



**EDMONTON  
TRIBUNALS**

*Subdivision &  
Development  
Appeal Board*

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Date: June 1, 2017  
Project Number: 242695476-001  
File Number: SDAB-D-17-087

**Notice of Decision**

- [1] On May 17, 2017, the Subdivision and Development Appeal Board (the “Board”) heard an appeal that was filed on **April 19, 2017**. The appeal concerned the decision of the Development Authority, issued on April 18, 2017, to refuse the following development:

**To construct a two-Storey Accessory building (main floor Garage, 8.83 metres by 6.85 metres, second floor Garage Suite, 9.44 metres by 7.16 metres), and to demolish an existing Accessory Building (rear detached Garage)**

- [2] The subject property is on Plan RN4A Blk 134 Lot 17, located at 10756 - 84 Avenue NW, within the RA7 Low Rise Apartment Zone. The Medium Scale Residential Infill 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;
  - The Appellant’s written submissions; and
  - Community Consultation.

**Preliminary Matters**

- [4] At the outset of the appeal hearing, the Chairman confirmed with the parties in attendance that there was no opposition to the composition of the panel.
- [5] The Chairman 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. A. Nguyen:*

- [7] Mr. Nguyen typically works with the Development Officer to resolve any issues. However, due to the height restriction for low slope roofs, the Development Officer had no choice but to refuse this development permit application.
- [8] He recently attended a Garage Suite seminar with a Senior City Planner and was advised that changes are being proposed to the Garage Suite regulations contained within the *Edmonton Zoning Bylaw* that could address all of the reasons for refusal by the time that a building permit is issued for the proposed development.
- [9] Mr. Nguyen referenced his written submission to address all of the reasons for refusal.
- [10] The maximum allowable height for a flat roof Garage Suite is currently 5.5 metres but is 6.5 metres for a Garage Suite with a pitched roof. It was his opinion that there is an unfair height restriction for flat roof designs which makes the second floor space feel cramped and congested. The proposed variance of 0.5 metres is nominal and would allow a standard 8 feet second floor ceiling height.
- [11] The subject site is adjacent to two three storey flat roof apartment buildings which are substantially higher.
- [12] The subject lot is approximately 400 square metres in size which is the minimum size for a Garage Suite. It was designed to build to the maximum allowed on the lot. Cantilevered spaces were proposed to add some design feature to the structure. Even with 15 percent site coverage for the garage, the total site coverage is still below the maximum allowable site coverage of 40 percent.
- [13] Parking requirements are also being reviewed and may be reduced from three spaces to two spaces and to one space for sites that are located on a major transit road or close to an LRT station. This property is located on a major transit road and close to the University LRT station. It is located in a major rental hub for the University of Alberta and the tenants of this suite will most likely walk to school.
- [14] The proposed garage suite will improve the appearance of the laneway and increase density in this neighbourhood.
- [15] None of his neighbours were opposed to the proposed development.

[16] Mr. Nguyen provided the following answers to questions:

- a) The flat roof was chosen to provide a more contemporary design. The adjacent apartment buildings have flat roofs and there is a flat roof house located across the street.
- b) He chose not to cancel his development permit application and wait for the proposed Bylaw amendments to be approved because of time constraints.
- c) He and his wife plan to move from a large house into the garage suite. The large storage area on the main floor of the garage will accommodate some of their personal items that require temperature controlled secure indoor storage.

*ii) Position of an Affected Property Owner in Support of the Appellant, Mr. Hauer:*

[17] Mr. Hauer lives three blocks from the subject site and owns a property in the 60 metre notification radius.

[18] He supports the proposed development and the variances required because it is characteristic of the neighbourhood.

*iii) Position of the Development Officer, Mr. J. McArthur, representing Mr. K. Yeung, who provided the following responses to questions:*

[19] Mr. McArthur suggested that the Board may want to include the area of the proposed storage area on the main floor of the Garage in the calculation of floor area if the space is solely for the use of the occupants of the proposed Garage Suite.

[20] The proposed Bylaw amendments were prepared by the Bylaw Amendment team. He was aware that several changes to the regulations for Garage Suites were being proposed but he could not provide any specific details.

[21] A Garage Suite is accessory to the principal dwelling on a site and one of the ways to ensure that it remains accessory is to restrict the height and the size to ensure that it is smaller than the principal dwelling.

[22] The maximum allowable height of a flat roof structure is less than a structure with a pitched roof to reduce the massing impact.

[23] He would have considered the other required variances with the exception of height which a Development Officer cannot vary, because the subject site is located in a high density neighbourhood close to public transit and the LRT. The proposed development also complies with the objectives of the *Garneau Area Redevelopment Plan* and the *Municipal Development Plan*.

[24] A variance of 24.86 square metres would be required if it was the decision of the Board to add the area of the proposed storage space on the main floor to the maximum allowable Floor Area of the proposed Garage Suite.

*iv) Rebuttal of the Appellant*

[25] The storage space on the main floor of the garage was never discussed with the Development Officer.

[26] This storage space can be used by tenants of the house and the proposed garage suite.

[27] His own personal vehicle will be parked inside the proposed garage.

