

# **Edmonton Subdivision and Development Appeal Board**

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Date: May 14, 2015  
Project Number: 167306313-001  
File Number: SDAB-D-15-083

## **Notice of Decision**

This appeal dated April 6, 2015, from the decision of the Development Authority for permission to:

Construct a Single Detached House with front veranda, fireplace, Basement development (not to be used as an additional Dwelling), rear covered deck (3.35m x 5.49m), rear uncovered deck (3.81m x 5 m), rear attached Garage

on Plan 2831HW Blk 7 Lot 22, located at 7431 - 119 Street NW, was heard by the Subdivision and Development Appeal Board at its hearing held on April 29, 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 Presiding Officer first addressed the issue of jurisdiction and whether the appeal was filed outside of the allowable 14-day appeal period, pursuant to the requirements of the *Municipal Government Act*, R.S.A. 2000, c. M-26 (the "MGA").

Mr. Fett, the Appellant, advised the Board that he attempted to file the appeal through the online filing system on April 3, 2015, but encountered a problem with the website and was not able to file the appeal electronically until April 6, 2015.

### **Motion:**

That the Board assume jurisdiction

### **Reason for Motion:**

The Board finds the following:

1. The decision of refusal was issued on March 20, 2015, which is the earliest date that the appellant could have received notification of the decision. Therefore in the normal course, the 14 day appeal period would end on April 3, 2015.

2. The Subdivision and Development Appeal Board office was closed for the Easter statutory holidays from April 3 to 6, 2015 inclusive. Therefore per sections 22(1) and (2) of the *Interpretation Act*, R.S.A. 2000, c. I-8, (the "*Interpretation Act*") the appeal period ended April 7, 2015.
3. The appeal was filed through the online system on April 6, 2015.
4. Based on the above, the Board applies the provisions of section 22(2) of the *Interpretation Act*, and finds that the appeal was filed within the allowable 14 days as per section 686(1)(a)(i) of the *MGA*.

### **Summary of Hearing (Continued):**

The Board heard an appeal of the decision of the Development Authority to refuse an application to construct a Single Detached House with front veranda, fireplace, Basement development (not to be used as an additional Dwelling), rear covered deck (3.35m x 5.49m), rear uncovered deck (3.81m x 5 m), rear attached Garage located at 7431 – 119 Street NW. The subject site is zoned RF1 Single Detached Residential Zone and is within the Mature Neighbourhood Overlay and the McKernan-Belgravia Station Area Redevelopment Plan.

The development permit was refused because of a deficiency in the minimum required Rear Setback, that being 40 percent of the Site Depth; and because a rear attached Garage shall not be allowed, except on corner Sites where the Dwelling faces the flanking public roadway and the proposed rear attached Garage is on an interior Site.

Prior to the hearing the Board received revised plans from the Appellant on April 24, 2015, copies of which are on file.

The Board heard from Mr. Fett, the Appellant, and Mr. Walter, the architect for the project, who provided the following information:

1. There are numerous rear attached garages located within 200 metres of the subject site.
2. This is an upscale development valued at approximately \$1,500,000.
3. The proposed development complies with all of the development regulations contained within the *Edmonton Zoning Bylaw*, with the exception of the proposed rear attached Garage and the deficiency in the minimum required Rear Setback under the Mature Neighbourhood Overlay.
4. Affected property owners were consulted and no one objected to the proposed development.
5. The most affected property owners who reside northeast and southwest of the subject site provided verbal support for the proposed development.

Mr. Fett and Mr. Walter provided the following responses to questions:

1. The majority of the neighbours were relieved that a duplex was not being built on the site.
2. The height of the proposed attached Garage is low and landscaping will be incorporated in the northeast side yard along the extension between the house and the Garage.

3. The revised plans that were submitted on April 24, 2015, lower the overall roof Height by lowering the starting point for the roof and increasing the slope of the roof. This is the only change contained in the revised plans.
4. The most affected neighbour to the northeast has a front attached Garage.
5. The extension between the house and Garage is 1.22 metres further southwest than the garage and the house is a further 0.61 metres southwest from the extension, resulting in a stepped articulation. Further articulation is provided through the inclusion of windows along the northeast elevation.
6. The majority of the rear attached Garages that exist within close proximity of the subject site were constructed over the past five years and would have been subject to the development requirements of the Mature Neighbourhood Overlay.

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

1. He could only have granted the variance if a case for hardship was identified.
2. If there were rear attached Garages on the two adjacent sites, he would have granted the required variances.
3. The existing rear attached Garages referenced by the Appellant could have been approved upon appeal to the Subdivision and Development Appeal Board or built prior to the implementation of the Mature Neighbourhood Overlay.

