



**EDMONTON
TRIBUNALS**

*Subdivision &
Development
Appeal Board*

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Date: December 16, 2016
Project Number: 230789273-001
File Number: SDAB-D-16-307

Notice of Decision

- [1] On December 1, 2016, the Subdivision and Development Appeal Board (“the Board”) heard an appeal that was filed on **November 15, 2016**. The appeal concerned the decision of the Development Authority, issued on November 14, 2016, to refuse the following development:

To construct a Semi-detached House with front verandas, fireplaces, rear uncovered decks (2.74 metres by 6.10 metres each), rooftop terraces and to demolish an existing Single Detached House and rear detached Garage.

- [2] The subject property is on Plan RN3 Blk 99 Lots 1-2, located at 10502 - 85 Avenue NW, within the (RF4) Semi-detached Residential Zone. The Mature Neighbourhood Overlay and the Strathcona Area Redevelopment Plan apply to the subject property.
- [3] The following documents were received prior to the hearing and form part of the record:
- A copy of the Strathcona Area Redevelopment Plan;
 - A copy of the Development Permit application with attachments, proposed plans, and the refused Development Permit;
 - The Development Officer’s written submission; and
 - The Appellant’s written submission and attachments.
- [4] The following exhibit was presented during the hearing and form part of the record:
- Exhibit A – A Railway plan submitted by the Appellants.

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 appeal was filed on time, in accordance with section 686 of the *Municipal Government Act*, RSA 2000, c M-26.

Summary of Hearing

i) Position of the Appellants, Mr. U. Franken and Mr. S. Franken

- [8] The development immediately to the west was approved by the SDAB with variances. A rendering of that Semi-detached House demonstrates that the proposed development is similar in design and has the same architectural features.
- [9] They submitted a Railway Plan from 1895 (“Exhibit A”) to show that a railroad right-of-way cuts through the northwest corner of the subject Lot, which prohibits them from developing in that area. If they owned that portion of the Lot, the Front Setback and Site Coverage would be reduced.
- [10] The flanking Side Setback variance will not interfere with anyone because there is no sidewalk along 105 Street.
- [11] There is a greenspace, rail line, and community garden located to the north (rear) of the subject Lot. They are installing a privacy glass on their Rooftop Terrace, so there will be no privacy issues.
- [12] The Appellants provided the following information in response to questions from the Board:
- a. They envision a 3-Storey development, high enough to view the downtown area and the new Walterdale Bridge.
 - b. The subject Site is surrounded by multiple Low Rise Apartment Houses. The neighbourhood is very dense.
 - c. A Front Setback variance is needed as the proposed development will be 6 feet further toward to the Front Lot Line compared to the development to the west due to the railroad right-of-way.
 - d. The Front Setback difference between the two Semi-detached Houses will not be noticeable viewed from street level. The entire block face is staggered and this provides architectural interest to the streetscape. Landscaping will be provided in the Front Yard to add to the aesthetics of 85 Avenue.
 - e. They are uncertain whether a sidewalk will be installed on the flanking roadway along 105 Street. There is a sidewalk on the opposite side of 105 Street. There is

- approximately a 10 to 12 foot separation from the curb to the Side Lot Line. The space can be seen on their aerial photograph.
- f. They plan on preserving as many of the mature trees in the Front Yard of the subject Lot as they can.
 - g. If the Coverage of the proposed development is reduced, the inside livable space would not work. The floor plan is for three bedrooms, family housing.
 - h. The third Storey provides entertainment and great views. Without the Rooftop Terrace, these Semi-detached Houses would not sell. There will be no privacy issues as the Rooftop Terrace does not look onto adjacent neighbours.
 - i. They did not receive any negative feedback during their community consultation. People were excited about the development. They sent their signatures of support to the Development Officer.. They showed their proposed plans to the adjacent neighbours, but could not reach everyone as some residents live in Apartments, which can be difficult to access. However, they understood that those residents would have been notified of the appeal hearing.
 - j. Directly across 105 Street is a Triplex.
 - k. The Height of the flat roof Semi-detached House immediately to the west is 10.1 metres, which is the same as what is proposed.
 - l. Although they cannot develop the railroad right-of-way, they are responsible to maintain the land.
 - m. They have no concerns with proposed conditions of the Development Officer and are amenable to an additional condition requiring them to install glass Privacy Screening on the Rooftop Terrace.
 - n. The wing walls shown on the Plot Plan support the railings on the steps to the front door.
 - o. The owner of one of the Units immediately to the west is aware of the proposed development and the other Unit has not been sold. There are large mature spruce trees that provide privacy to the property immediately west.

ii) Position of the Development Officer, Mr. K. Yeung

[13] The Development Officer provided the following information in answer to questions from the Board:

- a. There is no variance to the Amenity Area.

