

EDMONTON SUBDIVISION AND DEVELOPMENT APPEAL BOARD

Citation: Richard Winkenweder v Development Authority of the City of Edmonton, 2019
ABESDAB 10185

Date: November 13, 2019
Project Number: 339982319-001
File Number: SDAB-D-19-185

Between:

Richard Winkenweder

and

The City of Edmonton, Development Authority

Board Members

Gwen Harris, Presiding Officer
Mark Young
Chris Buyze
Elaine Solez
Sara McCartney

DECISION

- [1] On October 30, 2019, the Subdivision and Development Appeal Board (the “Board”) heard an appeal that was filed on October 7, 2019 for an application by Wei Qiao. The appeal concerned the decision of the Development Authority, issued on September 26, 2019, to approve the following development:

To operate a Major Home Based Business (VERA'S MASSAGE - Registered massage therapy, no more than 5 client visits per day), expires September 26, 2024.

- [2] The subject property is on Plan 2987MC Blk 27 Lot 33, located at 11415 - 137 Avenue NW, within the (RF1) Single Detached Residential Zone. The Mature Neighbourhood Overlay applies to the subject property.

[3] The following documents were received prior to the hearing and form part of the record:

- Copy of the Development Permit application and the approved Development Permit;
- The Development Officer's written submission; and
- The Appellant's written submissions.

[4] The following exhibits were presented during the hearing and form part of the record:

- Exhibit A – Google Aerial photograph, submitted by the Applicant; and
- Exhibit B – Registered Certificate, submitted by the Applicant.

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.

Summary of Hearing

i) Position of the Appellants, R. Winkenweder, who was accompanied by M. McNabb

[8] This is a residential area and the operation of the Major Home Based Business would be more suitable for a commercial area.

[9] In their opinion, the property value will decrease with the proposed development.

[10] They are concerned that there will be an excess of parking in the area that will be associated with the Major Home Based Business.

[11] The subject dwelling is currently vacant.

[12] In their opinion, there will be a safety issue with small children living in the area with the operation of the Major Home Based Business.

[13] The business could operate from the strip mall across the street.

[14] They are concerned that the Major Home Based Business will evolve to something different than what is being applied for.

[15] If they need to call Bylaw Enforcement it can take days for them to visit the area.

[16] Mr. Winkenweder and Ms. McNabb provided the following information in response to questions by the Board:

- a. They do not have any evidence that their property value will decrease with the operation of this Major Home Based Business.
- b. They do not have any statistics, but feel this type of business will increase crime in the area.
- c. This is a commercial business that should not operate in a residential neighbourhood.

ii) Position of the Development Officer, K. Payne

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

iii) Position of R. Speidel, Legal Counsel for the Applicant, W. Qiao

[18] Mr. Speidel referred to the aerial photograph and referenced the subject site.

[19] Clients are able to park on the driveway which can accommodate three vehicles.

[20] There will be one customer visit at a time and visits will not overlap.

[21] Ms. Qiao started her massage therapy schooling in China and completed a massage therapy course in Alberta in May 2018.

[22] Ms. Qiao is certified and registered with the Certified Registered Massage Therapist Association. Her certificate has to be renewed yearly.

[23] Mr. Speidel referred to each condition of the approved permit indicating the Major Home Based Business will comply with all of the conditions.

[24] Ms. Qiao confirmed that she lives at the subject site.

[25] She does not intend to have employees of the Major Home Based Business.

[26] The hours of operation will be 10:00 a.m. to 8:00 p.m., Monday to Friday.

iv) Rebuttal of the Appellants, R. Winkenweder and M. McNabb

[27] They do not believe the subject site is occupied.

[28] They are concerned that the Applicant will hire employees in the future.

[29] They are concerned that the number of clients will not be monitored.

