



**EDMONTON  
TRIBUNALS**

*Subdivision &  
Development  
Appeal Board*

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Date: April 25, 2019  
Project Number: 300759704-001  
File Number: SDAB-D-19-052

**Notice of Decision**

- [1] On April 11, 2019, the Subdivision and Development Appeal Board (the “Board”) heard an appeal that was filed on **March 13, 2019**. The appeal concerned the decision of the Development Authority, issued on March 12, 2019, to refuse the following development:

**Construct exterior alterations to a Single Detached House (pergola on the Rooftop Terrace).**

- [2] The subject property is on Plan 4590W Blk 78 Lot 5, located at 9922 - 148 Street NW, within the (RF1) Single Detached Residential Zone. The Mature Neighbourhood Overlay applies to the subject property.
- [3] The following documents were received prior to the hearing and form part of the record:
- A copy of the refused Development Permit and refused plans;
  - The Development Officer’s written submission; and
  - The Appellant’s written submission.

**Preliminary Matters**

- [4] 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.
- [5] The Presiding Officer outlined how the hearing would be conducted, including the order of appearance of parties, and no opposition was noted.
- [6] The appeal was filed on time, in accordance with section 686 of the *Municipal Government Act*, RSA 2000, c M-26.

**Summary of Hearing***i) Position of the Appellant, Mr. P. Whincup, representing Habitat Studio*

- [7] Mr. Whincup read from his written submission.
- [8] The homeowners would like to add a pergola on the rooftop patio for privacy and shade from the south and west. Privacy screening of five feet, seven inches, is permitted on a rooftop patio.
- [9] The pergola will not be taller than the existing rooftop access.
- [10] One neighbour submitted a letter in support and no letters were received in opposition to the proposed pergola.
- [11] The pergola will be an unenclosed structure that is open to the elements, air, and light. The pergola will not create an enclosed living space and will not create additional shading on adjacent properties.
- [12] The pergola is located on the rear of the house and will only be seen from the rear lane.
- [13] The rooftop pergola will not cause any hardship to any of the neighbouring property owners.
- [14] The pergola will be more aesthetically pleasing than stand-alone furniture such as umbrellas and lattice.
- [15] Mr. Whincup provided the following information in response to questions by the Board:
- a. The pergola was always part of the house plan but applied for separately.
  - b. He did not speak to neighbouring property owners regarding the proposed development.
  - c. The pergola will be placed on a curb and not the actual roof. The rooftop is finished with composite material.
  - d. The pergola will have a metal frame with open slat wood sides.
  - e. The houses in the area are one and a half storeys and bungalows.
  - f. The original development permit was for the pergola to be located on the south side of the property. After the house was built, the property owners wanted the pergola to be located on the west side of the rooftop and new drawings were submitted to the City.
  - g. There will be a three-foot high railing and privacy screen around the pergola.

ii) *Position of the Development Officer, Ms. E. Hong*

[16] The Development Authority did not appear at the hearing and the Board relied on Ms. Hong's written submission.

**Decision**

[17] 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. Immediately upon completion of the exterior alterations, the site shall be cleared of all debris.
2. 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 (Reference Section 57.3(1) of the *Edmonton Zoning Bylaw*).

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

1. The maximum allowable Height of 8.9 metres as per section 814.3(5) is varied to allow an excess of 1.7 metres, thereby increasing the maximum allowed to 10.6 metres.

**Reasons for Decision**

[19] The proposed development, exterior alterations to a Single Detached House (pergola on the Rooftop Terrace), is a Permitted Use in the (RF1) Single Detached Residential Zone.

[20] Based on the evidence submitted, a three-foot high (0.91 metres) privacy screen will be installed on the rooftop to ensure privacy of the Appellant and the adjacent neighbours.

[21] Based on the evidence submitted, the pergola will not be fully enclosed and will be the same Height as the enclosed rooftop access structure.

[22] The proposed development complies with all other regulations of the *Edmonton Zoning Bylaw*, specifically the Rooftop Terrace Stepback requirements pursuant to section 61.

[23] There were no letters received in opposition to the proposed development and no one appeared in opposition at the hearing.

