

## **Edmonton Subdivision and Development Appeal Board**

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Date: September 10, 2015  
Project Number: 136283926-005  
File Number: SDAB-D-15-198

### **Notice of Decision**

This appeal dated August 5, 2015, from the decision of the Development Authority for permission to:

Construct an addition to an existing Single Detached House (rear covered patio 4.56m x 3.20m)

on Plan 1224344 Blk 8 Lot 54, located at 7398 - May Common NW, was heard by the Subdivision and Development Appeal Board on September 2, 2015.

#### **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*, RSA 2000, c M-26.

The Board heard an appeal of the decision of the Development Authority to refuse an application to construct an addition to an existing Single Detached House (rear covered patio 4.56m x 3.20m) located at 7398 – May Common NW. The subject site is zoned RSL Residential Small Lot Zone is located within the Magrath Heights Neighbourhood Area Structure Plan.

The development permit application was refused due to a deficiency in the minimum required Rear Setback and an excess in the maximum total Site Coverage.

Prior to the hearing the following information was provided to the Board:

- A written submission from the Appellant received on August 27, 2015; and
- A written submission from the Development Officer received on September 1, 2015.

The Board heard from the Appellant, Mr. M. Dunster, representing Apollo Sunrooms Inc., who provided the following information:

1. A variance is required for the proposed transparent glass patio cover which will be architecturally consistent with other developments in the area.
2. Most of this proposed development will not be seen by the adjacent properties because of the fence height.

3. The existing at grade patio is south facing and the proposed development will provide a needed shaded area for the home owners during hot, sunny conditions in the summer.
4. They tried to contact the adjacent property owner to the south which is directly to the rear on three separate occasions, dropping off a full information package each time but have never received a response. The house on that lot is fully constructed and occupied.
5. There are a number of vacant lots around the subject site and the Appellants have received approval from three of the nearby occupied properties.
6. He clarified that the proposed development extends 3.4 metres from the south wall of the house.
7. The proposed development will cover less than half of the existing ground level patio.

Mr. Dunster provided the following responses to questions:

1. Sunlight reflection from the proposed patio roof (which is relatively flat) would be similar to that from windows and most of the sunlight would reflect back to the subject property, not to the adjacent property directly to the south.
2. His company has constructed several similar patio covers which feature built-in shades to allow for good control of light onto the patio.
3. He clarified that the patio will be mounted directly to the house. It will project 3.2 metres from the rear wall of the house and there will be a distance of 4.31 metres from the rear lot line to the patio.

The Board heard from Mr. C. Lee, representing the City of Edmonton Sustainable Development Department, who provided the following responses to questions:

1. The drawings are unclear as to the patio position in relation to the rear lot line and Site Coverage could be affected.
2. The application was turned down because of the lack of support from the neighbour to the rear.
3. He feels there is no hardship associated with this lot, therefore, he could not support the requested variance.
4. He did not feel the light reflection off the patio roof would reflect back to the adjacent property to the rear.
5. He confirmed that the Site Coverage for the patio was 8.0 square metres, a 1.4 percent excess in the permitted total Site Coverage.

Mr. Dunster provided no further comments in rebuttal.

**Decision:**

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 condition:

1. The development is approved as per the submitted plans which show an unenclosed structure with a glass roof and aluminum structural framing.

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

1. Section 115.4(5) is varied by 1.4 percent (8.0 square metres) to allow for a maximum total Site Coverage of 46.4 percent.
2. Section 115.4(7) is varied by 3.19 metres to reduce the minimum required Rear Setback to 4.31 metres.

**Reasons for Decision:**

The Board finds the following:

1. The proposed development is an addition to an existing Single Detached House which is a Permitted Use in the RSL Residential Small Lot Zone, section 115.2(4).
2. The overall massing effect of the proposed development and other possible adverse impacts of the variances are mitigated for two reasons. First, the proposed patio cover is approximately 9 feet above grade and the property is surrounded by a solid 6 foot high fence. Second, the proposed patio cover is comprised of a transparent glass ceiling, supported by a simple aluminum frame with no walls.
3. The Appellant made significant attempts to obtain feedback from the neighbours. This area is currently under construction and there are 28 properties within the notification area (10 vacant, 9 under construction, 9 occupied homes). The Appellant was able to obtain approval from 3 of the occupied homes and no responses were received from the remaining 6.
4. The Appellant provided a full package describing the development, including the specific variances to Rear Setback and Site Coverage on three occasions to the most affected neighbour directly to the south but received no response. The Appellant confirmed that this property is occupied.
5. The adjacent neighbour immediately to the east supports the proposed development.
6. No letters of objection were received and no one appeared to oppose the proposed development.
7. Given the above, the Board finds that the proposed development will not unduly interfere with the amenities of the neighbourhood nor materially interfere with or affect the use, enjoyment or value of neighbouring parcels of land.