Decision

[30] 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. Unless otherwise stated, all references to "section numbers" refer to the authority under the Edmonton Zoning Bylaw #12800, as amended.
2. The business owner must live at the site. The business use must be secondary to the residential use of the building and shall not change the residential character of the Dwelling or Accessory Building (Section 7.3(7)).
3. There shall be no exterior display or advertisement other than an identification plaque or sign a maximum of 20 cm (8") x 30.5 cm (12") in size located on the dwelling (Section 75.1).
4. The Major Home Based Business shall not generate pedestrian or vehicular traffic, or parking, in excess of that which is characteristic of the Zone in which it is located (Section 75.3).
5. If non-resident employees or business partners are working on-site, the maximum number shall not exceed the number applied for with this application.
6. If there are visits associated with the business the number shall not exceed the number applied for with this application.
7. Clients visit must be by-appointment only and appointments shall not overlap.
8. There shall be no outdoor business activities, or outdoor storage of material or equipment associated with the business (Section 75.5).
9. No offensive noise, odour, vibration, smoke, litter, heat or other objectionable effect shall be produced.
10. The business use must maintain the privacy and enjoyment of adjacent residences and the characteristic of the neighborhood.

11. All parking for the Dwelling and Home Based Business must be accommodated on site unless a parking variance has been granted for this Major Home Based Business.
12. This Development Permit may be cancelled at any time if the Home Based Business as stated in the Permit Details changes (Section 17.2).
13. Hours of operation shall be between 8:00am and 9:00pm on weekdays.
14. This approval is for a 5 year period from the date of this decision. A new Development Permit must be obtained to continue to operate the business from this location. This Development Permit expires on November 14, 2024.

Note:

1. This Development Permit is not a Business License.

Reasons for Decision

- [31] The proposed development, a Major Home Based Business (for Registered Massage Therapy), is a Discretionary Use in the (RF1) Single Detached Residential Zone.
- [32] The Board accepts the Applicant's evidence that Ms. Qiao is a registered Massage Therapist and will operate as such from the subject Site where she resides.
- [33] The Major Home Based Business complies with all of the regulations of the *Edmonton Zoning Bylaw*.
- [34] The Appellants did not produce evidence to confirm that their property value will decrease with the operation of the Major Home Based Business.
- [35] The Board accepts the Applicant's evidence that customers will park on the driveway of the subject Site.
- [36] The Board is satisfied that with the conditions imposed; the proposed Major Home Based Business will not alter the residential characteristics of the neighbourhood.
- [37] The Appellants' concerns are related to matters that are dealt with by Bylaw Enforcement.
- [38] The Board acknowledges the three signed notes opposing the proposed development submitted by the Appellants. However, on the evidence presented, the Board finds the Major Home Based Business will not negatively impact the neighbourhood as it complies completely with the *Edmonton Zoning Bylaw* and meets the minimum required on-site parking spaces.

[39] Based on the above, the Board finds that the proposed development with the conditions attached, is reasonably compatible with the neighbourhood.

Gwen Harris, Presiding Officer
Subdivision and Development Appeal Board

CC: R. Winkenweder & M. McNabb
Robert A. Speidel Professional Corporation, Attn: R. Speidel
City of Edmonton, Development & Zoning Services, Attn: K. Payne / A. Wen

Important Information for the Applicant/Appellant

1. This is not a Business Licence. A Business Licence must be obtained separately from Development & Zoning Services, 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 Development & Zoning Services, 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 SUBDIVISION AND DEVELOPMENT APPEAL BOARD

Citation: Joanna Sarauer v Development Authority of the City of Edmonton, 2019 ABESDAB 10186

Date: November 13, 2019
Project Number: 304538606-008
File Number: SDAB-D-19-186

Between:

Joanna Sarauer

and

The City of Edmonton, Development Authority

Board Members

Gwen Harris, Presiding Officer
Mark Young
Chris Buyze
Elaine Solez
Sara McCartney

DECISION

[1] On October 30, 2019, the Subdivision and Development Appeal Board (the “Board”) heard an appeal that was filed on October 3, 2019 for an application by Bedrock Homes Ltd. The appeal concerned the decision of the Development Authority, issued on September 19, 2019, to approve the following development:

To construct a 4 Dwelling Multi-unit Housing.