**Decision**

[28] 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. Prior to any demolition or construction activity, the applicant must post on-site a development permit notification sign. (Section 20)
3. Immediately upon demolition of the building, the site shall be cleared of all debris.
4. Eave projections shall not exceed 0.46 metres into required yards or Separations spaces less than 1.2 metres. (Reference Section 44.1(b))
5. Only one of a Secondary Suite, a Garage Suite or Garden Suite may be developed in conjunction with a principal Dwelling. (Section 87)
6. A Garage Suite shall not be allowed within the same Site containing a Group Home or Limited Group Home, or a Major Home Based Business and an associated principal Dwelling, unless the Garage Suite is an integral part of a Bed and Breakfast Operation in the case of a Major Home Based Business. (Section 87)
7. Notwithstanding the definition of Household within this Bylaw, the number of unrelated persons occupying a Garage Suite shall not exceed three. (Section 87).
8. The Garage Suite shall not be subject to separation from the principal Dwelling through a condominium conversion or subdivision. (Section 87)

**ADVISEMENTS:**

1. The driveway access must maintain a minimum clearance of 1.5 metres from all surface utilities.

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](mailto:lot.grading@edmonton.ca) for lot grading inspection inquiries.
- [29] In granting the development the following variances to the *Edmonton Zoning Bylaw* are allowed:
1. The maximum allowable Height (to midpoint of parapet) of 5.5 metres as per Section 87.2(a)(ii) is varied to allow an excess of 0.5 metres, thereby increasing the maximum allowed to 6.0 metres.
  2. The maximum allowable Height (to highest point of parapet) of 5.9 metres as per Section 52.1(b) is varied to allow an excess of 0.2 metres, thereby increasing the maximum allowed to 6.1 metres.
  3. The maximum allowable Site Coverage for an Accessory Building of 48.62 square metres as per Section 150.4(5) is varied to allow an excess of 11.28 square metres, thereby increasing the maximum allowed to 59.90 square metres.
  4. The minimum allowable number of Parking Spaces of 3 as per Section 54.2, Schedule 1(A)(2) is varied to allow a deficiency of 1 space, thereby decreasing the minimum allowable to 2 Parking spaces.

### **Reasons for Decision**

- [30] A Garage Suite is a Discretionary Use in the RA7 Low Rise Apartment Zone.
- [31] The Board agrees with the determination of the Development Officer that the proposed development follows the objectives of the *Garneau Area Redevelopment Plan* (Policy Number 2.1) to encourage alternate forms of development; encourage design innovation; and ensure that future redevelopment is compatible with existing development.
- [32] The Board also agrees with the determination of the Development Officer that the proposed Garage Suite complies with many of the densification, renewal and diversity policies and objectives in the City of Edmonton's *Municipal Development Plan, The Way We Grow*:

#### Policy 4.4.1

To ensure neighbourhoods have a range of housing choice to meet the needs of all demographic and income groups and create more socially sustainable communities.

#### Policy 4.4.1.1

Provide a broad and varied housing choice, incorporating housing for various demographic and income groups in neighbourhoods.

As such, the Board finds that the proposed Garage Suite is an appropriate Discretionary Use in the RA7 Low Rise Apartment Zone.

- [33] The Board has granted the required variances for the following reasons.
- [34] There was no evidence provided that would lead the Board to conclude that the Height variances of 0.5 metres to the midpoint of parapet and 0.2 metres to the highest point of parapet, which is the Height that would contribute most to the massing of the proposed Garage Suite, would unduly impact the use, enjoyment or value of neighbouring parcels of land. In fact, evidence was provided that the proposed flat roof design is characteristic of other developments in this neighbourhood.
- [35] The proposed Garage Suite is smaller in scale and lower than the Principal Dwelling on the subject site, appears subordinate to the Principal Dwelling and maintains the appearance of a single family residence which will maintain the character of the site. The Garage and Garage Suite cannot be seen from 84 Avenue and will therefore not impact the streetscape.
- [36] There is an Apartment Building located immediately east of the subject site which is significantly higher than the proposed Garage Suite which will mitigate the required height variances.
- [37] The maximum allowable total Site Coverage for this site, including the proposed Garage Suite is approximately 35 percent, well below the maximum allowable Site Coverage regulation of 40 percent. Therefore, adequate amenity and landscaped areas can still be accommodated on the subject site.
- [38] Based on the evidence provided, the subject site is located approximately 200 metres away from Whyte Avenue and 109 Street, both of which are major transit corridors which will mitigate the deficiency in the required number of onsite parking spaces.
- [39] The Appellant undertook community consultation and everyone who was consulted provided support for the proposed development. In fact, one affected property owner appeared at the hearing in support of the proposed development.
- [40] For all of these reasons, the Board finds that the proposed development with the required variances 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. I. Wachowicz, Chairman  
Subdivision and Development Appeal Board

**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: June 1, 2017  
Project Number: 240201553-001  
File Number: SDAB-D-17-088

**Notice of Decision**

- [1] On May 17, 2017, the Subdivision and Development Appeal Board (the “Board”) heard an appeal that was filed on **April 24, 2017**. The appeal concerned the decision of the Development Authority, issued on April 20, 2017, to refuse the following development:

**To construct a Single Detached House with a front veranda, attached Garage, Rooftop Terrace, rear uncovered deck 3.36 metres by 3.05 metres, fireplace and a Basement Development (NOT to be used as an additional Dwelling)**

- [2] The subject property is on Plan 8057R Blk 2 Lot 8, located at 10044 - 90 Avenue NW, within the RF2 Low Density Infill Zone. The Mature Neighbourhood Overlay and 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:
- Copy of the Development Permit application with attachments, proposed plans, and the refused Development Permit;
  - The Development Officer’s written submissions;
  - The Appellant’s written submissions; and
  - A written submission from affected property owners who reside at 10040 – 90 Avenue NW.

