



Date: February 3, 2017
Project Number: 230281261-001
File Number: SDAB-D-17-015

Notice of Decision

- [1] On January 19, 2017, the Subdivision and Development Appeal Board heard an appeal that was filed on **December 23, 2016**. The appeal concerned the decision of the Development Authority, issued on December 22, 2016, to refuse the following development:

Construct a Single Detached House with a front veranda, a fireplace, Rooftop Terraces, and a rear uncovered deck (3.05 metres by 5.18 metres).

- [2] The subject property is on Plan 1624261 Blk 1 Lot 32B, located at 14229 - 91 Avenue NW, within the (RF1) Single Detached Residential 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:
- A copy of the Development Permit application with attachments, proposed plans, and the refused Development Permit;
 - Circulation responses from other City Departments;
 - The Development Officer's written submission;
 - The Appellant's written submission; and
 - Renderings of the proposed development submitted by the Appellant.

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*, RSA 2000, c M-26.

Summary of Hearing*i) Position of the Appellant, Mr. M. Craig, representing Marcson Homes Master Builder Ltd.:*

- [7] This property was purchased in 2015 and subsequently subdivided into two lots. One of the lots includes a utility right of way.
- [8] The design of both houses was based on the development regulations that were in effect at the time of the subdivision and other similar houses that were approved and built in Edmonton.
- [9] Mr. Craig referred to a photograph included in his submission to illustrate a similar house that was used as a guideline for the design of these two houses.
- [10] The *Edmonton Zoning Bylaw* has recently been amended to address privacy concerns relating to roof top terraces. The designing of the house was started almost 12 months ago.
- [11] The Development Officer advised him that the overall height of the house could not exceed 10.1 metres and this requirement has been met. The second requirement was that the height to the midpoint of the roof could not exceed 8.6 metres. However, it was impossible to comply with this requirement given the low roof slope and the length of the house.
- [12] Mr. Craig referenced several photographs contained in his written submission to illustrate houses built in mature neighbourhoods in 2016 that are of a similar height or higher than the proposed development.
- [13] It has been his experience that infill lots have a higher grade. The grade of the subject lot is raised to address drainage requirements.
- [14] Extra design features have been included to block sight lines from the proposed front and rear roof top terraces to adjacent neighbours. The proposed terraces will be fully enclosed by solid walls on the sides and at the front and rear. The side walls will be seven and one-half feet high at the back and taper down to four feet at the front. The walls at the front and rear of the terraces will be solid rather than glass and are four feet high.
- [15] Mr. Craig referred to photographs that provided views from the subject site to provide a context of the surrounding area. Across the street to the front there is a three-storey townhouse with walk out roof top terraces with glass paneling. There is also a large park.
- [16] The proposed roof top terrace at the rear of the house will overlook the roof of the proposed garage and the existing three-car garage across the rear lane. There are large mature trees surrounding the rear portion of the subject site and that will provide screening and eliminate any privacy issues.

- [17] In response to a question, Mr. Craig indicated that the neighbouring townhouse could be classified as a two and a half storey structure instead of three storeys because the roof top terraces do not extend the entire width of the structure.
- [18] Mr. Craig referenced the rendering submitted to illustrate that the proposed roof top terraces are inside the roof edges with solid side and front walls.
- [19] They decided on solid walls at the front of the roof top terraces instead of glass to avoid privacy issues for neighbours but to still allow the disbursement of light into the third floor and stairwell.
- [20] In response to a question regarding the rendering which appeared to show there would be a massing effect created by the solid wall at the front of the roof top terrace, Mr. Craig indicated that the rendering did not show the finishing materials that will be used. The use of different finishing materials and colours will reduce any massing impact.
- [21] Although he acknowledged that replacing the proposed solid wall with glass panels is an option to reduce the massing, it was his opinion that this could result in privacy concerns for the neighbours.
- [22] The design includes roof top terraces at the front and the rear to maximize square footage. It was his opinion that reducing the depth of the proposed terraces to comply with the two metre setback requirements would make the space less usable and impact the salability of the house.
- [23] Amenity space will be available in the rear yard even with the development of a rear detached garage.
- [24] The proposed front terrace is wider than the proposed rear terrace. This development and the proposed house on the adjacent property are mirror images of each other except for different window placements.
- [25] Mr. Craig acknowledged that enclosing the proposed roof top terraces with solid walls does increase the massing but removing the wall will result in a significant loss of usable space.

ii) Position of the Development Officer, M. K. Yeung:

- [26] Mr. Yeung stated that Development Officers do not have the authority to vary maximum allowable Height. This proposed house exceeds the maximum allowable Height.
- [27] In response to a question, Mr. Yeung stated that the solid walls included in the design of the proposed roof top terraces would help mitigate some privacy concerns and prevent visual overlook onto adjacent properties.

