

Edmonton Subdivision and Development Appeal Board

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Date: October 1, 2015
Project Number: 172396971-003
File Number: SDAB-D-15-206

Notice of Decision

This appeal dated August 25, 2015, from the decision of the Development Authority for permission to:

Construct a rear uncovered deck (irregular shape, 3.61m x 2.43m @ 1.28m Height), existing without permits

On Plan 0221556 Blk 22 Lot 11, located at 12243 - 93 Street NW, was heard by the Subdivision and Development Appeal Board on September 16, 2015.

Summary of Hearing:

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.

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

The Board heard an appeal of the decision of the Development Authority to refuse an application to construct a rear uncovered deck (irregular shape, 3.61m x 2.43m, at 1.28m Height), existing without permits, located at 12243 – 93 Street NW. The subject site is zoned RF3 Small Scale Infill Development Zone and is within the Mature Neighbourhood Overlay.

The development permit application was refused because of an excess in the maximum allowable Site Coverage for the Principal Dwelling, an excess in the maximum allowable total Site Coverage; a deficiency in the minimum required separation space between the Garage and the principal Dwelling; and a deficiency in the minimum required Rear Setback. It is the opinion of the Development Authority that the proposed development will unduly interfere with the amenities of the neighbourhood or materially interfere with or affect the use, enjoyment or value of neighbouring properties.

Prior to the hearing the following information was provided to the Board:

- Information submitted with the appeal on August 25, 2015; and
- A written submission from the Development Authority dated September 11, 2015.

The Board heard from Ms. Elizabeth Mrdjenovich, who appeared on behalf of her parents, the Appellants, Marijan and Mich Kolar. Ms. Mrdjenovich submitted a photograph of the front and rear of the subject site, marked Exhibit "A", and provided the following information in support of the appeal:

1. The subject Semi-detached Dwelling was recently sold and the new owners would like to keep the deck as it exists.
2. The other Semi-detached Dwelling was sold in 2004.
3. The deck was built to utilize the small rear yard space effectively.
4. The deck cannot be seen from the front of the property.
5. This Duplex was one of the first infill developments in the neighbourhood.
6. Her parents have never received any complaints about the deck.
7. Many of the neighbours have complimented the property.
8. There are now 4 or 5 more infill developments on the same block.
9. Her parents originally owned the property, but now live in an adjacent house located north of the subject site.
10. All of the infill developments are unique, and the deck is unique to this property.
11. The deck serves as a landing from the rear entrance of the house and extends to the detached Garage. The deck also covers a recessed stairway into the basement.
12. It was her opinion that the development does not interfere with the amenities of the neighbourhood.

Ms. Mrdjenovich provided the following responses to questions:

1. A privacy screen that runs the entire length of the deck, between the house and the garage has been installed between the two Semi-detached Dwelling units.
2. Her father and brother built the deck in order to maximize the use of the small Rear Yard.
3. The deck has enough room for a patio table and chairs and can comfortably accommodate 4 people.
4. There is no deck structure at the front of the house.
5. Ms. Mrdjenovich did not know why her father did not obtain a development permit for the deck.
6. She referenced the photograph submitted and confirmed that the first floor of the house is elevated. There are 5 to 6 steps to the front door, and 5 to 6 steps to the rear door of the house.
7. The deck is the same height as the main floor of the house.
8. The privacy screen is attached to the garage just below the roof top deck on the Garage.
9. She is not able to see over the privacy screen and estimated that it is more than 6 feet high.
10. The house and garage were built in 2004 and the deck was built some years after.
11. Her parents currently live north of the subject site but previously owned the subject property.

The Board then heard from Ms. Heimdahl, representing the Sustainable Development Department, who provided the following responses to questions:

1. She conceded that this is a tight lot with limited space and the house is a bi-level style.
2. She could not provide any rationale as to why a deck is not considered as outdoor amenity space or the minimum required separation space.
3. The issue under appeal came to light during the Compliance Certificate application process.
4. It was her opinion that there is no hardship in this circumstance. She could not approve the development because it increases site coverage on a lot that is already over built.

Ms. Mrdjenovich provided the following information in rebuttal:

1. Funds are currently being held back through the sale.
2. The new owners were not aware of the problem with the deck and would like to keep the deck as it exists.

