

Edmonton Subdivision and Development Appeal Board

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Date: December 21, 2015
Project Number: 180916842-001
File Number: SDAB-D-15-297

Notice of Decision

This appeal dated November 18, 2015, from the decision of the Development Authority is for permission to construct an Accessory Building (Shed, 2.29m x 2.29m).

The development permit application was approved subject to conditions and with a variance granted in the minimum required distance between the Accessory Building and the Side property line. The approved development permit application was subsequently appealed by a neighbouring property owner.

The subject site is on Plan 2609HW Blk 6 Lot 4, located at 11127 - 63 Avenue NW. The subject site is zoned RF1 Single Detached Residential Zone and is within the Mature Neighbourhood Overlay.

The appeal was filed on time, in accordance with Section 686 of the *Municipal Government Act*, R.S.A 2000, c. M-26.

The appeal was heard on December 10, 2015.

Summary of Hearing:

1. At the outset of the appeal hearing, one of the panel members disclosed that she is acquainted with the Appellant through community league business. She and the Appellant are involved in their respective community leagues. They are not members of the same community league. Following this disclosure, the Presiding Officer confirmed with the parties in attendance that there was no opposition to the composition of the panel.
2. The following documentation was provided to the Board and referenced during the hearing, copies of which are on file:
 - Online responses from two neighbouring property owners in opposition to the proposed development.
 - Photographs submitted by the Appellant.
 - A plot plan submitted by the Appellant, marked exhibit A.

Position of the Appellant

3. The Board heard from the Appellant, Gerry Montgomery.
4. Ms. Montgomery said that the subject accessory building is oriented such that the eaves overhang her fence. This results in drainage which has damaged the fence.
5. The fence was paid for entirely by Ms. Montgomery. The cost was not shared with the adjoining property owner.
6. The subject accessory building is attached to the fence. Prior to the hearing, Ms. Montgomery phoned the Development Officer and confirmed that the accessory building should not be attached to the fence in any manner. Also, the Development Officer said that the accessory building should be oriented such that it faces west and the eaves drain into the subject yard.
7. The subject accessory building was constructed and put into place without any consultation with the neighbours.
8. Ms. Montgomery noted that her neighbourhood tends to experience flooding and the positioning of the subject accessory building further exacerbates the problem for her.

Position of an Affected Property Owner

9. The Board heard from an affected property owner, Matt Mercer, who lives directly east of the subject property. Mr. Mercer noted that he has lived here for 35 years. He said that the lots in this neighbourhood are small. Given that there has been significant construction of larger infill housing, it is essential that new developments are held to the zoning regulations.

Position of the Development Authority

10. The Development Officer, Fiona Hamilton, appeared at the hearing to answer questions from the Board.
11. Ms. Hamilton confirmed that because of the small dimensions of the accessory building, no development permit would have been required if it were not situated inside the required 0.9 metre setback.
12. Ms. Hamilton has not visited the site, but it is her understanding that the accessory building is not attached to the fence. She understands that it is moveable. She was also under the impression that the door would be facing the walkway and the roof would not slope towards the neighbouring yard.

Position of the Respondent

13. The Board heard from the Respondent, Colin Prather.
14. Mr. Prather said that he employed a professional surveyor to locate the property line adjacent to the subject accessory building. The survey revealed that the fence is constructed, in part, on his property.
15. Mr. Prather noted that the garage on the property to the east of his is setback 0.8 metres from the side lot line and, therefore, is also infringing on the side setback.
16. Mr. Prather originally constructed the accessory building with a setback of 0.9 metres, but he moved it after it was constructed. He moved it knowing that it would infringe on the side setback requirement. He recognizes that the current positioning of the accessory building may be an issue and he is prepared to accept that.
17. In answer to a question from the Board, Mr. Prather confirmed that the fence was in existence when he bought his property.
18. In answer to a question from the Board about the planning reasons for situating his accessory building adjacent to the fence, Mr. Prather explained that it was the best way to accommodate it considering the location of his garage, walkway and flowerbed. He was also concerned about placing it over a gas line.
19. In answer to a question from the Board, Mr. Prather said that he had no issue with the location of the fence and its minor encroachment onto his property.
20. Mr. Prather suggested that he could move the shed one inch or he could install eaves trough and downspouts to redirect drainage from the roof to his property.

