



**EDMONTON
TRIBUNALS**

*Subdivision &
Development
Appeal Board*

10019 – 103 Avenue NW
Edmonton, AB T5J 0G9
P: 780-496-6079 F: 780-577-3537
sdab@edmonton.ca
edmontonsdab.ca

Date: May 1, 2019
Project Number: 303277578-001
File Number: SDAB-D-19-053

Notice of Decision

- [1] On April 16, 2019, the Subdivision and Development Appeal Board (the “Board”) heard an appeal that was filed on March 20, 2019. The appeal concerned the decision of the Development Authority, issued on March 1, 2019, to refuse the following development:

Construct exterior alterations to a Single Detached House (Driveway extension, 3.35 metres by 12.80 metres), existing without permits.

- [2] The subject property is on Plan 1720278 Blk 16 Lot 21, located at 17223 - 61 Street NW, within the RSL Residential Small Lot Zone. The McConachie Neighbourhood Structure Plan and the Pilot Sound Area Structure Plan apply to the subject property.
- [3] The following documents were received prior to the hearing and form part of the record:
- Copy of the Development Permit application with attachments, proposed plans, and the refused Development Permit;
 - The Development Officer’s written submissions; and
 - The Appellant’s submissions.

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, J. Parker*

- [7] The driveway extension was poured by the builder and the Appellants assumed the proper permits were in place.
- [8] Their Recreational Vehicle (RV) is normally parked at their lake lot west of the City during the winter. Due to an illness in the family and the sports schedules of their children, they were unable to relocate the RV this past fall. Because only two other properties around them were occupied, the Appellants felt that leaving the RV parked there for the winter would not cause an issue for anyone. It has never been their intention to leave an RV parked on the driveway extension year-round.
- [9] The Appellants have spent a lot of money on landscaping to ensure the driveway extension is not an eyesore to the neighbourhood. It is their intention to sell the RV and use the driveway extension as a basketball court for their children in the future.
- [10] They have submitted photos of other driveway extensions within a 15 block radius of their property. Some of these properties also have RVs parked on the driveway extensions.
- [11] While the Appellants attempted to get signatures of support from neighbours, they were unsuccessful because the majority of the surrounding properties are vacant lots or homes under development. One neighbour they did speak to asked Mr. Parker to replicate the subject driveway extension for her.
- [12] It would be a financial hardship to tear the pad out. They are amenable to considering alternatives such as installing a fence, adding a shed or adding large flower pots to prevent parking on the extension.
- [13] The Appellants expressed confusion as to the location of the front yard versus the side yard; the Chair clarified the definitions of front and side yards.
- [14] The Appellants provided the following responses to questions from the Board:
- a) They would prefer to park their RV on the driveway extension during the summer months rather than on the street. They got the impression from the Bylaw officer that this would be permitted.
 - b) The Appellants have placed a large rock at the corner radius of the roadway to prevent anyone from driving across the sidewalk at this location. The overhead photo provided by the Development Officer depicts this rock and shows that their driveway, as built, does not encroach on the corner radius.

- c) The Appellants disagree with the Development Officer's opinion that the driveway extension and parked RV create an eyesore. They generally cover the parked RV with a tarp that matches their home so it blends in.
- d) One immediate neighbour has a trailer parked on their property and another has a boat but they are currently parked on the clay – no driveway extensions have been poured. Also many large rigs are left parked on the street in this neighbourhood.

(ii) *Position of the Development Officer, M. Winget*

[15] The Development Authority did not attend the hearing and the Board relied on Mr. Winget's written submission.

Decision

[16] 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. The driveway extension in the front yard shall not be used to park a large RV on it except during the time period from April 1 to October 31 inclusive.
2. Lot grades must match the *Edmonton Drainage Bylaw 18093* and/or comply with the Engineered approved lot grading plans for the area. Contact Lot Grading at (780) 496-5576 or lot.grading@edmonton.ca for lot grading inspection inquiries.
3. The driveway access must maintain a minimum clearance of 1.5 metres from the service pedestal and all other surface utilities.

