



**EDMONTON
TRIBUNALS**

*Subdivision &
Development
Appeal Board*

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Date: January 19, 2018
Project Number: 264527490-001
File Number: SDAB-D-18-003

Notice of Decision

- [1] On January 4, 2018, the Subdivision and Development Appeal Board (the “Board”) heard an appeal that was filed on December 5, 2017. The appeal concerned the decision of the Development Authority, issued on November 16, 2017, to refuse the following development:

Construct Exterior Alterations to a Single Detached House (Driveway extension (3.08 metres wide by 13.8 metres long)

- [2] The subject property is on Plan 7721184 Blk 19 Lot 28, located at 6412 - 14 Avenue NW, within the RF1 Single Detached Residential Zone. The Mill Woods Development Concept Plan applies to the subject property.
- [3] The following documents were received prior to the hearing and form part of the record:
- Copies of the refused permit and permit application with attachments;
 - Development Officer’s written submissions dated December 18, 2017; and
 - Canada Post Registered Mail receipt.
- [4] The following exhibits were presented during the hearing and form part of the record:
- Exhibit “A” – Petition of support
 - Exhibit “B” – Photographs of the subject site
 - Exhibit “C” – Photographs of other properties with Driveway extensions

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 Appellant, Mr. D. Ferland:

- [8] The Driveway extension is actually 2.13 metres wide and was developed when the Front Yard was regraded to rectify drainage problems. He submitted Exhibit “B”, a collection of photographs of the Driveway extension both during the construction process and as it currently exists. The construction photographs show how the sidewalk was removed and the Driveway extended. The photographs also show that rather than using the limited on-street parking along the cul-de-sac, visitors will be able to park on the Driveway extension without impeding access to the rear detached garage.
- [9] He noted that even with the extension, the Front Yard is still quite large. A professional landscaper was hired to do the landscaping, including a flower garden. Notwithstanding the width of the Driveway extension, there is space for two vehicles to park on the street in front of the landscaped portion of his property.
- [10] None of the neighbours object to the Driveway extension. He referenced a petition of support signed by 10 of the 12 residents of the cul-de-sac, including the two adjacent neighbours, and one other letter of support from another property owner (Exhibit “A”).
- [11] It was his opinion that he is not being treated fairly because his Driveway extension is, relatively speaking, much smaller than many other Driveway extensions. In support, he submitted Exhibit “C”, a collection of photographs of other Driveway extensions from the surrounding area. Some of these photographs depict homes with extended Driveways that do not lead directly to a garage, as required in the Zoning Bylaw. Upon questioning by the Board, he clarified that none of the Driveway extensions illustrated in the submitted photographs are located within the 60 metre notification radius.

ii) Position of the Development Authority:

- [12] The Development Authority provided written submissions and did not attend the hearing.

Decision

- [13] The appeal is **ALLOWED** and the decision of the Development Authority is **REVOKED**. The development is **GRANTED** as applied for to the Development Authority.

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

- 1) Sections 54.1(4)(a) and 54.2(2)(e)(i) are waived.

Reasons for Decision

[15] The proposed development is Accessory to a Single Detached House, which is a Permitted Use in the RF1 Single Detached Residential Zone.

[16] The Appellant advised the Board that the Driveway extension is used to provide additional onsite parking and is also used to provide pedestrian access to the front entrance of the house. The Board has determined that the proposed development is a Driveway, pursuant to Section 6.1(3) of the *Edmonton Zoning Bylaw* which defines a Driveway as “an area that provides access for vehicles from a Public or Private roadway to a Garage or Parking Area and does not include a Walkway”.

[17] The Board finds that the proposed Driveway extension will not have a material adverse impact for the following reasons:

- a) Even with the extension, the Driveway does not exceed the width allowed to accommodate two side by side parking spaces.
- b) The Board notes that the Driveway extension also provides the only means of pedestrian access to the front entrance of the Principal Dwelling.
- c) Upon review of the aerial photograph contained in the Development Officer’s report, the Driveway extension does not exceed the width of other existing Driveways in the cul-de-sac.
- d) Based on the Appellant’s submissions, the width of the Driveway extension will not reduce the number of available on-street parking spaces in the cul-de-sac.
- e) Written support was provided by 10 of the 12 property owners who reside in this cul-de-sac, including the most affected adjacent property owners. All of these neighbours have visual sight lines to the Driveway extension.
- f) Given the width of this lot, even with the extension, a substantial portion of the Front Yard will remain landscaped.