Mr. Zentner provided the following responses to questions:

1. The Mature Neighbourhood Overlay encompasses very diverse neighbourhoods throughout the City.
2. It was his opinion that Section 814(3)(5) of the Mature Neighbourhood Overlay was implemented to ensure that adequate amenity space would be provided in rear yards. He acknowledged that ample amenity space will be provided for this development.
3. Several of the proposed design elements will mitigate the impact of the proposed rear attached garage.

Mr. Fett and Mr. Walter made the following point in rebuttal:

1. A form of low maintenance landscaping that is compatible with the limited amount of sunlight penetration will be incorporated along the northeast elevation.

**Decision:**

That the appeal be ALLOWED and the decision of the development Authority is REVOKED. The development is GRANTED and the deficiency of 11.57 metres in the minimum required Rear Setback, that being 40 percent of the Site Depth, be permitted and the requirements of Section 814.3(18) of the *Edmonton Zoning Bylaw* be waived to allow a rear attached Garage.

**Reasons for Decision:**

The Board finds the following:

1. The proposed development, a Single Detached House, is a Permitted Use in the RF1 Single Detached Residential Zone.
2. The proposed development complies with all of the applicable development regulations contained in the *Edmonton Zoning Bylaw* with the exception of section 814.3(18) and section 814.3(5) of the Mature Neighbourhood Overlay, which would both require variances as a result of the proposed rear attached Garage.
3. The variances to sections 814.3(18) and 814.3(5) have been granted based on the following:
  - a) The Mature Neighbourhood Overlay encompasses a large part of the City, but is most suited to neighbourhoods that are comprised of long narrow lots with rear detached Garages. However, each development must be considered in its own context.
  - b) Based on the evidence provided, rear attached Garages are characteristic of this neighbourhood.
  - c) The adverse impacts of the proposed rear attached Garage will be mitigated by the following:
    - i) The proposed articulation in the step back and the addition of windows along the northeast elevation which is the closest elevation to the adjoining lot which is the lot most impacted by the development;
    - ii) The reduction of the overall height of the roof to a single Storey structure over the rear attached Garage;
    - iii) The low pitched design of the roof;
    - iv) The inclusion of landscaping along the northeast elevation;
    - v) Adequate Amenity Area will be provided and the rear attached Garage will be sited approximately 25 feet from the southwest property line; and
    - vi) The Appellant undertook community consultation pursuant to Section 814.3(24) of the *Edmonton Zoning Bylaw*. Although written evidence was not provided, the Board accepts the verbal evidence of the Appellant that none of the affected property owners, including the two most affected property owners, objected to the proposed development with the rear attached Garage.
  - d) The Board notes that the proposed development with rear attached Garage maintains the pedestrian-friendly street scape, thereby meeting an important objective of the Mature Neighbourhood Overlay.
  - e) The Board notes that no letters of objection were received and that none of the affected property owners appeared in opposition to the proposed development.
  - f) The Board notes it was the opinion of the Development Officer that several of the proposed design elements will mitigate the impact of the proposed rear attached Garage.
4. Based on the above, it is the opinion of the Board, that the proposed development would 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.
5. The Board's approval is based on the revised plans submitted on April 24, 2015, which only include revisions to the roof. The Board notes that these revisions do not require any further variance from the *Edmonton Zoning Bylaw*.

**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 5<sup>th</sup> Floor, 10250 – 101 Street, Edmonton.
2. Obtaining a Development Permit does not relieve you from responsibility for complying with:
  - a) the requirements of the *Edmonton Zoning Bylaw*, insofar as those requirements have not been related 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 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*, 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.
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.*

Ms. K. Cherniawsky, Presiding Officer  
Subdivision and Development Appeal Board

cc: City of Edmonton Sustainable Development Department, M. Zentner

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Development Appeal Board***

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**SDAB-D-15-084**

Application No. 162574122-004

An appeal to construct a Secondary Suite and Exterior Alterations (egressing front basement windows) in the basement of an existing Single Detached House (existing without permits) on Plan 7722530 Blk 27 Lot 9, located at 5522 - 11A Avenue NW, **WITHDRAWN**

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8424 - 16A Avenue SW  
Edmonton, AB T6X 0H9

Date: May 14, 2015  
Project Number: 162574122-004  
File Number: SDAB-D-15-085

### **Notice of Decision**

This appeal dated April 1, 2015, from the decision of the Development Authority for permission to:

Construct a rear addition to a Single Detached House (covered deck - 4.88m x 4.57m and 4.27m x 4.27m), existing without permits

on Plan 0628099 Blk 6 Lot 116, located at 8424 - 16A Avenue SW, was heard by the Subdivision and Development Appeal Board at its hearing held on April 29, 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 Board heard an appeal of the decision of the Development Authority to approve an application, with conditions, to construct a rear addition to a Single Detached House (covered deck - 4.88m x 4.57m and 4.27m x 4.27m), existing without permits. The subject site is zoned RSL Residential Small Lot Zone and is within the Ellerslie Area Structure Plan and the Summerside Neighbourhood Structure Plan. The approved development permit application was subsequently appealed by an adjacent property owner.