- b. In his view, the Privacy Screening will alleviate any issues with adjacent neighbours.
- c. The revised “redline” drawings were included with his submitted plans to hi-light architectural features of the proposed development. The Privacy Screening for the Rooftop Terrace is included on the plans he stamped.
- d. Both the proposed development and the development to the west provide architectural articulation.
- e. With regard to community consultation, he received mostly responses from low density houses. In his view, the community consultation requirement has been met.
- f. He confirmed that the Front Setback from the west unit of the proposed Semi-detached House between the Front Lot Line and the foundation of the building is 4.5 metres.
- g. The Front Setback of the Semi-detached House to the west is 5.5 metres.
- h. A fence would alleviate any privacy issues if a sidewalk were to be installed on the flanking boulevard,.
- i. In his view, the proposed development is well designed and provides value to the neighbourhood. He had to refuse development application because he is not authorized to grant the Height variance.
- j. He confirmed that the Subject lot is primarily surrounded by Apartment Housing.
- k. The Strathcona Area Redevelopment Plan references existing Single Detached Housing and states that this housing stock may not match proposed higher density Housing. In this case however, he believes that, the surrounding development has the same massing as the proposed development.
- l. There is a boulevard between the sidewalk and 85 Avenue.
- m. The proposed Front Setback meets the absolute 3.0 metres minimum requirement and is within 1.5 metres of the abutting Lot. A variance required because the Front Setback does not fall within 1.5 metres of the entire block face average. The block face includes Apartment Housing.
- n. He does not have the dimensions of the railroad right-of-way on the northwest corner of the subject Lot.

iii) Rebuttal of the Appellants

[14] They had nothing further to add.

Decision

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

1. The development shall be constructed in accordance with the stamped and approved drawings.
2. Where Semi-detached Housing and Duplex Housing are allowed in this Zone, a maximum of two Dwellings per lot or one Dwelling per Bare Land Condominium Unit shall be allowed (Reference Section 150.4(13)).
3. Semi-detached Housing requires 2 on-site parking spaces per Dwelling and may be in tandem to the attached garage. (Reference Section: 54.2(3)).
4. Except for the hardsurfacing of driveways and/or parking areas approved on the Site plan for this application, the remainder of the Site shall be landscaped in accordance with the regulations set out in Section 55 of the *Zoning Bylaw*.
5. On-Site parking shall be located in accordance with Section 50 of the Bylaw. Such hard surface parking pad shall include an underground electrical power connection with outlet on a post 1.0 m in height, located within 1.0 m of the parking pad.
6. All yards, visible from a public roadway other than a lane, shall be seeded or sodded within eighteen (18) consecutive months of the issuance of an Occupancy Certificate for the development. Alternative forms of landscaping may be substituted for seeding or sodding as specified in Section 55.2(4)(b).
7. Existing vegetation shall be preserved and protected unless removal is demonstrated, to the satisfaction of the Development Officer, to be necessary or desirable to efficiently accommodate the proposed development. (Reference Section 55.4(8)).
8. One deciduous tree or one coniferous tree, and two shrubs shall be required in the Front Yard for each Dwelling, except where the Front Setback is 4.5 m or less, and a landscaped boulevard is provided in accordance with subsection 150.4(6)(b)(i) of this Bylaw, the tree may be placed within the Rear or Side Yard, rather than the Front Yard. (Reference Section 150.4(10)(a)).

9. Private Outdoor Amenity Area shall be provided on Site in accordance with Section 47 of the Edmonton Zoning Bylaw 12800.

ADVISEMENTS:

1. Any future deck enclosure or cover requires a separate development and building permit approval.
2. Note that Secondary Suite Use Class does not include Semi-detached Housing.
3. Lot grades must comply with the Edmonton Drainage Bylaw 16200. Contact Drainage Services at 780-496-5500 for lot grading inspection inquiries.
4. An approved Development Permit means that the proposed development has been reviewed only against the provisions of the Edmonton Zoning Bylaw. It does not remove obligations to conform with other legislation, bylaws or land title instruments such as the Municipal Government Act, the ERCB Directive 079, the Edmonton Safety Codes Permit Bylaw or any caveats, covenants or easements that might be attached to the Site. (Reference Section 5.2)
5. Unless otherwise stated, all above references to "section numbers" refer to the authority under the Edmonton Zoning Bylaw 12800.

The Board imposes the following additional **CONDITION**:

1. The railing along the third floor Rooftop Terrace shall provide Privacy Screening up to 1.52 metres (5 feet) in Height along the west portion of the Rooftop Terrace.

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

1. The maximum Height of 8.6 metres allowed per section 814.3(13) is varied to permit an excess of 1.5 metres, thereby increasing the maximum Height to 10.1 metres.
2. The minimum required Front Setback of 5.1 metres required per section 814.3(1) is varied to permit a deficiency of 2.1 metres, thereby decreasing the minimum Front Setback to 3.0 metres.
3. The minimum required distance between the Front Lot Line and the proposed architectural (pillar) projection of 4.5 metres per section 44.1 is varied to permit a deficiency of 2.1 metres, thereby decreasing the minimum distance to the Front Lot Line to 2.4 metres.

4. The minimum required flanking Side Setback of 3.02 metres per section 150.4(8)(c) is varied to permit a deficiency of 1.37 metres, thereby decreasing the minimum flanking Side Setback to 1.65 metres.
5. The maximum Site Coverage for a Principal Building allowed per section 150.4(5) of 154.4 square metres (32 percent) is varied to permit an excess of 19.3 square metres (4 percent), thereby increasing the maximum Site Coverage to 173.7 square metres (36 percent).
6. The minimum Stepbacks for Rooftop Terraces required per section 61.1(b) from the building facades facing the Rear Lot Line, the Flanking Side Lot Line and the Interior Side Lot Line are waived.

