



**EDMONTON  
TRIBUNALS**

*Subdivision &  
Development  
Appeal Board*

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Date: September 1, 2016  
Project Number: 220524621-001  
File Number: SDAB-D-16-194

**Notice of Decision**

[1] On August 17, 2016, the Subdivision and Development Appeal Board heard an appeal that was filed on **July 26, 2016**. The appeal concerned the decision of the Development Authority, issued on July 7, 2016, to refuse the following development:

**To construct an addition to a Semi-detached House (rear covered deck, 3.66m x 4.27m).**

[2] The subject property is on Plan 9023542 Blk 26 Lot 22, located at 15539 - 59A Street NW, within the RF5 Row Housing Zone. The Hollick Kenyon Neighbourhood Area Structure Plan and the Pilot Sound Area Structure Plan apply to the subject property.

[3] The following documents were received and form part of the record:

- A Development Permit Application, including the plans of the proposed Development;
- The refused Development Permit;
- The Development Officer's written submission;
- A Registered Mail Delivery Confirmation from the Development Officer; and
- The Appellant's community consultation and photographs.

[4] The following exhibits were presented during the hearing and form part of the record:

- Exhibit A – A map of the Appellant's community consultation;
- Exhibit B – A photograph of the rear elevation of the existing Principal building; and
- Exhibit C – A photograph of a covered deck similar to the proposed development.

**Preliminary Matters**

- [5] 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.
- [6] The Presiding Officer outlined how the hearing would be conducted, including the order of appearance of parties, and no opposition was noted.
- [7] The Presiding Officer addressed the Registered Mail Delivery Confirmation submitted by the Development Officer. The decision of the Development Officer was issued July 7, 2016. The Registered Mail was delivered July 19, 2016 and the appeal was filed July 26, 2016.
- [8] The Board determined the appeal was filed on time, in accordance with section 686 of the *Municipal Government Act*, RSA 2000, c M-26.

**Summary of Hearing***i) Position of the Appellant, Mr. P. Doerksen of Ideal Sundecks (1979) Ltd.*

- [9] Mr. Doerksen submitted a map of the neighbourhood showing properties in support and properties that did not sign. (Exhibit A).
- [10] He canvassed 50 properties and received 37 signatures in support and received no opposition to the proposed development.
- [11] Most properties in this condominium corporation have similar additions and reduced Rear Setbacks.
- [12] This proposed addition is a high quality product that will beautify the yard. The roof will provide shade and be large enough to allow furniture and accommodate a group of people.
- [13] The roof will be supported by three posts on pilings, each piling is 12 feet in depth.
- [14] Landscaping and paving stones will be provided to create an enjoyable living space.
- [15] It was his opinion; the proposed development would not negatively impact the adjacent properties.
- [16] The proposed addition will have a three-light solid translucent panel wall on its north side as per (Exhibit B), to allow some sunlight penetration to the north.
- [17] The eaves and drainage will not have any adverse impact on the adjacent attached dwelling unit.
- [18] The condominium board has no issue with the proposed development.

[19] The adjacent property to the south has a fully enclosed, all-season addition. The addition that is the subject of this appeal will be fully open on the east and south sides and will be used only in the summer.

*ii) Position of the Sustainable Development Department, M. Ziober*

[20] Ms. Ziober indicated that she was speaking on behalf of the Development Officer who refused this development permit application.

[21] It was her opinion the Site Coverage and the Rear Setback each had a considerable variance.

[22] She was most concerned about the property immediately to the rear that did not sign in support. It was her opinion that property would be the most affected by this proposed development.

[23] She confirmed that if the proposed development was an enclosed addition, it would have a greater impact on adjacent properties.

*iii) Rebuttal of the Appellant*

[24] Mr. Doerksen clarified that he discussed the proposed development with the property owner to the rear and indicated that the property owner had no interest to get involved and sign anything, but was not opposed to the project.

**Decision**

[25] The appeal is ALLOWED and the decision of the Development Authority is REVOKED. The development is GRANTED as applied for to the Development Authority.

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

1. The maximum allowable Total Site Coverage of 45 percent (153.93 square metres) as per section 160.4(4)(d) is varied to allow an excess of 14.08 square metres, thereby increasing the maximum allowable Total Site Coverage to 168.01 square metres.
2. The minimum required Rear Setback of 5.5 metres as per section 160.4(6) is varied to allow a deficiency of 1.77 metres, thereby decreasing the minimum required Rear Setback to 3.73 metres.

