Edmonton Subdivision and Development Appeal Board

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Date: February 4, 2016
Project Number: 181873893-004
File Number: SDAB-D-16-033

Notice of Decision

[1] On January 20, 2016, the Subdivision and Development Appeal Board heard an appeal that was filed on December 22, 2015.

[2] The appeal concerned the decision of the Development Authority, issued on December 9, 2015, to approve the following development:

construct a Garage Suite [unedited from the Development Permit]

[3] The subject property is located on Plan I26 Blk 46 Lot 17, municipal description 10650 - 79 Avenue NW, within the RA7 Low Rise Apartment Zone. The Medium Scale Residential Infill Overlay and Garneau Area Redevelopment Plan apply to the subject property.

[4] The following documents, which were received prior to the hearing and copies of which are on file, were read into the record:

- Notice of appeal filed on December 22, 2015;
- Signed authorization from the Appellant, dated December 18, 2015 advising the Board he will be represented by his agent, Ms. K. Arnett;
- Signed letter from a neighbour in support of the development;
- Five photos of the subject property and surrounding environment;
- Copy of Canada Post receipt confirming delivery of the Development Permit decision on December 15, 2015;
- Copy of the refused Development Permit;
- Development Officer's written submissions, dated January 14, 2016; and
- Copy of the Garneau Area Redevelopment Plan.

Summary of Hearing:

[5] 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.

[6] The appeal was filed on time, in accordance with Section 686 of the *Municipal Government Act*, RSA 2000, c M-26.

i. Position of the Appellant, Mr. D. Seguin

[7] Mr. Seguin attended the hearing with his authorized agent, Ms. K. Arnett.

[8] The neighbourhood in which the subject property is situated consists of a variety of housing types, including single family housing, walk-up apartments, and old-character homes such as the development under appeal.

[9] When converting the subject property into four suites, they endeavored to maintain the unique Victorian-era style of the home. For this reason, rather than adding to the existing structure and effectively creating a building with a much larger footprint and massing, they elected to develop a detached Garage Suite.

[10] The Board acknowledged the Appellant's desire to develop the subject property such that it is more in keeping with the character of the neighbourhood. However, the Presiding Officer drew the Appellant's attention to the definition of a Garage Suite under Section 7.2(3) of the *Edmonton Zoning Bylaw*, which states in part: "A Garage Suite is Accessory to a building in which the principal Use is Single Detached Housing." In this case, the proposed development is Accessory to an Apartment Housing Use.

[11] The Presiding Officer explained that although the Subdivision and Development Appeal Board has authority under certain circumstances to vary or even revoke the decision of the Development Authority, the Board is bound by Section 687(3)(d)(ii) of the *Municipal Government Act*, which states:

> In determining an appeal, the subdivision and development appeal board may make an order or decision or issue or confirm the issue of a development permit even though the proposed development does not comply with the land use bylaw if, in its opinion… the proposed development *conforms with the use prescribed for that land or building in the land use bylaw*. [emphasis added]

[12] In this case, a Garage Suite as defined in the *Edmonton Zoning Bylaw*, which is the current land use bylaw, is permitted only if developed as an Accessory to a Single Detached House. Since the proposed Garage Suite will be Accessory to Apartment Housing, it does not conform with the use prescribed for that building, and as such, the Board cannot revoke or vary the Development Authority's decision as per the limitation set out under Section 687(3)(d)(ii) of the *Municipal Government Act*.

[13] The Appellant's agent acknowledged her understanding of the Garage Suite definition, and her understanding of the Board's limitations. However, she did not understand why staff from the Development Authority consistently advised that she could apply for a Development Permit, and once it is refused, she could then appeal to the Board to have the refusal revoked.

[14] The Presiding Officer explained that although she has the right to appeal under Section 686(1)(a) of the *Municipal Government Act*, the Board's powers are still limited by Section 687, and in this case, specifically Section 687(3)(d)(ii). At this point, the Board asked if she had any submissions with respect to the proposed development which might provide further insight as to how it might conform with the prescribed use under the *Edmonton Zoning Bylaw*.

[15] The Appellant reviewed five photographs showing the existing Apartment Housing development. One of the photos provided a view of the south side of the property, with a vine-covered veranda that complements both the unique character of the home and of the neighbourhood. He explained that access to the second floor suites is via an external staircase on the east side of the property, and access to the main floor suites is through the main entrance.