Reasons for Decision

- [17] The proposed development, a Semi-detached House, is a Permitted Use in the (RF4) Semi-detached Residential Zone.
- [18] The proposed development fulfills the stated General Purpose of the (RF4) Semi-detached Residential Zone to provide a zone primarily for Semi-detached Housing and Duplex Housing.
- [19] The proposed development is consistent with several redevelopment policies concerning revitalization, intensification and infrastructure optimization in mature neighbourhoods enunciated in the Municipal Development Plan, The Way We Grow, including policies 3.5.1.1, 3.5.2.1, 4.2.1.1, 4.2.1.5 and 4.2.1.6.
- [20] Based on the evidence of the Appellants and the Development Officer, the Board finds that the Appellant has substantially complied with the requirements for community consultation per section 814.3(24) of the Mature Neighbourhood Overlay.
- [21] The community consultation revealed that the neighbours generally supported the development. No negative responses were received by the Development Officer. No one appeared to oppose the proposed development.
- [22] The Board accepts the Development Officer's submission that he would have approved the proposed development if he had the authority to grant all the required variances.
- [23] The proposed development is located on a corner Lot and surrounded by a mix of residential uses of varying sizes and designs. A Semi-detached House of similar massing and identical Height abuts the proposed development. It faces low rise Apartments and a Triplex is located across the flanking roadway.
- [24] The Board finds that the massing and scale of the proposed development is similar to the development immediately to the west and is not out of character with the surroundings

which include Low Rise Apartment Housing to the west and across 85 Avenue and the Triplex across 105 Street.

[25] The variance to Height is granted for the following reasons:

- a. The proposed Height is identical to the Height of the only abutting development, a Semi-detached House located to the west.
- b. The proposed Height is similar to the Heights of the existing Low Rise Apartment Housing located across the street and along the block face.
- c. The variance in Height is ameliorated by the screening impact and Height of the mature vegetation in place along the flanking roadway (105 Street) and 85 Avenue.

[26] The variance to the required Front Setback and the projection of the pillar on the front façade is granted for the following reasons:

- a. A triangular piece of land that would otherwise comprise the northeast corner of the subject Lot has been cut out pursuant to a Railway Plan. This irregularity reduces the developable space in the Rear Yard pushing the proposed development forward into the Front Yard and contributing to the Front Setback deficiency.
- b. The foundation of the proposed development meets the minimum 3.0 metre Front Setback requirement of the Mature Neighbourhood Overlay and the underlying zone.
- c. The Front Setback variance is only required due to the block face average. This block face is not uniform, it consists of a variety of Uses that are subject to different Setback requirements creating an uneven pattern. The Front Setback variance will not materially impact this existing uneven pattern.
- d. The staggered front elevation of the proposed development lessens the impact of the variance. The west Unit of the Semi-detached House, nearest the only abutting development, is recessed. It has a Front Setback of 4.5 metres or 1.05 metres less than the Front Setback of 5.55 meters on the abutting development.
- e. Based on photographic evidence, there is a tree-lined boulevard along the block face that lessens the impact of the Front Setback deficiency.
- f. The only portion of the front façade that projects beyond the allowable limit into the Front Setback is a narrow pillar. The narrow pillar is located at the centre of the development and differentiates the two Units. At 2.4 metres from the Front Lot Line, the narrow pillar will not interfere with passing pedestrians nor with egress to either of the Units. This projecting architectural feature also adds interest and depth that lessens the overall massing of the front façade.

- [27] The variance to the flanking Side Setback and the Site Coverage is granted for the following reasons:
- a. The impacts of these two variances are lessened by the Site conditions. A 6.1 metre wide green space is located between the curb of the flanking roadway and the Side Lot Line. There is no sidewalk in this green space.
 - b. The unique Lot shape created by a Railway Plan reduces the developable area and increases the need for a Site Coverage variance to accommodate buildings which appear to match the size, scale and Site Coverage of surrounding developments.. While the triangular portion that would otherwise form part of the subject Site is not owned by the Appellants, they are required to maintain it. The triangular portion appears to be part of the rear yard of the subject Site. This situation lessens the perceptible impact of the requested variance to Site Coverage.
- [28] The Board waives the requirement for Rooftop Terrace Stepbacks for the following reasons:
- a. Only one residential development abuts the proposed Semi-detached House. It is located to the west of the subject Site. It is owned by the Appellants and they have agreed to the imposition of a condition requiring Privacy Screening up to 1.52 metres (5 feet) in Height along the west portion of the Rooftop Terrace to alleviate any privacy issues with that property.
 - b. The rooftop Terrace is located more than 12.0 metres from the Rear Lot Line shared with the Railway Plan. There are no residential Uses to the rear of the subject Site. The green space is currently used for a community garden and seasonally for the streetcar. Accordingly, the Board finds waiving the required Rear Stepback will have no material adverse impacts.
 - c. The impacts of a variance to the flanking Side Lot Line are reduced by the 6.1metres green space which separates the subject Site from the flanking roadway. In addition, based on the photographic evidence, mature vegetation on both sides of the flanking roadway will screen the Rooftop Terrace.

[29] For the above reasons, the Board finds 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.

