



**EDMONTON
TRIBUNALS**

*Subdivision &
Development
Appeal Board*

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Date: September 30, 2016
Project Number: 179517128-004
File Number: SDAB-D-16-226

Notice of Decision

- [1] On September 15, 2016, the Subdivision and Development Appeal Board heard an appeal that was filed on **August 23, 2016**. The appeal concerned the decision of the Development Authority, issued on August 15, 2016 to refuse the following development:

Construct exterior alterations (Driveway extension 4.26m X 6.28m) to an existing Single Detached House - existing without permit.

- [2] The subject property is on Plan 7922954 Blk 89 Lot 77, located at 1819 - 151 Avenue NW, within the RF1 Single Detached Residential Zone. The Fraser Neighbourhood Area Structure Plan applies to the subject property.
- [3] The following documents were received and form part of the record:
- A Development Permit Application, including the plans, photographs, and signatures of support for the proposed development;
 - The Refused Development Permit; and
 - The Development Officer's written submission.
- [4] The following exhibits were presented during the hearing and forms part of the record:
- Exhibit A – Photographs of the subject site submitted by the Appellants;
 - Exhibit B – Photographs of other properties submitted by the Appellants; and
 - Exhibit C – An e-mail in opposition to the proposed development from a neighbour.

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 Board determined 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, Mr. D. McCartney and Ms. K.D. Porteous-McCartney

[8] Mr. McCartney and Ms. Porteous-McCartney indicated that the concrete extension was poured in 2009 and their House was built in 1980.

[9] There are several vehicles parked along the street and neighbours with multiple vehicles prefer to park on the street rather than park in tandem.

[10] They could not find any restriction to extending the concrete Driveway on their property at the time it was poured.

[11] The concrete extension allows more space for garbage and snow removal.

[12] They indicated that approximately a year ago they received a complaint from the City that their property was storing too many vehicles.

[13] To comply with the violation notice, they removed some vehicles from their property.

[14] Once they complied, the Bylaw Officer issued a notice to apply for a Driveway extension permit.

[15] They canvassed the neighbourhood and received signatures of support for their concrete extension and Front Yard.

[16] They referenced photographs of their property (*Exhibit A*) to show the existing Front Yard landscaping.

[17] They indicated the Front Yard has Kentucky blue grass, trees, flower beds, and decorative ornaments and they have received many compliments from their neighbours about their landscaping.

[18] They stated that they have never parked vehicles on their landscaped Front Yard.

[19] They referenced several photographs of other properties in the surrounding neighbourhoods (*Exhibit B*) to demonstrate that other Front Yards are completely paved, some properties store RVs on their grass, and other Driveways are dilapidated.

[20] In their opinion, their concrete extension is characteristic of the neighbourhood.

- [21] In their opinion, their development is clean and made of high quality that blends with their landscaping.
- [22] They clarified that there are several new houses in the neighbourhood that are 10 to 15 years old that have entirely paved Front Yards.
- [23] They were unsure whether or not these properties with entirely paved Front Yards had permits.
- [24] In their opinion, their concrete extension should be considered legally non-conforming since the *Edmonton Zoning Bylaw* Driveway regulations were amended in 2011.
- [25] With respect to questions from the Board, Mr. McCartney and Ms. Porteous-McCartney provided the following:
- a. The concrete extension is used to park vehicles.
 - b. Neighbours do not park in front of their concrete extension.
 - c. 5 vehicles are stored on their property.
 - d. The Driveway with the concrete extension can potentially accommodate 7 to 8 vehicles.
 - e. The existing double detached Garage currently provides space for 1 vehicle and storage.

At this point, the Board Officer stated that an e-mail was submitted from an adjacent neighbour (*Exhibit C*) and copies were provided to the Board and the parties in attendance. The Presiding Officer clarified that the Appellants could reference the e-mail in their Rebuttal.

ii) Position of the Development Officer, Ms. S. Watts

- [26] Ms. Watts stated that her main concern was that the Driveway and concrete extension could potentially accommodate at least 8 parking spaces.
- [27] She indicated that she sympathizes with the Appellants; however it was her opinion, most of the other properties referenced in *Exhibit B* do not have permits.
- [28] She indicated that developments do not attain legal non-conforming status if they are existing without permits.
- [29] She confirmed that prior to 2011, permits were still needed for Driveway extensions and parking was not allowed on required Front Yards.

