



**EDMONTON
TRIBUNALS**

*Subdivision &
Development
Appeal Board*

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Date: May 2, 2019
Project Number: 304223416-001
File Number: SDAB-D-19-059

Notice of Decision

- [1] On April 25, 2019, the Subdivision and Development Appeal Board (the “Board”) heard an appeal that was filed on April 1, 2019. The appeal concerned the decision of the Development Authority, issued on March 20, 2019, to refuse the following development:

Convert a Garden Suite to a detached Garage. (Removal of Garden Suite on second floor)

- [2] The subject property is on Plan 8021695 Blk 6 Lot 5, located at 117 - Windermere Crescent NW, within the RR Rural Residential Zone. The Windermere Area Structure Plan and Windermere Neighbourhood 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;
 - One letter of support; and
 - One email response in opposition 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 (the “*Municipal Government Act*”).

Summary of Hearing

- i) *Position of the Appellant, Mr. B. Olstad who was represented by his father-in-law, Mr. B. Rattai:*

- [7] Mr. Rattai is representing his son-in-law who was called out of the City for work and not able to attend the hearing. Mr. Rattai advised that he is very familiar with the property.
- [8] The garage was originally built in 2011 in accordance to a previously issued Development and Building Permit to erect an Accessory Building with a Garden Suite even though it was never their intention to develop the Suite.
- [9] The original plan was to build a house on the property as well but construction of the house was never started. As the economy slowed, work on the garage eventually stopped. This resulted in the cancellation of the building permit for the garage and as such it was never completed. The interior is completely unfinished.
- [10] His daughter and son-in-law are in the process of purchasing the property and it is their intent to build a house on the land. However, they do not wish to develop a Garden Suite in the garage and have agreed to allow him to use the garage as his shop.
- [11] The garage was built in compliance with the maximum allowable height requirements for a Garage with a Garden Suite that were in effect in 2011. However, the height requirements for a detached Garage without a Garden Suite are different and a variance of 1.4 metres in the maximum allowable height is now required.
- [12] If the variance in height is not granted, the Garden Suite will be developed even though it is not their preference because it is not economically viable to reduce the height of the structure as it has been constructed.
- [13] It was his opinion that the Development Officer did not object to the proposed change and would have approved the permit if he was able to grant a variance in the maximum allowable height requirement.
- [14] Their neighbour who resides south of the subject site has provided a letter of support for the proposed change. He did not discuss the proposed development with his neighbour to the north but questioned their opposition because the height of the structure will remain as it has since 2011.
- [15] Mr. Rattai provided the following information in response to questions from the Board:
- a) The second floor of the detached Garage will be used to provide extra storage.
 - b) He plans to operate his shop on the main floor of the garage.
 - c) The garage was constructed at this height in 2011 and will not change.

- d) The garage is located in a treed area of the lot and is screened by mature trees.
- e) The garage was built before the garage and house on his neighbour's lot which are sited at a higher elevation.

ii) *Position of the Development Officer,*

[16] Mr. Folkman did not attend the hearing but provided a written submission that was considered by the Board.

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.

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

1. The maximum allowable Height to the midpoint of the roof of 4.3 metres as per Section 50.3(3) is varied to allow an excess of 1.4 metres to the midpoint of the roof, thereby increasing the maximum allowed to 5.7 metres.

Reasons for Decision

[19] The proposed development is Accessory to Single Detached Housing which is a Permitted Use in the (RR) Rural Residential Zone.

[20] The proposed Accessory Building (detached Garage) exceeds the maximum allowable Height requirement of 4.3 metres by 1.4 metres, pursuant to Section 50.3(3) of the *Edmonton Zoning Bylaw*.

[21] The Board grants the variance for the following reasons:

- a) A development permit for an Accessory Building (detached Garage) with a Garden Suite that complied with the maximum allowable Height requirement was issued in 2011 and has existed legally since that time.
- b) The property owner has decided not to proceed with the development of a Garden Suite and has applied for a development permit to remove the Garden Suite from the second floor of the detached Garage.

- c) This has resulted in a 1.4 metre variance in Height because the Accessory Building now has to comply with the maximum allowable Height requirement of 4.3 metres pursuant to section 50.3(3) of the *Edmonton Zoning Bylaw*.
- d) The Board acknowledges the opposition received from the immediately adjacent neighbour to the north but based on a review of the submitted Plot Plan and photographs finds that the structure is sited on the southeast portion of the subject site. The mature trees adjacent to the structure will also provide some screening to adjacent properties.
- e) The Board notes that a letter of support was received from the most affected neighbour who resides immediately south of the subject site.
- f) New construction on the site to the east that occurred after the Garage was built has significantly raised the grade along the property line and as a result the Garage on the Appellant's site is lower than existing buildings on the adjacent lot.
- g) No valid planning reasons were provided to persuade the Board that granting the required variance would result in a material impact to any of the neighbouring property owners.
- h) The detached Garage with Suite was constructed according to the original approved development permit with a height of 5.7 metres that was issued in 2011 and has existed without any known complaint since that time. The proposed removal of the Garden Suite will not alter the existing height of the Garage and therefore will not result in any material impact on neighbouring property owners.

[22] 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.

Vincent Laberge, Presiding Officer
Subdivision and Development Appeal Board

Board Members in Attendance:

Mr. B. Gibson, Mr. R. Hobson, Ms. D. Kronewitt Martin, Mr. A. Peterson

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.



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SDAB-D-19-060

An appeal of an approved development permit to construct exterior alterations to a Public Education Services Site (Landscaping revision of Ecole Joseph-Moreau Junior High School) was **TABLED** to June 5, 2019.