A handwritten signature in blue ink, appearing to read "K. Cherniawsky".

Ms. K. Cherniawsky, Presiding Officer
Subdivision and Development Appeal Board

Board members in attendance: Mr. M. Young, Mr. A. Bolstad, Ms. N. Hack, Ms. D. Kronewitt
Martin



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SDAB-D-16-293

Project No. 227741795-001

An appeal to install (1) Freestanding Off-premises Sign (3.0 metres by 6.1 metres facing north), located at 13122 – 82 Street NW was **WITHDRAWN**



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Date: December 16, 2016
Project Number: 225741795-001
File Number: SDAB-D-16-308

Notice of Decision

- [1] On December 1, 2016, the Subdivision and Development Appeal Board (“the Board”) heard an appeal that was filed on **November 8, 2016**. The appeal concerned the decision of the Development Authority, issued on October 27, 2016, to refuse the following development:

To construct an addition (up to 8 Storeys, 32.9 metres in Height) and exterior alterations to an existing Public Education Services Use building (alterations to existing landscaping and adding third level parkade with 128 parking stalls).

- [2] The subject property is on Plan 1212MC Blk 22 Lots 1-2, located at 11010 - 142 Street NW and 11040 - 142 Street NW, within the (US) Urban Services Zone.
- [3] The following documents were received prior to the hearing and form part of the record:
- A copy of a Court of Appeal decision, *Sihota v Edmonton (City)*, 2013 ABCA 43;
 - A copy of the Development Permit application with attachments, proposed plans, and the refused Development Permit;
 - A Transportations Services memorandum and circulation comments;
 - The Development Officer’s written submission;
 - The Appellant’s attachments including renderings, a parking impact study, a sun shadow study, and a parking agreement letter; and
 - An on-line response from a property owner in opposition to the proposed development.
- [4] The following exhibits were presented during the hearing and form part of the record:
- Exhibit A – A letter of support for the proposed development from a property owner;
 - Exhibit B – A letter of support for the proposed development from the President of the McQueen Community League.

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 appeal was filed on time, in accordance with section 686 of the *Municipal Government Act*, RSA 2000, c M-26.

Summary of Hearing

The Presiding Officer brought the parties' attention to the Alberta Court of Appeal decision of *Sihota v Edmonton (City)*, 2013 ABCA 43. They were invited to make submissions concerning its application to the current appeal.

i) Position of the Appellants, Mr. R. Rabinovitch of Workun Garrick Partnership and Dr. G. Thomas of the Alberta Teachers' Association

- [8] The Alberta Retired Teachers Association ("ARTA") has had offices with the Alberta Teachers' Association ("ATA") since 1939. The ATA has been located in Edmonton for almost 100 years and has been in the current building since 1961. The Use of the existing building has not changed in 50 years. They believe it is a Public Services Education Use.
- [9] They require additional space to allow the ATA to meet the growing needs of its members and its operations. The proposed addition will not be higher than the current structure that was approved by the SDAB in 2008.
- [10] Their goal is to remain at the current location for several more decades. They prefer to work things out with neighbours rather than to rezone the site.
- [11] They provided the following information in response to the questions from the Board:
- a. The ATA had an open house earlier in the week. Nine residents showed up and they had a good discussion about the proposed plans. They submitted letters of support from a neighbouring property owner and the President of the McQueen Community League (Exhibits A and B).
 - b. The proposed addition is located within the footprint of the existing building. They are going to demolish an existing portion and build on top of that space.
 - c. They have an agreement with the Church of Jesus Christ of Latter Day Saints ("the Church") to share use of a parking lot adjacent to the south of the site to address the parking variance.

- d. The other tenants in the building are part of the ATA.
- e. Their submitted sun shadow study shows a slight impact to one additional House due to the proposed addition. Overall, the impact is almost identical to the existing building.
- f. They have tried to tie the 15 metre expansion in with the existing building. What is now a blank façade will be architecturally matched to the design of the existing building as shown in the renderings.
- g. They hope to start construction on the proposed addition in the spring of 2017.
- h. The new net deficiency of 45 on-site parking spaces takes account of the Church parking lot agreement. The signed parking agreement with the date is pending the outcome of this hearing. The mutual parking agreement was signed November 25, 2016. The Church uses their parking lot for services on the weekend.
- i. Based on the Parking Impact Study completed by Bunt & Associates, the current number of parking spaces on-site was sufficient with the proposed addition to the existing development.
- j. They have never had any issues related to lack of parking or parking concerns from neighbours. Most events involving teachers are scheduled in the evening when employees of the ATA have gone home for the day. Telus Science Centre that is northeast of the subject Site has approached them to use their parking spaces.
- k. Their sun shadow study does not include a 6:30pm interval because it was made to match the sun shadow study submitted at the 2008 SDAB hearing for the previous eight-Storey addition. The latest interval on the 2008 sun shadow study was 3:30 p.m. as they believe there is no further impact on adjacent properties after 3:30 p.m.
- l. Bunt and Associates conducted the Parking Impact Study based on the ATA's schedule and considered a variety of times. They believe that the total required variance is falling based on the materials from Transportation.
- m. Snow would continue to be removed. However, there will be no further impact to snow removal noise, as the new snow removal will be from a higher elevation of the parkade. They expect noise to be less of an issue.
- n. They have no issues with the Development Officer's proposed conditions if the development is approved.