- [30] With regard to the signatures of support submitted, she commended the Appellants for conducting a Community Consultation.
- [31] In her opinion, this concrete extension is a major infraction. If it was deemed a minor infraction she would consider the signatures of support.
- [32] She clarified that the Driveway leading directly from the roadway to the Garage was not an issue and complies with the *Edmonton Zoning Bylaw*.
- [33] She referenced the Site Plan to indicate the highlighted portion that was noncompliant.
- [34] She referenced an aerial photograph in her submission and demonstrated that 6 vehicles were parked on the subject site and Single Detached Housing requires space for 2 vehicles.
- [35] With respect to questions from the Board, Ms. Watts provided the following:
- a. She reiterated that parking was prohibited in the required Front Yard in 2009.
 - b. Her Department's direction is not to grant variances for Driveway extensions in the required Front Yard.
 - c. She did not know if Bylaw Enforcement was targeting this neighbourhood.
 - d. She could not say whether this concrete extension was characteristic of the neighbourhood and stated that she was only reviewing this particular compliance issue.
 - e. In her opinion, the concrete extension would have a negative impact on the neighbourhood and there is too much concrete in the Front Yard. In her opinion, allowing the development could lead to a "concrete jungle effect."
- [36] She stated that allowing an excess of concrete could create drainage issues.
- [37] She stated if the concrete extension remained, she would condition the extension to include landscaping such as planters, shrubs, or trees to prevent parking in the Front Yard on the extension.

iii) Rebuttal of the Appellants

- [38] With regard to the e-mail in opposition to the concrete extension, they indicated that their neighbour is a renter and has lived in the neighbourhood for only 3 months.
- [39] In their opinion, their neighbour is more concerned about on-going construction in the area.

- [40] They clarified if they knew the concrete extension was not allowed, they would have not installed it.
- [41] In their opinion, the variance of the extension is minimal.
- [42] They indicated the City should not determine how many vehicles each household can store on their property.

Decision

- [43] The appeal is **DENIED** and the decision of the Development Authority is **CONFIRMED**. The development is **REFUSED**.

Reasons for Decision

- [44] The proposed development is Accessory to a Permitted Use in the RF1 Single Detached Residential Zone.
- [45] The Board when considering this Appeal, dealt with this property specifically. The existing property has a long Driveway that leads from the roadway along the side of the Principal Dwelling and on into the Rear Yard up to a double detached Garage. Without the extension, the existing Driveway and double rear detached garage can accommodate up to 6 or 7 parking spaces, an amount far in excess of the required two off street parking spaces.
- [46] Section 54.1(5) of the *Edmonton Zoning Bylaw* states:

The Driveway shall lead directly from the roadway to the required Garage or Parking Area.

Section 54.2(2) of the *Edmonton Zoning Bylaw* states the following with regard to Location of Vehicular Parking Facilities:

- e. Except as otherwise provided for in this Bylaw, parking spaces, not including Driveways, that are required in accordance with the minimum standards of this Bylaw shall be located in accordance with the following:
 - i. parking spaces shall not be located within a Front Yard [...].