Advisement

1. In Transportation Development and Engineering's (Transportation's) report dated February 23, 2017, they stated that: "No portion of the driveway shall encroach within the corner radius of the roadway." Based on the Board's review of the aerial photographs of the area it appears that the driveway extension does not encroach within the corner radius of the roadway as built. However, Transportation may come to the conclusion that there is an encroachment of the corner radius.

[17] In granting the development, the following variances to the *Edmonton Zoning Bylaw* are allowed:

1. The requirement that the driveway must lead directly from the roadway to a garage as per Section 54.1.4(a) is waived.

2. The maximum allowable Width of the Driveway of 11.1 metres as per Section 54.1.4(c) is varied to allow an excess of 3.1 metres, thereby increasing the maximum allowed Width of the Driveway to 14.2 metres.
3. The requirement that parking spaces shall not be located within a front yard in a residential zone as per Section 54.2.1(e)(i) is waived.

Reasons for Decision

- [18] A Driveway is considered an Accessory Use to Single Detached Housing which is a Permitted Use in the RSL Residential Small Lot Zone. The driveway extension is located in the front yard of this corner site.
- [19] The Appellants have done extensive landscaping including planting a number of trees along the east side of the driveway extension between the extension and the street. This landscaping helps to mitigate the impact of the driveway extension and of the RV parked there during the summer months. The Board has imposed a condition that the RV shall not be parked on the driveway extension during the winter months.
- [20] The Board is cognizant of the fact that, when Transportation reviewed the proposed development of this property in 2017, they stipulated that no portion of the driveway shall encroach within the corner radius of the roadway. In reviewing the aerial photographs of the Site provided by the Development Officer, it appeared to the Board that the driveway extension exits the property at a portion of the roadway where there is no corner radius, so it may be that this is no longer a concern for Transportation. However, the Board recognizes that Transportation, upon review of the driveway extension as built, may come to the conclusion that there is an encroachment.
- [21] The Appellants indicated that they had spoken with one or two of the neighbours in this new neighbourhood that actually had homes built and those neighbours were not opposed to the driveway extension or to the RV being parked on the driveway extension.
- [22] For all of the above reasons the Board finds that the driveway extension 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.



Mark Young, Presiding Officer
Subdivision and Development Appeal Board

Board Members in Attendance:

Ms. P. Jones; Mr. A. Nagy; Mr. D. Fleming; Mr. J. Wall

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 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 the Sustainable Development Department, 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.



**EDMONTON
TRIBUNALS**

*Subdivision &
Development
Appeal Board*

10019 – 103 Avenue NW
Edmonton, AB T5J 0G9
P: 780-496-6079 F: 780-577-3537
sdab@edmonton.ca
edmontonsdab.ca

Date: May 1, 2019
Project Number: 296346702-001
File Number: SDAB-D-19-054

Notice of Decision

- [1] On April 16, 2019, the Subdivision and Development Appeal Board (the “Board”) heard an appeal that was filed on March 26, 2019. The appeal concerned the decision of the Development Authority, issued on March 13, 2019, to refuse the following development:

Construct a Single Detached House with a front attached Garage, Front Unenclosed Porch, fireplace and Basement development (NOT to be used as an additional Dwelling).

- [2] The subject property is on Plan 239HW Blk 7 Lot 3, located at 10609 - 60 Avenue NW and Plan 1823270 Blk 7 Lot 3A, located at 10609 - 60 Avenue 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:
- Copy of the Development Permit application with attachments, proposed plans, and the refused Development Permit;
 - The Development Officer’s written submissions;
 - The Appellant’s written submissions; and
 - Online responses (4 in support and 2 opposed to the proposed development).