- o. They have no issues with an additional condition like the one imposed in the 2008 SDAB decision concerning the execution and maintenance of a parking agreement with the Church or another entity.
- p. They agree that estoppel applies.

ii) Position of the Development Officer, Ms. Cindy Li

[12] She provided the following information in response to questions from the Board:

- a. The Public Education Service Use does not have its own parking requirements in the *Edmonton Zoning Bylaw*. There are requirements for schools based on the number of classrooms and the age of students. This was not considered appropriate so an alternate method to determine the parking requirement was needed. In her view, based on the use of the building, parking requirements for the Professional, Financial, and Office Support Service Use was the most appropriate and accurate.
- b. She did not include the parking agreement with the Church in her parking calculations, as the original parking agreement from 2008 had expired. With the parking agreement in place, the total parking deficiency is 45. A deficiency of 45 parking spaces is less than 10 percent of what is required and she considers this a minor deficiency.
- c. She confirmed that the previously approved variance was 136 spaces and the current required variance will be 151 spaces.
- d. She agreed that the sun shadow study should have included a 5:00pm or 6:00pm time interval. She agreed that based on the information provided by the Appellants, an additional House to the northeast might be impacted by the proposed addition.
- e. She clarified that there was an error in her written submission. In her view, the proposed development will unduly interfere with the amenities of the neighbourhood. Her position is based on the sun shadow impact on one additional house and the parking deficiency without the parking agreement with the Church.

iii. Position of Mr. C. Priddle, an Affected Property Owner in opposition to the proposed development

[13] Mr. Priddle lives on an adjacent Lot located to the rear of the subject Site. The volume of the tower is a concern. In his view, the proposed addition will increase a very large building that borders his property by 50 percent.

- [14] He believes that the proposed addition will increase the shade to the neighbourhood by 50 percent impacting residences in both McQueen and North Glenora.
- [15] He has lived in the McQueen neighbourhood since he was a child and has observed over the years how development on the subject Site has transitioned from a 4-Storey building to a six-Storey building and then an eight-Storey building.
- [16] He feels this type of office space proposal is better suited downtown where there are many more appropriate vacant spaces.
- [17] In 2008, the ATA built a wall on the west Lane, adjacent to his property and the other residential properties to mitigate the unsightly visual impact of the parkade. In his opinion, the taller addition to the parkade will further impact the neighbours along the Lane.
- [18] He is concerned about snow removal from the greater Height of the proposed addition to the parkade. The only area to push snow from the parkade is at the west Lane. He is concerned snow may spill onto the Lane or adjacent properties. The new parkade will be higher than the noise attenuation wall built in 2008.
- [19] Overflow on-street parking has never been an issue in front of his home.
- [20] The ATA told him that the 2008 expansion was the final addition and that they would no longer be expanding their Site. He hoped that they would keep that promise.

iv) Rebuttal of the Appellants

- [21] They clarified that a wall was installed as a barrier to sound associated with the parkade in 2008. They have heard back from neighbours on the west Lane, that the wall has been successful in that respect. They also planted deciduous trees along the Lane.
- [22] In response to neighbourhood feedback at their open house, they are installing lighting in the west Lane and on the west end of the parkade. They are also trimming the trees they planted because of concerns that they were becoming too bushy and creating a place where people would congregate.
- [23] Dr. Thomas has never received a parking complaint in the 14 years that he has been the CEO for the ATA working at the subject Site.
- [24] They clarified that the proposed development will increase the building by 30 percent not 50 percent.
- [25] The parkade addition increases the Height by 12 feet.

Decision

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

DRAINAGE CONDITIONS:

1) PRIOR TO THE RELEASE OF DRAWINGS FOR BUILDING PERMIT REVIEW, the applicant or property owner shall pay a Sanitary Sewer Trunk Charge fee of \$4,865.24

TRANSPORTATION CONDITIONS:

1) All access locations and curb crossings shall require the approval of Transportation Services prior to the start of construction. Reference Section 53(1):

2. The existing most northerly access to 142 Street requires reconstruction to meet current City of Edmonton standards. The access must be reconstructed as a 9 m commercial crossing access located approximately 42 m from the north east corner property, as shown on Enclosure I.

3. There is an existing bus stop adjacent to the site on 142 Street. The owner is required to upgrade the existing bus stop for Edmonton Transit. A 9 m x 4 m bus pad must be constructed with the head of the bus pad located 29 m south of the reconstructed access, as shown on Enclosure I. The applicant should contact Gregory Scheller (780-496-8914) with Edmonton Transit for more information.

4. The owner must enter into a Municipal Improvement Agreement with the City for the following improvements:

a) reconstruction of the existing access to 142 Street to a 9 m commercial crossing access located approximately 42 m from the north east corner property; and

b) construction of a 9 m x 4 m bus stop pad located approximately 29 m from the reconstructed access to 142 Street.

Engineering Drawings are not required for this Agreement. However, construction must meet the City of Edmonton Design and Construction Standards. The Municipal Improvement Agreement must be signed PRIOR to the release of the drawings for Building Permit review. The Agreement must be signed by the property owner and returned to Transportation Planning and Engineering to the attention of Loli Fernandez (780-944-7683) including an irrevocable Letter of Credit in the amount of \$32,000 to cover 100% of construction costs. The Agreement will be forwarded directly to the

owner for his signature.

