

Edmonton Subdivision and Development Appeal Board

Churchill Building
10019 - 103 Avenue NW
Edmonton, AB T5J 0G9
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Date: October 15, 2015
Project Number: 175159478-002
File Number: SDAB-D-15-216

Notice of Decision

This appeal dated September 8, 2015, from the decision of the Development Authority for permission to:

Construct an addition to a Single Detached House (rear attached Garage and mudroom, irregular shape 11.88m x 6.11m x 6.91m) and to demolish an existing rear detached Garage)

On Plan 7722037 Blk 2 Lot 17, located at 267 Gariepy Crescent NW, was heard by the Subdivision and Development Appeal Board on September 30, 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 an addition to a Single Detached House (rear attached Garage and mudroom, irregular shape 11.88m x 6.11m x 6.91m) and to demolish an existing rear detached Garage, located at 267 Gariepy Crescent NW. The subject Site is zoned RF1 Single Detached Residential Zone.

The development permit application was refused because of a deficiency in the minimum required Rear Setback and a deficiency in the minimum required total Side Setbacks.

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

- A written submission received with the appeal on September 8, 2015;
- A written submission from the Development Officer dated September 25, 2015; and
- An on-line response from the Belgravia Community League in opposition to the proposed development.

The Board heard from the Appellant, Ms. Beverley O'Brien, who submitted a letter outlining her reasons for appeal and signatures of support, marked Exhibit "A", and provided the following information:

1. She has lived in this house for 24 years and is the second owner.
2. This is one of only two houses with Garages off the Lane.
3. There is very little traffic in the Rear Lane.
4. Her neighbours would prefer that the Lane not be used at all because it provides a nice area for children to play road hockey.
5. Both of the adjacent neighbours support the proposed rear attached Garage and addition with a shorter Driveway.
6. The proposed addition has been designed by an architect and will be a nice addition to her property and the entire neighbourhood.
7. The shorter access to the proposed Garage will make snow clearing easier and will be safer than the existing Garage.
8. The Bylaw requirements have changed since she purchased the house and detached Garage.
9. This property is unique to the Lane.

Ms. O'Brien provided the following responses to questions:

1. The proposed two car Garage will be similar in size and location to the existing detached Garage.
2. The Garage door will now access the lane directly.
3. The proposed addition will provide additional amenity space in the Rear Yard.
4. This lot fronts a curved crescent and a front attached Garage is therefore not possible.
5. The doors of the proposed Garage will face the Lane and result in less snow piling up behind the Garage.
6. She left the design to an architect and assumed that the property would conform to all of the regulations.
7. Moving the addition to comply with the Setback requirements would impact the siting of the proposed development to provide a direct path into the kitchen.
8. She estimated that the existing Garage is closer to the fence than the proposed addition, and the proposed Garage will be sited similarly to the existing detached Garage with a deficiency of 0.4 metres in the minimum required Side Setback.
9. There will be no windows on that side of the addition to preserve the privacy of the neighbours.

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

1. The Appellant made a good case for the variances that are required for the proposed development.
2. He conceded that the Lane is unique and not heavily used.
3. He agreed that direct Driveway access at the rear of the property will improve safety.

4. The proposed Garage would comply if it was not attached to the house, but then would require a variance in the minimum required Rear Setback because of the location of the house.
5. The proposed Garage is setback 1 metre further than the existing detached Garage.
6. The minimum required total Side Setback (20 percent of the Site Width) was calculated by using the width of the lot at the front property line.
7. The principal dwelling complies with the Setback requirements.
8. The subject lot is wider at the rear.

Ms. O'Brien made the following points in rebuttal:

1. She relied on the architectural drawings and measurements that were submitted by her architect.
2. She confirmed that the drawings on file are an accurate reflection of the proposed development.
3. It was her opinion that the deficiency in the Side Setback may be the result of the projection of the eaves.
4. She reiterated her opinion that the proposed attached rear Garage will be a good safe addition for this neighbourhood.

Decision:

The appeal is **ALLOWED** and 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 Driveway access must maintain a minimum clearance of 1.5 metres from the service pedestal and all other surface utilities;
2. Immediately upon completion of the exterior alterations, the site shall be cleared of all debris; and
3. As far as reasonably practicable, the design and use of exterior finishing materials used shall be similar to, or better than, the standard of surrounding development.

