

SUBDIVISION
AND
DEVELOPMENT APPEAL BOARD
AGENDA

Thursday, 9:00 A.M.
October 14, 2021

SUBDIVISION AND DEVELOPMENT APPEAL BOARD

I 9:00 A.M. SDAB-D-21-171

Erect a Fence at 1.85 metres in Height in the Front
Yard Abutting 112A Avenue and 12808 - 112A
Avenue NW

12804 - 112A Avenue NW
Project No.: 397894026-002

II 10:30 A.M. SDAB-D-21-172

Construct exterior alterations to a Multi-unit
Housing by increasing the Height

1404 - Aster Way NW
Project No.: 404906160-002

NOTE: *Unless otherwise stated, all references to "Section numbers" in this Agenda refer to the authority under the Edmonton Zoning Bylaw 12800.*

ITEM I: 9:00 A.M.

FILE: SDAB-D-21-171

AN APPEAL FROM THE DECISION OF THE DEVELOPMENT OFFICER

APPELLANT:

APPLICATION NO.: 397894026-002

APPLICATION TO: Erect a Fence at 1.85 metres in Height in the Front Yard
Abutting 112A Avenue and 12808 - 112A Avenue NW

DECISION OF THE
DEVELOPMENT AUTHORITY: Approved with Conditions

DECISION DATE: July 5, 2021

DATE OF APPEAL: September 14, 2021

NOTIFICATION PERIOD: July 13, 2021 through August 3, 2021

RESPONDENT:

MUNICIPAL DESCRIPTION
OF SUBJECT PROPERTY: 12804 - 112A Avenue NW

LEGAL DESCRIPTION: Plan 2099HW Blk 7 Lot 5

ZONE: (RF3) Small Scale Infill Development Zone

OVERLAY: Mature Neighbourhood Overlay

STATUTORY PLAN: West Ingle Area Redevelopment Plan

Grounds for Appeal

The Appellant provided the following reasons for appealing the decision of the Development Authority:

I wish to appeal the decision of the Development Authority for the reasons outlined below:

- The appeal is being filed late due to not receiving notification of the permit/permits in question. Between June/2021 & August 2021 mail delivery to my home was suspended by Canada Post due to construction in the neighborhood of Inglewood. Further, the permits in question affect my property alone.
- The permit reads: Job No 397894026-002 - To erect a Fence @ 1.85m in Height in the Front Yard Abutting 112A Avenue and 12808 - 112A Avenue NW. The next permit reads: Job No 402698214-002 - To construct exterior alterations to a 4 Dwelling Row House (Revised landscaping plan)

What is concerning, is that the 6.6 foot fence is erected along the front east side of my property as well as along the avenue, which is the property in question. The property owner has revised the landscape so the front yard now becomes the back yard. How is it that a property can have three back yards? I understand that permits are granted based on the information provided, therefore I suggest the manner in which the above noted permits read and were submitted are deceptive. For the nearly seventy years the three properties on the block are facing the avenue, facing a park and have front yards facing the avenue, accordingly; xxxxx – 112A Avenue. Now the property in question has three addresses facing the Street and one address facing the Avenue but has a proposed rear yard facing the Avenue and the rear of the property facing my home as well as a garage in the rear of the property abutting the back ally, how is this possible.

According to the City of Edmonton Fence Building Brochure there are regulations as to how high a fence can be built which is no higher than 4 feet along the front of the property. However obtaining approval on fence building front and rear according to regulations is one thing but when you get approval on permits then subsequently change the configuration of the property after the fact so the front is now the rear and the rear is now the front is underhanded and misleading. These permits call for 6.6 foot fence along the front of my property which I am totally opposed to.

Furthermore, I have been advised the fence was erected at such a height for the purpose of “privacy”. Be advised, there is no privacy to note on either side of this 6.6 foot fence when the 4 decks are 3 feet or more above the ground already and the 20 plus window and doors face into the privacy of my home, my bedrooms, bathrooms and complete yard. Therefore, I submit “privacy” reasons are a complete absurdity.

Your consideration of this appeal is appreciated.

