

**SUBDIVISION
AND
DEVELOPMENT APPEAL BOARD
AGENDA**

**Tuesday, 9:00 A.M.
June 30, 2015**

**Hearing Room No. 2
Churchill Building,
10019 - 103 Avenue NW,
Edmonton, AB**

**SUBDIVISION AND DEVELOPMENT APPEAL BOARD
HEARING ROOM NO. 2**

I	9:00 A.M.	SDAB-D-15-137	Construct an Accessory Building (detached Garage, 9.14m x 9.14m) 18616 - 122 Avenue NW Project No.: 171496483-001
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II	11:00 A.M.	SDAB-D-15-138	Develop a Secondary Suite in an existing Single Detached House 11234 - 86 Street NW Project No.: 148765660-003
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NOTE: *Unless otherwise stated, all references to “Section numbers” refer to the authority under the Edmonton Zoning Bylaw 12800.*

ITEM I: 9:00 A.M.

FILE: SDAB-D-15-137

AN APPEAL FROM THE DECISION OF THE DEVELOPMENT OFFICER

APPLICATION NO.:	171496483-001
APPLICATION TO:	Construct an Accessory Building (detached Garage, 9.14m x 9.14m)
DECISION OF THE DEVELOPMENT AUTHORITY:	Refused
DECISION DATE:	May 27, 2015
DATE OF APPEAL:	June 4, 2015
MUNICIPAL DESCRIPTION OF SUBJECT PROPERTY:	18616 - 122 Avenue NW
LEGAL DESCRIPTION:	Plan 8821139 Blk 2 Lot 3
ZONE:	DC2.369 Site Specific Development Control Provision
OVERLAY:	N/A
STATUTORY PLAN:	Kinokamau Plains Area Structure Plan

DEVELOPMENT OFFICER'S DECISION

REFUSED - The proposed development is refused for the following reason:

1. Section DC2.369.4(h) of Bylaw 10654 - An Accessory Building or Structure shall be in accordance with Section 61.3 of the Land Use Bylaw.

Section 61.3(2) of the Land Use Bylaw 5996 - an Accessory Building or Structure shall not exceed 3.7 m (12.0 ft.) nor one storey in Height.

Proposed Accessory Building Height: 4.69m
Maximum allowed Accessory Building Height: 3.70m
Exceeds by: 0.99m

APPELLANT'S SUBMISSION

- The proposed garage is sited at the rear of the property and cannot be seen from 122 Ave. or the neighbouring property to the West. Mature trees and vegetation act as a screen.
- Does not negatively impact adjacent properties or amenity of the neighbourhood; or create any shadowing / wall effect in any way.
- Neighbouring properties have similar garages that exceed height restrictions, and fit into the context of a rural residential lot.

SUBDIVISION AND DEVELOPMENT APPEAL BOARD OFFICER'S COMMENTS

Section 641(4) of the *Municipal Government Act*, Chapter M-26, states despite section 685, if a decision with respect to a development permit application in respect of a direct control district

- (a) is made by a council, there is no appeal to the subdivision and development appeal board, or
- (b) is made by a development authority, the appeal is limited to whether the development authority following the directions of council, and if the subdivision and development appeal board finds that the development authority did not follow the directions it may, in accordance with the directions, substitute its decision for the development authority's decision.

Section 2 of the Edmonton Zoning Bylaw 12800 concerning Repeal, Enactment and Transition Procedures states the following:

- 2.4 Subject only to the provisions in the Municipal Government Act respecting legal non-conforming Uses and notwithstanding the effect it may have on rights, vested or otherwise, the provisions of this Bylaw govern from the Effective Date onward. In particular, no application for a Development Permit shall be evaluated under the procedural or substantive provisions of the previous Land Use Bylaw after the Effective Date, even if the application was received before the Effective Date.
- 2.6 Any Direct Control Districts that were in effect immediately prior to the Effective date are hereby deemed to continue in full force and effect and are hereby incorporated into Part IV of this Bylaw.
- 2.7 Unless there is an explicit statement to the contrary in a Direct Control District or Provision, any reference in a Direct Control District or Direct Control Provision to a land use bylaw shall be deemed to be a reference to the land use bylaw that was in effect at the time of the creation of the Direct Control District or Provision.

