The Board heard from Mr. Hammermeister, representing the Appellant, Graphtec Design and Consulting and the property owner, Mr. Mark Ohe who was also in attendance. Mr. Hammermeister provided a written submission that contained photographs, building, plans, site plans and a copy of the community consultation, marked Exhibit "A". They provided the following information in support of the appeal:

1. They have been working with the Sustainable Development Department since 2014 and became aware early in the process that it would be difficult to comply with the development requirements.
2. However, it was their opinion that complying with the rear setback requirements should be considered a hardship for this lot.
3. A Slope Stability Evaluation was undertaken due to the proximity of the lot to the river bank.
4. The property owner has undertaken extensive consultation with the neighbours and generally received positive feedback for the proposed development.
5. The main concern is the variance required in the maximum allowable Height and an excess in the maximum allowable Basement elevation for a structure of two or more Storeys in Height.
6. The front and rear setback variances are acceptable to the city.
7. He referenced the notification map to illustrate that the subject site can only be accessed from the front.
8. A diagram of the block face was referenced to illustrate the variation in front setbacks that exist for houses along the block.
9. The lots adjacent to the subject site are setback quite far (an acknowledged hardship) and complying with the front setback requirement is difficult.
10. The existing house on the lot does not comply with the setback requirement.
11. It was his opinion that siting the house further forward will improve the view and the neighbourhood.
12. He referenced photographs to illustrate the existing mature trees along the block.
13. The rear setbacks for the adjacent houses are not compliant with existing legislation.
14. The proposed partial rear walk out is similar to existing rear walkouts on Lots 46 and 48.
15. The proposed new driveway will be approximately 0.5 metre higher than the existing driveway.
16. Lot 48 is approximately the same elevation as Lot 47 while Lot 46 is lower.
17. The partial walk out will be retained by developing a sunken rear patio.
18. It was his opinion that the house appears to be higher because of the grade discrepancy.
19. The portion of the building that is over height is located at the centre of the roof line and will have little impact on adjacent neighbours.
20. The proposed development is in keeping with the objectives of the Mature Neighbourhood Overlay.
21. The pitch of the roof was modified in an attempt to mitigate the impact of the required variance in height.
22. The property owner conducted an extensive community consultation by providing neighbours with a letter, copies of the site plan and drawings to illustrate the roof design and explain the required variances.

23. The community consultation allowed Mr. Ohe to meet and discuss the plans with neighbours which was a positive experience. Positive feedback was received from the neighbours.
24. The President of the Community League asked that landscaping be provided at the front of the site.
25. It was the Appellant's opinion that the required variances will not be detrimental to the neighbours and will be a positive contribution to the neighbourhood.

They provided the following response to a question:

1. The Geotechnical Engineering Report addressed the walkout portion of the proposed Dwelling at the rear of the site.

The Board then heard from Mr. Robinson, representing the Sustainable Development Department, who provided the following information:

1. He met with the Applicant during the design phase.
2. There was a practical difficulty on the site because of the front and rear setback requirements.
3. Siting the Dwelling further from the bank mitigates any potential slope problems.
4. It was his opinion that the determination of grade does not create a design hardship on the lot.
5. The house could be lowered by 1 metre.
6. The front and rear setbacks are not problematic.
7. Adequate community consultation was undertaken.

Mr. Hammermeister made the following points in rebuttal:

1. The houses on the adjacent lots 47 and 48 were built many years ago and the grading has not changed.
2. Lot 46 is lower than the two adjacent lots.
3. The proposed main floor will be within 0.4 metres of the elevation of the existing main floor.

Decision:

The appeal is **ALLOWED** and the decision of the Development Authority is **REVOKED**. The development permit is **GRANTED** as applied for to the Development Authority, subject to the following **CONDITIONS**:

GEOTECHNICAL CONDITIONS:

The ongoing involvement of the geotechnical consultant is required during construction to ensure other development constraints are in strict compliance with the requirements of their report, including the following:

1. Periodic monitoring of slope conditions during demolition should be conducted by the geotechnical consultant to ensure no impacts to the slope conditions.
2. Any proposed excavation and re-grading or fill placement, as well as any significant removal of vegetation, must only be undertaken in accordance with the detailed recommendations of the

consultant, and with their inspection, to confirm that the recommendations presented in the geotechnical report have been properly interpreted. (Reference Section 14.1 and Section 15)

ADVISEMENTS:

i.) Geotechnical advisements can be found in the Transportation Services Memorandum dated July 14th 2015 from Christina Tatarniuk. Please contact Sustainable Development for a copy of this memo.

ii.) The applicant is advised to research the Land Title for this property and to be aware of any restrictions in the Restrictive Covenant. This approval does not imply consent for any structure that does not meet the requirements of the Restrictive Covenant.

iii.) Lot grades must comply with the Edmonton Drainage Bylaw 16200. Contact Drainage Services at 780-496-5500 for lot grading inspection inquiries.

iv.) Any future deck development greater than 0.6m (2ft) in height will require development and building permit approvals

v.) Any future deck enclosure or cover requires a separate development and building permit approval.

