

Edmonton Subdivision and Development Appeal Board

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Date: August 27, 2015
Project Number: 173111314-001
File Number: SDAB-D-15-168

Notice of Decision

This appeal dated July 14, 2015, from the decision of the Development Authority for permission to:

Construct an Accessory Building (rear detached Garage, 8.53m x 7.93m)

on Plan 0226719 Blk 1 Lot 91, located at 5423 - 203 Street NW, was heard by the Subdivision and Development Appeal Board on August 12, 2015.

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*, RSA 2000, c M-26.

The Board heard an appeal of the decision of the Development Authority to refuse an application to construct an Accessory Building (rear detached Garage, 8.53m x 7.93m), located at 5423 - 203 Street NW. The subject Site is zoned RPL Planned Lot Residential Zone.

The development permit was refused due to an excess in the maximum allowable Height and a deficiency in the minimum required distance from the Rear Lot Line to a detached Garage where the vehicle doors face the Lane.

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 August 10, 2015.

The Board heard from Mr. Tymchyshyn, the Appellant, who made the following points:

1. He has lived in the house since 2004.
2. He is requesting a variance of 0.67 metres in the allowable Height for the proposed rear detached Garage.
3. The Garage will have 10 foot high walls on the main level, with added storage that will have an 8 foot ceiling clearance.

4. He would like to install a lift in the Garage for servicing his own vehicles.
5. He received verbal support for the proposed development from neighbouring property owners.
6. In his opinion, the proposed Garage will not interfere with the scale of future garages being built in the neighbourhood.
7. There are garages across the rear lane with additional storage space in them.
8. The proposed detached Garage will have a gable pitch roof that will match the principal Dwelling.
9. Because of differences in grade the Garages across the rear lane are taller than the proposed Garage. The Proposed Garage will be in keeping with the character of the neighbourhood.
10. The property is located on a pie shape lot and the location of the detached Garage will allow for sufficient amenity space in the Rear Yard.

In response to questions from the Board, Mr. Tymchyshyn provided the following information:

1. He confirmed that his house is a two Storey house and is taller than the proposed Garage.
2. The detached Garage will have interior stairs and will have gas and electricity services with no plumbing.
3. The detached Garage will not be used as a Secondary Suite or be used to operate a business.
4. He did not have anything in writing from neighbouring property owners in support of the proposed development.
5. The 10 foot Height for the proposed detached Garage is not necessary; however, he would prefer this Height.
6. Only one corner of the proposed detached Garage does not meet the Rear Setback requirement to the rear lane.
7. With the lift, there will still be two parking spaces available in the detached Garage.

The Board then heard from Ms. Hetherington, representing the City of Edmonton's Sustainable Development Department, who made the following points:

1. She reviewed her written submission with the Board.
2. She referred to Section 50.3(2) of the *Edmonton Zoning Bylaw*, which states in part that "an Accessory building or structure shall not exceed 4.3 m in Height".
3. She referred to Section 6.1(49) of the *Edmonton Zoning Bylaw*, which defines Height as the "vertical distance between two points."
4. Development Officers do not have the authority to grant a variance in Height. The proposed detached Garage is 4.77 metres, at mid-point which is in excess of the maximum allowable Height by 0.47 metres, and over the maximum height allowed for accessory buildings (5.8 m.) by 0.67 metres.

5. She referred to Section 50.3(4)(e)(i) of the *Edmonton Zoning Bylaw*, which states in part that “on any Site governed by the RPL , RF5, RF6 or UCRH Zone, the minimum distance from the Rear Lot Line to a detached Garage where the vehicle doors face the Lane shall be 2.75 m”.
6. There is a hardship for the Appellant to build on the property as this is an irregular shape lot and only a small portion of the corner is deficient in the Rear Setback.
7. The majority of the detached Garage does comply with the 2.75 metres requirement.
8. In her opinion, the location of the detached garage will not unduly interfere with the Rear Setback.

