

Edmonton Subdivision and Development Appeal Board

Churchill Building
10019 - 103 Avenue NW
Edmonton, AB T5J 0G9
Phone: 780-496-6079 Fax: 780-577-3537
Email: sdab@edmonton.ca
Web: www.edmontonsdab.ca

Date: October 8, 2015
Project Number: 174592929-001
File Number: SDAB-D-15-212

Notice of Decision

This appeal dated August 23, 2015, from the decision of the Development Authority for permission to:

Construct a Semi-detached House with front and rear verandas, fireplaces, and Basement developments (NOT to be used as an additional Dwelling), and to demolish an existing Single Detached House and Accessory Building (rear detached Garage)

on Plan 5765Q Blk 9 Lot 27, located at 10836 - 73 Avenue NW, was heard by the Subdivision and Development Appeal Board on September 23, 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 front and rear verandas, fireplaces, and Basement developments (NOT to be used as an additional Dwelling), and to demolish an existing Single Detached House and Accessory Building (rear detached Garage), located at 10836 - 73 Avenue NW. The subject Site is zoned RF6 Medium Density Multiple Family Zone and is within the Medium Scale Residential Infill Overlay.

The development permit was refused because of a deficiency in the minimum Site Area; minimum Site Width; the Front Setback being consistent with the 1.5 metres of the Front Setback on abutting lots and with the general context of the blockface; the minimum Rear Setback, that being 40 percent of the Site Depth; the minimum Width of the parking spaces; an excess in the maximum Site Coverage for a Principal Dwelling; the maximum allowable Height.

Prior to the hearing the following information was provided to the Board, copies of which are on file:

- A written submission received from Sustainable Development on September 21, 2015.

The Board heard from Mr. Raimondi, representing the Appellant, Tristate Signature Homes Ltd., who made the following points:

1. He provided the Board with three Exhibits:
 - a. a written submission with several attachments, marked "Exhibit A";
 - b. a list of addresses within the 60 metre notification radius that he contacted, marked "Exhibit B"; and
 - c. a copy of a document regarding barreled roofs, marked "Exhibit C".
2. He referred to Page 2 of Exhibit A which was the beginning of his written submission.
3. With regard to Attachments B and C of Exhibit A, he stated that under the 109 Street Corridor Plan, the subject Site was intended to be a Medium Scale Density development linked in with an active Transportation Plan.
4. The houses east of the subject Site are zoned RF3 Small Scale Infill Development Zone and 90 percent of those lots are similar to the subject Site. However, his site is zoned RF6.
5. In his opinion, the difference in the requirements of the RF3 Small Scale Infill Development Zone would have allowed him to develop Semi-detached housing.
6. He referred to Attachment E of Exhibit A, which shows a number of photographs of Semi-detached homes in the area that are within a three to five block radius.
7. Three of the houses shown are on lots the same width as the subject Site and two are built by the same builder.
8. One of those developments was before the SDAB after the permit was refused.
9. He referred to Attachment E-1 of Exhibit A, a decision of the SDAB, regarding the property at 10916 - 75 Avenue where a six unit Apartment was approved.
10. He referred to Attachment F of Exhibit A, another decision of the SDAB regarding property located at 65 Avenue and 106 Street showing other variances granted in Area and Site Width for front and back duplex developments.
11. He referred to Attachment G of Exhibit A, showing changes in the calculation for Site Coverage and indicated that the Development Authority has not reviewed the revised plans. However, he had met with the Development Authority to discuss the reasons for the refused permit.
12. The main floor could be lowered which means that it would be under 1.0 metres above Grade and the veranda would not be included in the total site coverage.
13. With regard to the Front Setback, he stated that the revised Plot Plan shifts the house back to provide for a 5.4 metres Setback which will address the deficiency.
14. He referred to Attachment H of Exhibit A, which showed nine letters in support of the development from neighbouring property owners. One neighbour provided verbal support of the proposed development.
15. In his opinion, based on his meeting with the Development Authority, he understood that one of the concerns related to the width of the landing at the top of the roof stairwell, which he thought should not have been included in the Height calculation.
16. He is willing to reduce the landing to only four feet in width because he feels 42 to 48 inches is required for safety purposes. This change is based on Page 8 of the initial plans.
17. In his opinion, he could address the issue regarding the stairwell structure by building a barreled roof.