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

- A written submission received from the Appellant on April 7, 2015;
- A second written submission received from the Appellant online between April 13 and April 19, 2015;
- A third written submission received from the Appellant on April 23, 2015;
- A written submission from the Development Authority received on April 23, 2015; and
- Two responses from neighbouring property owners that were submitted online.

The Presiding Officer advised that the written submissions relate to several matters over which this Board does not have jurisdiction. These include the Developer's Architectural Guidelines, caveats, restrictive covenants, Building Code and Safety Code requirements.

Mr. Loraas, the Appellant, provided the following information in support of the appeal:

1. The architectural guidelines were submitted to demonstrate the restrictions that limit his ability to regain privacy on his site as a result of the existing deck and sunroom addition on the adjacent property.
2. The privacy issues that exist between his home and the Respondent's property are different than those of other lots in the neighbourhood because they are located on the turnaround of the cul-de-sac.
3. The Respondent's house is setback 11.5 feet (3.5 metres) from the front lot line and the rear deck adds an additional 14 feet (4.3 metres) which creates a privacy issue.
4. Mr. Loraas referenced a diagram contained in his written submission to illustrate the sight lines from his house to the existing structure and the impact that it has on his privacy.
5. Mr. Loraas' lot was chosen specifically for privacy and the construction of the deck and sunroom has resulted in a loss of privacy, especially on the main floor of the house. The living room located on the main floor at the rear of the house was designed to take full advantage of the view of the park, which is now blocked by his neighbour's deck and sunroom.
6. The Respondent has suggested that blinds could be installed on the windows of the sunroom to address Mr. Loraas' privacy concerns. However, privacy would only be preserved when the blinds are lowered.
7. The Development Officer justified approving the development permit because there were similar developments in the area.
8. There are two other screened sunrooms in the neighbourhood, both of which have been constructed without permits. One of the sunrooms is owned by the Respondent's brother-in-law who is the general manager of the company that manufactures the structures.
9. Mr. Loraas submitted a letter from a realtor stating that the existence of the sunroom on the Respondent's property could reduce the value of his property because of the restricted view and loss of privacy.
10. Mr. Loraas stated that the deficiency in the required rear setback does not make a huge difference. His major concerns are related to the existence of the sunroom.

Mr. Loraas provided the following responses to questions:

1. He acknowledged that the portion of the deck closest to his property does not require a variance in the minimum required rear setback, but stated that he is still concerned about the 7-inch (0.18-metre) variance that is required for the eastern portion of the deck that is farthest away from his property.
2. The existing deck encroaches into the required 1.2-metre side setback.



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

1. The existing deck does encroach into the side setback. However, the Respondent agreed to cut back the deck and sunroom in order to comply with the minimum required side setback and this reduced deck and sunroom are reflected in the submitted plans.
2. The land located north of these properties is zoned AGU Urban Reserve Zone and has been designated as a future school site in the Ellerslie Area Structure Plan.
3. She clarified that the separation space requirement contained in Section 48 of the *Edmonton Zoning Bylaw* does not apply to this development because a minimum 1.2-metre side setback is required.
4. She reviewed aerial photographs of the neighbourhood to determine if there were similar developments in the area and the impact of the massing. However, she did not research the validity of any development permits.

Ms. Perkons provided the following responses to questions:

1. It is not their practice to research the development permit history of neighbouring properties because that would increase the time required to review development permit applications and slow down the permitting process.

The Board then heard from the Respondent, Mr. Gibb, who provided the following information:

1. He acknowledged that the deck was built without permits based on the assumption that all of the *Edmonton Zoning Bylaw* requirements were met.
2. Mr. Loraas did ask him if a development permit had been obtained for the construction of the deck. He advised Mr. Loraas that he was proceeding because there was a considerable backlog to get a permit.
3. He acknowledged that the deck was built too close to the side property line and has submitted revised drawings to reduce the width of the deck and sunroom along the west side to include a 1.29-metre side setback, which will comply with the minimum required side setback.
4. The variance in the minimum required rear setback is only required for the portion of the structure on the east side of the lot which is not visible from the Appellant's house. He submitted an overhead drawing indicating the difference in sightlines due to the 0.18-metre variance, and two aerial photographs of the neighbourhood, marked Exhibit "A". The construction of rear decks in the neighbourhood creates problems with privacy and sightlines on other properties in the neighbourhood, which is inevitable because the lots are small and the houses are close together.
5. Mrs. Gibb spoke to the Summerside Residents Association who indicated that they did not have any concerns about the deck and sun room.
6. It was his opinion that the screen room provides more privacy than an open rear deck.

