

Edmonton Subdivision and Development Appeal Board

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Date: November 19, 2015
Project Number: 168098031-006
File Number: SDAB-D-15-254

Notice of Decision

This appeal dated October 9, 2015, from the decision of the Development Authority for permission to:

Develop a Secondary Suite in the Basement and interior alterations to the Main Floor of an existing Single Detached House, existing without permits. [unedited from Permit decision]

On Plan 1710U Blk 23 Lot 5, located at 10856 - 93 Street NW, was heard by the Subdivision and Development Appeal Board on November 4, 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 subject Site is zoned DC1 Direct Development Control Provision.

The development was approved with a variance granted for the minimum required Site Area for a Single Detached Dwelling containing a Secondary Suite, subject to conditions. The approved development permit application was subsequently appealed by an adjacent property owner.

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

- A written submission received from Sustainable Development on October 29, 2015;
- A written submission received from the Appellant on October 30, 2015;
- A copy of the Development Permit Application; and
- A copy of the approved Development Permit.

The Board heard from Ms. Hale, the Appellant, who made the following points:

1. She lives across the rear lane south of the subject Site.

2. There are two broad areas to address in this appeal:
 - a. Variance to the Site Area – the Area Redevelopment Plan (“ARP”) states that the proposed development must be consistent with other developments; and
 - b. The area is for Family Oriented Housing, so the proposed development should not negatively impact neighbouring property owners.
3. In her opinion, the only allowable Use for the subject Site is for a Single Family Dwelling.
4. She referred to Section 641(4)(b) of the *Municipal Government Act*, which states:

Despite section 685, if a decision with respect to a development permit application in respect of a direct control district... is made by a development authority, the appeal is limited to whether the development authority followed the directions of council, and if the subdivision and development appeal board finds that the development authority did not follow the directions it may, in accordance with the directions, substitute its decision for the development authority’s decision.

5. She referred to Section 710 of the Direct Development Control Provision (DC1) and stated that the purpose of this Provision is to provide for detailed, sensitive control of the use, development, siting and design of buildings and disturbance of land where this is necessary to preserve or enhance areas of unique character as identified in the ARP.
6. In her opinion, this area has a unique character.
7. The reference in the DC1 to the ARP is a directive of City Council that should be followed. The objectives of the ARP are clear and must be applied contextually.
8. In her opinion, the Development Authority must go beyond a paper review when making a decision regarding properties in this ARP, and the ARP must be given broad deference.
9. The ARP is separated into Sub Areas and this neighbourhood is a unique sub area.
10. There are many new Canadians living in this area and others who have mental health issues and drug issues.
11. Individuals are forced to live in this area because of economic reasons, which slum landlords thrive on.
12. Due to economic factors, these individuals live in substandard housing.
13. City Council drafted the ARP to address these issues.
14. She purchased her property and built a new infill development next to the subject Site.
15. There is a Group Home on the other side of her property, which she was aware of before she purchased.
16. She is passionate and committed to the community and the mandates of the ARP.
17. In her opinion, the proposed studio basement suite does not promote family-oriented housing.
18. Family Oriented Dwelling is defined in the *Edmonton Zoning Bylaw* to mean, in part, “a Dwelling suitable as a residence for a Household with children” and should have a minimum of two bedrooms. The proposed development does not fall within this definition.

19. Basement suites are not family-oriented developments. Daycares, convenience stores, or day homes are family oriented.
20. She referred to TAB 3, Page SDAB 11 of her submission, which referenced Chapter 1.1 of the ARP: "Problems facing these neighbourhoods include housing that is crowded and in poor condition".
21. She referred to TAB 3, Page SDAB 13 of her submission, which referenced Chapter 2.1 of the ARP:

The Edmonton Inner City Housing Need and Demand Study (May 1990) found that over 1,000 household in Boyle Street and McCauley lived in inadequate rooming house conditions; that between 250 and 500 households were living in crowded or potentially substandard physical conditions; and, that more than 1,000 low-income households spent over 30 percent of their income on housing.

22. She referred to TAB 3, Pages SDAB 14 to 17 of her submission, which contained sections of the ARP dealing with initiatives to conserve existing housing, promote new housing construction, and encourage a broad mix of housing.
23. In her opinion, the proposed development does not meet basic health, safety, and building standards.
24. She referenced TAB 4, Page SDAB 53 of her submission, which was an order from Alberta Health Services with respect to the subject Site that reads: "No occupancy to be allowed in basement due to ceiling height."
25. She referenced TAB 4, Page SDAB 41 of her submission, which was an order from Alberta Health Services regarding the subject Site that reads: "Basement bedroom window (by bed) was 11x25" openable area. No bars on window. Window was not acceptable for emergency egress."
26. The proposed development does not have any smoke alarms, which does not meet the minimum safety requirements.
27. The existing Dwelling cannot be brought up to the current standards, and it is not being used as a Single Family Dwelling as there are three adults and six children living in the Dwelling.
28. The proposed plans show that there is no kitchen on the first floor, the Dwelling has two living rooms, there are two bedrooms on the second floor, the basement is occupied, and the attic is occupied. In her opinion, this is not considered a Single Family Dwelling.
29. In the past, occupants of the Dwelling have plugged an extension cord into her garage for electricity and have used her outside water tap because the Dwelling did not have utilities.
30. She referred to TAB 5, Page SDAB 57 of her submission, which was a Violation Notice from Sustainable Development regarding the subject Site that reads: "I have inspected your property and found that a Lodging House is in operation... Discontinue the use by June 29, 2015 and revert the construction back to the original approved state, which is a Single Detached House."

