

Edmonton Subdivision and Development Appeal Board

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DATE: April 16, 2015
PROJECT NO.: 084287777-004
FILE NO.: SDAB-D-15-066

NOTICE OF DECISION OF THE SUBDIVISION AND DEVELOPMENT APPEAL BOARD

This appeal dated February 19, 2015, from the decision of the Development Authority for permission to:

convert an existing Semi-detached House into a 4 Dwelling Apartment House (existing without permits)

on Condo Common Area (Plan 0823629), located at 10020 - 153 Street NW, was heard by the Subdivision and Development Appeal Board at its hearings held on February 25, 2015, and April 1, 2015. The decision of the Board was as follows:

February 25, 2015 Hearing:

MOTION:

“that the appeal hearing be scheduled for April 1 or April 2, 2015, at the written request of the Appellant”.

April 1, 2015 Hearing:

MOTION:

“that SDAB-D-15-066 be raised from the table.”

SUMMARY OF HEARING:

At the outset of the appeal hearing, the Presiding Officer confirmed with the parties in attendance that there was no opposition to the composition of the panel.

The appeal was filed on time, in accordance with Section 686 of the *Municipal Government Act*, R.S.A. 2000, c. M-26 (the “MGA”).

The Board heard an appeal of the decision of the Development Authority to refuse an application to convert an existing Semi-detached House into a 4 Dwelling Apartment House (existing without permits) located at 10020 – 153 Street NW. The subject site is zoned RA7 Low Rise Apartment Zone and is within the Medium Scale Residential Infill Overlay.

The development permit was refused because Secondary Suites are not permitted in a Semi-detached House; deficiencies in the minimum required Site Area, Site Width, and Front and Side Setbacks; minimum requirements for private exterior entrances and Private Outdoor Amenity Areas have not been met; Separation Space requirements not met; and deficiencies in the Parking and Landscaping requirements.

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

- Written submission from the Development Authority dated March 2, 2015;
- Memorandum from Transportation Services dated August 6, 2014; and
- A copy of the Major Development Review dated February 9, 2015.

The Board heard from the Appellant, Mr. Chavda, and his agent, Mr. Saeed, who provided a detailed written submission, marked Exhibit "A", including speaking notes, maps and photographs. He also provided a copy of their community consultation that included signatures of support for the proposed development, marked Exhibit "B". Mr. Saeed provided the following information in support of the appeal:

1. It was his opinion that the development requirements for this neighbourhood are lower than the standard for other RA7 Zones within the City of Edmonton.
2. Based on this, the Appellant asked the Board to consider granting variances to the requirements of the Edmonton Zoning Bylaw to allow the conversion of this Semi-detached House to a four-unit Apartment House.
3. It was their opinion that this building and the amenities of the surrounding neighbourhood are unique and should be exempt from the development standards as they exist, especially for the provision of a Private Outdoor Amenity Area and Separation Space.
4. The Semi-detached House was approved in 2007 and complied with all of the development requirements at that time.
5. It is not possible to comply with the Setback and Separation Space requirements for an Apartment House at this time because the structure already exists on this lot.
6. Conversion into an Apartment House should be permitted in the context of this neighbourhood as it supports the direction of the City of Edmonton to provide affordable housing.

Mr. Saeed and Mr. Chavda provided the following responses to questions:

1. The chain link fence and treed landscaped perimeter ameliorates any privacy concerns for the neighbours.
2. The outdoor Amenity Area is located between two parallel driveways that access the two rear attached garages and is not a private space. Although it currently exists without any landscaping, the Appellant is amenable to developing a landscaping plan that would include hardscaping for the Amenity Area.

3. There are eight on-site parking spaces: one in each of the two Garages and three parking spaces in tandem on each driveway leading to the Garage. This meets the parking requirements for this site.
4. The Site has easy access to public transit with a bus stop located on 100 Avenue two or three houses from the Site.
5. At present each of the four Dwellings is rented out and a total of eleven adults reside on site.
6. The main floor Dwellings are accessed through a front entry and the basement Dwellings are accessed through a separate side entrance.