- [28] The front yard of the subject site abuts a public roadway with a park on the other side of that roadway. Also there is higher density development in the form of a townhouse located to the north, which will also mitigate any privacy concerns.
- [29] Lot 32A includes a utility right of way that provides a six-metre separation space between the development and the adjacent lot.
- [30] He considered the elongated roof to be a gable roof.
- [31] Height was calculated using the average grade at the four corners of each lot. There are slight grade differences between the two lots. If the grade of each lot were the same, the Height of both of the proposed houses would be exactly the same.

iii) Rebuttal of the Appellant

- [32] Mr. Craig questioned how the Development Authority calculated grade and indicated that it is difficult to design a house that will meet the Height requirements when the grade of the lot is unknown.

Decision

- [33] The appeal is **ALLOWED** and the decision of the Development Authority **REVOKED**. The development is **GRANTED** as applied for to the Development Authority, subject to the following **CONDITIONS**:
1. Within 14 days of approval, prior to any demolition or construction activity, the Applicant must post on-site a development permit notification sign, pursuant to Section 20.2 of the *Edmonton Zoning Bylaw*;
 2. The development shall be constructed in accordance with the stamped and approved drawings;
 3. Landscaping shall be installed and maintained in accordance with Section 55 of the *Edmonton Zoning Bylaw*;
 4. Platform Structures greater than 1.0 metres above Grade shall provide privacy screening to prevent visual intrusion into adjacent properties, pursuant to Section 814.3(8) of the *Edmonton Zoning Bylaw*.

ADVISEMENTS:

1. Lot grades must match the *Edmonton Drainage Bylaw* 16200 and/or comply with the Engineered approved lot grading plans for the area. Contact Drainage Services at 780-496-5576 or lot.grading@edmonton.ca for lot grading inspection inquiries.

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

Height – The maximum Height is 9.1 metres instead of 8.6 metres, requiring a variance of 0.5 metres (Section 814.3.13).

The Stepback requirements for Rooftop Terraces contained in Section 61(1)(a) of the *Edmonton Zoning Bylaw* are waived.

Reasons for Decision

- [35] Single Detached Housing is a Permitted Use in the RF1 Single Detached Residential Zone.
- [36] The proposed development requires a variance to Section 814.3(13) of the *Edmonton Zoning Bylaw* which states that the maximum Height shall not exceed 8.6 metres. The height of the proposed development is 9.1 metres.
- [37] The proposed development also requires a variance to the Stepback requirements for Rooftop Terraces pursuant to Section 61 of the *Edmonton Zoning Bylaw*.
- [38] Based on the information provided, the Board is satisfied that the community consultation requirements of the Mature Neighbourhood Overlay have been fulfilled. Two neighbours within the 60-metre notification zone voiced concerns about the development. One neighbour lives adjacent to the site and another neighbour lives across the back lane and to the southeast. Both were concerned about loss of privacy, loss of direct sunlight and changing the character of this neighbourhood, which is largely made up of bungalows.
- [39] The proposed development exceeds the maximum Height of 8.6 metres, that is the Height to the midpoint of the sloped roof, by 0.5 metres. However, the Board notes that the overall Height to the ridge line of the roof is 9.9 metres, which is less than the maximum allowable overall Height of 10.1 metres (Section 52.2(c) *Edmonton Zoning Bylaw*).
- [40] Further, the orientation of the proposed development, with a roadway and a park to the north, means that for most of the day the sun shadowing caused by the development will not significantly affect neighbouring properties.

For these reasons, the Board is of the opinion that the relatively minor variance of 0.5 metres in Height will not have a significant impact on the neighbourhood or on neighbouring parcels of land.

- [41] The Board is of the view that the Stepback requirements for Rooftop Terraces contained in Section 61(1)(a) of the *Edmonton Zoning Bylaw* are primarily intended to provide increased privacy for adjacent property owners.

- [42] The proposed development has two Rooftop Terraces, one at the front and one at the rear. Each Rooftop Terrace has solid side walls that slope from seven and one-half feet near the ridge line of the roof to four feet at the outside, where they meet solid four-foot parapet walls. The result is that each Rooftop Terrace is essentially enclosed with restricted sight lines to neighbouring properties.
- [43] The Board finds that this design feature will provide adequate privacy for neighbouring property owners and has, therefore, waived the requirements of Section 61(1)(a) of the *Edmonton Zoning Bylaw*.
- [44] For all of the above reasons, 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.

