

SDAB-D-12-039

Application No. 131579314-001

An appeal to convert an Off-premises Freestanding Sign to an Off-premises Tri-fold Mechanical 6.4 metres by 3.35 metres Sign, on Lots 173 and 174, Block 5, Plan B2, located at 10260 – 105 Street NW, was **WITHDRAWN**.



**Subdivision and
Development Appeal Board**

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DATE: April 25, 2013
APPLICATION NO: 133152469-001
FILE NO.: SDAB-D-13-069

NOTICE OF DECISION OF THE SUBDIVISION AND DEVELOPMENT APPEAL BOARD

This appeal dated March 14, 2013, from the decision of the Development Authority for permission to:

Construct a Single Detached House with a deck and fireplace and basement development (not to be a Secondary Suite)

on Lot 1, Block 6, Plan 8701S, located at 9303 – 94 Street NW, was heard by the Subdivision and Development Appeal Board at its hearing held on April 10, 2013. The decision of the Board was as follows:

SUMMARY OF HEARING:

“At the outset of the appeal hearing, the Presiding Officer confirmed with the parties in attendance that there was no opposition to the composition of the panel.

The appeal was filed on time, in accordance with Section 686 of the *Municipal Government Act*, R.S.A 2000, c. M-26.

The Board heard an appeal of the decision of the Development Authority to refuse an application to construct a Single Detached House with a deck and fireplace and basement development (not to be a Secondary Suite), located at 9303 – 94 Street NW. The subject site is zoned RF3 Low Density Development Zone and is within the Mature Neighbourhood Overlay. The development permit application was refused because of an excess in the maximum allowable Site Coverage for the Principal Building, a deficiency in the minimum required Side Setbacks and the required total Side Setback, that being 20 Percent of the Site Width, an excess in the maximum allowable Height and the maximum allowable number of Storeys, an excess in the maximum allowable Height to the ridge line of the roof, and a deficiency in the minimum required Site Width.

SUMMARY OF HEARING (CONTINUED):

The Board notes that two letters were received in opposition to the proposed development with concerns that the proposed development does not meet the regulations of the Edmonton Zoning Bylaw.

Prior to the hearing, the Appellant, Mr. Marshall, submitted documentation that contained a petition with 16 signatures in support of the proposed development, several photographs of houses in the neighbourhood, and a Site Plan and Real Property Report for the proposed Development Permit application, and a letter from the Sustainable Development Department.

At the outset of the hearing the Presiding Officer advised that on March 26, 2013, City Council signed and passed Bylaw 16271 that amended the Edmonton Zoning Bylaw. These amendments eliminated two of the reasons for refusal that were identified by the Development Officer when this application was refused.

The Board heard from Mr. Barry Marshall, on behalf of the Appellant, Mr. Casey Marshall, who made the following points in support of the appeal:

1. Barry Marshall, while not the Appellant, is named on the title for the subject property and is speaking on behalf of the Appellant, his son.
2. He has lived in this neighbourhood for 23 years, and currently resides approximately three blocks from the subject site.
3. Numerous other family members also live in this neighbourhood.
4. The house was designed to take advantage of the view of the park located south of the subject site.
5. The initial plans were submitted to the Sustainable Development and they were advised that the proposed development was deemed to be a three Storey structure which exceeded the maximum allowable Height and the maximum allowable number of Storeys.
6. It was Mr. Marshall's opinion that all of the development requirements had been met and many conversations followed with staff members and Managers in the Sustainable Development Department.
7. The site is bermed and was designed as such to deal with drainage.
8. The berm is approximately 42 inches higher than the City sidewalk.
9. There are other houses in the neighbourhood that are much higher than the proposed development.
10. Berms have been used on lots at the end of a block in this area to address drainage issues.

SUMMARY OF HEARING (CONTINUED):

After a short recess and a review of the submitted plans, the Board determined that the elevation of the finished main floor of the proposed building was accurate, notwithstanding the elevation of the front and back of the house. It was determined that the Height of the proposed development is 10.44 metres. This was determined by measuring the vertical distance between the finished floor and the highest point of the building and adding the vertical distance between Grade and the finished floor. The elevation of Grade was determined by taking an average of the four corners of the site.

The Board then heard from Mr. Terry Wakaruk, Architect for the proposed development who advised that the proposed third Storey has been recessed from the edge of the second Storey to minimize overlook onto adjacent properties.

