

# **Edmonton Subdivision and Development Appeal Board**

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Date: October 8, 2015  
Project Number: 167396237-002  
File Number: SDAB-D-15-195

## **Notice of Decision**

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

Construct 3 Apartment Housing buildings (184 Dwellings) with underground parkades and an Accessory Building (amenity building)

on Plan 1224595 Blk 4 Lot 1, located at 17904 - 78 Street NW, was heard by the Subdivision and Development Appeal Board on August 27, 2015, and September 23, 2015.

### **August 27, 2015, Hearing**

#### **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.

At the outset of the hearing, the Presiding Officer indicated that there was a preliminary issue to address as the Appellant, Ms. Latenko, was requesting a postponement.

The Board heard from Ms. Latenko, the Appellant, who made the following points:

1. She would like a postponement of the hearing to allow her time to prepare for the appeal hearing.
2. After filing the appeal she was away on vacation and recently moved and has not had time to fully prepare for the appeal hearing.

The Board then heard from Mr. Bacon, representing Sustainable Development, who was not opposed to the postponement request.

The Board then heard from Ms. Arsenault, representing the Respondent, Highstreet Crystallina Apartments Ltd., who made the following points:

1. She flew in from Kelowna, BC, and is opposed to the postponement request.

2. In her opinion, the reasons for appeal are not related to the proposed development but matters related to the broader neighbourhood.

In response to questions by the Board, Ms. Arsenault provided the following information:

1. Highstreet Crystallina Apartments Ltd. intends to start development this year.
2. They intend to apply for a building permit once the proposed development is approved.
3. Construction of the proposed development will be delayed by approximately one month if the postponement request is approved.

**Motion:**

“that the appeal hearing be TABLED to September 23 or 24, 2015, at the verbal request of the Appellant.”

**Reasons for Granting the Postponement:**

1. The Board accepts the Appellant’s presentation that she was away on vacation and also moving and she did not have adequate time to prepare for the appeal hearing.
2. The Board acknowledges that the representative from Sustainable Development was not opposed to the postponement request.
3. The Board acknowledges that it may be a hardship for the representative of the Respondent, Crystallina Highstreet Apartments Ltd., to attend the hearing at a later date as she has to fly in from Kelowna BC.
4. It is the practice of the Board to grant an initial postponement in the interest of natural justice and fairness.
5. Based on the above, the appeal hearing is tabled to September 23 or 24, 2015, to allow the Appellant additional time to prepare for the hearing.

**September 23, 2015, Hearing**

**Motion:**

SDAB-D-15-195 shall be raised from the table. The motion was carried.

**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 approve an application to construct 3 Apartment Housing buildings (184 Dwellings) with underground

parkades and an Accessory Building (amenity building), located at 17904 - 78 Street NW. The subject site is zoned RA7 Low Rise Apartment Zone.

The development was approved, with variances to:

1. The minimum Front Setback abutting 78 Street to the surface parking stalls and to the proposed trash enclosure;
2. The minimum Rear Setback abutting the south property line to proposed building "C";
3. The minimum Privacy Zones in front of the Habitable Room windows of 3 main floor Dwellings;
4. The minimum width of the underground parking stalls.

The approved permit was subsequently appealed by an adjacent property owner.

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

- A written submission received from the Respondent on August 12, 2015
- A written submission received from Sustainable Development on August 14, 2015
- A written submission received from the Respondent on September 16, 2015
- A written submission received from the Appellant on September 22, 2015
- An email from the Respondent received on September 22, 2015
- A written submission received from the Appellant on September 23, 2015

At the outset of the hearing the Presiding Officer indicated that the proposed development complies with the density requirements for the RA7 Low Rise Apartment Zone that have been established by City Council. He further advised that the development permit would have been issued as a right to the property owner except for the variances that were granted. Accordingly, the Appellant was asked to address the variances that were granted for the approved development because these are the primary issues that the Board must consider.