**Reasons for Decision**

- [27] The proposed development is an addition to a Semi-detached House, which is a Permitted Use in the RF5 Row Housing Zone.
- [28] The Board notes the proposed development is an unenclosed summer patio and will not have the same impact as a multi-seasoned enclosed addition.
- [29] Based on the photographic evidence, the Board notes that the subject property is part of a condominium development in which all of the units are close to maximum allowed Site Coverage and many of the adjacent units have additions, patios and sunrooms with Rear Setbacks similar to the one proposed by the Appellant.
- [30] Based on the photographic evidence, the proposed development is characteristic of the area.
- [31] The Appellant provided an extensive community consultation with 37 properties in support and no one in opposition to the proposed development.
- [32] The Board notes that the Representative of the Sustainable Development Department was mostly concerned about the rear adjacent property immediately east of the subject site. The Appellant confirmed that the proposed development was discussed with this property owner and there was no opposition.
- [33] 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.

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

Board members present: Ms. K. Cherniawsky, Ms. G. Harris, Mr. K. Hample, Mr. L. Pratt.

**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 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 *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 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.*



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Date: September 1, 2016  
Project Number: 189288219-004  
File Number: SDAB-D-16-195

**Notice of Decision**

[1] On August 17, 2016, the Subdivision and Development Appeal Board heard an appeal that was filed on **July 13, 2016**. The appeal concerned the decision of the Development Authority, issued on June 27, 2016, to approve the following development:

**To leave as Built an Accessory Building.**

[2] The subject property is on Plan 2552S Blk 6 Lot 13, located at 12941 - 65 Street NW, within the RF5 Row Housing Zone. The Mature Neighbourhood Overlay and the Belvedere Station Area Redevelopment Plan apply to the subject property.

[3] The following documents, which were received prior to the hearing and are on file, were read into the record:

- A Development Permit Application, including the plans of the proposed Development;
- The approved Development Permit; and
- The Development Officer's written submission.

[4] The following exhibits were presented during the hearing and form part of the record:

- The Appellant submitted a photograph from 2008 of the existing Garage under construction (Exhibit A); and
- The current property owner of the subject site displayed photographs from his Electronic Tablet. He confirmed to the Board that he would provide hard copies of the photographs to the Board office following the hearing.

**Preliminary Matters**

[5] 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.

[6] The Presiding Officer outlined how the hearing would be conducted, including the order of appearance of parties, and no opposition was noted.

[7] The appeal was filed on time, in accordance with section 686 of the *Municipal Government Act*, RSA 2000, c M-26.

### **Summary of Hearing**

#### *i) Position of the Appellant, Mr. L.A. Ortega*

[8] The rain runoff from the subject Garage has flooded his property for several years. The water has destroyed the foundation of his Garage and it destroyed his fence, prompting him to build a new fence.

[9] He confirmed the rain water spills into his property from the roof of the subject Garage which is sloped downward toward his adjacent property. This year the problem was worse along his property as the eaves troughs failed and water spilled over into his yard alongside his Garage.

[10] He confirmed he signed an Encroachment Agreement, but felt misled and did not know what he was signing for. He felt the realtor selling the property pressured him to sign so his former neighbour would not be upset.

[11] He has tried to alleviate the flooding by pouring gravel and installing landscaping.

[12] He indicated that flooding usually causes the most damage after the seasonal snow melt.

[13] He referenced the 60 metre notification map and confirmed his Garage is approximately 1.5 metres from the subject Garage.

[14] He confirmed the entire roof of the subject Garage slopes downward into his property.

[15] He confirmed that he has lived at his property for three years.

#### *ii) Position of the Development Officer, S. Watts*

[16] She indicated that the Encroachment Agreement was a large part of her approval.

[17] The subject Garage was originally approved in 2008 with a Side Setback variance of 0.5 metres instead of the required 0.9 metre Side Setback, but was constructed askew and closer to the side Lot Line than approved in the 2008 Development Permit. The eaves as built now project past the Side Lot Line.

[18] She confirmed the roof of the Garage encroaches into the Appellant's property and therefore the eave contributes to water flow into the Appellant's yard.

