



**EDMONTON
TRIBUNALS**

*Subdivision &
Development
Appeal Board*

10019 - 103 Avenue NW
Edmonton, AB T5J 0G9
P: 780-496-6079 F: 780-577-
3537
sdab@edmonton.ca
edmontonsdab.ca

Date: October 26, 2017
Project Number: 257004199-001
File Number: SDAB-D-17-181

Notice of Decision

- [1] On October 11, 2017, the Subdivision and Development Appeal Board (the “Board”) heard an appeal that was filed on **September 14, 2017**. The appeal concerned the decision of the Development Authority, issued on September 12, 2017, to refuse the following development:

To construct a Semi-detached House with Unenclosed Front Porches, fireplaces, rear uncovered decks, and to demolish a Single Detached House and Accessory Building (rear detached Garage).

- [2] The subject property is on Plan 8266ET Blk 16 Lot 13, located at 10440 - 154 Street NW, within the (RF2) Low Density Infill Zone. The Mature Neighbourhood Overlay and the Jasper Place Area Redevelopment Plan apply to the subject property.
- [3] The following documents were received prior to the hearing and form part of the record:
- A copy of the Development Permit application with attachments, proposed plans, and the refused Development Permit;
 - The Development Officer’s written submissions; and
 - The Appellant’s written submissions including two photographs and a map.

Preliminary Matters

- [4] At the outset of the appeal hearing, the Presiding Officer confirmed with the parties in attendance that there was no opposition to the composition of the panel.
- [5] The Presiding Officer outlined how the hearing would be conducted, including the order of appearance of parties, and no opposition was noted.
- [6] The appeal was filed on time, in accordance with section 686 of the *Municipal Government Act*, RSA 2000, c M-26.

Summary of Hearing*i) Position of the Appellant, Mr. B. Ingram representing Raiders Site Services and Mr. A. Liyakat, the builder:*

- [7] Mr. Ingram has built one other duplex development with Mr. Liyakat. A photograph of the development that was built approximately one block from the subject site was submitted.
- [8] A map was submitted that identified the existing duplexes in the area and it was noted that approximately 50 percent of the lots contain duplex housing.
- [9] The proposed development will replace the existing house on the site and will have a four-car detached garage with two parking spaces for each dwelling.
- [10] They questioned why their application was refused while several other duplex developments that do not meet the locational requirements have recently been approved and are currently under construction. They chose to develop a Semi-detached House rather than subdividing the lot and building two skinny houses.
- [11] It was acknowledged that some of the existing duplex developments have been built on lots that have not been subdivided but they may be duplex condominiums that do not have separate titles.
- [12] The proposed Semi-detached House will be subdivided and have separate titles.

ii) Position of the Development Authority:

- [13] The Development Authority provided a written submission and did not attend the hearing.

Decision

- [14] 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. A maximum of one building containing Single Detached Housing, Semi-detached Housing, or Duplex Housing per Site shall be allowed;
2. Landscaping requirements shall be provided as listed in Section 55;
3. On-site parking shall be located in accordance with Section 50 of the *Edmonton Zoning Bylaw*;

4. Private Outdoor Amenity Area shall be provided on Site in accordance with Section 47 of *Edmonton Zoning Bylaw* 12800.

Advisements:

Any future basement development requires development and building permit approvals. A Secondary Suite is not permitted in a Semi-detached House (Reference Section 7.2(7) and 7.2(8)).

Lot grades must comply with the Edmonton Drainage Bylaw 16200. Contact Drainage Planning and Engineering at 780-496-5576 or lot.grading@edmonton.ca for lot grading inspection inquires.

Any future deck development greater than 0.6 metres (2 feet) in height will require development and building permit approvals.

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

The driveway access must maintain a minimum clearance of 1.5 metres from the service pedestal and all other surface utilities. On-site parking may be provided by means of a Garage pad. A Garage pad shall not be constructed over a common property line.