At the time of the creation of the subject DC site, the City of Edmonton Land Use Bylaw 5996 was in effect. A recent Court of Appeal decision in *Parkdale-Cromdale Community League Association v. Edmonton (City)*, 2007 ABCA 309 concluded that Section 2.7 of the Edmonton Zoning Bylaw only applies if there is an express cross-reference in a Direct Control bylaw passed before 2001 to a provision of the old Land Use Bylaw. In the absence of an express reference in the Direct Control Bylaw to the Land Use Bylaw 5996, it does not prevail over Section 2.4 of the Edmonton Zoning Bylaw.

Single Detached Housing is a listed Use in the DC2.369 Site Specific Development Control Provision, Section DC2.369.3(a).

DC2.369.4(h) states an Accessory Building or Structure shall be in accordance with Section 61.3 of the Land Use Bylaw.

Section 61.3(2) of the *Edmonton Land Use Bylaw 5996* states an Accessory Building or Structure shall not exceed 3.7 metres (12 feet) nor one storey in Height, except as provided in Sections 61.4 and 61.5.

The Development Officer determined the maximum allowable Height of the Accessory Building (detached Garage) is 3.70 metres. The Development Officer determined the proposed development provides a Height of 4.69 metres, which exceeds the maximum by 0.99 metres.

The submitted Site Plan shows that the subject site has a Site Width of 47.87 metres and a Site depth of 84.45 metres. The proposed detached Garage is located 5.06 metres from the (north) Rear Lot Line, and 3.04 metres from the (west) Side Lot Line.

Under Section 9.1(28) of the *Edmonton Land Use Bylaw 5996*, **Height** means, when used with reference to a building or structure, the vertical distance between the horizontal plane through grade and a horizontal plane through:

- a. the highest point of the roof in the case of a building with a flat roof or a roof having a slope than 20 degrees; and
- b. the average level between eaves and ridges in the case of a pitched, gambrel, mansard or hipped roof, or a roof having a slope of more than 20 degrees; provided that in such cases the ridge line of the roof shall not extend more than 1.5 metres (4.9 feet) above the maximum permitted building Height of the District.

Section DC2.369.1 states the purpose is to establish Site Specific Development Control District to accommodate rural residential development on lots a minimum of 0.4 ha in size, without the full range of piped urban utility services. The proposed District provides an interim solution to fulfill City Council's directive that Mooncrest Park be designated as a residential development, recognizing the current rural unserved nature of the area and the long term likelihood of neighbourhood area structure plans being prepared for the Mooncrest Park Subdivision and adjacent areas, as proposed in the Kinokamau Plains Servicing Concept Design Brief.

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. Bylaw No. 11136 requires that a verbal announcement of the Board's decision shall be made at the conclusion of the hearing of an appeal, but the verbal decision is not final nor binding on the Board until the decision has been given in writing in accordance with the Municipal Government Act.



SURROUNDING LAND USE DISTRICTS

Site Location ←

File: SDAB-D-15-137



ITEM II: 11:00 A.M.