**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 5<sup>th</sup> Floor, 10250 – 101 Street, Edmonton.

2. Obtaining a Development Permit does not relieve you from complying with:
  - a) the requirements of the *Edmonton Zoning Bylaw*, insofar as those requirements have not been relaxed or varied by a decision of the Subdivision and Development Appeal Board,
  - b) the requirements of the *Alberta Safety Codes Act*,
  - c) the *Alberta Regulation 204/207 – Safety Codes Act – Permit Regulation*,
  - d) the requirements of any other appropriate federal, provincial or municipal legislation,
  - e) the conditions of any caveat, covenant, easement or other instrument affecting a building or land.
3. When an application for a Development Permit has been approved by the Subdivision and Development Appeal Board, it shall not be valid unless and until any conditions of approval, save those of a continuing nature, have been fulfilled.
4. A Development Permit will expire in accordance to the provisions of section 22 of the *Edmonton Zoning Bylaw, Bylaw 12800*, as amended.
5. This decision may be appealed to the Alberta Court of Appeal on a question of law or jurisdiction under section 688 of the *Municipal Government Act*, RSA 2000, c M-26. If the Subdivision and Development Appeal Board is served with notice of an application for leave to appeal its decision, such notice shall operate to suspend the Development Permit.
6. When a decision on a Development Permit application has been rendered by the Subdivision and Development Appeal Board, the enforcement of that decision is carried out by the Sustainable Development Department, located on the 5th Floor, 10250 – 101 Street, Edmonton.

*NOTE: The City of Edmonton does not conduct independent environmental checks of land within the City. If you are concerned about the stability of this property for any purpose, you should conduct your own tests and reviews. The City of Edmonton, when issuing a development permit, makes no representations and offers no warranties as to the suitability of the property for any purpose or as to the presence or absence of any environmental contaminants on the property.*

Ms. K. Cherniawsky, Presiding Officer  
Subdivision and Development Appeal Board

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Date: September 10, 2015  
Project Number: 173955878-001  
File Number: SDAB-D-15-199

## **Notice of Decision**

This appeal dated August 7, 2015, from the decision of the Development Authority for permission to:

Park a recreational vehicle in the front Driveway of a Single Detached House

on Plan 8922401 Blk 67 Lot 54, located at 132 - Elsinore Close NW, was heard by the Subdivision and Development Appeal Board on September 2, 2015.

### **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*, RSA 2000, c M-26.

The Board heard an appeal of the decision of the Development Authority to refuse an application to park a recreational vehicle in the front Driveway of a Single Detached House located at 132 Elsinore Close NW. The subject site is zoned RF1 Single Detached Residential Zone and is located within the Castle Downs Extension Area Structure Plan, the Chambery Neighbourhood Structure Plan and the Elsinore Neighbourhood Structure Plan.

The development permit application was refused because of a deficiency in the required distance the recreational vehicle must be parked from the interior edge of the sidewalk or the curb.

Prior to the hearing the following information was provided to the Board:

- A written submission received from the Appellant on August 28, 2015;
- A written submission received from the Development Officer on August 31, 2015; and
- A letter of support from an adjacent property owner received on September 2, 2015.

The Board heard from the Appellant, Ms. E. Belzile, who provided the following information:

1. They received a Non-compliance Notice in June, 2015, and understood the risk posed by how their recreational vehicle ("RV") was parked at that time. She felt that moving the RV to the opposite side of the driveway and moving the hitch off the sidewalk addressed the safety issues outlined.
2. She emphasized that the Development Officer's remaining objections were based on aesthetics.
3. They have a 10,000 square foot lot, but are unable to park the RV in the back yard because there is no alley for access.
4. They use their RV almost every weekend. It would be a significant inconvenience if they had to retrieve their RV weekly from their storage space just outside of Edmonton.
5. Their RV is parked on their driveway from the May long weekend through the September long weekend and stored off-site during the remainder of the year.
6. A Planning Technician suggested they move the RV to other side of their driveway. She acknowledged they were still not in compliance with the *Edmonton Zoning Bylaw* but feels moving the RV has alleviated the safety concerns.
7. The Non-compliance Notice did not arise from a neighbour's complaint and they provided a petition of support from all of the neighbours but one. The one who did not sign verbally indicated he had no opinion.
8. If this appeal is rejected they would have to attach the RV to their truck in the next street before each trip. She felt that security was more important than neighbourhood aesthetics.
9. There are many other RVs and boats parked within the required 2 metre setback in the neighbourhood.