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

1. The deficiency of 5.57 metres in the minimum Rear Setback required under Section 110.4(9) of the *Edmonton Zoning Bylaw*.
2. The deficiency of 0.4 metres in the minimum required total Side Setbacks, that being 20 percent of the Site Width, which is otherwise required under Section 110.4(10) of the *Edmonton Zoning Bylaw*.

Reasons for Decision:

The Board finds the following:

1. The proposed development is Accessory to a Permitted Use in the RF1 Single Detached Residential Zone.
2. The Development Officer conceded, based on the evidence provided by the Appellant that the variance in the minimum required total Side Setbacks will be mitigated because the subject site is a pie-shaped Lot that widens to the rear.
3. The variance in the minimum required Rear Setback has been granted for the following reasons:
 - a) The Board accepts the evidence of the Appellant that the proposed development will improve safety in the rear Lane.
 - b) The proposed two car attached Garage will be similar in size and location to the existing detached garage and therefore the visual impact will remain virtually unchanged.
4. The Appellant submitted a letter of support signed by adjacent property owners, marked Exhibit "A".
5. The Board notes that there were no letters of objection received and no one appeared in opposition to the proposed development.
6. Based on the above, it is the opinion of the Board that the proposed development will not unduly interfere with the amenities of the neighbourhood, nor materially interfere with or affect the use, enjoyment or value of neighbouring parcels of land.

Important Information for the Applicant/Appellant

1. This is not a Building Permit. A Building Permit must be obtained separately from the Sustainable Development Department, located on the 5th Floor, 10250 – 101 Street, Edmonton.
2. Obtaining a Development Permit does not relieve you from complying with:
 - a) the requirements of the *Edmonton Zoning Bylaw*, insofar as those requirements have not been relaxed or varied by a decision of the Subdivision and Development Appeal Board;
 - b) the requirements of the *Alberta Safety Codes Act*, RSA 2000, c S-1;
 - c) the requirements of the *Permit Regulation*, Alta Reg 204/2007;
 - d) the requirements of any other appropriate federal, provincial or municipal legislation; and
 - e) the conditions of any caveat, covenant, easement or other instrument affecting a building or land.
3. When an application for a Development Permit has been approved by the Subdivision and Development Appeal Board, it shall not be valid unless and until any conditions of approval, save those of a continuing nature, have been fulfilled.
4. A Development Permit will expire in accordance to the provisions of Section 22 of the *Edmonton Zoning Bylaw 12800*, as amended.

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

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



Mr. W. Tuttle, Presiding officer
Subdivision and Development Appeal Board

c.c. City of Edmonton, Sustainable Development Department, Attn: Mr. J. Xie

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 15, 2015
Project Number: 175574886-001
File Number: SDAB-D-15-217

Notice of Decision

This appeal dated September 8, 2015, from the decision of the Development Authority for permission to:

Construct a Semi-detached House with front verandas, 2 fireplaces, rear uncovered decks (3.05m x 6.1m), uncovered rooftop patios (6.09m x 4.27m) and Basement development (Not to be used as an additional Dwellings), and to demolish a Single Detached House and Accessory Building rear Detached Garage

On Plan 2938HW Blk 13 Lot 63, located at 11424 - 71 Avenue NW, was heard by the Subdivision and Development Appeal Board on September 30, 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 verandas, 2 fireplaces, rear uncovered decks (3.05m x 6.1m), uncovered rooftop patios (6.09m x 4.27m) and Basement development (Not to be used as an additional Dwellings), and to demolish a Single Detached House and Accessory Building rear Detached Garage, located at 11424 – 71 Avenue NW. The subject Site is zoned RF1 Single Detached Residential Zone and is within the Mature Neighbourhood Overlay and the McKernan-Belgravia Station Area Redevelopment Plan.

The development permit application was refused for the following reasons:

- 1) an excess in the maximum allowable Height;
- 2) the proposed development will overlook into the Amenity Spaces affecting the privacy of the adjacent neighbours;
- 3) the proposed development may also impede on the sunlight penetration into adjacent properties; and
- 4) a deficiency in the minimum required interior Side Setback.

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

- Submission from the Appellant dated September 8, 2015;
- An additional submission from the Appellant dated September 25, 2015;
- A written submission from the Development Officer dated September 25, 2015; and
- A copy of the McKernan-Belgravia Station Area Redevelopment Plan.