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, R. Klein.*

- [7] The Appellants were not available to attend the hearing and were represented by their son, J. Klein and Ms. M. Unterschultz.
- [8] The primary reason for a front driveway is to preserve as many mature trees as possible. The property was initially purchased because of the view from the backyard of the property onto the cemetery and the mature trees at the rear. A mature tree at the rear of the property would have to be removed to accommodate a detached rear garage.
- [9] Also one of the property owners has mobility issues and would like the ability to go from a warm, attached garage directly into the house.
- [10] The Transportation Department asked the Appellants to modify the proposed driveway to avoid removal or damage of any mature boulevard trees which they are happy to comply with. A front access drive would allow them to preserve both the mature City owned and rear privately owned trees.
- [11] There are many other front attached garages in the area. The neighbours they spoke with had no concerns regarding danger or negative pedestrian impact. Some neighbours actually preferred a front attached garage as it results in less street parking in the cul-de-sac and the preservation of the mature tree at the rear.
- [12] The Appellants provided the following responses to questions from the Board:
- a) The previous house on the property has already been demolished and the current owner of the property has never lived there. That house had a front driveway that was in place since the house was built; they have not been made aware of any complaints associated with this previous driveway.
 - b) They have found the alley to be drivable but not well maintained when they came to maintain the property during the winter.
 - c) They were surprised to read the negative response to the proposed development from the developer of the two homes to the east as the Appellants have always had a very cordial relationship with this developer. The developer's main concern seems to be with the boulevard trees; the Appellants have no intention of removing any of these trees. Neighbours they spoke to were quite perturbed that this developer removed trees at the rear of the properties to build the rear detached garages.
 - d) They have not observed any children crossing the sidewalk in front of the proposed property to attend the nearby school.
 - e) Of the 23 homes located along their alley, 10 have a front driveway, although some of these properties are outside of the 60 metre notification area. One of these front

driveways was built quite recently. While there are other properties within the notification area with a front driveway, the Appellants acknowledged that these properties are not located on a lane.

- f) The lot immediately to the west of the proposed site is also owned by the Appellant, R. Klein and the intention is to eventually develop a second Single Detached House with a front attached garage while saving as many mature trees as possible (both City and privately owned).

[13] The Appellants have reviewed the recommended conditions of the Development Officer and have no objections to any of them.

ii) Position of an Affected Property Owner in Support of the Appellant

[14] A. Chaudhary is the owner of the property immediately to the west of the Appellant's two lots and fully supports the proposed development. There was never an issue with the previous driveway at the subject location. Ms. Chaudhary's property also has a driveway located off of the front street.

[15] Ms. Chaudhary's child is the only one in the immediate area that attends the nearby school. Because of the programming offered at this school it does not have boundaries and children attend from throughout the entire City. The driveway in question will have no effect on any children walking to this school.

[16] No one parks in the cul-de-sac to drop children off at the school.

iii) Position of the Development Officer, E. Lai

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

Decision

[18] 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**:

- a) The development shall be constructed in accordance with the stamped and approved Drawings.
- b) **WITHIN 14 DAYS OF APPROVAL**, prior to any demolition or construction activity, the applicant must post on-site a development permit notification sign (Section 20.6).

- c) The maximum Height shall not exceed 8.9 metres in accordance with Section 52. (Section 814.3.5).
- d) Frosted or translucent glass treatment shall be used on windows as required on the right elevation to minimize overlook into adjacent properties (Reference Section 814.3.8).
- e) Platform Structures located within a Rear Yard or interior Side Yard, and greater than 1m above the finished ground level, excluding any artificial embankment, shall provide Privacy Screening to prevent visual intrusion into Abutting properties. (Section 814.3.9)
- f) Existing vegetation should be preserved and protected unless removal is demonstrated to be necessary or desirable to efficiently accommodate the proposed development. (Reference Section 55.6).
- g) Landscaping shall be installed and maintained in accordance with Section 55.
- h) Except for the hard surfacing of Driveways and/or Parking Areas approved on the site plan for this application, the remainder of the site shall be landscaped in accordance with the regulations set out in Section 55 of the *Edmonton Zoning Bylaw 12800*.
- i) The proposed Basement development(s) shall NOT be used as an additional Dwelling. An additional Dwelling shall require a separate Development Permit application.

Transportation Conditions:

1. The proposed 6.7 metres residential access must be reduced in width to 5.0 metres within legal road right-of-way to provide required separation distance from the existing boulevard tree. The remaining 0.6 metres wide portion of the existing residential access outside of the proposed access must be filled in with curb & gutter and boulevard restored (excluding existing sidewalk). All work to construct the proposed residential access and fill in the existing access must conform to the City of Edmonton Complete Streets Design and Construction Standards, as shown on the Enclosure. The owner/applicant must obtain a crossing permit, available from Development Services, 2nd floor, Edmonton Tower, 10111-104 Avenue.
2. The proposed residential driveway must be tapered and reduced in width within legal road right-of-way and on the private property to maintain a 3.5 metres separation distance from the existing boulevard tree as required by City Operation, Parks and Roads Services.
3. There is an existing boulevard tree adjacent to the proposed redevelopment that must be protected during construction, as shown on the Enclosure. Prior to construction, the owner/applicant must contact Mark Walz of City Operations, Parks and Roads

