



**EDMONTON
TRIBUNALS**

*Subdivision &
Development
Appeal Board*

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Date: November 3, 2017
Project Number: 258025157-002
File Number: SDAB-D-17-190

Notice of Decision

- [1] On October 19, 2017, the Subdivision and Development Appeal Board (the “Board”) heard an appeal that was filed on **September 20, 2017**. The appeal concerned the decision of the Development Authority, issued on September 7, 2017, to refuse the following development:

Install (2) Replacement Panels (west and south elevations) (MEINEKE CAR CARE)

- [2] The subject property is on Plan 9821533 Blk 11 Lot 1, located at 12540 - 72 Street NW, within the IM Medium Industrial Zone. The Yellowhead Corridor Area Structure Plan 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 with attachments, proposed plans, and the refused Development Permit; and
 - The Development Officer’s written submissions.
- [4] The following exhibits were presented during the hearing and form part of the record:
- Exhibit A – Site Plan 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 property owner, Mr. Hill, speaking on behalf of the Appellant, Five Star Permits*

- [8] Mr. Hill purchased the property in April 2017 to start an Automotive Repair Shop.
- [9] The existing Sign on the south facing wall is 4 feet high by 40 feet long and the existing Sign on the west facing wall is 4 feet high by 36 feet wide. These Signs are imperative for locating his business off of Fort Road. There is no through traffic on the east side facing the roadway where a Sign could be seen.
- [10] In his opinion, the proposed Signs will be important for his business to succeed.
- [11] In response to questions by the Board, he stated that the previous business was Silver Star Automotive and Robin Trucking prior to that.
- [12] The existing Signs have been in place for several years and were used for Silver Star Automotive. Only the lit panels are being replaced.
- [13] The Sign boxes on the building were installed when the building was constructed in 1978. The new panels will fit into the existing boxes.
- [14] There are four bays at the rear of the building and access is through the common parking lot.
- [15] He did not speak to the adjacent neighbour west of the subject site, but noted that the owner would have received notice of this hearing.
- [16] The lights used on the existing Signs are T7 fluorescent lights and the proposed Signs will have LED lighting.
- [17] The Development Officer's suggested condition No. 2 states that the intensity of exposed bulbs on a Sign, excluding Digital Signs, shall not exceed 1100 lumens (Reference Section 59.2(4)). The Appellant felt that this condition will not be an issue as the bulbs will be behind the Sign and not exposed. He is agreeable to the remaining conditions.
- [18] He is willing to remove the Sign on the west side of the building if required, but would like the south Sign to remain as it identifies the business for vehicles travelling past this area.
- [19] He believes that approximately two inches of the Sign encroaches on the property to the south. This is where it was initially installed prior to subdivision of the site. In his opinion, the encroachment is not an issue as that owner provided written support.
- [20] If the proposed Sign is approved, he will have to speak to the neighbour regarding the encroachment.

ii) *Position of the Development Officer, Ms. Noorman*

[21] The Development Authority provided written submissions and did not attend the hearing.

Decision

[22] 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 proposed Fascia On-premises Signs shall be constructed in accordance with the stamped approved drawings.
2. The intensity of exposed bulbs on a Sign, excluding Digital Signs, shall not exceed 1100 lumens (Reference Section 59.2(4)).

[23] In granting the development, Section 59G.2(1)(a) of the *Edmonton Zoning Bylaw*, which states Fascia On-premises Signs shall only face a public roadway other than a Lane, is waived.

Reasons for Decision

[24] The proposed developments, Fascia On-premises Signs, are Permitted Uses in the IM Medium Industrial Zone.

[25] The proposed Signs will be replacing two lit Signs of similar dimension and will be attached to the existing structure. The Signs have been in place since the 1990's and probably date back to the 1970's when the building was originally constructed with no known complaints.

[26] Both Signs will identify the location of the business and direct customers to the exact location of the customer bay doors at the rear of the building.

[27] The abutting neighbour south of the subject Site, who would be most directly affected by the south facing portion, provided a written letter in support of the proposed development.