[16] A third photo showed a development with a large attached suite, which the Appellant stated was less appealing aesthetically, and serves as an example of the type of development they wish to avoid building in the Garneau area. He believes that such developments with large massing are not characteristic of the neighbourhood.

[17] The remaining two photographs showed nearby properties with detached Garage Suites, which the Appellant acknowledged were Accessory to Single Detached Family Housing rather than Apartment Housing. However, in his opinion, approval of the subject Garage Suite aligns with City Council's direction to increase densification while remaining sensitive to the character of the neighbourhood.

ii. Position of the Development Officer, Mr. J. Angeles

[18] The Board asked Mr. Angeles whether, in light of the Appellant's presentation, he could approve the proposed development.

[19] Mr. Angeles stated that although he is appreciative of how the detached Garage Suite appears to be more sensitive to the character of the neighbourhood than constructing an attached addition to the existing building, he is unfortunately bound by the development regulations under the *Edmonton Zoning Bylaw*, and the proposed development is effectively Accessory to an Apartment Housing Use, which he cannot approve.

[20] With respect to densification, he stated that the Development Authority does not consider Garage Suites in density calculations.

iii. Rebuttal of the Appellant, Mr. D. Seguin

[21] The Board invited the Appellant for rebuttal, but the Appellant declined.

Decision:

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

Reasons:

[23] The proposed development is for the construction of a Garage Suite as an Accessory to Apartment Housing in the RA7 Low Rise Apartment Zone.

[24] The Apartment Housing has four units, two on the second floor, and two on the main floor.

[25] Section 7.2(3) of the *Edmonton Zoning Bylaw* states:

> Garage Suite means an Accessory Dwelling located above a detached Garage (above Grade); or a single-storey Accessory Dwelling attached to the side or rear of, a detached Garage (at Grade). *A Garage Suite is Accessory to a building in which the principal Use is Single Detached Housing.* [emphasis added] A Garage Suite has cooking facilities, food preparation, sleeping and sanitary facilities which are separate from those of the principal Dwelling located on the Site. A Garage Suite has an entrance separate from the vehicle entrance to the detached Garage, either from a common indoor landing or directly from the exterior of the structure. This Use Class does not include Garden Suites, Secondary Suites, Blatchford Lane Suites, or Blatchford Accessory Suites.

[26] The proposed development was first refused by the Development Authority on the grounds that a Garage Suite can only be Accessory to a Single Detached House, whereas the subject development will be Accessory to Apartment Housing.

[27] The Appellant subsequently turned to this Board to appeal the decision of the Development Authority.

[28] However, the Board's authority is defined under Section 687(3)(d) of the *Municipal Government Act*, which states:

> 687(3) In determining an appeal, the subdivision and development appeal board
>
> …
>
> (d) may make an order or decision or issue or confirm the issue of a development permit even though the proposed development does not comply with the land use bylaw if, in its opinion,
>
> (i) the proposed development would not

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

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

and

(ii) the proposed development conforms with the use prescribed for that land or building in the land use bylaw. [emphasis added]

[29] The Board heard submissions from the Appellant regarding how the proposed detached Garage Suite is preferable to constructing a large addition to the existing Apartment Housing. The Garage Suite would be more characteristic of the neighbourhood, would be less likely to materially interfere with the use and enjoyment of neighbouring properties, and would therefore meet the criteria under subsection 687(3)(d)(i) of the *Municipal Government Act.*

[30] However, the Board is bound not only by subsection 687(3)(d)(i) of the *Municipal Government Act*, but also by subsection 687(3)(d)(ii), which requires that the proposed development conform with the use prescribed for it in the *Edmonton Zoning Bylaw*. Only where the criteria under both subsections are met may the Board exercise its discretion to approve the development.

[31] With regard to the criteria under subsection 687(3)(d)(ii), the Appellant made no submissions.

[32] With no evidence before it as to how the proposed Garage Suite might conform with the prescribed use as defined under Section 7.2(3) of the *Edmonton Zoning Bylaw*, the Board must accordingly deny the appeal. A Garage Suite is permitted only when developed as an Accessory to Single Detached Housing. Accordingly, the proposed development – which will be Accessory to Apartment Housing – does not conform to the prescribed use under the *Edmonton Zoning Bylaw*, and must be refused.

