

Edmonton Subdivision and Development Appeal Board

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Date: May 5, 2016
Project Number: 189001744-001
File Number: SDAB-D-16-098

Notice of Decision

[1] On April 20, 2016, the Subdivision and Development Appeal Board heard an appeal that was filed on **March 24, 2016**. The appeal concerned the decision of the Development Authority, issued on March 23, 2016, to refuse the following development:

construct exterior alterations (change in Height) to an existing Accessory building (rear detached Garage, 6.2m x 7.4m)

[2] The subject property is on Plan 0729436 Blk 13 Lot 12, located at 2461 - AUSTIN CRESCENT SW, within the RPL Planned Lot Residential Zone. The Ambleside Neighbourhood Structure Plan and the Windermere Area Structure Plan apply to the subject property.

[3] The following documents, which were received prior to the hearing and are on file, were read into the record:

- Canada Post delivery confirmation;
- A Minor Development Permit Application;
- Plans submitted to the Board;
- The refused development permit;
- The Development Officer's written submissions;
- A package of documents submitted by the Appellant, including photos;
- The Ambleside Neighbourhood Structure Plan; and
- The Windermere Area Structure Plan.

[4] The following documents, which were received during the hearing and marked as exhibits, also form part of the record:

- Exhibit A – Appellant Presentation;
- Exhibit B – A package of photos of the principal Dwelling taken from the street;
- Exhibit C – A photo of a Garage illustrating Height measurements;

Summary of Hearing

- [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 appeal was filed on time, in accordance with Section 686 of the Municipal Government Act, R.S.A 2000, c. M-26.
- i) *Position of the Appellant, Mr. M. Servant*
- [7] The Appellant reiterated the Grounds for Appeal included in the Notice of Appeal.
- [8] He confirmed that he is requesting a 0.91-metre variance with respect to the Height of the proposed development, a detached Garage. It is still in the process of being constructed, and the variance can still be incorporated. Apart from the requested variance, all other *Zoning Bylaw* regulations have been complied with.
- [9] He proposes to use the Garage for the storage and maintenance of personal vehicles and as a space where his family can pursue hobbies. The Height variance is required to accommodate an oversized vehicle, a camper with a roof rack, which will be parked inside the Garage. By allowing the oversized vehicle to be parked in the Garage rather than on the street, the proposed variance will have a positive impact on on-street parking in the neighbourhood, curb appeal, and the safety of drivers and pedestrians on the street.
- [10] Any potential concerns pertaining to a massing effect resulting from the proposed development have been addressed by incorporating a hip roof into the design that is consistent with the principal Dwelling's roof. The hip-roof design results in approximately 28% less volume and will produce less sun shadowing than a gable-style roof.
- [11] Further, the proposed development is below the maximum Site Coverage limits prescribed by the *Zoning Bylaw* by eight percent, and the east-west orientation of the proposed development will further serve to minimize sun shadowing on neighbouring properties.
- [12] The proposed development will also be compatible with the neighbourhood. Its design will be consistent with that of the principal Dwelling, and its proportions will complement the other structures in the area. The proposed Height will fit in with the tall, two-storey dwellings in the neighbourhood. The streetscape will not be affected either. As there are mostly two-storey Dwellings in the neighbourhood, the proposed development will not be overly visible from the front of the property. It will be mostly hidden by the principal Dwelling.

[13] The Appellant also conducted a community consultation to gauge reaction to the proposed development. He approached 15 properties that he determined to have a sightline of the proposed Garage, and all of the owners of those properties, save for one whom he was unable to contact, are in support of the proposed development. It will not interfere with amenities of the area or negatively affect neighbouring properties.

ii) Position of the Development Officers, Mr. J. Saraza and Mr C. Chan

[14] The Development Officers confirmed that he has no authority to allow a variance in Height for the proposed development. Everything else complies with the regulations of the *Zoning Bylaw*. There is some concern with respect to the massing effect that would be created, but the primary concern is the Height.

[15] There is also some concern about the weight of the oversized vehicle that is going to be parked inside the proposed development given the 4500 kg restriction contained in the *Zoning Bylaw*, but the Development Officers acknowledged that they do not know the weight of the vehicle that is going to be parked on the subject Site.

iii) Rebuttal of the Appellant

[16] In rebuttal, the Appellant confirmed that he will comply with all of the City's weight limits when he acquires the oversized vehicle. It will be a personal vehicle and will not be used for any business or commercial purposes.