General Matters

Appeal Information:

The *Municipal Government Act*, RSA 2000, c M-26 states the following:

Grounds for Appeal

685(1) If a development authority

- (a) fails or refuses to issue a development permit to a person,
- (b) issues a development permit subject to conditions, or
- (c) issues an order under section 645,

the person applying for the permit or affected by the order under section 645 may appeal to the subdivision and development appeal board.

...

(2) In addition to an applicant under subsection (1), any person affected by an order, decision or development permit made or issued by a development authority may appeal the decision in accordance with subsection (2.1).

Appeals

686(1) A development appeal to a subdivision and development appeal board is commenced by filing a notice of the appeal, containing reasons, with the board,

- (a) in the case of an appeal made by a person referred to in section 685(1)
 - (i) with respect to an application for a development permit,
 - (A) within 21 days after the date on which the written decision is given under section 642, or
 - (B) if no decision is made with respect to the application within the 40-day period, or within any extension of that period under section 684, within 21 days after the date the period or extension expires,

or

- (ii) with respect to an order under section 645, within 21 days after the date on which the order is made, or
- (b) in the case of an appeal made by a person referred to in section 685(2), within 21 days after the date on which the notice of the issuance of the permit was given in accordance with the land use bylaw.**

Hearing and Decision

687(3) In determining an appeal, the board hearing the appeal referred to in subsection (1)

...

- (a.1) must comply with the land use policies;
- (a.2) subject to section 638, must comply with any applicable statutory plans;
- (a.3) subject to clause (a.4) and (d), must comply with any land use bylaw in effect;
- (a.4) must comply with the applicable requirements of the regulations under the *Gaming, Liquor and Cannabis Act* respecting the location of premises described in a cannabis licence and distances between those premises and other premises;

...

- (c) may confirm, revoke or vary the order, decision or development permit or any condition attached to any of them or make or substitute an order, decision or permit of its own;
- (d) may make an order or decision or issue or confirm the issue of a development permit even though the proposed development does not comply with the land use bylaw if, in its opinion,
 - (i) the proposed development would not
 - (A) unduly interfere with the amenities of the neighbourhood, or
 - (B) materially interfere with or affect the use, enjoyment or value of neighbouring parcels of land,

and

- (ii) the proposed development conforms with the use prescribed for that land or building in the land use bylaw.

General Provisions from the *Edmonton Zoning Bylaw*:

Under section 140.2(5), **Multi-unit Housing** is a **Permitted Use** in the **(RF3) Small Scale Infill Development Zone**.

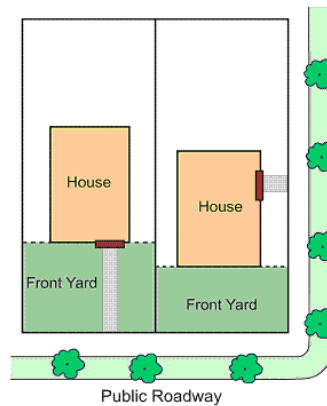
Under section 6.1, **Accessory** means “when used to describe a Use or building, a Use or building naturally or normally incidental, subordinate, and devoted to the principal Use or building, and located on the same lot or Site.”

Under section 6.1, **Fence** means “a structure constructed at ground level, used to prevent or restrict passage, provide visual screening, noise attenuation, Landscaping, or to mark a boundary.”

Under section 6.1, **Height** means “a vertical distance between two points.”

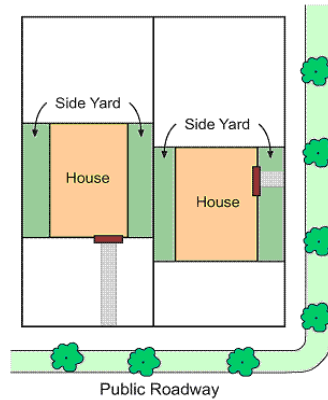
Under section 6.1, **Front Yard** means:

the portion of a Site abutting the Front Lot Line extending across the full width of the Site, situated between the Front Lot Line and the nearest wall of the principal building, not including projections.



Under section 6.1, **Side Yard** means:

that portion of a Site abutting a Side Lot Line extending from the Front Yard to the Rear Yard. The Side Yard is situated between the Side Lot Line and the nearest wall of principal building, not including projections.



Section 140.1 states that the **General Purpose** of the **(RF3) Small Scale Infill Development Zone** is “to provide for a mix of small scale housing.”

