

Edmonton Subdivision and Development Appeal Board

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Date: December 24, 2015
Project Number: 179679997-001
File Number: SDAB-D-15-309

Notice of Decision

This appeal is dated November 24, 2015, from the decision of the Development Authority for permission to construct a two-storey Accessory Building (a rear detached Garage on the main floor and a Garage Suite on the upper floor) to an existing Single Detached House, and to demolish an existing rear detached Garage.

The development permit application was refused due to an excess in the maximum permitted floor area, and an excess in the maximum area permitted for a proposed Garage Suite and balcony. The development officer believes the proposed development will have a negative impact on neighbouring properties.

The subject Site is on Plan 4807HW Block 18 Lot 5, located at 11920 - 129 Street NW. The subject Site is zoned RF1 Single Detached Residential Zone and falls 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 by the Subdivision and Development Appeal Board on December 17, 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. Prior to the hearing the following information was provided to the Board:
 - Appellant's written submission, received by the Board on December 11, 2015;
 - Development Officer's Technical Review, dated November 18, 2015;
 - Development Officer's written submission, dated December 4, 2015;
 - Garage Suite Application; and
 - Refused Development Permit.

The Board heard from Mr. M. Hackett, the Appellant, who provided the following submissions:

3. The Appellant seeks a development permit to build a Garage Suite for his parents to live in.
4. The Development Officer reviewed the Appellant's plans for his proposed Garage Suite and advised him that he had to reduce the total size of the Garage Suite by six square metres.
5. The Appellant does not believe that reducing the size of the space will have a substantial impact on the aesthetics of the building, but argued that doing so will significantly impact what they can fit into the living area.
6. The Board asked the Appellant to comment about the fact that the structure is large and is approximately ninety-two percent of the size of the house. The Appellant advised the Board that he agreed that the structure is large relative to the house but it within the allowable 12% of the lot size. Also, he pointed out that the existing house is small and that he could demolish it and build a larger house in the future. He argued that they are allowed to build to 40 percent of the size of the lot and they are far below that figure.

The Board heard from Mr. J. Angeles, representing the Department of Sustainable Development, who gave the following responses to questions from the Board:

7. The calculation of 66 square metres for the area of the Garage Suite was an accurate calculation and, if the common area and stairs are included in that calculation, the total area is 95 square metres.
8. Although the structure is oversize and not characteristic of the community, the fact that the Appellant canvassed the community and received support for the proposed development from 21 of the 28 nearby neighbours gives him some comfort that the proposed development will not upset the neighbours. However, he still cannot approve the development permit because it is over the required site coverage and pushes the limit of maximum allowable floor area.
9. He confirmed that, aside from the Garage Suite being in excess of the maximum floor area, there are no other variances required. Specifically, no variances are necessary for Maximum Site Coverage, Setbacks, Amenity Space, Height, or the provisions of the Mature Neighbourhood Overlay. If the Garage Suite had been 6.3 square metres smaller, the development permit would have been approved.
10. The plans for the Garage Suite show an office space. Mr. Angeles was asked to confirm whether a home based business would be operating out of the Garage Suite. He confirmed that no business would be operating out of the space.

The Board heard from Ms. T. Hackett, the Appellant's mother, who answered questions from the Board:

11. Ms. Hackett confirmed that she and her husband will be living in the Garage Suite and will not be operating a home based business out of the space.

Decision:

The appeal is **ALLOWED** and the decision of the Development Authority is **REVOKED**. The following variances are granted: A variance of 6.3 square metres in the maximum floor area of the Garage Suite and a variance of 2.5 square metres in the maximum floor area of the Garage Suite plus platform structure. (Section 87(3)(a) and (c)) The development is **GRANTED** as applied for to the Development Authority, subject to the following conditions:

1. This Development Permit authorizes the development of a 2 Storey Accessory Building (Garage on main floor and Garage Suite on upper floor) and demolition of the existing detached Garage. The development shall be constructed in accordance with the stamped and approved drawings.
2. Immediately upon demolition of the building, the site shall be cleared of all debris.
3. An accessory building or structure containing a Garage Suite shall not exceed 6.5m in height (Reference Section and 87.2.a).
4. Only one of a Secondary Suite, a Garage Suite or Garden Suite may be developed in conjunction with a principal Dwelling.
5. A Garage Suite shall not be allowed within the same Site containing a Group Home or Limited Group Home, or a Major Home Based Business and an associated principal Dwelling, unless the Garage Suite is an integral part of a Bed and Breakfast Operation in the case of a Major Home Based Business.
6. Notwithstanding the definition of Household within this Bylaw, the number of unrelated persons occupying a Garage Suite shall not exceed three.
7. The Garage Suite shall not be subject to separation from the principal Dwelling through a condominium conversion or subdivision.
8. The area hard surfaced for a driveway shall comply with Section 54.6 of the Zoning Bylaw 12800.
9. Except for the hard surfacing of driveways and/or parking areas approved on the site plan for this application, the remainder of the site shall be landscaped in accordance with the regulations set out in Section 55 of the Zoning Bylaw 12800.

ADVISEMENTS:

10. Lot grades must comply with the Edmonton Drainage Bylaw 16200. Contact Drainage Services at 780-496-5500 for lot grading inspection inquiries.
11. The driveway access must maintain a minimum clearance of 1.5m from all surface utilities.
12. An approved Development Permit means that the proposed development has been reviewed only against the provisions of the Edmonton Zoning Bylaw. It does not remove obligations to conform with other legislation, bylaws or land title instruments such as the Municipal Government Act, the ERCB Directive 079, the Edmonton Safety Codes Permit Bylaw or any caveats, covenants or easements that might be attached to the Site.
13. Unless otherwise stated, all above references to "section" numbers refer to the authority under the Edmonton Zoning Bylaw 12800.

Reasons for Decision:

The Board finds the following:

1. Garage Suites are a discretionary Use within the RF1 Single Detached Residential Zone.
2. The Board accepts the calculations provided by the Development Authority with respect to the floor area of the Garage Suite and development.
3. The Board notes that the proposed Garage with Garage Suite is large compared to the existing house, being approximately 92% of the floor area of the house. However, this is a large lot and, aside from the two variances, there are no other variances required. Specifically, no variances are required for Maximum Site Coverage, Setbacks, Height, Amenity Space, or the provisions of the Mature Neighbourhood Overlay.
4. The Floor Area of the Garage is within the allowable 12% of lot coverage.
5. All of these factors indicate that the lot is large enough to accommodate a structure such as the proposed development.
6. In addition, the existing home could be demolished and a larger structure built, which would lessen the size difference between the proposed development and the principal dwelling on the lot.
7. The Board also notes that the Appellant has obtained wide-spread community support for the development with the vast majority of neighbours within the 60-metre notification area voicing their support. No one voiced any opposition to the development.

8. Considering all of the above factors, the Board is of the opinion that the variances 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 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 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*,
 - 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*, 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.

Mr. Mark Young, Presiding Officer
Subdivision and Development Appeal Board

Edmonton Subdivision and Development Appeal Board

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Date: December 24, 2015
Project Number: 180404478-001
File Number: SDAB-D-15-310

Notice of Decision

This appeal is dated November 23, 2015, from the decision of the Development Authority for permission to construct exterior alterations (a Driveway extension, 8.23m x 2.44m) to a Single Detached House.

The development permit application was refused because:

- a. it exceeds the maximum allowable Driveway width;
- b. the proposed extension does not lead to the Garage;
- c. it decreases the amount of green space within the neighbourhood; and
- d. it restricts on-street parking opportunities.

The subject Site is on Plan 4884TR Block 16 Lot 28, located at 3015 - 105 Street NW. The subject Site is within the RF1 Single Detached Residential Zone.

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 by the Subdivision and Development Appeal Board on December 17, 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. Prior to the hearing the following information was provided to the Board:
 - Letter of opposition to the proposed development from W. Sorochan;
 - Development Officer's Technical Review, dated November 12, 2015;
 - Development Officer's Written Submission, dated December 3, 2015;
 - Canada Post Registered Mail delivery confirmation signed by "H. Jeethan", dated November 20, 2015;
 - Minor Development Permit Application; and
 - Refused Development Permit.