**Preliminary Matters**

- [4] At the outset of the appeal hearing, the Presiding Officer, Mr. Young, advised the parties in attendance that the proposed development is being opposed by the owners of an adjacent property. One of the owners of that property is Mr. Rohit Handa, who is a member of the Board. Mr. Young, Mr. O’Donnell and Mr. Pratt each advised that they had sat on two or three hearings with Mr. Handa but they had no other personal or professional connection with him. They felt that they would be able to provide a fair and impartial hearing. Mr. Young invited those present to voice any concerns they had. No one objected 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 Appellants, Mr. D. Gupta & Ms. K. Gupta:*

- [7] The proposed home at 10044 – 90 Avenue will be their personal residence.
- [8] Mr. Gupta is the Vice-President of Akash Homes Ltd., a greenfield builder and the builder of the proposed house.
- [9] They are seeking approval of the development and request that the Board grant variances to allow vehicular access from the front public roadway, a 1.15 metre variance in the maximum allowable Height, a 2.0 metre variance in the minimum required rear Stepback for the Rooftop Terrace and a 0.93 metre variance in the minimum required right and left side Stepback for the Rooftop Terrace. In addition, they request that the application be approved subject to the conditions identified by Integrated Infrastructure Services.
- [10] Section 814.3(10) does not allow access from the front or flanking public roadway where an abutting Lane exists. The laneway behind the subject site is undeveloped and currently inaccessible due to both the grade of the property and the heavy vegetation covering the back portion of the property. Nine of the 14 houses on 90 Avenue have front attached garages, and all of the new houses have this feature. Therefore, the proposed front attached garage is characteristic with existing houses on the block.
- [11] The Board recently granted a variance to allow vehicular access from the front public roadway for the development at 10066 – 90 Avenue. Therefore, not allowing front vehicular access would create an unnecessary hardship for the Appellants.
- [12] Transportation Planning and Engineering have no technical concerns related to the proposed front access. The Appellants are prepared to comply with Transportation’s recommended conditions.
- [13] The requirements of Section 811.3(3) of the *Edmonton Zoning Bylaw* have been met. SATT Engineering was contracted to conduct a geotechnical assessment and a final report was submitted to the Development Authority on or about April 10, 2017. The report documented a site specific geotechnical investigation and set out recommendations for the design and construction of foundations for the proposed house. It also included a slope stability evaluation of the site, taking into consideration the existing development in the area. Based on their investigations SATT Engineering concluded that the site was suitable for the proposed development.

- [14] A memorandum dated April 11, 2017 from Integrated Infrastructure Services advised that a geotechnical report prepared in 1986 indicated that the entire Lavigne neighbourhood is located on an ancient deep-seated landslide mass. Therefore, adequate information is not available to evaluate the risks to development in Lavigne and all applications in this neighbourhood must be rejected and forwarded to the Board.
- [15] Notwithstanding this, Integrated Infrastructure Services concluded that the geotechnical assessment provided a qualified professional opinion that the subject site could be used safely for the proposed development, with the development restrictions and recommendations outlined in the assessment. In addition Integrated Infrastructure Services provided additional site management guidelines and restrictions.
- [16] All of the guidelines, restrictions and recommendations outlined in Section 7.0 of the geotechnical assessment will be adhered to. They accept that they are fully responsible for suitably protecting surrounding properties and infrastructure during construction and their engineer will review the design of any proposed temporary shoring.
- [17] They are aware that the entire Lavigne neighbourhood is constructed on an ancient deep-seated landslide mass and assume the risks associated with developing at this location.
- [18] They referred to photographs to illustrate the existing neighbourhood and the development along 90 Avenue. Five houses along 90 Avenue have been developed since 2000. There are currently two vacant lots along 90 Avenue that will eventually be redeveloped.
- [19] Houses with many different architectural designs have been permitted on 90 Avenue with a variety of roof styles and heights. Houses built in this small neighbourhood are not typical of other areas that fall within the Mature Neighbourhood Overlay. The massing effect of many of these houses is significant because of the steep slopes and designs that seek to maximize views of the river valley and downtown skyline.
- [20] Many of the houses on 90 Avenue exceed the maximum allowable height of 8.6 metres as well as the highest point of the proposed house, which is 9.75 metres. However, the only portion of the proposed house that exceeds the maximum allowable height requirement is the 33.25 square metres enclosed entrance to the Rooftop Terrace, which comprises 28 percent of the floor space atop the second storey and 30 percent of the length of the house. Strict application of the Height requirement will limit development in Lavigne and prevent property owners from building to match the existing houses in this area.
- [21] Many of the houses along 90 Avenue have been designed with rooftop terraces, rear decks and rear windows to maximize the views.
- [22] There is no fence between the subject lot and the property to the east.

- [23] Ms. Gupta referenced previous decisions of the Board contained in the written submission. These decisions acknowledged development challenges in this area and variances were granted to allow development to proceed.
- [24] Extensive effort was undertaken during the design process to ensure compliance with Bylaw requirements and that the house was characteristic of the neighbourhood. The plans were revised to change the size and location of windows to reduce privacy concerns for neighbouring property owners, a portion of the rooftop terrace that extended along the east side of the house was removed and the rooftop terrace was recessed into the second storey roof to ensure additional privacy for neighbours. It was noted that these changes were made during discussions with the most affected property owners to the east.
- [25] They consulted all of the neighbours who reside within the 60-metre notification radius. Five neighbours provided support, two were opposed and, despite multiple attempts, they could not contact nine property owners. An email was sent to the Strathcona Community League but there was no reply.
- [26] Ms. Gupta responded to Ms. Handa's contention that neighbours were misled during the community consultation. She acknowledged that the neighbourhood consultation form provided by Sustainable Development only described the Mature Neighbourhood Overlay Height variance. However, a full set of plans was shared with all of the neighbours that they contacted and there was no attempt to conceal any aspect of the proposed design.
- [27] She acknowledged that the results of Ms. Handa's community questionnaire are different than the results of their community consultation. However, she took exception to Ms. Handa's contention that their community consultation is without merit and urged the Board to consider all of the neighbourhood feedback.
- [28] Any development on this site will impact the sunlight penetration and privacy for neighbouring property owners. Therefore the Board must determine if the variances being sought materially interfere with or affect the use, enjoyment or value of neighbouring parcels of land. Ms. Gupta disagreed with Ms. Handa's suggestion that the Board is not obligated to grant variances even if this test is satisfied. It was her opinion that if the test for the Board contained in Section 687 of the *Municipal Government Act* is satisfied, the only outcome is to grant the requested variances. The Board is not bound by the limitation on the Development Authority's power to grant variances only if there is unnecessary hardship.
- [29] She took exception to the contention of Ms. Handa that seeking variances is a "bad thing" and that they are being non-compliant. Property owners are allowed to develop their properties and seek variances to the development requirements of the *Edmonton Zoning Bylaw*. Section 814.3(24) of the *Edmonton Zoning Bylaw* expressly contemplates the granting of variances to development regulations.