31. She referred to TAB 6, Page SDAB 106 of her submission, a real estate listing stating that the property had multiple suites. In her opinion, this confirms the intended Use of the property is not a Single Family Dwelling.
32. She referred to TAB 3, Page SDAB 26 of her submission, which provides the entirety of DC1 (Area 6) – McCauley Direct Development Control Provision. Section 8.4.17.4(i)(vii) of this Provision states: “Secondary Suites shall be developed in accordance with Section 86 of the Zoning Bylaw.”
33. She referred to TAB 3, Page SDAB 27, which referenced Section 8.4.17.4(l) of the DC1 (Area 6) – McCauley Direct Development Control Provision, which states:

Development in this provision shall be evaluated with respect to compliance with the General Development Regulations and Special Land Use Provisions contained in Sections 40 to 97 inclusive, of the Zoning Bylaw.

34. Section 8.4.17.4(m) of the Provision further states

The Development Officer may grant relaxations to Sections 40 through 97 of the Zoning Bylaw and the regulations of this Provision, if in his opinion, such a variance would be in keeping with the general purpose of this district and would not adversely affect the amenities, use and enjoyment of neighbouring properties.

35. In her opinion, the proposed development will adversely affect the amenities, use and enjoyment of neighbouring properties.
36. She provided the Board with an Edmonton Police Service Neighbourhood Crime Map showing criminal activity in the area, marked “Exhibit A”.
37. She referred to TAB 7, Page SDAB 107 of her submission, an Edmonton Police Service Report regarding all activities dealt with by police that took place on the east and west side of 93 Street.
38. Her house was broken into three times before construction was complete.
39. The SWAT team used her garage in the winter to deal with activity taking place at the subject Site.
40. She is scared to use her back door after she witnessed armed men in her back yard.
41. In the past, when services to the subject Site were cut off, individuals were using buckets for a toilet and throwing garbage, including used needles, on the property and neighbouring properties.
42. Drugs and crime are an issue in the area.
43. The proposed Secondary Suite will increase the density in the neighbourhood.
44. She is speaking on behalf of neighbouring property owners in the area who could not attend the appeal hearing.
45. She provided the Board with an article from the Boyle Street McCauley paper stating that developments in the area should be family oriented, marked “Exhibit B”.
46. She reiterated that the proposed development is not consistent with the purpose of the ARP and does not promote family-oriented development.

In response to questions by the Board, Ms. Hale provided the following information:

1. When asked to address why she felt the Development Authority did not follow the directions of Council by granting the variance to minimum Site Area, she stated that the issue is broader than the 23 square metre Site Area variance. It would be an error to focus only on whether the Use is a listed use. The Board must consider the ARP, which states this area is to be family oriented. The proposed studio basement suite is not family oriented. Also, the variance to minimum Site Area will increase density which will negatively impact the use, enjoyment and value of neighbouring parcels of land.
2. Parking is not an issue as people who live in these types of developments do not drive. However, the garage cannot be used for parking as the roof is collapsing.
3. If the proposed development is approved it will not only affect the Dwelling, but the neighbourhood and herself as well.
4. Individuals are living on the deck and the only way to deal with this is to apply a broad interpretation of the ARP which opens the door for the Board to consider safe housing standards as a development criteria.
5. The Safety Code concerns should be addressed as the structure cannot physically support the proposed Use.
6. The Board should not take the proposed plans at face value because they do not reflect what is on Site.
7. If the proposed development is refused, the intensity of use at the property will decrease, other issues will decrease, the type of tenants will improve, and families will not be living in the basement suite.
8. The ARP, Sub Area 6, specifies that this Site should be a family-oriented development. Allowing intensification of development in this area does not conform to the ARP.
9. She agrees that Secondary Suites are allowed in Single Family Housing; however, they are not family oriented.
10. When asked what the definition of “family oriented” should be, she stated that it would include children living together with immediate family members as per the definition in the Zoning Bylaw.
11. The ARP targets the Use in these areas toward young families.

The Board then heard from Ms. Bubel, who was speaking on behalf of her mother who lives in the area. Ms. Bubel made the following points:

1. In the census, the definition of a family is a household with children.
2. In her opinion, a studio apartment and a Secondary Suite are not the same.
3. Increasing the density by granting a variance in the minimum Site Area on this property is not insignificant.
4. She referred to Section 86 of the Zoning Bylaw, which puts restrictions on the size of lots where Secondary Suites can be located. The Development Authority should have considered this in its decision.
5. She stated that decreasing the Site Area increases the density in the area.

6. The Board should show leadership and common sense and allow the appeal. It is not good enough to allow the development to proceed and pass the buck to the compliance authorities to do the Board's dirty work regarding Building Code issues.
7. In her opinion, Secondary Suites should not be allowed. This will help improve communities.

The Board then heard from Mr. Xie and Mr. Illingworth, representing the City of Edmonton's Sustainable Development Department, who made the following points:

1. They acknowledged the points raised by those opposed to the development and do not dispute most of their presentation.
2. With respect to the Appellant's submissions regarding whether this Secondary Suite was family oriented, Section 8.4.17.2 of the DC1 says that the rationale of the direct control provision is to provide a district which will accommodate affordable housing options designated to promote the family-oriented character of the neighbourhood. Secondary Suites are a listed use in the DC1. Section 7.2(7) of the Zoning Bylaw defines Secondary Suite as a development consisting of a Dwelling located within, and Accessory to, a structure in which the principal use is Single Detached Housing, including the conversion of Basement space to a separate Dwelling.
3. When reviewing this development application, they looked at the entire built form to determine whether it met the objectives of the DC1 regarding a family-oriented neighbourhood. A Single Detached House with a Secondary Suite in the basement is family oriented.
4. Also, since "family-oriented" is not capitalized in the DC1, this indicates that it was not intended to reference the definition of Family Oriented Dwelling contained in the definitions section of the *Edmonton Zoning Bylaw*. Therefore, the term "family-oriented character" in the DC1 could be interpreted in many ways beyond the strict definition of Family Oriented Dwelling.
5. Also, Council could have specified that all Dwellings in this district, including Secondary Suites, must have a certain number of bedrooms, but this was not done.
6. The entire built form of the proposed development is a Family Oriented Dwelling. A Secondary Suite does not need to meet the definition of Family Oriented Dwelling to comply with the DC1.