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

Board members in attendance: Ms. P. Jones, Mr. R. Handa, Mr. L. Pratt, Ms. E. Solez

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.



**EDMONTON
TRIBUNALS**

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Date: February 3, 2017
Project Number: 230290122-001
File Number: SDAB-D-17-016

Notice of Decision

- [1] On January 19, 2017, the Subdivision and Development Appeal Board heard an appeal that was filed on **December 23, 2016**. The appeal concerned the decision of the Development Authority, issued on December 22, 2016, to refuse the following development:

To construct a Single Detached House with a front veranda, a fireplace, Rooftop Terraces, and a rear uncovered deck (3.05 metres by 6.10 metres).

- [2] The subject property is on Plan 1624261 Blk 1 Lot 32A, located at 14231 - 91 Avenue NW, within the (RF1) Single Detached Residential 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:
- A copy of the Development Permit application with attachments, proposed plans, and the refused Development Permit;
 - Circulation responses from other City Departments;
 - The Development Officer's written submission;
 - The Appellant's written submission; and
 - Renderings of the proposed development submitted by the Appellant.

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*, RSA 2000, c M-26.

Summary of Hearing*i) Position of the Appellant, Mr. M. Craig, representing Marcson Homes Master Builder Ltd.:*

- [7] This property was purchased in 2015 and subsequently subdivided into two lots. One of the lots includes a utility right-of-way.
- [8] The design of both Houses was based on the regulations that were in effect at the time of the subdivision and other similar Houses that were approved and built in Edmonton.
- [9] He referred to a photograph included in his submission to illustrate the house that was used as a guideline for the design of these two Houses.
- [10] The *Edmonton Zoning Bylaw* has recently been amended to address privacy concerns relating to Rooftop Terraces. The design of the house was started almost 12 months ago.
- [11] The Development Officer advised him that the overall Height could not exceed 10.1 metres and this requirement has been met. The second requirement was that the Height to the midpoint of the roof could not exceed 8.6 metres. However, it was impossible to comply with this requirement given the low roof slope and the length of the building.
- [12] Mr. Craig referenced several photographs contained in his written submission to illustrate houses built in 2016 in mature neighbourhoods that are of a similar Height or higher than the proposed development.
- [13] It has been his experience that infill lots have a higher Grade. The Grade of the subject Lot is raised to ensure that drainage is contained on the Lot.
- [14] Extra design features have been included to block sight lines from the proposed front and rear roof top terraces to adjacent neighbours. The proposed terraces will be fully enclosed by solid walls on the sides and at the front and rear. The side walls will be seven and one-half feet high at the back and taper down to four feet at the front. The walls at the front and rear of the terraces will be solid rather than glass and are four feet high.
- [15] Mr. Craig referred to photographs that provided views from the subject site to provide a context of the surrounding area. Across the street to the front there is a three-storey townhouse with walk out roof top terraces with glass paneling. There is also a large park.
- [16] The proposed Rooftop Terrace at the rear of the House will overlook the roof of the proposed Garage and the existing three-car Garage across the rear lane. There are large mature trees surrounding the rear portion of the subject site that will provide screening and on the west side there is a 6.1-metre wide utility right-of-way. These features eliminate any privacy issues.

- [17] In response to a question, Mr. Craig indicated that the neighbouring townhouse could be classified as a two and a half storey structure instead of three storeys because the Rooftop Terraces do not extend the entire width of the structure.
- [18] Mr. Craig referred to the rendering submitted to illustrate that the proposed Rooftop Terraces are inside the roof edges with solid side and front walls.
- [19] They decided on solid walls at the front of the roof top terraces instead of glass to avoid privacy issues for neighbours but to still allow the disbursement of light into the third floor and stairwell.
- [20] In response to a question regarding the rendering which appeared to show there would be a massing effect created by the solid wall at the front of the roof top terrace, Mr. Craig indicated that the rendering did not show the finishing materials that will be used. The use of different finishing materials and colours will reduce any massing impact.
- [21] Although he acknowledged that replacing the proposed solid wall with glass panels is an option in an attempt to reduce the massing, it was his opinion that this could result in privacy concerns for the neighbours.
- [22] The design includes roof top terraces at the front and the rear to maximize square footage. It was his opinion that reducing the depth of the proposed terraces to comply with the two metre setback requirements would make the space less usable and impact the salability of the house.
- [23] Amenity space will be available in the rear yard even with the development of a rear detached garage.
- [24] An easement agreement has been entered into with the affected utility companies regarding the proposed cantilever that will extend into the utility right of way.
- [25] The proposed front terrace is wider than the proposed rear terrace. This proposed house and the development on the adjacent lot are mirror images of each other except for different window placements.
- [26] Mr. Craig acknowledged that enclosing the proposed roof top terraces with solid walls does increase the massing but removing the walls will result in a significant loss of usable space.

ii) Position of the Development Officer, M. K. Yeung:

- [27] Mr. Yeung stated that Development Officers do not have the authority to vary maximum allowable Height. Both this and the proposed houses on the adjacent lot exceed the maximum allowable Height.