18. Exhibit C shows several photographs of other homes that have barreled roofs.
19. One of these houses was approved by the SDAB and the other two houses were approved by Sustainable Development.
20. In his opinion, the Development Authority has the discretion to determine Height for barreled roofs, which he would be agreeable to if it will address the reason for refusal.

The Board noted that as of July 6, 2015, there was a change in how Height was calculated in the *Edmonton Zoning Bylaw*.

In response to questions by the Board, Mr. Raimondi provided the following information:

1. He was not trying to revise the plans, but was attempting to address the Development Authority's concerns.
2. In his past experience building multi-family dwellings, he had an opportunity to meet with the Development Authority before a decision was made regarding a proposed development permit. However, in this case, he was not provided an opportunity to meet with the Development Authority regarding the proposed development.
3. He reviewed the proposed changes and the attempts he made to accommodate the Development Authority's concerns.
4. He confirmed that there would be no walls or columns on either side of the proposed parking spaces.
5. He clarified that the retaining wall shown on the proposed plans was actually a 6 inch by 6 inch railway tie used to prevent drainage from the subject Site to other properties that have a lower grade.
6. He expressed his understanding that the *Edmonton Zoning Bylaw* would have allowed Semi-detached houses to be built on the subject lot if it was zoned RF3 Small Scale Infill Development Zone as there are different size requirements under that zone.
7. He reviewed the RF6 Medium Density Multiple Family Zone provisions with the Development Authority to allow for the possibility of tandem parking.
8. He confirmed that he intends to have tandem parking at the rear of the subject Site.
9. He confirmed that there are other properties in the area that have tandem parking.
10. Based on his experience as a landlord, he stated that the number of parking stalls could be reduced from 4 to 3 as some families do not have 2 cars.
11. There are six other rental properties in the area that have never had four cars associated with the property.
12. Many renters rely on transit or have one vehicle per household.
13. He reviewed Section 52.2(a) of the *Edmonton Zoning Bylaw* and stated that the term "roof stairway" does not indicate whether it is for an enclosed stairway. He understood that the concern regarded the Width of the stairway.
14. He confirmed that each deck will be 13 feet by 6 feet and the decks of the front units face the front, while the decks of the rear units face the back of the property.
15. With regard to the deck overlooking the property, he confirmed that each deck will overlook on one side of the property and he is willing to install privacy screening on that side.

16. He conceded that tandem parking spaces will reduce the amenity space at the rear of the property; however, there will be sufficient amenity space in the front, side, and roof deck.
17. He clarified that if he was not able to build a Semi-detached house he would be forced to build a Single Family Dwelling.
18. He expressed his concern regarding the lack of opportunity to consult with the Development Authority prior to finalizing the development permit and suggested how the process could be addressed in the future.

The Board then heard from Ms. Heimdahl, representing the City of Edmonton's Sustainable Development Department, who answered question from the Board and made the following points:

1. The parking width was determined by assuming that a fence would be constructed on the east and west side of the property. 2.7 metres was therefore used to calculate the Width of each of the end parking stalls.
2. Her correction in the refused permit regarding the Side Yard was based on the Setback of more than 2.0 metres from the property line. In her opinion, there will be no infringement on the habitable room window overlooking the adjacent property. However, the balconies overlooking the property are still a concern.
3. With regard to the difference between an enclosed elevator shaft and an enclosed stairwell to determine Height, she stated that the Bylaw was not clear and she could only refer to what was written.
4. The Height of the principal dwelling was calculated to the parapet wall surrounding the top of the structure which is a flat roof structure.
5. Lowering the floor Height may decrease the Site Coverage; however, she could not confirm this until she reviewed the plans.
6. In her opinion, tandem parking may affect the amenity space of the dwellings.
7. Tandem parking will not change the Rear Yard Setback as the location of the Semi-Detached creates the deficiency.
8. There may be a sun shadowing impact due to the infringement of the property into the Rear Yard but there is no evidence to confirm or refute that comment.
9. In her opinion, there is a massing effect on the adjacent property east of the subject Site.
10. With regard to the construction of a Single Family Dwelling, she stated that a Single Family Dwelling will revert back to the regulations in the RF1 Single Detached Residential Zone.
11. The proposed development does not fit the General Purpose of the RF6 Medium Density Multiple Family Zone due to the Height and the encroachment of the building into the Rear Yard.
12. With regard to the RF3 Small Scale Infill Development Zone, the regulations are different and allows for a 10.0 metre Site Width for front to back Semi-detached Dwellings. However, the same Site Area would still be deficient.
13. With regard to moving the dwelling back, she stated that the house will conform to the Front Yard regulations but will increase the deficiency of the projection into the required 40 percent Rear Yard amenity area.

