



**EDMONTON
TRIBUNALS**

*Subdivision &
Development
Appeal Board*

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Date: March 29, 2018
Project Numbers: 268866060-001
268867852-001
File Numbers: SDAB-D-18-044
SDAB-D-18-045

Notice of Decision

- [1] On March 22, 2018, the Subdivision and Development Appeal Board (the “Board”) heard appeals that were filed on **February 23, 2018**. The appeals concerned the decisions of the Development Authority, issued on February 23, 2018 to refuse the following developments:

SDAB-D-18-044: 10826 - 129 Street NW (Plan 1820517 Blk 22 Lot 7A)

To construct a Single Detached House with Unenclosed Front Porch, Rooftop Terrace, fireplace, rear uncovered deck (3.05 metres by 5.18 metres) and Basement development (NOT to be used as an additional Dwelling).

SDAB-D-18-045: 10828 - 129 Street NW (Plan 1820517 Blk 22 Lot 7B)

To construct a Single Detached House with rooftop terrace, Basement development (NOT to be used as an additional Dwelling), rear detached Garage, fireplace and uncovered deck.

- [2] The subject properties are within the RF1 Single Detached Residential Zone. The Mature Neighbourhood Overlay and West Ingle Area Redevelopment Plan apply to the subject properties.
- [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 refused Development Permit;
 - The Development Officer’s written submissions;
 - The Appellant’s written submissions; and
 - Online responses.

Preliminary Matters

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

- [5] The Chairman outlined how the hearing would be conducted, including the order of appearance of parties, and no opposition was noted. The Chairman advised that evidence for SDAB-D-18-044 and SDAB-D-18-045 will be heard together but will be considered as two separate appeals.
- [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 Appellants, Mr. A. Nunes and Mr. R. Medeiros, representing Nuneiros Homes:

- [7] The Appellants reviewed their PowerPoint submission.
- [8] The Appellants have been friends for many years and formed their company approximately seven years ago with the intent of building high quality homes with a European design. Mr. Nunes plans to live in one of the proposed houses with his family.
- [9] The proposed developments were refused because of an excess in the maximum allowable height and an excess in the maximum allowable dormer width.
- [10] However, the maximum height of the proposed houses is approximately 9.8 metres and the height to the midpoint of the main roof is approximately 8.3 metres which is well within the maximum allowed. Because the proposed dormer is wider than currently allowed, the Development Officer measured the mid-height of the dormer roof which is approximately +/- 9.1 metres.
- [11] Renderings and elevation drawings were referenced to illustrate that what is being proposed is not significantly different than what would be approved as complying with the development regulations and will not have any greater impact on neighbouring property owners.
- [12] The proposed houses are totally different designs both inside and outside.
- [13] It was their opinion that the variances should be granted for the following reasons:
- a) Square footage will be increased by providing a functional loft level.
 - b) The developments will add character to this neighbourhood and increase property values.
 - c) The proposed developments with the required variances are more aesthetically pleasing than an alternate development and allow the development of a desirable roof top balcony.
 - d) The majority of neighbours, including the two most affected adjacent neighbours, support the proposed development.

- e) The Bylaw regulations were amended in September, 2017, one month prior to the submission of their development permit application.
 - f) There will not be any additional height impact on neighbouring property owners.
- [14] This block is currently being redeveloped with houses of different architectural styles, including three or four sets of skinny houses. These new developments will help increase property values in this neighbourhood.
- [15] The setback requirements for the proposed roof top balcony have been met to ensure that it is not intrusive on neighbouring property owners.
- [16] Information submitted regarding the consultation process was referenced to identify the properties that were consulted, the number of attempts that were made and the feedback provided. Three visits were made to each property on different days of the week and at different times of the day. They visited 22 houses, 2 houses had signs indicating no soliciting which they respected. Two property owners indicated that they did not like skinny houses, one house was under construction, no response was obtained from 7 houses, 2 neighbours expressed support but were confused by the information regarding the variances contained in the letter received from the City and 8 neighbours provided signatures of support. They contacted the Community League, but were advised that it is not their practice to comment on variances specific to individual properties.
- [17] Photographs of two new similar developments located two blocks away on the same street were referenced. These houses were sold within 30 days at a high price point which supports their contention that these types of developments are in high demand in this neighbourhood.
- [18] Mr. Nunes provided the following information in response to questions from the Board:
- a) There is a mixture of bungalows and two storey houses in this neighbourhood, but most of the new houses being built are two storey structures.
 - b) The Board reviewed the plans in detail with the Appellants to understand the variances cited by the Development Officer. It was acknowledged that the height requirements for a sloped roof and a flat roof are different. However, clarification could not be provided regarding the calculations and measurements contained on the drawings prepared by their Architect.
 - c) The proposed loft space and balcony cannot be developed without the requested variances.
- ii) *Position of Development Officer, Mr. K. Yeung:*
- [19] Mr. Yeung provided a written submission but did not attend the hearing.