Section 814.1 states that the **General Purpose** of the **Mature Neighbourhood Overlay** is:

to regulate residential development in Edmonton’s mature residential neighbourhoods, while responding to the context of surrounding development, maintaining the pedestrian-oriented design of the streetscape, and to provide an opportunity for consultation by gathering input from affected parties on the impact of a proposed variance to the Overlay regulations.

Fences, Walls, Gates, and Privacy Screening in Residential Zones

Section 49.1 states the following with respect to *Fences, walls and gates*:

- a. The regulations contained within Section 49.1 of this Bylaw apply to:
 - i. the Height of the material used in the construction of a Fence, wall, or gate, such as but not limited to boards, panels, masonry, ornamental iron, and chain link, plus any additional elements used for screening, such as, but not limited to, lattice.
- b. Notwithstanding subsection 49(1)(a), the regulations for Fences, walls, and gates contained within this Section do not apply to the Height of the posts or other supporting material used to anchor the Fence, wall, or gate.
- c. The Height of a Fence, wall, or gate shall be measured from the general ground level 0.5 m back from the property line of the Site on which the Fence, wall, or gate is to be constructed.
- d. On an Interior Site, the Height of a Fence, wall, or gate shall not exceed:

- i. 1.2 m for the portion of the Fence, wall, or gate constructed in the Front Yard, and
 - ii. 1.85 m in all other Yards.
- e. **On a Corner Site, the Height of a Fence, wall, or gate shall not exceed:**
 - i. **1.2 m for the portion of the Fence, wall, or gate constructed in the Front Yard,**
 - ii. **1.2 m for the portion of the Fence, wall, or gate situated between the flanking Side Lot Line and the foremost side Façade of the principal structure, and extending from the Front Lot Line to the Rear Lot Line, and**
 - iii. 1.85 m in all other Yards.
- f. **In the case where the permitted Height of a Fence, wall, or gate is 1.2 m, the Development Officer may vary the Height of the Fence, wall, or gate to a maximum of 1.85 m, in order to provide additional screening from public roadways or incompatible adjacent Uses,**
- g. In the case where the permitted Height of a Fence, wall, or gate is 1.85 m, the Development Officer may vary the Height of the Fence, wall, or gate to a maximum of 2.44 m, in order to provide additional screening from public roadways or incompatible adjacent Uses,
- h. Notwithstanding subsection 49.1(f) and subsection 49.1(g) of this Bylaw, in the case of Double Fronting Sites, the Development Officer may grant a variance to allow a Fence, wall, or gate of up to 1.85 m in Height in one of the Front Yards, and allow a Fence, wall, or gate of up to 2.44 m in Height in the other Front Yard, having regard to the location of Fences, walls, and gates in the surrounding area and the requirement for screening.


Development Officer's Determination


Fence Height - The fence along 112A Avenue and abutting 12808 - 112A Avenue (west lot line) is 1.85m high, instead of 1.2m (Section 49.1.d).

