

Edmonton Subdivision and Development Appeal Board

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DATE: February 19, 2015
PROJECT NO.: 155580092-002
FILE NO.: SDAB-D-15-020

NOTICE OF DECISION OF THE SUBDIVISION AND DEVELOPMENT APPEAL BOARD

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

Construct an Accessory Building (Garage Suite (above Grade) 9.30 metres by 7.04 metres, with front balcony and rear uncovered deck), and to demolish an existing Accessory Building (rear detached Garage)

on Plan 2368Q, Block 1, Lots 17-18, located at 9651 - 85 AVENUE NW, was heard by the Subdivision and Development Appeal Board at its hearing held on February 4, 2015. 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 Presiding Officer first addressed the issue of jurisdiction and whether the appeal was filed within the allowable 14-day appeal period, pursuant to section 686 of the *Municipal Government Act*, R.S.A. 2000, c. M-26 (the "MGA").

The Board noted the following:

1. The permit was refused on December 18, 2014.
2. Assuming notification of the refusal at the earliest possible point, the notification appeal period ended on January 1, 2015.
3. The SDAB Office was closed on January 1, 2015, until January 5, 2015.
4. Mr. Wollin filed the Appeal on January 5, 2015.

MOTION:

That the Board assumes jurisdiction pursuant to Section 686(1)(a)(i) of the *Municipal Government Act*.

REASONS FOR DECISION:

The Board finds the following:

1. Based on the evidence provided, the Board determined that the appeal was filed on January 5, 2015. Therefore, pursuant to section 22(2) of the *Interpretation Act*, R.S.A. 2000, c. I-8 and section 686(1)(a)(i) of the *MGA*, the appeal was filed within the allowable 14 days.

SUMMARY OF HEARING CONTINUED:

The Board heard an appeal of the decision of the Development Authority to refuse an application to construct an Accessory Building (Garage Suite (above Grade) 9.30 metres by 7.04 metres, with front balcony and rear uncovered deck), and to demolish an existing Accessory Building (rear detached Garage), located at 9651 – 85 Avenue NW. The subject site is zoned RF2 Low Density Infill Zone and is within the Mature Neighbourhood Overlay. The development permit was refused due to an excess in maximum allowed Height, an excess in maximum allowed Floor Area, a proposed roof top deck/sod roof which is not permitted, a proposed balcony which faces into the Rear Yard, an excess in maximum permitted Site Coverage of Accessory buildings and failure to meet the location criteria for a Garage Suite.

Prior to the hearing, the Appellant submitted documentation to support the appeal, which included a written submission with photographs and the results of a canvassing effort in the neighbourhood.

Prior to the hearing, the Board received a written submission from the Development Authority dated January 26, 2015.

The Board notes that one letter was received in opposition to the proposed development from the adjacent property owner to the west of the subject Site.

The Board heard from Mr. Wollin, the Appellant, who made the following points:

1. He wants to build his retirement home.
2. He canvassed the neighbourhood and received 12 signatures from neighbouring property owners in support of the proposed development.

SUMMARY OF HEARING CONTINUED:

3. The proposed development has architectural interest and was designed as a green initiative.
4. There is no fence between his property and the adjacent property to the west; however, there is a spruce tree on the adjacent property which will provide screening of the proposed development.
5. The adjacent property to the east is abandoned and has been that way for over ten years.
6. The property is located in an area that supports increased urban density.

The Board then heard from Mr. Frost, the architect, who made the following points:

1. The plans for the proposed development started three years ago.
2. The roof Height could be reduced to meet the Bylaw by replacing proposed 9 foot ceilings with 8 foot ceilings in the Garage and the Garage Suite.
3. The balcony will be used for extra amenity space, a BBQ, and the basic look of a balcony.
4. He would be agreeable to providing screening.
5. The flat roof is a green roof and works toward a natural ecosystem.
6. The back deck improves the look of the building.
7. The overage in Site Coverage was his oversight because his drafting program measured to the centre of the walls rather than to the outside edge. It could be reduced to meet the Bylaw.
8. He reviewed the reasons for refusal and stated that the City of Edmonton Executive Committee is currently working on amending the regulations for Garage Suites.
9. They may be ahead of their time as they applied for a development permit application prior to the anticipated changes to the Edmonton Zoning Bylaw.

In response to questions by the Board, Mr. Wollin and Mr. Frost provided the following information:

1. Demolition of the current Single Detached House was considered as an alternative, but due to the cost the proposed Garage Suite is a preferable option.
2. The current Single Detached House was built in 1942 and has been extensively renovated.
3. Mr. Wollin intends to rent out the Single Detached House and reside within the Garage Suite.

SUMMARY OF HEARING CONTINUED:

4. The subject Site is considerably larger than other parcels in the area and the proposed courtyard between the Garage Suite and the Single Detached House will have natural light.
5. There are two existing Garage Suites in the area pictured in their submission.
6. In their opinion, the proposed design reflects future developments in the area.
7. They could reduce the Height of the Garage Suite if required.
8. They agreed that four of the six reasons for refusal would not be affected by the proposed changes to the Edmonton Zoning Bylaw, and would still require variances.
9. When asked how the proposed Garage Suite is incidental or subordinate to the Single Detached House, they stated that the Garage Suite is less of an incursion on the subject Site than the Single Detached House.
10. Due to the nature of a sod roof, the roof material is thicker than the typical materials.
11. There will be a solid railing or parapet wall around the proposed development.
12. They do not know the Height of the bungalow.
13. They understand that additional screening may be required on the rooftop deck, and that the structure could appear larger if additional screening or a railing is required for safety purposes. The distance from the garage slab to the roof deck is approximately 6 metres. Above the roof deck is a parapet wall approximately 1.1 metres high.
14. There are three two-Storey Garages on the block.

