



**EDMONTON
TRIBUNALS**

*Subdivision &
Development
Appeal Board*

**10019 - 103 Avenue NW
Edmonton, AB T5J 0G9
P: 780-496-6079 F: 780-577-
3537
sdab@edmonton.ca
edmontonsdab.ca**

Date: October 13, 2016
Project Number: 224832554-001
File Number: SDAB-D-16-238

Notice of Decision

- [1] On September 28, 2016, the Subdivision and Development Appeal Board (the “Board”) heard an appeal that was filed on **August 29, 2016**. The appeal concerned the decision of the Development Authority, issued on August 16, 2016, to refuse the following development:

To install a Freestanding Minor Digital Off-premises Sign (SW face Minor Digital - 6.1 metres by 3 metres & NW face static - 6.1 metres by 3 metres)

- [2] The subject property is on Plan 529KS Lot C, located at 14421 - Mark Messier Trail NW, within the IB Industrial Business Zone. The Major Commercial Corridors Overlay and Rampart Industrial Area Structure Plan apply to the subject property.
- [3] The following documents were received prior to the hearing and form part of the record:
- Copy of the Development Permit application with attachments, proposed plans, and the approved Development Permit;
 - The Development Officer’s written submissions; and
 - The Appellant’s written submissions.

Preliminary Matters

- [4] 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.
- [5] The Presiding Officer outlined how the hearing would be conducted, including the order of appearance of parties, and no opposition was noted.
- [6] The appeal was filed on time, in accordance with Section 686 of the *Municipal Government Act*, RSA 2000, c M-26 (the “*Municipal Government Act*”).

Summary of Hearing*i) Position of the Appellant, J. Murphy Jr., on behalf of Pattison Outdoor Advertising*

- [7] Mr. Murphy stated that the existing sign had not been installed in accordance with the plan that was approved when the development permit was issued. The Approved plan showed the sign setback six metres from the road but it was built closer than that.
- [8] No complaint or violation notice was issued with respect to this sign, nor was it brought to their attention by the Development Officer. The permit lapsed in 2014. During that year, the Appellant's leasing department was experiencing a massive turnover. In error, an employee improperly checked off that the development permit for the existing sign had been renewed. Mr. Murphy recently discovered that the permit had lapsed two years ago. As a result, the Appellant had to apply for a new development permit.
- [9] Mr. Murphy submitted that placing the sign at the prescribed setback of 6.0 metres is impossible. First of all, relocating the structure would be expensive. Also, there are protruding elements on the roof of the building that would obscure the sign if it were relocated.
- [10] Mr. Murphy believes that Development Officers are reluctant to use their variance powers when it comes to Digital Signs. In the past he has been successful with his applications to renew a development permit when he has reduced the impact of an existing Digital Sign by either reducing its size or making a portion of it static. In this case, rather than apply to keep the sign in its current form with two digital faces, he changed one digital face to a static face.
- [11] At first Mr. Murphy assumed the original sign had been given a setback variance. The Site plan from 2009 indicates a six-metre Setback. However, the contractors did not install the sign in accordance with the approved permit. The Appellant has a policy of building only in accordance with approved plans.
- [12] Mr. Murphy advised that the land owner will not suffer a decrease in rent as result of swapping one digital face for a static face. The land owner, however, will be negatively impacted if the development permit is refused and the Appellant has to remove the sign.
- [13] Mr. Murphy submitted the variance required is very small. He referred to Tab 6 of his submission (regulations with respect to Digital Signs) and took the position that Digital Signs are legitimate developments.
- [14] Mr. Murphy stated that the existing sign and proposed sign adhere to all of the regulations except for the Setback. Transportation Services did not object to the proposal. The total Sign Area is less than the maximum allowed. It does not conflict with other signage. The sign is located in a commercial area. There have been no brightness complaints.

- [15] Mr. Murphy reiterated that the Development Officer seemed reluctant to exercise his variance powers. However, by allowing the required variance, the Development Officer would not be exceeding his authority under Section 640 of the *Municipal Government Act* or Section 11 of the *Edmonton Zoning Bylaw*. The obstructions on the building constitute a hardship.
- [16] The proposed development would comply with Section 687 to the *Municipal Government Act* because the proposed development would not unduly interfere with the amenities of the neighbourhood or materially interfere with or affect the use, enjoyment or value of neighbouring parcels of land.
- [17] As shown on in Tab 8 of his submission, the property is located within a commercial corridor. This type of development is characteristic in the neighbourhood and, according to the text amendment to the *Edmonton Zoning Bylaw*, is in fact desirable in these types of areas.
- [18] Mr. Murphy stated that there are no neighbours in opposition to the proposed development. Property values have not suffered as result of the existing sign. The more impactful version of the sign has not caused any harm.
- [19] The Appellant submitted the sign is located effectively 22 metres from the nearest lane of Mark Messier Trail. Transportation Services have indicated there are no safety concerns.
- [20] If the Board attached a condition requiring the sign to be relocated, it would be tantamount to a denial of this appeal.
- [21] In response to a question from the Board as to why the Development Officer's calculation of the Setback differs from the plan (3.16 metres versus 3.27 metres), Mr. Murphy stated the Development Officer used pictometry, while the Appellant had the property surveyed.
- [22] Mr. Murphy advised that the height of the adjacent building is approximately 15 feet. It is not the building itself that would block the view of the sign if it were relocated, it is the light fixtures, vents and other protrusions on the roof that would cause problems.
- [23] The Board asked Mr. Murphy whether the Setback specified the *Edmonton Zoning Bylaw* for this Zone applies or the one in the Major Commercial Corridor Overlay. He conceded the Overlay does override the Zone requirements. However, Section 813.4(7) of the Overlay allows the Development Officer to reduce the Setback from 7.5 metres to 4.5 metres if the sign is at least 15 metres from the adjacent intersecting Major Arterial Road. Here, the distance is 22 metres to the curb of Mark Messier Trail. In any event, the Board could vary the Setback specified in the Overlay because doing so would meet the test in Section 687.
- [24] Mr. Murphy advised that the Appellant would remove the sign if the development permit was refused.

[25] Upon questioning from the Board, Mr. Murphy stated he had obtained the 22 metres distance from a Google Map (Tab 4 of his submission). He conceded this might not reflect the distance from the sign to the road right-of-way.

ii) *Position of the Development Officer, S. Ahuja*

[26] The Development Officer advised the Board that the previous permit expired in 2014, pursuant to section 22 of the *Edmonton Zoning Bylaw*. Thus any discussion regarding the previous permit is irrelevant.

[27] The Overlay allows the Development Officer to reduce the required Setback to 4.5 metres provided the average Width of the Setback is not less than 6.0 metres. In this case, the average width of the Setback is less than 6.0 metres and the Appellant was requesting a variance to allow a Setback of 3.17 metres.

[28] Upon questioning by the Board, the Development Officer stated that the requirements of an Overlay always supersede those of the Zone. Section 813.4(7) states “the Development Officer may use variance power to reduce the minimum Setback Width specified in subsection 813.4(6) above to 4.5 metres or to the minimum Setback Width specified in the underlying Zone, whichever is greater, adjacent to those Arterial Roads that directly intersect the Major Arterial Roads. This Setback Width of 4.5 metres may be further reduced to that specified by the underlying Zone, for that portion of the Site beyond a distance of 15.0 metres from the adjacent intersecting Major Arterial Roads.” Therefore, if a property subject to this Overlay is located in a Zone that allows a Setback of 3.0 metres and the Site is located 15.0 metres from the adjacent intersecting Major Arterial Roads, then the proposed development can have a Setback between 3 metres and 4.5 metres. In this case, the underlying Zone provides a 6.0 metre Setback, so the minimum allowable Setback is 4.5 metres.

[29] The Board questioned if the presence of the service road between the sign and Mark Messier Trail still meant the sign is adjacent to a Major Arterial Road pursuant to Section 813.4(6). The Development Officer said that, although the property not abutting, it is still adjacent to a Major Arterial Road.

[30] The Development Officer confirmed that Transportation Services has no issues with the proposed development. However, they review it against their own guidelines.

[31] The Development Officer acknowledged that the proposal would reduce the intensity of the sign by converting one of the digital faces to a static face. Their variance test is based on hardship. However, in this case, the previous permit had lapsed and this is a new application. Their office has approved new signs in the area with 4.5-metre Setbacks in cases of hardship. The static portion would still be a sign, just a different medium.

[32] The Development Officer does not believe the relocating the sign behind the building would be a hardship because the building Height is 15 feet and the bottom of the sign is 16 feet.

iii) Rebuttal of the Appellant

[33] Mr. Murphy stated that it is the projections on the roof that would obscure the view of the sign. The Google pictures submitted were taken from the Google street van, which has cameras that are higher than the view a typical driver would have. The Development Officer would not be exceeding his section 11 variance authority by issuing the development permit. The Appellant faces practical difficulties with regard to placement of the sign. He confirmed that it is the digital face and not static face of the sign that would be impacted by the building projections. Mr. Murphy submitted that, in any event, the development meets the test set out in Section 687 of the *Municipal Government Act*.

Decision

[34] 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 and ADVISEMENTS:

- 1) The development permit for a Freestanding Minor Digital Off-premises Sign (SW face Minor Digital - 6.1 metres by 3 metres & NW face static - 6.1 metres by 3 metres) is approved as applied for until October 13, 2021.
- 2) The development shall comply with the approved plans submitted.
- 3) The Minor Digital Off-premises Sign shall use automatic light level controls to adjust light levels at night, under cloudy and other darkened conditions to reduce light pollution, in accordance with the following:
 - a) Ambient light monitors shall automatically adjust the brightness level of the Copy Area based on ambient light conditions. Brightness levels shall not exceed 0.3 footcandles above ambient light conditions when measured from the Sign face at its maximum brightness, between sunset and sunrise, at those times determined by the Sunrise / Sunset calculator from the National Research Council of Canada (Reference Section 59.2(5)(a));
 - b) Brightness level of the Sign shall not exceed 400 nits when measured from the sign face at its maximum brightness, between sunset and sunrise, at those times determined by the Sunrise/Sunset calculator from the national research Council of Canada (Reference Section 59.2(5)(b)).

- 4) The proposed Minor Digital Off-premises Sign shall comply with the following conditions in consultation with the Transportation Planning, in accordance to Section 59.2(11):
 - a) That, should at any time, Transportation Planning and Engineering determine that the sign face contributes to safety concerns, the owner/applicant must immediately address the safety concerns identified by removing the sign, de-energizing the sign, changing the message conveyed on the sign, and or address the concern in another manner acceptable to Transportation Planning and Engineering.
 - b) That the owner/applicant must provide a written statement of the actions taken to mitigate concerns identified by Transportation Planning and Engineering within 30 days of the notification of the safety concern. Failure to provide corrective action will result in the requirement to immediately remove or de-energize the sign.
 - c) The proposed sign shall be constructed entirely within private property. No portion of the sign shall encroach over/into road right-of-way.

ADVISEMENT:

- 1) Should the Applicant wish to display video or any form of moving images on the sign, a new Development Application for a Major Digital Sign will be required. At that time, Transportation Services will require a safety review of the sign prior to responding to the application.

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

- 1) The minimum allowable Setback of 7.5 metres per Section 813.4(6) of the *Edmonton Zoning Bylaw* is varied to allow a deficiency of 4.23 metres, thereby decreasing the minimum required Setback to 3.27 metres.

Reasons for Decision

[36] Under section 400.3(41) Minor Digital Off-premises Signs are a Discretionary Use in the IB Industrial Business Zone.

[37] The Board is of the opinion that granting this variance will not unduly interfere with the amenities of the neighbourhood nor materially affect the use, enjoyment or value of neighbouring parcels of land for the following reasons:

- (a) The Sign is separated from the nearest travelled lane of Mark Messier Trail by over 22 metres. Within this space is a service road and a boulevard.

- (b) The size of the Sign is considerably less than the maximum size allowed.
- (c) The Sign complies with all other respective *Edmonton Zoning Bylaw* requirements, including the separation distance from other Signs.
- (d) The proposed Sign will be a less intense use than the existing Sign in that only one side will be digital.
- (e) Transportation Services has no issues with this Sign from a safety perspective.
- (f) The existing Sign has been place for a number of years with no complaints registered. No one appeared at the hearing or sent in letters indicating opposition to the Sign.

Mr. M. Young, Presiding Officer
Subdivision and Development Appeal Board

Board members in attendance:

Ms. P. Jones, Mr. M. Jummun, Ms. S. LaPerle, Ms. N. Hack

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*,
 - c) the *Alberta Regulation 204/207 – Safety Codes Act – Permit Regulation*,
 - d) the requirements of any other appropriate federal, provincial or municipal legislation,
 - e) the conditions of any caveat, covenant, easement or other instrument affecting a building or land.
3. When an application for a Development Permit has been approved by the Subdivision and Development Appeal Board, it shall not be valid unless and until any conditions of approval, save those of a continuing nature, have been fulfilled.
4. A Development Permit will expire in accordance to the provisions of Section 22 of the *Edmonton Zoning Bylaw, Bylaw 12800*, as amended.
5. This decision may be appealed to the Alberta Court of Appeal on a question of law or jurisdiction under Section 688 of the *Municipal Government Act*, R.S.A. 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.



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3537
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edmontonsdab.ca*

Date: October 13, 2016
Project Number: 186116148-001
File Number: SDAB-D-16-239

Notice of Decision

- [1] On September 28, 2016, the Subdivision and Development Appeal Board (the “Board”) heard an appeal that was filed on **August 25, 2016**. The appeal concerned the decision of the Development Authority, issued on August 18, 2016, to refuse the following development:

To construct a 3 Dwelling Row House, an Accessory building (rear detached Garage, 10.98 metres by 6.71 metres) and to demolish an existing Single Detached House and Accessory building (rear detached Garage).

- [2] The subject property is on Plan N727HW Blk 3 Lot 12, located at 7505 - 114 Street NW, within the RF3 Small Scale Infill Development Zone. The Mature Neighbourhood Overlay and McKernan / Belgravia Station Area Redevelopment Plan apply to the subject property.

- [3] The following documents were received prior to the hearing and form part of the record:
- Copy of the Development Permit application with attachments, proposed plans, and the approved Development Permit;
 - The Development Officer’s written submissions;
 - The Appellants’ written submissions; and
 - Letter of Opposition from the McKernan District Community League.

- [4] The following exhibit was presented during the hearing and forms part of the record:
- Exhibit A – Copy of PowerPoint Presentation

Preliminary Matters

- [5] At the outset of the appeal hearing, the Presiding Officer confirmed with the parties in attendance that there was no opposition to the composition of the panel.

[6] The Presiding Officer outlined how the hearing would be conducted, including the order of appearance of parties, and no opposition was noted.

[7] The appeal was filed on time, in accordance with Section 686 of the *Municipal Government Act*, RSA 2000, c M-26 (the “*Municipal Government Act*”).

Summary of Hearing

i) Position of the Appellants, R. Khorasani and M. Asadi, on behalf of the McKernan MSR Development Corporation

[8] The Appellants are committed to the City vision of creating affordable, sustainable, and attractive housing. The proposed development is in line with City goals. They are mindful of the McKernan community. New owners would be able to experience the neighbourhood amenities, such as the nearby LRT station, the University of Alberta, the University of Alberta hospital, parks, museums, and popular schools.

[9] The Appellants were surprised to receive the letter in opposition from the McKernan District Community League. They used the letter the Development Officer provided to them to consult with the neighbours and the Community League. They wanted the Board to be aware that they were in no way trying to be misleading when they did the community consultation, but they were conducting it as they had been advised. The Presiding Officer acknowledged that the Appellants followed the community consultation process that the Development Officer set out. The Mature Neighbourhood Overlay only requires community consultation with respect to variances to the regulations in the Overlay, not with respect to variances to other zoning regulations.

[10] The Appellants reviewed their PowerPoint presentation, marked Exhibit A.

[11] The Appellants stated the City of Edmonton website speaks to the importance of affordable housing.

[12] This project started January 21, 2016.

[13] The disadvantages of the existing property include:

- House is 67-years old (built in 1949)
- House and surroundings are poorly maintained
 - Foundation is badly damaged
- Expensive to build a single home or a duplex
 - \$700,000 - \$800,000 each for one or two Dwellings

- Most new developments on this avenue have not added any character to the neighbourhood
 - Simple duplexes with minimal aesthetic appeal
 - Old designs

[14] The Appellants submitted pictures to show that the existing property on 114 Street does not look attractive. They submitted further pictures and the prices of new duplexes.

[15] The advantages of the proposed plans include:

- Less expensive to build (\$420,000/dwelling)
- Fits with the City of Edmonton's vision for increased density in the city core
- Close to the University of Alberta, University hospital and McKernan/Belgravia LRT station
- Residents may not at all need vehicles for commuting to work or school or even for basic activities such as shopping
- Less traffic and shorter commute times for everyone
- Less land use and fewer sewer and water pipe lines
 - Supporting the goal of sustainable land use in Edmonton and less rezoning of farm land
- Increases the City's income in the short term and long term
- Much more landscaping, which would add to the aesthetic appeal of the neighbourhood
- New and modern design
- Max \$500,000/dwelling

[16] The Appellants reviewed their Site plan with the Board. The proposed development has a different look to it.

[17] The Appellants reviewed their arguments regarding each deficiency identified by the Development Officer.

[18] With regards to the Site Coverage and Setbacks, the Appellants stated:

- This project accommodates higher density and no one appeared in opposition except the Community League's letter of opposition
- Properties in this neighbourhood are expensive
- To maintain affordability, smaller lots must be accommodated
- The total Site coverage is within the recommended total Site coverage of the *Edmonton Zoning Bylaw* (45 percent), if it is assumed the garage is part of the building
- Site regulation for Row Housing (Bylaw 17403, Effective Feb 2016):
 - The minimum Site area shall be equal to the Sum of:
 - 186 square metre for each Dwelling, plus
 - 150 square metres for each internal Dwelling
- Total 186 square metres + 150 square metres + 186 square metres = 522 square metres < 556.2 square metres of the lot
- These deficiencies do not affect any other amenities required by the occupants of these houses or any neighbours

[19] The Appellants stated that since they have a larger than required Site Area, they should be afforded greater latitude with other regulations.

[20] The project is in line with the McKernan-Belgravia Station Area Redevelopment Plan.

[21] With regards to the windows on the interior Setback, the Appellants stated:

- The windows on this side elevation have been sized and located so the occupants of the rooms will not have a direct view of the neighbouring site
- On the ground floor the sill height is set at five feet off the floor
- On the 2nd floor the sill height is four feet
- The total area of unprotected openings on this wall is about 5.6 percent; the Alberta Building Code allows for 7 percent

- As recommended by Development Officer, eight Swedish Columnar trees will be planted to mitigate this concern
- Also frosted glass can be installed on the windows on this side

[22] With regards to the Architectural Features, the Appellants stated:

- This is a very subjective bylaw requirement
- Traditional flat roof dormers on the second storey have been designed to give a historical, residential form
- There are cantilevers and various projections on all sides except the east
- There are three flat verandah projections over each entry with the end ones wrapping around the south and north sides
- The attached Row Houses each ARE individually defined through the use of projections
- The roof terraces give the main sloped roof an interest and a residential character
- The smooth finished acrylic stucco with the chosen colours of white, grey and red is consistent on all sides

[23] With regards to the maximum Height, the Appellants stated:

- The architect is an experienced professional (more than 30 years of experience) and he has written an e-mail, which was provided to the Developer Officer, explaining this Height question
 - The midpoint of the "main" sloped roof is 8.1 meters. This is the dominant roof that will read as such from the street
- The height of the flat-roofed dormers is 9.6 meters, this is NOT the "midpoint" of the roof
- If the dormers are considered by the Development Officer in the roof height calculation (Section 52(1)(d)) then a more consistent midpoint height would be the average between the two (8.85 meters)
- For roof types, including dormer/flat roofs, the Development Officer shall determine Height by applying one of the previous three types (Section 52(1) (b), (c) and (d)) that is most appropriate for balancing development rights and the land use impact on adjacent properties

- This is not a hip and gable roof type (Section 52(1)(a))
- The Height of the first floor could be reduced by one foot, if desired by the Board, to accommodate this concern

[24] The Appellants provided a copy of an email and drawing from their architect to illustrate his Height calculation. They stated the Community League had expressed support for this calculation of Height.

[25] With regards to the Landscaping, the Appellants stated:

- Required are 11 trees and 24 shrubs, see site plan
- 14 cotoneaster shrub (2 inches high), 10 red Dogwood shrubs (2 inches high)
- 8 Swedish columnar Aspen (100 mm caliper), 3 Spruce (2 metres high)
- They would add more trees or shrubs, if required
- A detailed landscaping plan will be submitted for approval according to Sections 15.4 and 69.2 of the *Edmonton Zoning Bylaw 12800*, to the satisfaction of the Development Officer

[26] With regards to Parking, the Appellants stated:

- This development is very close to the McKernan and Belgravia LRT station:
- The residents may not have a car or may have just one car per dwelling
 - There will be a one-car garage for each dwelling
 - It is a two-minute walk to the LRT
 - It is 15 minutes to the University of Alberta or the University Hospital
- Objectives and policies of the recommended amendments to the *Edmonton Zoning Bylaw* by the City for McKernan and Belgravia are as follows:
 - Integrate higher density development with transit
 - Goal is a minimum 25 percent housing unit growth as infill
 - Integrate land use planning and transportation to create an accessible, efficient and compact urban form

- Limit surface parking
- Increase transit ridership and reduce automobile use

[27] With regards to the neighbourhood consultation, the Appellants stated they:

- Prepared a package consisting of: Community Consultation for Proposed Development (sent by Development Officer), Site plan, West Elevation, South Elevation and Building sections
- Visited all of the addresses within 60 metres shown on the canvassing map and handed the prepared packages those who opened the door or left them in mailbox if nobody opened the door
- Left a message on the envelope stating
 - "Sorry we missed you, please give us a call or email us if you need to discuss the project with us"
 - They stated they were willing to come back and clarify any questions if required
- Visited Roberta Franchuk (Community League's President) - She thought that their project is the best so far proposed for this neighbourhood
- Visited John Crabb (a Community League board member)
- They did not receive any feedback other than the earlier email from John Crabb, they visited him after they received his email
- They discussed the project with him and his wife and they were satisfied

[28] In conclusion, the Appellants submitted their proposed development meets the objectives and policies of the recommended amendments to the *Edmonton Zoning Bylaw* by the City for McKernan and Belgravia, which are:

- Affordable Housing
- Sustainability
- Accessibility
- Crime Prevention through Environmental Design - Orient development to face onto the street to help create a pedestrian friendly environment