- [30] Rooftop Terraces are a common feature of the houses along 90 Avenue to take advantage of the view and to maximize outdoor space. Four of the five houses built since 2000 on the north side of 90 Avenue have Rooftop Terraces.
- [31] The Stepback requirements for Rooftop Terraces were adopted by City Council in August 2016. Therefore, the existing Rooftop Terraces on 90 Avenue were not subject to the Stepback limitations.
- [32] There are two minimum Side Stepback requirements for Rooftop Terraces depending on whether the Site Width is less than or greater than 10.0 metres. The Rear Stepback requirement for the Rooftop Terrace is 2.0 metres from the Rear Lot Line.
- [33] The subject site is 10.05 metres wide, just five centimetres more than the 10.0-metre threshold for the lesser Side Stepback requirement of 1.0 metres. The proposed Side Stepback is 1.07 metres and there is no Rear Stepback, which results in a Rooftop Terrace space of approximately 37 square metres. If a variance is not granted from the minimum 2.0-metre side and Rear Stepback requirements, the Rooftop Terrace will be significantly reduced to 12.3 square metres. This will limit their use and enjoyment of the Rooftop Terrace and affect the value of the house. They are not seeking to avoid Stepbacks entirely but are attempting to strike a balance between the new Stepback requirements and the design, character and appearance of other houses on 90 Avenue.
- [34] She acknowledged the privacy concerns raised by Ms. Handa. However, they have attempted to mitigate privacy issues by setting the Rooftop Terrace into the roof and by using additional privacy screening in the form of translucent glass. She suggested that Mr. and Mrs. Handa could not have reasonably expected a 2.0-metre Stepback for the Rooftop Terrace because they purchased a house in a neighbourhood with many existing rooftop terraces and before the regulations were amended in August 2016.
- [35] There is a significant elevation difference between the subject site on 90 Avenue and the houses on 91 Avenue. The slope of the land with the heavy vegetation between abutting lots will minimize privacy concerns arising from the lack of a Rear Stepback on the proposed Rooftop Terrace.
- [36] She referenced the sight line comparison study submitted by Ms. Handa and suggested that the expectation for rear yard privacy is unrealistic. There is no fence between the subject site and the Handa property to the east. The rear yard will be visible whether or not a variance is granted for the Stepback requirements.
- [37] Section 814.3(13) of the Mature Neighbourhood Overlay allows a maximum Height of 8.6 metres. The Height of the proposed house is 9.75 metres. However, the only portion of the proposed house that exceeds the maximum Height is the 33.25 square metres enclosed entrance to the Rooftop Terrace, which occupies 28 percent of the floor space atop the second storey. Even if a variance is not granted for the maximum allowable Height, the proposed house will be taller than Mr. and Mrs. Handa's house.

- [38] The Board must determine whether or not the variance of 1.15 metres required for the enclosed entrance to the Rooftop Terrace in and of itself materially affects neighbouring property owners.
- [39] The shadow study prepared by Ms. Handa applied the 1.15 metre height variance over the entire house, making the height of the entire house 9.75 metres, which is not accurate. The only portion of the house that is 9.75 metres high is the enclosed entrance to the Rooftop Terrace, which is located near the southern façade, furthest away from Mr. and Mrs. Handa's rear yard. Therefore, the findings of the study are not reflective of the only portion of the house that exceeds the maximum allowable Height requirement.
- [40] The enclosed entrance to the Rooftop Terrace will have a minimal visual impact from the street. It is setback from the front of the house and will be largely obscured by the gabled roof atop the second floor. A gabled roof will have a lesser visual impact than a flat roof design. Exterior finishing and colour variations on the front façade will be chosen to break up the massing and height of the proposed house.
- [41] There are no houses located south of the subject site across 90 Avenue. Accordingly, the small portion of the house that exceeds the maximum allowable Height requirement will not affect the view of existing property owners.
- [42] It is possible to comply with the Rear Stepback requirement but it was a design choice to submit a plan requiring a variance in order to preserve the view as a private amenity. While they intend to live in this house for some time, they have to be cognizant that an eventual purchaser will expect a Rooftop Terrace similar in size and design to the other houses on 90 Avenue.
- [43] In response to a question from the Board, she acknowledged that the third floor development is more than just an enclosed entrance to the Rooftop Terrace. It is intended to be a lounge.
- ii) Position of the Development Officer, Mr. B. Langille, who provided the following responses to questions:*
- [44] Advice from the Integrated Infrastructure Services Department was sought regarding this application and it was their recommendation to refuse the application based on geotechnical concerns.
- [45] It was concluded that the subject site was considered suitable for the proposed development provided the restrictions and recommendations of the geotechnical assessment were followed. However, the level of risk posed to development in this neighbourhood could not be quantified.

- [46] He conceded that based on the width of the lot, the smaller Stepback requirements for the proposed Rooftop Terrace could have been considered but he refused the application based on the Height and geotechnical concerns.
- [47] He explained that the Grade of the site was calculated by using the front four corners of the site because of the significant slope of the site from the front to the rear.