[2] The subject property is on Plan 0820251 Blk 46 Lot 35, located at 7926 - 106 Street NW, within the (RA7) Low Rise Apartment Zone. The Garneau Area Redevelopment 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 approved Development Permit;
- The Development Officer's written submission;
- The Appellant's written submission; and
- The Applicant's written submissions and attachments.

[4] The following exhibit was presented during the hearing and forms part of the record:

- Exhibit A – Written submission read by the Applicant.

Preliminary Matter

[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.

[8] The Presiding Officer advised the Applicant that the Appellant would not be in attendance at the hearing and asked the Applicant if she would support a postponement due to the non-attendance of the Appellant.

Summary of Hearing on Preliminary Matter

i) Position of the Applicant, A. Bolen, representing Bedrock Homes Ltd.

[9] Ms. Bolen is opposed to postponing the hearing to a later date due to the Appellant not attending the hearing.

[10] Notification of the hearing was sent to all parties.

[11] The development permit application process started in February 2019 and was approved by the Development Officer.

[12] Several revisions and considerations were taken into their application so the proposed development would be in keeping with the character of the neighbourhood.

[13] The minor variances are required due to the layout of the lot.

[14] Construction has been delayed and they would like to start construction as soon as possible. If the appeal hearing is postponed, construction would not begin until the new year.

- [15] Further delay will affect the feasibility of the project.
- [16] Ms. Bolen has made several attempts to contact the Appellant by email, telephone, and messages in the Appellant's mail box to discuss the proposed development. She made the Appellant aware of the timing of the appeal hearing.
- [17] The Appellant has not returned any telephone calls, or email messages.

Decision on Preliminary Matter

- [18] The Board determined to proceed with the appeal hearing as scheduled.

Reasons on Preliminary Matter

- [19] The Subdivision and Development Appeal Board Administration ("SDAB administration") contacted the Appellant by telephone when the Appellant did not arrive for the appeal hearing. The Appellant indicated that she did not receive any notice regarding the date and time of the hearing.
- [20] The Appellant indicated that her email address was not working and she had contacted the SDAB office to provide them with a new email address and also sent an email with the information.
- [21] SDAB Administration confirmed that no email was received from the Appellant.
- [22] The Applicant made several attempts to contact the Appellant by email, telephone messages, and messages left in the Appellant's mail box after the appeal was filed.
- [23] The Board is mindful of the right of parties to have the opportunity to fully present their case. In this case, the Appellant provided the Board with an extensive written submission in support of her appeal.
- [24] The Board accepts the Applicant's evidence that further delay of the appeal hearing would negatively impact the proposed development. The Board finds that given the Appellant submitted detailed reasons in writing for objecting to the development, the prejudice to the Applicant as a result of further delay outweighs postponing the hearing to a later date.
- [25] For these reasons, the Board has determined to proceed with the hearing.

Summary of Hearing*i) Position of the Appellant, J. Sarauer*

[26] Ms. Sarauer provided the following written reasons for appealing the decision of the Development Authority: (unedited)

I'd like to put in an appeal to the permit, which I was never notified about at 7926 106 st, next door. I have not seen a copy of what their blueprints are or a copy of what it's to look like.