In response to questions by the Board, Ms. Hetherington provided the following information:

1. The Height was calculated with the new Bylaw that was passed on July 6, 2015.
2. The proposed detached Garage is within the 12 percent allowable Site Coverage.
3. She could not comment with regard to neighbouring garages as only aerial photographs were reviewed.

In rebuttal, Mr. Tymchyshyn made the following points:

1. The forms for the proposed detached Garage are being done and the trusses have been ordered, but no concrete has been poured.
2. The proposed Height is over by 0.67 metres which is less than three feet and not a full Storey.

Decision:

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 development is approved according to the plans submitted.
2. Eaves may project a maximum of 0.46 metres into required Setbacks or Separation Spaces of less than 1.2 metres.
3. Eavestroughing shall be installed and drainage must take place entirely on the subject property.
4. The access to the Garage shall be hard surfaced. Hard surfacing shall mean provision of a durable, dust-free material constructed of concrete, asphalt or similar pavement.

In granting the development the following variances to the *Edmonton Zoning Bylaw* are allowed:

- 1) A variance of 0.47 metres is granted for the Height to the midpoint of the roof.(Section 50.3(2));
- 2) A variance of 0.67 metres is granted for the maximum height of the roof. (Section 6.1.(49)); and

- 3) A variance of 1.25 metres is granted in the distance from the Rear Lot Line to the proposed Accessory Building. (Section 50.3(4)(e))

Reasons for Decision:

The Board finds the following:

1. The proposed development is Accessory to a Permitted Use in the RPL Planned Lot Residential Zone.
2. Based on the evidence submitted, only one corner of the detached Garage will be deficient and the rest of the detached Garage is within the required Rear Setback.
3. Based on the evidence submitted, there is a hardship to the Appellant to build a detached Garage that fully complies with the *Edmonton Zoning Bylaw* due to the lot being an irregular pie shaped lot.
4. The Grade of the lot is higher at the front of the property where the house is located closer to the front property line, and lower at the rear of the property, which will mitigate the impact of the excess Height to the detached Garage when looking at it from the front of the property.
5. Garages across the rear lane that have been built are on a higher grade than the proposed detached Garage.
6. Based on the evidence submitted, the additional space required in the upper area of the detached Garage will only be used for storage.
7. Based on the evidence submitted, the proposed detached Garage will be within the 12 percent allowable Site Coverage for Accessory Buildings.
8. For the above reasons, 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.

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 5th Floor, 10250 – 101 Street, Edmonton.
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*, RSA 2000, c S-1;
 - c) the requirements of the *Permit Regulation*, Alta Reg 204/2007;
 - d) the requirements of any other appropriate federal, provincial or municipal legislation; and

- 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*, 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 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. P. Jones, Presiding Officer
Subdivision and Development Appeal Board

c.c.

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SDAB-D-15-179

Application No. **170501713-001**

An appeal by Suman Garg to construct exterior alterations (extension of front Driveway) to a Single Detached House, located at 4640 - 26 Avenue NW, was **TABLED TO SEPTEMBER 2, or 3, 2015.**

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Date: August 27, 2015
Project Number: 170148049-001
File Number: SDAB-D-15-180

Notice of Decision

This appeal dated July 21, 2015, from the decision of the Development Authority for permission to:

Construct a Semi-detached House with veranda and Basement development (Not to be used as additional Dwellings) and to demolish a Single Detached House and Accessory Building (rear detached Garage)

on Plan RN43B Blk 76 Lot 3, located at 11609 - 88 Street NW, was heard by the Subdivision and Development Appeal Board on August 12, 2015.

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 then addressed the issue of jurisdiction and whether the appeal was filed within the allowable 14-days appeal period, pursuant to section 686 of the Municipal Government Act, RSA 2000, c M-26 (the "Act").