- Services 780-496-4953 to arrange for hoarding and/or root cutting. All costs shall be borne by the owner/applicant.
4. Any sidewalk or boulevard damage occurring as a result of construction traffic must be restored to the satisfaction of Development Inspections, as per Section 15.5(f) of the Zoning Bylaw. The sidewalks and boulevard will be inspected by Development Inspections prior to construction, and again once construction is complete. All expenses incurred for repair are to be borne by the owner.
 5. There may be utilities within road right-of-way not specified that must be considered during construction. The owner/applicant is responsible for the location of all underground and above ground utilities and maintaining required clearances as specified by the utility companies. Alberta One-Call (1-800-242-3447) and Shaw Cable (1-866-344-7429; www.digshaw.ca) should be contacted at least two weeks prior to the work beginning to have utilities located. Any costs associated with relocations and/or removals shall be at the expense of the owner/applicant.
 6. Any hoarding or construction taking place on road right-of-way requires an OSCAM (On-Street Construction and Maintenance) permit. OSCAM permit applications require Transportation Management Plan (TMP) information. The TMP must include:
 - the start/finish date of project;
 - accommodation of pedestrians and vehicles during construction;
 - confirmation of lay down area within legal road right of way if required; and
 - confirmation if crossing the sidewalk and/or boulevard is required to temporarily access the site.

It should be noted that the hoarding must not damage boulevard trees. The owner or Prime Contractor must apply for an OSCAM online at:

https://www.edmonton.ca/business_economy/licences_permits/oscam-permit-request.aspx and <https://www.edmonton.ca/documents/ConstructionSafety.pdf>


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

1. The requirement that the driveway must be located off of the Lane as per Section 814.3(17) is waived.

Reasons for Decision

[20] Single Detached Housing is a Permitted Use in the RF1 Single Detached Residential Zone. Because this is a Mature Neighbourhood, the development regulations in the Mature Neighbourhood Overlay apply, including Section 814.3(17) which states that “Where the Site Abuts a Lane, vehicular access will be from the Lane and no existing vehicular access from a public roadway other than a Lane shall be permitted to continue”.

- [21] The house that previously existed on this Lot had a front Driveway for a considerable period of time, apparently without any complaints. When the Development Officer did the neighbourhood consultation required by the Mature Neighbourhood Overlay, he received no responses either for or against the proposed front Driveway.
- [22] For this appeal five neighbours within the 60-metre notification area have indicated their support for the front driveway. A number of those neighbours indicated that they felt that a front driveway was preferable to a rear driveway because it would preserve the mature tree in the backyard of the proposed development. One of those neighbours attended the hearing.
- [23] The developer who owns the two lots immediately to the east of the proposed development was opposed to the front driveway primarily because he was of the view that the front driveway would damage the mature boulevard trees. However, the Board is of the view that the conditions imposed will protect those boulevard trees during construction.
- [24] There are a number of other front driveways in the neighbourhood including three located close by to the west. One of those driveways to the west is apparently a fairly new driveway.
- [25] One concern raised by the Development Officer was that the proposed front driveway would have a negative impact on pedestrians using the sidewalk in front of the house, particularly school children walking to the school located to the northeast of the proposed development. However, the neighbour who gave evidence at the hearing indicated that there are few neighborhood school children except for her own child who attend that school. She was of the opinion that the driveway would have very little impact on school children because there are so few of them using 60 Avenue to access the school.
- [26] For all of the above reasons the Board finds that the proposed development will not unduly interfere with the amenities of the neighbourhood nor materially interfere with or affect the use, enjoyment or value of neighbouring parcels of land.



Mr. M. Young, Presiding Officer
Subdivision and Development Appeal Board

Board Members in Attendance:

Ms. P. Jones; Mr. A. Nagy; Mr. D. Fleming; Mr. J. Wall

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 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 the Sustainable Development Department, 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.