[24] 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 or affect the use, enjoyment or value of neighbouring parcels of land.

A handwritten signature in blue ink, appearing to read 'B. Gibson', is written over a faint, light-colored rectangular stamp or watermark.

Mr. B. Gibson, Presiding Officer  
Subdivision and Development Appeal Board

Board Members in Attendance:

Ms. G. Harris; Mr. A. Bolstad; Ms. E. Solez; Mr. D. Fleming

CC: City of Edmonton, Development & Zoning Services, Attn: Ms. E. Hong / Mr. A. Wen

**Important Information for the Applicant/Appellant**

1. This is not a Building Permit. A Building Permit must be obtained separately from Development & Zoning Services, located on the 2nd Floor, Edmonton Tower, 10111 – 104 Avenue NW, Edmonton, AB T5J 0J4.
2. Obtaining a Development Permit does not relieve you from complying with:
  - a) the requirements of the *Edmonton Zoning Bylaw*, insofar as those requirements have not been relaxed or varied by a decision of the Subdivision and Development Appeal Board,
  - b) the requirements of the *Alberta Safety Codes Act*,
  - c) the *Alberta Regulation 204/207 – Safety Codes Act – Permit Regulation*,
  - d) the requirements of any other appropriate federal, provincial or municipal legislation,
  - e) the conditions of any caveat, covenant, easement or other instrument affecting a building or land.
3. When an application for a Development Permit has been approved by the Subdivision and Development Appeal Board, it shall not be valid unless and until any conditions of approval, save those of a continuing nature, have been fulfilled.
4. A Development Permit will expire in accordance to the provisions of section 22 of the *Edmonton Zoning Bylaw, Bylaw 12800*, as amended.
5. This decision may be appealed to the Alberta Court of Appeal on a question of law or jurisdiction under section 688 of the *Municipal Government Act*, RSA 2000, c M-26. If the Subdivision and Development Appeal Board is served with notice of an application for leave to appeal its decision, such notice shall operate to suspend the Development Permit.
6. When a decision on a Development Permit application has been rendered by the Subdivision and Development Appeal Board, the enforcement of that decision is carried out by Development & Zoning Services, located on the 2nd Floor, Edmonton Tower, 10111 – 104 Avenue NW, Edmonton, AB T5J 0J4.

*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: April 25, 2019  
Project Number: 243625660-004  
File Number: SDAB-D-19-039

**Notice of Decision**

- [1] On April 11, 2019 the Subdivision and Development Appeal Board (the “Board”) heard an appeal that was filed on February 26, 2019. The appeal concerned the decision of the Development Authority, issued on February 6, 2019, to refuse the following development:

**Construct an extension to an existing Uncovered Deck (new size: 4.22 metres by 8.57 metres), existing without permits.**

- [2] The subject property is on Plan 1620693 Blk 7 Lot 7, located at 1746 – Tanager Close NW, within the (RSL) Residential Small Lot Zone. The North Saskatchewan River Valley and Ravine System Protection Overlay, the Big Lake Area Structure Plan, and the Starling Neighbourhood Structure Plan apply to the subject property.
- [3] The following documents were received prior to the hearing and form part of the record:
- A copy of the Development Permit application with attachments, proposed plans, and the refused Development Permit; and
  - The Development Officer’s written submissions including a response from Integrated Infrastructure Services.
- [4] The following exhibits were presented during the hearing and form part of the record:
- Exhibit A – Photographs submitted by the Appellant.
  - Exhibit B – Map of the subject Site and neighbourhood, submitted by the Appellant.
  - Exhibit C – Restrictive Covenant, submitted by the Appellant.
  - Exhibit D – Aerial Map showing Area F, submitted by the Appellant.
  - Exhibit E – Site Plan showing Area F, submitted by the Appellant.

### **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 outlined how the hearing would be conducted, including the order of appearance of parties, and no opposition was noted.
- [7] The appeal was filed on time, in accordance with section 686 of the *Municipal Government Act*, RSA 2000, c M-26 (the “*Municipal Government Act*”).