Decision:

The appeal is ALLOWED and the decision of the Development Authority is REVOKED. The development is GRANTED as applied for to the Development Authority.

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

1. The excess of 90.21 square metres or 38.53% in the maximum Site Coverage for a Principal Dwelling allowed under section 140.4(10)(d) of the *Edmonton Zoning Bylaw*.
2. The excess of 125.52 square metres of 53.61% in the maximum total Site Coverage allowed under section 140.4(10)(d) of the *Edmonton Zoning Bylaw*.
3. The deficiency of 2.4 metres in the minimum required Separation Space between the Garage and Principal Dwelling allowed under section 44.3(b) of the *Edmonton Zoning Bylaw*.
4. The excess of 1.89 metres in the maximum projection of a Platform Structure into a Setback or Separation Space with a depth of at least 4.0 metres allowed under section 44.3(a) of the *Edmonton Zoning Bylaw*.

Reasons for Decision:

The Board finds the following:

1. The proposed development is Accessory to a Permitted Use in the RF3 Small Scale Infill Development Zone.
2. Based on the evidence provided, the deck has existed since before 2009 without any known complaints.
3. The Appellant provided written support from the most affected property owners who reside immediately north and south of the subject site.
4. Based on a review of the photographic evidence provided, the Board notes that the house on the subject site is a bi-level style and there is a door at the rear of the house which requires egress to comply with building code requirements. Therefore the existing deck meets the requirement to provide egress from the rear of the house by providing a landing and stairs to the rear yard.

5. Privacy screening that extends the entire length of the deck between one of the Semi-detached Dwellings and the detached Garage has been installed between the Semi-detached Dwellings.
6. The impact of the variances granted will be mitigated because the existing deck cannot be seen from the front sidewalk, boulevards, parks, or the rear lane.
7. The Board acknowledges that the proposed development exceeds the Site Coverage requirements for this site, but finds that based on the evidence provided, the excess will not exacerbate the variances that were previously granted for the development of this site.
8. 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.

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, 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*, RSA 2000, c S-1;
 - c) the requirements of the *Permit Regulation*, Alta Reg 204/2007;
 - d) the requirements of any other appropriate federal, provincial or municipal legislation; and
 - 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 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, 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.

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

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Date: October 1, 2015
Project Number: 172593585-001
File Number: SDAB-D-15-207

Notice of Decision

This appeal dated August 19, 2015, from the decision of the Development Authority for permission to:

Construct a Semi-detached House with verandas, fireplaces, rear covered decks (0.91m X 1.52m)

On Plan 7884AH Blk 21 Lot 7, located at 7326 - 81 Avenue NW, was heard by the Subdivision and Development Appeal Board on September 16, 2015.

Summary of Hearing:

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.

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

The Board heard an appeal of the decision of the Development Authority to refuse an application to construct a Semi-detached House with verandas, fireplaces, rear covered decks (0.91m X 1.52m) located at 7326 – 81 Avenue NW. The subject site is zoned RF3 Small Scale Infill Development Zone and is within the Mature Neighbourhood Overlay.

The development permit application was refused because of a deficiency in the minimum required site area for Semi-detached Housing.

Prior to the hearing the following information was provided to the Board:

- A written submission from the Appellant's agent dated September 9, 2015;
- A further written submission from the Appellant's agent dated September 11, 2015;
- A written submission from the Development Authority dated September 11, 2015; and
- An on-line response from a property owner who resides within the 60 metre notification radius in opposition to the proposed development.

The Board heard from Mr. Kevin Cooper, agent for the Appellant, who referenced his written submission and provided the following information in support of the appeal:

1. This is predominantly a neighbourhood of mixed uses.
2. There are abutting commercial uses to the rear, including a warehouse and a McDonald's Restaurant.

3. 82 Avenue is an arterial roadway with public transit.
4. The existing building on the site is uninhabitable.
5. The house is currently a legal non-conforming use because of an existing front attached garage.
6. The proposed development complies with all of the development regulations except site area.
7. The proposed development will be beneficial for the neighbourhood because it will replace a dilapidated house.
8. Due to the size of the lot, there is a smaller building envelope, and 26.55 percent of the site will be covered by the Principal Dwelling.
9. Mr. Cooper reviewed the community consultation process which included the circulation of a letter to affected property owners. Four property owners provided written support for the proposed development. Three others indicated their support, but declined to provide written indication of such support for various reasons.
10. Referencing his written submission, he indicated that one rationale for this type of development is to support City policies and goals.
11. There was an appeal hearing for the same type of development on the adjacent lot.
12. This site was originally one lot before separation of title was granted.
13. There is a 4 unit row housing located at the east end of 81 Avenue which is identical to the combined density of the proposed development and the development on the adjacent lot.
14. It was his opinion that the proposed development will have less massing and be more aesthetically pleasing than a 4 unit row housing.
15. The proposed development will provide much needed affordable family oriented housing in this neighbourhood.

Mr. Cooper provided the following responses to questions:

1. It was his opinion that the proposed Semi-detached Dwelling is more family oriented than a Duplex Dwelling because of the at grade entrances.
2. It was his opinion that the current *Edmonton Zoning Bylaw* is antiquated and should be amended to deal with this type of development and the required variances to achieve the goals of the City.
3. The proposed development is more reflective of what is happening in the area.
4. The proposed development will provide suitable affordable housing for individuals who are currently renting Dwelling units in Basement suites that may not have valid development permits.
5. It was his understanding that the site area regulations under the *Edmonton Zoning Bylaw* exists to ensure compliance with all other regulatory requirements such as parking space.
6. Other than the site area, all of the other regulations have been met.

The Board then heard from Ms. Hetherington, representing the Sustainable Development Department, who provided the following information:

1. The only variance required is for the minimum required site area.
2. A similar development on the abutting lot was approved by the Subdivision and Development Appeal Board earlier this year.

3. It was her opinion that the proposed development will increase density and that a Single Detached Dwelling is more suitable for the site.
4. It was her opinion that the variance required is excessive.
5. All of the other Semi-detached Dwellings in this area, with the exception of the development on the abutting lot, are side by side as opposed to front to back, which in her opinion is more suitable for the area.
6. It was her opinion that development should comply with all of the Bylaw regulations.
7. She could not clarify the rationale for the minimum site area requirement. However, it was her opinion that the massing on a larger lot would provide a larger Rear Yard area, more amenity space, and that this type of development on a larger lot would have less of an impact on the neighbours.
8. Amendments can be made to the *Edmonton Zoning Bylaw*.
9. Variances were not required for any of the Mature Neighbourhood Overlay regulations.
10. She did consider the commercial development on the abutting site to the north.
11. City Council has expressed concerns regarding variances that have been granted for infill developments in mature neighbourhoods. Therefore, she could not justify granting an almost 10 percent relaxation in the minimum required site area for this development.
12. It was her opinion that this type of development changes the character of the neighbourhood.
13. Duplex Housing on this site would be more suitable because it provides a larger floor area on one floor.
14. Semi-detached Housing has a smaller floor area which leads to a less appealing development.
15. This development on a larger site would result in the provision of a Rear Yard with amenity space and would have less massing.

The Board then heard from Mr. St. John, an affected neighbour who resides within the 60 metre notification radius, who provided the following information:

1. He has resided in this neighbourhood for 9 years.
2. There are Semi-detached Houses, Duplexes and other multi-family Dwellings being built in this area.
3. One of his concerns is the impact of the development on street parking.
4. He was also concerned that a basement suite would be developed in the basement, which would further impact street parking.
5. However, he is not opposed to infill housing. In fact, he himself is currently developing an infill property in the Ottewell neighbourhood. He would not be concerned with such developments so long as basement suites are not part of the proposed development.
6. Larger lots provide more frontage for on street parking.
7. Larger lots would also support the development of a larger garage which would minimize the impact on street parking.
8. He was not concerned about the massing of the proposed development.
9. A larger lot would also provide more amenity space in the rear yard.
10. It was his opinion that the proposed Semi-detached House will not attract families because of the lack of amenity space in the rear yard.

Mr. Cooper made the following points in rebuttal:

1. Comments from the neighbourhood are valuable.
2. It was his opinion that the increased size of the single detached Garage, combined with the Driveway which may be used for parking space, adequately addresses the parking concerns.
3. The Site Coverage for the garage complies with the maximum allowable for this Site but results in a reduction in the size of the Rear Yard Amenity Space.
4. Each Dwelling unit will have one master bedroom and 2 child size bedrooms.
5. The intent is for each Dwelling unit to be occupied by a family, which reduces the need for parking because such occupants would usually only have 2 vehicles that could be accommodated on Site.
6. Secondary Suites will not be constructed in the basements of these Dwelling units.
7. It was his opinion that a larger Site would allow a larger building with more massing that could have a greater negative impact in this area than the proposed development.
8. Parking affects the size of the Amenity Space more so than the principal building.
9. It was his opinion that the deficiency in site area will not have any impact upon the neighbourhood.
10. He reiterated his opinion that the proposed development will increase vibrancy and have a positive influence on the neighbourhood.

Decision:

The appeal is **ALLOWED** and the decision of the Development Authority is **REVOKED**. The development is **GRANTED** as applied for to the Development Authority.

In granting the development, the following variance to the *Edmonton Zoning Bylaw* was allowed:

1. The deficiency of 42.7 square metres in the minimum required Site Area for Semi-detached Housing under section 140.4(3)(a) of the *Edmonton Zoning Bylaw* to allow a Site Area of 399.5 square metres.

Reasons for Decision:

The Board finds the following:

1. Semi-detached Housing is a Permitted Use in the RF3 Small Scale Infill Development Zone, pursuant to Section 140.2(8) of the *Edmonton Zoning Bylaw*.
2. All of the development regulations for Semi-detached Housing, including Site Width, Site Depth, Site Coverage, Height, Setbacks, private Amenity Area and parking have been met. The only variance required is for the minimum required site area for Semi-detached Housing.
3. The proposed development is in keeping with Section 140.1 of the *Edmonton Zoning Bylaw*, which states that the General Purpose of the RF3 Small Scale Infill Development Zone “is to provide for Single Detached Housing and Semi-detached Housing while allowing small-scale conversion and infill redevelopment to buildings containing up to four Dwellings, and including Secondary Suites under certain conditions”.
4. The proposed development is consistent with the increased densification policy objectives of the Municipal Development Plan, *The Way We Grow*, specifically Policy 3.1.1.2 to

- encourage a minimum of 25 percent of city-housing unit growth to be located in the Downtown and mature neighbourhoods and around LRT stations and transit centres where infrastructure capacity supports the development. The proposed development is also consistent with Policy 4.4.1.1 to provide a broad and varied housing choice, incorporating housing for various demographic and income groups in all neighbourhoods.
5. The proposed development will replace an existing non-habitable Single Detached house with two new Dwelling units. With the approval of a similar development on the adjacent lot, four new Dwelling units spanning two lots will replace one existing non-habitable single detached house.
 6. Therefore, the proposed development is also consistent with the City of Edmonton Residential Infill guidelines because it will increase the supply of available family-oriented housing (3 bedroom homes with at grade access) and will provide additional renewed housing opportunities in a mature area that is close to community shopping and public transit.
 7. Based on the evidence provided, the proposed Semi-detached Housing is compatible with and characteristic of housing choices that have been developed on this block which include Semi-detached housing, Single Detached Housing and Apartment Housing.
 8. The density of the proposed development is not uncharacteristic of the area.
 9. The density of the proposed development and the previously approved similar development on the immediately adjacent lot will be equivalent to the density of the existing four dwelling Row House located at the end of the block face.
 10. The Appellant complied with the consultation requirements of Section 814.3(24) of the *Edmonton Zoning Bylaw*. The Appellant spoke with seven residents. Four provided written support for the proposed development while the other three did not oppose the development, though they did not provide their opinion in writing.
 11. One affected property owner attended the hearing to gather information regarding the proposed development and advised the Board that his primary concern was that the proposed development may impact on street parking which is already limited in this neighbourhood.
 12. The Board notes that all of the required parking for this development will be provided on site and a parking variance is not required.
 13. The Development Authority failed to provide sufficient planning reasons regarding the impact of the deficiency in the minimum required site area for Semi-detached Housing that would lead the Board to determine that granting this variance would materially affect the use and enjoyment of neighbouring properties.
 14. 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.