5. Access from the site to 142 Street exists at the south portion of the site, as shown on Enclosure I. Any modification to the existing access requires the review and approval of Transportation Planning and Engineering.

6. Sidewalk connections must be maintained from the building entrance to the public sidewalk to provide pedestrian connectivity and access to the bus stop, as shown on Enclosure I.

7. There may be utilities within road right-of-way not specified that must be considered during construction. The owner/applicant is responsible for the location of all underground and above ground utilities and maintaining required clearances as specified by the utility companies. Alberta One-Call (1-800-242-3447) and Shaw Cable (1-866-344-7429; www.digshaw.ca) should be contacted at least two weeks prior to the work beginning to have utilities located. Any costs associated with relocations and/or removals shall be at the expense of the owner/applicant.

8. Any hoarding or construction taking place on road right-of-way requires an OSCAM (On-Street Construction and Maintenance) permit. OSCAM permit applications require Transportation Management Plan (TMP) information. The TMP must include:

- the start/finish date of project;
- accommodation of pedestrians and vehicles during construction;
- confirmation of lay down area within legal road right of way if required;
- and to confirm if crossing the sidewalk and/or boulevard is required to temporarily access the site.

It should be noted that the hoarding must not damage boulevard trees. The owner or Prime Contractor must apply for an OSCAM online at:

http://www.edmonton.ca/transportation/on_your_streets/on-street-constructionmaintenance-permit.aspx

9. Any sidewalk or boulevard damage occurring as a result of construction traffic must be restored to the satisfaction of Transportation Planning and Engineering, as per Section 15.5(f) of the Zoning Bylaw. The sidewalks and boulevard will be inspected by Transportation Planning and Engineering prior to construction, and again once construction is complete. All expenses incurred for repair are to be borne by the owner.

DEVELOPMENT CONDITIONS:

1) Landscaping shall be in accordance to the approved landscape plan, Section 55 and to the satisfaction of the Development Officer. **PRIOR TO THE RELEASE OF DRAWINGS FOR BUILDING PERMIT REVIEW**, the applicant or property owner shall provide a guaranteed security to ensure that landscaping is provided and maintained for two growing seasons. The Landscape Security may be held for two full years after the landscaping has been completed. This security may take the following forms:

- a) cash to a value equal to 100% of the established landscaping costs; or
- b) an irrevocable letter of credit having a value equivalent to 100% of the established landscaping costs.

Any letter of credit shall allow for partial draws. If the landscaping is not completed in accordance with the approved Landscape Plan(s) within one growing season after completion of the development or if the landscaping is not well maintained and in a healthy condition two growing seasons after completion of the landscaping, the City may draw on the security for its use absolutely. Reference Section 55.6.

2) Exterior lighting shall be developed to provide a safe lit environment in accordance with Sections 51 and 58 and to the satisfaction of the Development Officer.

3) All required parking and loading facilities shall only be used for the purpose of accommodating the vehicles of clients, customers, employees, members, residents or visitors in connection with the building or Use for which the parking and loading facilities are provided, and the parking and loading facilities shall not be used for driveways, access or egress, commercial repair work, display, sale or storage of goods of any kind. (Reference Section 54.1(1.c))

4) Bicycle parking shall be provided in accordance to Section 54.3 and to the satisfaction of the Development Officer.

[27] The Board imposes the following additional **CONDITION**:

1. A legally executed parking use agreement between the ATA and the Church of Jesus Christ of Latter Day Saints for 106 off-site parking spaces is required and if that parking use agreement is terminated or modified at any time, a new agreement for off-site parking and/or an addition to the parkade will be required to replace the lost off-site parking spaces.

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

1. The maximum Height of 10 metres allowed per section 510.4(4) is varied to permit an excess of 22.9 metres, thereby increasing the maximum Height to 32.9 metres.
2. The minimum required 591 off-street parking spaces pursuant to section 54 is varied to allow a deficiency of off-street parking spaces, thereby decreasing the minimum required off-street parking spaces to 440.

Reasons for Decision

- [29] The proposed development is an addition to the approved Public Education Services Use, a Permitted Use in (US) Urban Services Zone.
- [30] The Board received two e-mails in opposition to the proposed development and one property owner appeared in opposition at the hearing.
- [31] The Board also received an e-mail and letter of support from two property owners and a letter of support from the President of the McQueen Community League.
- [32] The Appellants hosted an open house two days prior to the hearing. Nine individuals attended. The attendees were generally supportive of the proposed development.
- [33] The property owners in opposition to the proposed development raised four concerns: unauthorized Use class; sun shadowing and massing; parking congestion; and, nuisance due to noise from snow removal.
- [34] A property owner in opposition argues that the Development Permit should not be granted because the addition is intended to expand the building capacity for the ARTA, an independent corporation. In his view, the development of these lands for such tenants is not covered by the current Urban Services (US) zoning as the ARTA does not meet the criteria defined in section 510.2 of the *Bylaw*.
- [35] The Board declines to deny the appeal on this basis. The Board is bound by the Alberta Court of Appeal decision, *Sihota v Edmonton (City)*, 2013 ABCA 43 and estopped from declining the Development Permit application on the basis that the proposed development is unlawful because it does not fall within the Public Education Services Use class in 510.2(5) for the following reasons:
- i)* The ATA has been located in the current building since 1961. Over time the building has been renovated and expanded, but the Use has not changed in 50 years.
 - ii)* In 2008, the SDAB approved the construction of a vestibule and two-Storey office space development as an addition to the previously approved six-Storey Public Education Services Use building. That Board held that the addition was to a Discretionary Use in the US Zone.
 - iii)* The Board accepts the evidence of the Appellants that the tenants and the Use of the building has been constant for several years. In particular, the ATA and the associated organizations, including the ARTA, have occupied the building for many decades and are the tenants intended to occupy the proposed addition to the previously approved Public Education Services Use building.