[28] The adjacent neighbour across the lane to the west, who would be the most directly affected by the west facing portion, did not appear in support or opposition at the hearing and did not provide feedback for the Sign.

[29] No other feedback was received by the Board and no other affected parties appeared before the Board.

- [30] The Development Officer indicated that there were no other rear or side facing Signs in the vicinity. The Board does not find this uniqueness to constitute a planning reason to deny the application for a Permitted Use.
- [31] The Board reviewed the Development Officer's suggested conditions and advisements with the Appellant who did not object to them if the Development Permit were to be approved.
- [32] Based on 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.
- [33] In her written submission, the Development Officer indicated that a portion of the south facing Sign may hang over the Side Lot Line and encroach on the adjacent neighbour to the south. The Appellant could not provide the exact dimension for the width of the Sign but agreed that it might encroach approximately two inches onto the abutting property. The Appellant discussed the Sign with that owner who does not have an objection to the Sign and signed the submitted letter of support. The Board notes this decision in no way authorizes any encroachment on another property, that is a private matter outside the jurisdiction of the Board between the Appellant and owner of the abutting property to the south.

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 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 3, 2017
Project Number: 239376196-001
File Number: SDAB-D-17-191

Notice of Decision

- [1] On October 19, 2017, the Subdivision and Development Appeal Board (the “Board”) heard an appeal that was filed on **September 21, 2017**. The appeal concerned the decision of the Development Authority, issued on August 30, 2017, to approve the following development:

Construct a Semi-detached House with balconies (2nd and 3rd Floors) and to demolish an existing Single Detached House and rear detached Garage.

- [2] The subject property is on Plan I23 Blk 140 Lot 28, located at 10927 - 80 Avenue NW, within the RF3 - Small Scale Infill Development Zone. The Mature Neighbourhood Overlay and the Garneau 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 approved Development Permit;
 - The Development Officer’s written submissions;
 - The Appellant’s written submissions; and
 - The Respondent’s written submissions.
- [4] The following exhibits were presented during the hearing and form part of the record:
- Exhibit A – Appellant’s written submission with signatures from neighbouring property owners.

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. Dickson, who was accompanied by Ms. Pagliardini*

[8] They own the property directly adjacent to the subject Site and have lived there for over 15 years.

[9] When they moved in, several houses in the neighbourhood were used for student housing and were unkempt, but that has changed with new developments coming into the area.

[10] There are 30 infill developments in the neighbourhood. Almost all of them are single family style developments that fit in with the character of the neighbourhood.

[11] There are three other developments in this area that are similar to the proposed development, but with some differences. In their opinion, a precedent should not be set and several of the developments were appealed by the Garneau Community League and neighbouring property owners.

[12] Some of the differences between the proposed development and the others, particularly the large side windows and the front and rear balconies, are features that will negatively impact their property.

[13] They are concerned about the additional side doors which lead directly to the basements as with this extra access the building could be used as a quad-plex in the future which is not allowed under the *Edmonton Zoning Bylaw*.

[14] The Development Officer did not follow the Bylaw as he failed to demonstrate how the Respondent would suffer a hardship if they could not build a Semi-detached development. The Appellant can construct a Single Detached House so there is no hardship.

[15] The Respondent provided examples of similar developments that they believe would be more acceptable on the subject Site. An up/down development would fit in better than the proposed front/back development.

[16] The proposed development does not need such large side windows. The windows will create an undue hardship for them on their property as the proposed development will impact the use and enjoyment of their property and the value of their property.

[17] They support new developments in the neighbourhood that are well maintained and do not involve variances.

- [18] In their opinion, the proposed variance is excessive at 40 square metres. This is enough space for a garage. They referred to the map in the Respondent's submission to point out other locations where this type of development would not need a variance. There are several lots close by that will allow for this type of development.
- [19] Although it is one variance, they believe it is significant and will have an impact on their use enjoyment privacy and sun shadowing.
- [20] They reiterated the concerns set out in their written submission:
1. Hardship – the proposed development is out of scale for this neighbourhood. This type of development will have a negative impact on their property value.
 2. Massing effect – although the proposed development has been scaled down from the original proposal and some variances have been eliminated, it still does not take into consideration the size of the lot and the proposed increased density that the construction would allow.
 3. Sitting of development – with the back to front design, the large windows on the side of the building will overlook the back yard of their property.
 4. Sun shadowing effect – due to the size of the building (almost three storeys), sun shadowing will have an impact on both neighboring properties.
 5. Streetscape - the front and back balconies will impact the privacy and noise for the adjacent properties.
 6. Compatibility - The proposed development is out of scale and character of the neighborhood. Although they understand that increased density is encouraged by the City, there are other avenues for increasing value and income from investment properties.
 7. Parking – there will be an increase in the number of cars parked in the back alley and in the front street as the proposed development has only a single garage and six students may all wish to park their respective vehicles.
 8. Noise – they are concerned with the number of large windows that will overlook their property and the front and back balconies that will be used more in the summer. Noise from renting students will be a detriment for them.
 9. Feedback from Community Consultation – letters in opposition were provided to the Development Officer and they obtained signatures in opposition to the proposed development which they provided to the Board. In their opinion, the Garneau area wants to become a family oriented neighborhood and this proposal does not fit with that vision.

10. Additional planning concerns – with the front to back design, the lights on the side of the building will impact their privacy and enjoyment of their property. They are concerned that the side entrances will be used to access the basement which could be used for an additional dwelling in the future.

[21] The Appellants provided the following responses to questions by the Board:

i) The development will be located next to a one storey bungalow. The upper floor will have a negative impact on their property as it will overlook their back yard.

ii) There is a similar development on the corner in their neighbourhood, but it will have less of an impact as there is no neighbour on one side.

iii) They agreed the frosted windows will mitigate the impact on their property if they are closed. If the windows are open, they will lose privacy and hear noise from the subject Site. They believe the Respondent intends to maximize income from the site by renting space to six students, perhaps more. The previous house was rented out in the past and Alberta Health shut down the basement suite as shown in their submission. This development will maximize the Respondent's profits at the Appellant's cost.

[22] They spoke to the Community League Board, but it did not take a position in support or opposition to the proposed development.

[23] They are aware that a completely compliant Single Detached House could be built of the same size and with the same window and balcony configuration. They remain opposed to the built form and to the variance.

[24] They are not objecting to the density and recognize that two dwelling units could be built through a Duplex or Secondary Suite. An up/down design would be more suitable on the property and less impactful.

[25] In their opinion, there are other options that could be built on the subject Site. Development regulations and guidelines are in place so this type of development should not be not allowed.

[26] They did not have any documentation to support their belief that the value of their property will be negatively affected.

ii) *Position of the Development Officer, Mr. Langille*

[27] The Development Authority provided written submissions and did not attend the hearing.

iii) Position of the Respondent, Mr. Rashed, speaking on behalf of Coretec Consultant, who was accompanied by Mr. Qadri

- [28] They met all the regulations of the *Edmonton Zoning Bylaw* and the Mature Neighbourhood Overlay when applying for a Development Permit except for Site Area which they cannot change.
- [29] All of the Setbacks comply with the *Edmonton Zoning Bylaw*.
- [30] The proposed development is an energy efficient development and the large windows are for natural light.
- [31] The third floor area will be used as a family room for children to play.
- [32] There are other Semi-detached developments in the area as outlined in his submission. One photograph shows a side by side development with a side entrance that will be the same as the proposed development. This development is on a lot the same size as the subject lot.
- [33] The total Site Coverage for the proposed development does not exceed the 40 percent maximum allowable.
- [34] They were not aware that the neighbouring property owners had a concern until the appeal was filed.
- [35] They confirmed that their intent is that two families will live in the subject dwellings. The building will not be rented to students. The Floor Plan shows two bedrooms so there will only be two families living in the subject dwelling.
- [36] The windows will be frosted to provide privacy to the neighbouring property owners. There will be privacy screening on the third floor with additional planters for additional privacy.
- [37] The Respondents had a community meeting at a local business and neighbours who were in opposition indicated they would support it if they reduced the size of the development. They spoke to the Development Officer and revised the proposed plans to address the neighbours' concerns. The design of the house remained the same, but the size was reduced. They did not receive opposition from the neighbour to the west or any other property owners in the neighborhood.
- [38] They spoke to neighbours across the rear lane, provided them with information and invited them to review the plans.
- [39] The previous proposed plans exceeded the 40 percent maximum allowable in Site Coverage.

- [40] They confirmed the third balcony area will be used for children to play or a sitting area. Families will use the third balcony area for entertaining only. In response to questions from the Board, they acknowledged that there is a bedroom and a bathroom on the third floor in each dwelling unit.
- [41] The third door on the side will access the basement and the upstairs. Utility workers can use that door to get to the basement. The side door is only for the convenience of the design; it is not intended to provide access to separate basement suites. The Respondents noted that no basement development has been proposed.

vi) Rebuttal of the Appellant

- [42] The Respondent informed the Appellants at the community meeting that the house will be used for student housing.
- [43] They told the Respondents that they are not opposed to development, but are opposed to the variance that will impact the use and enjoyment of their property.
- [44] With regard to the Community Consultation, they recognized that the Respondents revised the original plans when they received negative response from the community.
- [45] With regard to hardship, they stated that the Respondents did not provide any information how the proposed development will be impacted if a variance was not required. The Appellants are opposed to any variance whatsoever and believe that a design should be created which has no variances at all.
- [46] Their main concern is that the third door on the side indicates that there will be an additional dwelling units built in the future, which is not allowed.
- [47] They disagree about neighbourhood support and point to their signed letter of opposition.
- [48] They remain willing to purchase the property from the developer and build on the subject Site themselves.

Decision

- [49] The appeal is DENIED and the decision of the Development Authority is CONFIRMED. The development is GRANTED as applied for to the Development Authority, subject to the following CONDITIONS:
1. This Development Permit authorizes the development of a Semi-detached House with with balconies (2nd and 3rd Floors) and to demolish an existing Single Detached House and rear detached Garage. The proposed development shall be constructed in accordance with the stamped approved drawings.

2. The Height of the principal building shall not exceed 8.6 metres as per the Height definition of Section 6.1(54) of the *Edmonton Zoning Bylaw 12800*.
3. This permit does not authorize any basement development.
4. This development has been approved as Semi-detached Housing and per the definitions of Secondary Suite in section 7.2(6) and Semi-detached Housing in section 7.2(7), this Use does not include Secondary Suites.
5. The maximum number of Dwellings per Site shall be two per Site per section 140.4(19) of the *Edmonton Zoning Bylaw 12800*.
6. The Basement elevation of structures of two or more Storeys in Height shall be no more than 1.2 metres above Grade. The Basement elevation shall be measured as the distance between Grade level and the floor of the first Storey.
7. Platform Structures greater than 1.0 metres above Grade shall provide privacy screening to the satisfaction of the Development Officer to prevent visual intrusion into adjacent properties.
8. Landscaping shall be developed in accordance with Section 55 and Section 140.4(18) of the *Edmonton Zoning Bylaw 12800* and the landscaping plan.
9. Notwithstanding the Landscaping regulations of Section 55 of this Bylaw, where new development consists of replacement or infill within areas of existing housing, Landscaping shall be implemented as a component of such new development in order to replace vegetation removed during construction or to reinforce an established Landscaping context in the area.
10. Immediately upon demolition of the building, the site shall be cleared of all debris.
11. A. Landscaping shall be provided on a Site within 18 months of the occupancy of the Single Detached House. Trees and shrubs shall be maintained on a Site for a minimum of 42 months after the occupancy of the Single Detached House (Reference Section 55.2.1).
B. Two deciduous trees with a minimum Caliper of 50 mm and eight shrubs shall be provided on the property. Deciduous shrubs shall have a minimum Height of 300 mm and coniferous shrubs shall have a minimum spread of 450 mm (Reference Section 55.2.1).
C. All Yards visible from a public roadway, other than a Lane, shall be seeded or sodded. Seeding or sodding may be substituted with alternate forms of ground cover, including hard decorative pavers, washed rock, shale or similar treatments, perennials, or artificial turf, provided that all areas of exposed earth are designed as either flower beds or cultivated gardens (Reference Section 55.2.1).
12. Unenclosed steps shall not exceed 0.60 metres in the case of Setbacks or Separation Spaces of 1.2 metres or greater (Reference Section 44.1(a))