Rebuttal

21. In Rebuttal, Ms. Montgomery's husband, Brian Platten said that installing eaves trough would not be a good solution because it would increase the overhang. Further it would be an increased hazard for hitting one's head when walking near the fence.
22. Mr. Platten said that he and his wife should not be impacted by his neighbour's poor planning of his lot space. He finally noted that there should have been consultation with the neighbours before this development was constructed.

Decision:

The appeal is **ALLOWED**, the decision of the Development Authority is **REVOKED**, and the development permit is **DENIED**.

Reasons for Decision:

1. The Respondent acknowledged that he was aware that he was placing the accessory building in the required setback and that it was subject to possibly being denied permission.
2. There is photographic evidence that the adjacent fence has been damaged by drainage from the roof of the accessory building. This is a cost and inconvenience that is born by the neighbouring property owner. The Respondent did not refute this fact.
3. The position of the accessory building will cause ongoing maintenance difficulty.
4. The Respondent acknowledges that the accessory building is a moveable structure and it can easily be moved away from the fence.
5. The Respondent did not provide compelling planning reasons as to why it would be difficult to comply with the development regulations.
6. There was no indication of support from any neighbouring property owners. However, there was opposition from the neighbouring property owners who are most affected by the development.
7. Based on the foregoing the Board finds that the positioning of the accessory building directly adjacent to the fence does negatively affect the use, value and enjoyment of neighbouring properties.

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*, 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.
2. 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. B. Gibson, Presiding Officer
Subdivision and Development Appeal Board

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Date: December 21, 2015
Project Number: 179526336-001
File Number: SDAB-D-15-299

Notice of Decision

This appeal dated November 22, 2015, from the decision of the Development Authority is for permission to operate a Major Home Based Business (Dog Care and Dog Walking business - AUNTIE LEAH'S DOG CARE).

The development permit application was refused because outdoor business activity and the outdoor storage of material or equipment associated with the business are not permitted and it was the opinion of the Development Officer that the proposed business would be more appropriately located in a commercial or industrial zone.

The subject site is located on Plan 6594KS Blk 6 Lot 36, located at 16102 - 88 Avenue NW. The subject site is within the RF1 Single Detached Residential Zone and is within the Mature Neighbourhood Overlay.

The appeal was heard on December 10, 2015.

Summary of Hearing:

1. 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.
2. The Presiding Officer noted that the decision of the Development Authority is dated November 5, 2015 and the Appeal was filed 17 days later on November 22, 2015. Therefore, the appeal was ostensibly filed outside the allowable 14 day time limit as prescribed by Section 686 of the *Municipal Government Act*, R.S.A 2000, c. M-26.
3. The Presiding Officer asked the Appellant when she had received notice of the Development Officer's decision. The Appellant referred to emails on her cell phone and confirmed that she had received the notice via email on November 5, 2015.
4. The Development Officer offered the Board a hard copy of the email correspondence between her and the Appellant. The Board took it in as evidence and marked it as exhibit A. The email correspondence from the Development Officer is dated November 5 and it notes the 14 day appeal period and Section 686 of the *Municipal Government Act*.

5. Subsequent to the Development Officer's email providing notice of refusal, there is an email response dated November 5 from the Appellant to the Development Officer.

Decision:

The Board declines to assume jurisdiction to hear the merits of this appeal.

Reasons for Decision:

1. Based on the Appellant's admission and on the email evidence provided by the Development Officer, the Board finds that notice of the decision of the Development Office to refuse the development application was provided to the Appellant on November 5, 2015. The appeal was filed on November 22, 2015, which is 17 days after the date of notice and outside the allowable 14 day appeal period.
2. The Board's jurisdiction comes from the *Municipal Government Act* and the Board may only act in accordance with the provisions of this governing legislation.
3. Section 686(1) of *Municipal Government Act* clearly prescribes the time limits for an appeal. The Board does not have discretion to waive this requirement.

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Mr. B. Gibson, Presiding Officer
Subdivision and Development Appeal Board