[36] In this situation, it is unfair to reopen the issue of whether the Use is lawful. The Board has previously authorized the Appellant's same development as an addition to a Public Education Services Use building, it cannot now revoke or ignore that permission. As the Court of Appeal explains in *Sihota* (at paragraph 15): "It would be unfair, and economically untenable, to permit significant investments in one year, and then allow the municipality to declare the interned use unlawful in a later year."

[37] The Board grants the variance to Height following reasons:

- a. The subject Site is a large property located at the southwest corner of the intersection of two divided roadways, 107 Avenue and 142 Street. Larger commercial developments, including the Telus World of Science Building and office buildings are located to the north of 107 Avenue. The Church and its parking lot are adjacent to the south. There are low-density residential developments across the rear lane to the west. There are also low-density residential developments to the east of the subject Site. The residential lots to the east are much further from the proposed addition than those to the west. They back toward the subject Site and are separated from it by 142 Street, a landscaped boulevard and a rear lane.
- b. The building is located to the south of the parkade and set back from all property lines. It has existed with considerably greater mass and Height than the nearby residential uses for many years.
- c. In 2008, the Board approved an addition to the then 6-Storey tower portion of the building with a variance of 22.65 metres in Height. The existing tower is stepped back significantly from the perimeter of the ground level facades of the building. Based on the refused plans, it is located approximately 34 metres from the Rear Lot Line, 24 metres from the South Lot line and 56 metres from the Front Lot Line.
- d. The proposed expansion will be constructed within the current building footprint and extend the south elevation of the existing 8-Storey tower by 15 metres toward the Church property. The impact of the proposed expansion is lessened because it will be stepped back from the front and rear facades of the existing building. It is set back approximately 56 metres from the Front Lot Line and separated from the Front Lot Line by a 30 metres wide landscaped area and a portion of the building which will remain unchanged. It will be set back from the Rear Lot Line by approximately 23 metres and separated from the Rear Lot Line by a private asphalt road way and a two-Storey portion of the building approximately 15 metres in width. These distances and intervening structures lessen the impact of the Height variance.

- e. The Proposed expansion is to match the location of the overhang of the southern elevation of the existing building. According to the refused plans, it will be set back from the southern Side Lot Line just over six metres. The neighbour to the south who is closest and arguably most affected by this façade has not objected to the development and has renewed a mutual, shared parking agreement with the Appellant.
- f. While the tower volume is increasing, the proposed Height is not increasing perceptibly. The Appellants are seeking a Height variance of 22.9 metres for the tower expansion to match the previously approved Height of 22.65 metres. The expansion will replace a blank wall with three facades designed to match the existing architectural style and finishes.
- g. No variances to Height are required for the parkade addition and it will maintain the same area as the current parkade.
- h. The existing building with the approved eight-Storey tower is significantly larger in mass and taller in Height than the surrounding residential uses and the commercial uses south of 111 Avenue. This situation has existed since 2008.
- i. Given the above, the Board finds that the overall massing of the proposed addition to the building will not bring a material change in Height or massing relative to the surrounding uses, nor a material change in the compatibility of the building with its current surroundings.
- j. The Board received conflicting evidence about the extent of the sun shadow impact attributable to the proposed addition. Mr. Priddle an owner of one of the most affected adjacent residential properties to the west believes that the sun shadow will be 50 percent larger and will shade areas for significantly longer portions of the day. He disputes the evidence of the Appellants. However, neither he, nor any other property owner provided evidence to support that opinion.
- k. The Appellants believe that the proposed development will have minimal additional sun shadowing impacts. They argue that the addition will place one additional property to the west in shadow during the morning, but by that by midday the existing building and the proposed addition will have little to no impact on the neighbouring properties. The Appellants submitted a sun shadow study to support their opinion.
- l. The Board notes that the submitted sun shadow study did not provide a complete picture of the full sun shadowing impact. It did not include a late afternoon / early evening interval to demonstrate the incremental difference attributable to the proposed addition for properties to the east at 3:30 p.m. throughout the year.

- m. Based on the totality of the submitted evidence, the Board concludes that the full sun shadowing impact attributable to the proposed addition is greater than shading of one additional home to the west during morning hours, but it is not so great as to constitute a material adverse impact on neighbouring properties.