- Increase Density
 - Ensure Financial Stability
 - Encourage renewal and densification of mature neighbourhoods
 - Increase transit ridership and reduce automobile use
 - Support higher density development along 114 Street
- [29] The Appellants attempted to talk to the neighbour immediately to the east. They spoke to the owner's sister, who advised that the owner lives in Vancouver and is not well. The sister had no issues with the proposed development.
- [30] The Board asked the Appellants to clarify why the windows in the bedrooms on the second floor would not be a privacy concern given that there is also a deficient Side Setback. The Appellants stated there will be landscaping and the older house is very narrow.
- [31] The Board asked the Appellants to confirm the number of bedrooms. Each Dwelling contains three bedrooms plus one bedroom on the upper floor. Even though the plans show bedrooms in the basements, the basements will not be developed as Secondary Suites because they are not allowed to do so. Each basement has a wet-bar.
- [32] The Board asked the Appellants to comment on the multitude of deficiencies. The Appellants stated because the lots in the neighbourhood are small, almost every development would require multiple variances or several lots would need to be consolidated.
- [33] Regarding the Reasons for Refusal, there is nothing they can do about the deficient Site Width. They conceded the maximum Site Coverage is 45 percent. However, they stated the *Bylaw* is very old. Complying with that Site Coverage requirement would make the development very small. The *Bylaw* was changed in regards to the minimum interior Side Setback and that is why there is a deficiency. Even though there is a Rear Setback deficiency, there is still ample amenity space. The Board asked whether the 11 deficiencies indicate that the proposed development is overbuilt for the Site. The Appellants stated they want to build something that is livable, which means the Dwellings have to be as large as what is proposed.
- [34] The Board pointed out that the elevation facing 114 Street in the PowerPoint presentation differs from the one in the refused plans in that it shows sloped dormer roofs rather than flat roofs.
- [35] In regards to specific questions as to the Height of the proposed development or whether a variance is required to Section 814.3(15) for dormer widths, the Appellant stated those were questions for the Architect who was not able to attend the hearing.

- [36] The Appellants conceded they could have probably submitted a better plan to have minimized the deficiencies.
- [37] The Board pointed out that, from 114 Street, it appeared the flat-roofed sections of the development made up the dominant roof even though their architect was of the opinion that the sloped roof was the dominant roof. The Appellants stated that their Architect is a professional and they deferred to his opinion.

ii) Position of the Development Officer, F. Hamilton

- [38] The Development Officer clarified that flat-roofed portions of the roof under discussion are not considered dormers. A dormer is not a defined term in the *Edmonton Zoning Bylaw*. The calculated Height is 9.6 metres, which is measured to the midpoint of the parapet on the flat-roofed sections. After discussions with the Architect, the Development Officer did revise her Height calculation. Section 52 provides the Development Officer with discretion to determine what the most appropriate method to calculate Height is. It is a combination roof and she chose the flat roof method because she considered it the dominant roof.
- [39] The Development Officer was concerned about the overlook of the windows into the neighbour's Amenity Area coupled with the deficient interior Side Setback. The Appellant mentioned the Height of the windows, window treatment, and landscaping as possible mitigation measures. However, variances are still required and the landscaping plan submitted was not accepted by the Landscaping technician.
- [40] The bedrooms in the basements and the excavated stairwells given separate access to the basements created concern that the basements could be developed as illegal Secondary Suites.
- [41] Although the Area Redevelopment Plans speaks to housing near transit, it does not mention increasing affordable housing as a goal.
- [42] The development requires four parking spaces, and only three are provided. The proposed development is located close to the LRT, and this was taken into account in calculating the parking spaces required. She is concerned about additional vehicles the owners of the units may have and visitor parking. She pointed out that parking on 75 Avenue is limited because no parking is allowed on the cul-de-sac in front of the proposed development.
- [43] The Development Officer stated the sections cited in her Reasons for Refusals were the sections in place prior to the Bylaw being amended. Her references to Sections 140.4(18) and 140.4(19) should be to Sections 140.4(20) and 140.4(21).

[44] The Board asked the Development to address the inconsistency between Section 140.4(20) and Section 140.4(21), where one section speaks to variations in building materials and one to consistency. The Development Officer stated the materials used on the corner that faces both 114 Street and 75 Avenue should be consistent. The flanking side still needs to look like the front of building not the side of the building. She refused the permit because there is not enough treatment on the flanking side and then the lack of treatment is replicated on the front. The only things differentiating the Dwellings are the colours, small cantilevers and small overhangs. The elevation facing 114 Street is a flat façade. The Bylaw was changed to require façades to be more differentiated to reduce massing. The intent is that Row Houses should look like a group of individual Dwellings.

iii) Rebuttal of the Appellants

[45] The Appellants reiterated that their Architect is a professional so value should be placed on his opinion. They can submit a revised landscaping plan. The Setbacks of the building cannot be changed.

Decision

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

Reasons for Decision

[47] Section 140.2(3) states that Row Housing is a Permitted Use in the RF3 Small Scale Infill Development Zone.

[48] The proposed development is governed by the Mature Neighbourhood Overlay. Compliance with the community consultation requirements contained in Section 814.3(24) of the Overlay is a condition precedent to the issuance of a development permit. That section requires an applicant for a development permit to contact each assessed owner of land within 60 metres of the Site and the Community League president to outline any requested variances to the Overlay. In this case, the Development Officer prepared a letter outlining the variances that would be required to the Overlay. The Appellant went door to door with this letter and gave it to those who answered and left it in the mail boxes of those who did not. They also gave the letter to the Community League president. They followed up with a second round of door to door canvassing.

- [49] One problem with this approach to community consultation is that door to door canvassing will not necessarily reach the owners of those properties who do not reside in the houses but rent them out. The evidence before the Board is that in this neighbourhood many of the houses are rented.
- [50] Another problem is that, although Section 814.3(24) only requires community consultation with respect to variances to the regulations in the Overlay, it does not require any mention of variances to other regulations in the *Edmonton Zoning Bylaw*. In this case, the Appellant complied with the community consultation requirements by distributing the letter prepared by the Development Officer setting out the Overlay variances. However, the numerous other variances were not mentioned. As a result, the Community League felt they had been misled by the Appellant.
- [51] Notwithstanding the above issues, the Board is satisfied that the Appellants have substantially complied with the community consultation requirements in the Mature Neighbourhood Overlay.
- [52] Although there was considerable discussion during the hearing regarding the appropriate calculation of Height, the Board is satisfied that the Development Officer correctly determined the Height should be measured to the midpoint of the parapet of the flat roofed sections of the structure, which comprises most of the roof of the building. Accordingly, the proposed development is 9.6 metres high, 1.0 metre higher than allowed.
- [53] The proposed development has a number of other deficiencies. The ones that this Board consider particularly relevant are the fact that the principal Dwelling is 6 percent over maximum Site Coverage and total Site Coverage is also exceeded by 6 percent. In addition, the proposed interior Setback is 1.5 metres less than it should be. Further, the minimum Rear Setback is 6 percent less than required. These deficiencies taken together with the excess in Height result in a development that has substantial massing. The Board is of the opinion it is overbuilt for this Site.
- [54] In addition, the building does not have the architectural features required by Section 140.4(20) to sufficiently define each of the Dwellings individually. The Board is of the opinion that the design of the west elevation is too monolithic and the placement of the windows is too symmetrical. The proposed development looks too much like an apartment block as opposed to three Dwellings.
- [55] Another deficiency is the lack of a parking space. Three are provided but four are required, even taking into account the reduced Transit Oriented Development parking requirements for a development such as this that is located close to an LRT station. This parking deficiency is a concern because parking in front of the proposed development on 75 Avenue is limited.

[56] For all of the above reasons, the Board is of the opinion that the proposed development would unduly interfere with the amenities of the neighbourhood and materially interfere with and affect the use and enjoyment of neighbouring parcels of land.

Mr. M. Young, Presiding Officer
Subdivision and Development Appeal Board

Board members in attendance:

Ms. P. Jones, Mr. M. Jummun, Ms. S. LaPerle, Ms. N. Hack

Important Information for the Applicant/Appellant

1. This decision may be appealed to the Alberta Court of Appeal on a question of law or jurisdiction under Section 688 of the *Municipal Government Act*, R.S.A. 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.