



**EDMONTON
TRIBUNALS**

*Subdivision &
Development
Appeal Board*

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Date: May 5, 2017
Project Number: 235119852-002
File Number: SDAB-D-17-077

Notice of Decision

- [1] On April 27, 2017, the Subdivision and Development Appeal Board (the “Board”) heard an appeal that was filed on **April 2, 2017**. The appeal concerned the decision of the Development Authority, issued on March 24, 2017, to refuse the following development:

**Convert a Semi-detached House to 4 Dwellings of Apartment Housing
- existing without permits**

- [2] The subject property is on Plan 0921841 Blk 30 Lot 16B, located at 12220 - 85 Street NW and Plan 0921841 Blk 30 Lot 16A, located at 12222 - 85 Street NW, within the RF3 Small Scale Infill Development Zone. The Mature Neighbourhood Overlay applies to the subject property.
- [3] The following documents were received prior to the hearing and form part of the record:
- Copy of the Development Permit application with attachments, proposed plans, and the refused Development Permit;
 - The Development Officer’s written submissions; and
 - The Appellant’s written submissions.

Preliminary Matters

- [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 Presiding Officer outlined how the hearing would be conducted, including the order of appearance of parties, and no opposition was noted.
- [6] The appeal was filed on time, in accordance with Section 686 of the *Municipal Government Act*, R.S.A 2000, c. M-26 (the “*Municipal Government Act*”).

Summary of Hearing*i) Position of the Appellant, Mr. G. Lamothe*

- [7] The subject property was purchased by Mr. Lamothe in August of 2016 and consists of two separate titles. He was aware at the time of purchase that Secondary Suites are not permitted in Semi-detached Housing but was advised by the realtor that the City bylaws were in the process of being changed.
- [8] His initial plan was to apply for the two basement suites once the regulations had changed. When one of the basement suites became vacant, he decided to take the opportunity to go ahead and replace the furnace and do other alterations that would be required for a future approved suite. When his furnace contractor applied for a permit, the City became aware of the basement suites.
- [9] He estimates that this property has been operating as four separate units for the past twenty to thirty years with no complaints.
- [10] He conducted two rounds of community consultation. The first time he had made his own document for neighbours to sign. He revised his community consultation document to follow the procedure recommended by the Development Officer and re-visited the neighbours. Eighteen documents were returned to him with no opposition. He believes that the majority of feedback received was from the actual property owners, not renters. He attempted to contact the owner of the group home in the area as well as the Community League but had no success.
- [11] One of the immediately adjacent neighbours had no concerns with the development as long as none of the alterations affected her sunlight. He did not receive feedback from the other adjacent neighbour despite making three attempts to contact this owner.
- [12] He provided examples of other properties in the neighbourhood located mid-block that seem to be operating as Semi-detached Housing with basement suites. He made this assumption because there are four mailboxes on these properties. All have side entrances for the basement suites and one has all four entrances facing towards the sides.
- [13] Several properties in the area have been approved as four-unit Apartments by the Board. The closest one is a block to the south of the subject property (SDAB-D-13-100). These properties would all have required variances similar to those he is seeking.
- [14] There are total of ten bedrooms – three in each of the main floor units and two in each of the basement suites. These four units could accommodate roughly the same number of people as two 5-bedroom duplexes. It is not his intention to run this property as a boarding house with 10 different leases; he plans to rent to small families.
- [15] There is adequate parking on the property. The garage has room for four cars and an additional five cars can be parked on the concrete pad behind the garage. Although the Real Property Report shows the length of the parking area behind the garage as 5.1

metres, the actual length of the concrete pad is 6.8 metres. He acknowledged that the extra length is on City property but this area cannot be used for anything else.

- [16] The two basement suites have side entrances. A fence runs along each side of the property and the side doors must be accessed by first going through a gate. Upon questioning, Mr. Lamothe agreed that the fence and gate could be moved back to allow easier public access to the side doors.
- [17] The excess in maximum allowable site coverage of the garage was approved in a previous SDAB decision. (SDAB-D-97-116).
- [18] All of the tenants share the back yard and there is no fence separating the two lots.

ii) Position of the Development Officer, Mr. J. Angeles

- [19] Mr. J. Angeles provided the following answers to questions from the Board.
- [20] Secondary Suites are not permitted in Semi-detached Housing; therefore he suggested that the Appellant apply for Apartment Housing on this site. A site can be comprised of two or more lots as is the case here.
- [21] He does not believe the development would have a negative material impact on the neighbourhood since it already exists but he must abide by the regulations of the *Edmonton Zoning Bylaw* when making his decision. He refused this application because he felt too many of the regulations have not been met.
- [22] He submitted that if the doors to the units do not face a public roadway it makes it hard to determine if the entrance is for a separate unit or if it is a secondary entrance for the principal dwelling.
- [23] Each of the two titles consists of one main floor unit and a basement unit. It would be possible for a future owner to sell only one of the properties by converting them into condominiums.
- [24] He considered the rear yard to be a shared amenity area for all of the units. The RF3 Small Scale Infill Development Zone requires private amenity areas directly accessible by each unit; therefore a deficiency exists.
- [25] He has no knowledge of the variances that would have been granted to similar properties in the area. Many of these developments could have been approved prior to the new regulations coming into effect. New applications have to be based on the current bylaw.
- [26] He confirmed that the oversized garage on the subject property was previously approved by the Board. (SDAB-D-97-116)
- [27] The parking deficiency relates to the length of the driveway, not the actual amount of parking spaces.

