

Edmonton Subdivision and Development Appeal Board

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Date: July 15, 2015
Project Number: 171496483-001
File Number: SDAB-D-15-137

Notice of Decision

This appeal dated June 4, 2015, from the decision of the Development Authority for permission to:

Construct an Accessory Building (detached Garage, 9.14m x 9.14m)

on Plan 8821139 Blk 2 Lot 3, located at 18616 - 122 Avenue NW, was heard by the Subdivision and Development Appeal Board at its hearing held on June 30, 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*, RSA 2000, c M-26.

The Board heard an appeal of the decision of the Development Authority to refuse an application to construct an Accessory Building (detached Garage, 9.14m x 9.14m) located at 18616 – 122 Avenue NW. The subject Site is zoned DC2.369 Site Specific Development Control Provision and is within the Kinokamau Plains Area Structure Plan.

The development permit was refused due to an excess in the maximum allowable Height for an Accessory Building.

Prior to the hearing the following information was provided to the Board, copies of which are on file:

- A written submission from the Appellant, received on June 30, 2015.
- A written submission from the Development Authority, received on June 26, 2015.

The Presiding Officer referenced Section 641(4) of the *Municipal Government Act*, RSA 2000, c M-16, which states the following:

(4) Despite section 685, if a decision with respect to a development permit application in respect of a direct control district

(a) is made by a council, there is no appeal to the subdivision and development appeal board, or

(b) is made by a development authority, the appeal is limited to whether the development authority followed the directions of council, and if the subdivision and development appeal board finds that the development authority did not follow the directions it may, in accordance with the directions, substitute its decision for the development authority's decision.

The Board heard from Mr. Romaneski, representing the Appellant, Permit Masters, who provided the following information:

1. Mr. Romaneski described the general location of the subject site in a rural subdivision that is bordered to the north by industrial sites and by rural residential properties to the east and the west.
2. Bylaw DC2.369 was approved in 1994 for this Rural Residential acreage community and it was his opinion that development in this neighbourhood should be viewed differently than in an urban residential community.
3. The property owner plans to use the Accessory Building to store the boards for an ice rink that they construct in the winter, other equipment and a recreational vehicle.
4. A driveway is not proposed at this time.
5. It is important to respect the purpose of the proposed development on a large rural residential lot.
6. The development permit application was refused based on the maximum allowable Height requirement of 3.7 metres contained in Section 61.3 of the old *Edmonton Land Use Bylaw 5996* ("Bylaw 5996"). Section 61.3 is not contained in the *Edmonton Zoning Bylaw 12800*, and is therefore an old standard.
7. The proposed Accessory Building will be located at the north end of a large lot with no view from the front streetscape along 122 Avenue. Large mature trees along the north, east and west property lines will also provide visual screening.
8. The existing Accessory building will be removed.
9. Mr. Romaneski referenced a map to illustrate the location of other over Height Garages that were built in this rural subdivision according to the requirements of Bylaw 5996.
10. One of the existing over Height Accessory Buildings was approved by the Subdivision and Development Appeal Board.
11. It was his opinion that the proposed development will not impact neighbourhood amenities or the use, enjoyment or value of neighbouring properties.

Mr. Romaneski provided the following response to a question from the Board:

1. It was his opinion that the proposed development should have been reviewed according to the requirements of Section 2.4 of the *Edmonton Zoning Bylaw* and not Section 2.7.
2. The Appellant confirmed the Height calculation to be 4.9 metres.
3. Packages of information regarding the proposed development were provided to other land owners in the subdivision.

4. Vehicle access is not required for the proposed Accessory Building.

The Board then heard from Mr. Jason Xie, representing the City of Edmonton Sustainable Development Department, who provided the following information:

1. Mr. Xie used a scale to calculate the height of the proposed building and confirmed his calculation of height to be 4.69 metres.
2. He confirmed that the proposed development had been reviewed using the requirements of Section 2.7 of the *Edmonton Zoning Bylaw* that required application of the former Bylaw 5996. However, he acknowledged that the intent of the Court of Appeal decision in *Parkdale-Cromdale Community League Association v. Edmonton (City)*, 2007 ABCA 309, determined that once the *Edmonton Zoning Bylaw* came into effect, Section 2.4 took precedence over Section 2.7, except in very unusual circumstances.

Mr. Romaneski made the following points in rebuttal:

1. It was his opinion that it is more accurate to calculate the Height of the proposed Accessory Building using the dimensions included on the submitted drawings rather than a scale.
2. The Height should be calculated from Grade and not from the slab.

Decision:

The appeal is ALLOWED and the decision of the Development Authority is REVOKED. The development is GRANTED as applied for to the Development Authority, subject to the following CONDITIONS:

1. This Development Permit authorizes the development of an Accessory Building (detached Garage, 9.14 metres by 9.14 metres), in accordance with the stamped and approved drawings;
2. The Accessory Building or structure shall not exceed 4.9 metres in height;
3. Eave projections shall not exceed 0.46 metres into required Yards or separation Spaces less than 1.2 metres, pursuant to Section 44(1)(b) of the *Edmonton Zoning Bylaw*); and
4. The Driveway access must maintain a minimum clearance of 1.5 metres from the service pedestal and all other surface utilities.