The Board then heard from Mr. Sheahan, representing the Sustainable Development Department, who made the following points:

1. The Appellant submitted a similar development permit application approximately three years ago.
2. Subsequent to the submission of the previous application, the Use class definition of Garage Suite was amended to include regulations and allow for increased infill developments.
3. The design of the proposed development includes items in keeping with the intent of the Edmonton Zoning Bylaw.
4. As the Development Officer, he does not have the authority to approve the excess in the allowable Height.
5. The City of Edmonton Executive Committee will be reviewing the regulations for Garage Suites in the near future.

SUMMARY OF HEARINCONTINUED:

6. The proposed design has a roof top patio intended to be used for living space.

The Board recessed for a short time so the Development Authority could provide the Board with additional calculations.

Upon reconvening, Mr. Sheahan made the following points:

1. The Height of the Single Detached House to the ridge of its roof from the average Grade is approximately 5.7 metres.
2. The parapet wall is exempt from the Height calculation for the Garage Suite.
3. While he believes the Appellant is genuine in his intent to use the roof top patio as a garden, regulating the use once approved raises a concern.
4. Future developments will be limited by the total Site Coverage regulation.
5. Garage Suites are often designed with exterior stairwell access in the rear yard which creates a privacy concern. Here the space will be used intermittently as a second Storey balcony and is too small to be considered an amenity area so it is less of a concern.

In response to questions by the Board, Mr. Sheahan provided the following information:

1. If he had the authority to approve the proposed development and grant the variance in Height, any such approval would be conditional on the Community Consultation.
2. The proposed development appears to be higher with the parapet wall, which increases the massing of the building.
3. If the roof top space was occupied by solar panels it would not be useable it would not be considered a deck on a Garage Suite roof and there would be no contravention of Section 87.9 of the Edmonton Zoning Bylaw.

The Board then heard from Mr. Veale, who was speaking on behalf of a the property owner immediately adjacent to the west of the subject Site. Mr. Veale made the following points:

1. He reviewed the letter of objection submitted by the adjacent property owner to the immediate west of the subject Site.

SUMMARY OF HEARINCONTINUED:

2. The adjacent property owner is particularly concerned that the second Storey balcony, will overlook his back yard and will impact privacy.
3. He is also concerned about future activities on the roof top patio which will impact his privacy.
4. The proposed development is too high and will interfere with the adjacent property owner's patio area.

The Board then heard from Ms. Roubalik who made the following points:

1. Her house is south of the subject Site across the rear Lane. She has lived in this home for 26 years.
2. She is not opposed to Garage Suites in the neighbourhood, but is opposed to the variances being requested including the Height of the proposed development.
3. Although the parapet wall is exempt in the Height calculations, it is not exempt from her line of vision. The parapet wall will have a visual impact on her property.
4. Nine-foot ceilings in both the Garage and Garage Suite are excessive.
5. The Appellant is pushing the Bylaw limits and over building at her expense and the expense of other adjacent neighbours.
6. A Garage Suite should not be used as a Principal Dwelling.
7. She enjoys her yard and the proposed development will negatively affect her property. The rear balcony and the roof top deck will overlook her property.
8. In her opinion, people should not be allowed to overbuild on their property.
9. While sunlight on her property will not be affected by the proposed development, she is concerned it will be an issue for others.

In rebuttal, Mr. Wollin provided the following information:

1. He summarized his efforts to provide privacy to the neighbouring property and is willing to provide screening if necessary.
2. The Garage Suite is close to what is allowed and the outdoor landing with the stairwell leading to the sod roof was designed to minimize impact on the living space.

DECISION:

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

REASONS FOR DECISION:

The Board finds the following:

1. The Board acknowledges there may be changes coming to the Edmonton Zoning Bylaw regarding Garage Suites; however, the Board must consider this appeal based on the current Edmonton Zoning Bylaw.
2. The proposed development is a Discretionary Use in the RF2 Low Density Infill Zone.
3. The proposed development requires six variances to the current Zoning Bylaw which create cumulative impacts for neighbouring properties, particularly for the adjacent properties.
4. The proposed development exceeds the maximum allowable limits of the Zoning Bylaw for Height, Floor Area, and Site Coverage.
5. In addition, the proposed development is located on an interior lot; includes a wraparound second Storey balcony oriented toward the rear yard of the site and toward an adjacent rear yard to the west; and a rooftop deck accessible by an exterior staircase oriented toward an adjacent rear yard to the west.
6. The Board accepts the evidence of the adjacent neighbours that the location and orientation of the second Storey balcony and the existence of a roof top deck will negatively impact their privacy.
7. Inclusion of a rooftop deck to be used as a garden involves the addition of a parapet wall. The Board accepts the estimate of the Appellant that this parapet wall adds approximately 1.1 metres to the calculated 6.03 metres Height of the Garage Suite. The Board accepts the submissions of the adjacent neighbours that the parapet wall will add to the visual massing and sunshadowing of the building. These impacts will be further increased if additional privacy screening is added to the rooftop deck.
8. The Board notes the privacy and sunlight concerns of the immediately adjacent property to the west are increased as the Garage Suite has been moved forward on the subject Site to accommodate the required third tandem parking stall on the rear driveway.
9. No sunlight study was provided by the Appellant to show the impact of the proposed development or the variance to Height.
10. While the total Site Coverage will be under the 40 percent, the proposed development requires a relaxation of the 12 percent maximum in Site Coverage for an Accessory Building.