[38] The Board grants the variance of 151 on-site parking spaces for the following reasons:

- a. The Parking Impact Assessment dated July 5, 2016 (the “2016 Study”) calculated parking space occupancy for four weekdays in May and June of 2016. It identified 312 existing on-site spaces plus 106 spaces on the adjacent Church site. The maximum observed number of occupied spaces on both sites was 260 which represents 83 percent of the 312 total available on-site parking spaces and an even lower percentage if the 106 Church lot spaces were taken into account.
- b. The 2016 Study forecast a likely future demand of 363 parking spaces. With the addition of a new level on the parkade, this demand could be met by the 440 on-site parking spaces without the use of any off-site Church parking.
- c. The 2016 Study results were similar to the results of the 2007 Parking Impact Assessment submitted in support of the 2008 expansion.
- d. These studies support the position there is surplus parking available on the subject Site even without the shared mutual parking agreement.
- e. The Appellant provided personal anecdotal evidence that the ATA has never received a single parking complaint over the past 14 years.
- f. While some of the letters of opposition cited a preexisting parking issue, the owner of a property adjacent to the rear (and opposed to the development) stated that he has never experienced any parking congestion or parking problems attributable to users of the subject Site.
- g. In any event, the 2016 Study also recommends re-establishment of the shared parking agreement for the 106 parking spaces on the adjacent site and notes adjustments could be made to the current system of designated staff parking to further accommodate visitor demand.
- h. Transportation Planning and Engineering reviewed the 2016 Study and concurs that parking for the proposed development can be accommodated on-site and does not object to the proposed development. With a 106 space shared parking use agreement in place, the Development Officer considered the parking variance minimal.
- i. At the time of the hearing, the Appellants had arranged to enter a new agreement with the Church to share 106 additional parking spaces on the adjacent lot to the

south. The agreement will also lessen the impact of the 151 parking space variance by practically reducing the actual variance to 45 spaces.

- j. The Board has imposed a condition that the Appellant execute a shared parking use agreement with the Church of Jesus Christ of Latter Day Saints for 106 off site parking spaces and that if that parking use agreement is terminated or modified at any time, a new agreement for off-site parking and/or an addition to the parkade will be required to replace the lost off-site parking spaces.

[39] The parties in opposition cited nuisance concerns related to the noise caused by snow removal from the third level of the parkade. The proposed development does not increase the area required to be cleared of snow. The Board received insufficient evidence to establish that the additional Storey in the garage will add appreciably to nuisance issues and the Height of the parkade requires no variances.

[40] For the above reasons, the Board finds 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.



Ms. K. Cherniawsky, Presiding Officer
Subdivision and Development Appeal Board

Board members in attendance: Mr. M. Young, Mr. A. Bolstad, Ms. N. Hack, Ms. D. Kronewitt
Martin

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 NW, 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*, 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 NW, 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.

SUSTAINABLE DEVELOPMENT ADVISEMENTS AND NOTES:

- 1) The Development Permit shall NOT be valid unless and until the conditions of approval, save those of a continuing nature, have been fulfilled; and no notice of appeal from such approval has been served on the Subdivision and Development Appeal Board within the time period specified in subsection 21.1 (Ref. Section 17.1).
- 2) This Development Permit is not a Business Licence. A separate application must be made for a Business Licence.
- 3) Signs require separate Development Applications.
- 4) A Building Permit is required for any construction or change in use of a building. For a building permit, and prior to the Plans Examination review, you require construction drawings and the payment of fees. Please contact the 311 Call Centre for further information.
- 5) The City of Edmonton does not conduct independent environmental checks of land within the City. If you are concerned about the suitability of this property for any purpose, you should conduct your own tests and reviews. The City of Edmonton, in issuing this 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.
- 6) An approved Development Permit means that the proposed development has been reviewed only against the provisions of the Edmonton Zoning Bylaw. It does not remove obligations to conform with other legislation, bylaws or land title instruments such as the Municipal Government Act, the ERCB Directive 079, the Edmonton Safety Codes Permit Bylaw or any caveats, covenants or easements that might be attached to the Site.

TRANSPORTATION ADVISEMENTS:

The applicant is advised that the reconstruction of the existing sidewalk on 142 Street would be supported with the redevelopment of the site. This reconstruction may require a Developer Initiated Municipal Improvement Agreement. The applicant must contact the City of Edmonton prior to any construction of the sidewalk. The applicant may contact Loli Fernandez (780-944-7683) of Transportation Planning and Engineering for more information on sidewalk construction requirements.

DRAINAGE ADVISEMENTS:

- SSTC is applicable to the entire lot area of 0.6212 ha at the rate of \$7,832/ha under the current DP#225741795-001. The area is obtained from the City's information computer program called POSSE. For information purposes, the year 2016 rate is

\$7,832/ha. However, the final SSTC is based on the prevailing rate at the time the applicant/owner makes payment at the 5th Floor cashier, Planning and Development Department, 10250 - 101 Street NW.

Additional Notes

- The above assessment is made based on information currently available to our Department. Should such information change in the future, a new assessment will have to be made.
- In addition to the above items, if required, the applicant/owner shall pay for the installation cost of sewer services to property line. For detail, please contact Derek Kucy of Public Services Section, at 780-496-5450.
- More information about PAC, EA, and SSTC assessments can be found on the City of Edmonton's website: www.edmonton.ca

Important Information for the Applicant/Appellant

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 - h) the *Alberta Regulation 204/207 – Safety Codes Act – Permit Regulation*,
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