- [18] 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.

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. V. Laberge; Mr. R. Hachigian; Ms. S. LaPerle; Ms. K. Thind

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 2nd Floor, Edmonton Tower, 10111 – 104 Avenue NW, Edmonton, AB T5J 0J4.
2. Obtaining a Development Permit does not relieve you from complying with:
 - a) the requirements of the *Edmonton Zoning Bylaw*, insofar as those requirements have not been relaxed or varied by a decision of the Subdivision and Development Appeal Board,
 - b) the requirements of the *Alberta Safety Codes Act*,
 - c) the *Alberta Regulation 204/207 – Safety Codes Act – Permit Regulation*,
 - d) the requirements of any other appropriate federal, provincial or municipal legislation,
 - e) the conditions of any caveat, covenant, easement or other instrument affecting a building or land.
3. When an application for a Development Permit has been approved by the Subdivision and Development Appeal Board, it shall not be valid unless and until any conditions of approval, save those of a continuing nature, have been fulfilled.
4. A Development Permit will expire in accordance to the provisions of Section 22 of the *Edmonton Zoning Bylaw, Bylaw 12800*, as amended.
5. This decision may be appealed to the Alberta Court of Appeal on a question of law or jurisdiction under Section 688 of the *Municipal Government Act*, RSA 2000, c M-26. If the Subdivision and Development Appeal Board is served with notice of an application for leave to appeal its decision, such notice shall operate to suspend the Development Permit.
6. When a decision on a Development Permit application has been rendered by the Subdivision and Development Appeal Board, the enforcement of that decision is carried out by the Sustainable Development Department, located on the 2nd Floor, Edmonton Tower, 10111 – 104 Avenue NW, Edmonton, AB T5J 0J4.

NOTE: The City of Edmonton does not conduct independent environmental checks of land within the City. If you are concerned about the stability of this property for any purpose, you should conduct your own tests and reviews. The City of Edmonton, when issuing a development permit, makes no representations and offers no warranties as to the suitability of the property for any purpose or as to the presence or absence of any environmental contaminants on the property.



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Date: January 19, 2017
Project Number: 245675108-003
File Number: SDAB-D-17-238

Notice of Decision

- [1] The Subdivision and Development Appeal Board (the “Board”) at a hearing on December 6, 2017, made and passed the following motion:

“That the hearing for SDAB-D-17-238 be tabled to January 4, 2018, at the request of the Appellant.”

- [2] On January 4, 2018, the Board made and passed the following motion:

“That SDAB-D-17-238 be raised from the table.”

- [3] On January 4, 2018, the Subdivision and Development Appeal Board (the “Board”) heard an appeal that was filed on October 23, 2017. The appeal concerned the decision of the Development Authority, issued on October 12, 2017, to refuse the following development:

Convert a Semi-detached House to a 4 Dwelling Apartment House and to construct interior alterations - existing without permits

- [4] The subject property is on Condo Common Area (Plan 1620089), located at 11718C - 122 Street NW, within the RF3 Small Scale Infill Development Zone. The Mature Neighbourhood Overlay and West Ingle Area Redevelopment Plan apply to the subject property.

- [5] The following documents were received prior to the hearing and form part of the record:

- Copies of the refused permit and permit application with attachments;
- Development Officer’s written submissions dated November 6, 2017;
- Copy of the refused drawings and plans;
- Appellant’s supporting materials, including community consultation information and updated materials received January 2, 2018; and
- Correspondence from neighbouring property owners in opposition to the development.

Preliminary Matters

- [6] 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.
- [7] The Presiding Officer outlined how the hearing would be conducted, including the order of appearance of parties, and no opposition was noted.
- [8] 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 Appellant, Mr. J. Yeung:

- [9] The Semi-detached House was constructed with basement suites in 2015.
- [10] Both of the Secondary Suites have separate entrances. The two Semi-detached Dwellings are currently being rented to families who have other family members residing in the basement in-law suites. He owns the subject property and made the development permit application after which a builder was hired. He was advised by the builder that no further development permits were required to develop the suites in the basement because they were in-law suites that would be used by family members of the main floor occupants. He was not aware that the addition of a kitchen, bathroom and bedrooms in the basement was not allowed.
- [11] In 2017, the City gave notice that the basement suites were illegal. He was advised to apply for a rezoning or decommission the basement suites and revert the Use back to Semi-detached Housing.
- [12] Subsequently a development permit application was made to convert the Semi-detached House to a four dwelling Apartment House because it was an acceptable use in the RF3 Zone. He was advised by the Development Officer that Apartment Housing was the most appropriate Use Class for this development. However, the application was refused because of deficiencies in the minimum required Site Area and Site Width.
- [13] It was his opinion that the Semi-detached House was underbuilt for the lot because it does not exceed any of the Site Coverage regulations.
- [14] The revised plans he sent to the Board identify outdoor amenity spaces and onsite parking spaces which comply with the development regulations for Apartment Housing.