Winston Tuttle, Presiding Officer
Subdivision and Development Appeal 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.

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.

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AMENDED

Date: February 4, 2016
Project Number: 161092241-011
File Number: SDAB-D-16-034

Notice of Decision

[1] On January 20, 2016, the Subdivision and Development Appeal Board heard an appeal that was filed on December 22, 2015.

[2] The appeal concerned the decision of the Development Authority, issued on December 15, 2015, to approve the following development:

> develop a Secondary Suite in the basement of a Single Detached House
> [unedited from the Development Permit]

[3] The subject property is located on Plan 1423020 Blk 150 Lot 48, municipal description 10947 - 90 Avenue NW, within RF3 Small Scale Infill Development Zone. The Mature Neighbourhood Overlay and Garneau Area Redevelopment Plan apply to the subject property.

[4] The following documents, which were received prior to the hearing and copies of which are on file, were read into the record:

- Appellant's written submissions with various attachments, received December 22, 2015;
- Appellant's additional written submissions, received January 19, 2016;
- Copy of the Development Permit Application;
- Development Officer's written submissions, dated January 14, 2016;
- Copy of the Garneau Area Redevelopment Plan; and
- One online response and one email response, both in opposition to the development.

Summary of Hearing:

[5] 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.

[6] The appeal was filed on time, in accordance with Section 686 of the *Municipal Government Act*, RSA 2000, c M-26.

i. Position of the Appellant, Rockwall Contracting Ltd.

[7] The Appellant was represented by an agent, Mr. W. Neeser, who was accompanied by Mr. K. Petterson, the legal owner of the subject property.

[8] After providing a brief history of Rockwall Contracting Ltd., Mr. Neeser submitted Exhibit "A", which consisted of a number of documents that he referred to at various stages during his presentation.

[9] Mr. Neeser submitted that the proposed development is characteristic of the neighbourhood, that the neighbours directly adjacent to the property have provided signatures in support of the development, and that nearby properties have achieved similar variances in the past year.

[10] He submitted that Rockwall Contracting Ltd. is conscientious of neighbourhood concerns regarding their developments. He referenced a picture of the subject development submitted in Exhibit "A". The picture showed the completed first phase of the project, in which the side entrances to the properties were built on the sides of the building.

[11] Following completion of the first phase, the community league expressed a preference for entrances located in the middle of buildings so as to minimize impact upon neighbouring properties. Consequently, when Rockwall Contracting Ltd. moved into the second phase of the project, they incorporated the league's feedback, as illustrated in the photo submission.

[12] Mr. Neeser referred to Policies 4.4.1.4 and 4.4.1.5 of the City of Edmonton's Municipal Development Plan, *The Way We Grow*. These policies aim to develop higher density housing in proximity to LRT stations and transit centres, and express a preference for multiple unit density in neighbourhoods with LRT stations and transit centres.

[13] Mr. Neeser stated that the subject property is within 400 metres of a LRT station and major bus terminal. It is also within close proximity to the 109 Street transit corridor. There are a mix of uses within the area, including restaurants, grocery stores, and public amenity areas. The proposed development contributes to this mix of uses.

[14] The Appellant emphasized that their developments have high owner-occupancy, and typically attract small families or empty-nesters who wish to live in a low maintenance, condominium-sized property without the hassle of dealing with a condominium board.

[15] With respect to the Development Officer's determination that the 15% Site deficiency amounted to a "substantial" variance, the Appellant stated that if the lot had been 1.35 metres wider, the development would have received automatic approval. In their mind, the deficiency is not substantial and is, indeed, minimal.

[16] The Board and the Appellant subsequently engaged in a brief discussion about the Site Area, and the Appellant acknowledged that the Site Area is deficient by 54.47 square metres.

[17] The Appellant acknowledged the online response received in opposition to the development, which expressed concern about parking space limitations in the neighbourhood. To clarify how the Site Area will be utilized to meet the parking space requirements, the Appellant referred to the plot plan to outline the location of the deck on the east side of the property, the parking pad adjacent to the deck, and the drive-through Garage leading toward the parking pad.

