Edmonton Subdivision and Development Appeal Board

Churchill Building
10019 - 103 Avenue NW
Edmonton, AB T5J 0G9
Phone: 780-496-6079 Fax: 780-577-3537
Email: sdab@edmonton.ca
Web: www.edmontonsdab.ca

15652 - 63 Street NW
Edmonton AB T5Y 2N3

Date: December 11, 2015
Project Numbers: 175290430-006
175290430-004
File Numbers: SDAB-D-15-281
SDAB-D-15-282

Notice of Decision

These are appeals dated November 4, 2015, from decisions of the Development Authority to construct an Accessory Building (an irregularly shaped rear detached Garage: 7.32m x 10.0m) and to construct a Single Detached House with a front veranda, a rear uncovered deck (5.18m x 4.88m), a fireplace, and Basement development (not to be used as an additional Dwelling).

The development permit applications were approved with conditions and subsequently appealed by an adjacent property owner.

The subject site is on Plan 1401HW Block 1A Lot 16, located at 13603 - 101 Avenue NW. The subject site is zoned RF1 Single Detached Residential Zone and is located within the Mature Neighbourhood Overlay.

The appeal was heard on December 2, 2015.

Summary of Hearing:

1. At the outset of the appeal hearing, the Presiding Officer confirmed with parties in attendance that there was no opposition to the composition of the panel.

2. The following information was provided to the Board and referenced during the hearing, copies of which are on file:
    - Online responses from property owners, in opposition to the proposed development;
    - Approved Development Permit; and
    - Email correspondence between the Development Authority and the Appellant.

3. The Presiding Officer advised the parties that the two preliminary issues before the Board are the late filing issue in respect of Section 686 of the *Municipal Government Act* ("*MGA*") and the issue of whether Section 685(3) of the *MGA* applies to prohibit an appeal because the proposed developments are Permitted Uses.

The Board heard from the Appellants, Mr. and Mrs. Lubin, who made the following submissions:

1. Mr. Lubin advised the Board that he received an email from the Development Officer, dated October 19, 2015 advising that the development had been approved, but that he did not check his email until November 3, 2015, as he was in Ottawa.

2. Mr. Lubin argued there was an officially induced error on the part of the City because, although the MGA says 14 days, the City's website indicated he had 14 business days from the date he received notice of the decision to file an appeal. He introduced two documents marked Exhibit "A", which were print-offs from the City's website. One document referred to 14 business days, the other document, which had been amended after he brought the error to the attention of the City, referred to 14 days.

3. In addition, the email from the Development Officer, dated November 3, 2015, stated the application had been approved "one business day" prior to him being notified, which furthered his impression that the time limit was calculated by reference to business days, not calendar days.

4. In response to a question from the Board, Mr. Lubin confirmed he did not receive the email from the Development Officer because he had his smart phone turned off the entire time he was in Ottawa.

5. In addition, he was aware that nothing related to the proposed development had been published in the newspaper because he had somebody checking the newspaper every Tuesday and Thursday in his absence. He advised the Board that he had been regularly reviewing the City's newspaper postings because he was aware of the potential development on the property.

6. Mr. Lubin acknowledged that on August 11, 2015, the Development Officer advised him by email that she would let him know when she had completed a full review of the Development Permit Application for the property.

7. One Board Member stated that, in his opinion, whatever information was on the City's website would not change the notice requirements set out in the *MGA*. When asked to comment on that, Mr. Lubin said he was relying on the City's information, as opposed to the provisions of the *MGA*, and the City's website indicated he had 14 business days within which to file his appeal.

8. The Appellant's consultant, Mrs. L. Robinson, argued that the City's website contained no disclaimer advising members of the public against relying on the information contained within it.

The Board heard from the Development Officer, K. Heimdahl, who made the following submissions:

1. Ms. Heimdahl advised the Board that the proposed developments are Class A Developments, which require no variances. Specifically, they require no variances to the height, setbacks, or requirements of the Mature Neighbourhood Overlay.

2. Still, she added as a condition that the eaves of the garage shall not project more than 0.46 metres into the required side setback. She was not aware of any actual eave projection requiring a variance.