7. Mr. Gibb referred to an email from Brookfield Residential dated April 24, 2015, marked Exhibit "B", which clarified that the Summerside Architectural Guidelines do not contain any restrictions regarding sunroom additions.
8. The neighbour residing immediately east of their property is the most affected by the required variance, but does not have any concerns about the existing deck and sunroom.
9. Mr. Gibb submitted several letters of support from neighbours, marked Exhibit "C".
10. There are a set of stairs and a door located on the west side of the deck that will need to be changed in order to reduce the width of the deck.

The Board then heard from Mr. Butler, general manager for Suncoast Enclosures in the Edmonton market, who provided the following information:

1. Suncoast Enclosures manufactures these structures and hires a contractor to complete the installation.
2. It was his opinion that privacy is always a concern in an RSL Small Lot Residential Zone because the lots are small and the houses are close together.
3. Mr. Butler demonstrated a sample of the 90 percent dark mesh screen that is produced by Suncoast Enclosures and suggested that this could be installed along the west side of the sunroom to provide more privacy for the Appellant.
4. There are other alternatives including the installation of a solid wall or tinting the glass. He would be willing to work with Mr. Loraas and Mr. Gibb to find a solution to the privacy issues.

Mr. Loraas made the following points in rebuttal:

1. He referenced the photograph illustrating the west side of the development to demonstrate that he can see the eastern portion of the deck that requires the 7-inch (0.18-metre) variance in the rear setback by looking through the western portion.
2. He also indicated that he can barely see the house located east of the subject site from his property.
3. It was his opinion that the three season sunroom has much more of an impact than a rear deck because it can be utilized almost year round.
4. Allowing this development will set a precedent in the neighbourhood.
5. Many neighbours are not supportive of this development but are reluctant to get involved.

**Decision:**

The appeal be DENIED and the decision of the Development Authority is CONFIRMED. The development is GRANTED as approved by the Development Authority. In granting the development the following variance to the *Edmonton Zoning Bylaw* is allowed:

- Section 115.4(7): - Relaxed - The minimum Rear Setback shall be 7.5 m
- Required: - 7.5 m
  - Proposed: 7.32 m (to addition)
  - Deficient by 0.180 m

**Reasons for Decision:**

The Board finds the following:

1. The proposed development is an addition to a Permitted Use in the RSL Residential Small Lot Zone.
2. The Board notes that the subject site is located at the start of a turn-around at the end of a cul-de-sac. This requires the subject house to be stepped back further on the lot and makes development in the smaller Rear Yard more difficult.
3. The Board notes that, because of the cul-de-sac turn around, the Respondent's property and the lots to the east of it are all affected in a way similar to that of the Appellant's property.
4. The variance has been granted for the following reasons:
  - a) The submitted plans require the Respondent to reduce the width of the existing structure along the west side of the lot, which is closest to the Appellant's property, in order to comply with the minimum required 1.2 metre required Side Setback. The submitted plans include a 1.29-metre Side Setback.
  - b) It is the western portion of the proposed development that will have an impact on the Appellant; however, the western portion of the proposed development is in compliance with the *Edmonton Zoning Bylaw*.
  - c) Section 115.4(10)(a) of the *Edmonton Zoning Bylaw* states that Separation Spaces that comply with Section 48 of the *Edmonton Zoning Bylaw* shall not be required between dwellings where a minimum Side Setback of 1.2 metres has been provided on the abutting site.
  - d) The deficiency of 0.18 metres in the Rear Setback is only required on the eastern portion of the existing structure, which is farthest away from the Appellant's property.
  - e) The land adjacent to the Rear Lot Line of the subject site is zoned AGU Urban Reserve Zone, for the future development of a K-9 School.
  - f) The Board finds that the Respondent has made revisions in order to bring the structure into compliance and is willing to work with the Appellant to address privacy concerns.
  - g) The Respondent submitted six letters of support, including a letter from the most affected property owner, who resides immediately east of the subject Site.
5. Based on the above, it is the opinion of the Board, that the proposed development with the required variance, would 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.

**Important Information for Applicant/Appellant**

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- 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.

(Refer to Section 5 of the Edmonton Zoning Bylaw, Bylaw No. 12800, as amended.)

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*, 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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Mr. N. Somerville, Presiding Officer  
Subdivision and Development Appeal Board

c.c.