



**EDMONTON
TRIBUNALS**

*Subdivision &
Development
Appeal Board*

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Date: September 13, 2018
Project Number: 282470590-002
File Number: SDAB-D-18-135

Notice of Decision

- [1] On September 5, 2018, the Subdivision and Development Appeal Board (the “Board”) heard an appeal that was filed on **August 13, 2018**. The appeal concerned the decision of the Development Authority, issued on August 7, 2018, to refuse the following development:

To add one additional Dwelling (Unit #209) to an existing Apartment House, (total of 48 Dwellings), existing without permit.

- [2] The subject property is on Plan 4592NY Blk 6 Lot 1, located at 3511 - 118 Avenue NW, within the (RA7) Low Rise Apartment Zone. The Medium Scale Residential Infill Overlay applies to the subject property.
- [3] The following documents were received prior to the hearing and form part of the record:
- A copy of the Development Permit application with attachments, proposed plans, and the refused Development Permit;
 - The Development Officer’s written submission;
 - The Appellant’s written submissions; and
 - An on-line response from an adjacent property.

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.

Summary of Hearing*i) Position of Mr. D. Mitton, representing the Appellant, Leston Holdings*

- [7] The subject dwelling unit (“unit”) existed when the building was purchased approximately one year ago.
- [8] Mr. Mitton referred to the floor plan showing the location of the unit and the parking spaces for the building, which include the existing unit.
- [9] There will be no alterations to the subject unit.
- [10] In his opinion, if the Development Officer had the authority to vary density, the application would have been approved.
- [11] There is a park in close proximity to the subject site that tenants can use.
- [12] In his opinion, more rental housing is needed in the neighbourhood
- [13] Mr. Mitton provided the following information in response to questions by the Board:
- a. There is amenity space along 118 Avenue that can be used by the tenants.
 - b. In his opinion, the existing unit will not negatively impact the neighbouring property owners.
 - c. Each of the 48 units has one bedroom, although the subject unit is slightly smaller.
 - d. He could not confirm exactly when the subject unit was developed, but estimates that it has existed for the last 40 years.
 - e. He believes he pays taxes for the subject unit, but he could not confirm.
 - f. There have been no known complaints regarding the subject unit prior to the hearing.
 - g. He found out the existing unit did not have a permit when he was attaining the mortgage for the building. He assumed the previous owner had a permit for the subject unit when they held the mortgage on the property.

ii) Position of Mr. D. Williams, an affected Property Owner

- [14] Mr. Williams misunderstood that the dwelling unit was existing and thought an additional apartment complex was being built.
- [15] He is no longer opposed to the appeal.

iii) *Position of the Development Officer, Mr. K. Yeung*

[16] The Development Authority provided a written submission and did not attend the hearing.

Decision

[17] The appeal is **ALLOWED** and the decision of the Development Authority is **REVOKED**. The development is **GRANTED** as applied for to the Development Authority, subject to the following **CONDITIONS**:

1. The development shall be constructed in accordance with the stamped and approved drawings.
2. **PRIOR TO THE RELEASE OF DRAWINGS FOR BUILDING PERMIT REVIEW**, the applicant or property owner shall pay a Sanitary Sewer Trunk Charge fee of \$1,629.00. The SSTC charge is quoted at year 2018 rate. Please contact Private Development, Drainage Services, at 780-496-5665 for further details regarding the fee. However, the final SSTC is based on the prevailing rate at the time the applicant/owner makes payment at the 2nd Floor, Edmonton Tower, 10111 104 Avenue NW, Edmonton AB T5J 0J4.

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

1. The maximum Density per section 210.4(2) is waived.
2. The Amenity Area requirement per section 46.2(d) is waived.

Reasons for Decision

[19] The proposed development is an additional Dwelling Unit (“Unit”) to an existing Apartment House. Apartment Housing is a Permitted Use in the (RA7) Low Rise Apartment Zone.

[20] The two matters before the Board are:

- i) to increase the Density from 47 Units to 48 Units; and
- ii) a lack of an Amenity Area provided for the additional Unit.

The Board grants these variances for the following reasons:

[21] Density:

- a. The Appellant indicated that to his knowledge, the additional Unit has existed for the last 40 years and no issues or concerns have arisen as a result of the additional Unit.
- b. The Appellant indicated that financing was required, which led to the Development Permit application in question.
- c. The Board heard evidence that adequate parking is provided for the additional Unit and there are no interior or exterior alterations required for the Unit.

[22] Amenity Area:

- a. The existing 47 Units of the existing Apartment House do not have Amenity space.
- b. As stated in paragraph [20.a], the 48th Unit has existed for the last 40 years. No issues or concerns were cited or presented to the Board related to the Amenity Area variance.
- c. The Board notes that the Amenity Area deficiency is mitigated by the subject building's close proximity to a Public Park.

[23] The only property owner opposed to the proposed development withdrew his objection in the course of the hearing and the Board finds that there is no opposition to the additional Unit.

[24] Another issue that the Board must deal with in considering this appeal is that the proposed development is considered a non-conforming building under section 643 of the *Municipal Government Act*. Given that the requested variance to Density is properly considered an "enlargement" under that section, the Board must satisfy itself that one of the exceptions in section 643(5) apply in order to have the jurisdiction to grant the appeal.

[25] The Board finds that it has jurisdiction to waive the Density requirements pursuant to section 643(5)(c), which states:

A non-conforming building may continue to be used but the building may not be enlarged, added to, rebuilt or structurally altered except;

...

(c) in accordance with a land use bylaw that provides minor variance powers to the development authority for the purposes of this section.

- [26] The land use bylaw provides this minor variance power in section 11.3(2) which mimics this Board's test in section 687(3)(d) of the *Municipal Government Act*. The Board further finds that the variance being granted satisfies the "minor variance" threshold applied to non-conforming buildings given that the additional one unit of Density is *de minimus* in the grand scheme of the development.
- [27] The Board finds that there were no planning reasons provided to turn down this appeal.
- [28] Based on the foregoing, the Board concludes 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.

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

Board Members in Attendance

Mr. R. Handa; Mr. C. Buyze; Mr. A. Nagy; Mr. R. Hobson

CC: City of Edmonton, Development & Zoning Services, Attn: Mr. K. Yeung / Mr. A. Wen

Important Information for the Applicant/Appellant

1. This is not a Building Permit. A Building Permit must be obtained separately from Development & Zoning Services, located on the 2nd Floor, Edmonton Tower, 10111 – 104 Avenue NW, Edmonton, AB T5J 0J4.
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*, 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 Development & Zoning Services, located on the 2nd Floor, Edmonton Tower, 10111 – 104 Avenue NW, Edmonton, AB T5J 0J4.

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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SDAB-D-18-136

Application No. 273339892-001

An appeal to install (1) Minor Digital Off-premises Freestanding Sign (2 digital panels V-shaped 3.1m x 6.1m facing NE/SW)(OUTFRONT MEDIA/SANDS HOTEL), was **TABLED TO OCTOBER 3, 2018.**