Decision

[17] The appeal is **ALLOWED** and the decision of the Development Authority is **REVOKED**. The Development is **GRANTED** as applied for to the Development Authority. In granting the development, the following variances to the *Zoning Bylaw* are allowed:

- i)* The maximum Height of 4.3 metres for Accessory buildings prescribed by Section 50.3(2) of the *Zoning Bylaw* is varied 0.91 metres to 5.21 metres.

Reasons for Decision

[18] The proposed development is an Accessory to a Permitted Use in the RPL Planned Lot Residential Zone.

[19] The Board notes that the objective of the development is to allow for the on-Site parking of an over-Height vehicle, which would otherwise be parked on the street.

- [20] The Board notes that, aside from the requested variance, the proposed development otherwise complies with all regulations of the *Zoning Bylaw*. The Development Officers confirmed as much and explained that the proposed development was refused because the *Zoning Bylaw* does not grant them the authority to allow variances relating to maximum Height restrictions.
- [21] The Board notes that, even though there is no legal requirement to do so in the *Zoning Bylaw*, the Appellant has conducted an extensive community consultation. The Appellant received support from all of the property owners who were consulted.
- [22] The Board further notes that no one appeared in opposition to the proposed development at the hearing.
- [23] Accordingly, the Board is comfortable in concluding that the proposed development will not unduly interfere with the amenities of the neighbourhood or materially interfere with or affect the use, enjoyment or value of neighbouring parcels of land.

Mr. N. Somerville, Presiding Officer
Subdivision and Development Appeal Board

Board Members in Attendance

Ms. A. Lund; Mr. L. Pratt

CC: City of Edmonton, Sustainable Development, Attn: Jayson Saraza / Anlin Wen

Important Information for the Applicant/Appellant

1. This is not a Building Permit. A Building Permit must be obtained separately from the Sustainable Development Department, located on the 5th Floor, 10250 – 101 Street, Edmonton.
2. Obtaining a Development Permit does not relieve you from complying with:
 - a) the requirements of the *Edmonton Zoning Bylaw*, insofar as those requirements have not been relaxed or varied by a decision of the Subdivision and Development Appeal Board,
 - b) the requirements of the *Alberta Safety Codes Act*,
 - 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*, R.S.A. 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.

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Date: May 5, 2016
Project Number: 171641697-002
File Number: SDAB-D-16-099

Notice of Decision

[1] On April 20, 2016, the Subdivision and Development Appeal Board heard an appeal that was filed on **March 28, 2016**. The appeal concerned the decision of the Development Authority, issued on March 11, 2016, to approve the following development:

construct a Public Library and Cultural Exhibit building (Capilano Public Library)

[2] The subject property is on Plan 1523973 Blk 3A Lot 11, located at 6503 - 101 AVENUE NW, within the A – Metropolitan Recreation Zone.

[3] The following documents, which were received prior to the hearing and are on file, were read into the record:

- The Appellant's photographs of the subject Site and surrounding neighbourhood;
- Documents submitted by the Respondent to the Development Authority;
- A response from Drainage Services;
- A memo from Fire Rescue Services;
- A Geotechnical Report;
- A Parking and Traffic Review;
- The approved development permit with attached application form;
- A Power Point presentation submitted by the Respondent;
- Revised drawings;
- A revised Site plan;
- The Development Officer's written submissions;
- A package of letters in support of the proposed development;
- A letter in opposition to the proposed development; and
- Three online responses.

Summary of Hearing

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

- [5] The appeal was filed on time, in accordance with Section 686 of the Municipal Government Act, R.S.A 2000, c. M-26.
- i) *Position of the Appellant, Ms. J. Groot*
- [6] The Appellant reiterated the Grounds for Appeal included in the Notice of Appeal.
- [7] Speaking on behalf of some of the Terrace Heights residents, she stated that they are not opposed to the library, but they are opposed to its proposed location.
- [8] The proposed development includes a conversion of 67th street into two-way traffic. This is inappropriate in a residential area and will result in vehicle lights shining into residents' homes. Increased traffic and parking resulting from the proposed development will also cause safety concerns for the children in the neighbourhood. There is already congestion in the area due to an adjacent skateboard park and a neighbouring church that produce activity throughout the week. The children walk to and from school and play on the proposed Site, putting them at risk if traffic activity is increased.
- [9] The residents' view and use of the ravine and greenspace will also be negatively affected by the proposed development. They purchased their homes with the ravine and greenspace in mind, and the proposed development will reduce family activities in those areas. They were promised years ago that the greenspace would be preserved. Not only will the proposed development block residents' view of the ravine, it will also result in sun shadowing on adjacent properties.
- [10] The original proposal was to have the development built where the old fire hall was located on 67th street and 101st avenue. As all of the amenities from the fire hall remain, that Site would be more capable of accommodating the library. Had the members of the community been consulted, they would have suggested building it at the originally proposed location. No other libraries in the area were built within residential Sites. They are all on shopping-centre or stand-alone Sites, which are easily accessible to bus routes and do not contribute to traffic congestion.
- [11] Also, the City has had issues in the past with developments being built on embankments. Although the geotechnical report that was issued for the subject Site did not consider the stability of the embankment to be a concern, she has a nephew who is an engineer who had expressed concern about building something in such close proximity to the ravine.
- [12] While there is some unattractive dumping that takes place in the ravine, it gets cleaned up rather quickly, and the dumping generally takes place at night. Residents are not overly disturbed by it.