Decision

[20] The appeals are **ALLOWED** and the decisions of the Development Authority are **REVOKED**. The developments are **GRANTED** as applied for to the Development Authority, subject to the following **CONDITIONS (for each Development Permit)**:

1. The developments shall be constructed in accordance with the stamped and approved drawings.
2. **WITHIN 14 DAYS OF APPROVAL**, prior to any demolition or construction activity, the applicant must post on-site development permit notification signs (Section 20.2)
3. Platform Structures located within a Rear Yard or interior Side Yard, and greater than 1.0 metres above the finished ground level, excluding any artificial embankment, shall provide Privacy Screening to prevent visual intrusion into Abutting properties. (Reference Section 814.3(9))
4. Single Detached Housing requires 1 parking spaces per dwelling; parking may be in tandem as defined in Section 6.1(113) (Reference Schedule 1 of Section 54.2).
5. Landscaping shall be installed and maintained in accordance with Section 55.
6. Frosted or opaque glass treatment shall be used on windows as indicated on the drawings to minimize overlook into adjacent properties (Reference Section 814.3(8)).
7. The proposed Basement development(s) shall NOT be used as an additional Dwelling. An additional Dwelling shall require a separate Development Permit application.

NOTE: NOTWITHSTANDING THE SCOPE OF APPLICATION, THE DEVELOPMENT OF REAR DETACHED GARAGES WILL REQUIRE SEPARATE DEVELOPMENT PERMIT APPLICATIONS.

ADVISEMENTS:

1. Any future deck development greater than 0.6 metres (2 feet) in height will require development and building permit approvals.
2. Any future deck enclosure or cover requires a separate development and building permit approval.
3. Any future additional dwelling such as Secondary Suite shall require a separate development permit application.
4. The driveway access must maintain a minimum clearance of 1.5 metres from the service pedestal and all other surface utilities.

5. Lot grades must match the *Edmonton Drainage Bylaw 16200* and/or comply with the Engineered approved lot grading plans for the area. Contact Drainage Services at 780-496-5576 or lot.grading@edmonton.ca for lot grading inspection inquiries.
6. A Building Permit is required for any construction or change in use of a building. Please contact the 311 Call Centre for further information.

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

10826 – 129 Street

1. The maximum allowable building Height of 8.9 metres as per Section 814.3(5) is varied to allow an excess of 1.3 metres, thereby increasing the maximum allowed Height to 10.2 metres.
2. The maximum allowable dormer width of 1.72 meters as per Section 814.3(7) is varied to allow an excess of 1.28 metres, thereby increasing the maximum allowed width to 3.0 metres.

10828 – 129 Street

1. The maximum allowable building Height of 8.9 metres as per Section 814.3(5) is varied to allow an excess of 1.1 metres, thereby increasing the maximum allowed Height to 10.0 metres.
2. The maximum allowable dormer width of 1.70 metres as per Section 814.3(7) is varied to allow an excess of 1.30 metres, thereby increasing the maximum allowed width to 3.0 metres.

Reasons for Decision

[22] Single Detached Housing is a Permitted Use in the RF1 Single Detached Residential Zone.

[23] The development permit applications were refused because of variances required to accommodate the proposed design of the roof line of both Single Detached Houses.

[24] The design of the roof line for the proposed Single Detached House located at 10826 – 129 Street can be classified in two ways. The developer has classified the design as containing dormers but it could also be considered a flat roof that occupies a considerable portion of the total roof area. The roof line of the proposed house located at 10828 – 129 Street is similar but portions of the “dormers” are slightly sloped at a 2/12 ratio.

- [25] These design features made it difficult to calculate the Height of the proposed Single Detached House located at 10826 – 129 Street. The portion of the roof classified by the developer as “dormers” can also be classified as a flat roof that covers a considerable portion of the roof area.
- [26] The Height of the proposed house located at 10828 – 129 Street would be calculated by determining the Height at the midpoint of the 2/12 sloped portion of the “dormers”. However, if it is determined that the portion of the roof classified as “dormers” is less impactful, the Height could be calculated on the basis of the sloped portion of the roof and the overall Height would comply with the development regulations. The Board notes that the dormers would still exceed the maximum allowable width pursuant to Section 814.3(7) of the *Edmonton Zoning Bylaw*.
- [27] Section 52.1(d) of the *Edmonton Zoning Bylaw* states that:
- For all other roof types, including saddle, dome, dual-pitch, shed, butterfly or combination roofs, the Development officer shall determine Height by applying one of the previous three types that is most appropriate for balancing the development rights and the land use impact on adjacent properties.
- [28] The Board finds that the proposed developments have a combination style roof and the Height should be determined by applying the type that is most appropriate for balancing the development rights and the land use impact on adjacent properties.
- [29] Accordingly, the Board considered the overall impact of the proposed unique roof designs on the adjacent properties and the effect on the amenities of the neighbourhood as a whole. Therefore, the Board focused on the visual impact of the proposed developments on the streetscape. The proposed roof structures are much less impactful on the front and rear elevations because the predominant view from the street is a sloped roof which reduces the impact of this unique roof structure on the neighbourhood as a whole.
- [30] The proposed roof designs will have more of an impact on the immediately adjacent neighbours who reside north and south of the subject site. However, the Board notes that both of these property owners have provided written support for the proposed developments.
- [31] The Board finds that the proposed roof lines are highly articulated with different Height levels which will significantly mitigate any massing impacts on neighbouring property owners.

[32] Based on the above, it is the opinion of the Board, that the proposed developments 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. Therefore, the variances have been granted and the appeals are allowed.

Mr. I. Wachowicz, Chairman
Subdivision and Development Appeal Board

Board members in attendance: Mr. A. Nagy, Ms. G. Harris, Mr. N. Somerville, Ms. K. Thind

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.