REASONS FOR DECISION CONTINUED:

11. The 12 percent maximum for Site Coverage is designed to ensure the subordinate nature of an Accessory Building. In this case, the Principal Building (94.2 square metres) and proposed Garage Suite (71.4 square metres) will be close in Site Coverage. In addition, the Garage Suite is taller than the Principal Dwelling. The Principal Dwelling is 5.7 metres to the ridge of its roof and the proposed Garage Suite with flat roof is 6.03 metres, not including the 1.1 metre parapet wall. Given these relative measurements, the Garage Suite will not appear subordinate to the Principal Dwelling.
12. The Strathcona Area Redevelopment Plan provides, “the general intent of the area is to maintain single family housing, to provide opportunity for a variety of architectural styles and designs and to ensure that new and renovated housing is compatible in mass and scale with existing housing, maintains sunlight and privacy on adjacent properties and retains the pedestrian oriented character of the front street.”
13. The proposed development does not meet that general intent with respect to compatibility in mass and scale or maintaining sunlight and privacy for neighbouring properties.
14. The Board acknowledges the Appellant’s efforts to conduct consultation as required under the Mature Neighbourhood Overlay and notes that the results submitted by the Appellant were mixed.
15. Owners of twelve of the 30 neighbouring properties within the notification zone did not object to the proposed development. Six of those twelve provided positive comments. One owner opposed the project. Seventeen owners were not reached or provided no response to the Appellant’s request for feedback.
16. Subsequently, the adjacent and most affected neighbour to the west and the neighbour directly across the Lane to the south opposed the appeal.
17. The property immediately to the east has been abandoned for many years.
18. Based on the above, the Board, is not persuaded that the proposed development will not unduly interfere with the amenities of the neighbourhood nor 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.
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.

Ms. K. Cherniawsky, Presiding Officer
SUBDIVISION AND DEVELOPMENT
APPEAL BOARD

CC:

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

Edmonton Subdivision and Development Appeal Board

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DATE: February 19, 2015
PROJECT NO.: 160906128-002
FILE NO.: SDAB-D-15-021

NOTICE OF DECISION OF THE SUBDIVISION AND DEVELOPMENT APPEAL BOARD

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

Construct an Accessory Building (Shed, irregular shape, 3.96 metres / 2.74 metres by 6.10 metres), existing without permits

on Plan 0941013, Block 8, Lot 16A, located at 3435 - WEST LANDING NW, was heard by the Subdivision and Development Appeal Board at its hearing held on February 4, 2015. 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 Presiding Officer first addressed the issue of jurisdiction and whether the appeal was filed within the allowable 14-day appeal period, pursuant to section 686 of the *Municipal Government Act*, R.S.A. 2000, c. M-26 (the "MGA").

The Board heard from Mr. Jackson, the Appellant, who provided the following information with regard to the timing of filing the appeal:

1. He received the refused development permit by registered mail on December 23, 2015, and filed the appeal on January 5, 2015, as the SDAB Office was closed for the holiday season until January 5, 2015.

The Board then heard from Ms. Atkinson, representing the Sustainable Development Department, who provided the following information with regard to the timing of filing the appeal:

1. She was not aware of the exact date that the refused permit was sent.

MOTION:

That the Board assumes jurisdiction pursuant to Section 686(1)(a)(i) of the *Municipal Government Act*.

REASONS FOR DECISION:

The Board finds the following:

1. Based on the evidence provided, the Board determined Mr. Jackson received notice of the refusal on December 23, 2014, and the appeal was filed on January 5, 2015. Therefore, pursuant to section 686(1)(a)(i) of the *MGA*, the appeal was filed within the allowable 14 days.

SUMMARY OF HEARING CONTINUED:

The Board heard an appeal of the decision of the Development Authority to refuse an application to construct an Accessory Building (Shed, irregular shape, 3.96 metres / 2.74 metres by 6.10 metres), existing without permits, located at 3435 – West Landing NW. The subject Site is zoned RSL Residential Small Lot Zone. The development permit application was refused because of a deficiency in the minimum required separation distance from the Side Lot Line and a deficiency in the minimum required separation distance from the Rear Lot Line.

Prior to the hearing, the Board received a written submission from the Development Authority dated January 13, 2015.

The Board notes that no letters were received in support or opposition to the proposed development.

The Board heard from Mr. Jackson, the Appellant, who made the following points:

1. He provided a photograph and a grading plan, marked Exhibit “A”.
2. The reverse pie shaped lot hinders the placement of the existing shed.
3. He could not purchase a ready-made shed to fit the shape of the lot.
4. He was not aware that a development permit was needed for the shed. He also did not realize that the shed was considered an Accessory Building that required separation from the Side and Rear Lot Lines.
5. The shed is located within one foot of the property line which is consistent with other sheds in the neighbourhood.

SUMMARY OF HEARING CONTINUED:

6. The shed was designed to fully contain all snow and rain on his property.
7. The shed was built as low as possible to make it aesthetically pleasing.
8. The shed was finished with low maintenance siding to match the existing Principal Dwelling.
9. He confirmed that the shed roof slopes down from the back to the front and the entire yard slopes to the front.

