

## ***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

11816 - 139 Street  
Edmonton AB  
T5L 2B7

Date: December 18, 2015  
Project Number: 078043867-005  
File Number: SDAB-D-15-289

### **Notice of Decision**

This appeal dated November 11, 2015, from the decision of the Development Authority for permission to:

Develop a Garage Suite in an existing Accessory Building (2-Storey Garage, 8.53m x 9.14m)

On Plan 5844HW Blk 18 Lot 2, located at 11816 - 139 Street NW, was heard by the Subdivision and Development Appeal Board on December 3, 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 appeal was filed on time, in accordance with Section 686 of the *Municipal Government Act*, RSA 2000, c M-26.

The Board heard an appeal of the decision of the Development Authority to refuse an application to develop a Garage Suite in an existing Accessory Building (2-Storey Garage, 8.53m x 9.14m) located at 11816 – 139 Street NW. The subject site is zoned RF1 Single Detached Residential Zone and is within the Mature Neighbourhood Overlay.

The development permit application was refused due to an excess in the maximum allowed Floor Area for a Garage Suite.

Prior to the hearing the following information was provided to the Board:

- One online response from a property owner residing within the 60 metres Notification radius;
- Copy of the development permit application and plans submitted by the Development Officer;
- A copy of the Canada Post receipt confirming delivery of the Development Officer's decision; and
- Written submissions of the Development Officer.

The Board heard from Mr. Jean Beausoleil and Ms. Arlene Beausoleil, who provided the following information:

1. They are requesting a variance to use the whole space on the second floor of the Garage. In support, they referred to their written submission, Exhibit A.
2. They indicated that they had dismantled the deck on the back of the principal residence to meet the Separation Space requirement between the Garage and house, and that they had changed their Major Home Based Business to a Minor Home Bases Business to provide off-site parking for the truck.
3. They then produced updated photographs (Exhibit B) to show the present state of the Garage.
4. They pointed out that the Garage has been prepared for stuccoing.
5. They indicated that they could decrease the non-living space by adding storage; however, the footprint of the Garage will not change. From their neighbours' perspective, there will be no change in appearance to the Garage.
6. They submitted photographs (Exhibit C) depicting large Garages in the area with suites.
7. They pointed out properties at 13808 - 110Ave, 12273 - 134 St, 14012 - 106A Ave, and a suite attached to house at 13432 - 118 Ave.
8. They provided a Google Maps overhead shot of the 13432 - 118 Ave location (Exhibit E).
9. Referring to page 5 of Exhibit A, they indicated they are only proposing one bedroom for the suite, and that the suite will not be conducive for use by more than two people.
10. Two cars can be parked in the Garage, with a possibility for three cars to be parked at the rear of the garage with access off the lane.
11. Their property assessment has increased since the Garage was built, and they feel that the development improves the overall value of properties in the neighbourhood.
12. They talked to most of their neighbours, and with the exception of two who were neutral, received support for the development.
13. They indicated that several letters had been provided in support of the development.

The Appellants provided the following responses to questions from the Board:

1. Upon receiving approval from the Subdivision and Development Appeal Board in 2008, they began building in Fall 2009, and there has been very slow progress.
2. The building permit was approved on June 5, 2008, and they only changed the separation distance between dormers, as illustrated in the plans they submitted as Exhibit G.
3. When asked about the 2008 decision where a smaller suite had been proposed, they indicated that the suite was turned down and they were left using the upper space for storage.
4. The upper Storey of the Garage had been left as a shell for quite some time, as they realized regulations for Garage Suites were about to change.
5. The bathroom was finished in June 2015.
6. When asked about the two separate plans submitted that do not match, they indicated that their intent was to use the full 28 ft x 30 ft space for a Garage Suite

The Board heard from, Mr. George Robinson, Development Officer from the City of Edmonton Sustainable Development, who provided the following information:

1. He confirmed that the plan submitted for review, and upon which he based his decision, utilized the full space for the Garage Suite.
2. He acknowledged that the development will not result in exterior changes to the building housing the Garage Suite.
3. He confirmed that the Appellants had sought off-site vehicular storage for their Home Based Business and they had removed the deck to increase the Separation Space between the Garage and the house.
4. He stressed that the Site poses no hardship.
5. Rather than being located on the side of the garage, the entryway to the garage suite faces toward the house, which raises concerns about overlook onto the neighbor.
6. He indicated that should this appeal be approved, privacy screening to the north would be desirable.
7. He confirmed there is an excess of 18 square metres in the allowed floor area for the suite.
8. He suggested that the limit of 60 square metres was intended to make Garage Suites secondary to the principal Use on the property.
9. He pointed out that the development is a very large structure and that in his opinion, the variance requested is too large.
10. When asked about the impact of the development upon the neighbor to the north, he replied that there will be a material impact, as a two-Storey building with a Garage Suite will bring additional people and foot traffic to the property.
11. He generally supports Garage Suites, and infill guidelines do align with city administration desires.
12. When asked about the possibility of a second bedroom in the Garage Suite, he indicated he would be concerned, but that being said, there is confusion about what is actually planned.
13. He noted there were small changes from the original plans, and referred to pages 3 and 4 of the submitted plans.
14. He is still unclear as to which plans are being proposed for the construction of the suite.
15. He acknowledged the positive community consultation and that the only variance was the excess floor area.