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, 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*, RSA 2000, c S-1;
 - c) the requirements of the *Permit Regulation*, Alta Reg 204/2007;
 - d) the requirements of any other appropriate federal, provincial or municipal legislation; and
 - 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 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, 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.

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

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Date: October 1, 2015
Project Number: 175354514-001
File Number: SDAB-D-15-208

Notice of Decision

This appeal dated August 24, 2015, from the decision of the Development Authority for permission to:

Construct a Single Detached House with attached Garage, rear balcony (1.52m x 3.35m), fireplace, and Basement development (NOT to be used as an additional Dwelling)

On Plan 2212HW Blk 2 Lot 5, located at 9027 - Saskatchewan Drive NW, was heard by the Subdivision and Development Appeal Board on September 16, 2015.

Summary of Hearing:

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.

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

The Board heard an appeal of the decision of the Development Authority to refuse an application to construct a Single Detached House with attached Garage, rear balcony (1.52m x 3.35m), fireplace, and Basement development (NOT to be used as an additional Dwelling), located at 9027 Saskatchewan Drive NW. The subject site is zoned RF1 Single Detached Residential Zone.

The development permit application was refused because of an excess in the maximum allowable Height; the proposed front vehicular access is not permitted; the Front Setback exceeds the maximum allowable; and the Rear Setback is less than the minimum required. It is the opinion of the Development Authority that front vehicular access is not appropriate in this context, and the rear lane should be used where available.

Prior to the hearing the following information was provided to the Board:

- Documentation submitted with the appeal on August 24, 2015;
- A written submission from the Development Authority dated September 3, 2015;
- A submission from the Appellant's builder dated September 11, 2015; and
- An on-line response from a property owner who resides within the 60 metres notification radius in opposition to the proposed development.

The Board heard from the property owner, Mr. Tim Wheaton, who advised the Board that he would like to build a house with an attached garage to provide security and protection from the weather conditions for his growing family. An attached garage will also provide a larger rear yard.

The Board then heard from Ms. Kellerman, Architect for the project, who used a PowerPoint presentation to review the four reasons for refusal and provide the following information in support of the appeal:

1. She referenced a streetscape rendering to provide context regarding the location of the subject site on Saskatchewan Drive.
2. She referenced photographs of other houses on this block that have recently been approved that appear to exceed the maximum allowable Height requirement.
3. The street is comprised of eclectic houses, ranging from traditional to modern.
4. All of the main roofs of the proposed development comply with the maximum allowable Height requirement. It is only the main entrance (centrally located) clerestory skylight roof that is over Height.
5. If this were a sloped roof house, it would comply with the maximum allowable height requirement.
6. It was her opinion that if the parapet was classified as a 'sky light,' it would meet the height requirement.
7. The parapet 'skylight' is only 7 percent of the entire roof area.
8. There are existing houses of a similar Height located along Saskatchewan Drive and therefore the proposed house would not affect the overall street scape.
9. The Sun Shadow Survey concluded that there would be little sun shadowing effect on the neighbour to the east.
10. She referenced photographs to illustrate that precedent is set for a front access garage by other houses on the block and in the neighbourhood.
11. There are only 3 flanking driveways located on Saskatchewan Drive.
12. There are not many front attached Garages on this block, but there are numerous front attached Garages in the area.
13. A front access Garage will reduce the impact of an additional Garage structure in the Rear Yard, will increase usable space in the Rear Yard and it will meet the needs of the property owner by providing convenience and safety.
14. It was her opinion that the garage in the basement of the proposed house with a sloped Driveway will have less visual impact from the front street than would a surface Garage.
15. There is no sidewalk at the front of this site, and the public sidewalk is on the opposite side of the street.
16. There are 42 front attached garages on Saskatchewan Drive, which is approximately 45 percent. Therefore, a precedent has been set for the development of front attached Garages in this area.
17. The existing house is actually set further back from the front property line than the proposed new house.
18. The Setback is required in order to achieve the proper slope for the Driveway to the lower level Garage.
19. The Setback creates less visual impact on adjacent neighbours' view of the River Valley.