- [47] The extension does not lead directly to the Garage, it covers a significant portion of the Front yard directly in front of the Principal Dwelling blocking it from view and giving the Front Yard the appearance of a parking lot. The Appellants are also seeking permission to continue to use this portion of their Front Yard adjacent to their existing Driveway as an additional Parking Area which they will access by crossing the curb and sidewalk directly in front of their House.
- [48] Notwithstanding the community support and photographic evidence that other wide Driveways and Parking Areas may exist in the general neighbourhood and elsewhere in the city, the Board notes that there was no evidence provided to indicate the legal status of those particular developments or enforcement of similar developments in the area. The Board also notes that several examples were located at a great distance from the Appellants' property and were less relevant to the issue of potential impact on the more proximate neighbouring properties.
- [49] Based on photographic evidence, this is the only site with a rear detached Garage with both a single car access Driveway and concrete extension in the required Front Yard. Therefore the Board finds that this Driveway layout and proposed concrete extension is not characteristic of Driveways located on either side of the street along this particular block, nor of the immediate neighbourhood.
- [50] The Board notes that if the concrete extension were to remain and to continue to be used by the property owners for two parking spaces it would remove at least 1 available on-street parking space.
- [51] The Board accepts the evidence from the Development Officer that a Landscaped Front Yard was required prior to 2011, vehicles were not allowed to park on the required Front Yard and monolithic concrete is not considered Landscaping.
- [52] Based on the above, the Board finds that the proposed development will unduly interfere with the amenities of the neighbourhood, and will 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

Important Information for the Applicant/Appellant

1. This decision may be appealed to the Alberta Court of Appeal on a question of law or jurisdiction under section 688 of the *Municipal Government Act*, RSA 2000, c M-26. If the Subdivision and Development Appeal Board is served with notice of an application for leave to appeal its decision, such notice shall operate to suspend the Development Permit.
2. When a decision on a Development Permit application has been rendered by the Subdivision and Development Appeal Board, the enforcement of that decision is carried out by the Sustainable Development Department, located on the 5th Floor, 10250 – 101 Street, Edmonton.



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Date: September 30, 2016
Project Number: 225465805-001
File Number: SDAB-D-16-227

Notice of Decision

- [1] On September 15, 2016, the Subdivision and Development Appeal Board heard an appeal that was filed on **August 23, 2016**. The appeal concerned the decision of the Development Authority, issued on August 19, 2016 to refuse the following development:

Erect a Fence at 1.83 m in Height in the Front Yard facing 111 Street NW along 12.85 m of the west lot line.

- [2] The subject property is on Condo Common Area (Plan 1520868), located at 11026 - 108 Avenue NW, within the RA7 Low Rise Apartment Zone. The Medium Scale Residential Infill Overlay and the Central McDougall / Queen Mary Park Area Redevelopment Plan apply to the subject property.

- [3] The following documents were received and form part of the record:

- A Development Permit Application, including the plans and a photograph;
- The Refused Development Permit;
- The Development Officer's written submission;
- The Appellant's written submission with signatures of support and photographs; and
- A letter of opposition from an affected condominium owner.

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

- Exhibit A – An additional signature of support from a neighbour and signature of support from the Director at Large of the Queen Mary Park Community League.

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 Board determined the appeal was filed on time, in accordance with section 686 of the *Municipal Government Act*, RSA 2000, c M-26.
- [8] The Board Officer clarified that the Fence regulations in the *Edmonton Zoning Bylaw* were amended after the written decision of the Development Officer was issued. However, the variance for this proposed Fence remained the same.

Summary of Hearing

i) Position of the Appellant, Mr. M. Cote

- [9] Mr. Cote stated that the main issue for the extended Fence height is safety and to deter people from entering his family's property.
- [10] In his opinion, a 1.2 metre high Fence is not sufficient, because it is easy to climb.
- [11] To address concerns from his neighbours, he will ensure that the Fence is aesthetically pleasing and will blend in with the existing Fence.
- [12] With regard to the proposed Fence disrupting sightlines for vehicles at the abutting intersection, in his opinion, a 4-way-stop would alleviate traffic safety concerns.
- [13] He indicated that his condominium board has approved his proposed Fence.
- [14] He acknowledged that the *Edmonton Zoning Bylaw* defines the subject Yard as a Front Yard, but more commonly, it acts like a Rear Yard, and the defined (south) Side Yard appears like a Front Yard.
- [15] He referenced his signatures of support including the Queen Mary Park Community League (*Exhibit A*) and indicated that he tried to obtain as many signatures as possible.
- [16] He confirmed that the neighbour immediately to the north is in support of his proposed fence.
- [17] With regard to Setbacks, he estimated that the distance from the proposed Fence to the 108 Avenue sidewalk is approximately 19 feet and the distance from the proposed Fence to the 111 Street sidewalk is approximately 14 feet.
- [18] He confirmed that both 108 Avenue and 111 Street have landscaped boulevards.
- [19] He confirmed that the yellow highlighted portion on the stamped Site Plan is part of his Amenity Area.