- [28] In response to a question, Mr. Yeung stated that the solid walls included in the design of the proposed roof top terraces could help mitigate some privacy concerns and prevent visual overlook onto adjacent properties.
- [29] The front yard of the subject site abuts a public roadway with a park on the other side of that roadway. Also there is higher density development in the form of a townhouse located to the north, which will also mitigate any privacy concerns.
- [30] Lot 32A includes a utility right of way that provides a six-metre separation space between the adjacent lot.
- [31] He considered the elongated roof to be a gable roof.
- [32] Height was calculated using the average grade at the four corners of each lot. There are slight grade differences between the two lots. If the grade of each lot were the same, the Height of both of the proposed houses would be exactly the same.

iv) Rebuttal of the Appellant

- [33] Mr. Craig questioned how the Development Authority calculated grade and indicated that it is difficult to design a house that will meet the Height requirements when the grade of the lot is unknown.

Decision

- [34] The appeal is **ALLOWED** and the decision of the Development Authority **REVOKED**. The development is **GRANTED** as applied for to the development Authority, subject to the following **CONDITIONS**:
1. Within 14 days of approval, prior to any demolition or construction activity, the Applicant must post on-site a development permit notification sign, pursuant to Section 20.2 of the *Edmonton Zoning Bylaw*;
 2. The development shall be constructed in accordance with the stamped and approved drawings;
 3. Landscaping shall be installed and maintained in accordance with Section 55 of the *Edmonton Zoning Bylaw*;
 4. Platform Structures greater than 1.0 metres above Grade shall provide privacy screening to prevent visual intrusion into adjacent properties, pursuant to Section 814.3(8) of the *Edmonton Zoning Bylaw*;
 5. Prior to the release of drawings for Building Permit review, the owner/applicant must enter into an Encroachment Agreement with the City. Please contact 780-496-8487 for information on the agreement.

ADVISEMENTS

2. Lot grades must match the *Edmonton Drainage Bylaw* 16200 and/or comply with the Engineered approved lot grading plans for the area. Contact Drainage Services at 780-496-5576 or lot.grading@edmonton.ca for lot grading inspection inquiries.
- [35] In granting the development, the following variances to the *Edmonton Zoning Bylaw* are allowed:

Height – The maximum Height is 9.2 metres instead of 8.6 metres, requiring a variance of 0.6 metres (Section 814.3.13).

The Stepback requirements for Rooftop Terraces contained in Section 61(1)(a) of the *Edmonton Zoning Bylaw* are waived.

Reasons for Decision

- [36] Single Detached Housing is a Permitted Use in the RF1 Single Detached Residential Zone.
- [37] The proposed development requires a variance to Section 814.3(13) of the *Edmonton Zoning Bylaw* which states that the maximum Height shall not exceed 8.6 metres. The height of the proposed development is 9.2 metres.
- [38] The proposed development also requires a variance to the Stepback requirements for Rooftop Terraces pursuant to Section 61 of the *Edmonton Zoning Bylaw*.
- [39] Based on the information provided, the Board is satisfied that the community consultation requirements of the Mature Neighbourhood Overlay have been fulfilled. Two neighbours within the 60-metre notification zone voiced concerns about the development. One neighbour lives adjacent to the site and another lives across the back lane and to the southeast. Both were concerned about loss of privacy, loss of direct sunlight and changing the character of this neighbourhood, which is largely made up of bungalows.

The proposed development exceeds the maximum Height of 8.6 metres, that is the Height to the midpoint of the sloped roof, by 0.6 metres. However, the Board notes that the overall Height to the ridge line of the roof is 10.0 metres, which is less than the maximum allowable overall Height of 10.1 metres (Section 52.2(c) *Edmonton Zoning Bylaw*).

- [40] Further, the orientation of the proposed development, with a roadway and a park to the north, means that for most of the day the sun shadowing caused by the development will not significantly affect neighbouring properties.

As well, the 6.1-metre utility right of way to the west provides a significant buffer that will mitigate any increased massing effect caused by the variance in Height.

For these reasons, the Board is of the opinion that the relatively minor variance of 0.6 metres in Height will not have a significant impact on the neighbourhood or on neighbouring parcels of land.