The Board heard from Ms. Latenko, the Appellant, who made the following points:

1. She expressed concern about the number of high-density developments in the Crystallina neighbourhood and noted that there are 11 low rise apartment developments in this area.
2. She asked that the planning of this neighbourhood be revisited because of the lack of playground space being provided in this family oriented neighbourhood.
3. She did not have any concerns regarding the specific variances that were granted for the proposed development.
4. Her concerns are related to the neighbourhood as a whole and not specifically to the proposed development.

The Board then heard from Mr. Kirk Bacon, representing the Sustainable Development Department, who provided the following information:

1. He explained that his rationale for approving the development and granting the required variances are outlined in his written submission dated August 24, 2015.

2. Playgrounds will be developed in this very new area as the neighbourhood is built out. Community Recreation Consultants in the Parks and Recreation Branch will be responsible for playground development in this area.
3. There is a designated school site as well as a natural area, three parks, and a Storm Water pond and walkway designated within the Neighbourhood Structure Plan.
4. He could not provide any specific details regarding the park development or the timing of the future school development.

The Board then heard from Ms. Arsenault, representing the Respondent, Highstreet Crystallina Apartments Ltd., who made the following points:

1. Highstreet is committed to quality developments and has developed several market rental communities in Edmonton and surrounding areas.
2. Highstreet purchases sites that are zoned ready for multi-family residential developments and select communities that are family oriented. They specifically look for sites that are close to bus stops, schools, parks, and amenities.
3. Families and pets are welcomed and community gardens and dog runs are provided at most of their locations.
4. The company is familiar with City of Edmonton development and building processes.
5. By definition, the setback abutting the south property line is a Rear Setback but resembles a Side Setback when viewed from 78 Street.
6. None of the required variances have been contested by adjacent property owners to the south or on 78 Street.
7. The rear setback variance is the result of an encroachment of one parking space, not the entire building, and was done to provide a larger amenity space and trees.
8. The proposed development complies with the density requirements for the RA7 Low Rise Apartment Zone.

The Board then heard from Mr. Leppky, representing Genstar Developments, who provided the following information:

1. The Municipal Reserve and park space were negotiated with the School Boards in 2011.
2. The required Municipal Reserve was spread throughout the neighbourhood so that it exceeds the minimum requirement of 10 percent.
3. A large stand of trees was sold to the City of Edmonton and is to be retained.
4. He could not provide any information regarding the timing of the development of the proposed school.

Ms. Latenko made the following points in rebuttal:

1. There is no guarantee that a playground will be part of any future school development.
2. She acknowledged that considerable green space is planned for the community but none of that space has been designated as a playground.

**Decision:**

The appeal is **DENIED** and the decision of the Development Authority is **CONFIRMED**. The development is **GRANTED** as approved by the Development Authority, subject to the following **CONDITIONS**:

This approval authorizes the construction of 3 Apartment House buildings (total of 184 Dwellings) with underground parkades and an Accessory Amenity building.

This Development Permit is NOT valid until the Notification Period expires in accordance to Section 21(1). Reference Section 17(1).

The applicant shall submit exterior cladding details for any portion of the underground parkades that project above grade to the satisfaction of the Development Officer. Exterior cladding of any exposed portions of the underground parkades shall be compatible with the rest of the building to the satisfaction of the Development Officer.

The 3 Habitable Room windows with the Privacy Zone deficiencies located beside the main entrances of the 3 buildings shall have opaque/non-transparent glazing to the satisfaction of the Development Officer.

All access locations and curb crossings shall have the approval of the City Transportation Department prior to the start of construction. Reference Section 53(1).