In rebuttal, Mr. Raimondi made the following points:

1. In his opinion, the Site Coverage is under the maximum allowable because the proposed development does not have a garage.
2. If the house was moved back there will still be room for tandem parking.
3. If he was building a different house allowed in the RF6 Medium Density Multiple Family Zone, there would not be a Rear Setback.
4. The proposed development is under the 45 percent total allowable Site Coverage, therefore, the massing effect on adjacent properties will not be a concern.
5. It is speculative for the parking spaces to be calculated based on the possibility of a fence being built in the future.
6. The Community League did not come forward with any objections, but he also did not approach them to assess their position.
7. There is sufficient space on the Lot to build a Garage which would be within the maximum total allowable Site Coverage of 45 percent.
8. Fencing is not a requirement of the Bylaw and should not be considered when determining parking spaces.
9. In his opinion, the building is not over 8.6 metres in Height, and the stairwell should be exempt from that calculation.

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, subject to the following CONDITIONS:

1. The proposed development must comply with the average blockface, which is a minimum of 5.39 metres; and
2. The Appellant must submit revised plans that align with conditions and variances as granted by the Subdivision and Development Appeal Board, to be approved by the same, no later than October 23, 2015.

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

1. The proposed Site area is 404.69 m². The requirement under Section 150.4(2)(a) that the minimum Site Area shall be 442.2 m² is relaxed to allow a deficiency of 37.51 m².
2. The proposed minimum Site Width is 10.04 m. The requirement under Section 150.4(2)(b) that the minimum Site Width shall be 13.4 m is relaxed to allow a deficiency of 3.36 m.
3. The proposed Site Coverage for the Principal Dwelling is 33.74% or 136.55 m². The requirement under Section 150.4(5)(d) that the maximum Site Coverage for a Principal Dwelling be 32% is relaxed to allow an excess of 0.91m².

4. The proposed Front Setback is 5.029 m. The block face average is 6.895 m +/- 1.5 m, resulting in a minimum block face average of 5.395 m. The requirement under Section 814.3(1) that the Front Setback shall be consistent within 1.5 m of the Front Setback on Abutting Lots and with the general context of the block face is relaxed. The appellant has agreed to reposition the proposed building to comply with the required setback
5. The proposed Rear Setback is 13.259 m. The requirement under Section 814.3(5) that the minimum Rear Setback shall be 40% of Site Depth (40% x 40.23 m = 16.092 m) is relaxed to allow a deficiency of 3.03 m.
6. The proposed Height is 10.16 m. The requirement under Section 814.3(13) that the maximum Height shall not exceed 8.6 m, in accordance with Section 52, is relaxed to permit a deficiency of 1.56 m.

Reasons for Decision:

The Board finds the following:

1. The proposed development is a Permitted Use in the RF6 Medium Density Multiple Family Zone.
2. The Board grants variances to the Maximum Site area and Site with requirements for the following reason:
 - a) The three adjacent lots of the same width and area are zoned RF3 with different regulations for building multiple family dwellings. This is an RF6 lot with more stringent requirements.
3. The Appellant has agreed to lower the height of the building from grade to the first floor to under 1.0 metres. By doing so, the site coverage of the semi-detached housing is decreased to 32.91%. The Board grants a variance of 0.91% in site coverage.
4. The appellant has agreed to reposition the building to comply with the required front setback. In doing so this will increase the intrusion into the minimum Rear Setback. The Board grants the variance of 3.03 m in the deficiency of the Rear Yard Setback.
5. The proposed height is in excess of the requirements due to the stairway and landing accessing a roof deck. The Board was not presented with any information to indicate that a stairway was different from an elevator in calculating height. Here the stairway was included in the calculation of the height whereas the top area for an elevator would not have been. The Board determined that the rooftop stairway and the landing area for it should not have been included in determining the height. The Board finds that the larger than required landing area for this stairway would not exacerbate the massing effect of the proposed building on the neighbouring properties, because the excess landing area extends towards the centre of the building.
6. The Appellant has stated that privacy screening will be installed on both the front and rear rooftop decks to eliminate privacy concerns of adjacent neighbours.
7. The Board finds that four parking spaces are required (2.6 x 4 = 10.4m). The width of this lot is 10.6. Therefore the parking requirements are met. Also there is public transportation that is in close proximity to the proposed development. These factors will alleviate neighbourhood parking concerns.