### **Summary of Hearing**

#### *i) Position of the Appellant, Mr.B. Romanesky*

- [8] Mr. Romanesky specializes in Urban Planning and provided the Board with an overview of the area.
- [9] He provided the Board with photographs showing the rear and side of the house, the existing deck, the columns that support the deck and the area of the walkout basement (*Exhibit A*).
- [10] The walkout is finished with a concrete pad. There are three columns that sit on the concrete pad and support the deck.
- [11] The Engineering Report prepared by Hoggan Engineering & Testing (1980) Ltd. outlines that there is no foundation below the columns that support the deck.
- [12] The elevation drawings reviewed by the Development Officer show the cantilevered area from the post.
- [13] He referred to the site plan showing that the rear yard is irregularly shaped and backs on to the Storm Water Management Facility to the north.
- [14] The first reason for refusal by the Development Officer was that the rear deck falls under the North Saskatchewan River Valley and Ravine System Protection Overlay. In his opinion, that is a statement and not a reason for refusal.
- [15] The second reason for refusal is that the proposed development was refused due to a memorandum from Integrated Infrastructure Services advising that the development does not comply with the Overlay.
- [16] Mr. Romanesky provided the Board with a map of the area showing the subject site and the ravine. The entire parcel and all of the adjacent lots are within the Overlay (*Exhibit B*).

- [17] The Geotechnical review identified which part of the Overlay that needs to be protected and which did not need to be protected. The Geotechnical Memorandum dated May 2, 2018 is what the Development Officer based the decision on.
- [18] The Geotechnical Memorandum does not reference section 811.3(8) or the Overlay. The Top of Bank Restrictive Covenant (*Exhibit C*) registered on the title established an area to be considered on the setback where you cannot have structures or buildings identified in “Area F”.
- [19] The property location falls within the area for which top of bank land use restrictions have been imposed, including restrictions on water feature construction and installation. Based on the information provided, it appears this proposed deck is not in compliance with the requirements of the restrictive covenant. In particular, the survey plan showed the proposed deck and foundations inappropriately encroaching within the development setback area identified as Area F.
- [20] To address this concern and facilitate the approval of this development, the following revisions could have been considered:
- a. Consideration could be given to modifying the proposed deck to a cantilevered structure with the foundations located outside of the development setback area.
  - b. The proposed deck could also be modified (reduced in size or relocated) such that there is no encroachment within Area F as required.
- [21] However, the report by Hoggan Engineering provided a slope analysis to have the subdivision approved.
- [22] He referenced 5.5.4 of the Restrictive Covenant that reads, “There shall be no Development within Area F Plan 152....”
- [23] He referred to point 1.c that states:
- “Development” means the carrying out of any construction, excavation, or the re-grading of the Servient Lands as well as any changes or alterations to any existing improvements on or in the Servient Lands. Development does not include perimeter fences, nor paved patios or wooden decks constructed on the ground surface. Any other structure that requires permanent foundations to be placed below the ground surface will be considered Development.
- [24] Point 5 of the Restrictive Covenant states that the following restrictions shall apply to the **Servient Lands**:
- 5.1 No **Swimming Pool** shall be constructed or installed.
  - 5.2 No permanent sprinkler or irrigation systems shall be constructed or installed.



5.3 Roof leaders, downspouts and sump pump discharge spouts shall not be allowed to discharge onto the ground. They shall be connected to the storm sewer system.

5.4 ...

5.5 Grading of the site and temporary construction excavations shall not allow for any ponding of water or the focused discharge of water toward the ravine slopes. Surface runoff shall be directed away from the slopes and into the storm drainage system where possible.

- [25] A foundation is not to be allowed in Area F.
- [26] The Restrictive Covenant was created based on the Hoggan Engineering report as part of the stability analysis for the subdivision.
- [27] He referred to the map showing the subject property, the property line, and the limit of Area F, which is approximately 6.0 metres from the property line. There is no setback from the property to the environmental reserve. He stated that structures are not allowed within the 6.0 metre setback (*Exhibit D*).
- [28] He requested a copy of Area F from the Development Officer and was told that they did not have a copy and they needed to contact the Engineering Company.
- [29] He provided the Board with a site plan and elevation drawing of the proposed development showing the 6.0 metre setback of Area F (*Exhibit E*). He stated that the corner of deck slightly touches the corner of Area F. There is an encroachment of 7.43 square inches on the top of the guardrail onto Area F. The foundation of the deck does not go into the ground and is far away from Area F.
- [30] It was suggested by Engineering Services that they should cantilever the deck at the Area F line as opposed to a foundation, which is what they did.
- [31] That corner is cantilevered from the post of the foundation of the deck and is 2.0 metres high, which can be walked under.
- [32] In his opinion, the Development Officer did not look at Area F and assumed it matched the Overlay.
- [33] In his opinion, the proposed development meets the intention of the Engineering Report and that the Development Officer erred by refusing the development for being in the Overlay when Engineering did not say that was the issue.