In response to questions by the Board, Mr. Jackson provided the following information:

1. The shed is approximately 12 inches higher than the fence, which he thought was a six-foot high fence.
2. The back of the shed is higher than the front. The rear fence is eight feet high.
3. There have been no complaints to him regarding the existing shed and the neighbours can only see the eaves on the shed.
4. In his opinion, there is a hardship to build on the subject Site as the lot is a reverse pie shaped lot.
5. The eaves are horizontal and level with the shed, the roof extends to the fence line to prevent the accumulation of snow between the fence and the shed.
6. The back of the shed is eight feet high and the front is six feet high.
7. The custom tin roof will include decorative dormers at the front of the shed.

The Board then heard from Ms. Atkinson, representing the Sustainable Development Department, who made the following points:

1. The aerial photograph of the subject Site in her submission was incorrect.
2. She provided a new aerial photograph, marked Exhibit "B".
3. The review of the existing shed was prompted by a complaint from a neighbouring property owner.
4. The existing shed is twice the minimum size that triggers the requirement for a permit.
5. She could not grant the variances because the separation distance variance is substantial and she did not know the location of the eaves.
6. She asked the Appellant for an updated Real Property Report, but did not receive one and noted that the Board has been presented with a grading certificate, not a Real Property Report today.

SUMMARY OF HEARING CONTINUED:

In response to questions by the Board, Ms. Atkinson provided the following information:

1. She confirmed that even if she received this information earlier she would not have approved the proposed development.
2. She does not have any evidence of the extent to which the eaves or roof overhang projects into the separation distances from the Side and Rear Lot Lines.
3. In her opinion, with no Real Property Report, there is no hardship to the property owner.

The Board then heard from Mr. and Mrs. Routier, neighbouring property owners in opposition to the proposed development, who together made the following points:

1. They were unhappy to be in attendance at the hearing as they want to be good neighbours.
2. They called the City within 24 hours of when the framing began.
3. The lot is a reverse pie lot and all they see from their window is a 12 foot by 24 foot shed which should not be allowed with the Edmonton Zoning Bylaw in place.
4. They showed the Board two digital photographs of the shed, one from the second floor of their house and the other from their backyard. They confirmed that the photos would be provided to the Board; however, copies have not been received.
5. They built their home according to the Edmonton Zoning Bylaw and feel that other property owners should do the same.
6. They are supporting the decision of the Development Authority.

In response to questions by the Board, Mr. and Mrs. Routier provided the following information:

1. The shed is located approximately one foot from the existing fence and the eaves and roof overhang do not project into their yard.
2. They intend to do some landscaping, which would mitigate the visibility of the roof of the shed if it was properly located.
3. They were surprised by the size of the shed.
4. They could not say if they experience any drainage issues directly resulting from the location of the shed and they have not noticed rain shedding onto their property from the roof of the shed.
5. They did not speak to their neighbour regarding the shed.

SUMMARY OF HEARING CONTINUED:

In rebuttal, Mr. Jackson provided the following information:

1. The shed was designed to fit in the reverse pie shaped lot.
2. In his opinion, the existing shed is better than a commercial shed as it blends in with and matches the finishing of the existing house.
3. He applied for a development permit when the need for a development permit was brought to his attention.
4. He does not understand why there was no conversation with neighbouring property owners with regard to the existing shed as they have all done landscaping together.
5. He confirmed that the shed could not be dismantled and moved.
6. The stamped concrete in the rear yard extends to within 6 inches of the property line.

DECISION:

that the appeal be ALLOWED and the DEVELOPMENT GRANTED and

1. the deficiency of 0.60 metres in the minimum separation distance from the Side Lot Line required under Section 50.3(4)(b) be permitted;
2. the deficiency of 0.30 metres in the minimum separation distance from the Rear Lot Line required under Section 50.3(4)(d) be permitted; and
3. the requirements under Section 44(1)(a) concerning the projection of the eaves or roof overhang into required Setbacks and Separation spaces be waived.

The Board imposes the following conditions:

1. Eavestroughing shall be installed and drainage must take place entirely on subject property.
2. Eaves, eavestroughing and roof overhang shall not project past the Side Lot Line or Rear Lot Line.

REASONS FOR DECISION:

The Board finds the following:

1. The proposed development, a shed, is an Accessory building to a Permitted Use in the RSL Residential Small Lot Zone.

REASONS FOR DECISION CONTINUED:

2. The existing shed complies with all regulations of the Edmonton Zoning Bylaw other than the required the separation distances from the Side and Rear Lot Lines and the limits on eave or roof projections.
3. The only issue before the Board is the potential adverse effect of the proximity of the existing shed to the Side and Rear Lot Lines.
4. Based on photographic evidence submitted by the neighbouring property owner, the Board does not agree that shifting the existing shed 30 centimetres further from the Rear Lot Line and and 60 centimetres further from the Side Lot Line will impact the sight lines or amenities of the immediate adjacent property to the east. The Board finds that moving the existing shed to comply with the required Setbacks would increase the visual impact of the shed from the second floor of the neighbouring property to the northeast as the partial screening currently provided by the fence would be lessened.
5. Based on the evidence submitted, snow and water drainage from the roof of the existing shed is contained on the subject Site.
6. No correspondence was received from the immediately adjacent neighbor rear of the subject Site.
7. Based on the above, it is the opinion of the Board, that the proposed development will not unduly interfere with the amenities of the neighbourhood nor materially interfere with and affect the use, enjoyment and value of neighbouring parcels of land.

IMPORTANT INFORMATION FOR APPLICANT/APPELLANT

1. **THIS IS NOT A BUILDING PERMIT.** A Building Permit must be obtained separately from the Sustainable Development Department, located on the 5th Floor, 10250 – 101 Street, Edmonton.
2. 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.