*iii) Position of an Affected Property Owner in opposition to the proposed development, Ms. J. Handa:*

- [48] Ms. Handa and her husband own the most affected property to the east and are opposed to the variances required for the proposed development. The proposed development with the required variances will materially interfere with and affect the use, enjoyment and value of their property.
- [49] Their property is one of the few in this area with a usable rear yard and was one of the primary reasons that they purchased the property only 16 months ago. Most of the adjacent lots experience significant grade changes from the front to the rear, rendering the rear yards virtually unusable for recreational activities.
- [50] Some sunlight is able to penetrate into the rear yard and there is a relative degree of privacy.
- [51] Sunlight and privacy are two of the paramount qualities valued in the Mature Neighbourhood Overlay. Sunlight is a precious commodity along this block and should not be disregarded lightly. Access to sunlight has a direct effect on the use and enjoyment of their property and was one of the primary reasons for purchasing the property. The proposed development will also create privacy concerns which would limit the use and enjoyment of the rear yard.
- [52] She referenced the shadow and sight line comparative study contained in her written submission to demonstrate the impact of the required Height variance. Ms. Handa advised that she personally conducted the shadow studies. She has been trained and has the expertise to conduct these studies, which she regularly does in the ordinary course of her occupation.
- [53] The shadow study demonstrates that the additional 1.15 metres of Height will result in a reduction of solar penetration up to 81 hours per year at certain locations within the rear yard. These hours are lost primarily during summer afternoons, which are when the rear yard would be most used. For example, on August 21<sup>st</sup> at 2:00 p.m., an additional eight square meters of the yard would be in shadow when compared to the maximum Height of 8.6 metres permitted under the Mature Neighbourhood Overlay.

- [54] The diagrams included in the shadow and sight line studies are for representative purposes only. All of the building Heights were modelled based on the calculated Heights of previous approvals that were obtained from the City website. She conceded that they are not exact but she felt they provide a fair representative of the impacts of the required Height variance of 1.15 metres.
- [55] She referenced a diagram contained in the submitted shadow and sight line comparative studies to illustrate the portion of their rear yard that will be visible from the proposed Rooftop Terrace. It was her opinion that these diagrams demonstrate the effectiveness of the required Stepback requirements in addressing privacy concerns.
- [56] During discussions with their neighbours, they determined that the neighbours had not been made aware of the extent of the development and they therefore sought written feedback from their neighbors, which is contained in the written submission. The property owners most affected by the proposed development do not support the application, in fact, many were not consulted at all or were not given full information regarding the development. The results of their feedback show that none of the affected neighbours supported the proposed development and two nearby property owners did not respond, which is not an indication of either support or non-support.
- [57] Ms. Handa referenced the previous decisions of the Board contained in the Appellant's written submission and noted that specific Height variances were not granted in those decisions.
- [58] The Appellants were aware of the development restrictions prior to purchasing the subject site and were aware of their opposition from the earliest design stages for this development.
- [59] The Appellant is a sophisticated residential developer and was fully informed of the development requirements at the outset of this project. From the outset, the Appellant was aware of their concerns regarding the required Height variances and assured them that their suggested options for complying with the Height requirements would be addressed.
- [60] She and her husband welcome development, especially in this unique neighbourhood. They attempted to work with the Appellant and tried to assist them with their application so that variances would not be required.
- [61] It was her opinion that the Appellant has not demonstrated reasonable justification for granting the required variances. The effect of the variances would be to allow the Appellant to build a bigger house, outside of the building pocket, with greater value which would have a detrimental effect on the use, enjoyment and value of their property.

- [62] They did not build a fence between the subject site and their property because the house on the subject site was vacant for years. The expectation was that a fence would be built when the property was developed.
- [63] She acknowledged that the community consultation results contained in the written submission of the Development Officer did comply with the requirements of the Mature Neighbourhood Overlay.
- [64] She acknowledged that the shadow study that she prepared was based on a 1.15-metre Height variance for the length of the entire structure, which is 68 feet, instead of only the over-height portion, which is 21 feet long and located in the middle of the house.
- [65] There will still be some shadowing impact on their property because the proposed house is longer and higher than their house.
- [66] If both variances are granted and assuming that privacy screening in any form is provided, the massing effect and shading of their rear yard will increase. If no privacy screening is provided, there would still be some increased shading on their property from the required guardrails. However, the absence of any screening would significantly affect their privacy.
- [67] They purchased this property approximately 16 months ago. There was an old single storey house that was built in 1910 on the subject site. The previous owner demolished the house in order to sell the lot.
- [68] Photographs submitted by the Appellant were referenced and Ms. Handa confirmed that the high rise buildings located on Saskatchewan Drive and the bank itself cast a shadow on the houses along 90 Avenue, especially during the winter months.
- [69] They expected that the subject site would be purchased and redeveloped.
- [70] They have a view of downtown during the winter months but not during the summer months. The tradeoff is that they have a usable rear yard that is relatively flat. As one progresses west down 90 Avenue, the rear yards of the lots become steeper and unusable.
- [71] Their house was built in 1989 and was the first redevelopment along this block. Some variances were required for the development of the house, which was built before the adoption of the Mature Neighbourhood Overlay. There is a green space with public stairs to access Saskatchewan Drive located east of their property and the rear lane ends at their property.



*iv) Rebuttal of the Appellants:*

- [72] The shadow study submitted by Ms. Handa does not provide an accurate representation of the impact of the proposed third storey enclosure on her property. Therefore, the Board cannot put any weight on that model and its findings.
- [73] The peak of the second storey gable roof will be higher than 8.6 metres. Therefore, the practical increase in height is less than 1.15 metres.
- [74] The proposed Rooftop Terrace does not require a variance. A variance is only required for the Stepback requirements for the proposed Rooftop Terrace.
- [75] The sight line comparative study did not consider the provision of privacy screening.
- [76] It was Ms. Gupta's opinion that the proposed development will increase the value of this site as well as the other properties in this neighbourhood.