The Board heard from Ms. Culinescu, the Appellant and Mr. Raju, representing Tech View Homes, who together provided the following information with regard to the timing of filing the appeal:

1. Mr. Raju's office, Tech View Homes is located in the west end of the City.
2. Only he and his wife work at the office for the company and he often works outside of the office. There are no other employees.
3. He became aware of the refused permit letter from his business neighbour on June 24, 2015.
4. The signature on the Canada Post delivery confirmation is his business neighbour's signature and is dated June 5, 2015.
5. He thought he needed to receive the official refused permit prior to filing the appeal even though they had been notified of the refusal by e-mail.
6. He waited until July 20, 2015 to give the letter to Ms. Culinescu.
7. Ms. Culinescu stated that there was some communication between her and the Development Authority prior to her receiving the registered letter.

8. On receipt of the registered letter, she filed the appeal on July 21, 2015.

In response to questions by the Board, Ms. Culinescu and Mr. Raju provided the following information:

1. They confirmed that the signature on the Canada Post delivery confirmation does not belong to any Tech View Homes employee. Only he and his wife work at the Tech View Homes office.
2. They confirmed that the signature belongs to the business neighbour next to Tech View Homes.
3. He confirmed that he received the refused permit from the neighbour on June 24, 2015.
4. Ms. Culinescu confirmed that she received the refused permit on July 20, 2015 and filed the appeal on July 21, 2015.

Ms. Hetherington, representing the Sustainable Development Department, provided the following information:

1. She refused the Development Permit on June 2, 2015 and advised the Appellant of the decision by email.
2. She received an e-mail response from the Appellant which she interpreted to mean that they would file the appeal within the allowable 14-days appeal period as advised.
3. The registered mail letter was received and signed for on June 5, 2015.
4. There was no feedback from Canada Post with respect to clarifying the exact address that the refused permit letter was delivered to.
5. She informed the Appellant of the allowable 14-day appeals period in her email dated June 2, 2015 and also in a follow up phone call with Ms. Culinescu. A copy of the email is on file.
6. In her opinion, the appeal was filed seven weeks after the permit was refused.

In rebuttal, Ms. Culinescu and Mr. Raju made the following points:

1. They waited for the official refused permit and did not make phone inquiries despite the June 2, 2015 email confirmation.
2. Tech View Homes has been in business for several years and this is their first appeal.

Decision:

The Subdivision and Development Appeal Board does not have jurisdiction to hear the appeal.

Reasons for Decision:

The Board finds the following:

1. The Appellant was notified by the Sustainable Development Department of the permit refusal on June 2, 2015 by e-mail. A hard copy of the permit refusal was sent by Canada Post Registered Mail the same day and was accepted and signed for on June 5 2015 by the Appellant's business neighbor.
2. There were several communications between the Appellant and the Sustainable Development Authority regarding the refused permit during the period between the decision given by the Sustainable Development Authority and the time that the appeal to the Subdivision Development Appeal Board was filed
3. The refused permit was provided to the Appellant/Tech View Homes by the neighbouring business on June 24, 2015.
4. Mr. Raju notified Ms. Culinescu of the receipt of the permit refusal letter. However, he did not provide the letter to her until July 20, 2015, after which she then filed an appeal.
5. Section 686(1)(a)(i) of the *Municipal Government Act* (the "Act") states, in part:

A development appeal to a subdivision and development appeal board is commenced by filing a notice of the appeal, containing reasons, with the board *within 14 days... after the date on which the person is notified of the order or decision* or the issuance of the development permit... (emphasis added)

The Act does not require that the person receive the official permit – or in this case, the official refused permit. The Act simply requires that the person be notified of the decision.

6. In the present case, the Board is prepared to accept the Appellant's submission that the June 5, 2015 Canada Post registered mail was delivered to a neighbouring business.
7. However, the Board finds that the Appellant received notice of the permit refusal from the neighbouring business no later than June 24, 2015. As such, the deadline for filing an appeal was July 8, 2015.
8. Since the appeal was filed on July 21, 2015, the Board does not have jurisdiction to hear the appeal as per section 686(1)(a)(i) of the *Municipal Government Act*.

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