3. A Development Permit shall expire and shall no longer be valid after one year from the date of approval of the Permit, if no construction has been initiated. However, if the permit holder is unable to proceed pending a court decision involving the proposed development, time shall not run until such proceedings are finally completed. For further information, refer to Section 22 of the Edmonton Zoning Bylaw, 12800.
4. Notwithstanding clause (3) above, if a Building Permit is issued for the development within the twelve month period, the Development Permit issued therefore shall not lapse unless and until the Building Permit so issued is cancelled or allowed to lapse by virtue of work not having commenced within the statutory minimum period.
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, 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.
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.

Ms. K. Cherniawsky, Presiding Officer
SUBDIVISION AND DEVELOPMENT
APPEAL BOARD

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DATE: February 19, 2015
PROJECT NO.: 159667813-001
FILE NO.: SDAB-D-15-022

NOTICE OF DECISION OF THE SUBDIVISION AND DEVELOPMENT APPEAL BOARD

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

Construct an Addition, exterior and interior alterations to an existing Single Detached House (addition: front attached Garage 6.68 metres by 9.75 metres, exterior alterations: demolish existing attached Garage and remove one window on right elevation)

on Plan 2136KS, Block 52, Lot 44, located at 6515 - Hardisty Drive NW, was heard by the Subdivision and Development Appeal Board at its hearing held on February 4, 2015. 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 Presiding Officer first addressed the issue of jurisdiction and whether the appeal was filed within the allowable 14-day appeal period, pursuant to section 686 of the *Municipal Government Act*, R.S.A. 2000, c. M-26 (the "MGA").

The Board noted the following:

1. The notification period, as indicated on the permit, ended on December 29, 2014.
2. The SDAB Office was closed on December 29, 2014, until January 5, 2015.
3. Mr. Raffa filed the Appeal on January 5, 2015.

MOTION:

That the Board assumes jurisdiction pursuant to Section 686(1)(a)(i) of the *Municipal Government Act*.

REASONS FOR DECISION:

The Board finds the following:

1. Based on the evidence provided, the Board determined that the appeal was filed on January 5, 2015. Therefore, pursuant to section 22(2) of the *Interpretation Act*, R.S.A. 2000, c. I-8 and section 686(1)(a)(i) of the *MGA*, the appeal was filed within the allowable 14 days.

SUMMARY OF HEARING CONTINUED:

The Board heard an appeal of the decision of the Development Authority to approve an application to construct an Addition, exterior and interior alterations to an existing Single Detached House (addition: front attached Garage 6.68 metres by 9.75 metres, exterior alterations: demolish existing attached Garage and remove one window on right elevation), located at 6515 Hardisty Drive NW. The subject site is zoned RF1 Single Detached Residential Zone and is located within the Mature Neighbourhood Overlay. The development permit application was approved with conditions and subsequently appealed by an adjacent property owner.

Prior to the hearing, the Board received a written submission from the Development Authority dated January 19, 2015.

The Board notes that no letters were received in support or opposition to the proposed development.

The Board heard from Mr. Raffa, the Appellant, who made the following points:

1. He was speaking on behalf of himself and his neighbour, Ms. Henderson, who wanted to avoid conflict with the neighbouring property owner.
2. The proposed development will increase the non-conformity of the property.
3. He provided the Board with three photographs showing properties in close proximity with garages that do not protrude past the front wall of the principal building, marked Exhibit "A".
4. He reviewed the variance powers of the Development Authority under Sections 11.3 and 11.4 of the Edmonton Zoning Bylaw.
5. In his opinion, the variances for the proposed development are not minor.
6. The proposed development will block his neighbour's view of the river valley.

SUMMARY OF HEARING CONTINUED:

In response to questions by the Board, Mr. Raffa provided the following information:

1. He does not know who owns the spruce tree between the subject Site and his neighbour's property.
2. He does not have an issue with any variances related to the back of the house.

The Board then heard from Mr. Zentner, representing the Sustainable Development Department, who made the following points:

1. The proposed development requires variances in the protrusion of the Garage and the Rear Setback to conform with the Edmonton Zoning Bylaw.
2. In his opinion, a variance of 4.49 metres in the Rear Setback and a variance to permit a 9.75 metre front projection are minor having a minimal if any impact on surrounding properties.
3. The neighbours were canvassed with respect to both variances and only one negative response received from the Appellant.
4. There is no expectation of a river valley view from a side window when a spruce tree is blocking much of that view.
5. The property became non-conforming in 2001 with the implementation of the Mature Neighbourhood Overlay.
6. The rear of the property is not changing.
7. While the front is changing, the purpose of the protrusion regulation respecting front attached Garages is to prevent the garage from dominating the front of a house.

The Board then heard from Ms. Lamb, representing the Respondent, 1222446 Alberta Inc. / Homes of Distinction, who was accompanied by Mr. Tonowski, the property owner, who together made the following points:

1. They have spoken with the adjacent property owner Ms. Henderson and provided a letter from her, marked Exhibit "B". It confirms she no longer has any concerns with the proposed development and that she has not authorized anyone to represent her at the hearing
2. The total Site Coverage will increase from 18 percent to 20 percent, which is much lower than the 40 percent Site Coverage permissible on the subject Site.
3. The proposed development will make the house more consistent with the streetscape as the inclusion of living space over the Garage will give the appearance that the Garage is flush with the house.

SUMMARY OF HEARING CONTINUED:

4. They showed the Board several photographs of the surrounding area, marked Exhibit "C".
5. The photographs confirm that the spruce tree is located on the subject Site. The property owner has agreed with Ms. Henderson that the tree will be removed to improve her view of the River Valley.