Mr. Barry Marshall continued to provide the following information:

1. He reiterated that the proposed third floor was designed to minimize the sun shadowing impact by having the shadows fall onto the neighbour's roof and not the rear yard and to protect the privacy of the neighbour to the north.
2. There are four parking spaces available on site, two on the driveway and two in the garage.
3. It was his opinion that the noise concerns of the neighbouring property owners are unfounded and that the massing of the proposed house is less than the impact of a duplex or a four-plex being build on this site, both of which are allowed uses in this zone.

Mr. Marshall provided the following responses to questions:

1. While he could not confirm the depth of the sewer invert, he estimated that it was approximately 9 feet at the rear lane.
2. The height of the existing main floor is approximately the same height as the main floor of the proposed house.
3. The proposed third floor does not span the entire length of the house which will minimize shadowing on the house to the north.
4. The house was designed to take advantage of the view of the park to the south.
5. The proposed third Storey was recessed from the edge of the second Storey and the railing is setback 6 feet from the edge.
6. They decided on a flat roof instead of a pitched roof for aesthetic reasons.

SUMMARY OF HEARING (CONTINUED):

7. It was Mr. Wakaruk's opinion that the height of the proposed flat roof would be lower than the ridge line of a pitched roof.
8. Mr. Marshall referenced a photograph of a development with a pitched roof, marked Exhibit "A".

The Board then heard from Mr. Andreas Schloo, a neighbouring property owner, who made the following points in opposition to the proposed development:

1. He has lived in this neighbourhood for 30 years.
2. He currently resides adjacent to a large house with a large garage that negatively impacts the use and enjoyment of his property because it limits sunlight into his Rear Yard.
3. The Appellants advised him during the consultation process that the proposed ridge line would only be 4 inches higher than what was allowed according to the development regulations.
4. It was his opinion that the proposed development is not characteristic of the neighbourhood and that he was not given all of the information during the consultation process.
5. Because of this, Mr. Schloo withdrew his support for the proposed development. He submitted a letter withdrawing his support and outlining his concerns regarding the proposed development, marked Exhibit "B".
6. It was his opinion that any new development in this area should comply with the development regulations established for the neighbourhood.

The Board then heard from Mr. Monk who resides two properties north of the subject site. Mr. Monk made the following points in opposition to the proposed development:

1. During the community consultation he was told that the proposed development exceeded the maximum allowable Height requirement because of the existing sanitary system.
2. He was therefore surprised after reviewing the plans that the proposed house was a three Storey structure.
3. He is concerned about the excessive size and height of the proposed house that will block sunlight into his rear yard.
4. A large house has recently been developed across from the subject site which in his opinion is uncharacteristic of the neighbourhood.

SUMMARY OF HEARING (CONTINUED):

5. He indicated that some of the photographs submitted by the Appellant were not houses that are located in the Bonnie Doon neighbourhood.
6. Mr. Monk clarified that he did not undertake a sun shadow study.

The Board then heard from Mr. James Allan, who indicated that he was speaking as an affected neighbour as well as the Facilities Chair for the Bonnie Doon Community League. The President of the Community League could not attend but submitted a letter, marked Exhibit "C", which outlined the concerns of the Community League. Mr. Allan provided the following information in opposition to the proposed development:

1. The Community League was under the assumption that the proposed development was a two Storey house, not a house with a basement plus three Storeys.
2. The Community League does not support the development of excessively large houses because of the loss of sunlight onto neighbouring properties.
3. The Community League is also concerned about the precedent set by approving these types of developments because they are not characteristic of the neighbourhood.
4. It was the opinion of the Community League that the proposed development will negatively impact the use, enjoyment and value of adjacent properties.
5. Mr. Allan submitted a document containing statistics for the Bonnie Doon neighbourhood as well as comments on some of the photographs submitted by the Appellant, marked Exhibit "D".
6. He has lived in the Bonnie Doon neighbourhood for approximately 24 years.
7. He was contacted by the Appellants approximately two weeks ago, after the decision of the Development Officer and before the appeal hearing.
8. It was his opinion that the houses illustrated in the photographs submitted by the Appellant were not all from the Bonnie Doon neighbourhood, were isolated examples and that some of the houses backed onto the river valley and therefore had no sun shadowing impact to the north.
9. He is personally concerned about the precedent that this type of development sets in the neighbourhood and referenced the Cloverdale neighbourhood as a comparison.