The Board heard from Mr. Kevin Cooper, agent for the Appellants Mr. Sundeep Randhawa and Mr. Roshan Kalra, who were also in attendance. Mr. Cooper used a PowerPoint presentation and made the following points in support of the appeal:

1. This is a neighbourhood comprised predominantly of Single Detached and Semi-detached Housing.
2. Maximum allowable height in the RF1 Zone is 10 metres. However, this site falls within the Mature Neighbourhood Overlay which restricts the maximum allowable Height to 8.6 metres.
3. Depending on roof style, Height is measured differently, but all roof types can be built up to 10.2 metres to the ridge.
4. The proposed design that includes a flat roof presented some design challenges in order to comply with the requirements of the *Edmonton Zoning Bylaw*.
5. It was his opinion that it is not the intent of the *Edmonton Zoning Bylaw* to determine architectural features and design elements.
6. Due to the Setbacks, the proposed 2 ½ storey structure will be nearly invisible from the front street and the rear Lane.
7. The 2 ½ storey wall abutting the side of the house only spans 33 percent of the length of the house which will minimize the massing impact.
8. He referenced photographs of similar 2 ½ storey houses on this block, including one located across the intersection from the subject Site.
9. Privacy screening can be installed on the east and west sides of the proposed roof top patio to address any privacy concerns and there is a stand of mature trees that will provide privacy for neighboring properties to the north.
10. Neighbourhood consultation was undertaken by providing a letter outlining the required variances and a full set of plans to all of the residents within the 60 metre notification radius.
11. Six signatures of support were received, 7 residents did not respond and 1 signature in opposition was received from a neighbour who is also the Director of Planning for the Belgravia Community League.
12. He noted that the Community League had provided an on line response in opposition to the proposed development.
13. It was clarified that duplicate signatures contained on the petition of support were from individuals who owned more than one property.
14. Mr. Cooper outlined how the proposed design supports City Policy Goals contained on page 8 and 9 of his written submission.
15. The variance in the minimum required Side Setbacks translates to approximately 2 inches and will not be noticeable from the front street. The variance will have no impact on building code requirements or the use and enjoyment of neighbouring properties.

Mr. Cooper provided the following responses to questions:

1. In order to address the Height and any privacy concerns, wood screening can be installed without covering or enclosing the proposed roof top patio.
2. The design plans have not been finalized to date.
3. The patios face north and the lot Grades toward the Lane.

The Board then heard from Mr. George Robinson, representing the Sustainable Development Department who appeared on behalf of Ms. Kendall Heimdahl. Mr. Robinson provided the following information:

1. He referenced Section 4.4 of the McKernan-Belgravia Station Area Redevelopment Plan and indicated that the Height had to conform to the built form.
2. The Area Redevelopment Plan does not support Semi-detached Housing
3. The guidelines for determining the Height of a flat roof structure were established through the intent of City Council.
4. The height of a parapet is regulated by Section 52 of the *Edmonton Zoning Bylaw*.
5. He could not comment on the provision of privacy screening on the proposed roof top patio because it was not included on the plans that were submitted with the development permit application.
6. The Development Officer's report includes a proposed condition of approval that privacy screening be provided pursuant to Section 814(3)(8) of the *Edmonton Zoning Bylaw*.

Mr. Robinson provided the following responses to questions:

1. The McKernan-Belgravia Station Area Redevelopment Plan encourages higher density housing than Semi-detached Housing.
2. This is a neighbourhood in transition and the long term plan does not include Semi-detached Housing.

Mr. Cooper made the following points in rebuttal:

1. A Semi-detached House is currently being constructed on a site located two blocks west of the subject site and there are other Semi-detached Houses on this block.
2. A higher density development on this Site would have similar or greater impacts on the privacy of neighbouring property owners.
3. The current real estate market is dictating the development of Semi-detached Housing rather than Apartment housing.
4. It was his opinion that the *Municipal Government Act* requires the Board to regard Statutory Plans but it does not have to comply with those plans.

It was later clarified that Section 687(3)(a.1) of the *Municipal Government Act* states that "In determining an appeal, the subdivision and development appeal board *must* comply with the land use policies and statutory plans and, subject to clause (d), the land use bylaw in effect" [emphasis added].

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. That the Applicant install Privacy Screening on the east and west sides of the proposed uncovered roof top patio as shown in the highlighted areas of the attached "Schedule A", pursuant to Section 814.3(8) of the *Edmonton Zoning Bylaw*.

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

1. The excess of 1.4 metres in the maximum allowable Height, pursuant to Section 814.3(13) of the *Edmonton Zoning Bylaw*.
2. The deficiency of 0.06 metres in the minimum required interior (left) Side Setback and the deficiency of 0.05 metres in the minimum required interior (right) Side Setback, pursuant to Section 814.3(3)(b) of the *Edmonton Zoning Bylaw*.