vi.) The driveway access must maintain a minimum clearance of 1.5m from all surface utilities.

vii.) Any hoarding or construction taking place on road right-of-way requires an OSCAM (On-Street Construction and Maintenance) permit. It should be noted that the hoarding must not damage boulevard trees. The owner or Prime Contractor must apply for an OSCAM online at: http://www.edmonton.ca/bylaws_licences/licences_permits/oscam-permit-request.aspx

viii.) Unless otherwise stated, all above references to "section numbers" refer to the authority under the Edmonton Zoning Bylaw 12800.

ix.) An approved Development Permit means that the proposed development has been reviewed only against the provisions of the Edmonton Zoning Bylaw. It does not remove obligations to conform with other legislation, bylaws or land title instruments such as the Municipal Government Act, the ERCB Directive 079, the Edmonton Safety Codes Permit Bylaw or any caveats, covenants or easements that might be attached to the Site.

In granting the development the following variances to the *Edmonton Zoning Bylaw* are allowed:

Section 814.3(1) has been relaxed to allow a Front Setback of 12.22 metres which is deficient by 16.29 metres

Section 814.3(5) has been relaxed to allow a Rear Setback of 17.55 metres which is deficient by 6.83 metres

Section 814.3(13) has been relaxed to allow a Height of 11.08 metres which exceeds the maximum allowable Height requirement by 1.13 metres.

Section 814.3(16) has been relaxed to allow a Basement elevation of 2.11 metres which exceeds the maximum allowable by 0.91 metres

Reasons for Decision:

The Board finds the following:

1. Single Detached Housing is a Permitted Use in the RF1 Single Detached Residential Zone.
2. The Board has granted variances in the minimum required Front Setback, the minimum required Rear Setback, the maximum allowable Height and the maximum allowable basement elevation for a structure of two or more storeys for the following reasons:
 - a) The portion of the proposed Dwelling that is over height is located at the centre of the roof line and will have little impact on adjacent neighbours.
 - b) The height of the proposed structure has been calculated based on the Grade of existing adjacent lots which have existed for many years.
 - c) Based on a review of the photographic evidence provided the proposed Height is characteristic of other infill developments in this neighbourhood.
 - d) The Geotechnical requirements in relation to the top of bank concerns create a practical difficulty peculiar to the site that impacts the front and rear setbacks.
 - e) The variance in the minimum required rear yard and maximum allowable Height will be mitigated by several design changes, including reducing the size of the deck and reducing the slope of the roof.
 - f) Based on the evidence provided, there is a great deal of variation in the Front Setbacks among the other houses on the block face. Because there is no uniformity in Front Setback, the requirement of the Mature Neighbourhood Overlay to preserve an average Front Setback does not contribute to preserving an aspect of the neighbourhood's character.
3. The Appellant submitted written support from 13 of the 14 neighbouring property owners who were contacted about the proposed development.
4. The Board notes that there were no letters of opposition received and no one appeared in opposition to the proposed development.
5. Based on the above, the Board finds that the proposed development will not unduly interfere with the amenities of the neighbourhood or materially interfere with the use, enjoyment or value of neighbouring properties.

Important Information for the Applicant/Appellant

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 - a) the requirements of the *Edmonton Zoning Bylaw*, insofar as those requirements have not been relaxed or varied by a decision of the Subdivision and Development Appeal Board,
 - b) the requirements of the *Alberta Safety Codes Act*,

- c) the *Alberta Regulation 204/207 – Safety Codes Act – Permit Regulation*,
 - d) the requirements of any other appropriate federal, provincial or municipal legislation,
 - e) the conditions of any caveat, covenant, easement or other instrument affecting a building or land.
3. When an application for a Development Permit has been approved by the Subdivision and Development Appeal Board, it shall not be valid unless and until any conditions of approval, save those of a continuing nature, have been fulfilled.
 4. A Development Permit will expire in accordance to the provisions of Section 22 of the *Edmonton Zoning Bylaw, Bylaw 12800*, as amended.
 5. This decision may be appealed to the Alberta Court of Appeal on a question of law or jurisdiction under Section 688 of the *Municipal Government Act*, R.S.A. 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.

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Mr. B. Gibson, Presiding Officer
Subdivision and Development Appeal Board

Edmonton Subdivision and Development Appeal Board

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Date: October 22, 2015
Project Number: 177467895-001
File Number: SDAB-D-15-228

Notice of Decision

This appeal dated September 9, 2015, from the decision of the Development Authority for permission to:

Place a Temporary Sign for 90 days ending 19-NOV-2015 for ALBERTA SIGN RENTALS (Multi: REXALL)

On Plan 9721947 Blk 150 Lot 2A, located at 13508 - Victoria Trail NW, was heard by the Subdivision and Development Appeal Board on October 7, 2015.

Summary of Hearing:

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.

The appeal was filed on time, in accordance with Section 686 of the *Municipal Government Act*, R.S.A 2000, c. M-26.