In response to questions by the Board, Mr. Xie and Mr. Illingworth provided the following information:

1. In their opinion, the Development Authority has the power to grant variances for the proposed development pursuant to the DC1.
2. Any development in a direct control district is considered a Class B development regardless of whether variances are granted and requires notices to be sent out to neighbours.
3. They confirmed that a Site visit was not done and the decision was based on the proposed plans submitted with the development permit application.

4. When asked whether the proposed development was reviewed in accordance with the Direct Control Provision and the *Edmonton Zoning Bylaw*, they answered affirmatively, and stated that neither the condition of the house nor its compliance with Building Code requirements is considered when making a development decision.
5. Although the house had been used as a Boarding and Lodging House, they stated that was no longer relevant because the application was for the conversion of the basement of a Single Family House to a Secondary Suite.
6. They confirmed that Section 8.4.17.4(m) of the DC1 gives the Development Authority the discretion to grant relaxations provided that such variances would be in keeping with the general purpose of the district and would not adversely affect the amenities, use and enjoyment of neighbouring properties. They confirmed that this is different from the usual variance power in Section 11.3 of the Zoning Bylaw, which does not mention the general purpose of the district.
7. They confirmed the general purpose of the DC1 was considered when reviewing the proposed development.
8. Section 8.4.17.2 sets out the rationale of this area. The range of options for innovative housing types described were reviewed and Secondary Suites are specifically mentioned. Further, Secondary Suites are a listed Use in this area of the district.
9. Section 8.4.30 of the ARP states that on properties which were subdivided prior to the adoption of the ARP, the Development Officer is encouraged to allow redevelopment of single detached housing on lots substandard in width, depth and area, provided the development is sensitive in scale and design with adjacent development. This is what they did in allowing the minimum Site Area variance for the Secondary Suite. Because the exterior dimensions of the building will not change, it will remain sensitive in scale to adjacent development.
10. Allowing the minimum Site Coverage variance does not affect other zoning provisions, such as the parking, setbacks or Amenity Area size. Because of this, they felt the variance would have minimum impact on neighbouring parcels of land.
11. The Secondary Suite will not affect the footprint of the existing Dwelling.
12. They confirmed that Building Code issues and Community Standards issues are not within the purview of the Board.

The Board then heard from Ms. George representing the Respondent, M O George Architect, who made the following points:

1. The property owner purchased the property in late 2014 and she is speaking on his behalf.
2. She was hired at the end of May or early June to provide drawings to bring the property into compliance with the Zoning Bylaw.
3. The tenants living in the house at the time of purchase were not paying their rent and it took the owner a long time to evict them.
4. She acknowledged that the property owner received several letters regarding the illegal Lodging and Boarding House. She took steps to correct this.
5. She met with Sustainable Development several times. She was advised that a Secondary Suite could only be put in the basement of a Single Detached House so she took steps to convert the house.

6. The undersized basement window was replaced with one that was 30 inches by 36 inches.
7. The house originally had three Suites in various formats, but steps will be taken to convert it to a Single Family House.
8. She confirmed that at present there is only one legal tenant in the house. Two adults and four children live there.
9. Prior to that, the house had been empty and vagrants had broken in. Police had to remove them. None of the problems described by the Appellant were caused by the current tenants.
10. She believes that having only one bedroom does not mean that the housing is not Family Oriented.
11. The property owner wants to comply with the regulations of the *Edmonton Zoning Bylaw*.
12. She acknowledged that the basement ceiling is low and she is aware of other current conditions that will need to be remedied.
13. In her opinion, the Secondary Suite will be suitable for a student.
14. Regarding the variance, there is sufficient Rear Yard Amenity Space for children to play.
15. The property owner has cleaned up the subject Site and this is the first legal tenant he has had. On a recent visit, she noted that things looked good and the tenant seemed to be taking care of the property.

In response to questions by the Board, Ms. George provided the following information:

1. The property owner does not live at the subject Site but purchased the property at the end of 2014.
2. She confirmed that the existing tenants have access to the whole house but only live on the main and second floors.
3. She confirmed that there is an internal staircase to access the second floor. There will be no separate entrance to the second floor.
4. The development permit will allow them to make interior alterations so that this will be a legal Single Family House with a Secondary Suite in the basement.

In rebuttal, Ms. Hale made the following points:

1. The task of the Board is not to review the Development Authority's decision but to consider all applicable legislation.
2. The built form of the existing Dwelling is not an issue.
3. The Development Authority needs to apply the ARP when making the decision and did not follow the direction of City Council.
4. The variance power is not unconstrained.
5. This is not a variance to the Bylaw but a variance in the ARP.
6. She referred to TAB 3, Page SDAB 17 of her submission, which is a map in the ARP showing areas designated for Family-Oriented Housing Opportunities.
7. She agreed that "family-oriented" was not capitalized in the ARP. However, the Board must look for some meaning to "family-oriented" and should therefore look to the definition in the *Edmonton Zoning Bylaw* for guidance.