Reasons for Decision:

The Board finds the following:

1. Semi-detached Housing is a Discretionary Use in the RF1 Single Detached Residential Zone.
2. The proposed development is consistent with the increased densification policy objectives of the Municipal Development Plan, *The Way We Grow*, specifically Policy 3.1.1.2 to encourage a minimum of 25 percent of city-housing unit growth to locate in the Downtown and mature neighbourhoods and around LRT stations and transit centres where infrastructure capacity supports development. The proposed development is also consistent with Policy 4.4.1.1 to provide a broad and varied housing choice, incorporating housing for various demographic and income groups in all neighbourhoods.
3. The proposed development is in keeping with Section 4.4.5 of the McKernan-Belgravia Station Area Redevelopment Plan to ensure that over the longer term, single family properties fronting 71 Avenue and located along the gateway intersection at 114 Street could be intensified given the proximity to the University of Alberta's South Campus.
4. Based on the evidence provided, the proposed Semi-detached House is compatible with and characteristic of housing choices that have been developed on this block which include Semi-detached Housing, Single Detached Housing and Apartment Housing.
5. Further, the density of the proposed development is not uncharacteristic of the area.
6. The Board has granted the variance in the maximum allowable Height for the following reasons:
 - a) The total overall Height is 10 metres, however, the proposed half Storey loft area is set back to reduce the massing affect. Therefore the total visible Height from the lane is 6.43 metres or the Height of a two Storey structure.

- b) The proposed half Storey loft area, is set back from the front and rear of the second Storey and only occupies 65 percent of the floor space atop the second Storey which will mitigate the variance required in the maximum allowable Height requirement.
 - c) The condition imposed to provide Privacy Screening on two sides of the proposed roof top patio will prevent overlook into the Amenity Spaces of neighbouring properties and ensure the privacy of neighbouring property owners.
 - d) Based on the evidence provided, there is a stand of mature trees that will provide privacy for neighbouring properties to the north.
7. The Appellant complied with the consultation requirements of Section 814.3(24) of the *Edmonton Zoning Bylaw* by sending letters and a copy of the proposed plans to property owners who reside in the 60 metres notification radius. Six provided written support for the proposed development, nine did not respond and one provided written opposition to the proposed development.
 8. The Board also notes that written opposition was received from the Director of Planning for the Belgravia Community League.
 9. The Board has allowed the deficiency of 0.06 metres in the minimum required interior (left) Side Setback and the deficiency of 0.05 metres in the minimum required interior (right) Side Setback based on the legal maxim *de minimis non curat lex*, or the law does not concern itself with trifling matters.
 10. Based on the above, it is the opinion of the Board that the proposed development will not unduly interfere with the amenities of the neighbourhood, nor materially interfere with or affect the use, enjoyment or value of neighbouring parcels of land.

Important Information for the Applicant/Appellant

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 - 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.