The Board heard from the Appellant, Mr. B. Jeethan, who provided the following submissions:

3. He applied for a development permit for a driveway extension but he did not realize he had to wait for the City's approval and, on the advice of his contractor, he allowed construction to proceed before he got the permit. The development permit was not approved.
4. He advised the Board that he requires a driveway extension because his garage is full and he does not want to park on the street, as little street parking is available. Since he often leaves the City for a few weeks at a time for work, Mr. Jeethan would prefer to park his vehicle on his driveway.
5. He was asked whether he understood that the *Edmonton Zoning Bylaw* prohibits people from parking in the front yard of their home and requires that the driveway lead to a garage. He explained that his contractor advised him that the driveway can be ten metres wide and he believes his driveway is less than ten metres wide. He presented photographs showing that his driveway measures 9.7 metres wide.
6. He agreed that the aerial photographs provided in the Development Officer's written submission show that his driveway is the only one on the street with an extension.
7. The Development Officer's Technical Report shows a photograph of a metal grate on the sidewalk where the proposed driveway extension leads to the road. When asked what the grate is for, Mr. Jeethan advised the Board that he believed it was covering an electrical transformer.

The Board heard from Mr. B. Langille, representing the Department of Sustainable Development, who provided the following submissions:

8. He advised the Board that four parking spaces per home is characteristic of the neighbourhood – two spaces in the garage and two spaces on the driveway. The Appellant is proposing to have six parking spaces – two in the garage and four on the driveway.
9. The site plan indicates that the total width of the driveway with the extension was supposed to be 10.3 metres, making it 4.1 metres wider than the 6.2 metres allowed under the *Edmonton Zoning Bylaw*. The Appellant's driveway with the extension as constructed is actually 9.7 metres wide, which is 3.5 metres over what is allowed under the *Edmonton Zoning Bylaw*.
10. Section 54.2(4)(a)(i) specifies that the minimum dimensions for off-street parking spaces are 2.6 metres by 5.5 metres. Therefore, the total width required for the Appellant's four parking spaces on the driveway is 10.4 metres. The driveway with the extension is not wide enough for four parking spaces. However, it is wide enough for three spaces.

11. The width of the garage is 6.77 metres. Mr. Langille was asked by the Board whether the existing driveway, without the proposed extension, is non-compliant. He agreed it is, but noted that it was poured prior to a change in the regulations.
12. Mr. Langille circulated the appeal materials to Transportation Services for comment on the metal grate located on the sidewalk where the Appellant's driveway extension meets the road, but he had not received a response at the time of the hearing. He did not know whether the grate could support vehicle traffic.
13. Mr. Langille was asked whether a variance was required pursuant to Section 45(7)(b) of the *Edmonton Zoning Bylaw*, which provides that vehicles can only be parked on a driveway or in a garage. He responded that the Appellant is proposing to have this portion non-landscaped, so it would not require a variance.
14. He was asked if a variance would be required with respect to Section 54.2(2)(e)(i), which prohibits parking spaces within a Front Yard. He thought a variance probably would be required.
15. In response to questions, he advised he wasn't sure if a variance would also be required with respect Section 55.4(1), which requires that all open space, including Front Yards, must be landscaped.

Mr. Jeethan provided the following submissions in rebuttal:

16. Prior to the appeal hearing, he did not realize he required a variance and would like the Board to grant one now.

Decision:

The appeal is **DENIED** and the decision of refusal of the Development Authority is **CONFIRMED**.

Reasons for Decision:

The Board finds the following:

1. Driveway is an Accessory to a Permitted Use within the RF1 Residential Zone.
2. The Development Officer referred to two sections of the *Zoning Bylaw* when denying the development permit. One was Section 54.1(4), which provides that the maximum width of driveways is calculated as the product of 3.1 metres multiplied by the total number of adjacent side by side parking spaces contained within the garage. Since this is a two car garage, the maximum allowable width of the driveway is 6.2 metres.