**Decision**

- [77] The appeal is **ALLOWED** and the decision of the Development Officer 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 approved drawings.
  2. Any future basement development may require development and building permit approvals. A Secondary Suite shall require a new development permit application.
  3. The Basement elevation of structures of two or more Storeys in Height shall be no more than 1.2 metres above Grade. The Basement elevation shall be measured as the distance between Grade level and the floor of the first Storey.
  4. Platform Structures greater than 1.0 metres above Grade shall provide privacy screening to the satisfaction of the Development Officer to prevent visual intrusion into adjacent properties.
  5. Landscaping shall be developed in accordance with Section 55 of the *Edmonton Zoning Bylaw*.
  6. Notwithstanding the Landscaping regulations of Section 55 of the *Edmonton Zoning Bylaw*, where new development consists of replacement or infill within areas of existing housing, Landscaping shall be implemented as a component of such new development in order to replace vegetation removed during construction or to reinforce an established Landscaping context in the area.
  7. Landscaping shall be provided on a Site within 18 months of the occupancy of the Single Detached House. Trees and shrubs shall be maintained on a Site for a minimum of 42 months after occupancy of the Single Detached House (Reference Section 55.2.1).

8. Two deciduous trees with a minimum Caliper of 50 millimetres, one coniferous tree with a minimum Height of 2.5 metres and six shrubs shall be provided on the property. Deciduous shrubs shall have a minimum Height of 300 millimetres and coniferous shrubs shall have a minimum spread of 450 mm (Reference Section 55.2.1).
9. All Yards visible from a public roadway, other than a Lane, shall be seeded or sodded. Seeding or sodding may be substituted with alternate forms of ground cover, including hard decorative pavers, washed rock, shale or similar treatments, perennials, or artificial turf, provided that all areas of exposed earth are designed as either flower beds or cultivated gardens (Reference Section 55.2.1).
10. The ongoing role of the geotechnical engineer in design and construction review and inspection will be important. Strict compliance to the development restrictions outlined in the geotechnical report shall be adhered to during the design, construction, and future use of these lands.
11. The Applicant shall be aware that they are fully responsible to suitably protect surrounding properties, structures, and infrastructure from any adverse impacts during construction. The responsible engineer shall provide review of the design of any proposed temporary shoring and shall ensure that adequate retaining structures are constructed both for the proposed development and to suitably protect neighboring properties, structures and infrastructure from any adverse impacts during construction.
12. Excavations and backfill, temporary shoring, and the sequence of construction phases and activities shall also be carried out in accordance with the recommendations of the geotechnical consultant. In this regard, it is expected that SATT Engineering Ltd. shall confirm their review of the drawings to verify that these accurately reflect their recommendations.
13. The recommendations of the geotechnical consultant shall also be followed with respect to surface and groundwater drainage at the site as part of design and construction, as well as ultimately for site grading and roof leaders, sumps, and other collection structures established as part of the development. Where possible, roof leaders, downspouts, and sump pump discharge spouts shall not be allowed to discharge onto the ground surface. They shall be connected to the storm sewer system.
14. Grading of the site shall not allow any ponding of water or the focused discharge of water toward or along the slopes. Surface runoff shall be directed away from the slopes and into the storm drainage system where possible.

#### **TRANSPORTATION CONDITIONS:**

1. The proposed 5.8 metres access to 90 Avenue located 1.3 metres from the east property line shall be constructed as a private crossing to the current City of Edmonton standards. The owner/applicant must obtain a crossing permit, available from Development and Zoning Services, 2<sup>nd</sup> Floor, 10111 – 104 Avenue NW.
2. 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](http://www.digshaw.ca)) should be contacted at least two weeks prior to and/or removals shall be at the expense of the owner/applicant.
3. 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 *Edmonton Zoning Bylaw*. The sidewalk 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.
  4. Any hoarding or construction taking place on road right-of-way requires an OSCAM (On-Street Construction and Maintenance) permit. 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/bylaws/licences/licences\\_permits/oscam-permit-request.aspx](http://www.edmonton.ca/bylaws/licences/licences_permits/oscam-permit-request.aspx).

OSCAM permit applications require Transportation Management Plan (TMP) information. The TMP must include:

- the start/finish date of the 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.

#### **DEVELOPMENT ADVISEMENTS:**

1. The existing tree(s) retained on site shall be protected/hoarded during construction. Please refer to the City of Edmonton Design & Construction Standards for details pertaining to tree hoarding; fencing as per the specific detail will ensure a tree/root protection zone, this should be sized relative to the canopy of the tree.
2. Lot grades must comply with the *Edmonton Drainage Bylaw 16200*. Contact Drainage.
3. Any future deck development greater than 0.6 metres (2 feet) in height will require development and building permit approvals.
4. Any future deck enclosure or cover requires a separate development and building permit approval.
5. The driveway access must maintain a minimum clearance of 1.5 metres from any service pedestal and all other surface utilities.

- [78] In granting the development, the following variances to the *Edmonton Zoning Bylaw* are allowed:
1. The maximum allowable Height of 8.6 metres as per Section 814.3(13) is varied to allow an excess of 1.15 metres, thereby increasing the maximum allowed to 9.75 metres.
  2. The minimum allowable Stepback for Rooftop Terraces of 2.0 metres from any building Façade facing a Rear Lot Line as per Section 61.1(a)(ii) is varied to allow a deficiency of 2.0 metres, thereby decreasing the minimum allowed to 0.0 metres.
  3. The minimum allowable Stepbacks for Rooftop Terraces of 2.0 metres from any building Façade facing a Side Lot Line as per Section 61.1(a)(iv) is varied to allow a deficiency of 0.93 metres, thereby decreasing the minimum allowed to 1.07 metres.
  4. The requirement that there shall be no vehicular access from the front or flanking public roadway where an abutting lane exists and a Treed Landscaped Boulevard is present along the roadway adjacent to the property line, the Site Width is less than 15.5 metres, or fewer than 50 percent of principal Dwellings on the blockface have vehicular access from the front or flanking roadway, as per Section 814.3(10), is waived.