8. The ARP permits a broader definition than the *Edmonton Zoning Bylaw*, and family-oriented developments should be promoted.
9. Regarding Section 8.4.30 of the ARP, she noted that it states that allowances should be given to sub-standard sized lots “in order to achieve the intent” of the ARP.
10. She disagrees with the Development Authority’s assertion that it is not the purview of the Board to consider compliance issues such as sub-standard housing when making a decision.
11. She questions whether the subject Site is being used as a Single Detached House because two adults and six children live in the building.
12. The Secondary Suite is a studio apartment and therefore does not fit the definition of Family Oriented Dwelling and is contrary to the intent of the ARP.
13. In her opinion, the Building Code must be considered by the Board.

Decision:

The appeal is DENIED and the decision of the Development Authority is CONFIRMED. The development is GRANTED as approved by the Development Authority, subject to the CONDITIONS as set out in the Development Permit.

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

Class B Discretionary Use: Includes all developments on Sites designated Direct Control (Reference Section 12.4 of the *Edmonton Zoning Bylaw* 12800).

1. Section 86.1 relaxed - The Minimum Site Area for Single Detached Dwelling containing a Secondary Suite is 360 m².

Existing Site Area: 337 m²
Required Site Area: 360 m²
Deficient by: 23 m²

Reasons for Decision:

The Board finds the following:

1. The proposed development is for a Secondary Suite, which is a listed Use in the DC1 Direct Development Control Provision.
2. Section 641(4)(b) of the *Municipal Government Act* states:

Despite section 685, if a decision with respect to a development permit application in respect of a direct control district

...

- (b) is made by a development authority, the appeal is limited to whether the development authority followed the directions of council, and if the subdivision and development appeal board finds that the development authority did not follow the directions it may, in accordance with the directions, substitute its decision for the development authority's decision.
3. The Board is limited to determining whether or not the Development Authority followed the directions of Council by issuing a Development Permit for a Secondary Suite in the basement with interior alterations to the main floor of an existing Single Detached House without permits and allowing a variance of 23 square metres in the minimum required Site Area.
 4. The Development Control Provisions for Area 6 of this Direct Control District, where the proposed development is located, are found at Section 8.4.17 of the Boyle St. McCauley Area Redevelopment Plan (the "ARP").
 5. Section 8.4.17.2 states that the Rationale of the ARP is:

To provide a district which will accommodate affordable housing options designated to promote the family-oriented character of the neighbourhood in order to achieve the intent of Section 7.2.7 of this plan. This District is intended to provide the bulk of low density housing opportunities in the Boyle Street/McCauley ARP area. In order to achieve these objectives, this range of housing options may include innovative forms of housing such as Semi-detached Housing and Duplex Housing on single lots. Semi-detached Housing where the dwellings are back-to back and the two dwellings are joined in whole or in part at the rear only, and in which one dwelling faces the front of the lot and the other dwelling faces the rear of the lot. This may also include Secondary Suites as well as Garage Suites and Garden Suites under certain conditions.

6. The emphasis is on affordable housing options with a family-oriented character. Innovative forms of housing are to be permitted, including Secondary Suites under certain conditions.
7. Secondary Suites are one of the listed Uses in Section 8.4.17.3.
8. Section 8.4.17.4(i)(vii) states that Secondary Suites shall be developed in accordance with Section 86 of the Zoning Bylaw.
9. Section 8.4.17.4(m) states:

The Development Officer may grant relaxations to Sections 40 through 97 of the Zoning Bylaw and the regulations of this Provision, if in his opinion, such a variance would be in keeping with the general purpose of this district and would not adversely affect the amenities, use and enjoyment of neighbouring properties.

10. The Development Authority followed the directions of Council and applied Section 86 to evaluate the Secondary Suite. Section 86.1 requires that the minimum Site Area of a Single Detached Dwelling containing a Secondary Suite be at least 360 m². This requirement was relaxed to permit a deficiency of 23 m² for a total Site Area of 337 m².
11. The Development Authority followed the directions of Council as contained in Section 8.4.17(m) by considering whether this variance would adversely affect the amenities, use and enjoyment of neighbouring properties and concluding that it would not. The basis for this conclusion was that the exterior form of the house would not change and that the variance would not affect any of the other zoning requirements such as parking, amenity space or setbacks. The Board finds that the Development Authority acted reasonably in exercising its discretion in this regard. Further, the Board agrees with the Development Authority's conclusion that the variance would not adversely affect the amenities, use and enjoyment of neighbouring properties.
13. The Development Authority also followed the directions of Council as contained in Section 8.4.17(m) by considering whether this variance would be in keeping with the general purpose of this district. They considered the Rationale for the area as set out in Section 8.4.17.2. They reviewed the range of options for innovative housing types described and noted that Secondary Suites are specifically mentioned. They further noted that Secondary Suites are a listed Use in this area of the district.
14. The Development Authority also considered Section 8.4.30 of the Boyle Street/McCauley Area Redevelopment Plan that states:

**Advice to the Development Officer Regarding Development on Lots
which are Sub-Standard in Width, Depth and Area.**

On properties which were subdivided prior to the adoption of this Area Redevelopment Plan, the Development Officer is encouraged to allow the redevelopment of single detached housing on lots sub-standard in width, depth and area, providing the development is sensitive in scale and design with adjacent development, in order to achieve the intent of Section 7.2.7 of this Plan.

12. The Development Authority followed the directions of Council by allowing redevelopment on this lot, which is sub-standard in area, by concluding that the development would not change the exterior of the house, leaving its scale and design intact.
13. The Board finds that the Development Authority acted reasonably in considering whether the variance would be in keeping with the general purpose of the district. Further, the Board agrees that the variance is in keeping with the general purpose of the district.
14. The Appellant argued that the Development Authority did not follow the directions of Council because they failed to take into account Section 2.4(16) of the ARP, which states: "The City will promote more family-oriented housing through a variety of land use districts as shown on Map 3."