- [41] The Board is of the view that the Stepback requirements for Rooftop Terraces contained in Section 61(1)(a) of the *Edmonton Zoning Bylaw* are primarily intended to provide increased privacy for adjacent property owners.
- [42] The proposed development has two Rooftop Terraces, one at the front and one at the rear. Each Rooftop Terrace has solid side walls that slope from seven and one-half feet near the ridge line of the roof to four feet at the outside, where they meet solid four-foot parapet walls. The result is that each Rooftop Terrace is essentially enclosed with restricted sight lines to neighbouring properties.
- [43] The Board finds that this design feature will provide adequate privacy for neighbouring property owners and has, therefore, waived the requirements of Section 61(1)(a) of the *Edmonton Zoning Bylaw*.
- [44] For all of the above reasons, 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.

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

Board members in attendance: Ms. P. Jones, Mr. R. Handa, Mr. L. Pratt, Ms. E. Solez

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.



**EDMONTON
TRIBUNALS**

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Date: February 3, 2017
Project Number: 220587701-001
File Number: SDAB-D-16-316

Notice of Decision

- [1] The Subdivision and Development Appeal Board, at a hearing on December 7, 2016, made and passed the following motion with the consent of all parties:

“That the hearing for SDAB-D-16-316 be TABLED to a date to be determined in January, 2017 at the written request of the Appellant.”

- [2] On January 19, 2017, the Subdivision and Development Appeal Board heard an appeal that was filed on **November 21, 2016**. The appeal concerned the decision of the Development Authority, issued on November 8, 2016 to refuse the following development:

To construct an addition and exterior alterations to an existing Religious Assembly (250-seat addition to 250-seat building and parking lot expansion) (Ethiopian Church).

- [3] The subject property is on Plan RN46 Blk 22 Lots 17-20, located at 11409 - 124 Street NW, within the CNC Neighbourhood Convenience Commercial Zone. The West Ingle Area Redevelopment Plan applies to the subject property.

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

- A copy of the West Ingle Area Redevelopment Plan;
- Photographs from the Appellant;
- A copy of the Development Permit application with attachments, proposed plans, and the refused Development Permit;
- A parking justification from the Development Officer;
- A Transportation Public Consultation from the Development Officer;
- Circulation responses from other City Departments, submitted by the Development Officer; and
- The Development Officer’s written submission; and
- On-line responses from two properties in opposition to the proposed development.

Preliminary Matters

[5] The Board made and passed the following motion:

“That SDAB-D-16-316 be raised from the table.”

[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, Ms. F. Hansen of Superior Buildings & Design Ltd.*

[9] Ms. Hansen indicated that their initial application proposed 250 additional seats for a total of 500 seats, but they now want to amend their application to 50 additional seats, for a total of 300 seats.

[10] The intent of the proposed development is to provide more space and not necessarily more seats.

[11] The subject Site used to be a gas station and has been their church for 20 years.

[12] Occasionally parishioners are forced to stand or sit in the vestibule for Sunday services.

[13] The existing green space on their property will be converted into parking stalls.

[14] Their goal with this proposal is to maximize the site and building size so they do not have to reapply every few years for further expansion.

[15] She referred to a photograph to show the crowded indoor space during a typical service. A second photograph showed a vacant parking stall during a service, which demonstrated that they were not always at capacity for parking. She indicated that the parking lot is rarely at capacity during a Sunday service.

[16] At present they only have one service on Sunday. They do not want multiple services on Sunday, but if the expansion is not approved, they may have to.

[17] With respect to the Development Officer's calculation of 36 on-site parking stalls, she referred to the parking lot plan to show that there are 39 on-site parking stalls proposed.

- [18] Regarding the variance required for the parking lot Setback, the proposed parking lot plans are based on the boundaries of the existing parking lot. They wish to have the Setback requirement waived.
- [19] With regard to the alley access to the parking lot, Ms. Hansen indicated that she had a meeting with Transportation Services prior to their Development Permit application and was advised that the alley access was acceptable. Based on that conversation, she was under the impression that no road and curb upgrades would be required.
- [20] They conducted a parking review on November 27, 2016 for a Sunday service and there were five parking stalls available.
- [21] Many parishioners take public transportation and/or taxis and therefore do not require parking.
- [22] There is on-street parking available on 113 Avenue, 114 Avenue and 115 Avenue. 124 Street does not have parking restrictions on weekends.
- [23] With regard to the loading space requirement, Ms. Hansen indicated that nothing is delivered to the church and they have no need for a loading zone. They would like this requirement waived.
- [24] Archbishop Abraham indicated that the church has been in existence for 20 years.
- [25] The expansion of their church is required to accommodate a new generation of families.
- [26] They have never received any complaints during their 20 years in existence and they try to be respectful neighbours.
- [27] Ms. Hansen indicated that their Orthodox denomination holds services on Christmas and Easter but these are not celebrated on the same days as Canadian statutory holidays. As well, the services on these two occasions are at midnight. In her opinion, this breaks up the parking demand during those busy times.
- [28] With respect to questions from the Board, Ms. Hansen provided the following:
- a. If they had to comply with the Setback requirement, two parking spaces would be removed.
 - b. There is a major bus route with bus stops on each side of 124 Street near their property.
 - c. She estimates that there are approximately 20 off-site parking spaces on the streets abutting the frontage and flank of their property.