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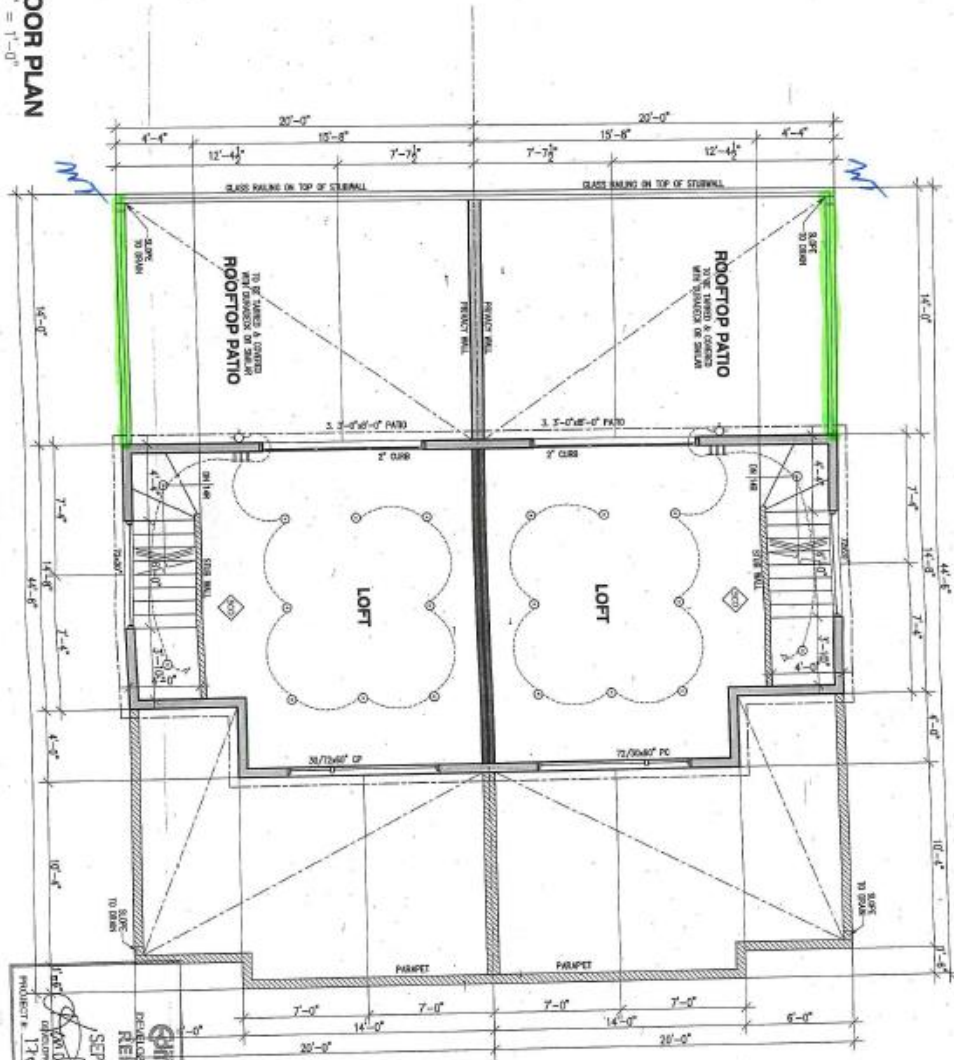


Mr. W. Tuttle, Presiding Officer
Subdivision and Development Appeal Board

c.c.

Schedule A

ATTIC FLOOR PLAN
SCALE: 3/16" = 1'-0"



PRODUCED BY: *[Signature]*
 DATE: SEP 01 2015
 PROJECT: 14424 - 71st Avenue
 DESIGNER: *[Signature]*
 CHECKER: *[Signature]*
 APPROVED: *[Signature]*
 REVISIONS: REFUSED

291 Sq. Ft.
 291 Sq. Ft.

RECEIVED
SEP 11

SUBMITTED
DEVELOPER
APPELLANT

NO.	DESCRIPTION	DATE
1	REVISION	08/11/15
2	REVISION	08/11/15
3	REVISION	08/11/15
4	REVISION	08/11/15
5	REVISION	08/11/15
6	REVISION	08/11/15
7	REVISION	08/11/15
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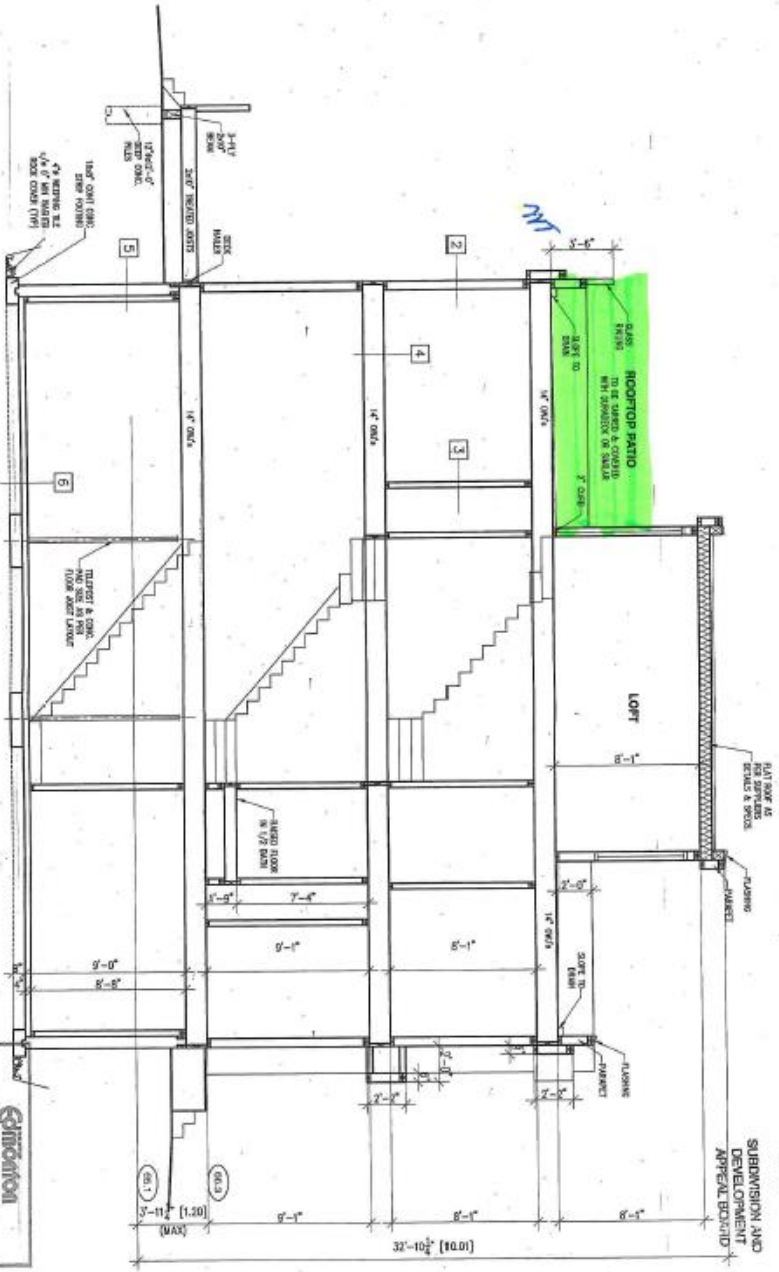
11424 - 71st Avenue
 CLIENT: GUNDEEP RANDHAWA
 ROUSHAN KALELA
 2093 Sq. Ft.
 SEMI-DETACHED
 DRAWINGS: ATTIC FLOOR PLAN