15. The Appellant argued that “family-oriented housing” was equivalent to Family Oriented Dwelling, as defined by Section 6.1(33) of the *Edmonton Zoning Bylaw* as follows:

Family Oriented Dwelling means a Dwelling suitable as a residence for a Household with children and meeting the following criteria:

- a. the lowest Storey of the Dwelling is no higher than the third Storey of the building;
 - b. the Dwelling has two bedrooms or more, and the average number of bedrooms per Dwelling is not less than 2.25 for all such Dwellings in a development;
 - c. the Dwelling has individual and private access to Grade, except that in the case of Stacked Row Housing access to Dwellings above the first Storey may be shared by two Dwellings; and in the case of Apartment Housing, access to Dwellings above the first Storey may be shared, provided that entrances to not more than six Dwellings are located on any one Storey or landing; and
 - d. the Dwelling has direct access to a Private Outdoor Amenity Area;
16. The Appellant’s position was that the proposed development was a basement studio apartment and, as such, it was not a “Dwelling suitable as a residence for a Household with children” and it did not meet the criterion of having two bedrooms or more. Further, even if the proposed development was not required to meet the strict definition of Family Oriented Dwelling, she argued it did not “promote the family-oriented character of the neighbourhood” as required by Section 8.4.17.2.
17. The Board rejects these arguments of the Appellant.
18. The Board accepts the submission of the Development Authority that the definition of Family Oriented Dwelling does not apply to the term “family-oriented character” as it is used in Section 8.4.17.2. The Board finds that the Development Authority followed the directions of Council by allowing the development of a basement Secondary Suite, albeit a studio apartment, in this Single Detached House. The house without the Secondary Suite in the basement meets the definition of Family Oriented Dwelling. Allowing a studio apartment to be developed in the basement will not change this. This development will provide affordable housing options that will promote the family-oriented character of the neighbourhood, as Council intended.
19. In further support of this the Board notes that Section 2.4.17 of the ARP states that the City will implement a policy to encourage the distribution of housing affordable to low-income and special needs households throughout the city. The proposed Secondary Suite will provide affordable housing.
20. The Board is satisfied that the Development Authority followed the directions of City Council when approving the proposed development. Accordingly, the Board does not have the jurisdiction to change the Development Authority’s decision.

21. In the alternative, if the Board is wrong and it does have the authority to change the Development Authority's decision, the Board would decline to change it. The Board would allow the development with the same variance and conditions granted by the Development Authority.
22. With regard to issues the Appellant raised regarding the behaviour of individuals on the property, unsafe and sub-standard conditions, and the potential improper Use of the property, the Board finds that these issues are outside the purview of the Board. Such issues are best dealt with by safety codes officers, bylaw enforcement officers or police officers who have the mandate and authority to handle them.

Important Information for 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. M. Young, Presiding Officer
Subdivision and Development Appeal Board

CC:

Edmonton Subdivision and Development Appeal Board

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Date: November 19, 2015
Project Number: 177382832-001
File Number: SDAB-D-15-255

Notice of Decision

This appeal dated October 9, 2015, from the decision of the Development Authority for permission to:

Construct a Semi-Detached House with front verandas, fireplaces and rear uncovered decks (4.72m x 3.05m) and to demolish an existing Single Detached House and Accessory Building (detached Garage) [unedited from Development Permit]

on Plan 426HW Blk 20 Lot T, located at 9530 - 72 Avenue NW, was heard by the Subdivision and Development Appeal Board on November 4, 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 subject Site is zoned RF3 Small Scale Infill Development Zone and is located within the Mature Neighbourhood Overlay.

The development was approved with a variance granted in the minimum required Site Width, subject to conditions, and subsequently appealed by an adjacent property owner.

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

- A written submission received from Sustainable Development on October 27, 2015;
- A copy of the Development Permit Application; and
- One on-line response from the Appellant.

The Board heard from Ms. Steiger, the Appellant, who made the following points:

1. She is concerned with Semi-detached developments being built on mature lots in the Ritchie Area and the design of Semi-detached developments that are mirror images.
2. She has lived in the community since 2008 and has developed an infill project herself and is an active member of the Ritchie Revitalization Community.
3. She read a letter provided by the Community League outlining their position and concerns, marked "Exhibit A".
4. A Semi-detached development will reduce the charm of the neighbourhood.
5. The block has changed in ambiance which creates a lack of selling ability for homes in the area.
6. She and the Community League support infill developments and increased density, particularly on appropriate rental properties and on approved locations.
7. Semi-detached developments should be located on the outside of the block or on a corner and not in the middle of the block such as the proposed development.
8. When the Development Authority looks at developments they should look at the City block as a whole and not as individual lots.
9. These kind of developments are lowering the value of the neighbourhood and properties within it.
10. Although there are similar developments across the avenue, they are in the Hazeldean neighbourhood where lots are wider and meet the regulations of the *Edmonton Zoning Bylaw* for Semi-detached Housing.
11. She is aware that the larger lots across the street will result in Semi-detached developments on the whole block.
12. Of the 29 lots on the block, eight have infill developments, and five of the homes have basement suites.
13. Regarding the first variance, she acknowledged that although a variance of 0.5 metres in Site Width is a small variance, there should be balance on a City block.
14. She is not opposed to Semi-detached developments if they are in the right place.
15. Granting the variance takes away the opportunity to build a Single Family Dwelling on that lot. A Semi-detached development is not characteristic of existing development.
16. The proposed development does not fit in with the charm and integrity of the community.
17. Regarding the second variance, Semi-detached Houses are required to be asymmetrical. The charm of the neighbourhood is its uniqueness and variety. Allowing this variance results in buildings that look like row housing. The symmetrical units are not unique and have no variety. This will have a negative impact on property values.
18. The Semi-detached development next door is built by the same builder and it is also a mirror image development.
19. The Development Officer's submission refers to comparable developments across the street. However, the lots across the street are larger and do not require a variance in Site Width. She is concerned with the approach of allowing new developments because similar ones already exist. The Board should not allow this to happen.
20. She conducted research of the area and purchased the property, confident that no Semi-detached developments were going to be developed in the community because the lots were too narrow.
21. Although parking for the proposed development is adequate, these developments are disruptive, generate traffic and interrupt the flow of traffic.