The Board then heard from Mr. Illingworth, representing the Sustainable Development Department, who provided the following information:

1. The structure exists as a Semi-detached House and has not been designed to accommodate a four-dwelling Apartment House Use.
2. A development permit was issued for the construction of this Semi-detached House in 2007. The approval contained a condition that the proposed basement developments shall not be used as additional dwelling units.
3. Shortly after the 2007 approval, Secondary Suites were developed in the basements of both dwelling units that contravened the condition that was imposed.
4. The existing building was never designed to accommodate a four-dwelling Apartment House. The mechanical rooms for each of the main floor Dwellings can only be accessed through the corresponding basement Dwellings.
5. It was therefore his opinion that this is not an orderly or responsible way to develop and should be discouraged.
6. If the proposed change in Use is approved, he anticipates that significant and expensive renovations will be necessary in order to comply with the building code requirements.
7. Although the Sustainable Development Department is not unwilling to consider developments that require variances, it was his opinion that he could not vary the substantial deficiencies present in this development.

Mr. Saeed made the following points in rebuttal:

1. The building exists and cannot be changed. The Development Officer's main concerns addressed "softer" regulations such as the amenity space requirements.
2. He reiterated his opinion that, in the context of this neighbourhood, it is acceptable to grant relaxations to the Amenity Area and privacy requirements.
3. The basement windows on the side of the building do not create any privacy concerns because of the low placement of the windows.

DECISION:

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

REASONS FOR DECISION:

The Board finds the following:

1. Apartment Housing is a Permitted Use in the RA7 Low Rise Apartment Zone, Section 210.2(1) of the *Edmonton Zoning Bylaw*.
2. Semi-detached Housing and Secondary Suites are Discretionary Uses in the RA7 Low Rise Apartment Zone, Section 210.3 of the *Edmonton Zoning Bylaw*.
3. Pursuant to Section 7.2(1) of the *Edmonton Zoning Bylaw*, Apartment Housing means development consisting of one or more Dwellings contained within a building in which the Dwellings are arranged in any horizontal or vertical configuration, which does not conform to the definition of any other Residential Use Class.
4. Pursuant to Section 7.2(8) of the *Edmonton Zoning Bylaw*, Semi-detached Housing means development consisting of a building containing only two Dwellings joined in whole or in part at the side or rear with no Dwelling being placed over another in whole or in part. Each Dwelling has separate, individual, and direct access to Grade. This type of development is designed and constructed as two Dwellings at the time of initial construction of the building. This Use Class does not include Secondary Suites or Duplexes.
5. Pursuant to Section 7.2(7) of the *Edmonton Zoning Bylaw*, Secondary Suite means development consisting of a Dwelling located within, and Accessory to, a structure in which the principal use is Single Detached Housing. A Secondary Suite has cooking facilities, food preparation, sleeping and sanitary facilities which are physically separate from those of the principal Dwelling within the structure. A Secondary Suite also has an entrance separate from the entrance to the principal Dwelling, either from a common indoor landing or directly from the side or rear of the structure. This Use Class includes the Development or Conversion of Basement space or above-grade space to a separate Dwelling, or the addition of new floor space for a Secondary Suite to an existing Single Detached Dwelling. This Use Class does not include Duplex Housing, Semi-detached Housing, or Apartment Housing, and does not include Garage Suites, Garden Suites, or Lodging Houses.
6. A development permit application for a Semi-detached House was approved and issued in 2007 and continues today, which includes a condition prohibiting the development of Secondary Suites. The Board notes that shortly after the approval of the development permit for a Semi-detached House, basement development was undertaken to develop Secondary Suites in the basement of each Semi-detached House.
7. In the circumstances of this application, especially with respect to the timing of the proposed Use Class change, the Board agrees with the Development Authority that approving this development permit application would not promote an orderly and responsible way to conduct development in the City of Edmonton.
8. Based on the evidence provided, including the plans submitted with the development permit application, the Board finds the proposed development is properly two Secondary Suites within, and Accessory to, a Semi-detached Housing Use.

