



**EDMONTON
TRIBUNALS**

*Subdivision &
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Appeal Board*

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Date: June 1, 2017
Project Number: 230219091-003
File Number: SDAB-D-17-091

Notice of Decision

- [1] On May 24, 2017, the Subdivision and Development Appeal Board (the “Board”) heard an appeal that was filed on **May 1, 2017**. The appeal concerned the decision of the Development Authority, issued on April 12, 2017 to refuse the following development:

Construct a Single Detached House with a front veranda, fireplace, rear partially covered deck (irregular shape, 3.05 metres by 6.40 metres) with balcony above (1.83 metres by 4.57 metres), Rooftop Terrace, and Basement Development (not to be used as an additional Dwelling)

- [2] The subject property is on Plan 1720071 Blk 36 Lot 15, located at 11716 - Edinboro Road NW, within the RF1 Single Detached Residential Zone. The Mature Neighbourhood Overlay applies 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 refused Development Permit;
- The Development Officer’s written submissions;
- Canada Post Confirmation of Delivery Letter;
- A Letter of Opposition from the Community League;
- Numerous e-mails and letters opposing the proposed development; and
- Five Online responses in opposition.

- [4] The following exhibits were presented during the hearing and form part of the record:

- Exhibit A – Series of Pictures from affected property owners
- Exhibit B – Proposed Garage Plans

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 Presiding Officer confirmed through a Canada Post Confirmation of Delivery letter submitted by the Development Officer that the refused Development Permit was received by “W Wong” on April 18, 2017. The appeal was filed on May 1, 2017 and thus in time, in accordance with Section 686 of the *Municipal Government Act*, R.S.A 2000, c. M-26 (the “*Municipal Government Act*”).

Summary of Hearing

i) Position of the Appellant, Mr. C. Wong

- [8] Mr. Wong will not be residing in the house; he is the developer.
- [9] He plans to develop a “skinny” house on each of the subdivided lots. Both will require approximately a one metre Height variance.
- [10] He made numerous attempts to consult with the neighbours but had difficulty contacting many of them. The majority of those people they did contact disliked the lot being subdivided into two and they did not like skinny houses; however, there are already many skinny houses in the Windsor Park Area.
- [11] Mr. Wong believes that many of the new developments in the area are taller than permitted and likely required a variance in Height. There are currently some skinny homes being developed to the east and south (along 116 Street) which also appear to be over-height.
- [12] Homes in this area are very valuable and they are trying to maximize the living space and amenities. The river view and the bonus room are attractive to buyers. The subject site slopes down towards the North Saskatchewan River and allows for a walk-out basement.
- [13] They plan to screen the Rooftop Terrace with privacy glass to prevent the occupants from looking directly into the neighbour’s back yards. The view from the Rooftop Terrace will be towards the river. The elevation drawings showed privacy screening of 2 feet high at the front portion of the Rooftop Terrace and increasing in height towards the back. They are willing to increase the Height of the privacy glass the full length to the front of the Rooftop Terrace, if required.
- [14] He acknowledged that this is one of the first new developments along Edinboro Road and that the existing homes are either bungalows or two storeys. All of the homes along Saskatchewan Drive are new developments and much higher than the existing homes on Edinboro Road. These new builds to the north have massive Heights.

- [15] They were aware that a Height variance would be required at the time of design. The variance is required because of the way the maximum Height is calculated for a flat roof design. The median point is calculated differently than for a sloped roof.
- [16] The third floor with the bonus room is the portion that is over-height. If they were to shrink the width a little they would be in compliance because of the way the Height calculation is done. The over Height portion is set back approximately 15 feet from the rear of the house and between 4 and 6 feet from the front of the house.
- [17] The basement has 8 foot ceilings and the remaining floors have 9 foot ceilings.
- [18] They have used different materials on the front facade to break up the massing effect and to make it more visually attractive.
- [19] The distance between the rear foundation and the rear lot line is approximately 20 metres.
- [20] A rear detached nine foot high garage is planned.
- [21] Mr. Wong is not aware of an existing retaining wall but one will be constructed.

ii) Position of the Development Officer, Mr. G. Robinson

- [22] This property is subject to the Mature Neighbourhood Overlay. Extensive community consultation was conducted and 12 out of the 19 property owners within the 60 metre notification area were in opposition to the variances. Such a high response rate, especially with so many negative responses, is uncommon. The written comments specifically objected to the Height and did not mention the subdivision of the lot. Other concerns included sight lines, privacy, massing effect of the side and rear elevations, and the context of the development within this neighbourhood. There were no letters of support and one response was neutral. The Windsor Park Community League also objected to the proposed variances.
- [23] He requested that, if the Board were to allow the appeal, a condition be added regarding Privacy Screening on the side elevations of the Rooftop Terrace to prevent visual intrusion into the neighbouring properties.
- [24] Mr. Robinson used the drawings to explain the method he used to calculate the Height. Because this is a flat roof, the Height was calculated to the mid-point of the parapet. If this were a sloped roof, the Height would be calculated to the midpoint of the peaked roof.
- [25] The Height calculation is a measurement of the average grade to the finished floor elevation plus the measurement from the finished floor to the mid-point of the parapet. He stated that the grade lines on the elevation drawings are approximate.