[19] She indicated if there was not an Encroachment Agreement, she might have asked the applicant to cut the eave to reduce the impact. On questioning from the Board, the

Development Officer clarified that had she known the Appellant did not agree, she would have refused to issue the Development Permit because the subject Garage is adversely impacting his property.

[20] She clarified that this Garage application was prompted as result of a Compliance review.

[21] She clarified that there are no new drawings on file. She reviewed the elevation drawings from the 2008 decision and a new site plan showing the actual location of the subject Garage to make her decision.

[22] She clarified that she did not know if the existing Garage was the built at exactly the same location or the same design as the former Garage which burnt down.

[23] It was her opinion the Encroachment Agreement allows the overhang, but it does not allow water and drainage to spill into the adjacent property.

*iii) Position of the Respondent, Mr. D. Moroz of Moroz Law Office, representing the former property owner of the subject site*

[24] On April 5, 2016 he received a Compliance letter from the City of Edmonton requiring a variance for the existing Garage overhang.

[25] He provided the Appellant an Encroachment Agreement and it was signed. The Appellant must take the good with the bad of this Agreement.

[26] He clarified he does not know the history of this Garage site prior to the original development permit.

[27] It was his opinion the Encroachment Agreement provides consent to allow for any effect to the Appellant's property.

[28] He indicated that if the Appellant no longer agrees to the Encroachment Agreement, this issue as well as the validity of the Agreement would be addressed as a private matter, outside the Board's jurisdiction.

[29] It was his opinion that the Appellant has not provided any evidence of adverse impact or drainage damage. The Appellant could have addressed the encroachment when he purchased the property three years ago. The fact that the Appellant bought the property and signed the agreement showed that there was no adverse impact and the variances should be granted.

*iv) Position of the current property owner of the subject site, Mr. K. Cabana*

[30] He provided photographs of the existing Garage on his electronic tablet.

[31] It was his opinion the subject Garage was built poorly and the roof will eventually collapse.



[32] It was his opinion that both his property and the Appellant's property were landscaped poorly. He installed Landscaping to alleviate the Appellant's flooding concerns.

[33] He referenced his photographs and clarified that he has cleared the eave and removed the eave downspout so now the water from the roof of the subject Garage sheds into the adjacent property and then runs toward the alley. He was not aware until this hearing that the eave of the subject Garage actually encroached into the adjacent property.

[34] He clarified that the foundation of his Garage is larger and higher than the foundation of the Appellant's Garage.

*iv) Rebuttal of the Appellant*

[35] He clarified that he did not know anything about the subject Garage encroaching into his yard when he purchased the property three years ago. He was only aware of an issue with the fence at the time.

**Decision**

[36] The appeal is ALLOWED and the decision of the Development Authority is REVOKED. The development is REFUSED.

**Reasons for Decision**

[37] The existing detached Garage is Accessory to a Discretionary Use in the RF5 Row Housing Zone.

[38] The Board notes that the Development Officer's decision was based on a belief that the Appellant supported the development per an Encroachment Agreement signed by the Appellant and submitted with the application.

[39] The Board notes that the validity and effect of the Encroachment Agreement is beyond its purview. The Board accepts that the Appellant signed the agreement and also now has concerns with this Permit application and is opposed to the development.

[40] The Board heard evidence that there is a massive adverse impact from the subject Garage on the Appellant's property immediately north, resulting from water runoff.

[41] Based on the photographic evidence the existing sloped roof extends unreasonably far into the Appellant's property. The Board finds the water run-off issues are exacerbated by the sloped roof design.

[42] The Board accepts the evidence of the Appellant, the current property owner of the subject site and the Development Officer that drainage issues exist and are due to the design and location of the existing detached Garage.

[43] Accordingly, the Board finds that this Discretionary Accessory building is not reasonably compatible with the neighbouring properties in the RF5 Row Housing Zone.

[44] Finally, the Board is of the opinion that this development and the required variances will unduly interfere with the amenities of the neighbourhood, and will materially interfere with or affect the use, enjoyment or value of neighbouring parcels of land.

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

Board members in attendance: Ms. K. Cherniawsky, Ms. G. Harris, Mr. K. Hample, Mr. L. Pratt

**Important Information for the 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*, 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.
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