- [20] He confirmed that the Fence will be built entirely within the condo property.
- [21] With regard to the neighbour in opposition, he reiterated that the Fence will be within his property line and it will be an attractive Fence and he has not had a chance to talk to him about the proposal.
- ii) Position of the Development Officer, Mr. B. Liang*
- [22] Mr. Lang indicated that he conducted a Google Street View search within a 2 block radius and could not find any other over height Front Yard Fences.
- [23] He indicated that many of the adjacent lots contain Apartment Housing and those buildings typically do not have over height Fences facing a road way.
- [24] In his opinion, 1.83 metre high Fences in Front Yards are not characteristic of the neighbourhood. However some Corner Sites incorporate Privacy Screening in the form of mature vegetation of a similar or higher Height.
- [25] He confirmed a 1.2 metre high Fence is allowed in the required Front Yard.
- [26] With regard to possible traffic safety concerns, he confirmed that Transportation Services did not review this application. However, in his opinion the proposed Fence would create an obstruction at the subject intersection.
- [27] He confirmed that older neighbourhoods usually do not provide corner cuts to increase sightlines.
- [28] He confirmed that there are wide landscaped boulevards abutting the subject Site.
- [29] He stated that the purpose of the Fence regulations of the *Edmonton Zoning Bylaw* is to provide a balance between security and privacy.
- [30] He reiterated that in his opinion, the proposed Fence would impact the neighbourhood.

iv) Rebuttal of the Appellant

- [31] Mr. Cote had nothing further to say.

Decision

- [32] 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**:

- I. This Development Permit ONLY authorizes the development of a 1.83 m tall fence in the Front Yard facing 111 Street NW along 12.85 m of the west lot line. The development shall be constructed in accordance with the stamped and approved drawings.
- II. The fence shall not encroach onto municipal property or onto adjacent properties.
- III. The design and use of exterior finishing materials on the fence shall be similar to, or better than, the standard of surrounding development (Section 57.2.1).

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

- 1) The maximum allowable Height of 1.2 metres for a Front Yard Fence on a Corner Site as per section 49(1)(e)(i) is varied to allow an excess of 0.63 metres, thereby increasing the maximum allowable Fence Height to 1.83 metres.

Reasons for Decision

[34] The proposed development is Accessory to a Permitted Use in the RA7 Low Rise Apartment Zone.

[35] Given the photographic evidence, from the Board's perspective it clearly indicates that there is approximately a 3.35 metre (11 feet) Setback from the (west) Front Lot Line to the edge of the sidewalk and there is approximately a total 6.10 metre (20 feet) Setback from the (west) Front Lot Line to the curb. The Board notes that this 6.10 metre Setback from the proposed Fence to the roadway provides a sufficient Setback.

[36] Further, the Board notes there is a Setback of 2.38 metres between the (south) Side Lot Line and the proposed Fence, which mitigates the proximity of the proposed Fence to the south roadway.

[37] Based on the above, the Board has determined that both Fence locations provide sufficient space between both the sidewalks and roadways.

[38] The Board notes that the most affected property owner immediately to the north does not have any issues or concerns with the proposed Fence.

[39] The Board acknowledges an e-mail submitted in opposition to the proposed Fence.

Condition [III] states “The design and use of exterior finishing materials on the fence shall be similar to, or better than, the standard of surrounding development (Section 57.2.1).”

The Board is satisfied that with the proposed Setbacks of the Fence and the design and materials used to build the Fence, the concerns of the neighbour will be alleviated.

[41] The Board acknowledges that several signatures of support from adjacent properties and from a representative of the Queen Mary Park Community League were received.