- [15] He discussed the development with his neighbours. Four neighbours signed in support (a copy of this support was provided in his written submission). Five neighbours did not object, but declined to provide written support. Two neighbours were opposed, but it was his opinion that the opposition was based on a dispute that arose between them and the builder over fencing problems that are not relevant to this application.
- [16] He acknowledged that the major concern of the neighbours in opposition was the impact for on-street parking. However, there are two double detached garages at the rear and adequate onsite parking for the occupants of this building.
- [17] Upon questioning by the Board, Mr. Yeung clarified that there are Semi-detached Houses located both immediately north of his property and across the street. The subject site is located four lots south of a commercial zone on 118 Avenue. He could not provide any information regarding the development of basement suites in the other Semi-detached Houses.

ii) Position of the Development Authority:

- [18] The Development Authority provided written submissions and did not attend the hearing.

Decision

- [19] 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 **CONDITION**:
1. The development shall be constructed in accordance with the drawings stamped and approved by the Board.
- [20] In granting the development the following variances to the *Edmonton Zoning Bylaw* are allowed:
1. Section 140.4(5)(a) is varied to permit a deficiency of 95.74 square metres for a total allowable Site Area of 654.26 square metres.
 2. Section 140.4(5)(b) is varied to permit a deficiency of 1.76 metres for a total allowable Site Width of 15.24 metres.
 3. Section 140.4(7) is waived to permit Apartment Housing at this location.
 3. Sections 47 and 140.4(15) are waived and no Private Outdoor Amenity Areas are required.

Reasons for Decision

- [21] Apartment Housing is a Permitted Use in the RF3 Small Scale Infill Development Zone.
- [22] The Board finds that the proposed development is in keeping with section 140.1 of the Zoning Bylaw, which states:
- The purpose of [the RF3 Zone] is to provide for Single Detached Housing and Semi-detached Housing while allowing small-scale conversion and infill redevelopment to buildings containing up to four dwellings under certain conditions, and including Secondary Suites and Garden Suites.
- [23] The proposed development is consistent with the policies of the West Ingle Area Redevelopment Plan to increase density at this location.
- [24] While the proposed development does not meet the locational criteria and is located mid-block, the Board notes that exterior alterations are not proposed and the structure will retain the appearance of a Semi-detached House that is typical of the street. The subject site is also located six lots south of commercial developments on the same block located along the commercial zone abutting 118 Avenue.
- [25] The Board notes that the proposed development meets or exceeds all other development requirements applicable to this lot, including density, Height, Site Coverage, Setbacks, off-street parking and Private Outdoor Amenity Area for Apartment Housing, all of which suggest that the subject application does not represent an over-development of the site. Further, the variances required for Site Area and Site Width are necessitated by set lot parameters that cannot be changed.
- [26] The Board agrees with the written submission of the Development Officer that a variance should be considered for the Private Outdoor Amenity Areas, given that the property has the appearance of a Semi-detached House from the street and that this variance will impact only the residents of the subject Dwellings and not the adjacent property owners.
- [27] Mixed feedback was received from neighbouring property owners. The Appellant canvassed the neighbourhood and provided four letters of support. At that time, several property owners also indicated verbally to the Appellant that they were neutral as they did not feel that the proposed development would have any impact on them.
- [28] Two neighbouring property owners objected to the proposed development based mainly on the availability of on street parking and security concerns raised by renters. However, the proposed development exceeds the minimum required number of off-street parking spaces by one space. The neighbours' comments about the potential users of the proposed suites relate to community standards and policing, and were not supported with any evidence. Further, the Board is not persuaded in any event that these opinions constitute planning considerations that would justify the refusal of a development permit application for the requested Permitted Use.

- [29] Similarly, while the Board acknowledges the comments of the Development Officer concerning prior communications about basement suites in the subject building, it finds that these observations do not constitute planning considerations that would justify the refusal of a development permit application for the requested Permitted Use.
- [30] 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.

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