22. Property owners are moving out of the area because they do not like what is being proposed for the community and are not given adequate consultation in the process.
23. The approved development permit compromises the community without providing adequate recourse
24. It would benefit property owners if developers would work with them prior to construction.
25. The Development Authority approves development permits when they do not know the community.
26. The community has concerns about problems that arise during construction, such as inspections, grading, drainage, etc.
27. She provided a letter from a neighbouring property owner indicating that she is speaking on their behalf, marked "Exhibit B".
28. The developer will demolish the existing Garage and develop the property to face neighbouring properties.
29. Some builders build nice homes and others build lower quality Semi-detached homes. This builder has proceeded with construction and assumed that the variances will be granted.
30. The City should slow down on developments and not grant variances which result in the community having to take action.
31. There are several property owners in the community that feel the same way.
32. Developing symmetrical Semi-detached housing compromises the look of the City block. The units should look different from one another. This is about more than just moving windows.
33. The comparables submitted by the Development Authority are not in the same community, it is a different neighbourhood across the street.
34. In her opinion, Semi-detached developments are undesirable and compromise the integrity of the community and the block.

In response to questions by the Board, Ms. Steiger provided the following information:

1. The Semi-detached house next door to the proposed development was built by the same builder. She is not aware if it required a variance because she was not notified prior to construction.
2. Regarding the variance to Site Width and how it would affect the use, enjoyment and value of neighbouring parcels of land, she stated that before she purchased her property, she knew certain lots were not wide enough for Semi-detached Houses. She believed none would be built near her. Having Semi-detached homes near her alters her enjoyment of her property. The variance in Site Width is not the issue, the issue is the type of development occurring nearby. She is not opposed to the variance in the Width but the type of development being built.
3. When she moved into the neighbourhood, she was not aware that it was zoned RF3 and that Semi-detached Houses were a Permitted Use. She knew about the minimum Site Width for Semi-detached Houses and thought there would be none nearby. She questioned why there are Bylaws if variances are granted.

4. Regarding her opinion that developments like the proposed one result in lower property values, she had no specific evidence. She felt a neighbourhood with Row Housing is less desirable. An acquaintance who is a real estate agent told her such developments decrease property values. Also, houses in the neighbourhood are taking longer to sell and she felt this was because of developments like the proposed one.

The Board then heard from Ms. Hetherington, representing Sustainable Development, who made the following points:

1. She referred to Section 140.4(18) of the *Edmonton Zoning Bylaw*:

Each Dwelling within Semi-detached Housing and Row Housing shall be individually defined through a combination of architectural features that may include variations in the rooflines, projection or recession of the façade, porches or entrance features, building materials, or other treatments.

2. She acknowledged that although she referenced Section 140.4(18) in the Development Permit, the actual content of the provision that was quoted was from Section 140.4(20). She confirmed that the correct provision was Section 140.4(18).
3. She clarified that although a variance was granted because each half of the proposed development is a mirror image of the other, the section is unclear and she was not sure if a variance was actually required. The interpretation of this section by the Development Authority has changed over time. The section does not say that each half cannot be a mirror image of the other. It says that each Dwelling should be individually defined through a combination of architectural features. The front elevation for the development shows that each Dwelling is individually defined. There are doors on either side, there are no common porches and there are separate roof lines, among other features, that show there are two Dwellings in the development.
4. The photographs she provided of Semi-detached Housing across the street from the proposed development show two developments that are mirror images but with individually defined Dwellings.
5. Semi-detached developments are permitted in the RF3 Small Scale Infill Development Zone and are not required to be on a corner lot.
6. No community consultation was required as the development meets all of the regulations within the Mature Neighbourhood Overlay.

The Board then heard from Mr. Lengle, representing the Respondent, Grandview Homes Co. Ltd., who made the following points:

1. He provided the Board with a letter outlining why the proposed development should be allowed, marked "Exhibit C".
2. He is a long time builder and has been building homes in the area for years.
3. He can purchase a property for \$335,000 in this neighbourhood, develop a Semi-detached development and sell it for \$950,000.

4. In his opinion, improving the neighbourhood with newer houses will increase the property value of neighbouring properties.
5. He could have revised the development during the planning stages so that it was asymmetric but chose to go with a mirror image design, which is easier to build.
6. He researched other Semi-detached developments and found that 60 percent were mirror image and 40 percent were not.
7. The proposed development will have a good curb appeal and will be finished with quality materials.
8. A neighbour told him he was very pleased with these new developments, which are replacing old, war-time houses and increasing property values.
9. The older developments in the area have small garages and short driveways that make backing into the rear lane difficult. This development will have a double garage and a large driveway, making it easy to back out.