[42] For the above reasons, the Board finds 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

Important Information for the Applicant/Appellant

1. This is not a Building Permit. A Building Permit must be obtained separately from the Sustainable Development Department, located on the 5th Floor, 10250 – 101 Street NW, Edmonton.
2. Obtaining a Development Permit does not relieve you from complying with:
 - a) the requirements of the *Edmonton Zoning Bylaw*, insofar as those requirements have not been relaxed or varied by a decision of the Subdivision and Development Appeal Board,
 - b) the requirements of the *Alberta Safety Codes Act*,
 - c) the *Alberta Regulation 204/207 – Safety Codes Act – Permit Regulation*,
 - d) the requirements of any other appropriate federal, provincial or municipal legislation,
 - e) the conditions of any caveat, covenant, easement or other instrument affecting a building or land.
3. When an application for a Development Permit has been approved by the Subdivision and Development Appeal Board, it shall not be valid unless and until any conditions of approval, save those of a continuing nature, have been fulfilled.
4. A Development Permit will expire in accordance to the provisions of section 22 of the *Edmonton Zoning Bylaw, Bylaw 12800*, as amended.
5. This decision may be appealed to the Alberta Court of Appeal on a question of law or jurisdiction under section 688 of the *Municipal Government Act*, RSA 2000, c M-26. If the Subdivision and Development Appeal Board is served with notice of an application for leave to appeal its decision, such notice shall operate to suspend the Development Permit.
6. When a decision on a Development Permit application has been rendered by the Subdivision and Development Appeal Board, the enforcement of that decision is carried out by the Sustainable Development Department, located on the 5th Floor, 10250 – 101 Street NW, Edmonton.

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



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Date: September 30, 2016
Project Number: 188057550-001
File Number: SDAB-D-16-228

Notice of Decision

[1] On September 15, 2016, the Subdivision and Development Appeal Board heard an appeal that was filed on **August 18, 2016**. The appeal concerned the decision of the Development Authority, issued on August 17, 2016 to refuse the following development:

Construct a 2-Storey Accessory Building (Garage Suite on 2nd floor, Garage on main floor, 7.01m x 10.67m) and to demolish the existing detached Garage.

[2] The subject property is on Plan 1841KS Blk 9 Lot 16, located at 10204 - 52 Street NW, within the RF1 Single Detached Residential Zone. The Mature Neighbourhood Overlay applies to the subject property.

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

- A Development Permit Application, including the plans and elevating drawings;
- Revised drawings dated July 21, 2016 submitted by the Development Officer;
- The Refused Development Permit;
- The Development Officer's written submission with a letter of support from an adjacent property;
- The Appellant's written submission; with photographs and a letter of support;
- The Appellant's Community Consultation summary;
- A letter of support from the Fulton Place Community League; and
- An On-line response in support of the proposed development from an adjacent property.

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

- Exhibit A – A written submission from the Development Officer

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

Summary of Hearing*i) Position of the Appellant, Mr. M. Friesen*

- [8] Mr. Friesen indicated that his family will live at the subject site for the long term.
- [9] The proposed Garage Suite might be used for other family members, a home office, or a rental suite if needed.
- [10] He indicated that the existing Driveway leading to the flanking roadway was poured when the House was built.
- [11] He indicated it would be difficult to add a rear Driveway to the lane given there are utility poles in place.
- [12] He referenced an aerial photograph in his submission and confirmed that 29 out of 32 Corner Sites in the neighbourhood have a flanking Driveway.
- [13] With regard to Floor Area, he indicated that the internal staircase was oversized to possibly put in a chairlift if required. He stated that if this staircase was removed the total Floor Area of the Suite would be 68 square metres.
- [14] His family prefers an interior staircase to provide safety and comfort from the outside elements. In his opinion, an interior staircase is more aesthetically pleasing compared to an exterior staircase.
- [15] With regard to complying with the maximum 60 square metre Floor Area, he indicated it was difficult to design a plan that is comfortable and provides adequate closet space.
- [16] With regard to Site Coverage, he noted that the proposed Garage Suite with the House is within the maximum Total Site Coverage requirement.
- [17] He reiterated he wanted to have a good sized Garage that was appealing and comfortable.