1. My concern is I don't know what the side variance means, if its closer than required it is a problem for my brick foundation and the wood exterior walls of 120 year old cedar. The side to 80 Ave needs to be maintained as well, as no other development is close to that roadway, and it interferes with site lines near our busy intersection with four way bicycle lanes and three way traffic.
2. Second the front variance will hide my home, which is a 1902 heritage home (not designated yet). It is the oldest wood grand home in the city, so you can see my concern. The community will also be concerned that they would be hiding the home behind a large back wall. It would place my home in a tunnel, between 7926 walls and 7918 future developments.
3. I assume they want to face their property to 80 Ave. This will bring their back wall to my home, and because they are in our subdivision they should face 106 St. So the other concern I have is if the front entrance should be still 106 st. My home and the north (7926) lot and my south lot (7918) are a subdivision on their own, so any development must match the neighboring home (7922) to some degree.
4. The other concern I have is my home is RF3 and as so the development is to adhere with heritage home and neighboring home rules (be it infill or whatever) to maintain the character of the neighboring properties.
5. The other concern is the parking. They are the only home with a driveway to 80 Ave, and to make it four driveways is unacceptable, especially as their vehicles will back into a bicycle lane. As well, the driveways totally interfere with 80 Ave parking for the entire side length of their lot. The relaxation of 6 parking stalls is also unacceptable. There is a shortage of parking in the area due to the proximity to Whyte Ave, and to relax this is ridiculous.

6. The height of the building is also of a concern, as it will be taller than our home, hiding our side views. I assume it will also be close to the back. I don't know if back yard allowances need to apply, but I assume that our center home will be totally hidden by this giant development.

I spoke to Benny Liang and I understood that I was supposed to get notice, before it was approved. Not get an appeal notice.

ii) Position of A. Bolen, representing the Applicant, Bedrock Homes Ltd.

- [27] Ms. Bolen read from her written submission (Exhibit A).
- [28] The property was purchased in November 2018.
- [29] The subject site is zoned RA7 Low Rise Apartment Zone.
- [30] She referred to the location map, Attachment No. 3 of her submission showing that all of the lots in this area are zoned RA7 Low Rise Apartment Zone.
- [31] One of the challenges with the RA7 Zone in mature neighbourhoods is that the lots are small for the designated Multi-unit Housing land use.
- [32] Regardless of what was intended for the lot, they have faced several deficiencies regarding the lot area, width, length, as well as no vehicular access from a lane.
- [33] The original application was for a Discretionary Use for a semi-detached dwelling with secondary suites, which is four dwellings, requiring 4 parking stalls.
- [34] City Administration advised against being able to approve a Discretionary Use on a lot that encumbered so many variances. By changing the secondary suites to dwellings it could be designated as a Permitted Use for a stacked row housing development.
- [35] There are the same number of dwellings and structure for a stacked row house and a semi-detached house with secondary suites. Parking as a stacked row house was calculated based on the number of bedrooms instead of number of dwellings requiring six parking spaces.
- [36] Council approved the Missing Middle Housing Bylaw Amendment in August 2019 which eliminated all of the 'size' related restrictions on the RA7 Low Rise Apartment lots. However, there were many site specific obstacles making on-site parking a challenge.
- [37] She referred to Attachment No. 1 of her submission showing there is no rear lane and two large boulevard trees along 80 Avenue, making the only access to the rear yard a single entry point (Access No. 1 between a boulevard tree and a light pole, leading directly onto a utility right of way no-build zone).