[28] There would still be a deficiency in the required amenity area if the rear yard were to be divided in half with a fence.

iii) Rebuttal of the Appellant

[29] He understands that the parking area behind the garage is short by about a foot but the concrete pad itself is 6.8 metres in length. While the excess is not part of his property, it cannot be used for any other purpose; therefore, there is more than adequate room for parking.

[30] If these were two Single Family Dwellings with basement suites only six parking spaces would be required instead of the seven required due to this property being designated as Apartment Housing.

[31] He has no objections to any of the conditions recommended by the Development Officer and would be agreeable to moving the fence and gate back behind the side entrances and installing clear directional signage.

Decision

[32] 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:

1. Prior to the release of drawings for building permit review, the applicant or property owner shall pay a Sanitary Sewer Trunk Charge (SSTC) fee of \$3,132.00. The SSTC charge is quoted at year 2017 rate. Please contact Private Development Drainage Services, at 780-496-5665 for further details regarding the fee. However, the final SSTC is based on the prevailing rate at the time the applicant/owner makes payment at the 2nd Floor, Edmonton Tower, 10111 – 104 Avenue NW, Edmonton, AB, T5J 0J4.

Advisement

1. The Appellant is advised to relocate the existing fence to allow unimpeded access to the side entrances of both basement units.
- [33] In granting the development the following variances to the *Edmonton Zoning Bylaw* are allowed:
1. The minimum allowable Site Area of 750 square metres as per Section 140.4(5)(a) is varied to allow a deficiency of 53.09 metres, thereby decreasing the minimum allowed to 696.91 square metres.
 2. The minimum allowable Site Width of 17.0 metres as per Section 140.4(5)(b) is varied to allow a deficiency of 1.74 metres, thereby decreasing the minimum allowed to 15.26 metres.

3. The locational requirements of Section 140.4(7) are waived.
4. The maximum allowable total Site Coverage of 278.77 square metres as per Section 140.4(10)(f) is varied to allow an excess of 13.94 square metres, thereby increasing the maximum allowed to 292.71 square metres. (NOTE: The following variance was granted by the Board in SDAB-D-97-116: The maximum allowable Site Coverage for Accessory Building of 83.63 square metres as per Section 140.4(10)(f) is varied to allow an excess of 13.94 square metres, thereby increasing the maximum allowed to 97.57 square metres.)
5. The Private Outdoor Amenity Area requirements of Section 140.4(15) and Section 47(1) are waived, thereby allowing Private Outdoor Amenity Areas not immediately adjacent to each Dwelling it is intended to serve.
6. The requirement of Section 140.4(23) is waived, thereby allowing the entrance door on each of the 2 Dwellings on the lower levels facing the interior Side Setbacks, rather than facing a public roadway.
7. The requirement of Section 814.3(9) is waived, thereby allowing the 2 Dwellings on the lower levels facing the interior Side Setbacks, rather than facing a public roadway.
8. The minimum allowable length for an off-street parking space of 5.5 metres as per Section 54.2(4)(a) is varied to allow a deficiency of 0.37 metres, thereby decreasing the minimum allowed to 5.13 metres.

Reasons for Decision

- [34] Apartment Housing is a Permitted Use in the RF3 Small Scale Infill Development Zone.
- [35] The proposed development is consistent with the General Purpose of the RF3 Small Scale Infill Development Zone which in part allows for “small-scale conversion and infill redevelopment to buildings containing up to four Dwellings, and including Secondary Suites under certain conditions.”
- [36] The proposed development is consistent with the General Purpose of the Mature Neighbourhood Overlay, which “ensure[s] that new low density development in Edmonton’s mature residential neighbourhoods is sensitive in scale to existing development, maintains the traditional character and pedestrian-friendly design of the streetscape, ensures privacy and sunlight penetration on adjacent properties and provides opportunity for discussion between applicants and neighbouring affected parties when a development proposes to vary the Overlay regulations.”
- [37] The proposed development is consistent with Section 4.4.1.1 of the *Municipal Development Plan*, “The Way We Grow” which states one policy is to “provide a broad

and varied housing choice, incorporating housing for various demographic and income groups in all neighbourhoods”.

- [38] The proposed development is characteristic of the neighborhood. The Board accepts the evidence submitted by the Appellant that there are several similar developments with similar variances (specifically Site Area, Site Width, and Locational Criteria) in close proximity to the development.
- [39] The Board finds the proposed development has adequate Amenity Area to service the residents of the building. The Board accepts the evidence submitted by the Appellant that the deficiency in the Amenity Area is mitigated by nearby parks and community rinks.
- [40] There is sufficient space within the garage and the parking pad behind the garage to allow for the seven required parking spaces.
- [41] Notwithstanding the basement units have side entrances, the appearance and the character of the proposed development is pedestrian friendly. The most directly affected neighbours did not oppose these variances and the Side Yards are adequate to mitigate any potential impacts.
- [42] The development has been existing for many years without any known complaint.
- [43] The Appellant conducted the required community consultation to the satisfaction of the Development Authority and the Board accepts that there is community support for this development.
- [44] No letters of opposition were received and no one appeared in opposition at the hearings.
- [45] The excess in maximum allowable Site Coverage of the Accessory Building was considered and varied by the Board previously in SDAB-D-97-116 so no variance is necessary in this decision.
- [46] The Board finds that the proposed development with variances, taken individually or cumulatively, will not unduly interfere with the amenities of the neighbourhood nor materially interfere with or affect the use, enjoyment nor value of neighbouring parcels of land.

Brian Gibson, Presiding Officer
Subdivision and Development Appeal Board

Board Members in Attendance:

Mr. V. Laberge; Mr. J. Wall, Mr. A. Nagy, Mr. A. Bolstad

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.