- d. Approximately 75 parishioners attend a normal Sunday service; some days there are up to 130 parishioners.
- e. With regard to the photograph demonstrating the indoor service, Mr. T. Mogess, a Senior of the church, indicated that most people stand during prayer.
- f. There is no daycare or similar service within the church, however there is a Sunday school for the children located in the basement during the Sunday service which is on the main floor.
- g. There are four Eastern Orthodox churches in Edmonton.
- h. They clarified that the hours of operation during their Sunday service are between 7:00 a.m. and 11:00 a.m. The majority of parishioners have left the church by 11:00 a.m.
- i. Ms. Hansen clarified that they are proposing to build 10 parking stalls in addition to the 29 existing stalls.
- j. Although the *Edmonton Zoning Bylaw* requires 75 on-site parking stalls for 300 seats, it does not take into account parishioners using public transportation and the available on-street parking.

ii) *Position of the Development Officer, Mr. I. Welch*

- [29] With respect to expanding the church to allow for more comfortable space and more parishioners, the reality of the current situation is that the parking lot is full or mostly full during Sunday service.
- [30] In his view, the proposed expansion of the parking lot is not at the same level as the proposed building expansion. This will lead to vehicular spillover onto neighbouring roadways.
- [31] With this expansion, it is about the impact it will have and whether that impact can be mitigated. He reviewed this application with Transportation Planning, who had concerns about the parking spillover. Despite the Appellant's indication that they want to amend their application to 300 total seats from the initially proposed 500, he still believes his decision to refuse the development permit is sound.
- [32] He reiterated that there is enough information to show that the existing parking lot does not have sufficient space and the proposed building expansion will further impact the neighbourhood.
- [33] With respect to questions from the Board, Mr. Welch provided the following:

- a. He indicated that the loading space and Setback requirements are less of a concern than parking. His main concern is the parking deficiency and the spillover onto adjacent roadways as well as the fact that access to the parking lot will be solely through the alley. Residential alleys are not meant to accommodate non-residential uses, which is why the regulations prohibit Religious Assemblies from using alleys that abut residential properties.
- b. He acknowledged that the proposed parking plan accommodates 39 parking stalls and not 36 as he had stated in his reasons for refusal.
- c. With respect to the fact that all 20 people who responded to the neighbourhood consultation process did not object to the proposed development, he indicated that he felt the community consultation had not been conducted properly by the Appellant. He indicated that a proper community consultation requires the applicant to return to properties whose residents were not home at the first round. Notwithstanding the positive response, he decided to err on the side of caution because of the potential impact. The Presiding Officer pointed out that the memorandum from Transportation Planning dated October 18, 2016 indicates that the community consultation was conducted on three separate days at three separate times during the day, which seems to indicate that the Development Officer's concerns about the adequacy of the consultation were unfounded.
- d. Mr. Welch did consider the fact that some parishioners walk and use public transportation. However, the documentation submitted to him indicated that a large portion of parishioners use vehicles.
- e. With respect to the fact that the church only holds a service once a week for a limited time, he indicated that his main concern is the intensity of the use. With the intense level occurring even once a week, it still impacts the neighbourhood.
- f. There was no parking variance granted when the Religious Assembly was approved 20 years ago. Mr. Welch stated that in the 1990s the parking regulations of the old Land Use Bylaw were more generous.
- g. He confirmed there is a commercial strip to the north that abuts the same alley.
- h. He could not comment on whether there is another Religious Assembly in the inner city with adequate on-site parking but he indicated that church parking is an on-going issue.
- i. He is unaware of any parking or traffic complaints with this development.

iii) Position of Mr. and Mrs. Dusseault, Affected Property Owner in Opposition to the proposed development