Ms. Belzile provided the following responses to questions:

1. She admitted that the current parking of the RV does infringe slightly on the sidewalk but is an improvement to where it was previously positioned.
2. There are not many children riding their bikes on the sidewalk as many neighbours are long time owners and their children are the youngest in the neighborhood.
3. Visitors to the neighbourhood park perpendicular to the sidewalk at times, as shown in the photos provided.
4. They had tried other options for parking the RV on the driveway such as angling it partially onto the grass, but the slope of the driveway does not make this a viable option.
5. Angling the RV across the driveway also caused difficulties in hitching the RV to their truck.
6. She was advised by the City that the notice of non compliance arose as the City was going around and checking driveways in the area and many other property owners in the area had received similar notices of non-compliance.

The Board heard from Mr. J. Xie, representing the City of Edmonton Sustainable Development Department, who provided the following responses to questions:

1. If the RV was parked on an angle and the wheels of the RV remained on the paved front Driveway while a portion of the trailer hung over the grass this would be considered parking in the front yard which is prohibited under the bylaw.
2. A walkway extension could provide a possible solution, but that would require a separate application.
3. He agreed that the pie-shaped lot and location of the house arguably created a hardship for this RV.
4. It would be safer if it were possible to angle the RV on the driveway.
5. He clarified that an encroachment agreement on City property or on a right-of-way is required for permanent structures. A Development Officer is permitted to vary the minimum setback requirement for parking a RV on City property as described in section 45.4(b) of the *Edmonton Zoning Bylaw* because this is a temporary Use and not a permanent structure.
6. In addition to aesthetics, he has concerns regarding sight lines and the movement of pedestrians if the required setback were varied to zero metres.
7. Shifting the RV to the proposed location on the front Driveway is an improvement but he still has concerns about the appellant's own sightlines when backing out of the Driveway when the RV is parked there.
8. If the information regarding neighbourhood support had been included in the initial application he may have considered approval, but might also have asked for some form of mitigating measure such as two-way mirrors on the RV to improve sight lines. He has requested a similar condition in the past for a garage with tight sight lines.
9. There are no restrictions in the *Edmonton Zoning Bylaw* that deal with temporary structures blocking access to the front door of a dwelling.

Ms. Belzile made the following points in rebuttal:

1. She felt that moving the RV to the proposed location had resolved Mr. Xie's concerns regarding safety and pedestrian use and enjoyment of the sidewalk as cited in his e-mail of July 23, 2015. However, she acknowledged that Mr. Xie's written submission dated August 27, 2015, still contained concerns for pedestrians and obstruction of sight lines as a reason for refusal.
2. She had no objections to the imposition of a condition suggested by the Development Officer of installing two-way mirrors on the RV to improve sightlines but questioned the effectiveness of such a condition.

**Decision:**

The appeal is DENIED and the decision of the Development Authority is CONFIRMED. The development is REFUSED.

**Reasons for Decision:**

The Board finds the following:

1. This application for a development permit was prompted by a compliance notice received by the Appellant when her Recreational Vehicle was parked on the west side of the front Driveway where it blocked all or substantially all of the width of the front sidewalk (Photograph, Development Officer Written Submission, Appendix A).
2. The Appellant has applied to “park a recreational vehicle in the front Driveway of a Single Detached House” in the RF1 Single Detached Residential Zone. More specifically, the Appellant now seeks a development permit to park the Recreational Vehicle on the deeper east side of the front Driveway perpendicular to the attached Garage of the Single Detached House as shown in her photographs submitted August 28, 2015.
3. Under section 12.2(10) of the *Edmonton Zoning Bylaw* no development permit is required if the parking or storage, or both, of any uninhabited Recreational Vehicle in a Residential Zone, where such parking or storage fully complies with the regulations of Section 45 of this Bylaw.
4. Section 45 provides in part:
  3. No person shall keep, in the Front Yard in any Residential Zone, or in the case of a corner Site, in the Front Yard or the flanking Side Yard in any Residential Zone, any large Recreational Vehicle for any longer than is reasonably necessary to load or unload such vehicle.
  4. Notwithstanding subsection 45.3, from April 1 through October 31 inclusive, on a residential Site with no rear Lane, large Recreational Vehicles may be parked **to within 2.0 m of the interior edge of the sidewalk**, or within 2.0 m of the curb if there is no sidewalk:
    - a. where vehicular access is solely available through the Front Yard; or
    - b. in the case of a corner Site, where vehicular access is solely available through the Front Yard or through the exterior flanking Side Yard,subject to the discretion of the Development Officer, who may exercise his variance power to decrease **this minimum Setback requirement** on a Site by Site basis, given the proximity and orientation of driveways, parking areas, buildings and other physical features which may affect sight lines and amenities on the subject property and on adjacent properties.
5. The proposed parking location, while an improvement to the original location, still does not comply with the 2.0 metres minimum Setback required under section 45.4 of the *Edmonton Zoning Bylaw*. Photographic evidence provided by the Appellant and by the Development Officer shows that the blocks which support the Recreational Vehicle hitch and the hitch of the Recreational Vehicle itself will still project onto and over a portion of the City sidewalk.



6. The Board acknowledges that the Appellant's have received approval for the proposed development from their neighbours; however, based on the photographic evidence of the Appellant and the submissions of the Development Officer, the Board has determined that parking the recreational vehicle on the east side of the front Driveway, as proposed, would interfere with sight lines for both access and egress from the subject site and would also negatively affect sightlines and safety for passing motorists, pedestrians and cyclists.
7. While the Development Officer suggested the imposition of a condition requiring two way mirrors to improve sightlines it was unclear as to exactly how that would occur. The Board notes that the Appellant also doubted the effectiveness of such a condition.
8. Based on the above, the Board finds that allowing a waiver of the required Setback in section 45.4 from 2.0 metres to 0 metres will unduly interfere with the amenities of the neighbourhood and materially interfere with or affect the use, enjoyment or value of neighbouring parcels of land.
9. Finally, the Board notes that section 45.3 authorizes it to reduce the 2.0 metre Setback from the interior edge of the sidewalk, but does not authorize the Board to issue a variance to allow parking which encroaches on or over the sidewalk. Therefore the Board has no authority to issue a permit to authorize parking the recreational vehicle as shown in the Appellant and Development officers Photographs in any event. The authority to allow such a projection or encroachment on to the City sidewalk is beyond the jurisdiction of this Board.

#### **Important Information for the 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*, 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.
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.

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Date: September 10, 2015  
Project Number: 173878369-001  
File Number: SDAB-D-15-200

### **Notice of Decision**

This appeal dated August 11, 2015, from the decision of the Development Authority for permission to:

Construct an Accessory Building (rear detached Garage, 10.36m x 7.93m) and to demolish an existing Accessory Building (rear detached Garage, 7.96m x 4.30m)

on Plan 6574ET Blk 3 Lot 8, located at 12250 - 95 Street NW, was heard by the Subdivision and Development Appeal Board on September 2, 2015.

#### **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*, RSA 2000, c M-26.

The Board heard an appeal of the decision of the Development Authority to refuse an application to construct an Accessory Building (rear detached Garage, 10.36m x 7.93m) and to demolish an existing Accessory Building (rear detached Garage, 7.96m x 4.30m) located at 12250 – 95 Street NW. The subject site is zoned RF3 Small Scale Infill Development Zone and is within the Mature Neighbourhood Overlay.

The development permit application was refused due to an excess in maximum allowable Site Coverage for an Accessory Building. It is the opinion of the Development Officer that the additional coverage and overall size of the proposed Accessory Building is excessive and would be a significant contrast to the surrounding existing Garages.

Prior to the hearing the following information was provided to the Board:

- A written submission from the Development Officer received on August 31, 2015.