The Board heard from Mr. F. Laux, counsel for the Respondents, Hon and Ivy Leong, who made the following submissions:

1. The evidence is clear that the Development Officer gave the Appellant more than 14 days notice of the appeal, by way of email. The fact that the Appellant did not receive the email within that time period is of no consequence.

2. The Appellant could not rely on newspaper notice because a Permitted Use without variances does not require newspaper notice. Moreover, by the Appellant's own evidence, he was aware for several months that there was a Development Permit application on the property and he should have taken active steps to check his email while he was away.

3. With respect to whether this is a Class A Development or not, he had reviewed the *Edmonton Zoning Bylaw* and the plans for the proposed development and argued that no variance or relaxation was required, and the Development Officer did not misinterpret the *Edmonton Zoning Bylaw* in granting the Development Permit. Therefore, according to the *MGA*, no appeal is allowed.

4. The Appellant is out of time and the Board has no jurisdiction to hear the appeal.

The following submissions were made in Rebuttal:

<u>The Appellant</u>

1. The Appellant argued that even if he had read the email within the 14 day timeline, he still relied on the City's website, which indicated he had 14 business days to file an appeal.

2. In response to questions about whether there were any variances or whether the provisions of the Zoning Bylaw had been misinterpreted, he advised the Board that the garage required a variance on the east corner because it was only 0.9 metres from the property line.

3. In addition, he advised the Board that the deck, located on the southeast corner of the house, is one metre above the surface and, therefore, it should be included in the calculation of total site coverage; when calculated in this manner, the maximum site coverage was exceeded. He advised the Board that the architectural drawings show the deck as being more than one metre above the surface, and that is what you must use to determine whether the square footage of the deck should be included in total site coverage.

The Development Officer

1. The garage was allowed to be 0.9 metres from the property line by virtue of Section 50.1(4)(b).

2. The deck is less than one metre above grade because the main floor is less than one metre above grade and the deck is below the main floor.

Decision:

The Board finds that the Appellant did not file the Notices of Appeal within 14 days as required by Section 686(1)(b) of the *MGA*. The Board, therefore, has no jurisdiction to hear the appeal.

In the alternative, if the Board is incorrect and the appeal was filed on time, the Board finds these developments are Permitted Uses with no variances or relaxations. The Board further finds that the Development Authority did not misinterpret the provisions of the land use bylaw. Accordingly, pursuant to Section 685(3) there is no right to appeal the issuance of these development permits.

In the further alternative, if the Board is wrong that variances are not required in respect of Side Setback for the garage or in respect of maximum Site Coverage, the Board grants the necessary variances.

Reasons for Decision:

1. Single Detached Housing is a Permitted Use within the RF1 Single Detached Residential Zone. A rear detached Garage is an Accessory Building to a Permitted Use and is, therefore, a Permitted Use in this Zone. (Section 50.1(2) Zoning Bylaw).

2. The Development Authority treated these developments as Permitted Uses without variances or relaxations, meaning they were Class A developments as per Section 12.3 of the Zoning Bylaw.

3. Section 685(3) provides that there is a right of appeal in respect of a development permit for a permitted use only if the provisions of the land use bylaw were relaxed, varied or misinterpreted.

4. Section 686(1)(b) provides that any person affected by a development permit may file a notice of appeal within 14 days after notice of the issuance of the permit was given in accordance with the land use bylaw.

5. However, because these developments were treated as Class A developments, there is no requirement in the Zoning Bylaw to notify neighbouring land owners that the development permits had been issued.

6. The issue then arises as to when the 14 day appeal period begins to run. The case of *Coventry Homes Inc*. v. *Beaumont (Town of) Subdivision and Development Appeal Board*, 2001 ABCA 49, addresses this.

7. That case involved similar circumstances. The Court of Appeal makes it clear that the Board would be in error if it assumed jurisdiction to hear an appeal outside the 14 day period. Further, the absence of a notice provision in the Zoning Bylaw does not preclude the Board from finding that more than 14 days had elapsed from the date the Appellant had notice of the development permits to the date he filed his appeal. The appeal period begins from the date of actual or constructive notice.

8. The copy of the email correspondence between the Development Officer and the Appellant indicates that the Appellant was aware as early as August 10, 2015 that there was a development permit application with respect to this property. On August 11 the Development Officer sent him an email advising that she would let the Appellant know once a full review of the application had been made.