[18] In their minds, the drive-through Garage is an innovative approach to reducing the impact upon on-street parking. In addition, there are currently six parking passes that have been issued to construction workers, and these passes will expire in Spring 2016, when construction will be completed. At that point, the parking strains in the immediate area should be reduced.

[19] Upon questioning from the Board, the Appellant confirmed that they have reviewed the conditions recommended by the Development Officer and have no problems should the Board decide to approve those recommendations.

ii. Position of the Development Officer

[20] Mr. G. Robinson attended on behalf of his colleague, Mr. B. Langille, the Board Officer who issued the Development Permit refusal.

[21] Mr. Robinson confirmed that the only deficiency with respect to the proposed development is the minimum Site Area.

[22] In light of ongoing review of infill developments and feedback from residents within infill neighbourhoods, in May 2015 City Council issued clear instruction to the Development Authority that for any proposed Secondary Suite on narrower lots, the subject lot must meet Zoning Bylaw regulations with respect to Site Area and parking and variances should be minimal.

[23] He stated that minimum requirements for Site Area are intended to ensure that other development regulations can be met, such as Setback requirements, space for Amenity Areas and parking, and landscaping. He acknowledged that in this case, despite the Site Area deficiency, all other development regulations for the underlying RF3 Zone have been met.

[24] He further acknowledged that although the area is sensitive to development, the development is also approximately 400 metres from HUB Mall located at the University of Alberta LRT station and bus terminal. In addition, he referred the Board to Appendix I

of Section 54.2, a map that highlights the City's transit avenues, which includes 109 Street.

iii. Position of Affected Neighbour, Ms. M. Burns

[25] Ms. Burns submitted two photographs, marked as Exhibit "B". The first photo showed the backyard parking pad of the developer's first project, which is next door to the proposed development. The parking pad had not been shoveled, demonstrating that it was not actually being used for parking. Ms. Burns submitted that owners are unlikely to want to drive through their garage to park on their backyard amenity space. She stated that if the second project – which has a similar drive-through Garage and backyard parking pad – is also approved, the same situation will occur.

[26] The second photograph showed the garage currently under construction, butting against a utility pole. She submitted that the site is simply too small, which forces the garage to be pushed to the edges of the lot to maximize the amenity space. The result is that the owners will end up parking behind their homes, with their vehicles projecting onto the lane.

[27] When questioned by the Board, she clarified that she does not approve of the development as a whole, but she understands that a Basement Suite is a permitted use for Single Detached Housing. The main concern for her is the parking strains resulting from developing on a site that is simply too small. She cited a duplex development on her street which she did not oppose, despite a variance being needed, because that property had ample off-street parking.

[28] She understood that the basement suite is intended to provide additional space for a nanny to stay and care for the owners' young child. However, in time, the property will likely be sold, and the impact on parking will continue to be felt by the neighbourhood. In her opinion, the subject development is not characteristic of the neighbourhood.

iv. Rebuttal of Appellant, Rockwall Contract Ltd.

[29] The Appellant confirmed that the development is within 400 to 800 metres of HUB Mall.

[30] The backyard parking pad was the result of consultation with the Development Authority, which had made it clear that they did not want parking behind the Garage.

[31] The Appellant acknowledged Ms. Burns' concerns about parking, but noted that illegally parked cars and vehicles projecting onto the lane are enforcement issues outside the purview of this Board. Also, the garage of the proposed development is located too close to the lane for a vehicle to park behind the garage. The Appellant also suggested providing visitor parking passes to guests, which has been successful in other areas of the city.

[32] The Appellant disagreed with Ms. Burns' submission that the development is uncharacteristic of the neighbourhood. The Appellant noted that the Garneau area, in fact, consists of a mix of housing, which was something they considered when they decided to develop a Single Detached House rather than a multi-residential development.

Decision:

[33] The appeal is ALLOWED and the decision of the Development Authority is REVOKED. The Development is GRANTED.

[34] In granting the development, the Subdivision and Development Appeal Board grants the following variances:

1) Section 86(1) is relaxed to permit a deficiency of 54.47 square metres in the Site Area.