- 1) The proposed 9.14m commercial crossing access to 78 Street located approximately 69m north of the south property line is acceptable to Transportation Services and must be constructed as a commercial crossing access.
- 2) The owner must enter into a Municipal Improvement Agreement with the City for the following improvements:
  - a) Construction of a 9.14m commercial crossing access to 78 Street located approximately 69m north of the south property line.  
Engineering Drawings are not required for this Agreement. However, construction must meet the City of Edmonton Design and Construction Standards. The Municipal Improvement Agreement must be signed PRIOR to the release of the drawings for Building Permit review. The Agreement must be signed by the property owner and returned to Transportation Services to the attention of Loli Fernandez (780-944-7683) including an irrevocable Letter of Credit in the amount of \$10,000 to cover 100% of construction costs. The Agreement will be forwarded directly to the owner for his signature.
- 3) A 'Private Road' sign is to be located on private property at the site entrance.
- 4) Parallel parking is NOT permitted on the internal road system. The road must be signed 'No Parking' in order to allow emergency vehicle access and sufficient maneuvering for this development.
- 5) The connector sidewalks from the property to 78 Street and Crystallina Nera Way are acceptable. An access gate is required to Crystallina Nera Way given that there is an existing fence. This gate must open into the property and should be signed as private entry only into the site.

6) Any boulevard, sidewalk and shared use path damage occurring as a result of construction traffic must be restored to the satisfaction of Transportation Services, as per Section 15.5(f) of the Zoning Bylaw. The boulevard, sidewalk and shared use path will be inspected by Transportation Services prior to construction, and again once construction is complete. All expenses incurred for repair are to be borne by the owner.

Transportation Department Advisements:

- 1) There may be utilities within road right-of-way not specified that must be considered during construction. The owner/applicant is responsible for the location of all underground and above ground utilities and maintaining required clearances as specified by the utility companies. Alberta One-Call (1-800-242-3447) and Shaw Cable (1-866-344-7429; [www.digshaw.ca](http://www.digshaw.ca)) should be contacted at least two weeks prior to the work beginning to have utilities located. Any costs associated with relocations and/or removals shall be at the expense of the owner/applicant.
- 2) Residential Sales Trailers require a separate development permit. Construction trailers must be located on private property or within the hoarded area.
- 3) In order to reduce potential for vehicle conflict in the parking lot near the parkade entrance/exits, the applicant is encouraged to implement traffic control measures, such as signage to ensure vehicles can enter and exit the parkade safely.
- 4) There is an existing bus stop on 78 Street.
- 5) Arterial Roadway Assessments were previously paid for this site, and therefore are not owed under this development application.

Landscaping shall be in accordance to the approved landscape plan, Section 55 and to the satisfaction of the Development Officer.

PRIOR TO THE RELEASE OF DRAWINGS FOR BUILDING PERMIT REVIEW, the applicant or property owner shall provide a guaranteed security to ensure that landscaping is provided and maintained for two growing seasons. The Landscape Security may be held for two full years after the landscaping has been completed. This security may take the following forms:

a) cash to a value equal to 100% of the established landscaping costs;

or

b) an irrevocable letter of credit having a value equivalent to 100% of the established landscaping costs.

Any letter of credit shall allow for partial draws. If the landscaping is not completed in accordance with the approved Landscape Plan(s) within one growing season after completion of the development or if the landscaping is not well maintained and in a healthy condition two growing seasons after completion of the landscaping, the City may draw on the security for its use absolutely. Reference Section 55(6).

PRIOR TO THE RELEASE OF DRAWINGS FOR BUILDING PERMIT REVIEW, the applicant or property owner shall pay a Lot Grading Fee of \$2,750.00.

PRIOR TO THE RELEASE OF DRAWINGS FOR BUILDING PERMIT REVIEW, the applicant or property owner shall pay a Sanitary Sewer Trunk Fund fee of \$187,864.00 (based on 2015 rate of \$1,021.00 / Dwelling). All assessments are based upon information currently available to the City. The SSTF charges are quoted for the calendar year in which the

development permit is granted. The final applicable rate is subject to change based on the year in which the payment is collected by the City of Edmonton.