- [34] The church has been a peaceful neighbour and there have never been noise issues but parking has been a concern.
- [35] They are the property owners of the apartment building immediately north of the subject Site.
- [36] Tenants in their building have indicated that when the church parking lot is full, parishioners park in the alley, which has blocked access. They are concerned with the ramifications if there is ever an emergency and the alley is blocked.
- [37] 124 Street is congested with vehicle parking and traffic and they are concerned that there are not enough crosswalks to accommodate the number of people attending Sunday service.
- [38] They feel that there is the potential for the church to hold other events, such as weddings.
- [39] In their opinion, there is a tendency to drive in the winter due to the harsh climate and aging population.
- [40] There are no street side businesses like restaurants or cafes within a three block radius, so there is no reason for people to park in the church parking lot on non-service days.
- [41] On-street parking spaces will be further reduced with more infill development occurring in the area.
- [42] When the church holds outdoor summer celebrations, it causes mini-traffic jams.
- [43] There is already a parking problem and they feel it will get worse if the subject Site cannot accommodate parking.
- [44] There are several renters in the area who, in their opinion, do not have the same stake in the neighbourhood as property owners. Some of the approvals received in the course of the community consultation may have been from renters. This is not the same as approval from a property owner.

iv) Rebuttal of the Appellant

- [45] Ms. Hansen indicated that the parking impact study from the November 27, 2016 service determined that out of 130 parishioners, 18 walked, 9 took a taxi, and 29 took a bus.
- [46] She indicated that most of the parishioners cannot afford a car.
- [47] There is a marked crosswalk in front of their property on 124 Street and the City would not allow a crosswalk between two bus stops if there was a safety issue.

[48] She is concerned about some of the Development Officer's proposed conditions if the development is approved, particularly Condition 2 relating to an environmental site assessment. She does not understand why an environmental site assessment would be required since the church has existed on the subject Site for 20 years.

Decision

[49] 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) The development shall be constructed in accordance with the stamped and approved drawings.
- 2) The maximum number of parishioners allowed during a regular, weekly service shall not exceed 300. More may be allowed during Orthodox Christmas and Easter services.
- 3) **WITHIN 14 DAYS OF APPROVAL**, prior to any demolition or construction activity, the applicant must post on-site a development permit notification sign (Section 20.2).
- 4) **PRIOR TO THE RELEASE OF DRAWINGS FOR BUILDING PERMIT REVIEW**, the applicant shall provide the Development Officer with a copy of a Phase One Environmental Site Assessment that is completed and signed off by a Qualified Environmental Specialist and confirms that the Site is suitable for the full range of development contemplated in this Permit, to the satisfaction of the Development Officer. The Environmental Site Assessment shall include a comparison of any previous environmental information on record to the most recent Alberta Environment Criteria, and any additional investigation necessary to prove site suitability. This could include the following (not limited to): Phase II ESA, Remediation Report, and/or Risk Management Plan.

Failure to provide such an assessment within two years of the date of issuance of this Permit, shall result in the expiry of this Permit pursuant to Section 22.4(a)(ii) of the Edmonton Zoning Bylaw 12800.

- 4) **PRIOR TO THE RELEASE OF DRAWINGS FOR BUILDING PERMIT REVIEW**, the applicant or property owner shall pay a Lot Grading Fee of \$220.

- 5) 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. Landscaping shall be in accordance to the approved landscape, Section 55 and to the satisfaction of the Development Officer. (Reference Section 55.8).

- 6) PRIOR TO THE RELEASE OF DRAWINGS FOR BUILDING PERMIT REVIEW, the owner must enter into a Municipal Improvement Agreement with the City for the following improvement:

- a) filling in of the existing access approximately 8.5 m east of the west property line on the north side of 114 Avenue.

Engineering Drawings are not required for this Agreement. However, construction must meet the City of Edmonton Design and Construction Standards. 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 \$8000.00 to cover 100% of construction costs. The Agreement will be forwarded directly to the owner for their signature.

- 7) The existing 6.7 m commercial access approximately 8.5 m east of the west property line on the north side of 114 Avenue must be removed and filled in with curb, gutter and sidewalk constructed as per City of Edmonton Design and Construction Standards and the boulevard restored to grass, as per the Sustainable Development memorandum dated 18 October 2016.

- 8) All access locations and curb crossings shall have the approval of the Transportation Planning and Engineering Department prior to the start of construction. (Reference Section 53(1)).
- 9) 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.
- 10) 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-construction-maintenance-permit.aspx
- 11) Any alley, 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 alley, 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.
- 12) Bicycle parking shall be provided in accordance to Section 54.3 and to the satisfaction of the Development Officer.
- 13) 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.