20. The original house that will be demolished was set further back on the lot than the proposed new house.
21. The subject lot is located on a curve in the road which will mitigate the visual impact of the front Setback and the Height.
22. The deficiency in the rear setback only applies to a small corner of the house. Most of the proposed house is well within the required Setback.
23. The deficiencies in Setbacks actually create less of an impact on the neighbours to the south and creates more privacy for the neighbours to the north.
24. The amount of house projecting into the Rear Setback will have much less of an impact than the construction of a detached Garage that is otherwise permitted.
25. Sun shadowing will only occur during late afternoon.
26. The protrusion into the Rear Yard is a southern exposure and will facilitate the installation of solar panels in the future.

Ms. Kellerman and Mr. Wheaton provided the following responses to questions:

1. The clerestory area and 'skylight' is located at the front of the house and is part of the foyer development.
2. It was her opinion that if it was classified as a 'skylight' it would be exempt from the maximum allowable Height requirements.
3. It was their opinion that the block face average should be calculated by using the entire length of Saskatchewan Drive.
4. If Saskatchewan Drive was used in its entirety to calculate the block face, there are 19 houses out of 37 that have front attached Garages.
5. There is no sidewalk or treed boulevard on the side of Saskatchewan Drive on which the subject property is located.
6. Two mature trees would have to be removed to accommodate the construction of a rear detached Garage.
7. The house was set back to preserve the view of the River Valley for neighbouring property owners.
8. The sun shadowing effect of the proposed house is less than that of a house that could be built to maximize the size of the lot.
9. The parapets were designed as an architectural feature and to provide extra light.
10. The majority of the house complies with the maximum allowable 8.6 metres Height requirement.

The Board then heard from Mr. Robinson who appeared on behalf of Mr. Illingworth from the Sustainable Development Department. Mr. Robinson provided the following responses to questions:

1. The proposed parapet is a clerestory and not a 'skylight' and therefore had to be considered according to the definition of Height.
2. The area in question is minimal and only comprises a small portion of the roof line.
3. When viewed from the street, this area would create a negative massing of the structure on the site.

4. The proposed front attached garage complies with all of the development regulations except section 814.3(10)(c), which states that front access is not permitted if fewer than 50% of the principal Dwellings on the blockface have vehicular access from the front or flanking roadway.
5. The blockface was determined by using the internal policy of the Sustainable Development Department to use the Principal dwellings located between two flanking streets.
6. He provided a map, marked Exhibit "A", to illustrate that there was only one front access Garage and two flanking access Garages for the 12 residences located between the two flanking roadways.
7. The Front Setback should be similar to other developments on the block.
8. He agreed that the Setback will reduce the massing of the proposed building on the site.
9. The final grade is 66.24 metres, with the Grade to finished floor at 0.79 metres, grade from the finished floor to the midpoint of the highest parapet at 9.14 metres, resulting in a total Height of 9.93 metres. The overall Height of the proposed building is 10.09 metres, which exceeds the maximum allowable Height requirement of 8.6 metres by 1.49 metres.
10. The proposed Rear Setback of 14.78 metres is 31.6 percent of the depth of the Site, which is 3.95 metres less than the required Rear Setback of 18.73 metres (40 percent of the Site Depth).
11. It was his opinion that the deficiency in the Rear Setback would have a negative impact because of the two storey wall along the east side of the lot.
12. The original house was a two storey structure that was set further back from the front property line than the proposed house and did not project into the Rear Setback because there was a detached Garage.

Mr. Wheaton and Ms. Kellerman provided the following information in rebuttal:

1. They calculated the final grade to be 66.25 metres not 66.24 metres.
2. A glass dome could be installed on top of the central parapet to make it a 'skylight'.

At this point, the Presiding Officer advised that the matter of a glass dome was not before the Board and therefore could not be considered at this hearing.

3. Mr. Wheaton and Ms. Kellerman clarified that 27 of the 48 houses along Saskatchewan Drive have front attached Garages.
4. The variance required in the Front Setback is necessary to accommodate the slope for the Driveway to the underground Garage.
5. The proposed house is sited 18 feet from the side property line and landscaping will be provided which will minimize the impact of the proposed two storey house on adjacent property owners.