In rebuttal, Mr. Raffa provided the following information:

1. There is one unnamed neighbor that is having second thoughts about agreeing to the Community Consultation provided with the development permit application.
2. He is not trying to stop the proposed development.

DECISION:

that the appeal be DENIED and the decision of approval by the Development Authority be CONFIRMED, the proposed development is approved with the following variances and conditions:

Variances:

1. The deficiency of of 4.49 metres in the minimum Rear Setback required under Section 814.3(5) is permitted: the minimum required Rear Setback of 40 percent of Site depth is reduced from 17.79 metres to 13.30 metres)
2. The requirement under Section 814.3(11) which provides that if vehicular access is provided from a public roadway other than a Lane, a Garage may only protrude beyond the front wall of the principal building a distance that is characteristic of the majority of existing Garages on the blockface is waived and the projection of 9.75 metres per the submitted plans is permitted.

Conditions

1. The development shall be constructed in accordance with the stamped, redlined, and approved drawings.
2. The height of the principal building shall not exceed 8.6 metres nor 2 1/2 Storeys as per the height definition of Section 6.1(49).
3. Immediately upon completion of the exterior alterations, the site shall be cleared of all debris.

DECISION CONTINUED:

4. 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.

NOTES:

An approved Development Permit means that the proposed development has been reviewed only against the provisions of the Edmonton Zoning Bylaw. It does not remove obligations to conform with other legislation, bylaws or land title instruments such as the Municipal Government Act, the ERCB Directive 079, the Edmonton Safety Codes Permit Bylaw or any caveats, covenants or easements that might be attached to the Site.

Unless otherwise stated, all above references to section numbers refer to the authority under the Edmonton Zoning Bylaw 12800.

REASONS FOR DECISION:

The Board finds the following:

1. The proposed development is an addition to a Permitted Use in the RF1 Single Detached Residential Zone.
2. The existing building is a non-conforming building.
3. The Board accepts the reasoning of the Development officer that the two variances which will bring the proposed development into compliance with the Zoning Bylaw are minor and authorized pursuant to Section 643 of the Municipal Government Act and Section 11.3(3) of the Zoning Bylaw.
4. The variances are granted for the following reasons:
 - a. The property owner took extensive measures completing Community Consultation. All neighbouring property owners were aware of the proposed development and the two variances required and an overwhelming majority supported the proposed development.
 - b. There are a variety of house designs along the street; the majority of which include front attached Garages with second Storey habitable space directly above those Garages.
 - c. The proposed renovations will make the existing home more characteristic of the surrounding neighbourhood as the current projecting single storey attached Garage which protrudes from the two Storey Principal Dwelling will be replaced by an attached Garage with second Storey habitable space directly above it.

REASONS FOR DECISION CONTINUED:

- d. The proposed development is within the Front Setback requirements of the Mature Neighbourhood Overlay.
 - e. The Board accepts the evidence submitted that the concerns of the adjacent property owner have been addressed, to her satisfaction, and that she is not represented by anyone at the hearing.
 - f. The Board accepts the photographic evidence submitted by the Respondent, that the site lines of the adjacent neighbour will not be impacted by the proposed development.
 - g. The projection of the front attached Garage is ameliorated by the front entry design which includes a front deck with arbor intended to be used as livable space.
 - h. The curve of the front street also minimizes the impact of the projection.
 - i. The proposed development will not increase the overall Height of the Principal Dwelling.
 - j. The proposed development is approximately 20 percent Site Coverage, well under the 40 percent allowable Site Coverage.
 - k. All parties agree that the Principal Dwelling has been located well back on the subject site for many years without known complaint or negative impact concerning its proximity to the rear property line.
 - l. The proposed development will not change the location of the rear of the Principal Dwelling.
5. Based on the above, it is the opinion of the Board, that the proposed development will not unduly interfere with the amenities of the neighbourhood nor materially interfere with and affect the use, enjoyment and value of neighbouring parcels of land.

IMPORTANT INFORMATION FOR APPLICANT/APPELLANT

1. **THIS IS NOT A BUILDING PERMIT.** A Building Permit must be obtained separately from the Sustainable Development Department, located on the 5th Floor, 10250 – 101 Street, Edmonton.

2. 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.
3. A Development Permit shall expire and shall no longer be valid after one year from the date of approval of the Permit, if no construction has been initiated. However, if the permit holder is unable to proceed pending a court decision involving the proposed development, time shall not run until such proceedings are finally completed. For further information, refer to Section 22 of the Edmonton Zoning Bylaw, 12800.
4. Notwithstanding clause (3) above, if a Building Permit is issued for the development within the twelve month period, the Development Permit issued therefore shall not lapse unless and until the Building Permit so issued is cancelled or allowed to lapse by virtue of work not having commenced within the statutory minimum period.
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, 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.
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.

Ms. K. Cherniawsky, Presiding Officer
SUBDIVISION AND DEVELOPMENT
APPEAL BOARD

CC:

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

Edmonton Subdivision and Development Appeal Board

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10019 - 103 Avenue NW
Edmonton, AB T5J 0G9
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Email: sdab@edmonton.ca
Web: www.edmontontribunals.ca

DATE: February 19, 2015
PROJECT NO.: 153227733-001
FILE NO.: SDAB-D-15-023

NOTICE OF DECISION OF THE SUBDIVISION AND DEVELOPMENT APPEAL BOARD

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

Construct a Single Detached House with double attached garage/workshop, rear uncovered deck (4.80 square metres / 2.44 metres by 13.56 metres), front veranda, fireplace and basement development (not to be used as an additional dwelling)

on Plan 3734KS, Block 14, Lot 3A, located at 10826 - 60 AVENUE NW, was heard by the Subdivision and Development Appeal Board at its hearing held on February 4, 2015. 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 “MGA”).