- [18] In his opinion, the proposed size of the Garage will not have a negative impact on his neighbours.
- [19] With regard to the separation space between the House and the proposed Garage Suite, he indicated that if the proposed development was moved further into the Rear Yard, he could only build a single car Garage.
- [20] To alleviate the deficient separation space, he moved the Garage Suite 1.38 metres from the House instead of the original 1.26 metres proposal.
- [21] In his opinion, there will be enough space between the 2 buildings and there are several other buildings in the neighbourhood with the same space.
- [22] With regard to Community Consultation, they received support from 23 neighbours and there was no opposition, including the 2 most immediate neighbours.
- [23] In his opinion, this proposed Garage Suite meets the City's objectives to build more density in the core.
- [24] In his opinion, the proposed development will improve the property as well as the neighbourhood.
- [25] With regard to privacy issues, the windows are placed to face the flanking roadway and are placed above the stairwell.
- [26] With respect to questions from the Board, Mr. Friesen provided the following:
- a. He indicated that proposed detached Garage is narrower than the existing detached Garage.
 - b. He indicated that narrowing the detached Garage any further, would not provide enough space for their vehicles.
 - c. In his opinion, redesigning the staircase to make it smaller would create empty space that could not be used. In its current design, every part of the proposed Garage will be used.
 - d. He confirmed the Garage will also be used for storage.
 - e. He clarified that he would not operate a Home Based Business from his property, just a home office for the family.

ii) *Position of Affected Property Owners in Support of the Appellant, Mr. J. Taylor and Ms. M. Gaulin*

- [27] Mr. Taylor and Ms. Gaulin confirmed they live directly to the west of the proposed development.
- [28] They support the Appellant and his family and they support the proposed Garage Suite.
- [29] In their opinion, the renovated House on the subject site is attractive and the proposed Garage Suite will also be attractive.
- [30] They have no privacy concerns with the window placement on the proposed Garage Suite.
- [31] They indicated that the surrounding neighbours are very supportive of the proposed Garage Suite.

iii) Position of the Development Officer, Mr. G. Robinson

- [32] Mr. Robinson confirmed that the Appellant complied with the Community Consultation requirement under the Mature Neighbourhood Overlay.
- [33] Reviewing the proposed Garage Suite, he determined that there was no hardship to comply with the *Edmonton Zoning Bylaw*.
- [34] The proposed Garage Suite was refused because of the large size of the Garage and the number of variances.
- [35] He clarified that if there are privacy issues with the placement of the windows, he would recommend frosting the windows as a condition.
- [36] With respect to questions from the Board, Mr. Robinson provided the following:
- a. He confirmed the Mature Neighbourhood Overlay was implemented in 2001.
 - b. He confirmed that a 2-car Garage could not be built on the subject site and comply with the *Edmonton Zoning Bylaw* at the same time. However, he indicated that the *Edmonton Zoning Bylaw* does not require a 2-car Garage.
 - c. In his opinion, a single car Garage and 1-car parking pad could be built and comply with the *Edmonton Zoning Bylaw*.
 - d. He confirmed with the existing building configurations and Site Coverage, a shed would not be allowed on the subject site.
 - e. He indicated that the Setback from the Garage to the Rear Lane requires a minimum 0.60 metre space.

- f. He stated that there would be a Rear Setback variance if the rear Garage was attached to the House.
- g. He confirmed the Community Consultation was submitted prior to making his decision.

iv) Rebuttal of the Appellant

[37] Mr. Friesen had nothing further to say except that he was amenable to the conditions in the Development Officer's written submission, if the development is approved.