8. The proposed development meets the General Purpose of the Mature Neighbourhood Overlay. Section 814.1 states:

The purpose of this Overlay is to ensure that new low density development in Edmonton's mature residential neighbourhoods is sensitive in scale to existing development, maintains the traditional character and pedestrian-friendly design of the streetscape, ensures privacy and sunlight penetration on adjacent properties and provides opportunity for discussion between applicants and neighbouring affected parties when a development proposes to vary the Overlay regulations.
9. The City of Edmonton's Municipal Development Plan, *The Way We Grow*, includes the 109 Street Development Plan, which expresses the goal to increase Low to Medium Density Housing in the area. The proposed development aligns with this goal.
10. Based on the evidence submitted, there is adequate amenity space between the Principal Dwelling and the parking area.
11. Community consultation provided the Board with 10 signatures of support for the proposed development within a three block radius of the site.
12. Based on the above reasons, it is the opinion of the Board that the proposed development will not unduly interfere with the amenities of the neighbourhood, and materially interfere with or affect the use, enjoyment or value of neighbouring parcels of land.

Important Information for 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.

Ms. P. Jones, Presiding Officer
Subdivision and Development Appeal Board

Edmonton Subdivision and Development Appeal Board

Churchill Building
10019 - 103 Avenue NW
Edmonton, AB T5J 0G9
Phone: 780-496-6079 Fax: 780-577-3537
Email: sdab@edmonton.ca
Web: www.edmontonsdab.ca

Date: October 8, 2015
Project Number: 174658189-001
File Number: SDAB-D-15-213

Notice of Decision

This appeal dated August 31, 2015, from the decision of the Development Authority for permission to:

Construct a Semi-detached House with front balconies (1.23m x 1.39m), with rear uncovered decks (3.05m x 5.33m), and Basement Developments (Not to be used as an additional Dwelling), and to demolish a Single Detached House and an existing rear Detached Garage

on Plan 1602HW Blk 17 Lot 25, located at 11147 - 72 Avenue NW, was heard by the Subdivision and Development Appeal Board on September 23, 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 front balconies (1.23m x 1.39m), with rear uncovered decks (3.05m x 5.33m), and Basement Developments (Not to be used as an additional Dwelling), and to demolish a Single Detached House and an existing rear Detached Garage, located at 11147 - 72 Avenue NW. The subject Site is zoned RF1 Single Detached Residential Zone and is within the Mature Neighbourhood Overlay.

The development permit was refused because of a deficiency in minimum Site Width, it does not meet locational requirements and the proposed second floor balcony exceeds the allowable projection into the front setback.

Prior to the hearing the following information was provided to the Board, copies of which are on file:

- Documentation submitted with the Appeal on August 31, 2015; and
- A written submission received from Sustainable Development on September 21, 2015.

The Board heard from Mr. Mohan, the Appellant, who made the following points:

1. He provided the Board with two letters from neighbouring property owners in support of the proposed development, marked "Exhibit A".
2. He received an email from a neighbouring property owner in support of the proposed development but did not bring it with him.
3. The proposed development is a Discretionary Use, and the Development Authority has the authority to approve the proposed development.
4. He provided the Board with a photograph of the area showing other Semi-detached housing developments which have been constructed on a 10.0 metre wide lot.
5. He referred to the deficiency in the projection into the Front Yard and stated that the proposed development projects into the Front Yard by 0.37 metres. In his opinion, the Dwelling could be moved back on the site to alleviate this deficiency.
6. He considered re-zoning the property, but would like to leave it zoned as RF1 Single Detached Residential Zone and proceed with the proposed development.
7. Based on his interpretation of the regulations, he would be allowed to build a 1280 square foot building which could be a three unit Dwelling.

In response to questions by the Board, Mr. Mohan provided the following information:

1. He confirmed that the garage will be 32 feet by 20 feet, which will accommodate three vehicles.
2. Even though parking is not listed as a reason for refusal, the garage can be situated to accommodate tandem parking and alleviate the deficiency in the number of parking spaces for the proposed development.
3. The proposed development complies with the City's policy for Multiple Family Dwellings in mature neighbourhoods because it is in close proximity to public transportation along 114 Street.