9. It was the Appellant's evidence that he had been reviewing the City's newspaper notices regarding approved development permits every Tuesday and Thursday so he would be aware if a permit was issued for this property. He even took the step of having someone do this in his absence when he went to Ottawa. However, notwithstanding his keen interest in this matter and notwithstanding the fact that the Development Officer had advised him by email that she would let the Appellant know when a decision had been made about the permit, the Appellant says he decided to leave his smart phone turned off while he was in Ottawa.

10. The copy of the email correspondence between the Development Officer and the Appellant shows that the Development Officer notified the Appellant on October 19, 2015 that the development had been approved.

11. The Board finds that the Appellant had actual or constructive notice that the permits had been approved on October 19, 2015. The Appellant did not file his appeals until November 4, 2015, which was 16 days after he was given notice of the Development Officer's decision. Accordingly, the appeals were filed late and the Board does not have jurisdiction to hear them.

12. The Board acknowledges that the Appellant reviewed the information on the City of Edmonton's website indicating he had 14 business days to file an appeal. This

information was subsequently changed on the website to reflect the fact that parties have 14 days to file an appeal. While the Appellant may have been misled because of this error, this does not have the effect of altering the provisions of the MGA, which the Board is bound by.

13. Even if the Appellant had filed the appeals on time, he still would not have a right of appeal because of Section 685(3) of the MGA, which states that there is no right of appeal in respect of development permits for permitted uses unless the provisions of the land use bylaw were relaxed, varied or misinterpreted.

14. The Appellant argued that the Development Authority was wrong that no variances are required. He contended that a variance is required in respect of Side Setback because one corner of the garage is only 0.9 metres from the property line. He also felt a variance is required in respect of maximum Site Coverage. He argued that, because the deck is more than one metre above ground, its area must be included in calculating maximum Site Coverage and, if it is, maximum Site Coverage is exceeded.

15. However, the Board finds that the corner of the garage is allowed to be as close as 0.9 metres from the property line by virtue of Section 50.1(4)(b) of the *Zoning Bylaw* and, therefore, no variance is required. The Board also finds that the deck is less than one metre above grade and that no variance is necessary in respect of maximum Site Coverage. The Board finds that the provisions of the Zoning Bylaw were not misinterpreted.

16. Therefore, the Board finds that there is no right of appeal pursuant to Section 685(3) of the *MGA*.

17. In the event the Board is incorrect about the need for variances, the Board would allow the necessary variances. In respect of the Side Setback for the garage, any encroachment into the Setback will be very minor. Regarding the deck, if it is more than one metre above grade, the amount that it exceeds one metre will be minimal. The Board would allow these variances because the Board is of the view that the variances will not unduly interfere with the amenities of the neighbourhood nor materially interfere with the use, enjoyment or value of the neighbouring parcels of land.

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

Edmonton Subdivision and Development Appeal Board

Churchill Building
10019 - 103 Avenue NW
Edmonton, AB T5J 0G9
Phone: 780-496-6079 Fax: 780-577-3537
Email: sdab@edmonton.ca
Web: www.edmontonsdab.ca

Date: December 11, 2015
Project Number: 169819194-001
File Number: SDAB-D-15-283

3652 - 8 Street NW
Edmonton AB T6T0S4

Notice of Decision

This is an appeal dated November 5, 2015, from the decision of the Development Authority to approve an application to operate a Major Home Based Business (a nail salon). The approved development permit was appealed by an adjacent property owner.

The subject site is on Plan 1125359 Block 2 Lot 60, located at 3652 - 8 Street NW. The subject site is zoned RSL Residential Small Lot 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 on December 2, 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:

   - Approved Development Permit;
   - Development Officer's written submission received by the Board on November 30, 2015; and
   - Additional submissions from the Development Officer, including aerial photographs of the subject property and standard conditions, received by the Board on December 2, 2015.

3. The Board began the hearing at 2:15 pm to provide the Appellant with fifteen extra minutes to arrive at the hearing. The Appellant did not attend the hearing. The Board reviewed the Appellant's written submissions and relied on them in making its decision.