- [26] A sun shadow study was not a requirement as he has no authority to grant a Height variance. Usually a sun shadow study is requested if a Site Coverage variance or a Rear Setback variance is required.
- [27] An application for an Accessory building (rear detached garage) is currently on hold pending the result of today's hearing. The garage plans were reviewed and a copy was also received and marked as Exhibit B. The Height of the ridge of the roof of the proposed garage is 4.55 metres and the midpoint is 3.8 metres which meets the regulations. The overhead door faces the alley and the man door faces the principal structure. The distance from the foundation of the principal structure to the garage is 11.5 metres.
- [28] When viewed from the lane, the walk-out basement level of the proposed development would be somewhat obstructed by the garage. The main floor deck would line up with the roof of the garage.

iii) Position of the Windsor Park Community League represented by Mr. J. Collier

- [29] Mr. Collier was the president of the Windsor Park Community League for approximately 10 years and is currently the past president. He referred to the e-mail that had been submitted by the current president, Ms. Gail Powley.
- [30] This is an older neighbourhood with many of the homes being 50 and even up to 100 years old. The Community League is pro-development and appreciates developers coming in and revitalizing the area. New homes mean stable, well looked after properties for many years.
- [31] Edinboro Road slopes down moderately from the east towards the west. The subject property significantly slopes from a small plateau at the front and then falls fairly steeply north toward the alley.
- [32] A key concern with the proposed development is the great oversight the occupants will have into their neighbours' backyards to the north. Another major concern is the massing effect of the side elevations of the proposed development due to the height and the sloping yard.
- [33] Although the Appellant mentioned that there are a lot of over-height homes in this area, this is difficult to determine due to the heavily sloped lots. When this application came before the Community League, they researched other home applications within the past four or five years and found that only two were granted Height variances. Neither had decks facing a neighbour's property; the homes faced a schoolyard or parkland. All of the other recently developed homes complied with the maximum Height restriction.
- [34] They are also concerned about the wet bar entertainment area on the third floor with a double door leading to a terrace living area which overlooks the neighbours' yards. While the Appellant offered to provide privacy screening, this was not shown on the plans.

- [35] While the front of the proposed development is very attractive and the massing is broken up, the sides are solid stucco masses with a bit of glass block. There is nothing on the plans which breaks up the massing, such as trees or a variation in the siding materials.
- [36] It was not mentioned by the Appellant that a variance of over a metre is required to address the minimum required Stepback for the Rooftop Terrace. Residents could walk to the edge of the Rooftop Terrace and overlook the properties to the north, affecting the northern neighbours' quality of life. The slope of the lot exacerbates this possibility.
- [37] The Windsor Park Community League would like to see this application refused. It is basically a three story house in an inappropriate location. Because of the sloped lot it looks like a four story house from the rear. They do not oppose a new development at this location; it just needs to be re-designed to comply with the requirements.

iv) Position of Affected Property Owners in Opposition to the Development Ms. J. Casault and Mr. J. Hawkings

- [38] Ms. Casault and Mr. Hawkings are the directly affected neighbours to the east. They are also representing the neighbours directly to the west of the proposed development who were unable to attend the hearing today.
- [39] Ms. Casault and Mr. Hawkings moved into the neighbourhood this past November. They chose this area for a variety of reasons including its central location, the beautiful light in the backyard, and the lovely neighbours.
- [40] There is an interesting mix of bungalows and two storey homes along Edinboro Road with no 2 ½ storey homes. Many homes are original while others are newer or have had recent renovations. Their own home is a two storey built in 1942.
- [41] Edinboro Road curves down west towards 118 Street and the houses are set back progressively which lessens the light/shadow impact between houses.
- [42] Their biggest concerns with the proposed development are the excess in maximum allowable Height and the Rooftop Terrace. They showed a series of eight photographs (marked Exhibit A) showing current views of the neighbourhood and the impact the Height and Rooftop Terrace will have on the two directly adjacent properties.
- There is a constant elevation loss as one travels west to 118 Street and north towards Saskatchewan Drive. Various photos depicted this elevation loss. The backyards of the properties on Edinboro Road could be argued to be at the same level as the rooftops of the Saskatchewan Drive properties.
 - One photo showed the existing retaining wall, which is 2 to 2 1/2 feet high, running along the length of the west property line of the proposed development.