The Board heard an appeal of the decision of the Development Authority to approve an application to construct a Single Detached House with double attached garage/workshop, rear uncovered deck (4.80 square metres / 2.44 metres by 13.56 metres), front veranda, fireplace and basement development (not to be used as an additional dwelling) with a variance granted in Section 814.3(10) of the Edmonton Zoning Bylaw, subject to conditions, located at 10826 – 60 Avenue NW. The subject Site is zoned RF1 Single Detached Residential Zone. The approved development permit application was subsequently appealed by a neighbouring property owner.

The Board notes that two letters were received in opposition to the proposed development and one letter was received in support of the proposed development.

SUMMARY OF HEARING CONTINUED:

The Board heard from Ms. Schwarz, the Appellant, who made the following points:

1. She provided several photographs of the surrounding area, marked Exhibit "D" showing a variety of garages and means of vehicular access. Many houses have front vehicular access. Many houses, including those directly across street from the proposed development, have no rear Lane. Some houses do have rear Lanes.
2. From the information she was provided, she understands a variance is only for a hardship and she sees no hardship for the proposed development.
3. The neighbouring property owners received an approval for a large garage and two front driveways which are not being used properly as there are often four cars parked in front of the garage.
4. There is sufficient space in the rear of the subject property to build a large garage with access from the rear Lane leaving the front street beautiful and characteristic of the neighbourhood.
5. She reiterated that there is no hardship for the property owner, which would necessitate a front drive garage and rear Lanes should be used for garages.

The Presiding Officer indicated to Ms. Schwarz that there is only one variance with the proposed Permitted Use development: front vehicular access. The Presiding Officer indicated that the Board's standard to determine the appropriateness of that variance is set out in Section 687(3) of the MGA: whether the proposed development would materially interfere with the amenities of the neighbourhood or materially interfere with or affect the use, enjoyment or value of neighbouring parcels of land.

In response to questions by the Board, Ms. Schwarz provided the following information:

1. In her opinion, the proposed development is not characteristic of the neighbourhood and a garage in the rear is normal in the neighbourhood.
2. She has a double garage at the rear of her property.
3. Asked about the map submitted by Ms. Wittaker, an opposed neighbour that shows the homes on 60 Avenue with front vehicular access on lots with rear Lane access, she stated the front drive garages are not characteristic as the subject Site has a rear Lane, which should be used to access a garage.
4. She reiterated that there is no hardship for the property owner.

SUMMARY OF HEARING CONTINUED:

5. Ms. Schwarz agreed that several properties with an abutting rear Lane on 60 Avenue also have front vehicular access.

The Board then heard from Mr. Robinson, representing the Sustainable Development Department, who made the following points:

1. He provided an aerial photograph indicating eight properties on the blockface have front vehicular access and an abutting rear Lane, marked Exhibit "A".
2. He provided an updated memorandum from Transportation Services, dated January 29, 2015, marked Exhibit "B".
3. Front drive garages are characteristic of the neighbourhood.
4. He confirmed that 15 houses on the blockface have front vehicular access.

The Board then heard from Mr. Haldane, legal counsel for the Respondent, Mr. Nisbet, who made the following points:

1. He provided the Board with documentation, marked Exhibit "C".

The Presiding Officer indicated that the Board would adjourn for a short time to allow all parties time to review Exhibit "C".

Upon reconvening, Mr. Haldane made the following points:

1. The photos in TAB 7 of Exhibit "C", show there is restrictive access to the property through the narrow dead end rear Lane.
2. TAB 6 of Exhibit "C" shows that the Mature Neighbourhood Overlay covers a large portion of the city. It works well for typical mature areas with long rectangular lots and two exit rear Lanes, but not so well here given the unique nature of the area.
3. There is a hardship to the property owner as he will have to access the dead end rear Lane from 60A Avenue.
4. The map in TAB 6 of Exhibit "C" shows the properties along 60 Avenue that have front vehicular access. Six of twelve properties that can access the Lane also have front vehicular access. Sixteen of thirty-one properties on the blockface have front vehicular access.
5. The proposed development meets all requirements for front vehicular access other than the lack of a back Lane and the existence of a treed boulevard.
6. Pedestrian traffic in the area is not interrupted with front drive garages.
7. There is support from neighbouring property owners indicated in the Community Consultation per TAB 4 of Exhibit "C".

SUMMARY OF HEARING CONTINUED:

8. Most of the objections do not deal with the sole variance, front vehicular access.
9. No evidence was submitted to indicate that the proposed development with front vehicular access will unduly interfere with the amenities of the neighbourhood nor materially interfere with and affect the use, enjoyment and value of neighbouring parcels of land.

In rebuttal, Ms. Schwarz provided the following information:

1. The majority of the neighbours are not in support of the proposed development.
2. In her opinion, garages should be located in the rear and accessed from the rear Lane.
3. She protested the appeal process and felt that she was misinformed.
4. She thought the appeal was about the garage itself and did not realize the only question was as to whether or not a variance granted for the front vehicular access should be granted.
5. In her opinion, she was misled by the Sustainable Development Department.

