

# **Edmonton Subdivision and Development Appeal Board**

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Date: August 20, 2015  
Project Number: 171638906-001  
File Number: SDAB-D-15-182

## **Notice of Decision**

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

Construct exterior alterations to an existing Single Detached House (Driveway extension), existing without permits

on Plan 0224579 Blk 92 Lot 13, located at 9304 - 158 Avenue NW, was heard by the Subdivision and Development Appeal Board on August 13, 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 first addressed the issue of jurisdiction and whether the appeal was filed within the allowable 14-day appeal period, pursuant to section 686 of the *Municipal Government Act*, RSA 2000, c M-26 (the "MGA").

The Board heard from Mr. Grewal, the Appellant, who was accompanied by Mr. Powar, who together provided the following information with regard to the timing of filing the appeal:

1. They did not receive a registered mail regarding the decision of the development permit application.
2. On July 20, 2015, they called Sustainable Development and were told that the development was refused. They were informed that, although the time to file an appeal was beyond the 14-day appeal period, they could still file an appeal and the Subdivision and Development Appeal Board ("SDAB") deal with timing issue.
3. On July 21, 2015, they filed the appeal with the SDAB.

Ms. Heimdahl, representing the Sustainable Development Department, provided the following information with regard to the timing of filing the appeal:

1. The normal practice is to send out the decision letter by registered mail on the day the Development Authority made the decision. However, she did not have any mailing records with her.

The hearing was adjourned to allow the Development Authority to return to her office to provide information to the Board in order for them to make a decision regarding the timing of filing the appeal.

The Board then reconvened and continued to hear from Ms. Heimdahl who made the following points:

1. She provided the Board with a copy of the Canada Post tracking record from when the permit decision was sent out, marked "Exhibit A".
2. The tracking record indicated that there were multiple attempts to deliver the registered mail with the first attempt being on July 7, 2015. The registered mail was ultimately returned to Sustainable Development after numerous attempts.

**Motion:**

That the Board assumes jurisdiction pursuant to Section 686(1)(a)(i) of the *Municipal Government Act*.

**Reasons for Decision:**

The Board finds the following:

1. Based on the evidence provided, the Board determined the Appellant was notified of the refusal of the development permit on July 20, 2015, and filed the appeal on July 21, 2015. Therefore, pursuant to section 686(1)(a)(i) of the *MGA*, the appeal was filed within the allowable 14 days.
2. Even if the Appellant had received the registered mail on July 7, 2015, the appeal was filed within the allowable 14-day period.

**Summary Continued:**

The Board heard an appeal of the decision of the Development Authority to refuse an application to construct exterior alterations to an existing Single Detached House (driveway extension), existing without permits, located at 9304 - 158 Avenue NW. The subject Site is zoned RF1 Single Detached Residential Zone.

The development permit was refused because the concrete extension to the left of the existing driveway does not lead to an overhead garage door or parking area, Front yards must be landscaped and parking is not allowed, the maximum allowed width for a driveway is exceeded by 7.00 metres and the proposed development is not in keeping with the character of the neighbourhood.

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

- An email dated August 10, 2015, from the owner of the property immediately west of the subject site withdrawing previous concern and recommending that the driveway extension be allowed to remain.
- A written submission from the Development Authority dated August 11, 2015.

The Board heard from Mr. Grewal, the Appellant, who was accompanied by Mr. Powar, who together made the following points:

1. An adjacent neighbour filed a complaint to Bylaw Enforcement regarding a truck, trailer, and bobcat that had been parked on the front driveway.
2. Due to the complaint they poured the extended driveway in 2006.
3. They received two tickets within one week due to the complaints.
4. As a result of the tickets, they decided to pour concrete into the back yard so they could park the truck, trailer, and bobcat there to avoid any further tickets.
5. They provided the Board with a petition with two signatures from neighbouring property owners in support of the development, marked "Exhibit B".
6. They provided the Board with a printout of a slide deck showing three examples of comparable properties located more than 10 blocks from the subject Site, marked "Exhibit C".
7. They did not receive any complaints from neighbouring property owners when the extension was poured.
8. They did not undertake any formal community consultation.

In response to questions by the Board, Mr. Grewal and Mr. Powar provided the following information:

1. The house on the subject Site was built in 2000.
2. The comparable extended driveways shown in the photos they provided were completed by builders known to them.
3. They were informed that those driveway extensions were approved but they did not have documents to confirm this.
4. There are no other properties that have similar existing driveway extensions.
5. They clarified that the Appellant purchased the property from his father-in-law in 2010 and he was the last owner of the property until April 2015 when it was purchased by the new property owners.

6. The original walkway and driveway are finished with exposed aggregate and the extension is plain concrete.
7. They confirmed that the current property owners would like the driveway to remain as it is.