- [38] They could not provide a garage in the rear yard. They worked with Transportation Services for several weeks, designing two parking stalls into the rear yard, but it would be impossible to fit any more. There was also concern regarding increasing the number of vehicles through this small access which could pose a risk to the tree and power pole.
- [39] Two parking stalls only support a single family home, duplex, or semi-detached with no secondary suites. All three of these Uses were removed from the RA7 Zone on August 26th, 2019.
- [40] In order to provide a number of parking stalls that supports the RA7 Zone, they incorporated two parking stalls within the structure, with access from the only section of 80 Avenue that would support it, between the east boulevard tree and the three-way intersection.
- [41] During the review process, Ms. Bolen was in contact with Transportation Services on several occasions and the requirement for driveway access off of 80 Avenue, nor was the proximity to the three-way intersection ever identified as a concern.
- [42] To provide direct driveway access to both parking garages, they applied for a 0.7 metres front setback variance, just for the depth of the garage. They had to avoid curving the driveway around the tree's clearance area, potentially causing risk to the tree. They do not feel that it adversely impacts the neighbourhood, the safety, or the traffic flow on this one-way road. All traffic will be approaching the area from the west only and will be decreasing in speed as they approach the stop sign at the intersection.
- [43] During the neighbourhood renewal process, a bike lane was added to 80 Avenue, and all parking along the entire length of the subject lot was removed. The proposed development does not eliminate any street parking. In her opinion, the parking provided on site is sufficient, meeting the requirements of a low density 4 dwelling unit structure.
- [44] The Queen Alexandra neighbourhood has a great network of bike lanes. Occupants from this site have access to lanes on both 80 Avenue and 106 Street, encouraging that use of transportation.
- [45] She referred to Attachment No. 3 showing that the lot is just over half a block outside the reduced parking corridor of 82 Avenue and its public transportation network.
- [46] She referred to Attachment No. 2 showing the design of the house. The proposed development needed to bridge the transition between the walk-up apartments along 80 Avenue and the single family homes along 106 Street.
- [47] The portion of the development facing 106 Street has elements, such as height, and massing, similar to the single family homes. One of the four dwellings fronts onto 106 Street, and has a veranda entrance similar in scale to the adjacent home.

- [48] In consideration of the Appellant's adjacent lot, they ensured to keep the interior side massing of the development within the allowable building pocket. The veranda and entry area behind the front setback, minimizing the impact of the front projection, and not hiding or blocking the adjacent home. The gable roof lines are common among the single family homes in the area, such as the ones across 106 Street at 10555 and 10557 - 80 Avenue. Siding and brick are typical exterior treatments, on both the apartment and single detached homes, so that exterior treatment was incorporated into elevation drawings.
- [49] On the corner of 80 Avenue, the three storey portion of the structure is located adjacent to the similar scaled apartments. The third storey adheres to the Edmonton Zoning Bylaw and is staggered in from the interior side property line. They were aware of the adjacent windows facing their development, and provided tall landscaping in areas close to the foundation that was available to soften the visual impact of the exterior two storey wall.
- [50] With the changes Council approved in August 2019, also came the reduced interior side setbacks to 1.2 metres. Ms. Bolen spoke to the Appellant on several occasions at the subject site and was aware of their concerns regarding the integrity of their original 1902 foundation.
- [51] Older homes, such as the Appellant's, which have been carefully maintained and restored, are vital to the character and heritage of mature neighbourhoods. Redevelopment is necessary for the sustainability of Edmonton's neighbourhoods, but redevelopment should also be conscious of, and support, the preservation of homes such as the Appellant's. They did not reduce the side yard when provided the opportunity to do so, leaving it at 2.158 metres. The extra width could have improved the development and potentially provide more space in the rear yard for parking, but their ambition is to provide housing options so more people can enjoy living in the context of an established neighbourhood, not potentially causing harm to the existing context of homes by the redevelopment.
- [52] The landscape buffer is in reference to the flanking side yard. Because two of the dwellings do not have garage storage, they needed to provide an area for garbage bins, and determined the most convenient location would be in the northwest corner of the lot, where there will be a four-foot fence. Their intention is to provide a landscape buffer in front of it.
- [53] The proposed development benefited greatly from the Missing Middle Housing Bylaw Amendment and she feels it is a prime example of what Council is hoping to achieve through implementation of that amendment.
- [54] However, the timing of the amendment adversely affected the engagement with the neighbours on this project. On August 26, 2019, the Mature Neighbourhood Overlay governing the subject lot, was removed, and with it the required consultation with the neighbours by the City before the Development Authority rendering a decision.