4. At the outset of the hearing, the Presiding Officer noted that the Subdivision and Development Appeal Board Agenda incorrectly noted that the appeal had not been filed in time. The Board is satisfied the appeal was filed within the time allowed under Section 686(1) of the *Municipal Government Act* ("*MGA*").

The Board heard from the Development Officer, Mr. S. Cooke, who provided the following submissions:

1. In granting the permit, he considered the parking and traffic issues raised by the Appellant.

2. He determined there was adequate on-Site parking for the major home based business. There are four parking spaces in total, two spaces in the garage, and two spaces on the driveway. There are only two vehicles registered to the property.

3. In addition, the conditions in the Development Permit direct that clients must visit the business by appointment only, and that appointments shall not overlap. The hours of operation are restricted to 3 pm – 7 pm on weekdays and 10 am – 5 pm on weekends. The business operates four days per week, and there are no non-resident employees.

4. For these reasons, his view is that the conditions in the Development Permit are sufficient to reduce the impact of traffic and parking.

The Board heard from the Respondents, Ms. Pirasath and Mr. Kirupakaran, who provided the following submissions:

1. Although the business is classified as a major home based business, they will have a maximum of four clients visiting the business each day, each of whom will attend one at a time. They felt this would not impact traffic or parking in the neighbourhood.

2. They have a cement pad in the rear of the property with parking space for two additional vehicles.

3. In response to questions from the Board, they indicated they would encourage clients to park on the driveway and encourage them not to park on the street.

Decision:

The appeal is **DENIED** and the decision of the Development Authority is **CONFIRMED**. The Development is **GRANTED** as approved by the Development Authority.

Reasons for Decision:

1. The Board finds that the adoption of the conditions specified by the Development Authority will govern this Development.

    - The Development Permit may be revoked or invalidated, at any time, if the Home Based Business as stated in the Permit Details, or if the character or appearance of the Dwelling or Accessory Building, changes. This includes mechanical or electrical equipment used which creates external noise or interference with home electronic equipment in adjacent Dwellings. (Reference Section 23.5)

- This approval is for a 5 year period ONLY from the date of this decision. A new Development Permit must be applied for to continue to operate the business form this location after October 23, 2020.
- Any expansion of the business such as an increase in customers, addition of employees, changes to the hours of operation, or additional equipment requires that a new Development Permit MUST be obtained.
- There shall be no more than four business associated visits per day at the Dwelling. The business Use must be secondary to the residential Use of the building and no aspects of the business operations shall be detectable form outside the property. There shall be no non-resident employees or business partners working on-site.
- Client visits must be by-appointment only and appointments shall not overlap with each other.
- Hours of Operation shall be four days a week, including Saturday and Sunday. Weekday hours shall be 15:00-19:00. Weekend hours shall be 10:00-17:00.
- There shall be no exterior display or advertisement other than an identification plaque or sign a maximum of 20 cm (8") x 30.5 cm (12") in size located on the dwelling.
- No offensive noise, odour, vibration, smoke, litter, heat or other objectionable effect shall be produced.
- The business Use shall not involve the use of commercial vehicles or vehicles weighing over 4500 kg.
- The business Use must maintain the privacy and enjoyment of adjacent residences and the character of the neighbourhood.
- No commodity shall be displayed on the premises.
- There shall be no deliveries of supplies to the residential location.
- Residential properties do not store dangerous goods.
- There shall be no outdoor storage of materials associated with the business.
- There is absolutely no outdoor business-related activities at any time.
- All parking for the Home Based Business must be accommodated on site. Parking on the street in conjunction with this Home Based Business is not permitted.
- All commercial, industrial and overweight vehicles shall be parked at an approved storage facility when not in use. The Development Permit will be revoked if any commercial, industrial and overweight vehicles are parked/stored on the Residential Site.
- An approved Development Permit means that the proposed development has been reviewed only against the provisions of the *Edmonton Zoning Bylaw*. IT does not removed 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.

2. The Board notes that no parties appeared in favour of the appeal.

3. The Board finds that, because of the parking provisions the Respondents have incorporated into their plan and because there will only be one client at a time, neither parking congestion nor increased traffic will be an issue. Therefore, the Board is of the opinion that the development will not unduly interfere with the amenities of the neighbourhood nor materially interfere with 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. B. Gibson, Presiding Officer
Subdivision and Development Appeal Board