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Date: May 2, 2019
Project Number: 277958649-001
File Number: SDAB-D-19-057

Notice of Decision

- [1] On April 25, 2019, the Subdivision and Development Appeal Board (the “Board”) heard an appeal that was filed on March 28, 2019. The appeal concerned the decision of the Development Authority, issued on March 8, 2019, to refuse the following development:

To construct an Accessory Building (rear detached Garage, 7.32 metres by 10.97 metres)

- [2] The subject property is on Plan 2109HW Blk 12A Lot 24, located at 11040 - 110 Street NW, within the RF1 - Single Detached Residential Zone. The Mature Neighbourhood Overlay and Central McDougall / Queen Mary Park Area Redevelopment 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 written submissions including a Petition of support.

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 (the “*Municipal Government Act*”).

Summary of Hearing*i) Position of the Appellant, Mr. S. Zubot:*

- [7] The application was made to develop a two storey garage that will include utility servicing to accommodate a Garden Suite on the second floor in the future. In the meantime, the second storey space will be used as an office by his wife who is a writer.
- [8] Their house is a bungalow with a legal secondary suite in the basement.
- [9] Their future plan is to reclaim the basement suite to provide additional living space for their growing family and develop a Garden Suite in the detached Garage.
- [10] The decision was made to build a higher garage in order to retain amenity space in the large rear yard for a garden and to preserve existing fruit trees.
- [11] Similar two storey garages have been built in this neighbourhood, including one immediately behind their house with a workshop and storage area on the second floor.
- [12] Mr. Zubot provided the following information in response to questions from the Board:
- a) The proposed plans and the location of the garage were discussed with the neighbours who signed the petition of support.
 - b) It was his opinion that sun shadow would not be a problem because the closest house will be located approximately 20 metres from the site of the proposed garage.
 - c) The basement suite will be decommissioned if they decide to develop living space in the garage at some point in the future.
 - d) He was not able to contact the owner of the property immediately to the west despite several attempts.
 - e) Several discussions were held with Development Officers regarding the maximum allowable height but there seemed to be some confusion because the regulations kept changing. In the end, the garage was designed based on their preferences.
 - f) The dormers were included to provide extra head room on the second storey of the garage.
 - g) The overall height could be lowered if 9 foot ceilings were developed instead of 10 foot ceilings.
 - h) Their bungalow is approximately 1200 square feet in size with a shared laundry area in the basement.

- i) It was conceded that the proposed garage will be much higher than the existing house. The proposed garage has a 12/12 roof pitch but the roof pitch of the house was not known. The 12/12 roof pitch was chosen based on an aesthetic preference, to provide adequate ceiling height and to accommodate solar panels in the future.
- j) The lot slopes slightly from front to back.

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

[13] Ms. Bauer did not attend the hearing but provided a written submission that was considered by the Board.

Decision

[14] 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. Eave projections shall not exceed 0.46 metres into required Setbacks or Separations spaces less than 1.2 metres (Reference Section 44.1(c)(ii)).

Advisements:

1. 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.
2. 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 including, but not limited to, the *Municipal Government Act*, the *Safety Codes Act* or any caveats, restrictive covenants or easements that might be attached to the Site (Reference Section 5.2).
3. A Building Permit is required for any construction or change in use of a building. Please contact the 311 Call Centre for further information.

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

2. The maximum allowable Height to the midpoint of the roof of 4.3 metres as per Section 50.3(3) is varied to allow an excess of 3.1 metres to the midpoint of the roof, thereby increasing the maximum allowed to 7.4 metres.

3. The maximum allowable Height to the roof ridge line of not more than 1.5 metres above the permitted building Height of 4.3 metres as per Section 52.2(c) is varied to allow an excess of 2.3 metres, thereby increasing the maximum allowed to 8.1 metres.

Reasons for Decision

- [16] The proposed development is Accessory to Single Detached Housing which is a Permitted Use in the (RF1) Single Detached Residential Zone.
- [17] The Board accepts the calculations of the Development Officer which determined that the proposed development requires variances to the Height requirements contained in section 50.3(3) and section 52.2(c) of the *Edmonton Zoning Bylaw*.
- [18] The Board grants the required variances for the following reasons:
- a) The Board considered the evidence provided by the Appellant regarding the possible future development of a Garden Suite on the second floor of the proposed over height garage and is confident that the Appellant understands that the existing Secondary Suite in the basement of their Single Detached House will have to be decommissioned prior to a development permit application to develop a Garden Suite in the detached Garage.
 - b) The subject lot is large and provides the opportunity to develop a large garage. The proposed garage is still smaller than the maximum allowed on this site. The proposed two storey garage will meet the needs of the property owner while retaining amenity area and green space in the rear yard.
 - c) The Board finds that the proposed two storey garage will not have any impact on sun shadow given the location in the corner of the lot at the intersection of two rear lanes.
 - d) The proposed design is architecturally pleasing and the inclusion of dormers will provide articulation to what would otherwise be a predominant roof face.
 - e) Based on the evidence provided, similar two-storey garages have been developed in this neighbourhood.
 - f) Sufficient planning reasons were not provided to persuade the Board that granting the required variances would have a material impact on neighbouring property owners.
 - g) The Appellant submitted a petition of support signed by 8 affected property owners.
 - h) No letters of objection were received and no one attended in opposition to the proposed development. The Board also notes that Queen Mary Park Community League was sent a notice of the appeal but did not provide any feedback regarding the proposed development or the variances required.

[19] 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.

Mr. V. Laberge, Presiding Officer
Subdivision and Development Appeal Board

Board Members in Attendance: Mr. Peterson, Ms. Kronewitt-Martin, Mr. Hobson, Mr. Gibson

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