The Board heard an appeal of the decision of the Development Authority to approve subject to conditions and a variance to allow a Temporary Sign to remain at a location for more than 180 days in a calendar year and to waive the requirement that a location be free of Temporary Signs for 30 consecutive days, an application to place a Temporary Sign for 90 days ending 19-NOV-2015 for ALBERTA SIGN RENTALS (Multi: REXALL), located at 13508 Victoria Trail NW. The subject site is zoned DC2 Site Specific Development Control Provision.

The approved development permit application was subsequently appealed by an affected property owner.

Prior to the hearing the following information was provided to the Board:

At the outset of the hearing the Presiding Officer referenced Section 641(4) of the *Municipal Government Act*, Chapter M-26 which states that despite section 685, if a decision with respect to a development permit application in respect of a direct control district is made by a council, there is no appeal to the subdivision and development appeal board, or 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.

The Board heard from the Appellant, Ms. Kathleen Murrie, who provided Exhibit “A” which contained photographs, a copy of the DC2.621 provisions and the Sign regulations as set out in section 79.9(30(b) of the *Edmonton Land Use Bylaw 5996*. Ms. Murrie made the following points in support of the appeal:

1. She referenced a photograph dated September 9, 2015 to illustrate the location of five portable signs along 137 Avenue and Victoria Trail.
2. This is in contravention to Section 79.9(3)(b)(iii) of the *Edmonton Land Use Bylaw 5996*, which states that a maximum of 4 portable signs are allowed on a street face for a shopping centre.
3. She and her neighbours have received numerous notices regarding the approval of temporary signs in this area with a variance granted for the duration of the sign.
4. This is an ongoing situation which allows portable signs anywhere, any time.
5. She questioned why this was allowed to happen and why the City was allowing the proliferation of signs in this area.
6. She did speak to her neighbours and the Community League and encouraged them to attend the hearing. Most of them told her that they do not actually see the signs anymore.
7. Ms. Murrie volunteers for Capital City Clean Up and views this type of temporary sign as clutter.
8. She referenced several sections of the *Edmonton Land Use Bylaw 5996* regarding temporary portable signs and stated that this type of sign is not unobtrusive, finished or in character with the principal buildings.
9. The Community League told her that if the businesses using the portable signs had permission from their landlords to use the signage they did not object.
10. Some of her neighbours considered the signs as clutter.

At this point the Presiding Officer indicated that DC2.621.4(u) allows the Development Officer to grant relaxations to the regulations contained in Sections 50 to 79 of the Land Use Bylaw and the provisions of this Provision, if, in his opinion, such variance would be in keeping with the General Purpose of the Provision and would not adversely affect the amenities, use and enjoyment of the neighbouring properties. He asked Ms. Murrie to explain to the Board how the Development Officer had not followed that regulation.

Ms. Murrie reiterated that the signs are obtrusive and not aesthetically pleasing. Ms. Murrie expressed her frustration with the test used by the Subdivision and Development Appeal Board when dealing with appeals in a DC2 Site Specific Development Control Provision.

The Board then heard from Mr. Paul Adams, representing the Sustainable Development Department, who provided the following information:

1. There are only three portable signs that have valid development permits on the street face that abuts Victoria Trail and 137 Avenue and one is the subject of this appeal hearing.
2. The other portable signs are not permitted and will be investigated by the Bylaw Enforcement Branch.

3. However, he could not confirm the time line because it involves notification to property owners, followed by an opportunity for voluntary compliance and then enforcement.

The Board then heard from Mr. Gillani, representing the Respondent, Alberta Sign Rentals, who provided the following information in support of the proposed development:

1. He was prepared to provide information regarding the appearance and quality of temporary signs but after listening to the Appellant did not feel that information was relevant to this hearing.
2. They take pride in providing a product that complies with municipal regulations and are willing to work with municipalities in this regard.
3. It was his opinion that the Development Officer did follow the directions of City Council in approving this development permit application.

Decision:

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

Reasons for Decision:

The Board finds the following:

1. Section 641(4)(b) of the *Municipal Government Act* states, “if a decision with respect to a development permit application in respect of a direct control district 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.”
2. DC2.621.4(u) states that the Development Officer may grant relaxations to the regulations contained in Sections 50 to 79 of the Land Use Bylaw and the provisions of this Provision, if, in his opinion, such variance would be in keeping with the General Purpose of the Provision and would not adversely affect the amenities, use and enjoyment of the neighbouring properties.
3. The Development Officer has granted a variance to Section 79.9(3)(b)(iii)(B) of the December 15, 1999 Land Use Bylaw to allow a Temporary Sign to remain at a location for more than 180 days in a calendar year and to waive the requirement that a location be free of Temporary Signs for 30 consecutive days. This was the exercising of a discretionary decision-making authority that City Council expressly delegated to the Development Authority.
4. Based on the evidence provided, the Board is satisfied that the Development Authority did follow the direction of City Council in approving the proposed development. Therefore, the Board has no jurisdiction to consider the matter further or to substitute its decision for the Development Officer’s decision.

1. This is not a Building Permit. A Building Permit must be obtained separately from the Sustainable Development Department, located on the 5th 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*, R.S.A. 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.

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