euro design inc
 681 13 DOWNSVIEW STREET
 SCARSDALE, ONTARIO M1S 1T2
 TEL: 416-291-1111
 DATE: JULY 6, 15
 SCALE: 3/16" = 1'-0"
 SHEET: 9
 TOTAL SHEETS: 12

Notes:
 1. Client/contractor to check for any...
 2. All work to be done in accordance...
 3. The contractor shall be responsible...
 4. The contractor shall provide...
 5. The contractor shall ensure...
 6. The contractor shall maintain...
 7. The contractor shall protect...
 8. The contractor shall remove...
 9. The contractor shall restore...
 10. The contractor shall provide...
 11. The contractor shall ensure...
 12. The contractor shall maintain...
 13. The contractor shall protect...
 14. The contractor shall remove...
 15. The contractor shall restore...

Schedule A

SECTION A-A
SCALE: 3/16" = 1'-0"



RECEIVED
SEP 11 2015

SUBMISSION AND
DEVELOPMENT
APPEAL BOARD

PROJECT # 15S-1498A-102
SEP 11 2015
DEVELOPMENT PERMIT
REFUSED
euro design no

11424 - 71st AVENUE	
CLIENT:	SUNDEEP Bhandari RASHMI KALIA
NO. OF UNITS:	2033 Sq. ft. SEMI-Detached
DATE:	JULY 6, 2015
SCALE:	N/A
NOTED:	12

- 1. REVISIONS: NONE
- 2. APPROVED BY: [Signature]
- 3. APPROVED DATE: 07/21/15
- 4. SCALE: 3/16" = 1'-0"
- 5. TITLE: SECTION A-A
- 6. SHEET NO.: 8
- 7. DATE: JULY 6, 2015
- 8. PROJECT: 15S-1498A-102
- 9. CLIENT: SUNDEEP Bhandari
- 10. ARCHITECT: euro design no
- 11. DRAWING BY: [Signature]
- 12. CHECKED BY: [Signature]
- 13. IN CHARGE: [Signature]
- 14. DATE PLOTTED: 07/21/15
- 15. PLOTTER: PLOTTER
- 16. FILE: 15S-1498A-102-DWG
- 17. PROJECT LOCATION: 11424 - 71st AVENUE
- 18. CITY: VANCOUVER, BC
- 19. PROVINCE: BRITISH COLUMBIA
- 20. COUNTRY: CANADA
- 21. PROJECT STATUS: DEVELOPMENT PERMIT REFUSED
- 22. REASON FOR REFUSAL: [Not specified]

Edmonton Subdivision and Development Appeal Board

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

Date: October 15, 2015
Project Number: 164197540-001
File Number: SDAB-D-15-218

Notice of Decision

This appeal dated September 3, 2015, from the decision of the Development Authority for permission to:

Construct a Restaurant (376 sq.m. of Public Space; including outdoor patio)

On Plan 1421576 Blk 25 Lot 4, located at 4303 - 167 Avenue NW, was heard by the Subdivision and Development Appeal Board on September 30, 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 Restaurant (376 sq.m. of Public Space; including outdoor patio), located at 4303 – 167 Avenue NW. The subject Site is zoned CB2 General Business Zone and is within the Brintnell Neighbourhood Structure Plan and the Pilot Sound Area Structure Plan.