Decision

[38] 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**:

- I. The development shall be constructed in accordance with the stamped and approved drawings.
- II. Immediately upon demolition of the building, the site shall be cleared of all debris.
- III. An accessory building or structure containing a Garage Suite shall not exceed 6.5m in height. (Reference Section 6.1 (49) and 87 .2(a)).
- IV. Eave projections shall not exceed 0.46m into required yards or Separation spaces less than 1.2m. (Reference Section 44.1 (b))
- V. Only one of a Secondary Suite, a Garage Suite or Garden Suite may be developed in conjunction with a principal Dwelling.
- VI. A Garage Suite shall not be allowed within the same Site containing a Group Home or Limited Group Home, or a Major Home Based Business and an associated principal Dwelling, unless the Garage Suite is an integral part of a Bed and Breakfast Operation in the case of a Major Home Based Business.
- VII. Notwithstanding the definition of Household within this Bylaw, the number of unrelated persons occupying a Garage Suite shall not exceed three.
- VIII. The Garage Suite shall not be subject to separation from the principal Dwelling through a condominium conversion or subdivision.

ADVISEMENTS:

- i.) Lot grades must comply with the Edmonton Drainage Bylaw 16200. Contact Drainage Planning and Engineering at 780-496-5576 or lot.grading@edmonton.ca for lot grading inspection inquiries.
- ii.) The driveway access must maintain a minimum clearance of 1.5m from all surface utilities.
- iii.) Any hoarding or construction taking place on road right-of-way requires an OSCAM (On-Street Construction and Maintenance) permit. It should be noted that the hoarding must not damage boulevard trees. The owner or Prime Contractor must apply for an OSCAM online at:
http://www.edmonton.ca/bylaws_licences/licences_permits/oscam_permit-request.aspx
- iv.) Unless otherwise stated, all above references to "section numbers" refer to the authority under the Edmonton Zoning Bylaw 12800.
- v.) An approved Development Permit means that the proposed development has been reviewed against the provisions of this bylaw. It does not remove obligations to conform with other legislation, bylaws or land title instruments including, but not limited to, the Municipal Government Act, the Safety Codes Act or any caveats, restrictive covenants or easements that might be attached to the Site.

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

- 1) The maximum allowable Site Coverage of 12 percent (60.92 square metres) for an Accessory building as per section 110.4(7)(a) is varied to allow an excess of 13.88 square metres (14.7 percent), thereby increasing the maximum allowable Site Coverage for an Accessory building to 74.80 square metres.
- 2) The maximum allowable Floor Area of 60.0 square metres for a Garage Suite (above Grade) as per section 87.3(a) is varied to allow an excess of 14.80 metres, thereby increasing the maximum allowable Floor Area to 74.80 square metres.

- 3) The minimum required distance of 3.0 metres from a Principal building to a rear detached Garage as per section 814.3(22) is varied to allow a deficiency of 1.62 metres, thereby decreasing the minimum required distance to 1.38 metres.
- 4) The minimum required distance of 4.0 metres from a Principal building to a Garage Suite as per section 87.7 is varied to allow a deficiency of 2.62 metres, thereby decreasing the minimum required distance to 1.38 metres.

[40] In granting the development the following requirement to the *Edmonton Zoning Bylaw* is waived:

- 1) The Vehicular Access requirement under section 814.3(10).

Reasons for Decision

- [41] The proposed development is a Discretionary Use in the RF1 Single Detached Residential Zone.
- [42] With respect to the Discretionary Use of this proposed development, the Board must determine whether the Use is reasonably compatible with surrounding properties, the general purpose of the RF1 Zone as well as the Mature Neighbourhood Overlay.
- [43] By making Garage Suites a Discretionary Use it also allows the development to be reviewed to determine if there will be any impact on the neighbourhood. One of the main desired outcomes of a Discretionary Use is to ensure proper engagement with the neighbourhood occurs. Based on the submitted Community Consultation the Board acknowledges the significant support for this proposed Garage Suite.
- [44] With respect to Privacy issues, the Board accepts that the windows on the Suite level have been located in such a way to mitigate any Privacy concerns. The windows to the west are located over the staircase and the windows to the east face out toward to the flanking roadway on 52 Street.
- [45] The Board notes that the most affected property owners to the west are in support of this proposed development and expressed no concerns with regard to Privacy.
- [46] With respect to the existing flanking Driveway access, the Board was provided with photographic evidence that confirmed that 29 out of 32 Corner Sites in the neighbourhood have a Driveway extension on the flanking Side Yard. The Board makes a finding that this type of access is characteristic of this neighborhood. Further, flanking access has been in place without any indication of complaint for many years. Accordingly, this variance carries no impact.