PRIOR TO THE RELEASE OF DRAWINGS FOR BUILDING PERMIT REVIEW, the applicant or property owner shall pay a Notification Fee of \$100.00.

The proposed short parking stalls shall be clearly signed as such to the satisfaction of the Development Officer. Reference Section 54.2.4.a(iii).

Bicycle parking shall be provided in accordance to Section 54.3 and to the satisfaction of the Development Officer.

Exterior lighting shall be developed to provide a safe lit environment in accordance with Sections 51 and 58 and to the satisfaction of the Development Officer.

The developer shall provide a minimum of 27 visitor parking spaces readily available to an entrance of the building to be served, and clearly identified as visitor parking to the satisfaction of the Development Officer. Reference Section 54.2, Schedule 1A(1).

The off-street parking, loading and unloading (including aisles or driveways) shall be hardsurfaced, curbed, drained and maintained in accordance to Section 54(6).

All outdoor trash collection areas shall be located and screened to the satisfaction of the Development Officer in accordance with Sections 55(4) & (5).

#### NOTES:

- 1) Signs require separate Development Applications.
- 2) A Building Permit is required for any construction or change in use of a building. For a building permit, and prior to the Plans Examination review, you require construction drawings and the payment of fees. Please contact the 311 Call Centre for further information.
- 3) This approval does not remove obligations to conform with other legislation, bylaws or land title instruments such as the Municipal Government Act, the ERCB Directive 079, the Edmonton Safety Codes Permit Bylaw or any caveats, covenants or easements that might be attached to the Site.

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

- 1) Section 210.4(6) relaxed - the minimum Front Setback abutting 78 Street NW is reduced from 6.0m to 4.0m to the surface parking stalls and to the proposed trash enclosure.

NOTE: The proposed Apartment House buildings meet the Front Setback requirements.

- 2) Section 210.4(7) relaxed - the minimum Rear Setback abutting the south property line is reduced from 7.5m to 5.5m to proposed building 'C'.

- 3) Section 48.3(3) relaxed - there are onsite walkways within the required 4.5m Privacy Zones in front of the Habitable Room windows of 3 main floor Dwellings.
- 4) Section 54.2.4.a(vi and v) relaxed - the minimum widths of the underground parking stalls where the stalls are obstructed on one side by a wall or column is reduced from 2.7m to 2.6m. Where the stalls are obstructed on both sides by a wall or column, the minimum required width is reduced from 3.0m to 2.8m.

### **Reasons for Decision:**

The Board finds the following:

1. Apartment Housing is a Permitted Use in the RA7 Low Rise Apartment Zone.
2. The General Purpose of the RA7 Zone is to provide a Zone for Low Rise Apartments, pursuant to Section 210.1 of the *Edmonton Zoning Bylaw*.
3. The proposed development is consistent with the guidelines and policies of the Edmonton North Area Structure Plan and the Crystallina Nera West Neighbourhood Structure Plan which states that the subject site is intended to be developed as Medium Density Housing with Densities ranging from 42 to 125 units per hectare.
4. The four variances granted are required to provide reasonable accommodation for the three apartment house buildings and the accessory amenity building on the subject site.
5. The Appellant did not have any specific concerns related to the variances that were granted for the proposed development and failed to provide sufficient planning reasons that would lead the Board to determine that granting the variances would materially affect the use and enjoyment of neighbouring properties.
6. The Board acknowledges the concerns of the Appellant regarding the provision of playground space in this new neighbourhood. However, there is no basis in legislation that allows the Board to “re-visit” the design of the Crystallina Nera West neighbourhood, as approved by City Council. The provision of playgrounds will be the responsibility of the City of Edmonton Parks and Recreation Branch through the development of the lands provided through the Municipal Reserve.
7. Based on the above, it is the opinion of the Board, that the proposed development, with the required variances, 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 5<sup>th</sup> 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. N. Somerville, Presiding Officer  
Subdivision and Development Appeal Board