The development permit application was refused for the following reasons:

- 1) the proposed Restaurant is on a Site that is adjacent to a Site zoned residential and therefore does not comply with the locational criteria for the proposed Use; and
- 2) a deficiency in the minimum required number of parking spaces.

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

- A written submission from the Development Authority dated September 21, 2015;
- A written submission from Legal Counsel for the Appellant dated September 28, 2015;
- An online response from an affected property owner who resides within the 60 metre notification radius in support of the proposed development; and
- A copy of the Britnell Neighbourhood Structure Plan and the Pilot Sound Area Structure Plan.

The Board heard from Ms. Janice Agrios, Legal Counsel for the Applicant and Mr. Dave Hawkins, representative of the owners group. Ms. Agrios referenced her written submission and provided the following information in support of the appeal:

1. The Applicant has agreed to provide additional parking so the only issue before the Board is the locational criteria.
2. Ms. Agrios provided a history and background information about the subject Site which was originally zoned CSC.
3. She reviewed the submitted photographs and provided context and comment with respect to surrounding land uses.
4. She referenced the Site plan and specifically noted that the proposed Restaurant is located in the centre of the northern boundary of the subject Site, which is farthest away from the adjacent RA7 residential site. There are also other buildings on the Site which will buffer the Restaurant from the RA7 and RF5 Sites.
5. Transportation Services support the proposed development as did the Development Officer, despite the locational criteria.
6. Section 7.4(45) of the *Edmonton Zoning Bylaw* defines a Restaurant as a “development where the primary purpose of the facility is the sale of prepared foods and beverages to the public, for consumption within the premises or off the Site. Minors are never prohibited from any portion of the establishment at any time during the hours of operation. This Use class typically has a varied menu, with a fully equipped kitchen and preparation area, and includes fast food and family restaurants.”
7. Section 340.3(31) states: “Restaurants, *for more than 200 occupants and 240 m² of Public Space, provided the Site is not adjacent to or across a lane from a Site zoned residential*” [emphasis added] is a Discretionary Use. The Development Officer interpreted the latter portion of the provision regarding size and locational criteria as forming a part of the Restaurants Use Class. Ms Agrios disagreed with this interpretation: it was her opinion that the requirements regarding size and locational criteria are more properly characterized as development regulations.
8. It was her opinion that the portion of Section 340.3(31) pertaining to size and locational criteria is a regulation, much like the separation distance requirements for Liquor Stores that can be varied by the Development Authority and the Board.
9. It was her opinion and that of the Development Authority that the proposed development is in keeping with Section 340.1, the General Purpose of the CB2 General Business Zone “to provide for businesses that require large Sites and a location with good visibility and accessibility along, or adjacent to, major public roadways.”
10. She referenced photographs of similar sized Restaurants that have less separation distance and no buffers to adjacent residential RA7 sites.
11. None of the adjacent property owners oppose the proposed development.
12. If this site was zoned CSC Shopping Centre Zone, there would be no locational criteria.

Ms. Agrios provided the following responses to questions:

1. The proposed Restaurant is similar in size to the Original Joes Restaurant illustrated in one of the submitted photographs.

2. She reiterated her opinion that the locational requirements are regulations and not part of the Use Class.
3. The proposed outdoor patio is approximately 60 square metres in size.
4. It had to be included in the calculation of the minimum required number of Parking spaces even though it will not be used during the winter months.
5. Pursuant to Section 48 of the *Edmonton Zoning Bylaw*, Separation Space is a regulation that can be varied.
6. The owner prefers not to reduce the size of the proposed Restaurant because it was their opinion that the merits of the appeal are sufficient to grant the required variance for this location.
7. She could not confirm whether or not a change in design would impact occupancy loads.