The Board heard from the Appellant, Mr. S. Heath, who was accompanied by Ms. L. Scott. They provided the following information:

1. They would like to build a Garage large enough to allow for the storage and maintenance of Mr. Heath's car collection; they do not plan to run any business activities out of the Garage.
2. They would like a wider Garage rather than a deeper Garage to allow for gardening at the rear of the Garage.
3. There are a number of run-down properties in close proximity and they feel the new structure will be a general improvement to the neighbourhood
4. They have received no objections from neighbours and they emphasized that the Garage will be the same depth as the existing Garage.
5. A three car Garage space will provide room for the storage of equipment and will allow them to have a tidier yard.
6. There are several oversize Garages in the area:
  - a. A triple car Garage to the east with a roof patio on it.
  - b. A large Garage four lots to the south.
  - c. A large Garage one lot to the west, across the alley from their property
7. This area is in transition with many young families moving in and large family homes being built. A new duplex development across the street from their property does not fit in with the character of neighbourhood and has no useable backyard space.
8. The proposed Garage will be a single storey and lower in height than their house and will not cause sunlight penetration problems for their neighbours.
9. They plan to shift the proposed Garage slightly closer to the lane than the existing Garage to provide more air space for their adjacent south neighbour. The rear distance from the lane will now be 4.87 metres rather than the 5.33 metres indicated on their preliminary sketch. The separation between the house and garage will now be 7.6 metres.
10. They recently held a BBQ for their neighbours to discuss their plans. Those in attendance, including their neighbours immediately to the south and north as well as to the west, supported the proposed garage.
11. They have received verbal support from five adjacent neighbours but confirmed they have not spoken with all of the neighbours within the notification area.

The Board heard from Ms. K. Heimdahl, representing the City of Edmonton Sustainable Development Department, who provided the following responses to questions:

1. She confirmed the 4.87 metres rear distance separation to the lane and the increased separation space of 7.6 metres between the house and the Garage.
2. There are some large Garages in the area but she did not see any comparable to the proposed development.
3. She confirmed the principal site coverage is 14.45 percent and the total site coverage of the garage and the house will be 32 percent, well under the 40 percent total site coverage allowed.
4. The proposed Garage could possibly be seen from the front of the lot because it is wider than the house.
5. The proposed Garage would not be particularly high and sunlight penetration would likely not be an issue. It is more of a concern with two storey buildings.

6. Her main objection was that the proposed development would be larger than other Accessory Buildings seen in the area but admitted the neighbourhood is in transition with newer, larger buildings being built.
7. She agreed that the proposed Garage meets both of the required side setbacks and a fully compliant Garage could have the same impacts on the two immediately adjacent lots as the proposed triple Garage.

Mr. Heath and Ms. Scott declined the opportunity for rebuttal.

**Decision:**

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 changes noted on the site plan.

In granting the development, the following variance to the *Edmonton Zoning Bylaw* is allowed:

1. Section 140.4(10) is varied by 5.69 percent (26.43 square metres) percent to allow for a maximum allowable Site Coverage for an Accessory building of 17.69 percent (82.15 square metres).

Advisements:

1. An Accessory building or structure shall not exceed 4.3 metres in Height (Reference section 6.1(49) and 50.3(2) of the *Edmonton Zoning Bylaw*).
2. Eave projections shall not exceed 0.46 metres into required yards or separation spaces less than 1.2 metres (Reference section 44.1(b) of the *Edmonton Zoning Bylaw*).

**Reasons for Decision:**

The Board finds the following:

1. A rear detached Garage is Accessory to a Single Detached House, which is a Permitted Use in the RF3 Small Scale Infill Development Zone, section 140.2(9) of the *Edmonton Zoning Bylaw*.
2. While the proposed Garage exceeds the permitted Site Coverage for an Accessory building, the Board notes that the Principal Dwelling has a Site Coverage of 14.45 percent resulting in a combined total Site Coverage for the Principal Dwelling and the Garage of 32.14 percent, well below the total allowable Site Coverage of 40 percent.

3. Any massing impact due to the size of this Accessory building is mitigated because the Garage is a single storey and lower in height than the Principal Dwelling and therefore not highly visible from the front street.
4. There are three existing oversized Garages in the immediate area which are similar, although not identical, to the proposed development.
5. The Board accepts the evidence of the Appellants that they have consulted with the most affected neighbours and that the abutting neighbours to the north and south support this development as do the two adjacent neighbors to the rear and front of the property.
6. No letters of objection were received and no one appeared to oppose the proposed development.
7. The Board accepts the evidence of the Appellants and the Development Officer that this area is in transition and that larger Dwellings and Accessory buildings, such as Garages, will not be out of character.
8. Given the above, the Board has determined that the proposed development is sensitive in scale to the existing development and consistent with section 814.1 of the *Edmonton Zoning Bylaw* (Mature Neighbourhood Overlay).
9. The Board finds that the proposed development will not unduly interfere with the amenities of the neighbourhood nor materially interfere with or affect the use, enjoyment or value of neighbouring parcels of land.

#### **Important Information for the Applicant/Appellant**

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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*,
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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.
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