The Board then heard from Ms. Heimdahl, representing Sustainable Development, who answered questions from the Board and provided the following information:

1. There is sufficient room on the property to build a garage and provide tandem parking behind the garage. Even with tandem parking, there will still be sufficient amenity space in the Rear Yard.
2. She provided the Board with a map showing arterial roads in Edmonton, marked "Exhibit B", and confirmed that 72 Avenue is not an arterial road.
3. She confirmed that privacy concerns was one of the reasons for refusal because the proposed development does not comply with the Site location criteria as outlined in Section 110.4(4)(a) of the *Edmonton Zoning Bylaw*.

In rebuttal, Mr. Mohan made the following point:

1. He is willing to revise the proposed plans so that the proposed development complies with the regulations of the *Edmonton Zoning Bylaw*.
2. The Appellant indicated that there is a duplex built on a smaller lot in the area; however, it was not in close proximity to the subject Site.

Decision:

The appeal is DENIED and the decision of the Development Authority is CONFIRMED. The development is REFUSED.

Reasons for Decision:

The Board finds the following:

1. The proposed development is a Discretionary Use in the RF1 Single Detached Residential Zone.
2. The subject Site does not comply with the Site location criteria as outlined in Section 110.4(4)(a) of the *Edmonton Zoning Bylaw* for Semi-detached houses as follows:
Semi-detached Housing shall only be located:
 - a) On Corner Sites;
 - b) On Sites abutting an arterial or service road;
 - c) Where both Side lot Lines abut existing Duplexes or Semi-detached Housing;
 - d) Where a minimum of one Side lot Line:
 - i) abuts a Site where Row housing, Apartment Housing, or a commercial Use is a Permitted Use, or
 - ii) is not separated from a Site where Row housing, Apartment housing or a commercial use is a Permitted use by a public roadway, including a Lane, more than 10.0m wide.
3. The Board finds that the proposed development will be on an interior lot and not on a corner lot.
4. Based on Exhibit B, the subject Site is not abutting an arterial or service road,.
5. There must be either Duplex or Semi-detached developments on both sides of the subject Site, or there must be one side lot line abutting Row housing, Apartment Housing, or Commercial Uses. The Appellant provided evidence to the Board that there are Single Family Dwellings on either side of the subject Site.
6. As there are Single Family Dwellings on both sides abutting this lot Section 110.4(4) (d) does not apply.

7. Based on the above, it is the opinion of the Board that the proposed development will unduly interfere with the amenities of the neighbourhood, and materially interfere with or affect the use, enjoyment or value of neighbouring parcels of land.

Important Information for 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.

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.

Ms. P. Jones, Presiding Officer
Subdivision and Development Appeal Board

Edmonton Subdivision and Development Appeal Board

Churchill Building
10019 - 103 Avenue NW
Edmonton, AB T5J 0G9
Phone: 780-496-6079 Fax: 780-577-3537
Email: sdab@edmonton.ca
Web: www.edmontonsdab.ca

Date: October 8, 2015
Project Number: 174442218-001
File Number: SDAB-D-15-214

Notice of Decision

This appeal dated August 28, 2015, from the decision of the Development Authority for permission to:

Construct a Single Detached House, fireplace, rear attached Garage, and side rear uncovered deck (3.12m x 3.53m), and to demolish an existing Single Detached House and Accessory Building (rear detached Garage)

on Plan 6077KS Blk 26 Lot 10, located at 16010 - 95 Avenue NW, was heard by the Subdivision and Development Appeal Board on September 23, 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, fireplace, rear attached Garage, and side rear uncovered deck (3.12m x 3.53m), and to demolish an existing Single Detached House and Accessory Building (rear detached Garage), located at 16010 - 95 Avenue NW. The subject Site is zoned RF1 Single Detached Residential Zone.

The development permit was refused because rear attached garages are not allowed, except on Corner Sites where the Dwelling faces the flanking public roadway. In addition, there is an excess in the proposed projection into the rear Setback. The proposed rear second floor balcony may overlook neighbouring properties, creating a lack of privacy. Finally, the overall length of the proposed building may impact sunlight penetration on adjacent properties.

Prior to the hearing the following information was provided to the Board, copies of which are on file:

- One on-line response from a neighbouring property owner in opposition to the proposed development; and

- A written submission received from Sustainable Development on September 21, 2015.