On-site parking may be provided by means of a Parking Area, the dimensions of which shall conform to the off-street parking space requirements of subsection 54.2(4) of this Bylaw.

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.

- [15] In granting the development, the following variance to the *Edmonton Zoning Bylaw* is allowed:
1. The locational requirements pursuant to section 120.4(4) are waived to allow the development of a Semi-detached House on the subject site.

Reasons for Decision

- [16] Semi-detached Housing is a Permitted Use in the (RF2) Low Density Infill Zone (the "RF2 Zone").

- [17] The Development Officer refused this application solely on the basis of the locational requirements contained in section 120.4(4) of the *Edmonton Zoning Bylaw*. The Development Officer also relied upon Policy C1 of the Jasper Place Area Redevelopment Plan (the “ARP”) which states that “when considering discretionary developments, the Development Officer shall ensure that the locational criteria for different housing forms are not varied”.
- [18] Section 687(3)(a)(i) of the *Municipal Government Act* states that when determining an appeal this Board must comply with, among other things, Statutory Plans such as the ARP. However, section 687(3)(d) of the *MGA* allows this Board to grant a development permit even though the proposed development does not comply with the requirements of the *Edmonton Zoning Bylaw* if in the Board’s opinion the proposed development would 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. The first question the Board must determine in this case is whether Policy C1 of the ARP operates to prevent the Board from using the power given to it in section 687(3) of the *MGA* to vary the locational requirements in section 120.4(4) of the *Zoning Bylaw*.
- [19] City Council has the authority to impose any limits it considers appropriate on the variance powers of the Development Authority. This is what it has done with Policy C1 in the ARP. The Development Officer had no option but to refuse the application because this Policy specifically prohibits the Development Officer from varying the locational requirements prescribed for this type of development.
- [20] However, Council does not have the authority to limit the power given to this Board by the Province in section 687(3)(d). Notwithstanding the limitations imposed on the Development Officer by Policy C1 in the ARP, this Board retains its power, in certain circumstances, to issue development permits that do not comply with the Zoning Bylaw. Therefore the Board does have the power to vary the locational criteria for Semi-detached Housing in the RF2 Zone covered by the ARP provided that the development will not have too great an impact on the amenities of the neighbourhood or on neighbouring parcels of land.
- [19] The Board accepts the evidence provided by the Appellant that there are many Semi-detached Housing type developments in the immediate neighbourhood. The map submitted by the Appellant shows that approximately 50 percent of the lots have been developed as Semi-detached style housing.
- [20] None of the neighbours or the Canora Community League appeared at the hearing to voice any concerns regarding the proposed development, nor was any written opposition submitted.

[21] Given the lack of community opposition and the number of existing Semi-detached developments in this neighbourhood that do not conform to the locational requirements contained in section 120.4(4) of the *Edmonton Zoning Bylaw*, the Board concludes that the proposed development would 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. Accordingly, the appeal is allowed.



Mr. M. Young, Presiding Officer
Subdivision and Development Appeal Board

Board members in attendance: Mr. N. Somerville, Ms. S. LaPerle, Ms. L. Gibson, Mr. R. Handa

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: October 26, 2017
Project Number: 258156445-002
File Number: SDAB-D-17-182

Notice of Decision

- [1] On October 11, 2017, the Subdivision and Development Appeal Board heard an appeal that was filed on **September 13, 2017**. The appeal concerned the decision of the Development Authority, issued on August 25, 2017, to approve the following development:

To construct a two-Storey Accessory building (main floor Garage 6.40 metres by 11.58 metres, second floor Garage Suite with balcony 6.70 metres by 11.58 metres).

- [2] The subject property is on Plan 1624116 Blk 13 Lot 51, located at 8611 - 221 Street NW, within the (RPL) Planned Lot Residential Zone. The Lewis Farms Area Structure Plan applies to the subject property.
- [3] The following documents were received prior to the hearing and form part of the record:
- A copy of the Development Permit application with attachments, proposed plans, and the approved Development Permit; and
 - The Development Officer's written submission.

Preliminary Matters

- [4] At the outset of the appeal hearing, the Presiding Officer noted that the Appellant was not in attendance. An attempt was made to contact the Appellant by telephone without success. The Board decided to proceed with the hearing based on the written reasons for appeal that were provided by the Appellant.
- [5] 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.
- [8] The Presiding Officer noted that City Council approved changes to the *Edmonton Zoning Bylaw* on July 10, 2017, intended to improve the buildability and quality of Garden Suites. The new regulations came into effect on September 1, 2017, after this development permit application was approved on August 25, 2017. Garage Suites were reclassified as Garden Suites and as a Permitted Use in all Residential Zones where Single Detached Housing is a Permitted Use.
- [9] As a result of the amended regulations, the Development Officer indicated in his written submission that two variances are required. The first variance relates to an excess in the maximum allowable total Floor Area for a Garden Suite and the second relates to an excess in the maximum allowable second storey Floor Area.
- [10] The Board will therefore evaluate the proposed development on the basis of the impact at these two required variances will have on the neighbourhood and on neighbouring parcels of land.

Summary of Hearing

i) Position of the Appellant, Ms. B. Nedelec:

- [11] In the Appellant's written reasons for appeal, she contended that the proposed development would:
- a) reduce sun exposure to her rear yard and deck;
 - b) allow tenants into a zone for single families;
 - c) reduce parking in the rear and add congestion to an already narrow alley;
 - d) restrict her views and sight lines.

ii) Position of the Development Authority:

- [12] The Development Authority provided a written submission and did not attend the hearing.

iii) Position of the Respondent, Mr. K. Jansen and Mr. M. Cudal, representing Lincolnberg Master Builders:

- [13] Mr. Jansen referenced section 87.5(a) of the *Edmonton Zoning Bylaw* which states that Floor Area shall exclude parking areas within the Garden Suite. In his opinion the Development Officer included the parking area when calculating the Floor Area, which resulted in the variance identified.
- [14] The Floor Area of the second storey is 59.9 square metres which is less than the 60 square metres allowed. In his opinion, the proposed landing results in the excess of 2.86 square metres. The definition of Floor Area was referenced that states “the total Floor Area of the building or structure, contained within the outside surface of the exterior and Basement walls, provided that in the case of a wall containing windows, the glazing line of windows may be used.”
- [15] The proposed development complies with all of the other development requirements for a Garden Suite and it is located on a very large lot in the middle of a cul-de-sac. Six on-site parking spaces can be provided.
- [16] Mr. Jansen provided the following information in response to the concerns outlined in the written submission of the Appellant:
- a) The Appellant’s property is located across the lane and a significant distance north of the subject site. In his opinion, the proposed Garden Suite will not create any sun shadowing impact on the Appellant’s rear yard or deck. The rear detached Garage on the Appellant’s site will create more of a shadowing impact than the proposed development.
 - b) Rear detached garages have been built all along the lane way.
 - c) He could not comment on the Appellant’s contention that she was told when she purchased the property that Garage Suites would not be built along the lane way.
- [17] Mr. Jansen provided the following information in response to questions from the Board:
- a) The excess in the maximum allowable total Floor Area for a Garden Suite will not impact neighbouring property owners because this is a very large lot, the proposed detached Garage does not exceed the maximum allowable Site Area, there is a large amount of amenity space and parking available on the subject site.
 - b) A sun shadow impact study was not completed. He referenced the Site Plan to illustrate the setbacks for the proposed Garage. In his opinion, any shadowing will occur on the lane and not adjacent houses.
 - c) There are three parking spaces available inside the proposed Garage, two on the parking pad and space for another parking space on the (west) side of the Garage.

- d) They did consider locating the stairs on the outside of the Garage but it was their client's preference to have the stairs enclosed for safety reasons and to separate the parking spaces inside the garage.
- e) The proposed balcony overlooks the lane and is setback to prevent overlook into the rear yards of adjacent properties.
- f) Mr. Jansen calculated the Floor Area of the second storey to be 59.9 square metres without the proposed balcony.