ii) Position of Affected Property Owners in Support of the Appellant

- [13] Mr. Roberts appeared in support of the appeal and reiterated the Appellant's concerns. He stated that the blocking of residents' views of the ravine was the primary issue and suggested that, by rotating or moving the proposed development, the problem could be resolved.
- [14] Mr. Johnman, another affected neighbour, stated that the proposed development will not only result in the loss of his view of the ravine. It will also cause a loss of space in front of his home. The space in front of his home will decrease from approximately 100 yards to a few feet.

iii) Position of the Development Officer, Mr. I. Welch

- [15] The Development Officer stated, with respect to the Appellant's concerns in terms of safety and parking, that Transportation Services has required the Respondent to make significant improvements to the existing road network to accommodate the proposed development. As such, improvements are a part of the development application. This includes additional crossings and infrastructure that would mitigate the situation.
- [16] The parking assessment states that the subject Site will be able to accommodate parking. The times during which on-street parking is being used between competing uses are such that on-street parking can be shared effectively between those uses and the proposed development.
- [17] With respect to the residents' view of the ravine and whether or not the proposed development would be an appropriate use for that ravine, the City of Edmonton's Municipal Development Plan, "the way we grow", explicitly argues for broader integration of park space and municipal space.

iv) Position of the Respondents, Ms. P. Martinez, Mr. G. Boothroyd, Mr. M. Huberman, Mr. C. Belanger

- [18] Ms. Martinez appeared on behalf of Edmonton Public Libraries and stated that the proposed development represented the top priority in the EPL's budget this year. They require more space than is available at their current location in Capilano Mall and have had a lot of issues relating to the accessibility and maintenance of that location. As a result, Council approved the proposed development, a new 10,000 square foot library branch with main floor access.
- [19] Once the location of the proposed development was determined, community-information sessions were held in March and June of 2015. Feedback was received from over 30 community organizations, and details of the project were posted on the EPL website. The feedback they have received has been overwhelmingly positive.

- [20] Mr. Boothroyd, one of the architects of the proposed development, appeared for the respondent. He stated that the ravine is actually part of a much larger ravine system that has been fragmented by development over the years. The proposed development is a catalyst to restore and reconnect that ravine system.
- [21] The design strategy implemented is also geared to respond to the mix of commercial buildings and small scale residences in the area. The Site setback ensures that the proposed development has similar relation to the street as all the houses in the neighbourhood. Also, the top-of-bank setback was established by the City in consultation with geotechnical engineers. The proposed development will be located within those boundaries in a safe manner that is consistent with the planning strategy in the neighbourhood.
- [22] The ravine will provide a serene view from the interior of the library and a nice backdrop for the building. It will also create enhanced ravine awareness.
- [23] Also, by bringing people to the area, the anti-social activities that have been taking place in the ravine, such as dumping, will be reduced.
- [24] Parking will be located to the north of the proposed library on a side street to minimize impact on the neighbourhood and safety concerns for residents. Vehicles going in and out of a parking lot do so more comfortably on a smaller street. The Respondent has also located the parking lot access to ensure that headlights from vehicles will point away from residences and planned to insert a hedge to further mitigate any headlight impact on adjacent homes.
- [25] The location proposed by the Appellant is insufficient for the proposed development. It is too small of a portion of the Site. It would require building a three-storey building with underground parking, which is not at all in keeping with the design of the proposed development. Also, the Respondent wants the community to benefit from the ravine. This is consistent with the City's objective of having ravines interact with public space.
- [26] Mr. Huberman spoke to the traffic and parking report prepared for the proposed development, which was reviewed and approved by Transportation Services. He stated that, in terms of the number of visitors attending the library throughout the week, the busiest days of the week are Monday, Tuesday, Wednesday and Thursday. The lowest day is Sunday. Saturday is the second-lowest day in terms of attendance. Therefore, there is not a cumulative impact in terms of congestion, as was suggested by the Appellant. The peak days of the church do not conflict with the peak days of the library. There is an opportunity to share road space and parking space.
- [27] Based on a strict interpretation of the *Zoning Bylaw*, the library requires 80 parking spaces. However, the report suggests that 30 to 35 spaces would be a more appropriate range. The final Site plan has 36 spaces, which is sufficient.