The Board then heard from Ms. Heimdahl, representing Sustainable Development, who answered questions by the Board and provided the following information:

1. Although it was stated in the refused permit that vehicles are parked on the extension, there is no evidence of equipment being stored on the subject Site.
2. The refused permit was prompted due to a Compliance Certificate application.
3. There are no known complaints on file.
4. She has not inspected the property and is not aware of similar driveway extensions in the immediate area.
5. She agreed that the photographs in her submission show there is a similar extended driveway on the adjacent pie shape lot to the east.
6. Section 11.4(1) of the Edmonton Zoning Bylaw states "... a variance shall be considered only in cases of unnecessary hardship or practical difficulties peculiar to the Use, character, or situation of land or a building, which are not generally common to other land in the same Zone;"
7. In her opinion, hardship is not the case on this property because the length and width of the garage can be met on the front lot line.
8. The original aggregate driveway and walkway could have been approved but required a variance to Section 54.1 of the Edmonton Zoning Bylaw as they are not "contained within the garage".
9. Ms. Heimdahl confirmed the following points:
  - a. Section 54.1(4) is very precise with regard to the minimum and maximum width of driveways, "not including the area used as a walkway", but the Edmonton Zoning Bylaw does not define the maximum width of a walkway therefore it is possible that the proposed development is a walkway extension.
  - b. A driveway is the only place where you can park in the Front Yard. Parking in a Front Yard is not allowed on a walkway or a driveway extension. Therefore, the Edmonton Zoning Bylaw prohibits parking on driveway extensions, but does not prohibit driveway extensions in and of themselves.
  - c. A driveway extension is not illegal but parking on the extension is illegal. That is a Bylaw Enforcement issue not a Development Permit issue for a driveway extension.
10. In her opinion, the driveway extension is not compliant with the landscaping requirements, which specifically exclude monolithic concrete in the front yard.

In rebuttal, Mr. Grewal and Mr. Powar made the following points:

1. With regard to the landscaping requirements, they were not aware they needed a written submission and asked the Board to disregard the statement regarding landscaping requirements as outlined on Page 4 of the Agenda.

2. They reiterated that the driveway extension was poured to resolve the concerns with the truck, trailer, and bobcat being parked at the subject Site.
3. He agrees that the extension is a walkway and is characteristic of the neighbourhood.
4. The bobcat belongs to a previous property owner and was parked in the back yard and not the front driveway extension.
5. There was previously grass in the area where the concrete now exists.
6. The extension was poured to address the concerns of the residents complaining and to avoid any further tickets.

**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 CONDITION:

1. Parking of vehicles of equipment in the Front Yard is allowed only of the original aggregate Driveway which connects the existing front-attached Garage to 158 Avenue (see shaded area on attached site plan).

In granting the development the following sections of the Zoning Bylaw are waived:

- a) Section 54.1(4) that imposes a limit of one Driveway in a Front Yard.
- b) Section 55.4(1) that requires Landscaping of all open spaces in Front, Side and Rear Yards.

**Reasons for Decision:**

The Board finds the following:

1. The proposed development is Accessory to an existing Single Detached House, which is a Permitted Use in the RF1 Single Detached Residential Zone.
2. The appealed Driveway extension does comply with definition of 'Driveway' in section 6.1(26) because it leads to a parking area in the Rear Yard.
3. Having existed since 2006, prior to the introduction of Section 54.1(4) and Section 55.4(1) into the Edmonton Zoning Bylaw in 2011, the Driveway extension was clearly not in violation of these requirements when it was built. Had a permit been obtained at the time of construction or, alternatively, had a permit for this type of development not been required in 2006, the development would be a legal non-conforming structure and could continue to be used.
4. The subject Site poses practical difficulties as defined in section 11.4 for the following reasons:
  - a) It is one of two pie-shaped lots with very narrow frontage on a 90 degree bend joining 158 Avenue to 93 Street. This severely limits access to on-street parking.

- b) There is no access to the subject property except through the very narrow frontage.
  - c) Access to on-street parking is further limited by the existence of two cul-de-sacs in close proximity.
  - d) The appealed development is one of the few ways that additional off-street parking could be provided on the subject site.
5. Photographic evidence shows that the similar pie-shaped lot to the east also provides parking in addition to that available on the Driveway, as defined in section 54.1(4)(a - b).
  6. The portion of the additional concrete extension in front of the Dwelling will not have a negative impact on neighbouring property owners.
  7. Two signatures were received from neighbouring property owners in support of the proposed development.
  8. The Board received a letter from the most affected neighbor to the west indicating that the Driveway extension should be approved and that previous concerns outlined in the letter relate to the Use of the property.
  9. The Driveway extension has existed for several years with no known complaints.
  10. No one appeared in opposition at the hearing.
  11. 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.

### **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 complying with:
  - a) the requirements of the Revised City of Edmonton, by-law 12800, *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 Revised City of Edmonton, by-law 12800, *Edmonton Zoning Bylaw*.

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.*

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

CC:

***Edmonton Subdivision and  
Development Appeal Board***

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**SDAB-D-15-183**

Application No. **167367309-001**

An appeal by Jie Chen to Operate a Major Home Based Business (Hair Salon) on Plan 7921952 Blk 2 Lot 20, located at 10660 - 21 Avenue NW, was **WITHDRAWN**.