3. The Board notes that the existing driveway was built some time ago and already exceeded the maximum allowable width as calculated by the current regulations.
4. The existing driveway without the extension was 7.9 metres wide, which is already over width by 1.7 metres. With the extension, the driveway is overwidth by 3.5 metres.
5. The second section relied on by the Development Officer was Section 54.1(5), which provides that a driveway must lead directly from the roadway to the garage. The driveway extension does not do this.
6. There are additional requirements of the *Edmonton Zoning Bylaw* with respect to this application that the Development Officer did not address.
7. Section 54.2(2)(e)(i) states that parking spaces shall not be located within a front yard. The Appellant's evidence was that he wishes to use the driveway extension to park an additional vehicle on the driveway extension, which is part of the front yard.
8. The *Edmonton Zoning Bylaw* also requires landscaping in the yard. Section 55.4(1) states that "all open space including front yards ... shall be landscaped with trees, shrubs, flower beds, grass, ground cover or suitable decorative hardsurfacing."
9. Section 6.1(55) defines "landscaping" as excluding monolithic concrete and asphalt, such as what the driveway extension is constructed of.
10. The Board notes from the aerial photos contained in the Development Officer's written submission that the Appellant is already parking three vehicles on his driveway.
11. The Appellant indicated that because he often works out of town, he intends to leave a vehicle parked on the driveway extension for extended periods of time.
12. The aerial photographs of the neighbourhood contained within the Development Officer's Technical Review demonstrate that driveway extensions are not characteristic of the neighbourhood.
13. The Board notes that there was a letter of objection from an immediate neighbour, who was concerned, among other things, about the loss of green space resulting from the extension, and about having multiple vehicles parked in the front yard.
14. The Board shares these concerns. The regulations in the Zoning Bylaw regarding the maximum width of driveways, the limitations on parking vehicles in front yards and the landscaping requirements are intended to enhance the amenities of the neighbourhood.

15. The Board is of the view that the driveway extension will unduly interfere with the amenities of the neighbourhood because of the loss of greenspace and landscaping and because it will allow for up to four vehicles to be parked outside the garage.
16. Accordingly, the Development Officer's decision to refuse to issue a development permit for this driveway extension is confirmed.

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.

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. M. Young, Presiding Officer
Subdivision and Development Appeal Board

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Date: December 24, 2015
Project Number: 177150861-002
File Number: SDAB-D-15-311

Notice of Decision

- [1] On December 17, 2015, the Subdivision and Development Appeal Board heard an appeal that was filed on November 26, 2015.
- [2] The appeal concerned the decision of the Development Authority, issued on November 19, 2015, to approve the following development:
- Construct an Accessory Building (rear detached Garage 7.92m x 8.53m)
[unedited from the Development Permit]
- [3] The development was approved with no variances or relaxations, and subsequently appealed by the adjacent property owner. The subject property is located on Plan 7521610 Blk 40 Lot 13, municipal description 17928 - 93 Avenue NW, within the RF1 Single Detached Residential Zone.
- [4] The Presiding Officer confirmed with the parties in attendance that there was no opposition to the composition of the panel.
- [5] The following documents, which were received prior to the hearing and copies of which are on file, were read into the record:
- Notice of Appeal received November 26, 2015;
 - Appellant's written submissions received December 10, 2015;
 - Respondent's written submissions received December 7, 2015;
 - Email from the Respondent, dated December 7, 2015, indicating that the Respondents may be unable to attend the hearing;
 - Lot Grading Acceptance Letter from the City of Edmonton dated August 14, 2013;
 - Written report of the Development Officer dated December 7, 2015;
 - Copy of a previous decision of the Subdivision and Development Appeal Board for Appeal File No. SDAB-D-15-158, dated August 6, 2015; and
 - Copies of the following Alberta Court of Appeal decisions:
 - *World Health Edmonton Inc. v Edmonton (City)*, 2015 ABCA 377
 - *Masellis v Edmonton (Subdivision and Development Appeal Board)*, 2011 ABCA 157
 - *Coventry Homes Inc v Beaumont (Town of) Subdivision and Development Appeal Board*, 2001 ABCA 49

Preliminary Matters:

- [6] Prior to opening the hearing, the Presiding Officer identified two preliminary issues:
- 1) Did the Appellant file his appeal within the statutory time limit prescribed under Section 686(1)(b) of the *Municipal Government Act* (the “MGA”), RSA 2000, c M-26?
 - 2) Since the development is a Permitted Use with no variances or relaxations, is there a right to appeal, pursuant to the limitations set out in Section 685(3) of the MGA?

Time Limit to Appeal

- [7] The Presiding Officer explained to the parties that the Board’s jurisdiction to hear appeals is derived, in part, from Section 686(1)(b) of the *Municipal Government Act*, which states:

686(1) 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,

...

- (b) in the case of an appeal made by a person referred to in section 685(2), after the date on which the notice of the issuance of the permit was given in accordance with the land use bylaw.

- [8] The Board must therefore determine whether the Appellant filed his appeal within the 14 days limitation period. If the appeal was filed late, the Board has no authority to hear the matter.

- [9] The Presiding Officer invited the parties to provide submissions in this regard.

i. Position of the Appellant, Mr. S. Tyszko

- [10] On November 17, 2015, he spoke with Ms. N. Swain, a City of Edmonton Development Officer. He contacted her to ask about the progress in having the Respondents’ driveway extension removed as per a previous decision of this Board. She informed him that the extension would not be removed because the Respondents had been issued a development permit to construct a detached garage. This was the first time he heard about the development.

- [11] On the same day, he spoke with Ms. Karen Wun, a Board Officer with the Subdivision and Development Appeal Board, who informed him that November 18 was the last day to file an appeal.

- [12] On November 19, 2015, he left a voice message with Ms. Swain's supervisor, who did not return his call but forwarded his message to Ms. Swain, who did return his call.
- [13] He also called Mr. J. Xie, a Development Officer, to request a copy of the plans for the proposed development. Mr. Xie replied on November 20, 2015 via email with attachments of the plans, but the Appellant was unable to print them.
- [14] Following his conversations with Ms. Swain, he understood that the previous decision of the Subdivision Development Appeal Board, dated August 6, 2015, would not be enforced because of the approved Development Permit for the Garage.
- [15] Under the previous decision, his neighbours were supposed to remove the Driveway extension by October 31, 2015, but the subsequent approval for a rear Garage meant that the extension could remain in place.
- [16] He confirmed that he filed his appeal on November 26, 2015.

ii. Position of the Development Officer, Mr. K. Yeung

- [17] The Development Officer provided no submissions with respect to this preliminary matter.

Decision

- [18] The appeal was filed within the statutory time limit under Section 686(1)(b) of the *Municipal Government Act*.

Reasons

- [19] The Board accepts the evidence that the appeal was filed on November 26, 2015.
- [20] In the case of *Coventry Homes Inc. v. Beaumont (Town of) Subdivision and Development Appeal Board*, 2001 ABCA 49, the Court held that, in situations regarding Class A Developments where no notice of issuance of the Development Permit is required, the 14 day appeal period runs from the day of actual or constructive notice.
- [21] The Board accepts the Appellant's evidence that he first learned that a Development Permit had been issued with respect to the detached garage on Nov 17, 2015.
- [22] Accordingly, the notice of appeal, which was filed on November 26, 2015, was filed within the 14 day appeal period.

Right to Appeal Under Section 685(3) of the MGA

[23] The Presiding Officer then explained that the proposed Garage is accessory to a Permitted Use within the RF1 Single Detached Residential Zone, and the development permit was granted without variances or relaxations to the development regulations. Section 685(3) of the *Municipal Government Act* states that “no appeal lies in respect of the issuance of a development permit for a permitted use unless the provisions of the land use bylaw were relaxed, varied or misinterpreted.”