- [47] With respect to the required Separation Space between the House and the proposed development, the Board is prepared to grant both the Mature Neighbourhood Overlay detached Garage requirement, section 814.3(22) and the Garage Suite requirement in the underlying Zone, section 87.7 for the following reasons:
- a. The Board finds that the subject Site has constraints in its ability to provide a 2-car Garage in the space that exists between the lane and the existing House.
 - b. Further, the Board finds that the proposed development is marginally further away from the existing House compared to the existing detached Garage.
 - c. This is a longstanding condition and there have been no known complaints that the current form or location has impacted adjacent property owners. Indeed the most affected adjacent owner is in full support of the development and its proposed location.
- [48] With respect to Site Coverage, the Board acknowledges that the Total Site Coverage of 39.4 percent is under the maximum allowable 40 percent Total Site Coverage. Therefore, it is the Board's opinion that both the existing House and the proposed Garage Suite are below the maximum Total Site Coverage requirement thus not creating an over building of the site.
- [49] With respect to the Floor Area issue, the Board accepts that the internal staircase mitigates any Privacy concerns that an exterior staircase would have. The Board acknowledges the practical outcome of an interior staircase with regard to environmental and safety issues. While this only partially explains part of the variance the Board was provided with no planning reasons that granting this variance would create a material impact on the neighbourhood or neighbouring properties.
- [50] The Board accepts the Development Officer's view that, given the Corner Lot location and configuration of buildings on the Site, a storage shed could not be allowed even with a smaller Garage. Therefore the Board accepts that this proposed Garage provides consolidated storage space. The lack of other external storage options also justifies granting the variance as noted in paragraph 39(1) above.
- [51] The Board accepts the Development Officer's confirmation that the Community Consultation was done in accordance with section 814.3(24) of the Mature Neighbourhood Overlay.
- [52] The Board further notes that this development provides housing choices which is a desired outcome of section 4.4.1 of the *Municipal Development Plan*, "The Way We Grow." The Board, pursuant to section 687(3)(a.1) of the *Municipal Government Act* must have regard to all statutory plans. The *Municipal Development Plan* is a statutory plan.

[53] For the above reasons, the Board finds 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

Important Information for the Applicant/Appellant

1. This is not a Building Permit. A Building Permit must be obtained separately from the Sustainable Development Department, located on the 5th Floor, 10250 – 101 Street NW, Edmonton.
2. Obtaining a Development Permit does not relieve you from complying with:
 - a) the requirements of the *Edmonton Zoning Bylaw*, insofar as those requirements have not been relaxed or varied by a decision of the Subdivision and Development Appeal Board,
 - b) the requirements of the *Alberta Safety Codes Act*,
 - c) the *Alberta Regulation 204/207 – Safety Codes Act – Permit Regulation*,
 - d) the requirements of any other appropriate federal, provincial or municipal legislation,
 - e) the conditions of any caveat, covenant, easement or other instrument affecting a building or land.
3. When an application for a Development Permit has been approved by the Subdivision and Development Appeal Board, it shall not be valid unless and until any conditions of approval, save those of a continuing nature, have been fulfilled.
4. A Development Permit will expire in accordance to the provisions of section 22 of the *Edmonton Zoning Bylaw, Bylaw 12800*, as amended.
5. This decision may be appealed to the Alberta Court of Appeal on a question of law or jurisdiction under section 688 of the *Municipal Government Act*, RSA 2000, c M-26. If the Subdivision and Development Appeal Board is served with notice of an application for leave to appeal its decision, such notice shall operate to suspend the Development Permit.
6. When a decision on a Development Permit application has been rendered by the Subdivision and Development Appeal Board, the enforcement of that decision is carried out by the Sustainable Development Department, located on the 5th Floor, 10250 – 101 Street NW, Edmonton.

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