[28] The report concluded that the relative increase in traffic resulting from the proposed development will not overly affect the corridor in question. It will continue to accommodate an appropriate amount of vehicle trips, and, while there is likely to be a parking ban on the library side of 67th street, the residents will be allowed to continue parking on their side of the street. The level of traffic activity on an hourly basis is approximately one vehicle per minute during peak hours. The impact on the neighbourhood will not be significant.

v) *Position of Affected Property Owners in Support of the Respondent*

[29] Ms. Y. Godwin resides directly across the street from the proposed development. She explained that the portion of 67th street that is to be converted into two-way traffic as a result of the proposed development has already been used as such for some time in an unofficial manner. It would be much safer for the community to have that portion of the street officially marked for two-way traffic to make it less of a hazard for children and other residents living in the neighbourhood.

[30] She believes the proposed development will be a nice addition to the ravine. She and her daughter would like to have such a development across the street from where they live.

vi) *Rebuttal of the Appellant, Ms. J. Groot*

[31] In rebuttal, the Appellant stated that the church parking is not just limited to Sundays. It causes congestion throughout the week and will not be able to accommodate a space-sharing arrangement with the proposed development. The parking provided is sufficient for the library's needs only.

[32] With respect to the proposed two-way traffic corridor, it is already used as a two-way street resulting in high-speed, dangerous traffic flow.

[33] The location of the Site remains problematic. Residents of the area are not simply suggesting that the proposed development occupy the location of the old fire hall. They recognize that is not realistic. However, the entire side of the Site where that fire hall was located is available for use and would be able to accommodate a library.

[34] Finally, the Appellant stated that placing a parking ban on the library side of 67th street would merely result in producing more parking issues in the neighbourhood.

Decision

[35] The appeal is DENIED and the decision of the Development Authority is CONFIRMED. The development is GRANTED as approved by the Development Authority.

Reasons for Decision

- [36] The proposed development is a Discretionary Use in the A – Metropolitan Recreation Zone and is a Permitted Use in the US – Urban Services Zone. Accordingly, the Board must regard the proposed development as a Discretionary Use.
- [37] The Board notes that the Appellant raised many concerns regarding the loss of access to park areas and views of the ravine area. There was a mixed response in the written submissions received from the community, some being in support of the appeal but many others being in support of the proposed development.
- [38] The Board notes that the Appellant's concerns regarding the loss of access to green space and loss of views is not an issue that this board can address. The green space and the ravine are public property, zoned to allow Permitted and Discretionary uses. The exercise of the right to develop the property remains with the property owner and cannot be infringed by adjacent property owners, except as otherwise provided by the *Zoning Bylaw*.
- [39] With regard to traffic congestion and parking in the area, the Board notes that an extensive parking impact study was received and this provided ample justification for the variance in parking spaces on the library Site. Further, the Board notes that the Appellant acknowledged that the parking provided on the library Site is in fact sufficient to meet the needs of the library development. Accordingly, other problems related to traffic and parking in the area are not a matter for this appeal. They are a matter for bylaw enforcement.
- [40] The Board acknowledges the Appellant's contention that the proposed development should have been located on a different portion of the subject Site but has determined that the Respondent's architects have provided sufficient explanation regarding why that alternative location is not suitable. The proposed location is required to allow for remediation of the ravine in that area, keep parking further away from the affected neighbourhood and allow the library and its visitors to benefit from the ravine.
- [41] The Board heard evidence of changes that were made to the proposed development and its surrounding area to accommodate concerns of the neighbourhood's residents. The entrance to the library parking area was relocated to minimize the impact associated with vehicle headlights shining into adjacent residences. Also, an illuminated pedestrian crossing was added to 101st Avenue to respond to pedestrian safety concerns relating to the proposed development.

[42] The Board is satisfied that the proposed development will not unduly interfere with the amenities of the neighbourhood or materially interfere with the use, enjoyment or value of neighbouring parcels of land.

Mr. N. Somerville, Presiding Officer
Subdivision and Development Appeal Board

Board Members in Attendance

Ms. A. Lund; Mr. L. Pratt

CC: Joanne Winona Groot
City of Edmonton, Sustainable Development, Attn: Imai Welch / Harry Luke

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