ADVISEMENTS:

- i.) Lot grades must comply with the Edmonton Drainage Bylaw 16200. Contact Drainage Services at 780-496-5500 for lot grading inspection inquiries.
- ii.) Any future deck development greater than 0.6 metres (2 feet) in height will require development and building permit approvals

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

iv.) The driveway access must maintain a minimum clearance of 1.5 metres from any service pedestal and all other surface utilities.

v.) 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

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

vii.) 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.

[50] In granting the development, the following variance to the *Edmonton Zoning Bylaw* is allowed:

1. The minimum allowable Site Area of 442.2 square metres, pursuant to Section 140.4(3)(a) is varied to allow a deficiency of 38.2 square metres, thereby decreasing the minimum required to 404 square metres.

Reasons for Decision

[51] The proposed development, Semi-detached Housing, is a Permitted Use in the RF3 Small Scale Infill Development Zone.

[52] The Respondents initially proposed Semi-detached Housing with several variances to both the Mature Neighbourhood Overlay and the underlying RF3 Small Scale Infill Development Zone.

[53] Later, in response to the Community Consultation feedback, the Respondents revised it. The proposed development now before the Board complies with all the applicable regulations in the RF3 Small Scale Infill Development Zone and the Mature Neighbourhood Overlay with the exception of the minimum Site Area required for Semi-detached Housing found in Section 140.4(3)(a) of the *Edmonton Zoning Bylaw*.

[54] The final remaining variance is needed due to the size of the Lot, a factor that cannot be changed by the Respondent.

- [55] The Respondents argued that their application should be approved because there are four other nearby developments with similar variances. The Board notes that the existence of other Semi-detached houses is not surprising given that is a Permitted Use and it also indicates that Semi-detached Housing, including front to back Semi-detached developments, are somewhat characteristic of the neighbourhood. However, this is not a determinative factor. The Board is not bound by precedence. It must consider this application on its unique merits. Further, the exact legal status and full circumstances of the other similar developments were not presented to the Board.
- [56] The Appellants raised four general objections to the variance granted by the Development Officer.
- [57] First, they argued that a variance should not be allowed because there are three other nearby lots that meet the minimum Site Area regulation which could accommodate the proposed Semi-detached House in full compliance with the Bylaw. The Board is not persuaded by this argument as the appeal concerns the subject Site, not nearby sites. The existence of other larger lots is not a valid planning reason to deny the application.
- [58] Second, the Appellants objected to the idea of a variance in principle given that a different fully compliant Use with equal density could be developed on the Site. The Board notes that Semi-detached Housing is an available Use. This appeal involves the application as proposed by the Respondents. The potential availability of other fully compliant Uses is not a planning reason to deny an application for this particular Permitted Use.
- [59] Third, the Appellants argued that the Respondents must establish a hardship in order to justify a variance and that in this case any hardship will fall on adjacent owners if the development proceeds. The Board notes that Development Officers are authorized to grant variances based on the relevant provisions of the *Edmonton Zoning Bylaw* which include an assessment of hardship. The Board has a different test. It may grant variances based on the test in section 687(3)(d) of the *Municipal Government Act* as explained further below. The Respondent is not required to establish a hardship before the Board to justify the variance. There is no presumption for or against variances before the Board.
- [60] Fourth, the Appellants argued that a 40 square metre variance to the minimum required Site Area is too large. Once again, the Board is governed by Section 687(3)(d) of the *Municipal Government Act*. In determining whether a variance should be granted, it must consider the impact of that variance. The sheer magnitude of a variance is not alone determinative because size is not always indicative of impact. A small variance may have a huge impact and a large variance may have minimal impact. The Board has assessed the impact of the required variance below.