DECISION:

that the appeal be DENIED and the decision of approval by the Development Authority waiving the requirements in Section 814.3(10) and allowing front vehicular access be CONFIRMED, subject to the following conditions:

1. Any future deck enclosure or cover requires a separate development and building permit approval.
2. Height to top of deck railing from grade not to exceed 1.85 metres.
3. Any future deck development greater than 0.6 metres (2 feet) in height will require development and building permit approvals.
4. The proposed basement development shall not be used as an additional dwelling unit.
5. The height of the principal building shall not exceed 8.60 metres nor 2 1/2 Storeys as per the height definition of Section 6.1(36) of the Edmonton Zoning Bylaw 12800.
6. The proposed basement development shall not be used as an additional dwelling unit.

DECISION CONTINUED:

7. All yards, visible from a public roadway other than a lane, shall be seeded or sodded within eighteen (18) consecutive months of the issuance of an Occupancy Certificate for the development. Alternative forms of landscaping may be substituted for seeding or sodding as specified in Section 55.2(4)(b).
8. Notwithstanding the Landscaping regulations of Section 55 of this 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.
9. The proposed 6.0 metres crossing to 60 Avenue with the alignment, located 1.58 metres from the south corner pin, shall be constructed as a private crossing as per the City of Edmonton Design and Construction Standards. This alignment provides a 0.5 metres of curing in between the edge of the flare and the extension of the property line to the street.
10. The approximate remaining 1.6m of the existing access to 60 Avenue, adjacent to the south corner pin, must be removed and the curb and gutter constructed and the boulevard restored to grass. The removal of this portion of the existing access must be included as a requirement of the crossing permit.
11. There is an existing boulevard tree adjacent to the proposed access that must be protected during construction. A minimum clearance of 3.0m must be maintained between access and the trunk of the tree. A Forestry Representative must be present during the construction of the access. The owner/applicant must contact Marshall Mithrush of Community Services (780-496-4953) prior to construction. The costs for any required hoarding and/or root-cutting shall be borne by the applicant.
12. A crossing permit and a Fill in permit is required. Please contact Val Gordychuk at 780-496-6733 to obtain the crossing permit.

Note: The applicant should be advised that there may be complications in obtaining a Development Permit for future house additions because of the maximum allowable site coverage.

Note: Lot grades must match the Engineered approved lot grading plans for the area. Contact Drainage Services at 780-496-5500 for lot grading inspection inquiries.

DECISION CONTINUED:

Note: 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 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).

REASONS FOR DECISION:

The Board finds the following:

1. The proposed development a Single Detached House, is a Permitted Use in the RF1 Single Detached Residential Zone.
2. The proposed development complies with all regulations in the Edmonton Zoning Bylaw except for the front vehicular access requirements in Section 814.3(10).
3. Section 814.3(10) of the Edmonton Zoning Bylaw provides:
 1. 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. a Treed Landscaped Boulevard is present along the roadway adjacent to the property line;
 - b. the Site Width is less than 15.5 metres; or
 - c. fewer than 50 percent of principal Dwellings on the blockface have vehicular access from the front or flanking roadway.
4. The Board grants the variance for the following reasons:
 - a. Based on the evidence submitted:
 - i. a variety of garage and vehicular access configurations exist in the area;
 - ii. front attached garages are characteristic of the area;
 - iii. front vehicular access is characteristic of the neighbourhood, the blockface and the opposing blockface;
 - iv. a majority of the properties on the blockface have vehicular access from the front or flanking roadway;
 - v. based on Exhibit "A" provided by the Development Officer, many of the properties on the blockface (including the subject site and both adjacent properties) have front vehicular access and an abutting rear Lane.
 - b. No evidence was submitted that a variance to allow front vehicular access will adversely affect the neighbourhood.

REASONS FOR DECISION CONTINUED:

- c. Transportaion Services has reviewed the application and agreed to a curb crossing request from the front roadway, subject to conditions which include preservation of an existing boulevard tree and fill in of the existing front vehicular access.
 - d. The Respondent conducted Community Consultation as is required in Section 814.3(24) of the Mature Neighbourhood Overlay and provided written evidence of support from fourteen of the twenty one properties within the notification zone.
 - e. While letters were received in opposition; many of the objections deal with design of the dwelling and do not address material impacts of the sole variance: front vehicular access.
 - f. As the subject site previously had front vehicular access, the proposed development will make no material change to the existing situation in the abutting rear Lane.
5. The Board notes that the Mature Neighbourhood Overlay applies to many neighbourhoods and the regulations therein were drafted for areas typified by long rectangle lots, rear detached Garages and an abutting rear Lanes accessible from both ends of the block. This is not a typical neighbourhood or block. Some properties have rear Lanes and others do not. Lots vary significantly in size and configuration.
 6. The Board acknowledges that the unusual configuration of lots on this block together with the location of the property with respect to the dead-end Lane results in rear vehicular access to the property being further than that one might expect on a typical block within a mature neighbourhood.
 7. Based on the above, it is the opinion of the Board, that the proposed development will not unduly interfere with the amenities of the neighbourhood nor materially interfere with and affect the use, enjoyment and value of neighbouring parcels of land.

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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, 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.
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Ms. K. Cherniawsky, Presiding Officer
SUBDIVISION AND DEVELOPMENT
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***Edmonton Subdivision and
Development Appeal Board***

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SDAB-D-15-024

Application No. 162866785-001

An appeal by Queen Mary Park Community League VS David Laville to change of use from Professional, Financial and Office Support Services to General Retail Stores and Accessory Specialty Food Services (8 square metres public space) (Rogue Wave Coffee Company), on Plan B4, Block 13 Lots 193-194, located at 10571 - 114 Street NW, was WITHDRAWN.