Decision

- [18] The appeal is **DENIED** and the decision of the Development Authority is **VARIED**. The development is **GRANTED** as approved by the Development Authority with the following changes:
1. The maximum allowable total Floor Area for a Garden Suite per section 87.4 is varied to allow an excess of 17 square metres, thereby increasing the maximum allowed to 137 square metres.
 2. The maximum allowable second storey Floor Area per section 87.5(e) is varied to allow an excess of 2.86 square metres, thereby increasing the maximum allowed to 62.86 square metres.

Reasons for Decision

- [19] This development permit application to construct a two-storey Accessory Building (main floor Garage and second floor Garage Suite) was approved on August 25, 2017.
- [20] On September 1, 2017 amendments to the *Edmonton Zoning Bylaw* came into effect. Prior to the amendments, Garden Suites and Garage Suites were classified as Discretionary Uses. Under the new regulations, Garage Suites were reclassified as Garden Suites, which became a Permitted Use in all Residential Zones where Single Detached Housing is a Permitted Use. There were also amendments to the regulations governing Garden Suites. In this appeal, the Board must use the new regulations to evaluate the proposed development.
- [21] The proposed development now requires two variances as a result of the new regulations.
- [22] Section 87.4 of the *Edmonton Zoning Bylaw* states that "the maximum Total Floor Area for a Garden Suite shall be 120 square metres." The proposed development exceeds the maximum allowed by 17 square metres.

- [23] Section 87.5(e) of the *Edmonton Zoning Bylaw* states that “the maximum Second Storey Floor Area shall be 60 square metres.” The proposed development exceeds the maximum allowed by 2.86 square metres.
- [24] The Board finds that the required variances will not have a significant impact on the neighbourhood or on neighbouring parcels of land for the following reasons:
- a) This lot and the abutting lots are all large and the subject site is located at the terminal end of a cul-de-sac where visual and privacy impacts of the proposed development will be minimized.
 - b) The Development Officer advises that development permits for Garden Suites have been approved on four sites that either abut or are adjacent to the subject site and are in close proximity to existing Row Housing developments.
 - c) The subject site backs onto an undeveloped parcel of land and the windows for the proposed Garden Suite have been located to reduce overlook onto abutting lots. The recessed design and orientation of the balcony also reduces overlook.
 - d) The proposed development complies with all other applicable regulations including those dealing with total Site Coverage, Setbacks, Height, Amenity space and parking.
- [25] The Board relied on the written reasons for appeal in the absence of the Appellant. The Board notes that the Appellant did not address the variances required for the proposed development. Instead, her concerns related to how the development would cause sun shadowing in her rear yard, bring tenants into a single family neighbourhood, negatively impact parking, create traffic congestion in the rear lane and restrict the view and sight lines from her property.
- [26] The Board notes that the Appellant’s property is a considerable distance from the subject site. Given the distance between the Appellant’s property and the proposed development, the Board is of the opinion that the proposed development will not have any effect on sun exposure in the Appellant’s rear yard, nor will it restrict her view. Since Garden Suites are now permitted uses in this Zone, the Appellant’s concerns about tenants are immaterial to this appeal. The proposed development has adequate parking, so the Appellant’s concerns about parking and congestion are unfounded. The Appellant was the only neighbour who voiced any concerns about the proposed development.

[27] For all of the above reasons, the Board is of the opinion 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. M. Young, Presiding Officer
Subdivision and Development Appeal Board

Board members in attendance: Mr. N. Somerville, Ms. S. LaPerle, Ms. L. Gibson, Mr. R. Handa

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SDAB-D-17-136

Project No. 237601282-001

To demolish an existing Freestanding Off-premises Sign (Existing without Permit)
& install a Freestanding Minor Digital Off-premises Sign (Single sided facing SE)
was **WITHDRAWN**