FILE: SDAB-D-15-138

AN APPEAL FROM THE DECISION OF THE DEVELOPMENT OFFICER BY AN ADJACENT PROPERTY OWNER

APPLICATION NO.: 148765660-003

APPLICATION TO: Develop a Secondary Suite in an existing Single Detached House

DECISION OF THE DEVELOPMENT AUTHORITY: Approved with Conditions

DECISION DATE: May 19, 2015

DATE OF APPEAL: June 8, 2015

NOTIFICATION PERIOD: May 26, 2015 through June 8, 2015

MUNICIPAL DESCRIPTION OF SUBJECT PROPERTY: 11234 - 86 Street NW

LEGAL DESCRIPTION: Plan 512V Blk 84 Lot 20

ZONE: RA7 Low Rise Apartment Zone

OVERLAY: Medium Scale Residential Infill Overlay

STATUTORY PLAN: Parkdale-Cromdale Area Redevelopment Plan

DEVELOPMENT OFFICER'S DECISION

APPROVED - The proposed development is approved subject to the following conditions:

A Secondary Suite shall not be developed within the same principal Dwelling containing a Group Home or Limited Group Home, or a Major Home Based Business, unless the Secondary Suite is an integral part of a Bed and Breakfast Operation in the case of a Major Home Based Business.

Notwithstanding subsection 86.7 of this Bylaw, the number of unrelated persons occupying a Secondary Suite shall not exceed three.

The Secondary Suite shall not be subject to separation from the principal Dwelling through a condominium conversion.

Only one of a Secondary Suite, a Garage Suite or Garden Suite may be developed in conjunction with a principal Dwelling.

A Secondary Suite shall be developed in such a manner that the exterior of the principal building containing the Secondary Suite shall appear as a Single Dwelling.

1 parking space per 2 Sleeping Units in addition to the parking requirements for primary Dwelling. Tandem Parking is allowed for Secondary Suites and Garage Suites.

For an on-site driveway in any Residential Zone, the area required to be hard surfaced may be constructed on the basis of separated tire tracks, with natural soil, or gravel between the tracks, but shall be constructed so that the tires of a parked or oncoming vehicle will normally remain upon the hard surface. (Reference Section 54.6.2 (b) of Edmonton Zoning Bylaw)

The Driveway shall lead directly from the roadway to the required Garage or Parking Area. The existing driveway shall not be widened for additional parking stall. The Secondary Suite parking is to be in tandem on the existing driveway.

Note: A Building Permit is required for any construction or change in use of a building. For a building permit, and prior to the Plans Examination review, you require construction drawings and the payment of fees.

An approved Development Permit means that the proposed development has been reviewed against the provisions of Edmonton Zoning Bylaw 12800. It does not remove obligations to conform with other legislation, bylaws or land title instruments such as the Municipal Government Act, the Edmonton Building Permit Bylaw or any caveats, covenants or easements that might be attached to the Site. (Reference Section 5.2 of Edmonton Zoning Bylaw 12800).

APPELLANT'S SUBMISSION

The addition of a secondary suite is a discretionary use on this RA7 property. The current landowner has caused significant disruption to surrounding neighbours due to the actions of his renters in both this property and the adjacent four properties he owns, including loud partying and unruly behaviour, property damage, parking in neighbours driveways, excessive garbage being left on the property. The landlord seems to have little concern for neighbours, and we feel that allowing an additional dwelling unit on the property will only exacerbate the problem.

SUBDIVISION AND DEVELOPMENT APPEAL BOARD OFFICER'S COMMENTS

Secondary Suites is a Discretionary Use in the RA7 Low Rise Apartment Zone, Section 210.3(13).

Under Section 7.2(7), **Secondary Suite** means development consisting of a Dwelling located within, and Accessory to, a structure in which the principal use is Single Detached Housing. A Secondary Suite has cooking facilities, food preparation, sleeping and sanitary facilities which are physically separate from those of the principal Dwelling within the structure. A Secondary Suite also has an entrance separate from the entrance to the principal Dwelling, either from a common indoor landing or directly from the side or rear of the structure. This Use Class includes the Development or Conversion of Basement space or above-grade space to a separate Dwelling, or the addition of new floor space for a Secondary Suite to an existing Single Detached Dwelling. This Use Class does not include Duplex Housing, Semi-detached Housing, or Apartment Housing, and does not include Garage Suites, Garden Suites, or Lodging Houses.