Decision:

The appeal is **ALLOWED** and the decision of the Development Authority is **REVOKED**. The development is **GRANTED** as applied for to the Development Authority.

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

1. The excess of 1.49 metres in the maximum Height requirement of 8.6 metres allowed under Section 814.3(13);
2. The excess of 3.05 metres in the maximum Front Setback of 8.68 metres allowed under Section 814.3(1); and
3. The deficiency of 3.95 metres in the minimum Rear Setback of 18.73 metres (40% of the Site Depth) required under Section 814.3(5).

Reasons for Decision:

The Board finds the following:

1. The proposed development is a Permitted Use in the RF1 Single Detached Residential Zone.
2. The Board grants the variance in the maximum allowable Height requirement for the following reasons:
 - a) Based on a review of the submitted plans and the evidence provided, the portion of the roof that exceeds the maximum allowable Height requirement is only 7% of the overall footprint of the proposed Principal Dwelling and is part of the foyer development.
 - b) This portion of the roof which was identified as a clerestory window extension is located on the front elevation of the proposed house at a central location which will mitigate any sun shadowing or privacy concerns for neighbouring property owners.
 - c) The increased Setback from the front property line will mitigate the required variance.
 - d) There are no residential properties located across the street from the subject site.
3. The Board grants the development for the proposed front attached Garage for the following reasons:
 - a) Section 814.3(10)(c) of the *Edmonton Zoning Bylaw* states:

Regardless of whether a Site has existing vehicular access from the front or flanking public roadway, there shall be no such access where an abutting Lane exists, and... fewer than 50% of principal Dwellings on the blockface have vehicular access from the front or flanking roadway.
 - b) Blockface is not defined in the *Edmonton Zoning Bylaw*.
 - c) Based on the evidence provided, Development Officers use an internal policy of the Sustainable Development Department which uses the Principal dwellings between 2 flanking roadways to determine blockface.
 - d) However, the Board finds that the Development Authority's approach to determining blockface does not provide an accurate method of determining whether fewer than 50% of principal Dwellings on the blockface have vehicular access from the front or flanking roadway in this instance.
 - e) Based on a review of the photographic evidence provided, the Board finds that this is a unique neighbourhood that is not typical of a traditional City neighbourhood

- because Saskatchewan Drive stretches for many kilometres and the majority of houses abut the North Saskatchewan River Valley System. Therefore, the variance granted to allow a front attached garage will be mitigated because it will not face onto other residential development.
- f) The Board accepts the evidence of the Appellant that 19 of the 37 houses along Saskatchewan Drive have front attached garages which exceeds the minimum 50 percent criteria, established under Section 814.3(1)(c) of the *Edmonton Zoning Bylaw*.
 - g) The Board notes that there is no sidewalk at the front of the subject site which will minimize any safety concerns for pedestrians in this neighborhood.
 - h) The garage is sunken and landscaping will be provided on either side of the proposed driveway which will mitigate the visual impacts of a front attached garage on Saskatchewan Drive.
4. The Board grants the variance in the Front Setback for the following reasons:
 - a) The existing two storey house (to be demolished) has a larger setback than the proposed new house.
 - b) The Board accepts that siting the house further back on the lot will accommodate the slope of the proposed driveway to the underground garage and preserve the view of the river valley for neighbouring property owners.
 - c) Saskatchewan Drive is a curved roadway which will lessen the visual impact of the variance granted in the Front Setback.
 - d) The variance will allow the preservation of some mature trees on the subject site.
 5. The Board grants the variance in the Rear Setback for the following reason:
 - a) Part of the rationale for the setback requirement in the *Edmonton Zoning Bylaw* is to accommodate the development of a rear detached garage and provide amenity space in the rear yard. However, the proposed development does not include a rear detached Garage.
 6. 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.

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, 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*, RSA 2000, c S-1;
 - c) the requirements of the *Permit Regulation*, Alta Reg 204/2007;
 - d) the requirements of any other appropriate federal, provincial or municipal legislation; and

- 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 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, 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.

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