[61] The Board grants the variance to Site Area for the following reasons:

- i) While a deficiency in Site Area may sometimes be an indicator of overdevelopment, the Board does not find this to be true in this case given that all other related physical requirements for Height, Site width, Site Coverage, Setbacks, parking and private amenity space have been met or exceeded.
- ii) The Appellants' more specific objections concerned height, sunlight, massing and scale, loss of privacy due to window size and orientation and balconies, potential illegal basement suites, the possible use as student rental accommodation and loss of property value. Based on the submissions of the parties, the Board finds that these objections were not causally related to the sole variance - a 40 square metre relaxation to minimum Site Area.
- iii) The Appellant's arguments concerning sunlight, height, and massing are unrelated to the variance granted to Site Area as the proposed development is fully compliant in these respects.
- iv) According to their oral submissions, the Appellant's main concern is that the design of the development will negatively impact their privacy due to east facing windows and the balconies. Again these design elements are compliant and unrelated to the size of the lot. The proposed development also fully complies with the Side and Rear Setback. In any event, the approved plans show several of the windows that face the Appellants' property will be frosted. The Board also notes that a Single Detached House could be built as of right with identical features, including identical dimensions, massing, entrances as well as window and balcony design.
- v) The proposed development complies with the applicable Density regulations and the Appellants stated that it was design, not Density which they believed created adverse impacts. They would approve of other types of compliant two-dwelling built forms.
- vi) The Appellant argued that their property value will be negatively impacted. However, they provided no evidence to support that assertion.

[62] The Appellants objected to the proposed development as they believed it would be used for student accommodation. During the hearing, the parties disagreed about the intention to rent the development to students or sell them to families. The Board must regulate the Use and not the users and has not considered this argument one way or the other in making its decision.

[63] The Appellants opposed the development on the basis that the third doors on the sides of the building that lead to the basements may be developed as additional Dwellings in the future which is not allowed under the *Edmonton Zoning Bylaw*.

- [64] The application before the Board is for Semi-detached Housing. The Applicant provided evidence, supported by the application and approved plans, that there is to be no development in either basement under this approval.
- [65] The approved permit also addresses this issue. The Board has affirmed the condition that neither basement is to be used as an additional Dwelling. Further, section 7.2(6) provides, in part, Secondary Suites means development consisting of a Dwelling located within, and Accessory to, a structure in which the principal use is Single Detached Housing. This Use Class does not include Apartment Housing, Duplex Housing, Garden Suites, Semi-detached Housing, Lodging House.
- [66] Should the Respondent or anyone else wish, at some future date, to either use the property in a manner which will cause it to become another Use class such as a Lodging House or add to the number of Dwellings on this Site, a new application would be required involving a full evaluation by a Development Officer including redetermination of Use class, applicable development regulations and variances.
- [67] Any future development of unauthorized illegal basement suites or a Lodging House would be a compliance matter, outside the jurisdiction of the Board on this appeal.
- [68] Based on the above, it is the opinion of the Board that the proposed development, with the conditions imposed by the Board, will not unduly interfere with the amenities of the neighbourhood, and materially interfere with or affect the use, enjoyment or value of neighbouring parcels of land.

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

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



**EDMONTON
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*

SDAB-D-17-192

Application No. 258895254-001

An appeal by _____ to construct exterior alteration to an existing Apartment building (removing the rooftop addition and rooftop patio, 5.54m x 4.04m), located at 10003 – 87 Avenue NW, was **TABLED TO A DATE TO BE DETERMINED.**