This application was approved by the Development Officer subject to conditions.

The decision of approval by the Development Officer has been appealed by the Parkdale-Cromdale Community League.

The submitted Site Plan shows that the subject site has a Site Width of 9.46 metres, a (north) Site depth of 37.67 metres, and a (south) Site depth of 38.66 metres. The submitted plans indicate that the proposed Suite is located in the Basement level and consists of two bedrooms, one bathroom, a kitchen, a living room, and a mechanical room. Access to the Secondary Suite is provided from a common landing on the main floor.

Section 210.5(1) states notwithstanding subsection 210.4, Single Detached, Semi-detached Duplex Housing, Secondary Suites, Garage Suites and Garden Suites in this Zone shall be developed in accordance with the provisions of the RF4 Zone.

Section 150.4(18) states Secondary Suites shall comply with Section 86 of this Bylaw.

Section 86 states a Secondary Suite shall comply with the following regulations:

1. the minimum Site area for a Single Detached Dwelling containing a Secondary Suite is 360 square metres, except in the case of the RR Zone, where it shall be the same as the minimum Site area for the Zone.
2. the maximum Floor Area of the Secondary Suite shall be as follows:
 - a. in the case of a Secondary Suite located completely below the first storey of a Single Detached Dwelling (other than stairways or a common landing), the Floor Area (excluding the area covered by stairways) shall not exceed the Floor Area of the first storey of the associated principal Dwelling.
 - b. in the case of a Secondary Suite developed completely or partially above grade, the Floor Area (excluding the area covered by stairways) shall not exceed 40% of the total Floor Area above grade of the building containing the associated principal Dwelling, nor 70 m², whichever is the lesser.

3. the minimum Floor Area for a Secondary Suite shall be not less than 30 m².
4. a Secondary Suite shall be developed in such a manner that the exterior of the principal building containing the Secondary Suite shall appear as a single Dwelling.
5. only one of a Secondary Suite, a Garage Suite or Garden Suite may be developed in conjunction with a principal Dwelling.
6. a Secondary Suite shall not be developed within the same principal Dwelling containing a Group Home or Limited Group Home, or a Major Home Based Business, unless the Secondary Suite is an integral part of a Bed and Breakfast Operation in the case of a Major Home Based Business;
7. notwithstanding the definition of Household within this Bylaw, the number of unrelated persons occupying a Secondary Suite shall not exceed three.
8. the Secondary Suite shall not be subject to separation from the principal Dwelling through a condominium conversion or subdivision.
9. Secondary Suites shall not be included in the calculation of densities in this Bylaw.
10. notwithstanding Secondary Suites being listed as Permitted or Discretionary Uses within any Zone, they shall be subject to the regulations of the Edmonton-Strathcona County Joint Planning Study Area Secondary, Garage and Garden Suites Overlay in Section 822 of this Bylaw.

Section 823.1 states the purpose of the Medium Scale Residential Infill Overlay is to accommodate the development of medium-scale infill housing in Edmonton's mature residential neighbourhoods in a manner that ensures compatibility with adjacent properties while maintaining or enhancing a pedestrian-friendly streetscape.

Section 210.1 states the purpose of the zone is to provide a Zone for Low Rise Apartments.

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SURROUNDING LAND USE DISTRICTS

Site Location ←

File: SDAB-D-15-138



BUSINESS LAID OVER

SDAB-D-15-114	An appeal to construct a Freestanding Minor Digital On-premises Off-premises Sign <i>July 2, 2015</i>
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APPEAL HEARINGS TO BE SCHEDULED

152684111-003	An appeal to increase the height of an approved Fascia Minor Digital On-premises Off-premises Sign <i>July 8 or 9, 2015</i>
170465146-003	An appeal to construct an uncovered deck (1.95m x 4.90m at 1.10m in height), existing without permits <i>July 15 or 16, 2015</i>