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

The excess of 0.6 metres in the maximum allowable Height for an Accessory Building or Structure.

Notes:

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, as per Section 5.2 of the *Edmonton Zoning Bylaw*.

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

There are no requirements for a separate curb crossing permit under Sections 1210 and 1211 of *Traffic Bylaw 5590*. Approval is given for the access under this Development Permit.

The Applicant is advised to research the Land Title for this property and to be aware of any restrictions in any restrictive Covenants registered against the legal title. This approval does not imply consent for any structure that does not meet the requirements of the Restrictive Covenant.

Reasons for Decision:

The Board finds the following:

1. Section 641(4)(b) of the *Municipal Government Act*, RSA 2000, c M-26, states the following:

(4) Despite section 685, if a decision with respect to a development permit application in respect of a direct control district

(a) ...

(b) is made by a development authority, the appeal is limited to whether the development authority followed the directions of council, and if the subdivision and development appeal board finds that the development authority did not follow the directions it may, in accordance with the directions, substitute its decision for the development authority's decision.

2. The Development Authority's decision does not comply with the direction of City Council because the requirements of Section 2.7 of the *Edmonton Zoning Bylaw* were used to review and refuse this development permit application. Instead, Section 2.4 should have been applied. In addition, the Development Authority scaled the submitted drawings, which included clearly marked dimensions. Scaling was therefore not necessary and the clearly marked dimensions should have been relied upon when reviewing the application.

3. At the time of the creation of the subject Site Specific Development Control Provision, DC2.369 site, the former Bylaw 5996 was in effect. In *Parkdale-Cromdale Community League Association v. Edmonton (City)*, 2007 ABCA 309, the Alberta Court of Appeal held at para 4:

Section 2.7 [of the *Edmonton Zoning Bylaw 12800*] is only intended to deal with a situation where a Direct Control bylaw passed before 2001 contained an express cross-reference to a provision of the old Land Use

Bylaw. Such cross-references might not, of course, be directly transferable to the provisions of the new Zoning Bylaw, and section 2.7 was required to ensure that such express references remained meaningful, and faithful to the original intent of the Bylaw.

4. The Board finds that in the absence of an express reference in the Direct Control Bylaw to the old *Land Use Bylaw 5996*, Section 2.7 does not prevail over Section 2.4 of the *Edmonton Zoning Bylaw*. Even if DC2.369.4(h) could be construed as an express reference to Bylaw 5996, the Board finds that Section 61.3 of Bylaw 5996 is directly transferable to Section 50.3 of the *Edmonton Zoning Bylaw 12800*. As such, Section 2.4 of the *Edmonton Zoning Bylaw 12800* prevails over Section 2.7.
5. Further, Section 720.3(3) of the *Edmonton Zoning Bylaw 12800* states that “All Regulations in the Zoning Bylaw shall apply to developments in the Direct Control Provision, unless such Regulations are specifically excluded or modified in a Direct Control Provision.” Since DC2.369.4(h) did not specifically exclude the Development Regulations of the *Edmonton Zoning Bylaw*, Section 50.3 applies and the maximum Height shall be 4.3 m.
6. Based on the above reasons, the Board is satisfied that the Development Authority did not follow the direction of City Council in refusing the proposed development, and therefore revokes the decision of the Development Authority. The Board therefore exercises its discretionary powers under Section 641(4)(b) of the *Municipal Government Act* and substitutes its decision for the Development Authority’s decision. A variance of 0.6 m from the maximum Height of 4.3 m is granted for the following reasons:
 - a) The proposed development is Accessory to Single Detached Housing, which is a listed Use in DC2.369 Site Specific Development Control Provision.
 - b) Applying the provisions of Section 2.4 of the *Edmonton Zoning Bylaw* would have allowed the proposed Accessory Building or Structure at a Height of 4.3 metres, which would have reduced the required variance.
 - c) Based on a review of the photographic evidence provided, the proposed Accessory Building will be located on the northwest corner of a site located in a unique rural residential neighbourhood.
 - d) The proposed Accessory Building will be screened by large mature trees and is not visible from 122 Avenue, which will mitigate the required variance.
 - e) Affected neighbours were consulted about the proposed development and there were no objections received and no one appeared in opposition to the proposed development.
 - f) Based on the evidence provided, the Board is satisfied that the approved development is characteristic of developments in the DC2.369 zone and that the variance granted is consistent with the minor variance powers granted in Section 11.3 of the *Edmonton Zoning Bylaw*, and that the development will not unduly interfere with the amenities of the neighbourhood or materially interfere with or affect the use, enjoyment or value of neighbouring properties.

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. 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.

Mr. W. Tuttle, Presiding Officer
Subdivision and Development Appeal Board

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SDAB-D-15-138

An appeal to develop a Secondary Suite in an existing Single Detached House, located at 11234
– 86 Street was TABLED to August 5 or 6, 2015