### **Reasons for Decision**

- [79] A Single Detached House is a Permitted Use in the RF2 Low Density Infill Zone.
- [80] The subject site is falls within the North Saskatchewan River Valley and Ravine System Protection Overlay. Pursuant to Section 811.1 of the *Edmonton Zoning Bylaw*, the General Purpose of this Overlay is to provide a development Setback from the North Saskatchewan River Valley and Ravine System.
- [81] Section 811.3(3) of the *Edmonton Zoning Bylaw* states that “any development permit application on a Site that abuts or is partially or wholly contained within the North Saskatchewan River Valley and Ravine System shall be accompanied by a report prepared by a registered Professional Engineer, and as set out in subsection 14.1 of this Bylaw, and that also details the minimum Setback for structures on the Site and any development conditions for the property required to prolong the stability of the bank.”
- [82] The Appellants complied with these requirements and provided the appropriate geotechnical report outlining the conditions that had to be met in order to ensure slope stability at the site of the proposed development.

- [83] The City of Edmonton Supervisor of Geotechnical Engineering stated in his response to the geotechnical report submitted by the Appellants that:

“Strict compliance to the development restrictions outlined in the geotechnical report shall be adhered to during the design, construction and future use of these lands. Although there will remain some residual risk to the developer and owner, the geotechnical report documented an engineering assessment and recommendations that would appear to appropriately mitigate and reduce local geotechnical risk for this development.”

- [84] However, the Supervisor of Geotechnical Engineering also referred to a geotechnical report that was prepared in 1986 by EBA Engineering Consultants Ltd. (a copy of which was not provided to the Board). That report apparently indicated that the entire Lavigne neighbourhood is located on an ancient deep-seated landslide mass. The Supervisor of Geotechnical Engineering stated that:

“The level of risk that is posed to development in this neighbourhood has not been quantified, and the possibility of determining this information is considered to be well beyond the means of any individual property owner to address.

Since the City’s administration do not have the information required to adequately evaluate the geotechnical risk to development in Lavigne, all applications in this neighbourhood must be rejected and forwarded to the Subdivision and Development Appeal Board (SDAB). I would therefore recommend that this application also be forwarded to the SDAB for a final ruling”.

- [85] Based on this information and the fact that that the proposed development was over Height, the Development Officer made the decision to refuse this development permit application. It is the Board’s understanding that the Supervisor of Geotechnical Engineering makes the same recommendation for all proposed developments in this neighbourhood because of the uncertainty posed by the ancient landslide.
- [86] The Board is of the view that the Development Officer should not have refused the development application based solely on the statement provided by the Supervisor of Geotechnical Engineering.
- [87] The Supervisor of Geotechnical Engineering is essentially saying that residential development should not be permitted in this neighbourhood. However, the City has known since 1986 that this entire neighbourhood is located on an ancient deep-seated landslide. Notwithstanding this knowledge, City Council has not taken any steps to restrict residential development in the neighbourhood and large parts of the neighbourhood are zoned RF2 Low Density Infill Zone, where Single Detached Housing is a Permitted Use.

- [88] The Development Officer's function is to evaluate development applications for Permitted Uses and to approve them, with or without conditions, provided they comply with the *Edmonton Zoning Bylaw* or provided any required variances do not unduly or materially interfere with the amenities of the neighbourhood or with neighbouring parcels of land. (*Edmonton Zoning Bylaw*, Sections 11.1(1)(e) and 11.2)
- [89] In this case Section 811.3(3) of the *Edmonton Zoning Bylaw* requires a Professional Engineer's report setting out, among other things, any development conditions for the property required to prolong the stability of the bank. Section 811.3(8) requires consultation with Integrated Infrastructure Services (the department where Geotechnical Engineering is located) with respect to conditions required to minimize erosion and stabilize soil conditions. The Supervisor of Geotechnical Engineering did not have any concerns about the local geotechnical risk of the proposed development provided the restrictions in the Appellants' geotechnical report were adhered to. As well, the Appellants have acknowledged that they are aware of the ancient landslide and they accept the risk associated with it.
- [90] In short, the proposed development is a Permitted Use that complies with Section 811 of the *Edmonton Zoning Bylaw*. The Development Officer was wrong to refuse to issue a development permit on the basis that there are uncertainties regarding the potential stability of the entire neighbourhood. If there are such issues that are serious enough to restrict residential development, it is the function of City Council, with the advice of City Administration, to address them by way of zoning changes.
- [91] The Supervisor of Geotechnical Engineering purported to have this matter forwarded to this Board for a final ruling on the geotechnical risk to development in the neighbourhood because he does not have the information required to adequately evaluate it. This Board has not been provided with all the geotechnical reports that are relevant, notably the 1986 report that identified the ancient landslide, nor does it have the expertise to make such a determination. In any event, it is beyond the mandate of this Board to make such decisions.
- [92] The mandate of this Board with respect to development appeals is set out in Section 687(3) of the *Municipal Government Act*. The Board is required to comply with the land use bylaw in effect (Section 687(3)(a.1)) but it may issue a development permit that does not comply with the land use bylaw if it is of the opinion that the proposed development would not unduly interfere with the amenities of the neighbourhood or materially interfere with the use, enjoyment or value of neighbouring parcels of land and the proposed development conforms with the use prescribed in the land use bylaw (Section 687(3)(d)).
- [93] In short, this Board focuses on ensuring that proposed development will not significantly interfere with the neighbourhood or neighbouring parcels of land.