In rebuttal, Ms. Steiger made the following points:

1. She was confused with the Development Authority's explanation of symmetry. While there may be cost savings in building mirror image developments, they do not align with the integrity and values of the community.
2. She agrees that new developments increase the value of older properties; however, in her opinion, they negatively impact the value of newer Single Detached homes.
3. She would like to see more development of new Single Detached homes.
4. New Single Family Homes in the neighbourhood sell for \$730,000 to \$740,000.
5. Properties currently for sale are staying on the market for a long time.
6. She stated that she had to lower the rent she charges for a basement suite, which shows that the market has changed.
7. It is possible to build Semi-detached Houses that conform to the community. Mirror image developments do not do this and the cumulative effect is a decrease in property values..
8. The Development Officer's evidence about the internal policy regarding mirror image developments was disconcerting. She was concerned about how interpretations of the Zoning Bylaw can change and result in inconsistencies.

Decision:

The appeal is DENIED and the decision of the Development Authority is CONFIRMED. The development is GRANTED as approved by the Development Authority, subject to the CONDITIONS as set out in the Development Permit:

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

1. Section 140.4(3)(b) requires a minimum Site Width of 13.4 m for non-Corner Lots. This requirement is relaxed to permit a Site Width of 12.9 m.
2. Section 140.4(18) requires that "Each Dwelling within Semi-detached Housing and Row Housing shall be individually defined through a combination of architectural features".

No variance is required because the Board finds that despite the mirror imaging of the Semi-detached development, the variation in roof lines, entrance features and other architectural features is sufficient to “individually define” each Dwelling in the development.

Reasons for Decision:

The Board finds the following:

1. The proposed development is a Permitted Use in the RF3 Small Scale Infill Development Zone.
2. The Board is required to look at the two variances granted by the Development Authority to determine if the variances will have a negative impact on neighbouring properties or on the amenities of the neighbourhood.
3. The first variance relates to the minimum Site Width of 13.4 metres outlined in Section 140.4.3(b) of the *Edmonton Zoning Bylaw*. The Development Authority granted a variance of 0.5 metres in the minimum required Site Width.
4. The Appellant acknowledged that her main concern was not regarding the Site Width variance but the type of development that was approved.
5. The Board notes that the Site Width variance will not have an effect on other zoning requirements such as Amenity Space, parking, setbacks or any of the requirements of the Mature Neighbourhood Overlay. The Board is of the opinion that the variance will not have any significant impact on the neighbourhood.
6. The second variance is the requirement of Section 140.4(18) of the *Edmonton Zoning Bylaw* which states:

Each Dwelling within Semi-detached Housing and Row Housing shall be individually defined through a combination of architectural features that may include variations in the rooflines, projection or recession of the façade, porches or entrance features, building materials, or other treatments.

7. The Development Officer indicated that she was unsure if a variance was required. In her opinion, one interpretation of the section was that Semi-detached Housing like the proposed development could not have Dwellings that were mirror images of each other.
8. The Board notes that nothing in Section 140.4(18) indicates that a mirror image is not allowed. Rather, the focus is on individually defining each Dwelling through a combination of architectural features. The Board is of the view that the section is intended to avoid monolithic structures where it is not clear how many Dwellings are present.
9. Based on the front elevation plans for the proposed development, the Board finds that the Dwelling units are individually defined as a result of the entrance features, the variations in roof lines, and other architectural treatments. It is clear that there are two separate Dwellings in the building. The Board finds that no variance is required with respect to Section 140.4(18).

10. Further, the Board notes that there are several other mirror-image Semi-detached Houses in the neighbourhood. The Board is of the opinion that this development will not have a negative impact on the neighbourhood or on neighbouring parcels of land.
11. Although the Appellant indicated that the proposed development will negatively impact neighbouring properties by decreasing property values, she did not provide anything other than anecdotal information to support this.
12. 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 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. M. Young, Presiding Officer
Subdivision and Development Appeal Board

CC:

Edmonton Subdivision and Development Appeal Board

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Date: November 19, 2015
Project Number: 176585012-001
File Number: SDAB-D-15-256

Notice of Decision

This appeal dated October 7, 2015, from the decision of the Development Authority for permission to:

Add an Automotive and Minor Recreation Vehicle Sales/Rentals use to an existing General Retail Store (U-Haul van rental - Maximum 3 cargo vans)

on Plan B4 Blk 14 Lot 169, located at 11429 - 107 Avenue NW, was heard by the Subdivision and Development Appeal Board on November 4, 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 subject Site is zoned CB1 Low Intensity Business Zone.

The development permit was refused because the proposed Use is contrary to the objectives of the Central McDougall / Queen Mary Area Redevelopment Plan. It is the opinion of the Development Authority that the proposed development will have a negative impact on the adjacent and surrounding residential uses.

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

- A copy of a petition in support of the development, submitted by the Appellant;
- A written submission received from Sustainable Development on October 28, 2015;
- A copy of the Canada Post delivery confirmation of the Development Authority's decision;
- A copy of a Google Streetview Observation;
- A copy of the on-line responses, 2 in opposition of the development;
- A copy of the scanned Development Permit and Plans;

- A copy of Site visit photographs, dated September 9, 2015; and

- A copy of a letter of opposition.

The Board heard from Mr. Ghirmu, representing the Appellant, 7 Heaven Food Store Ltd., who made the following points:

1. He was asked by the U-Haul dealer to operate the U-Haul business from his property.
2. He was not aware that he needed a development permit to operate the U-Haul business.
3. There are three U-Haul vans parked on his property. The half-ton truck shown in the photos is no longer being used by the business.
4. In his opinion, the U-Haul vans do not negatively impact the neighbourhood.
5. The customer reviews posted on the web page were posted before he applied for a development permit.
6. The photographs shown in the Development Officer's report were taken before he applied for the development permit.
7. He stated that the large trucks shown in the photographs are no longer being used.
8. There are 15 parking spaces on his property and three are specifically assigned for the U-Haul vans.
9. The trucks are always clean and empty when they enter or leave the property.