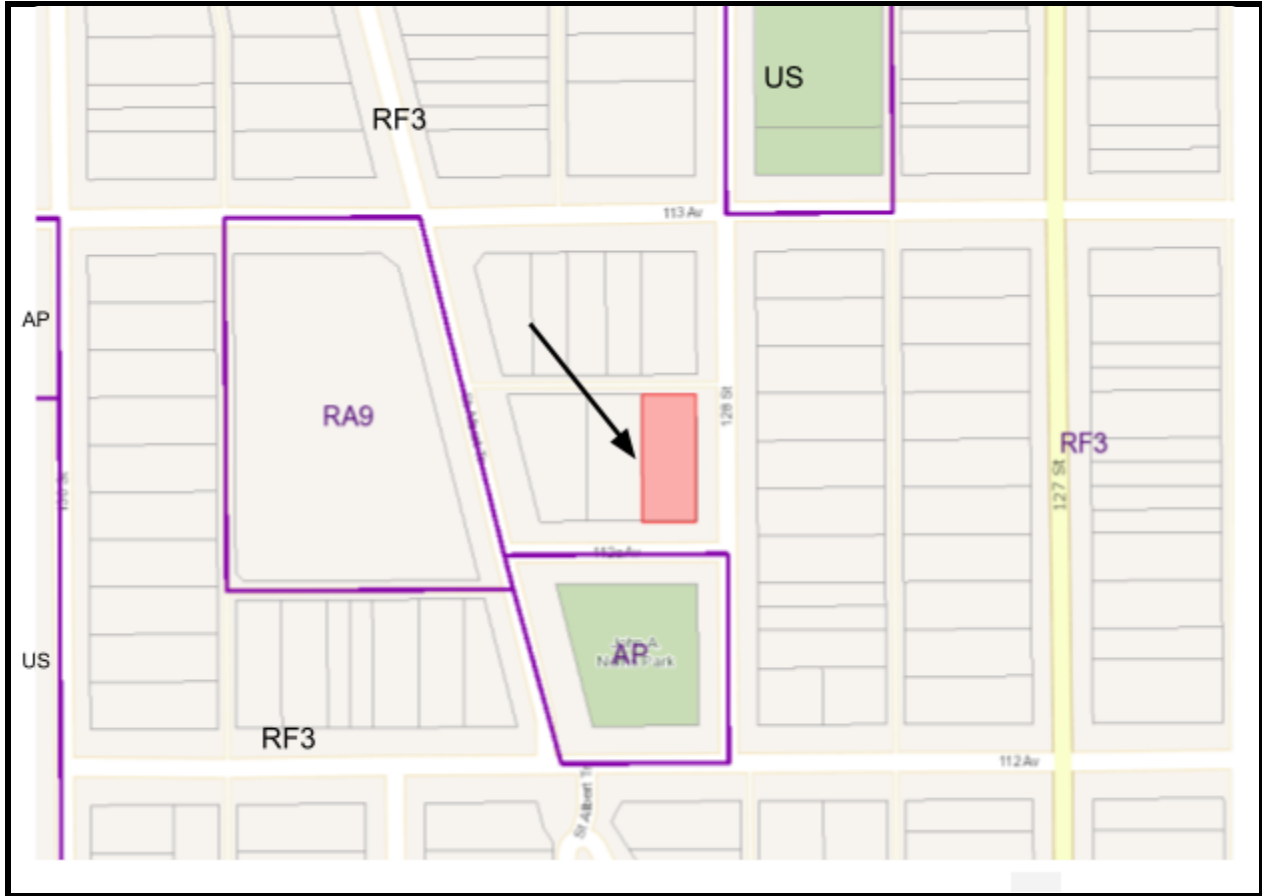
[unedited]

Notice to Applicant/Appellant

Provincial legislation requires that the Subdivision and Development Appeal Board issue its official decision in writing within fifteen days of the conclusion of the hearing.

	<p>Project Number: 397894026-002 Application Date: MAY 31, 2021 Printed: July 5, 2021 at 12:19 PM Page: 1 of 2</p>		
<h2>Overheight Fence Permit</h2>			
<p>This document is a record of a Development Permit application, and a record of the decision for the undertaking described below, subject to the limitations and conditions of this permit, of the Edmonton Zoning Bylaw 12800 as amended.</p>			
<p>Applicant</p>	<p>Property Address(es) and Legal Description(s) 12804 - 112A AVENUE NW Plan 2099HW Blk 7 Lot 5</p> <p>Location(s) of Work Entryway: 12804 - 112A AVENUE NW Building: 12804 - 112A AVENUE NW</p>		
<p>Scope of Permit To erect a Fence @ 1.85m in Height in the Front Yard Abutting 112A Avenue and 12808 - 112A Avenue NW.</p>			
<p>Permit Details</p> <table border="1" style="width: 100%;"> <tr> <td data-bbox="251 745 812 825"> Class Of Permit: Class B Stat. Plan Overlay/Annex Area: Mature Neighbourhood Overlay </td> <td data-bbox="812 745 1369 825"> Site Area (sq. m.): 746.54 </td> </tr> </table>		Class Of Permit: Class B Stat. Plan Overlay/Annex Area: Mature Neighbourhood Overlay	Site Area (sq. m.): 746.54
Class Of Permit: Class B Stat. Plan Overlay/Annex Area: Mature Neighbourhood Overlay	Site Area (sq. m.): 746.54		
<p>Development Permit Decision Approved Issue Date: Jul 05, 2021 Development Authority: ZHOU, ROWLEY</p> <p>Subject to the Following Conditions This Development Permit is NOT valid until the Notification Period expires in accordance to Section 21 (Section 17.1).</p> <p>This Development Permit authorizes the development of a Fence @ 1.85m in Height in the Front Yard Abutting 112A Avenue and 12808 - 112A Avenue NW.</p> <p>The development shall be constructed in accordance with the stamped and approved drawings.</p> <p>The fence shall be installed entirely on the subject property.</p> <p>The fence shall not impede any sightlines for vehicular or pedestrian traffic.</p> <p>As far as reasonably practicable, the design and use of exterior finishing materials used shall be similar to, or better than, the standard of surrounding development (Section 57.3.1).</p> <p>Immediately upon completion of the development of the fence, the site shall be cleared of all debris.</p> <p>ADVISEMENTS:</p> <p>An approved Development Permit means that the proposed development has been reviewed against the provisions of this bylaw. It does not remove obligations to conform with other legislation, bylaws or land title instruments including, but not limited to, the Municipal Government Act, the Safety Codes Act or any caveats, restrictive covenants or easements that might be attached to the Site (Section 5.2).</p> <p>Unless otherwise stated, all above references to section numbers refer to the authority under the Edmonton Zoning Bylaw 12800.</p> <p>Variances Fence Height - The fence along 112A Avenue and abutting 12808 - 112A Avenue (west lot line) is 1.85m high, instead of 1.2m (Section 49.1.d).</p>			