[24] Since there were no relaxations or variances in this specific Class A Development Permit, the Appellant must demonstrate that the Development Officer “misinterpreted” a provision of the land use bylaw. The Board then invited the parties to provide submissions in this regard.

i. Position of the Appellant, Mr. S. Tyszko

[25] He acknowledged that he had no concerns about the Garage itself, but it is the Driveway leading to the Garage that he is apprehensive about. The Driveway as it currently exists results in heavy flooding when the snow melts, and in the winter time, can lead to icy patches that cause a danger to himself and his wife, who are both elderly.

[26] He referenced his materials and a copy of the site plan which showed the area of his neighbour’s Driveway which should have been removed by October 31, 2015. He stated that if his neighbours simply remove this portion and make it level with his own property, then there would be no flooding or icy conditions caused by melting and freezing snow.

[27] He believes that the proposed Garage will exacerbate the existing problems.

[28] Mr. Tyszko was joined by his wife, Ms. K. Tyszko, who stated that she does not understand why her neighbours will not contact a professional company that will ensure a compliant Driveway.

[29] He understood that the scope of this appeal relates only to the approved Garage, but he submitted that Garages require Driveway access, therefore, the existing Driveway extension should not be approved.

[30] He submitted Exhibit “A”, a photograph taken from his home with a view toward the school across the street. The photo demonstrated the extent of the icy conditions caused by the sharp slope and difference in Grade of his neighbour’s Driveway.

ii. Position of the Development Officer, Mr. K. Yeung

[31] He clarified that the approved Development Permit does include the Driveway.

- [32] He believes that there were no relaxations, variances or misinterpretations of the land use bylaw.
- [33] He confirmed that under Section 54.1(4), the maximum width of the area hardsurfaced for a Driveway on a Front Yard “shall be calculated as the product of 3.1 m multiplied by the total number of adjacent side-by-side parking spaces contained with the Garage.” In this case, since there are three parking spaces, the maximum allowable width of the Driveway is 9.3 m.
- [34] In his view, the Driveway is the entire portion of the concrete drive leading from 93rd Avenue up to both the attached and detached Garage. Therefore, the width of the proposed Driveway is 7.45 m, which is less than the allowable width of 9.3 m.

iii. Position of the Respondent, Mr. P. Calapre

- [35] Mr. Calapre stated that unless there are questions from the Board, all his submissions were contained in the written materials provided to the Board.

iv. Rebuttal of the Appellant, Mr. S. Tyszko

- [36] Mr. Tyszko reiterated his previous points, namely that he had no concerns with the Garage development itself; however, he objects to the Driveway leading to the Garage, particularly to severe difference in Grade.
- [37] In his mind, the Driveway should have been removed following the previous decision issued by the Subdivision and Development Appeal Board.

Decision

- [38] There is no right of appeal in respect of this development permit because it is for a permitted use without variances or relaxations and there were no misinterpretations of the land use bylaw.

Reasons

- [39] Single Detached Housing is a Permitted Use in the RF1 Single Detached Residential Zone.

- [40] Section 50.1(2) of the *Edmonton Zoning Bylaw* provides that “Accessory Uses and buildings are permitted in a Zone when Accessory to a principal Use which is a Permitted Use in that same Zone and for which a Development Permit has been issued.”
- [41] Accordingly, the Accessory Garage is a Permitted Use in this zone.
- [42] The Development Officer treated this application as if it were a Class A development requiring no variances or relaxations. The Board agrees that no variances or relaxations are necessary.
- [43] In the course of the hearing, the Appellant indicated that he had no problem with the approved Development Permit for the detached Garage itself. His concern lies with the front Driveway extension, which is causing drainage problems on his property. He was unable to point to any ways in which the land use bylaw had been misinterpreted with respect to this Development Permit.
- [44] Accordingly, the Board is bound by Section 685(3) of the MGA, which states:
- Despite subsections (1) and (2), no appeal lies in respect of the issuance of a development permit for a permitted use unless the provisions of the land use bylaw were relaxed, varied or misinterpreted.
- [45] Since no relaxations or variances are required, and since the Board finds that the provisions of the land use bylaw were not misinterpreted, there is no right of appeal with respect to this Development Permit.

Important Information for the Applicant/Appellant

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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.

Mr. M. Young, Presiding Officer
Subdivision and Development Appeal Board