- 14) Any outdoor lighting for any development shall be located and arranged so that no direct rays of light are directed at any adjoining properties, or interfere with the effectiveness of any traffic control devices. (Reference Section 51 of the Edmonton Zoning Bylaw 12800).

NOTES:

- 1) Signs require separate Development Applications.
- 2) The garbage location has not been identified on the site plan. Garbage bins must be located so that all turning maneuvers for the waste management vehicles are accommodated on site.
- 3) Any further parking deficiencies will require parking justification.

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

1. The minimum required (west) Setback of 4.5 metres per section 310.4(5) is varied to permit a deficiency of 1.27 metres, thereby decreasing the minimum Setback to 3.23 metres.
2. Section 310.4(7) is waived to permit parking in the required Setback.
3. The minimum required 75 on-site parking spaces per Section 54.2, Schedule 1(A)(45) is varied to permit a deficiency of 36 parking spaces, thereby decreasing the minimum required on-site parking spaces to 39.
4. Section 54.4, Schedule 3(2) is waived to eliminate the required loading space.
5. Section 71.3(f) is waived to allow vehicular access from the abutting Lane.

Reasons for Decision

[51] The proposed development, an addition and exterior alterations to a Religious Assembly, is a Discretionary Use in the (CNC) Neighbourhood Convenience Commercial Zone.

[52] With respect to the variance regarding the loading space, the Board accepts the evidence of the Appellant that there is no need for a loading space. On the occasions when they do need deliveries, these will most likely occur outside of regular church service hours and there will be adequate space in the parking lot.

- [53] With respect to the Setback variance, the Board is satisfied that extending the parking lot into the Setback will not have any significant impact on the adjacent properties or the neighbourhood. The parking lot expansion will have the same Setback as the existing parking lot. Further, the landscaping to be provided will mitigate the impact of the reduced Setback.
- [54] The real issues of this appeal are the required variances to the number of parking spaces that must be provided and the access to the Lane that abuts a zone where Single Detached Housing is a permitted use.
- [55] At the beginning of the hearing, the Appellant advised that it wanted to amend its application. Rather than an additional 250 seats, it wants an additional 50 seats in the proposed expansion of the building. This reduces the number of parking spaces required under the *Edmonton Zoning Bylaw* from 125 to 75 spaces. Since the amended application is a reduction in the proposed intensity of the proposed use and does not involve alterations to the plans, the Board decided to consider the amended application.
- [56] The Board accepts the evidence of the Appellant that on most Sundays there are between 75 to 130 parishioners in attendance. It is only during Christmas and Easter services that the congregation can swell to as many as 500 parishioners. Because this is an Orthodox church, on those occasions the services are held on different days than non-Orthodox holidays, meaning that overflow parking will not impact on-street parking to the same degree it would if the holidays coincided.
- [57] The church only holds one service on each Sunday for approximately four hours, which is completed prior to noon.
- [58] Outside of Sunday peak hours the parking lot is relatively vacant for the remainder of the week.
- [59] There are no other existing or proposed church services or daycare service offered.
- [60] There are existing bus routes on 124 Street and the Board accepts the evidence that a significant number of parishioners take public transportation or walk.
- [61] At the request of Transportation Planning, the Appellant undertook community consultation of the adjacent 52 properties. Transportation Planning appear to be satisfied with the adequacy of that process. Despite the reservations of the Development Officer and the affected persons who attended the hearing about the community consultation process, the Board is of the view that it was adequate and it gives a fair representation of the views of those residing within the notification area. Twenty residents responded and none of them objected to the proposed 250-seat addition. Of those 20 residents, many are located along the Lane through which access to the parking lot will be attained.
- [62] Unrestricted on-street parking is available on 113 Avenue, 114 Avenue and 115 Avenue. As well, there are no parking restrictions on 124 Street on weekends.

- [63] The affected property owners who attended the hearing in opposition own the apartment building immediately north of the church. They were concerned about parishioners parking illegally in the Lane. However, this is a Bylaw Enforcement issue, not a development issue. The Board notes that the tenants of that apartment building have their own designated, onsite parking spots, so they won't be significantly impacted by parishioners using parking spaces on the adjacent streets.
- [64] There are no nearby businesses on 124 Street that will be competing for on-street parking during church service hours.
- [65] The Board notes that the proposed development is located on a corner site. This means that vehicles using the Lane for access to the church parking lot will travel a relatively short distance on the Lane. Accordingly, use of the Lane by parishioners will have a limited impact on those Single Detached Houses that abut the Lane.
- [66] For all of the above reasons, the Board is of the opinion 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.

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

Board Members in Attendance;

Ms. P. Jones, Mr. R. Handa, Mr. L. Pratt, Ms. E. Solez

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.