The Board then heard from Mr. Paul Kowal, representing the Sustainable Development Department, who provided the following responses to questions:

1. He was advised by their Legal Counsel that the locational criteria for a proposed Restaurant of this size is considered part of the Use Class under Section 340.3(31).
2. One of the reasons stated was to address the impact of noise on nearby residential properties.
3. This decision is not site Specific but applies to all similar developments.
4. The Applicant has complied with the Parking requirements and the proposed development is in keeping with the General Purpose of the CB2 General Business Zone.
5. The locational requirements have not been met because of the size of the proposed Restaurant.

Ms. Agrios had nothing further to add in rebuttal.

Decision:

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

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

The Board has waived the requirements of Section 340.3(31) of the *Edmonton Zoning Bylaw* to allow a Restaurant for more than 200 occupants and 240 square metres of Public Space on a Site that is adjacent to or across a lane from a Site zoned residential.

Reasons for Decision:

The Board finds the following:

1. The proposed Restaurant is a Discretionary Use in the CB2 General Business Zone.
2. The Board has waived the requirements of Section 340.3(31) of the *Edmonton Zoning Bylaw* for the following reasons:
 - a) The Board agrees with Legal Counsel for the Applicant that the locational requirements contained in Section 340.3(31) are not part of the Use Class but are regulations that can

be varied by the Board in accordance with s 687(3)(d) of the *Municipal Government Act*. This is especially true given the reference in the present case in Bylaw 16224 is included only in the recitals/headings of same. Furthermore, the Board accepts counsel's reference to Mr. Laux's text, *Planning Law and Practice in Alberta*, 3d ed at s 12.5(2)(b), p 12-15: "Occasionally the drafting is such that a development standard is grammatically attached to the listed use provision, giving the impression that the provision as a whole deals with use. However, the form of drafting is not determinative."

- b) The subject Site is located on a major arterial roadway and the proposed Restaurant has been sited on the northern most boundary of the Site which is furthest away from the adjacent residential zone.
 - c) Based the evidence provided, other buildings on the site buffer the proposed Restaurant from the adjacent RA7 Zone. In fact, the photographs illustrate that there will be more separation distance between the proposed Restaurant and the RA7 Zone than an existing Restaurant on the site and the adjacent residential zone.
 - d) This Site has always been zoned for commercial development and the proposed Restaurant is part of a commercial strip.
 - e) Seven Letters of support from affected property owners were submitted by the Appellant and one on-line response from an affected property owner who resides within the 60 metre notification radius was received.
 - f) There were no letters of objection and no one appeared in opposition to the proposed development.
3. Based on the evidence provided, 13 additional Parking spaces will be provided to comply with the minimum required number of Parking spaces, pursuant to Section 24 of Schedule 1(A) under Section 54.2 of the *Edmonton Zoning Bylaw*.
 4. Based on the above, it is the opinion of the Board that the proposed development will not unduly interfere with the amenities of the neighbourhood, nor materially interfere with or affect the use, enjoyment or value of neighbouring parcels of land.

Important Information for the Applicant/Appellant

1. This is not a Building Permit. A Building Permit must be obtained separately from the Sustainable Development Department, located on the 5th Floor, 10250 – 101 Street, Edmonton.
2. Obtaining a Development Permit does not relieve you from complying with:
 - a) the requirements of the *Edmonton Zoning Bylaw*, insofar as those requirements have not been relaxed or varied by a decision of the Subdivision and Development Appeal Board;
 - b) the requirements of the *Alberta Safety Codes Act*, RSA 2000, c S-1;
 - c) the requirements of the *Permit Regulation*, Alta Reg 204/2007;
 - d) the requirements of any other appropriate federal, provincial or municipal legislation; and
 - e) the conditions of any caveat, covenant, easement or other instrument affecting a building or land.

3. When an application for a Development Permit has been approved by the Subdivision and Development Appeal Board, it shall not be valid unless and until any conditions of approval, save those of a continuing nature, have been fulfilled.
4. A Development Permit will expire in accordance to the provisions of Section 22 of the *Edmonton Zoning Bylaw 12800*, as amended.
5. This decision may be appealed to the Alberta Court of Appeal on a question of law or jurisdiction under Section 688 of the *Municipal Government Act*, RSA 2000, c M-26. If the Subdivision and Development Appeal Board is served with notice of an application for leave to appeal its decision, such notice shall operate to suspend the Development Permit.
6. When a decision on a Development Permit application has been rendered by the Subdivision and Development Appeal Board, the enforcement of that decision is carried out by the Sustainable Development Department, located on the 5th Floor, 10250 – 101 Street, Edmonton.

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



Mr. W. Tuttle, Presiding Officer
Subdivision and Development Appeal Board

c.c.