- A topographical map of the area was displayed with the contour lines showing elevation differences of 10 meters from street to street, which is fairly significant. This elevation loss allows for a walk-out basement which will effectively make the proposed development a four storey structure when viewed from the north.

- [43] The neighbours to the west are very concerned about their loss of backyard privacy. The typical backyard layout in the area is a deck at grade or a stone patio; there are no elevated decks along Edinboro Road between 116 and 118 Streets. Not only does the proposed development have a second floor deck, there is also a third storey terrace without proper Stepbacks, a wet bar and no privacy screening shown on the drawings. This will result in privacy and noise issues.
- [44] Ms. Casault is concerned about the massing effect that the side elevation will have. The proposed development will extend 10 metres further to the north than their home and is in close proximity to the property line. No effort has been made to add visual appeal, their light will be cut off and the additional Height exacerbates the issue.
- [45] They were not contacted by the developer and only became aware of the proposed project when they received notice from the City regarding the requested variances.
- [46] They want to see a successful project at this location but are disappointed by the lack of courtesy shown to the neighbours. They would like to be able to enjoy their homes without being overlooked by a giant structure. They do not feel a compelling case has been made to justify the requested variances.
- [47] Since the developer is building right up to the rules and maximizing the house to the utmost, all regulations should be enforced to protect the neighbours.

ii) Rebuttal of the Appellant

- [48] They started the community consultation process at the time of demolition but had a difficult time trying to contact all of the neighbours despite numerous attempts.
- [49] They would be happy to make some design changes and include higher privacy glass on the Rooftop Terrace.
- [50] While their design company labelled the room on the top floor as a “wet bar”, it is essentially a bonus room for the residents to enjoy. It could also have been labelled as a library.
- [51] He confirmed that there are four levels of outdoor space because of the desirable view of the river valley and the second floor deck has Privacy Screening.
- [52] Mr. Wong has no issues complying with any of the conditions suggested by the Development Officer should this application be approved.

Decision

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

Reasons for Decision

- [54] Single Detached Housing is a Permitted Use in the RF1 Single Detached Residential Zone.
- [55] The Board notes that the proposed development is within the Mature Neighbourhood Overlay. A community consultation process was conducted in accordance with Section 814.3(24) of the *Edmonton Zoning Bylaw*. The Board notes that 12 of the 19 neighbours within a 60 metre radius oppose granting the requested variances. The Development Authority indicated that it is unusual to see such a high level of opposition arising from this consultation process. The Board is satisfied that the Appellant has substantially complied with the community consultation requirements in the Mature Neighbourhood Overlay.
- [56] The Board finds that the excess in maximum allowable Height and deficiency of Stepback in the Rooftop Terrace result in a development that has substantial massing.
- [57] The Board accepts the evidence of the Community League that only two other Height variances have been granted in this area with neither home overlooking adjacent neighbours, but facing a school or parkland. The Board accepts the evidence of the neighbors in opposition that Rooftop Terraces are atypical in the area. Thus, the Board finds that the proposed development is not characteristic of the area.
- [58] The Board finds the excess in maximum allowable Height taken together with the deficiency of Stepback in the Rooftop Terrace creates privacy issues for the surrounding neighbours. The overlook on adjacent properties is amplified by the topography of this street. The slope from front to back on the proposed site amplifies the oversight of properties to the north. The slope from east to west amplifies the oversight on the property to the west.
- [59] The side elevations of the proposed development provide minimal mitigation of the requested variances.
- [60] The Board finds the proposed development does not meet the General Purpose of the Mature Neighbourhood Overlay, which ensures that “that new low density development in Edmonton’s mature residential neighbourhoods is sensitive in scale to existing development, maintains the traditional character and pedestrian-friendly design of the streetscape, ensures privacy and sunlight penetration on adjacent properties and provides opportunity for discussion between applicants and neighbouring affected parties when a development proposes to vary the Overlay regulations.”

[61] Accordingly, the Board finds that the proposed development will unduly interfere with the amenities of the neighbourhood and materially interfere with or affect the use, enjoyment or value of neighbouring parcels of land.

Brian Gibson, Presiding Officer
Subdivision and Development Appeal Board

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*, 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.

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 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.