The Board heard from Mr. Vo, the Appellant, who was accompanied by Mr. Elmikkawi, the designer, who together made the following points:

1. Mr. Elmikkawi indicated that he was making the presentation on behalf of the property owner.
2. The owners would like to build a rear attached Garage and upgrade the modern design of the house on the subject Site.
3. The rear attached Garage will protect the residents from the winter elements.
4. There are two developments in the neighbourhood that are on interior lots that have rear attached Garages.
5. Mr. Elmikkawi provided the Board with six photographs, three of each property, showing rear attached Garages, marked "Exhibit A".
6. With regard to the sunlight impact and the deck overlooking on adjacent properties, Mr. Elmikkawi stated that the property owners are willing to install privacy screening on the two flanking sides to mitigate privacy concerns.

The Board then heard from Ms. Heimdahl, representing the City of Edmonton's Sustainable Development Department, who answered questions from the Board and provided the following information:

1. One of the reasons for refusal was based on the requirement that the minimum Rear Setback shall be 40 percent of the Site Depth. With regard to the difference between the required minimum Rear Setback and projection into the Rear Yard, she stated that her decision factored in the eaves that encroached further into the required 40 percent Rear Yard.
2. She agreed that privacy screening installed on the deck will mitigate the impact on the adjacent properties.
3. If the house did not have a rear attached garage and complied with the *Edmonton Zoning Bylaw*, a rear deck would be allowed.
4. She was asked if she knew of any planning concerns caused by the rear attached garage, and she did not have a planning issue or knew of a planning issue other than it is a regulation under the Mature Neighbourhood Overlay.
5. If the garage was detached, there would not be a deficiency in the Rear Yard Setback and would be approved.
6. With regard to the limitations placed upon Development Officers to vary maximum Height under Section 11.4(2), she clarified that her concerns with Height were based only on the privacy issue caused by the deck above the rear garage as well as the sunlight impact.
7. She stated that a two Storey development would be approved on the subject Site because the proposed development results in a greater sunlight impact.
8. The proposed development and rear attached garage encroach into the required 40 percent Rear Yard.

In rebuttal, Mr. Vo and Mr. Elmikkawi made the following points:

1. In their opinion, there will not be a sunlight impact as the Height does not exceed the maximum allowable.
2. They explored their options for a breezeway between the house and the garage; however, a breezeway would also not be approved.
3. The road in front of the house is a service road off of 95 Avenue. Access to the back of the property is to the west.

In response to questions by the Board, Mr. Vo and Mr. Elmikkawi provided the following information:

1. With regard to community consultation, they provided the Board with a petition from neighbouring property owners in the 60 metre notification radius in support of the proposed development, marked "Exhibit B".
2. Mr. Vo did not conduct the community consultation. However, the person who completed it contacted all of the property owners in the 60 metre notification radius. The neighbours were not shown the proposed plans; however, the proposed development was explained to the neighbours.
3. They were not certain if the Community League was contacted.

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, subject to the following CONDITION:

1. The Appellant shall install privacy screening on the decks on the second level to provide privacy screening for the properties east and west side of the subject Site.

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

1. Section 814.3(18) states: "Rear attached Garages shall not be allowed, except on Corner Sites where the Dwelling faces the flanking public roadway." This requirement is waived to permit the proposed rear attached Garage.
2. Section 814.3(5) states: "The minimum Rear Setback shall be 40% of Site depth" (14.62m). The proposed minimum Rear Setback is 9.07 m. This requirement is relaxed to allow a deficiency of 5.55 m.

The following sections of the *Edmonton Zoning Bylaw* are waived:

1. Section 44.1(a) requires, in part, that “projections do not exceed 0.6 m in the case of Setbacks or Separation Spaces of 1.2 m or greater.” This requirement is waived to permit the proposed projection of 8.47 m into the Rear Setback.

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 finds that the rear attached garage will not have an effect on the adjacent properties.
3. Based on the evidence submitted, the proposed garage will not be visible from the street.
4. The rear attached garage is the cause of the deficiency in the rear yard, but the Board is persuaded that there is adequate amenity space in this area
5. Based on the evidence submitted, given that the Height of the proposed development is within the required Height, the Board finds that there will not be a sun shadow impact on the adjacent neighbouring properties.
6. With the conditions imposed by the Board, the privacy impact will be mitigated on the properties east and west of the subject Site. The Development Authority agreed to the privacy screening thereby removing any objections to the second floor balcony.
7. The property owner received signatures from 18 neighbouring property owners in support of the proposed development.
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 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.

Ms. P. Jones, Presiding Officer
Subdivision and Development Appeal Board