	Project Number: 397894026-002 Application Date: MAY 31, 2021 Printed: July 5, 2021 at 12:19 PM Page: 2 of 2																				
<h2 style="margin: 0;">Overheight Fence Permit</h2>																					
<p>Rights of Appeal This approval is subject to the right of appeal to the Subdivision and Development Appeal Board (SDAB) as outlined in Chapter M-26, Section 683 through 689 of the Municipal Government Act. Notice Period Begins: Jul 13, 2021 Ends: Aug 03, 2021</p>																					
<p>Building Permit Decision No decision has yet been made.</p>																					
<p>Fees</p> <table style="width: 100%; border-collapse: collapse;"> <thead> <tr> <th style="width: 60%;"></th> <th style="text-align: right; width: 15%;">Fee Amount</th> <th style="text-align: right; width: 15%;">Amount Paid</th> <th style="text-align: left; width: 10%;">Receipt #</th> <th style="text-align: left; width: 10%;">Date Paid</th> </tr> </thead> <tbody> <tr> <td>Development Application Fee</td> <td style="text-align: right;">\$182.00</td> <td style="text-align: right;">\$182.00</td> <td>10612903190J001</td> <td>May 31, 2021</td> </tr> <tr> <td>Total GST Amount:</td> <td style="text-align: right;">\$0.00</td> <td></td> <td></td> <td></td> </tr> <tr> <td>Totals for Permit:</td> <td style="text-align: right; border-top: 1px solid black;">\$182.00</td> <td style="text-align: right; border-top: 1px solid black;">\$182.00</td> <td></td> <td></td> </tr> </tbody> </table>			Fee Amount	Amount Paid	Receipt #	Date Paid	Development Application Fee	\$182.00	\$182.00	10612903190J001	May 31, 2021	Total GST Amount:	\$0.00				Totals for Permit:	\$182.00	\$182.00		
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SURROUNDING LAND USE DISTRICTS

Site Location ←

File: SDAB-D-21-171

▲
N

ITEM II: 10:30 A.M.

FILE: SDAB-D-21-172

AN APPEAL FROM THE DECISION OF THE DEVELOPMENT OFFICER

APPELLANT:

APPLICATION NO.: 404906160-002

APPLICATION TO: Construct exterior alterations to a Multi-unit Housing by increasing the Height

DECISION OF THE DEVELOPMENT AUTHORITY: Refused

DECISION DATE: September 9, 2021

DATE OF APPEAL: September 15, 2021

MUNICIPAL DESCRIPTION OF SUBJECT PROPERTY: 1404 - Aster Way NW

LEGAL DESCRIPTION: Plan 2022634 Blk 2 Lot 1

ZONE: (RA7) Low Rise Apartment Zone

OVERLAY: N/A

STATUTORY PLAN: The Meadows Area Structure Plan

Grounds for Appeal

The Appellant provided the following reasons for appealing the decision of the Development Authority:

We now have a Class B development permit granted by the City of Edmonton, Development Authority on June 24th, 2021. That permit allowed us a 2 apartment Building Complex of 327 units which was compliant with the "Height" regulations of the Bylaw. These drawings showed an allowed / complying height of 14.5 m. The problem for Developer with this 14.5m height is all the units have 8'0" to the underside of the suite / apartment ceilings but in to-days rental market: the much more in demand rental

suite has 9'-0" to the underside of the ceilings. The marketplace has determined that a 9 foot to the underside of the apartment ceiling is the preferred height for the rental condo market today. This is the primary reason for our appeal. All we are doing is adding (requesting) an extra foot (12") in the floor to underside of ceiling height of each suite X 5 levels= 5'0" or 1.5 m. Instead of 8 feet to underside of ceiling we want to give the all the apartments 9'-0".

See the attached Building Section 3 showing the allowed pitched roof (as measured by Section 52 of the Bylaw) verses the Flat Roof that we are proposing.

See drawings Building 1 A8.0 and A8.1. Also see attached is Building 2 A8.0 and A8.1. Upon examination of the above stated sections you'll see that the requested extra height of this new flat roof design when superimposed over allowed 16 m pitched roof is not any more than the top of the ridge of the already allowed height for a pitched roof in the city bylaw.

I challenge anyone who's walking along the sidewalk with their dog or driving by to appreciate this extra height. The perception of height of the two building types as described above are virtually identical. The reason we need this extra height is the marketplace (The people renting these apartment units today are demanding it) .

We have applied for this new Development Permit to request this extra "height" and it was refused. That is why we are before the Board to appeal this decision, to "construct exterior alterations to a five Storey Multi-unit Housing development (327 Dwellings in 2 Apartments)." These alterations increase the Height above grade of the building but in our opinion it doesn't change the overall massing of this development.

We bring to the SDAB's attention that the same contractor brought a similar project before the STAB (Project 360129641-003) on June 26, 2020. The arguments we made then are the same now. We need the extra height in the suites to bring it to 9'0" to the underside of the ceiling and make the suites more marketplace friendly. The board at that time allowed us this extra height. We hope you will do the same here with this appeal?

We are requesting to increase the Height of the building from 14.5 metres to 16.13 metres".

Proposed New Height: 16.13 metres

Exceeds Bylaw by: $16.13 - 14.5 = 1.63$ metres

In our opinion:

(i) the proposed development would not

(A) unduly interfere with the amenities of the neighbourhood, or

(B) materially interfere with or affect the use, enjoyment or value of neighbouring parcels of land, and

(ii) the proposed development conforms with the "use" prescribed for that land or building in the land use bylaw.

Our argument is that a permitted 16m plus 1.5m to the top of the ridge = 17.5m pitched roof (as measured by Section 52 of the Bylaw) would appear more massive than the 16.13m flat roof we are requesting.

The impact in granting this appeal would have little impact on neighbouring properties. It will be negligible, due to:

- the overall large size of the site and the scale of the development; This is a large 4.258 acre / 1.723 ha site that does not directly touch any neighbouring properties.
- the west lot line of the development borders the busy 23 Avenue and includes a setback from the road right-of-way. The right-of-way itself is large and features grass and minor utility articles. There is also a public sidewalk. This creates a significant distance between the road itself and the development. 23 Avenue is anticipated to have significant traffic, as it is identified by the City of Edmonton as an arterial road;
- the siting of the 5-Storey building on the Site, is oriented so this additional height will not effect any sun shadow to neighbouring properties.
- On the east side of the Site there is a setback and then a lane. There is sufficient space to eliminate any undue effects of the variance to height on the neighbouring residential parcels of land. The site is surrounded with public roadways /lanes.
- We suggest there no privacy concerns on the adjacent neighbouring properties due to the large setbacks and the variation in roof features and parapets,
- There have been no responses from the public, Community League, or owners of neighbouring parcels of land to date opposing this request for extra height.
- We suggest this development with the minor request for extra height will not unduly interfere with the amenities of the neighbourhood nor materially interfere with or affect the use, enjoyment or value of neighboring parcels.