- [34] They relied on the Engineering study and the Restrictive Covenant registered to allow for a subdivision and house to be approved and built.
- [35] He reiterated that there is no structure within Area F except for the guard rail that projects into the area by approximately 7.43 square inches.
- [36] In his opinion, the proposed development meets the conditions as outlined in the Development Officer's written submission.
- [37] In his opinion, the Board does not need to consider section 687.3(d) of the *Municipal Government Act* as the proposed development is completely complying with the *Edmonton Zoning Bylaw*.
- [38] If the Overlay generated a variance, it would have been dealt with at the time the house was developed.
- [39] The small portion of the existing deck that is in Area F is not an *Edmonton Zoning Bylaw* requirement but a Restrictive Covenant issue and a civil matter.
- [40] Mr. Romanesky provided the following information in response to questions by the Board:
- a. The existing deck was part of the original development permit but not built according to the plans.
  - b. The Restrictive Covenant was in place when the house was built or they would not have been able to subdivide and receive a development permit for the house.
  - c. He confirmed that the posts that support the deck sit on the walkout concrete pad.
  - d. The original development permit application was for a deck 10 feet by 14 feet.
  - e. In his opinion, the Overlay has been addressed through the Restrictive Covenant.
  - f. No letters were received in opposition to the existing deck.

ii) *Position of the Development Officer, Ms. K. Bauer*

- [41] The Development Authority did not appear at the hearing and the Board relied on Ms. Bauer's written submission.

**Decision**

[42] 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. **Obtaining a Development Permit does not relieve you from complying with the conditions of any caveat, covenant, easement or other instrument affecting a building or land.**
2. Any future deck enclosure or cover requires a separate development and building permit approval.

**Engineering Services Advisements:**

1. No 'Swimming Pool' shall be constructed or installed, where 'Swimming Pool' refers to a swimming pool, ornamental pond, or other water retention structure as defined in the restrictive covenant.
2. No permanent sprinkler or irrigation systems shall be constructed or installed.
3. Roof leaders, downspouts, and sump pump discharge spouts shall not be allowed to discharge onto the ground surface. They shall be connected to the storm sewer system.
4. Grading of the site and temporary construction excavations shall not allow for any ponding of water or focused discharge of water toward the ravine slopes. Surface runoff shall be directed away from the slopes and into the storm drainage system where possible.
5. No fill materials shall be placed unless such fill is placed in accordance with the approved lot grading plan for the Servient Lands.

**Reasons for Decision**

[43] The proposed development, an extension to an existing uncovered deck, is a Permitted Use in the (RSL) Residential Small Lot Zone.

[44] The existing deck falls outside the 6.0-metre Setback of the Restrictive Covenant and the Appellant identified on the Site Plan the property line to the subject deck.

[45] The Appellant indicated that there is an encroachment of 7.43 square inches into the Restrictive Covenant from the platform structure guardrail but it is not noticeable.

[46] The proposed development meets all of the regulations of the *Edmonton Zoning Bylaw*.

[47] Based on the evidence submitted, the appeal is allowed and the development approved.

A handwritten signature in blue ink, appearing to read 'B. Gibson', with a long horizontal flourish extending to the right.

Mr. B. Gibson, Presiding Officer  
Subdivision and Development Appeal Board

Board Members in Attendance:

Ms. G. Harris; Ms. E. Solez; Mr. D. Fleming; Mr. A. Bolstad

CC: City of Edmonton, Development & Zoning Services, Attn: Ms. K. Bauer / Mr. A. Wen

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