9. Section 687(3)(c)(ii) of the *MGA* states:
in determining an appeal, the Subdivision and Development Appeal Board may confirm, revoke or vary the order, decision or development permit or any condition attached to any of them to make or substitute an order, decision or permit of its own if the proposed development conforms with the use prescribed for that land or building in the land use bylaw.
10. Pursuant to Section 687(3)(c)(ii) of the *MGA*, the Board does not have the authority to approve the proposed development as it does not conform with the Use prescribed for that land or building in the land use bylaw.
11. Even if the Board considered approving this development permit application as a four-Dwelling Apartment House, approximately 15 variances would be required to the development regulations for Apartment Housing pursuant to the *Edmonton Zoning Bylaw*. The sheer number of variances required is a strong indication of the incompatibility of the proposed conversion of Use.
12. The Board recognizes that some of the variances are required because the building already exists on the subject site that cannot be changed. However, the Board is concerned about the lack of a Private Outdoor Amenity Area and Separation Space both of which are not resolvable given the footprint of the existing building.
13. The Board does not accept, as a sound planning reason, the evidence provided by the Appellant that the composition of this neighbourhood justifies overlooking the minimum development requirements for Apartment Housing contained in the *Edmonton Zoning Bylaw*.
14. Based on the above, it is the opinion of the Board, that the proposed development will unduly interfere with the amenities of the neighbourhood and materially interfere with and affect the use, enjoyment and value of neighbouring parcels of land.

IMPORTANT INFORMATION FOR APPLICANT/APPELLANT

1. This decision may be appealed to the Alberta Court of Appeal on a question of law or jurisdiction under Section 688 of the Municipal Government Act, R.S.A. 2000, c. M-26. 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.

Mr. D. Chronopoulos, Presiding Officer
SUBDIVISION AND DEVELOPMENT
APPEAL BOARD

Edmonton Subdivision and Development Appeal Board

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DATE: April 16, 2015
PROJECT NO.: 158270265-002
FILE NO.: SDAB-D-15-067

NOTICE OF DECISION OF THE SUBDIVISION AND DEVELOPMENT APPEAL BOARD

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

construct an addition to an existing Accessory Building (Originally approved as 8.53m by 5.64m built as 8.86m by 6.28m rear detached Garage) existing without permits

on Plan 5765Q Blk 1 Lot 20, located at 10615 - 76 Avenue NW, was heard by the Subdivision and Development Appeal Board at its hearing held on April 1, 2015. The decision of the Board was as follows:

SUMMARY OF HEARING:

At the outset of the appeal hearing, the Presiding Officer confirmed with the parties in attendance that there was no opposition to the composition of the panel.

The appeal was filed on time, in accordance with Section 686 of the *Municipal Government Act*, R.S.A. 2000, c. M-26 (the "MGA").

The Board heard an appeal of the decision of the Development Authority to refuse an application to construct an addition to an existing Accessory Building (Originally approved as 8.53m by 5.64m built as 8.86m by 6.28m rear detached Garage) existing without permits was refused due to an excess in the maximum allowable Site Coverage for Accessory Buildings or Structures. The subject site is zoned RF3 Small Scale Infill Development Zone and is within the Mature Neighbourhood Overlay.

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

- A written submission from the Development Authority dated March 25, 2015; and
- Two letters of opposition received from neighbouring property owners.

The Board heard from Mr. Chagger, representing the Appellant, Emirates Construction, who provided the following information in support of the appeal:

1. A development permit to construct a triple car garage, 8.53 metres by 5.64 metres, was obtained February 6, 2013.

2. The subcontractor that he hired built the garage larger than what was approved on the original plan.
3. The existing garage is 8.86 metres by 6.28 metres in size.

Mr. Chagger provided the following responses to questions:

1. His subcontractor built the garage larger than what was approved without his knowledge.
2. He has been working in the construction field for 5 years, primarily in the construction of single detached family houses. He has never had any compliance issues in the past.
3. He referenced photographs contained in the submission from the Development Officer and clarified that the garage does not contain a second floor, and is 8 feet high with a 5/12 pitch roof.