[35] The Development Permit shall be subject to the following conditions:

1) 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. (Reference Section 86.4)

2) Only one of a Secondary Suite, a Garage Suite or Garden Suite may be developed in conjunction with a principal Dwelling. (Reference Section 86.5)

3) 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; (Reference Section 86.6)

4) Notwithstanding the definition of Household within this Bylaw, the number of unrelated persons occupying a Secondary Suite shall not exceed three.

5) The Secondary Suite shall not be subject to separation from the principal Dwelling through a condominium conversion or subdivision. (Reference Section 86.7)

6) Dwelling means a self-contained unit comprised of one or more rooms accommodating sitting, sleeping, sanitary facilities, and a principal kitchen for food preparation, cooking, and serving. A Dwelling is used permanently or semi-permanently as a residence for a single Household. (Reference Section 6.1(27))

7) Locked separation that restricts the nonconsensual movement of persons between each Dwelling unit shall be installed.

8) Secondary Suites shall not be included in the calculation of densities in this Bylaw. (Reference Section 86.9)

Reasons for Decision:

[36] The proposed development is a Permitted Use in the RF3 Small Scale Infill Development Zone.

[37] The Board has received direction from the Alberta Court of Appeal that in considering any variances, the focus is not on the size of the variance, but on the **impact** of that variance.

[38] In the present case, the impact of allowing a Basement Suite is, in the opinion of the Board, minimal and will not unduly interfere with the use, enjoyment and amenities of the neighbourhood.

[39] The Board also accepts the Appellant's submission with respect to the contention that, if the lot were 1.35 metres wider, all Site Area requirements would be met and no variance would be required, since the development otherwise meets all other underlying regulations of the RF3 Zone.

[40] The Garneau Area Redevelopment Plan, which is a statutory plan that the Board must comply with under Section 687(3)(a.1) of the *Municipal Government Act*, encourages a variety of housing options and the Board notes that the proposed development will indeed add variety to the neighbourhood.

[41] The Board heard from an affected neighbour opposed to the development, who expressed that the primary concern was the impact of the development upon parking, as the neighbourhood's experience is that approved tandem parking options are rarely used.

[42] While the Board sympathizes with that experience, the Board must also consider factors that mitigate the parking strains. In this case, the subject property is located in close proximity to the 109 Street transit avenue. It is also within 400 to 800 metres of HUB Mall, where both the University of Alberta LRT station and bus terminal are located. As well, currently six on-street parking spaces are being occupied by construction workers. When construction is complete, those spaces will be available to residents. The Board therefore concludes that the impact of granting the Site Area variance upon the existing parking situation will be minimal.

[43] As noted by the Appellant, two nearly identical developments on adjacent properties were granted variances to Minimum Site Area by the Development Authority, and the

Development Authority was unable to point to any significant differences between those developments and the subject development that would justify denying this development.

[44] Based on the above reasons, 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 or affect the use, enjoyment or value of neighbouring parcels of land.

Winston Tuttle, Presiding Officer
Subdivision and Development Appeal Board

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 5th 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*, RSA 2000, c S-1;
   c) the requirements of the *Permit Regulation*, Alta Reg 204/2007;
   d) the requirements of any other appropriate federal, provincial or municipal legislation; and
   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 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.

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Date: February 4, 2016
Project Number: 176563749-002
File Number: SDAB-D-16-035

Notice of Decision

[1] On January 20, 2016, the Subdivision and Development Appeal Board heard an appeal that was filed on December 21, 2015.

[2] The appeal concerned the decision of the Development Authority, issued on December 15, 2015, to approve the following development:

> construct exterior alterations (Driveway extension, 4.55m x 10.59m) to a Single Detached House, existing without permits [unedited from the Development Permit]

[3] The subject property is located on Plan 0426367 Blk 84 Lot 77, municipal description 7353 Singer Way NW, within the RF3 Small Scale Infill Development Zone. The Mature Neighbourhood Overlay and Garneau Area Redevelopment Plan apply to the subject property.

[4] The following documents, which were received prior to the hearing and copies of which are on file, were read into the record:

- Appellant's written submissions, received on December 21 and 22, 2015;
- Appellant's Community Consultation, received on January 14, 2016;
- Appellant's full, revised written submissions, received on January 15, 2016;
- Copy of the Development Permit Application;
- Development Officer's written submissions, dated January 14, 2016;
- Copy of the Garneau Area Redevelopment Plan; and
- One online response and one email response, both in opposition to the development.