SUMMARY OF HEARING (CONTINUED):

10. He is not opposed to redevelopment in the neighbourhood but it was his opinion that development regulations contained in the Edmonton Zoning Bylaw should be the guideline for new development because it protects the rights of property owners who already reside in the neighbourhood.
11. It was his opinion that the excess of 1.6 metres in the maximum allowable Height requirement is substantial.
12. He expressed concern that the Appellant did not provide accurate and complete information during the consultation process.
13. Mr. Allan submitted letters from two affected property owners advising that they were withdrawing their support for the proposed development based on concerns regarding sun shadowing and the precedence that this development will set in the neighbourhood, marked Exhibit "E" and Exhibit "F".
14. Mr. Allan also submitted a letter of opposition from an affected property owner, marked Exhibit "G".
15. This neighbourhood has many mature trees which is a distinguishing feature of the neighbourhood and he expressed his concern about the loss of this amenity.
16. Mr. Allan referenced a house with a turret that is located one block away where all the shadowing remains on the subject property.
17. The berm on the subject site does not extend the length of the entire lot.
18. His property has been in his family for 57 years.
19. He reiterated his concern that the proposed development will limit the amount of sunlight to his property especially during the winter months.
20. He asked the Board to uphold the decision of the Development Officer and expressed his concern about being misled by the Appellants during the community consultation.
21. He advised that the plans show a bar located on the proposed third Storey. This concerns him because a bar located on the third floor suggests potential for increased usage of the roof-top patio which will create noise.

In response to a question, Mr. Allan indicated that he did not wish to comment specifically about any other type of development that could be developed on this site.

Mr. Marshall made the following points in rebuttal:

1. He understands that change is hard to accept for property owners in a well established mature neighbourhood.

SUMMARY OF HEARING (CONTINUED):

2. He confirmed that the photographs he submitted are from adjacent neighbourhoods as well.
3. A sun shadow study was not undertaken for this development.
4. There are similar developments in this neighbourhood.
5. It is his intent to retain both of the mature trees on the west side of the subject site and additional landscaping is also proposed.
6. He does not want to be at odds with his neighbours and he hopes that the proposed development will be integrated into the neighbourhood.
7. In response to comments related to a bar shown on the third floor, he advised that the proposed use of the third Storey, as indicated on the plans, was simply included for visualization purposes.
8. It was his opinion that the proposed development will not generate any excess noise.
9. The plans for the proposed development were available for public viewing and the plans were made available to all of the neighbours.
10. Mr. Marshall stated that he made every attempt to fulfill the community consultation requirement according to the Mature Neighbourhood Overlay.

DECISION:

that the appeal be DENIED and the decision of refusal by the Development Officer CONFIRMED

REASONS FOR DECISION:

The Board finds the following:

1. Single Detached Housing is a Permitted Use in the RF3 Low Density Development Zone.
2. Based on the evidence that Bylaw No. 16271, amending the Edmonton Zoning Bylaw, was passed on March 26, 2013, the variance required in the minimum required Site Width and the minimum Side Yard requirement is no longer applicable.
3. The Appellant, including those who spoke in support of his appeal, did not demonstrate to the satisfaction of the Board that the variances, in particular, the required number of Storeys and Height, would not materially interfere with and affect the use, enjoyment and value of neighbouring parcels of land based on the following:

REASONS FOR DECISION (CONTINUED):

- a) The proposed dwelling is designed and orientated such that it provides a presentation towards the street on both the west and south side. The north elevation, however, consists of a large uninterrupted wall that produces a significant massing effect on the abutting property.
- b) The proposed third Storey, while having a floor area smaller than the floor below, is positioned on the northern edge above the second Storey. Therefore, the elevation with the most massing effect is the north elevation which is immediately adjacent to a Single Detached Dwelling.
- c) The Board is of the opinion that the excessive height, additional storey, and the overage in site coverage are all factors that contribute to the massing impact of the proposed building.
4. Based on the above, it is the opinion of the Board, that the proposed development would unduly interfere with the amenities of the neighbourhood and materially interfere with and affect the use, enjoyment and value of neighbouring parcels of land.”

IMPORTANT INFORMATION FOR APPLICANT/APPELLANT

1. 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*, R.S.A. 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.
2. When a decision on a Development Permit application has been rendered by the Subdivision and Development Appeal Board, the enforcement of that decision is carried out by the Sustainable Development Department, located on the 5th Floor, 10250 – 101 Street, Edmonton.

NOTE: Citizens can call 311, 24-hours a day, every day of the year for access to City of Edmonton information, programs and services.

Mr. C. Thomas, Presiding Officer
SUBDIVISION AND DEVELOPMENT
APPEAL BOARD