The Board then heard from Ms. Ziober, representing the Sustainable Development Department, who provided the following information:

1. The original development permit application was for a triple car garage that was 48.12 square metres in size and complied with the maximum allowable 12 percent Site Coverage requirement for an Accessory Building or Structure.
2. The existing triple car garage exceeds the maximum allowable Site Coverage requirement by 1.65 percent, approximately 100 square feet.
3. It was her opinion that the Site does not present any hardship.
4. The required two parking spaces can be accommodated on the subject Site.
5. It was her opinion that the Garage creates a massing effect that is not characteristic of this mature neighbourhood and is not in keeping with the spirit and intent of the Mature Neighborhood Overlay.
6. Ms. Ziober referenced photographs contained in her written submission to illustrate the massing effect, especially for the houses located east of the subject site across the rear lane.
7. Smaller detached Garages are characteristic of this neighbourhood.
8. This subject site abuts a T-intersection of two rear lanes.
9. Transportation Services did not provide any comments regarding the location of the Garage.
10. The Garage is oriented in accordance with the originally approved plans.
11. The excess in Site Coverage of 6.3 square metres was determined from the Real Property Report and is more accurate than the calculation of an excess in Site Coverage of 7 square metres determined from the City of Edmonton SLIM map system.

The Board then heard from Mr. Bonsma, a neighbouring property owner, who submitted one of the letters of opposition to this garage and who appeared in opposition to the proposed development. He provided the following information:

1. The lots in this neighbourhood are only 33 feet wide.
2. The site abuts a rear lane and T-intersection, both of which are narrow and graveled.
3. Larger vehicles, particularly waste disposal trucks, have difficulty making the turn at the T-intersection and maneuvering in the rear lane.

4. A triple car garage of this size at this location will make it even more difficult and dangerous to maneuver in the rear lane.
5. Mr. Bonsma is a builder by trade and it was his opinion that all developers and builders should follow the regulations contained in the *Edmonton Zoning Bylaw*.
6. He does not accept the excuse of the Appellant that a subcontractor made a mistake. The Appellant is in the business of developing and selling properties and overbuilding the Garage would increase the sale price of the property.
7. The garage exceeds the maximum allowable Site Coverage requirement and should not be permitted.
8. The garage negatively impacts the neighbourhood and will set a precedent.

Mr. Chagger made the following points in rebuttal:

1. He is a relatively inexperienced builder who only builds one house per year.
2. The original approved plans included a triple car garage.
3. He is currently living in the house.

DECISION:

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

REASONS FOR DECISION:

The Board finds the following:

1. The proposed development is Accessory to a Permitted Use in the RF3 Small Scale Infill Development Zone.
2. A development permit to construct an Accessory Building (detached Garage), that complied with the maximum allowable 12 percent Site Coverage for an Accessory Building or Structure was issued on February 6, 2013. However, the detached Garage that was constructed on the subject site was not built according to the approved development permit.
3. The Garage is located on the southwest corner of the subject site that abuts a T-intersection for two rear lanes. Based on evidence provided by a neighbouring property owner, vehicles, especially large trucks such as waste disposal trucks, have difficulty maneuvering through the narrow lane and the T-intersection. The required variance in Site Coverage may exacerbate this problem and create a safety concern for vehicles and pedestrians using the rear lanes.
4. The proposed development is not in keeping with the spirit and intent of the Mature Neighbourhood Overlay because the proposed extension will create a massing effect for neighbouring property owners, especially those who reside east of the subject site.
5. The Appellant did not undertake any community consultation and the Board notes the concerns addressed in letters of opposition received from two affected property owners.

6. This Accessory building is the only oversized garage on this block.
7. Based on the above, it is the opinion of the Board, that the proposed development will unduly interfere with the amenities of the neighbourhood and materially interfere with and affect the use, enjoyment and value of neighbouring parcels of land.

IMPORTANT INFORMATION FOR APPLICANT/APPELLANT

1. This decision may be appealed to the Alberta Court of Appeal on a question of law or jurisdiction under Section 688 of the Municipal Government Act, R.S.A. 2000, c. M-26. If the Subdivision and Development Appeal Board is served with notice of an application for leave to appeal its decision, such notice shall operate to suspend the Development Permit.
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Ms. P. Jones, Presiding Officer
SUBDIVISION AND DEVELOPMENT
APPEAL BOARD