Summary of Hearing:

[5] 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.

[6] The appeal was filed on time, in accordance with Section 686 of the *Municipal Government Act*, RSA 2000, c M-26.

i. Position of the Appellant, Ms. L. Sirdiak.

[7] The subject property was built in 2005, and purchased by her son, Mr. S. Sirdiak (who was also in attendance) in 2011. By that time, the Driveway extension already existed, and was marketed to her son as an additional parking space. Since her son owned a RV, the Driveway extension was a key selling point.

[8] Prior to 2015, the extension existed without any complaints. Following the June 2015 violation notice issued to her son, he immediately stopped parking his RV on the Driveway extension, but as a result, the vehicle has to be parked on the street. Since the RV is approximately 29.5 feet in length, and the truck to which it is attached is approximately 17 feet in length, both on-street parking space and part of the Driveway is blocked off.

[9] Mr. S. Sirdiak noted that due to the number of cars parked on the street, it can sometimes be difficult to see around them. Parking both the RV and the truck on the street further exacerbates this problem, whereas permitting the Driveway extension and allowing the RV to be parked on the extension actually helps to ameliorate the problem.

[10] Ms. Sirdiak referred the Board to her written submissions, a brief summary of which follows:

1) A number of photos were referenced, some showing similar properties with Driveway extensions, others to show the extent of the on-street parking. One property has a parking pad on the front lawn, with no clear access from the roadway to the parking pad. Upon questioning, the Appellant confirmed that a RV has been parked on the pad before, and the owner likely had to drive over a portion of the front lawn to access the parking pad.

2) Several photos showed a view of the subject property from different street angles. The Appellant submitted that in all cases, the RV and the Driveway extension on which it was parked were not visually obtrusive. She stated that when she conducted the community consultation, many neighbours had to make an effort to try to locate the RV, as it was not clearly discernable.

3) The community consultation was a very positive experience, as many neighbours were sociable, supportive of the development, and shared similar concerns about the parking issues in the neighbourhood. The most affected neighbour at 7351 Singer Way expressed strong support for the development.

4) She acknowledged the online response received in opposition to the development, but noted that the response was from an individual located at the edge of the notification area. With respect to an email received in apparent opposition to the development, she noted that the individual's concerns appeared to be in relation to a different property.

5) One photograph showed an extended Driveway with monolithic concrete. The Appellant stated that she had attempted to obtain some clarity with respect to the requirement for monolithic concrete. However, as she was researching the Bylaw, amendments were occurring and she was unfortunately unable to locate the pre-amendment provisions with respect to monolithic landscaping. She believes that prior to the amendment, paving stones were an acceptable form of landscaping.

6) The Appellant referenced five previous decisions of the Subdivision and Development Appeal Board, specifically appeal files SDAB-D-13-049, SDAB-D-15-171, SDAB-D-15-182, SDAB-D-15-201, and SDAB-D-15-266. In all five cases, the Board allowed the Driveway extensions and found that the developments would not interfere with the amenities of the neighbourhood.

7) The Appellant submitted that based on the community consultation and the concerns about on-street parking, the Board should allow the appeal and grant the development, as it would actually help to alleviate the on-street parking problem and improve the amenities of the neighbourhood.

[11] She also noted that many of the Development Officer's reasons for refusal are subjective elements. For example, "curb appeal" differs with each potential buyer, depending on the individual's interests and hobbies. For her son, who owns an RV, a property with an extended Driveway has great curb appeal.

[12] The Appellant concluded by stating that under the Bylaw, the subject development is for a Driveway extension to a Single Detached House. A Driveway is accessory to a Permitted Use under the Bylaw. Since Driveway extensions already exist in the neighbourhood, approving the development will not create a precedent, as extended Driveways are characteristic of both the neighbourhood and others in the City.

ii. Position of the Development Officer, Mr. J. Xie

[13] The Development Officer confirmed that since the Driveway extension did not have an approved permit, it would be considered non-conforming under Section 643 of the *Municipal Government Act.* Had a Development Permit been issued for the Driveway extension, it would be considered a legally non-conforming use.

[14] He referred to the plot plan submitted with the original development application, which showed that the Development Authority approved the development with a standard 6.4 m width for the Driveway.

[15] He confirmed that the lawn area to the right of the Driveway would be expected to be landscaped. He stated that pavers were considered landscaping at some point, but in this case, the paved landscaped area appears contiguous with the Driveway and was therefore considered a Driveway extension rather than front lawn landscaping.

[16] He acknowledged that prior to 2011 amendments to the *Edmonton Zoning Bylaw*, there was no prohibition of parking on a Front Yard that is not a Driveway. However, he submitted that Section 44(6) of the April 3, 2009 version of the *Edmonton Zoning Bylaw* provides some guidance in support of the view that parking on Front Yards was not intended to be permitted.

[17] He submitted Exhibit "B", a copy of Section 44(6) of the April 3, 2009 *Edmonton Zoning Bylaw*, which states in part: "a parking area [may project into a required Yard or Separation Space] when comprised of parking spaces required under this Bylaw, provided that no parking area in any Zone shall be located within the required Front Yard."

[18] When questioned about landscaping requirements, and the necessity of obtaining a Development Permit for landscaping, he referred the Board to Section 12.2(12), which states: "A Development Permit is not required for Landscaping, where the existing Grade and natural surface drainage pattern is not materially altered, *except where Landscaping forms part of a development which requires a Development Permit.*" [emphasis added]

[19] In this case, the Development Officer stated that hard surfacing materials such as pavers used for landscaping should not be used for parking. Such types of landscaping are intended for recreational or aesthetic uses.

[20] Upon questioning, he acknowledged that the Appellant has clearly complied with the violation notice, but to maintain the character of the neighbourhood, he would still prefer that the Appellant provide some sort of physical mitigation of the extension. He recommended that should the Board allow the appeal and grant the development, that the Board adopt the recommendations as laid out in his written report.

iii. Rebuttal of the Appellant, Ms. L. Sirdiak

[21] Ms. Sirdiak reiterated her key points with respect to the on-street parking and comparisons to other similar developments with the neighbourhood.

[22] In response to the Development Officer's submissions regarding landscaping requirements, she stated that when she researched the Bylaw in June 2015, she remembered reading that paving stones could be used for Driveways. However, the difference between paving stones and concrete is still not clear to her, and the Bylaw does not provide her any clarity.

Decision:

[23] The appeal is ALLOWED and the decision of the Development Authority is REVOKED. The Development is GRANTED.

[24] In allowing the development, the Subdivision and Development Appeal Board grants the following variances:

1) Section 54.1(4)(b) is relaxed to permit a total width of 10.95 m to the Driveway and extension;

2) Section 55.4(1) is relaxed to permit paving stones to be used as landscaping for the Driveway extension; and

3) Section 54.2(2)(e)(i) is relaxed to permit parking on the Driveway extension.

Reasons for Decision:

[25] The Proposed Development is Accessory to a Permitted Use in the RSL Residential Small Lot Zone.

[26] The Appellant submitted that parking on the Driveway is safer than parking on the street and prevents further parking congestion on the street. The Board accepts this.

[27] Further to the above, allowing the Appellant to park in the manner they demonstrated in their evidence will allow for less parking competition in the neighbourhood in an area that is not particularly well-served by transit and whose residents are not heavy transit users.

[28] The Board acknowledges there is limited street parking due to new developments in this neighbourhood. The very nature of the RSL Zone, with comparatively higher density, confirms that street parking is likely to be a rarity in this zone.

[29] The Appellant submitted that paving stones were considered at one point to be landscaping in a previous version of Bylaw. Board notes that there was no evidence submitted to contradict this submission.

[30] The Board accepts the community consultation evidence put forward by the Appellant, wherein 11 community members signed in support of the development, including the most affected neighbour.

[31] The Board accepts the Appellant's submission that the Driveway extension has existed for 10 years without complaint.

[32] The Board notes that the paving stones used for the proposed development may be considered more appealing than simple monolithic concrete.

[33] The Board also notes that the lack of rear lane access increases hardship for the Appellant.

[34] Based on evidence submitted, the extension does not appear to be uncharacteristic of the neighbourhood, as several examples were provided of properties within the 60 metre notification area with Driveway extensions.