In response to questions by the Board, Mr. Ghirmu provided the following information:

1. In his opinion, the U-Haul business meets the purpose of the Central McDougall/Queen Mary Park Area Redevelopment Plan.
2. The business on the second floor of his store is a McMan Youth Family and Community Services Association school.
3. There are three parking spaces for McMan that are used from 8:00 a.m. to 2:00 p.m.
4. The U-Haul business and McMan share the parking lot but there are three parking spaces assigned for the U-Haul vans.
5. The garbage collected from the business is taken to the Westmount transfer station. He does not use garbage bins on the neighbouring property.
6. He clarified that the street view photograph was taken before he applied for the development permit. The other photographs were taken on September 9, 2015 and show one truck and three vans on his lot.
7. He owns three of the vans; the truck parked in the U-haul parking space does not belong to him.
8. In his opinion, parking the vans on the subject Site will not negatively impact the community.
9. With regard to how the vans in the CB1 Zone will impact the surrounding residential properties, he stated that the vans are small, not very heavy, and will not impact visibility.
10. He confirmed that the only developments in the CB1 Zone are his store and the McMan Youth and Family and Community Services Association school on the second floor.
11. With regard to the Development Officer's finding that the vans are an outdoor display area, he stated that there are no flashing signs on the vans and, in his opinion, the vans should not be considered displays or signs.

12. With regard to how the U-Haul vans will enhance the Mainstreet Commercial Precinct to promote pedestrian/street-oriented development, he stated that the vans have their own parking spaces and will not negatively affect the neighbourhood.

The Board then heard from Ms. Buccino, representing the City of Edmonton's Sustainable Development Department, who made the following points:

1. She confirmed that the customer reviews from the website were posted after the development permit application was made and are related to trucks being dropped off.
2. The photographs were taken by her on a site visit after the development permit application was made.
3. The first reason for refusal as stated in the Development Permit Decision is always implemented when there is a change in Use.
4. The building was constructed in 1974 prior to the existing Bylaw.
5. The parking calculations used were based on the approved Uses for the subject Site and do not include the change of Use on the second floor from Professional Services to a Private School.
6. There is sufficient parking on the subject Site for the approved Uses and the proposed Use.

In response to questions by the Board, Ms. Buccino provided the following information:

1. The requirement for garbage waste collection in the Setback was not included in her initial review but was included as a recommendation for the new development permit application.
2. The U-Haul business is not supportive of the Mainstreet Commercial Precinct to promote pedestrian/street-oriented development.
3. The proposed development increases the intensity of vehicles in the area and the Use is not appropriate for this area.
4. The change in Use will not trigger the Use requirement for parking and will be considered a non-conforming Use.
5. A truck rental business does not meet the objective of other automotive related businesses in the area prior to the Mainstreet Commercial Precinct to promote pedestrian/street-oriented development.
6. The complaints received were regarding large trucks parking on the street all night in a residential area.
7. In her opinion, the Appellant cannot guarantee that the trucks will not be parked in the parking lot or on the street.
8. Her interpretation of outdoor display area includes signs on a Site, as well as the wording on the side of a vehicle.

The Board then heard from Ms. Field, speaking on behalf of 1327561 Alberta Ltd., who made the following points:

1. She is the property manager for the residential building adjacent to the subject Site.

2. For the past two years, she has seen large U-Haul trucks and vans parked on 114 Street and 115 Street and across 107 Avenue.
3. The garbage bins for the residential building are used by the Appellant's business as their name can be found on items in the garbage bin.
4. The U-Haul vans have damaged the residential vehicles in the parking lot of her building.
5. Tenants in the residential building have placed cones on their parking spaces to prevent customers of the businesses from parking there.
6. She is in support of the Mainstreet Commercial Precinct that promotes pedestrian/street-oriented development.
7. In her opinion, the U-Haul business does not fit this objective.

In rebuttal, Mr. Ghirmu made the following points:

1. He agrees that trucks were parked on the street but do not park there anymore.
2. There is room to park three vans on his property.
3. In his opinion, signage is not an issue as the advertising on his vans are like other vehicles that may be parked in the parking lot.

Decision:

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

Reasons for Decision:

The Board finds the following:

1. The proposed development is a Discretionary Use in the CB1 Low Intensity Business Zone.
2. The Central McDougall/Queen Mary Park Area Redevelopment Plan refers to Precinct A: Mainstreet Commercial, which the proposed development falls within. The objective of this Precinct is to enhance and improve existing commercial precincts on 107 Avenue, 101 Street, 109 Street, and 116 Street (northbound), and guide the growth of these areas as pedestrian-oriented mainstreet commercial precincts.
3. The Board is of the opinion that the proposed development, which will involve trucks and vans going to and from the premises, will not promote the pedestrian-oriented development envisioned by the ARP.
4. Further, the Board is of the opinion that the proposed Use is not compatible with the existing Use of a General Retail Store in a Zone as small as this Zone, which has only one building.

5. The Board accepts the submission of the Development Authority that there have been several complaints from neighbouring property owners regarding large U-Haul trucks parking on the street for extended periods of time near the proposed development.
6. The Board does not accept the submission of the Appellant that the parking issues will not continue if the proposed development is approved and is of the opinion that the proposed development will have a negative impact on the neighbourhood.
7. The Board acknowledges the petition submitted by the Appellant with signatures in support of the proposed development. However, the Appellant did not provide any evidence that these individuals live within the notification area or how they would be impacted by the proposed development. As a result, the Board is unable to place much weight on the petition.
8. Based on the above, it is the opinion of the Board that it should exercise its discretion and refuse to allow this development.

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

CC: