



**EDMONTON
TRIBUNALS**

*Subdivision &
Development
Appeal Board*

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Date: September 27, 2019
Project Number: 281221025-001
File Number: SDAB-D-19-148

Notice of Decision

- [1] On September 12, 2019, the Subdivision and Development Appeal Board (the “Board”) heard an appeal that was filed on August 19, 2019. The appeal concerned the decision of the Development Authority, issued on August 15, 2019, to refuse the following development:

Construct a Single Detached House with rear attached Garage, veranda, front and rear covered decks, front and rear balconies, fireplace, hot tub and Basement development (NOT to be used as an additional Dwelling)

- [2] The subject property is on Plan 3313EO Blk 1 Lot 7, located at 9517 - 99B Street NW, within the RF3 - Small Scale Infill Development Zone. The Mature Neighbourhood Overlay and Strathcona Area Redevelopment Plan apply to the subject property.
- [3] The following documents were received prior to the hearing and form part of the record:
- Copy of the Development Permit application with attachments, proposed plans, and the refused Development Permit;
 - The Development Officer’s written submissions;
 - The Appellant’s written submissions;
 - Revised plans submitted by the Appellant prior to the hearing starting;
 - Online responses; and
 - Nine letters from neighbouring property owners in support of the proposed development.
- [4] The following exhibits were presented during the hearing and form part of the record:
- Exhibit A – email from City of Edmonton Geotechnical Engineer

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*”).
- [8] At the outset of the hearing, the Presiding Officer indicated that revised plans were provided to the Board. The Presiding Officer asked Mr. Hammermeister to outline the revisions to the plans to determine if the Board will accept the plans or adjourn the hearing.
- i) *Position of the Appellant, Mr. E. Hammermeister, representing Graphtec Design & Consulting, who was accompanied by Mr. Johnston, the property owner*
- [9] In dealing with the Mature Neighbourhood Overlay, there have been changes in the process.
- [10] In the past, they were able to make changes to the plans to address the neighbours’ concerns and submit revised plans to the Development Officer but they are no longer able to do that.
- [11] The City sends letters directly to the property owners and receives feedback but does not share the information with the Appellant.
- [12] They were encouraged to contact the neighbouring property owners, which they did, and found out what their concerns were.
- [13] The plans were revised but the Development Officer would not review them, and they were told to appeal the decision to the Board.
- [14] In their opinion, they should have been able to submit revised plans for review.
- [15] They spoke to the Development Officer’s supervisor and the senior supervisor who advised them that the Development Officer should look at the plans, but she would not do that.
- [16] They were told that the Board has full authority to accept revised drawings, review them, and make a decision.
- [17] The landslide areas in the subject section of the riverbank were reviewed by a Geotechnical Engineer. They received a report indicating that 99B Street will be temporarily closed for construction in the area and it will be closed permanently.
- [18] Parking will be an issue with 99B Street closing.

- [19] They received an email from the Geotechnical Engineer informing them of the scope of work for the naturalization of 99B Street (marked Exhibit A).
- [20] They are concerned that if the Board does not accept the revised plans, they will not be able to reapply with plans that will benefit the property owner because of the closure of 99B Street.
- [21] There are two properties at the south end of 99B Street that do not have a road in the front of the properties.
- [22] Their only recourse is to appeal the refused development permit to the Board and to highlight the changes in detail.
- [23] Mr. Hammermeister reviewed the revised plans and outlined the changes to the Board.
- [24] The front staircase is being removed as a result of the closure of 99B Street. Further down the street, houses have rear accesses. Access to the house will only be through the rear lane. The front staircase was not included as part of Site Coverage.
- [25] The staircase was moved as a result of the change in the upper level. It will be moved approximately 8 feet into the rear of the house.
- [26] There will be an underground garage that will have access from the rear lane.
- [27] They received documentation from the City stating that the naturalization process will take place in 2020. This is the only access to the property during construction.
- [28] He confirmed that the balcony will be closed in and there will be no change in the Site Plans.
- [29] The side entry step is considered the platform structure and will be moved slightly to the east. The drainage will remain the same.
- [30] They submitted this plan to the surveying company for a new Plot Plan confirming the drainage will not be an issue.
- [31] The original refused Plot Plan was accepted by the Transportation Department. The only change is moving the staircase.
- [32] He referred to Page 12 of the plans showing the Roof Plan. A portion of the floor was projecting and intruding into the sight lines of the neighbouring property. The plans were revised to remove that portion to maintain sight lines for that neighbour. That will become a deck and privacy screening will be added to that portion.

- [33] He referred to Page 11 of the plans showing the Loft Plan. The removal and shifting of the glass elevator resulted in the need to move the staircase. The loft is now a balcony to address concerns from the neighbour two doors south of the subject Site.
- [34] They addressed the needs and comments of the neighbours.
- [35] The revised drawings were provided to the Safety Code department.
- [36] He referred to Page 10a of the plans showing the option for a future upper floor plan.
- [37] He referred to Page 10 of the plans showing the Upper Floor Plan. The balcony on the upper floor level was directly above the balcony at the main floor level. When the access was closed off at the lower level, they did the same thing at the upper level. This did not change the sight lines. The removal of the upper level living space to the balcony was recaptured on the main floor and upper floor. The rear balcony recaptured the living space.
- [38] He referred to Page 9 of the plans showing the Main Floor Plan. The front balcony has been enclosed and recaptured the living spaces. The elevator has moved which resulted in the adjustment to the staircase.
- [39] He referred to Page 8 of the plans showing basement / garage plan. There is no change to the foundation other than an internal change. There is no change to the footprint.
- [40] The elevator will be closer to the garage.
- [41] He referred to Page 7 of the plans showing the foundation plan and indicated that there will be no change to the footprint and location, with the exception to the elevator which will be moved.
- [42] He referred to Page 3 of the plan showing the front (west) elevation that faces 99B Street as it currently exists. The upper level shows the removed portion (balcony) of the loft and recaptured on the second and main floor.
- [43] Whether or not the balcony or massing is included in the Site Coverage, there will be no change.
- [44] He referred to Page 3 of the new revised plans. There are no neighbours north of the subject Site. The neighbour south of the subject Site has an application for the home to be demolished and a new home to be built. The number of windows on the side has been reduced.
- [45] The loft level is farther back which will reduce the massing for the neighbours. They are in support of this revision.

- [46] External finishing has not changed. Streetscape was not the primary concern of the Development Officer. The privacy screening was to the satisfaction of the Development Officer and has been maintained in the new drawings.
- [47] He referred to Page 4 of the plans showing the right (south) elevation. The area on the loft level which is highlighted in red has been removed. The area on the second and main floors will be enclosed and the stairwell has been moved.
- [48] He referred to Page 5 of the plans showing the rear (east) elevation. One balcony will be filled in at the second level. He showed the Board the difference between the two plans.
- [49] He referred to Page 6 of the plans showing the left (north) elevation showing the portion that was removed on the upper loft level and the balcony (east) on the second level that will be filled in. He showed the Board the difference between the two plans.
- [50] Mr. Hammermeister provided the following information in response to questions by the Board:
- a. With regard to privacy, he stated that there is no neighbour north of the subject Site and the neighbour to the south has made an application to demolish the house and rebuild on the property.
 - b. With regard to streetscape, he stated that all of the materials, privacy screening, and finishing will be the same.
 - c. In his opinion, the proposed development meets the requirements outlined in Section 814.3(15) of the *Edmonton Zoning Bylaw*.
 - d. The houses on the neighbouring properties are all different but have similar features. The proposed development will be characteristic of the neighbourhood.
- [51] Mr. Johnston, the property owner, stated that he purchased the property two years ago.
- [52] He was able to get to know his neighbours during the community consultation process.
- [53] He respects his neighbours and was happy to address their concerns.
- [54] The revision to the front of the house is because of the closure to 99B Street.
- [55] The Presiding Officer outlined the process in determining if the Board will accept the revised plans.
- [56] Mr. Hammermeister reiterated that if the Board does not accept the revised plans they will have to make a new application which will delay the development even longer.

Decision on Preliminary Matter

[57] The Board accepts the revised plans submitted by the Appellant.

Reasons for Decision on Preliminary Matter

[58] The Board is prepared to accept the revised plans and move forward with the hearing for the following reasons.

- a. Based on the evidence submitted, the revised plans do not affect the required variances.
- b. The Appellant outlined in detail the revisions to the proposed plans which allowed the Board to compare the revisions to the original plans.
- c. It became clear to the Board that the required variances from the original plans and the revised plans are identical.
- d. The Board in its ability to review revised plans made a determination that no other variances were required and that the original and revised plans are identical in that regard.
- e. When considering and accepting the revised plans, the Board relied heavily on the impact and acceptance of the revised drawings based on the Appellant's thorough community consultation with the affected neighbouring property owners.
- f. The changes to the plans accommodated the requests of the affected neighbours who provided electronic submissions in support to the revisions of the proposed development.
- g. The Board accepts an email from the Geotechnical Engineer submitted by the Appellant indicating that 99B Street will be closing permanently and will become a naturalized area with no front access to the subject Site by 2020.
- h. This in itself facilitated the need for some design changes which will have some impact on the ability to comply with Section 814.3(17) and 814.3(19).
- i. The Board is cautious when considering new revised plans that have not been reviewed by the Development Officer through the application process. However, the property owner made several attempts to have the Development Officer review the revised plans.
- j. The Board has some empathy for the inadequate ability for the City to review the revised plans.

Summary of Hearing

The Board allowed Mr. Maharaj to speak first as he was not able to stay for the whole hearing.

ii) Position of Affected Property Owners in Support of the Appellant

[59] Mr. Maharaj will be building a house immediately adjacent to the subject Site.

[60] In his opinion, the proposed development will fit in with the streetscape and the characteristics of the neighbourhood.

[61] Mr. Johnston has communicated with the neighbours to address any concerns.

[62] Mr. Maharaj provided the following information in response to questions by the Board:

a. He has reviewed the variances and the plans and understands why variances are required and that revisions needed to be done.

b. He confirmed that he has no concern with the variances required.

iii) Position of the Appellant, Mr. E. Hammermeister, representing Graphtec Design & Consulting

[63] Mr. Hammermeister referred to the submitted PowerPoint presentation.

[64] He has been working with Mr. Johnston since February 2018.

[65] The neighbourhood is within the Mature Neighbourhood Overlay and has its own unique characteristics.

[66] The Mature Neighbourhood Overlay encompasses land uses throughout the City.

[67] There was a roadway in front of the property when the design of the house was made.

[68] All of the properties will be required to have an underground garage to facilitate access to the property.

[69] It is not possible to build on this property without any variances. All of the adjacent properties will have more than one variance.

[70] In his opinion, the Development Officer's written submission stated that variances were needed for other properties on the block.

[71] He understood that variances would be required for Height, the garage, and rear setback.

- [72] He referred to a drawing in his submission showing the streetscape and the massing of the developments on the block.
- [73] He provided the Board with rationale for the required variances:
- a. To fully comply with the requirements of the *Edmonton Zoning Bylaw*, they would be limited and over shadowed by the adjacent homes and they are working with what everyone has worked with in regard to massing, Height, and Setbacks.
 - b. The lot size parameters and surrounding community necessitates the variances requested.
 - c. The massing, height and setbacks are consistent with neighboring properties that exist and those that are being proposed.
- [74] He provided the Board with the timelines during the application process:
- a. The property was purchased in November, 2017
 - b. Zoning Review & Design – February 2018
 - c. Owner Neighbourhood Review – May 2018
 - d. Permit Submittal – May 2, 2018
 - e. City Review Comments Received and Geotechnical Requirements Introduced
 - f. Geotechnical Study, Review, Re-Review & Approval – September 2018 to June 2019
 - g. City Authority Community Consultation - July 21 to August 14, 2019
 - h. Permit Refusal and Appeal – August 15 to September 12, 2019
- [75] He provided the Board with the information with drawing plans and amendments:
- a. Initial Permit Application – May 2, 2018
 - b. Amendment for Geotechnical Review – January 2019
 - c. Amendment No. 2 for Geotechnical Approval – June 17, 2019
 - d. Appeal Drawing Amendment – August 30, 2019
- [76] He provided the Board with the neighbourhood review:
- a. The property owner recognized the unique characteristics of the neighbourhood and potential variances that would be required.

- b. Mr. Johnston consulted with the neighbours on several occasions, before and at the time of design submittal.
- c. This was followed up by a City review in August, 2018 and again in July, 2019.
- d. Further consultation occurred after the permit refusal and comments were forwarded by the City, prior to the appeal.
- e. The goal was to propose a design that met the context of the neighbourhood but was also sensitive to neighbours' concerns.

[77] He provided the Board with information regarding the initial permit review:

- a. Based on May 2, 2018 Permit submittal.
- b. Revised July 10, 2018.
- c. The property owner was willing to work with Development Officer to make amendments as necessary.

[78] He provided the Board with information on the geotechnical requirements:

- a. Geotechnical requirements not previously identified in property title or zoning review.
- b. Requirements not identified in first Development Authority Review.
- c. Requirements only introduced in second Development Authority review after consultation with Geotechnical Department.

[79] He stated that when the property was purchased there was no restrictive covenant or any geotechnical concerns.

[80] He received an email from the Development Officer outlining additional variances and that more information may be required once engineering and transportations comments are received.

[81] He referred to the memo from Geotechnical Services on August 27, 2018:

.....however, the subject lot, Lot 7, as well as Lot 6, were not accounted for when the restrictive covenants were created for this neighbourhood.

Engineering Services would require that the applicant must supply specific geotechnical information to support this development proposal in order to address the relevant portions of Sections 14.1 and 811 of the *Edmonton Zoning Bylaw*.

- [82] Mr. Hammermeister highlighted a concern to Mr. Lach, Geotechnical Services as follows:
- a. Our question was not directly technical and not limited to this application only, as we are trying to determine the basis of Geotechnical requirements as identified in the land use bylaw and the City's Top of Bank Policy for this lot and similar ones where a road exists between a subject property and the top of bank.
 - b. With no identified encumbrance or restrictive covenant on title, and in reviewing the above noted bylaws pertinent to this lot, we felt we had completed due diligence in ascertaining the requirements. While we appreciate the information and requirements of a report that exists nearby, it was out of our known parameters and the requirements thereof were only made known after design, detailed drawings and our application had been in the city over a period of 6 months.
- [83] After receiving the memo, Mr. Johnston hired Shelby Engineering in January, 2019 to compile a Geotechnical Engineer to compile a report. Details as follows:
- a. Slope Stability Report recommends 21.5 metre setback.
 - b. Previous Report by the City recommends 25.0 metre setback.
 - c. Geotechnical Services subsequently requires a more detailed report that would refute the City Commissioned Report.
 - d. This is identified in a memo and through numerous discussions, the parameters thereof become even more encumbering to the owner.
 - e. It is determined the cost and time frame for this exceeds what the owner could reasonably accommodate, and therefore further drawing amendments are required.
- [84] The onus was on them to provide a report which added costs and delayed the process for Mr. Johnston.
- [85] He referred to the Geotechnical Amendments:
- a. Shelby Engineering amends the report to be in line with City requirements and to meet approval.
 - b. Graphtec Design amends the Drawing Plans to meet the new Geotechnical setbacks.
 - c. These amendments result in further variance changes to setbacks, height, and access points such as required stairs and driveway slope.

- [86] He referred to an email received from Transportation, Ms. K. Haromy:
- a. The sloped driveway must be entirely located within the private property. No portion of the sloped driveway or any retaining walls will be permitted within legal road right-of-way. It appears that both of these encumbrances remain. Either option is not supported.
 - b. An increased slope within the property of up to 12 percent would be accepted.
- [87] He confirmed that the slope of the driveway will be 11 percent which is supported by Transportation.
- [88] He referred to an email from the Development Officer, Ms. K. Bauer:
- a. Community Consultation was sent out in August 2018. If there have been any changes to Mature Neighbourhood Overlay variance requests (more) that were not addressed from this document, a new Community Consultation period must occur.
- [89] He referred to the Community Consultation in his submission:
- a. The Development Authority confirms further changes as result of the increased setback requirement by Geotechnical Services and requires another Community Consultation.
 - b. The owner also conducted further consultation with the neighbours to identify these changes.
 - c. The comments were made available by written format for the Development Authority without opportunity to address their comments directly or interact with neighbours.
 - d. The application was refused after the consultation process.
- [90] Mr. Johnston outlined the revisions to the neighbours as outline in the submission:
- a. This increase is required to satisfy top of bank geotechnical setback of 25 meters. The front of the house will closely align with the adjacent homes.
 - b. This decrease is again to satisfy the required top of bank geotechnical setback of 25 meters. Again, the rear of the home will closely align with the adjacent homes.
 - c. The height has also been increased due to the 25-meter top-of-bank setback. This has forced the house slightly higher out of the ground to accommodate the required driveway slope over a shorter distance.
 - d. We are marginally over this height because of the front setback and grading, and therefore this is noted as a variance.

- e. We are permitted 40.0 percent to 40.5 percent Site Coverage, the inclusion of the steps has increased this to 41.3 percent.
- [91] He referred to his submission and the comments received from Ms. Bauer on August 15, 2019:
- a. I have just refused the above application. From the Community Consultation period there were three inquiries / comments:
 1. One in support, one non-support, and one no comment (they wanted more info)
 - b. Comments
 - Strong support for the variances and believe the design will fit into the block.
 - Concern with the design blocking views.
 - Do not support the variances to building height / setbacks.
- [92] He referred to the Appeal Process in his submission:
- a. After the application was refused, the decision was appealed.
 - b. During this time and while preparing for appeal, the property owner became aware of the concerns of an adjacent neighbour.
 - c. They engaged in discussion as to potential amendments to design and were able to come to an equitable solution.
 - d. The changes are identified in the existing drawings as per attached marks in Red.
- [93] He referred to the letter that was provided to the neighbouring property owners that provided them information regarding the construction and the naturalization planned in 2020.
- [94] He referred to his submission showing the front setback on each of the lots.
- [95] With regard to the elevation, a surveyor established they were working with Transportation for a 12 percent slope. The house is slightly higher but will be consistent with the characteristics of the neighbouring properties.
- [96] The rear underground garage is important due to the closure of 99B Street.
- [97] They have a verbal agreement with the Old Timers Cabin to use their parking lot for over flow parking if there is no function taking place at the cabin.
- [98] The massing of the development will affect the most adjacent neighbour to the south who is in support of the proposed development.

[99] The Development Officer acknowledged that there was a hardship to the site due to the proximity of the North Saskatchewan River Valley.

[100] Mr. Hammermeister referred to the Final Drawings in his submission.

- a. These Drawings represent further amendments made as result of interaction with neighbours after the appeal was started.
- b. They eliminate the issue raised during community consultation of blocking a loft level view.
- c. The neighbour has provided an email of support confirming this as a more suitable solution.
- d. Further, in compliance with subsection (ii) the proposed development conforms with the use prescribed for that land or building in the land use bylaw.
- e. The privacy of the Community Consultation process did not give opportunity for direct consultation previously.
- f. The variances for this drawing with the amendments remain the same as those for which the appeal was filed.
- g. The Development Authority would not permit a resubmittal of these plans once the decision of a refusal was issued as there is a 6 month moratorium on resubmittal of a refused application.
- h. These plans represent another positive step to an equitable solution in the process as they more satisfactorily meet the approval of the neighbours.

[101] Mr. Johnston referred to the parking and reiterated that parking at the Old Timers Cabin can be used for overflow parking.

[102] They have revised plans and worked with the neighboring property owners to address any concerns.

[103] In their opinion, the proposed development will not affect the use and enjoyment of neighbouring properties.

[104] Mr. Hammermeister and Mr. Johnston provided the following information in response to questions by the Board:

- a. They confirmed that there is no restrictive covenant on the property.
- b. The front 8.1 metres is based on the adjacent street setback.
- c. The building envelope is restricted by the Site Coverage.

d. The Slope Stability Report recommended a 21.5 metre Setback.

[105] Pushing the house building back did not change the variances.

[106] The variance in Height, Front Setback, and Platform structure is due to where the front of the house needs to be.

[107] The variances are still the same but the development is scaled differently.

[108] It is not possible to have a rear detached garage due to the size and slope of the lot.

[109] They are agreeable to the suggested conditions of the Development Officer.

iv) Position of the Development Officer, Ms. Bauer

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

Decision

[111] 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 development is approved in accordance with the revised plans submitted on September 12, 2019.
2. WITHIN 14 DAYS OF APPROVAL, prior to any demolition or construction activity, the Applicant must post on-site a development permit notification sign (Section 20.6).
3. Landscaping shall be installed and maintained in accordance with Section 55 and 811.3(7).
4. Frosted or translucent glass treatment shall be used on windows to minimize overlook into adjacent properties (Reference Section 814.3.8).
5. On site development shall be in accordance with the Development Restrictions as set out by Shelby Engineering and to the satisfaction of the Development Officer.
6. The Applicant shall be prohibited to have above or underground sprinklers or irrigation systems (811.3(6)(a)).

7. The Applicant shall be prohibited to have roof leaders, downspouts and sump pump discharge spouts that discharge into or onto the ground (811.3(6)(b)).
8. The colours and finishing materials on all facades shall comply with the stamped and approved elevation plans (Reference Section 814.3.15).

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

1. The maximum allowable Front Setback of 8.1 metres pursuant to section 814.3(1) is varied to allow an excess of 0.5 metres, thereby increasing the maximum allowed Front Setback to 8.6 metres.
2. The minimum allowable Rear Setback of 13.8 metres, that being 40 percent of Site Depth pursuant to Section 814.3(4) is varied to allow a deficiency of 6.5 metres, thereby decreasing the minimum allowed Rear Setback to 7.3 metres.
3. The maximum allowable building Height of 8.9 metres pursuant to section 814.3(5) is varied to allow an excess of 4.4 metres, thereby increasing the maximum allowed Height to 13.3 metres.
4. The maximum allowable building Height of 9.3 metres (to top of parapet) pursuant to section 52.1(b) is varied to allow an excess of 4.0 metres, thereby increasing the maximum allowed Height to 13.3 metres.
5. The maximum allowable projection for a platform structure and unenclosed steps pursuant to Section 44 is waived as per the submitted stamped revised plans.
6. The prohibition that rear attached Garages shall not be allowed pursuant to Section 814.3(19) is waived.
7. The maximum allowable Site Coverage pursuant to section 140.4 is waived.

Reasons for Decision

[113] The proposed development, a Single Detached House, is a Permitted Use in the RF3 Small Scale Infill Development Zone.

[114] The Board grants the required variances for the following reasons:

- a. The Board finds that the proposed development is consistent with the General Purpose of the Mature Neighbourhood Overlay as it is characteristic of this neighbourhood.

- b. While not all the variances are eliminated, a majority of them would be reduced had the Appellant not been required to comply with the North Saskatchewan River Valley Overlay that set the Front Setback 25 metres as outlined in the Geotechnical report.
- c. Notwithstanding this requirement, the Appellant pursued and received their own Geotechnical Report that should have allowed them to reduce that Front Setback to 21.5 metres. The analysis by the property owner in having their report accepted by the City is that it would have created substantial costs and added to the timeframe for it to be approved.
- d. This particular need to comply with the 25 metre Setback contributed to the majority of the variances.
- e. It has done so by the need to set the home further back in the yard having an effect on the Rear Setback, the overall Height of the structure and Front Setback, Platform Structure, and Site Coverage.
- f. Based on the evidence submitted and with the Development Officer's written submission, it was found that many of the homes in the area have received similar variances in both numbers and amounts.
- g. This particular design is very typical of this neighbourhood.
- h. This particular property went through the required Community Consultation process and the decision was rendered after the initial process.
- i. Subsequent to that, a further and direct review was done with the neighbours and from that changes were made and revised drawings created. These were a direct result of the Appellant ensuring the development was acceptable to the neighbourhood.
- j. The Board was presented with information provided by the City Transportation Department indicating that 99B Street will be closed in the spring of 2020.
- k. This was identified to the property owners subsequent to the initial drawings being completed and submitted and, through this process, further amendments and revisions were needed to the drawings and are now part of the new revised drawings.
- l. The closure of 99B Street in front of the property will eliminate on street parking and puts more importance that off street parking being provided in the rear, and helps justify the Board waiving the prohibition of attached rear garages.
- m. The Board cannot consider a hardship as its test but determined there is some hardship in being able to develop on the subject Site.
- n. The Board has received significant neighbourhood support in particular the most affected neighbour to the south.

- o. One letter was received in opposition to the proposed development but then later supported the revised plans.
- p. 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.

Mr. V. Laberge, Presiding Officer
Subdivision and Development Appeal Board

Board Members in Attendance:

Ms. G. Harris; Mr. J. Kindrake; Ms. M. McCallum; Ms. L. Delfs

CC: City of Edmonton, Development & Zoning Services, Attn: Ms. K. Bauer / Mr. 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.



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SDAB-D-19-149

Application No. 316044404-001

An appeal change the use from General Retail Stores to Cannabis Retail Sales was **TABLED TO OCTOBER 2 or 3, 2019.**



**EDMONTON
TRIBUNALS**

*Subdivision &
Development
Appeal Board*

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Date: September 27, 2019
Project Number: 309777592-001
File Number: SDAB-D-19-150

Notice of Decision

- [1] On September 12, 2019, the Subdivision and Development Appeal Board (the “Board”) heard an appeal that was filed on July 27, 2019. The appeal concerned the decision of the Development Authority, issued on July 9, 2019, to approve the following development:

To construct an Automotive and Minor Recreation Vehicle Sales/Rental and Automotive and Equipment Repair Shop addition to an existing building, change the Use of an existing building to an Automotive and Minor Recreation Vehicle Sale/Rental, and to construct interior and exterior alterations (marine dealership).

- [2] The subject property is on Plan 4241MC Lot D, located at 7404 - Meridian Street NW, within the (IB) Industrial Business Zone. The Maple Ridge Industrial 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 with conditions;
- The Development Officer’s written submissions;
- A revised written submission from the Development Officer; and
- The Appellant’s written submissions.

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

- Exhibit A – Documentation from the City of Edmonton.

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 appearances and no one objected.
- [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. P. Begoray:

- [8] Based on a review of the revised submission of the Development Officer it appears that the Development Authority is recommending that the two sanitary servicing assessments should not be applied to this Development Permit because the subject site does not have access to the sanitary sewer system. The storm servicing assessment does not apply because drainage from the subject site enters into provincially owned lands and does not utilize the City’s infrastructure.
- [9] The subject site is located within the “Maple Ridge & South East Industrial” Catchment of the Arterial Roads For Development Bylaw 14380, Schedule K and accordingly, the Arterial Roadway Assessment (“ARA”) is payable on this Development Permit.
- [10] A map was referenced to confirm the location of the site which is adjacent to Anthony Henday Drive. The service road to the east is Meridian Street and 76 Avenue is located north of the subject site. Both of these roads were developed by the provincial government and are on provincial land.
- [11] The subject site is isolated from the remainder of the subdivision and the City did not pay for the adjacent roadways.
- [12] Mr. Begoray acknowledged that he is responsible to pay his fair share of the ARA but it needs to be assessed fairly. There are no curbs, gutters or sidewalks in this area.
- [13] A map was referenced to illustrate that the narrow strip of land located north and east of the site is owned by the Province and not the City. He had to obtain permission from the Province to drain into the adjacent ditch.
- [14] It was his opinion that because of this situation, the ARA should be reduced by 50 percent.
- [15] A map was referenced to illustrate the location of an old sewage lagoon that is located in the southwest corner of his property. Much of his property will be undevelopable because of the location of the lagoon and drainage ditches. It was his opinion that the ARA should not be assessed on this portion of the property.

- [16] The Presiding Officer clarified that drainage issues are outside the purview of the Board and that the amount of the ARA was calculated on 1.6 hectares of land, based on the development area identified on the site plan that was submitted with this development permit application.
- [17] Mr. Begoray would like to leave the fence on the property line until the Province completes their landscaping requirements in order to protect his site.
- [18] In summary, he would like the ARA reduced by 50 percent because his site is serviced by roadways that were built by the Province on land owned by the Province and movement of the fence deferred until the landscaping on the adjacent provincial land is complete.
- [19] Mr. Begoray provided the following information in response to questions from the Board:
- a) The ARA should be reduced because the majority of the roads in and around his property were built and paid for by the Province.
 - b) The ARA should be reduced but at a rate applied to the entire site not just the portion of the site to be developed.
- [20] The Presiding Officer clarified that the ARA is governed through Bylaw 14380 and is administered according to the direction set out in City Policy and Procedure C507 which may be outside of the mandate of the Board.

ii) Position of an Affected Property Owner, Mr. K. Sparrow

- [21] Mr. Sparrow owns the abutting site and questioned how the ARA fees are calculated and applied.

iii) Position of the Development Officer, Mr. P. Adams and Mr. D. Young, City of Edmonton, Development Servicing Agreements:

- [22] EPCOR is not part of the development permit review process but they did confirm after the appeal was filed that they provided a response to the Appellant that was contested as part of the appeal. Their response was that drainage to the natural area located south of the site was not permitted and that he should seek permission from the Province to drain storm water from the site into the Provincial drainage system along Anthony Henday Drive.
- [23] After discussions with EPCOR and the Appellant, it was determined that the sanitary servicing assessments should not be applied to this Development Permit at this time because the subject site does not have access to the sanitary sewer system. The storm servicing assessments should not be applied because drainage from the subject property enters into provincially owned lands and does not utilize the City's infrastructure. These

assessments have been deferred to future development if these services become available to the site in the future. These assessments are no longer being pursued as part of the Servicing Agreement.

- [24] The Assessment costs were applied based on the amount of land that is being developed as part of this development permit application. The ARA assessment is only being charged to just over 44 percent of this site. The City's Drainage Assessment agreed with that.
- [25] Mr. Adams indicated that some of the charges were not being pursued at this time, as demonstrated by the revisions to the charges submitted to this Board this morning. However, the Applicant would still be required to pay the assessed ARA charges prior to the issuance of the building safety codes permit. If the Board is contemplating altering this, a postponement would be required to obtain a legal opinion over whether this Board has that authority, and to allow the City Solicitor to attend the hearing.
- [26] It was Mr. Adams' opinion that the landscaping issue raised by the Appellant is more of an inspection issue than a problem with the development permit. It is his understanding that the Appellant wants to comply with the landscaping plan that was approved as part of this application but that the inspection may need to be delayed because of concerns with the implementation of the landscaping plan. That matter can be discussed with the City to determine the best way to proceed with that process.
- [27] Mr. Young provided a written submission, marked *Exhibit A*, to explain the ARA for this catchment area. An ARA is a cost sharing mechanism to pay for the major arterial roads in an area, especially in newer areas. The City does not upfront the cost to develop the roadways. In the Maple Ridge subdivision the costs to develop the major arterial roads are being up fronted by private developers. The ARA program was established as a means to have all property owners in an area to share in the costs of roadway development. The monies collected do not come to the City itself. They are dispersed to the developers who are up fronting the costs to develop the roads.
- [28] The ARA rate for this site is established by City Policy C592, Clause 5.3. A 25 percent reduction has been applied to this site in accordance with City Policy C592, the Industrial Infrastructure Cost Sharing Program which was designed "to assist in financing large municipal infrastructure in industrial areas, and to ultimately encourage the servicing and development of industrial land which provides an increased tax assessment base, employment, and other economic spinoffs". In an industrial area like this the City helps the smaller business owners by providing a 25 percent reduction and this money comes from the larger developers. The 2019 ARA rate for this site should be \$107,579.00 per hectare but it has been reduced by 25 percent to \$80,115.00 per hectare.
- [29] The monies collected through the ARA are not for 76 Avenue or Meridian Street. The roads that are being cost shared as part of the ARA are 17 Street, 34 Street and Roper Road. The \$80,115.00 per hectare collected from the Appellant will be used to pay for the construction of these three roadways, not 76 Avenue or Meridian Street.

- [30] Mr. Young stated that if the Appellant is asking the Board to both reduce the ARA by 50 percent and postpone payment of the reduced amount until other portions of the property are developed, or have the assessment waived altogether, it would result in a slightly higher assessment for every other property owner in the area.
- [31] Mr. Adams reiterated that if the Board were to consider reducing the ARA, a postponement would be requested to obtain a legal opinion and have Counsel from the City Solicitor's Office to attend.
- [32] Mr. Adams and Mr. Young provided the following information in response to questions from the Board:
- a) The roads included in the ARA as specified in the Bylaw are 34 Street, 17 Street and Roper Road.
 - b) The *City of Edmonton Charter*, 2018 Regulation Alta Reg 39/2019 ("*City of Edmonton Charter*") references section 648 of the *Municipal Government Act* and specifically authorizes the collection of offsite levies to a Development Permit.
 - c) The condition as applied to the development permit is that the Servicing Agreements be entered into prior to release to the building safety codes which mean that a building permit cannot be issued until they are paid.
 - d) The City Solicitor was consulted regarding the application of section 648(1) of the *Municipal Government Act*.
 - e) The levy only applies to the portion of the site that is included in this development permit application. If the remainder of the site is developed in the future it will be assessed and a similar condition imposed at that time.
 - f) There is no provision in the ARA for a graduated fee schedule. Policy C592 was created after Arterial Roads for Development Bylaw 14380 was adopted to facilitate development in industrial areas. This policy allows the City to defer property tax revenue from newly constructed industrial facilities in industrial areas towards developers who are constructing arterial roads. This Policy allows reduced rates to be applied.
 - g) The *City of Edmonton Charter* amends but does not replace section 648 of the *Municipal Government Act*. It provides clarity on how to assign the levies.
 - h) There is a provision to allow a staged payment of the assessments in a Development Agreement but the Applicant is required to provide Security.

- i) Mr. Adams indicated that he would have to seek legal advice regarding the *City of Edmonton Charter* and the applicability of section 648(1) of the *Municipal Government Act*.
- j) The fence is part of the approved site plan and landscaping plan and the date of inspection could be deferred by the Board.

iv) *Rebuttal of the Appellant:*

- [33] Mr. Begoray questioned why the Board cannot deal with the ARA fees. It was his opinion that the Board can determine whether or not these fees should be paid now.
- [34] The ARA fees should be reduced because the roads identified do not connect to his site. He questioned why a further reduction could not be applied since the fees have already been reduced by 25 percent.
- [35] His only concern is the timing of the fence removal. The fence is required to protect his site and landscaping from the adjacent provincial land that has not yet been landscaped. It would be fair to require the landscaping securities and removal of the fence within 18 months from the date on which the Province completes their landscaping.

Decision

- [36] The appeal is **ALLOWED IN PART** and the decision of the Development Authority is **VARIED**. The development is **GRANTED** as approved by the Development Authority with the following **AMENDMENTS** to the **CONDITIONS**:
 - 1. **The sanitary servicing assessments and storm servicing assessments are removed from the approved Development Permit per the City's revised written submission.**

Reasons for Decision

- [37] An Automotive and Equipment Repair Shop is a Discretionary Use in the (IB) Industrial Business Zone, pursuant to section 400.3(3) of the *Edmonton Zoning Bylaw*.
- [38] An Automotive and Minor Recreation Vehicle Sales/Rentals is a Discretionary Use in the (IB) Industrial Business Zone, pursuant to section 400.3(4) of the *Edmonton Zoning Bylaw*.
- [39] The Development Authority reviewed the proposed assessments to ensure compliance with the *Municipal Government Act*. Upon review, it was determined that neither the sanitary servicing assessments nor the storm servicing assessments should be applied to this Development Permit.

[40] As such, the Board has removed this condition from the approved Development Permit.

[41] The subject site is located within the Maple Ridge Industrial Area Structure Plan.

[42] Section 6.6 of the Maple Ridge Industrial Area Structure Plan states that:

Lands within the ASP will be subject to Arterial Roadway Assessments (ARA) pursuant to the Arterial Roads for Development Bylaw 14380, or to the policies and bylaws regarding arterial roadways in place at the time of development to cost share the construction of arterial roadway facilities needed to service the area. In general terms, the ARA outlines the developer's responsibility of arterial roadway construction within the catchment area and is based on the estimated and actual costs of constructing arterial roads required for access to a catchment area.

[43] The Arterial Road Assessment is payable pursuant to section 648 of the *Municipal Government Act* and Bylaw 14380.

[44] Section 648.1(1) of the *Municipal Government Act* states:

Any person may, subject to and in accordance with the regulations, appeal any of the provisions of an off-site levy bylaw relating to an off-site levy for a purpose referred to in section 648(2.1) to the Municipal Government Board [...]

However, the *City of Edmonton Charter* states the following:

(35.1) Subject to subsection (35.2), section 648 of the Act is to be read as follows:

Off-site levy

648(1) The council for the City may by bylaw

(a) provide for the imposition and payment of a levy, to be known as an off-site levy, in respect of land that is to be subdivided, developed or redeveloped,

...

(35.4) Section 648.1 of the Act does not apply to the City.

The Board is bound by this legislation and does not have the authority to amend or change the area designated for the assessment calculation or vary the amount of the levy.

[45] Based on the evidence provided, the removal of the fence is part of the approved Site Plan and Landscaping Plan. An extension to the inspection date will be addressed through the Inspections Section Branch.

[46] Based on all of the above, the appeal is allowed in part.

Mr. V. Laberge, Presiding Officer
Subdivision and Development Appeal Board

Board Members in Attendance: Ms. G. Harris; Ms. L. Delfs; Mr. J. Kindrake; Ms. M. McCallum

c.c: City of Edmonton, Development & Zoning Services, Attn: Mr. P. Adams / Mr. H. Luke
City of Edmonton, Development Servicing Agreements, Attn: Mr. D. Young

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.