[45] Based on the above reasons, 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 or affect the use, enjoyment or value of neighbouring parcels of land.

Winston Tuttle, Presiding Officer
Subdivision and Development Appeal Board

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 5th 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*, RSA 2000, c S-1;
   c) the requirements of the *Permit Regulation*, Alta Reg 204/2007;
   d) the requirements of any other appropriate federal, provincial or municipal legislation; and
   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 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.

Edmonton Subdivision and Development Appeal Board

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Date: February 4, 2016
Project Number: 181205357-004
File Number: SDAB-D-16-036

Notice of Decision

[1] On January 20, 2016, the Subdivision and Development Appeal Board heard an appeal that was filed on December 24, 2015.

[2] The appeal concerned the decision of the Development Authority, issued on December 1, 2015, to refuse the following development:

> leave as built a rear detached Garage (9.24m x 6.17m) [unedited from the Development Permit decision]

[3] The subject property is located on Plan RN22B Blk 49 Lot 11, municipal description 10620 - 126 Street NW, within the RF3 Small Scale Infill Development Zone. The Mature Neighbourhood Overlay applies to the subject property.

[4] The following documents, which were received prior to the hearing and copies of which are on file, were read into the record:

- Appellant's written submissions, dated January 12, 2016;
- Letters of support from one neighbour and from the Ottawa House Condominium Association;
- Canada Post receipt confirming delivery of the Development Permit decision on December 9, 2015; and
- Copy of the Development Permit application and Development Permit itself.

Preliminary Matters:

[5] 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.

[6] The Presiding Officer then identified the following preliminary issue:

1) Did the Appellant file his appeal within the statutory time limit prescribed under Section 686(1)(a) of the *Municipal Government Act* (the "MGA"), RSA 2000, c M-26.?

[7] The Presiding Officer explained to the parties that the Board's jurisdiction to hear appeals is derived, in part, from Section 686(1)(a)(i) of the *Municipal Government Act*, which states:

> 686(1) A development appeal to a subdivision and development appeal board is commenced by filing a notice of the appeal, containing reasons, with the board within 14 days,
>
> (a) in the case of an appeal made by a person referred to in section 685(1), after
>
> (i) the date on which the person is notified of the order or decision or the issuance of the development permit…

[8] The Board must therefore determine whether the Appellant filed his appeal within the 14 days limitation period. If the appeal was filed late, the Board has no authority to hear the matter.

[9] In this instance, the decision of the Development Officer was dated December 1, 2015, and the Canada Post receipt confirmed delivery of the decision on December 9, 2015. Since the Appellant filed his Notice of Appeal on December 24, 2015, it would appear that the appeal was filed one day after the 14 days limitation period.

[10] The Presiding Officer invited the Appellant to provide submissions in this regard.

i. Position of the Appellant, Mr. J. Lock

[11] The Appellant confirmed that he did receive the Development Authority's decision on December 9, 2015. He reviewed the decision immediately the following day, but due to December being a busy month, he was unable to file his appeal until December 24.

[12] He explained that the property has already been sold to the new owners, who purchased the property in good faith. Although there is a slight holdback, the amount is insignificant. Their reason for appealing is not to obtain release of the funds in holdback, but to clear the matter for the new owners.

Decision:

[13] The appeal was filed outside the 14 days statutory time limit under Section 686(1)(a)(i) of the *Municipal Government Act*, and the Board therefore has no jurisdiction to hear the matter.

Reasons for Decision:

[14] The Board accepts the evidence that the Appellant received notification of the Development Authority's decision on December 9, 2015, and that he filed his Notice of Appeal on December 24, 2015.

[15] Section 22(7) of the *Interpretation Act*, RSA 2000, c I-8, states: "If an enactment provides that anything is to be done within a time after, from, of or before a specified day, the time does not include that day." Accordingly, since the Appellant received notification on December 9, 2015, he had until December 23, 2015 to file his Notice of Appeal.

[16] Since the appeal was filed on December 24, 2015, no appeal lies pursuant to Section 686(1)(a)(i) and the Subdivision and Development Appeal Board has no jurisdiction to hear the matter.

Winston Tuttle, Presiding Officer
Subdivision and Development Appeal Board

CC: City of Edmonton Sustainable Development Department – K. Heimdahl

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