- [55] Ms. Bolen has been reaching out to the neighbours trying to initiate conversation ever since the August 26, 2019 amendment as shown in her correspondence (Attachment No. 4).
- [56] The Garneau Area Redevelopment Plan identifies this area, Sub Area 2, as having a lack of diversity in housing unit size and built form.
- [57] The proposed development is a stacked row house with a diversity of unit sizes. It is an alternative form of development, providing character to a street that is predominately walk-up apartments. Not only does it meet the objectives in the Area Redevelopment Plan, it also enhances the neighbourhood, it does not cause any hardship on existing homes or enjoyment of the neighbourhood, and it provides potential new residents with an adult or family-orientated housing option.
- [58] Ms. Bolen provided the following information in response to questions by the Board:
- a. The 0.7-metre Setback is referred to the plot plan provided by the Development Officer. The Development Officer referenced the cantilever portion for the variance. There is a cantilever but it is not part of the variance.
 - b. She is aware of the Appellant's concerns. She believes information provided at the appeal hearing will alleviate all the concerns of the Appellant.
 - c. She reiterated that she made attempts to contact the Appellant to discuss the proposed development.
 - d. In her opinion, the Appellant was not aware of what the side yard variance is.
 - e. The proposed development has minor variances that are not adjacent to the Appellant's home. The Appellant's line of sight will not be impacted by the projection of the proposed development.
 - f. With regard to parking, they have worked with Transportation Services and it has no objection to access from 80 Avenue which is a one way street.
 - g. She confirmed that there is no parking on 106 Street and no access.
 - h. There is a designated bike lane on 106 Street.
 - i. Vehicles backing out of the subject site will back into traffic and not a bike lane.
 - j. She contacted the Community League but has not received any response.
 - k. She is agreeable to all of the conditions imposed by the Development Officer on the approved permit.
 - l. She confirmed that some of the conditions were identified before the proposed development was approved.

- m. They will need to contact Transportation Services to install access to the site and the remaining conditions are part of the process.

iii) *Position of the Development Officer, K. Bauer*

- [59] The Development Authority did not appear at the hearing and the Board relied on Ms. Bauer's written submission.

Decision

- [60] The appeal is **DENIED** and the decision of the Development Authority is **CONFIRMED**. The development is **GRANTED** as applied for to the Development Authority.

Reasons for Decision

- [61] The proposed development, a four Dwelling Multi-unit Housing, is a Permitted Use in the (RA7) Low Rise Apartment Zone pursuant to section 210.2(9) of the *Edmonton Zoning Bylaw* (the "Bylaw").
- [62] Section 210.1 of the *Bylaw* states that the General Purpose of the (RA7) Low Rise Apartment Zone is to provide a Zone for low rise Multi-unit Housing.
- [63] The Appellant raised a number of concerns related to the required variances and other matters. The Board notes that as the proposed development is a Permitted Use in this Zone, it is only the variances required for the Front Setback, Landscaping buffer and parking that are subject to appeal.
- [64] In regard to the side variance noted as the Appellant's first concern, the proposed development does not require a variance on the side of the property abutting the Appellant's lot. The proposed development maintains a side yard of 2.158 metres which is well within the zoning requirements.
- [65] The Appellant has concern about the front variance. However, there is no evidence of concerns raised by the Development Authority and the 0.7-metre variance required is minimal.
- [66] On the Appellant's concerns about the facing of the development towards 80 Avenue rather than 106 Street and the impact of the development's back wall on her property, there is no variance required as to the facing of the development to 80 Avenue. Further, the finishing of the back wall and the addition of extensive landscaping mitigates the impact.