- [94] There is nothing to indicate that the proposed development will have any impact on the ancient landslide. Accordingly, any concerns with respect to the ancient landslide are beyond the purview of this Board. In dealing with this appeal, this Board expresses no opinion about whether residential development should be allowed to take place in this neighbourhood because of the ancient landslide. Rather, this Board focuses on the impact the proposed development will have on the neighbourhood and on neighbouring parcels of land.
- [95] The Board accepts the Supervisor of Geotechnical Engineering's assessment that the local geotechnical risk associated with the proposed development will be appropriately mitigated provided that there is strict compliance with the development restrictions outlined in the Appellants' geotechnical report.
- [96] The Board is satisfied that the Appellants have substantially complied with the necessary community consultation required by the Mature Neighbourhood Overlay (Section 814.3(24)) of the *Edmonton Zoning Bylaw*. Although the affected owners to the east did their own neighbourhood consultation that resulted in different responses from some of the neighbours, this does not affect the appropriateness of the process followed by the Appellants.
- [97] Section 814.3(10) of the *Edmonton Zoning Bylaw* states that "regardless of whether a Site has existing vehicular access from the front or flanking public roadway, there shall be no such access where an abutting Lane exists, and a treed landscaped boulevard is present along the roadway adjacent to the property line, the Site Width is less than 15.5 metres, or fewer than 50 percent of Principal Dwellings on the blockface have vehicular access from the front or flanking public roadway". The Board waives this requirement and allows vehicular access from the front public roadway for the following reasons:
- a) All of the new houses built on this street have front attached garages with front access, with the result that nine of the 14 houses on this block have vehicular access from the front public roadway.
  - b) The front of the site is approximately six metres higher than the rear, which makes the development of a rear detached garage problematic.
  - c) The lane at the rear of the site is in poor shape.
  - d) No one who appeared at the hearing was opposed to allowing vehicular access from the front public roadway.
  - e) Transportation Services had no objection to allowing front access as long as their recommended conditions were met.
- [98] The Board grants the variance to Section 814.3(13) of the *Edmonton Zoning Bylaw* to allow a 1.15 metre variance to the maximum allowable 8.6-metre Height for the following reasons:

- a) The most affected property owner immediately to the east of the proposed development prepared a shadow study to illustrate the impact of the increase in Height on their rear yard during the summer months. This study was based on the premise that the entirety of the proposed development would be 1.15 metres higher than the allowed 8.6 metres. However, the plans show that the 1.15-metre Height variance is only required for the proposed lounge and enclosed stairwell on the third storey. This third storey development is located approximately 6.1 metres (20 feet) from the rear of the house and approximately one metre (3.3 feet) from the east façade of the house. Most of the shadowing in the rear yard that would be caused by the proposed development would result from the rear portion of the development, not from the rooftop lounge. As a result during the summer months, the shadow caused by portion of the third storey requiring a variance will have minimal impact on the affected property owner's rear yard. The Board does not accept the conclusions of the shadow study.
- b) The portion of the third storey development requiring a variance in Height will have minimal visual impact from the street. It is setback from the front of the house and will be largely obscured by the gabled roof atop the second floor. Exterior finishing and colour variations on the front façade will break up the massing and height of the proposed house.
- c) The Board accepts the evidence of the Appellants that most of the houses on this street, many of which are relatively new developments, give the appearance from the street of being high and that the proposed development will not appear to be significantly higher than many of these existing homes. Therefore, the Height of the proposed house will not be uncharacteristic of this neighbourhood.

[99] The Board grants the variances to Section 61.1(a)(ii) and Section 61.1(a)(iv) of the *Edmonton Zoning Bylaw* to allow variances to the Side and Rear Stepback requirements for Rooftop Terraces for the following reasons:

- a) Section 61.1(a)(iii) requires a 1.0 metre Stepback from any building Façade facing a Side Lot Line where the Site Width is less than 10 metres. Section 61.1(a)(iv) increases the required side Stepback when the Site Width is 10 metres or greater. The subject Site is 10.05 metres wide, meaning that, if it were just a few centimetres narrower, the less restrictive Side Stepback would apply.
- b) The main concern when reducing Side Stepbacks is the potential loss of privacy of the immediate neighbours. The Board is of the view that privacy concerns related to the reduction in the Side Stepbacks are largely mitigated by the fact that a portion of the Rooftop Terrace is set into the sloped roof of the proposed house and the remaining portion of the Rooftop Terrace will be enclosed by a five-foot high translucent glass privacy screen and by a translucent glass railing. The result is that it will only be when a person is standing at the very edge of the Rooftop Terrace looking down into the adjacent yards that there will be any loss of privacy.



- The Board is of the view that the frosted glass railings and privacy screening will significantly reduce overlook into neighbouring properties when the Rooftop Terrace is being used in a typical fashion.
- c) Section 61.1(a)(ii) requires a 2.0-metre Stepback from the building Façade facing the Rear Lot Line. In this case, the Board has granted a 2.0-metre variance. This property is located on a lot with an elevation change of approximately six metres from the front of the lot to the rear. There is also significant mature vegetation at the rear of the lot and on the adjacent rear lane that will screen properties to the rear from any overlook from the Rooftop Terrace. Together these factors largely mitigate the elimination of the Rear Stepback requirement.
  - d) The Board is of the view that granting the variances to the Side and Rear Stepbacks will not have any significant impact on the privacy of neighbours who reside to the north, east or west of the subject site.
  - e) The Board also notes that many of the houses on the street have similar rooftop terraces and that allowing these variances will not be uncharacteristic of the neighbourhood.
- [100] The affected property owner to the east submitted a letter from a realtor expressing the opinion that the required variances in Height and the Stepbacks for the proposed Rooftop Terrace would lower the value of their property. However, the Board notes that this opinion was based on the shadow study conducted by the affected property owner and on their concerns regarding reduced privacy. Given that the Board puts little weight on the shadow study and disagrees with the affected owner about the privacy impacts, the Board does not accept the opinion of the realtor. Therefore, the Board finds that there is no evidence to support the concern of the property owner to the east that the proposed development will negatively impact the value of their property.
- [101] For all of the above reasons, the Board is of the view that the proposed development, with the variances and the imposed conditions, 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

**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.*