<i>General Matters</i>

Appeal Information:

The *Municipal Government Act*, RSA 2000, c M-26 states the following:

Grounds for Appeal

685(1) If a development authority

- (a) fails or refuses to issue a development permit to a person,
- (b) issues a development permit subject to conditions, or

- (c) issues an order under section 645,

the person applying for the permit or affected by the order under section 645 may appeal to the subdivision and development appeal board.

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(2) In addition to an applicant under subsection (1), any person affected by an order, decision or development permit made or issued by a development authority may appeal the decision in accordance with subsection (2.1).

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- (B) if no decision is made with respect to the application within the 40-day period, or within any extension of that period under section 684, within 21 days after the date the period or extension expires,

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- (ii) with respect to an order under section 645, within 21 days after the date on which the order is made, or

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- (a.1) must comply with the land use policies;

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- (d) may make an order or decision or issue or confirm the issue of a development permit even though the proposed development does not comply with the land use bylaw if, in its opinion,
 - (i) the proposed development would not
 - (A) unduly interfere with the amenities of the neighbourhood, or
 - (B) materially interfere with or affect the use, enjoyment or value of neighbouring parcels of land,
- and
- (ii) the proposed development conforms with the use prescribed for that land or building in the land use bylaw.

General Provisions from the *Edmonton Zoning Bylaw*:

Under section 210.2(8), **Multi-unit Housing** is a **Permitted Use** in the **(RA7) Low Rise Apartment Zone**.

Under section 7.2(4), **Multi-unit Housing** means:

development that consists of:

- a. three or more principal Dwellings arranged in any configuration and in any number of buildings;

or

- b. any number of Dwellings developed in conjunction with a Commercial Use where allowed in the Zone.

Section 210.1 states that the **General Purpose** of the **(RA7) Low Rise Apartment Zone** is “to provide a Zone for low rise Multi-unit Housing.”

<i>Height</i>

Section 210.4(2) states “The maximum Height shall not exceed 14.5 m for flat, mansard and gambrel roofs, or 16.0 m for a roof type with a pitch of 4/12 (18.4 degrees) or greater, in accordance with Section 52.”

Under section 6.1, **Height** means “a vertical distance between two points.”

Development Officer’s Determination

**The maximum Height shall not exceed 14.5 m for flat roofs.
(Reference Section 210.4.2)
Proposed Height: 16.01 m
Exceeds by: 1.51 m**


Note:

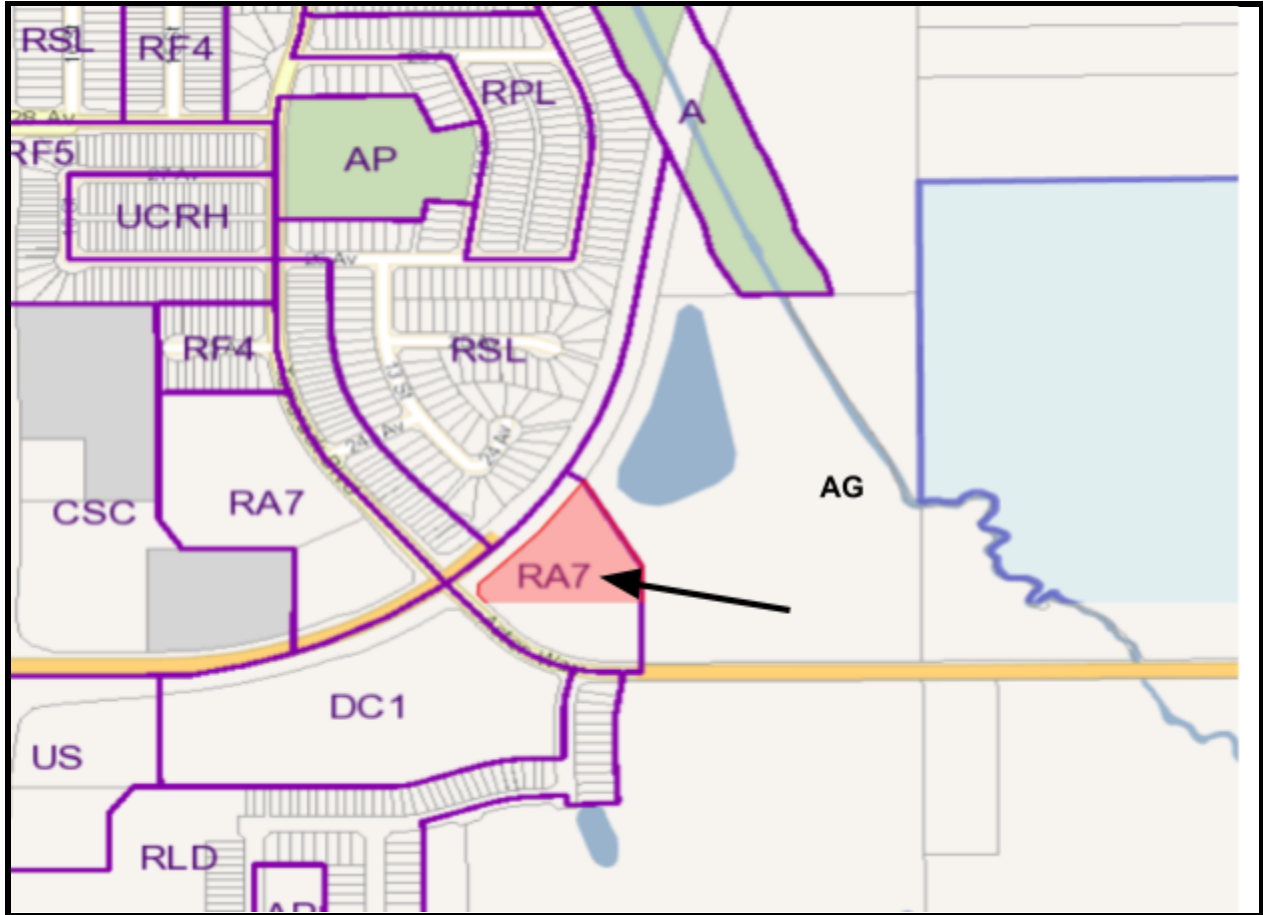
**There shall be no variance from maximum Height regulations.
(Reference Section 11.4.1.b)**

[unedited]

Notice to Applicant/Appellant

Provincial legislation requires that the Subdivision and Development Appeal Board issue its official decision in writing within fifteen days of the conclusion of the hearing.

	<h2 style="margin: 0;">Application for Major Development Permit</h2>	Project Number: 404906160-002 Application Date: AUG 09, 2021 Printed: September 9, 2021 at 2:13 PM Page: 1 of 1		
This document is a Development Permit Decision for the development application described below.				
Applicant	Property Address(es) and Legal Description(s) 1404 - ASTER WAY NW Plan 2022634 Blk 2 Lot 1			
Scope of Application To construct exterior alterations to a Multi-unit Housing by increasing its Height.				
Permit Details				
Class of Permit: Gross Floor Area (sq.m.): New Sewer Service Required: Site Area (sq. m.):	Contact Person: Lot Grading Needed?: N NumberOfMainFloorDwellings: Strat. Plan Overlay/Annex Area: (none)			
Development Application Decision Refused Issue Date: Sep 09, 2021 Development Authority: ANGELES, JOSELITO Reason for Refusal The maximum Height shall not exceed 14.5 m for flat roofs. (Reference Section 210.4.2) Proposed Height: 16.01 m Exceeds by: 1.51 m Note: There shall be no variance from maximum Height regulations. (Reference Section 11.4.1.b) Rights of Appeal The Applicant has the right of appeal to the Subdivision and Development Appeal Board (SDAB) within 21 days after the date on which the decision is made as outlined in Chapter M-26, Section 683 through 689 of the Municipal Government Act.				
Fees				
	Fee Amount	Amount Paid	Receipt #	Date Paid
Major Dev. Application Fee	\$375.00	\$375.00	07223999	Aug 31, 2021
Total GST Amount:	\$0.00			
Totals for Permit:	\$375.00	\$375.00		
THIS IS NOT A PERMIT				



SURROUNDING LAND USE DISTRICTS

Site Location ←

▲
N

File: SDAB-D-21-172