- [67] The Appellant's submission that the development adhere to heritage home and neighboring home rules to maintain the character of the neighbouring properties also does not involve a variance as the RA7 Zoning that applies to the entire area does not require such.
- [68] It is the Appellant's view that the driveways requiring backing onto 80 Avenue and the relaxation of the parking requirement by two spaces are unacceptable. Again, as the Development Authority has not raised traffic or safety concerns and parking is not permitted on the roadways where the proposed development is located, the relaxation of the parking requirement will not interfere with street parking.
- [69] Finally, in regard to the Appellant's concern with the height of the proposed development, as the height of the proposed development comes within the requirements of the *Bylaw*, no variance is needed and as such is not subject to appeal.
- [70] The Board's authority is set out in section 687(3)(d) of the *Municipal Government Act* (the "*Act*") which states:

In determining an appeal, the subdivision and development appeal board may make an order or decision or issue or confirm the issue of a development permit even though the proposed development does not comply with the land use bylaw if, in its opinion,

- (i) the proposed development would not
 - (A) unduly interfere with the amenities of the neighbourhood, or
 - (B) materially interfere with or affect the use, enjoyment or value of neighbouring parcels of land,and
- (ii) the proposed development conforms with the use prescribed for that land or building in the land use bylaw.

- [71] The Board is satisfied that the proposed development with the required variances satisfies the Board's test under section 687(3)(d) of the *Act* for the following reasons:
- a. The subject Site presents a number of practical difficulties for developing the property in accordance with the RA7 Zoning requirements. The lack of a back lane limits vehicle access to the Site and the protection of the existing boulevard trees limits options for siting of the garage and driveway.
 - b. The variance of the parking requirement to four from six on-site spaces per Section 54.2, Schedule 1(A)(1) of the *Bylaw* is reasonable given this is a walkable neighbourhood with convenient public transportation and bicycle lanes. The Board

- notes that had the developer developed two homes with secondary suites, which the Development Authority would not permit within this Zone, only four parking spaces would be needed. Further, parking on the subject Site can only be accessed from 80 Avenue.
- c. The Board acknowledges the Appellant's concerns that the proposed driveways would reduce on street parking spaces and would interfere with on-street parking. Based on the evidence submitted, parking is restricted in front of the subject Site and as such the relaxation for the proposed driveways will not impact on-street parking.
 - d. With regard to the landscaping variance, section 210.4(11) of the *Bylaw* requires a minimum 1.5 metres wide soft landscaping buffer within the north flanking Side Setback. The Development Officer approved a variance of 0.9 metres.
 - e. The Board recognizes the practical difficulties with the subject Site and the Applicant has taken steps to ameliorate any concerns by installing a fence and landscaping on the property. The Board is satisfied that the impact of the variance allowed for landscaping on the area or neighbouring property would be negligible.
 - f. Section 210.4(4) of the *Bylaw* requires the east Front Setback to be 4.5 metres. The Board finds that the evidence submitted shows that the minor variance of 0.7 metres will not have a negative impact on the neighbouring property.
 - g. The Board notes that the need for the minor variance to the Front Setback requirement arises in part because of a need to protect the boulevard trees that will contribute significantly to maintaining the character of the neighbourhood.
- [72] The Applicant referred to the Garneau Area Redevelopment Plan (the "ARP"). Sub-Area 2 states that there is a "lack of diversity in housing unit size and built form in the central and southern portions of the sub area." The Board finds that the proposed development meets the Plan's objectives to "maintain the existing built form character of the area...." And to "encourage alternate forms of development."
- [73] Policy Number 2.1 of the ARP provides that future residential development in sub-area 2 will involve a mix of housing types including Walk-up Apartments, Limited to four storeys....and Stacked Row Housing. The Board observes that the development as proposed contributes to achieving this policy.
- [74] No letters were received in opposition from neighbouring property owners or Queen Alexandra Community League other than the concerns of the Appellant.

[75] 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.

Gwen Harris, Presiding Officer
Subdivision and Development Appeal Board

CC: J. Sarauer
City of Edmonton, Development & Zoning Services, Attn: K. Bauer / A. Wen

Important Information for the Applicant/Appellant

1. This is not a Building Permit. A Building Permit must be obtained separately from Development & Zoning Services, 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 Development & Zoning Services, 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.