**Decision:**

The appeal is GRANTED and the decision of the Development Authority is REVOKED. The development is GRANTED, subject to the following conditions:

1. The Appellant shall submit a detailed drawn-to-scale, second floor plan, outlining the layout of the proposed Garage Suite as a one-bedroom suite, to be submitted to the offices of the Subdivision and Development Appeal Board by January 4, 2016.
2. The plans shall show screening on the north side of the landing entry to the Garage Suite.

In granting the development, the following variance to the *Edmonton Zoning Bylaw* is allowed:

1. A variance of 18.04 square metres in excess of the maximum floor area of 60 square metres, pursuant to Section 87(3),

**Reasons for Decision:**

The Board finds the following:

1. The proposed development is a Discretionary Use in the RF1 Single Detached Residential Zone.
2. The Board notes that, despite the fact that no variance to the requirements of the Mature Neighbourhood was required, there was an extensive community consultation, which was generally very supportive of the proposed development.
3. While the excess in the floor area for the Garage Suite is significant, the Board notes that the proposed development is compliant with Policy 4.4.1 of the City's Municipal Development Plan, *The Way We Grow*: "Ensure neighbourhoods have a range of housing choice to meet the needs of all demographic and income groups and create more socially sustainable communities".
4. Nobody appeared in opposition to the development, nor were there any letters of opposition.
5. The building as it exists was previously approved, and there have been no material external alterations.
6. The Board notes that the proposed Secondary Suite is being installed in an existing building that was previously approved and granted a development permit, and that the building is in accordance with that approval. The proposed building will not result in any material change to the massing or size or dimensions of the previously approved 2 Storey garage that has existed without known complaints for approximately six years.
7. The Board is satisfied that, based on the above reasons, 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 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*, 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. N. Somerville, 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

11316 - 66 Street NW  
Edmonton AB T5B 1H6

Date: December 18, 2015  
Project Number: 176771671-001  
File Number: SDAB-D-15-290

### **Notice of Decision**

This appeal dated November 4, 2015, from an Order issued by Current Planning

To comply with an Order to demolish the existing Accessory Building (Detached Garage - 6.79 m by 7.40m) and remove materials from the site before May 30, 2016. (A Demolition Permit is required for the demolition of this building)

on Plan 1982HW Blk 1 Lot D, located at 9351 - 90 Street NW, was heard by the Subdivision and Development Appeal Board on December 3, 2015.

#### **Summary of Hearing:**

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

The Board heard an appeal from the decision of Current Planning to comply with an Order to demolish the existing Accessory Building (Detached Garage - 6.79 m by 7.40m) and remove materials from the site before May 30, 2016.

The subject site is zoned RF1 Single Detached Residential Zone and is within the Mature Neighbourhood Overlay.

Prior to the hearing, the following information was provided to the Board:

- 5 online responses in opposition to the development, from property owners who reside within the 60 metres notification radius;
- A copy of the Development Officer's written submission, received November 17, 2015;
- Supporting documents submitted by the Appellant;
- A copy of the Stop Order; and
- A copy of the decision of the Subdivision and Development Appeal Board on Appeal File Number SDAB-D-15-155.

The Presiding Officer disclosed that he had presided previously on the preliminary jurisdiction matter on Appeal File Number SDAB-D-15-155. He indicated he did not believe that his hearing on the jurisdiction matter would affect his ability to give an impartial hearing with respect to this Stop Order appeal.

Panel Member, Ms. Oviatt, disclosed that she is a resident of Strathearn, but she is not within the 60 metres notification area. She has driven past the subject property and is aware of it, but she does not have any prior knowledge of this appeal. She did not feel that she would be unable to provide a fair and impartial hearing.

Following the disclosures, none of the parties in attendance objected to the composition of the Panel.

The Board heard from the Appellant, Mr. Michael Cormier, who was accompanied by the Owner of the subject property, Mr. Steve Schippanoski. Together, they provided the following information:

1. There are limitations to siting the garage on this property due to numerous issues.
2. They wish to maintain the embankment trees and flower beds.
3. They did speak with the Development Officer prior to beginning construction and making the application.
4. The location of the Garage and the Driveway is positioned to alleviate vehicles bottoming out when coming onto the property from the lane. They indicated that there is a substantial Grade difference, which they indicated was as much as 6 feet high from the rear property line to where the Garage is currently situated.
5. They are looking for a functional Garage.
6. The finish of the Garage is similar to the dwelling
7. The Garage is not overheight, and it is designed to maintain the existing streetscape.
8. Mr. Schippanoski indicated they went to great lengths to ensure that the finish was compatible with the dwelling and the neighbourhood.
9. They want to maintain the natural environment of the property.
10. When questioned, they confirmed there is a 6 feet Grade difference from the lane.

The Appellants provided the following responses to questions from the Board:

1. With respect to the previous jurisdiction matter addressed in SDAB-D-15-155, Mr. Cormier confirmed that he missed the appeal deadline because he was getting married and missed the deadline for filing the appeal.
2. He was led to believe that Sustainable Development would likely approve the development due to the positive community consultation.
3. He indicated that this development is the only Garage he has built without a permit as he has built many in the City of Edmonton.
4. He indicated that he was told to apply for a second variance. He had faxed in an appeal but he was not sure which department received the form, and he did not follow up in this regard.
5. When notified that there was no permit, he was then told that he had to wait one year to reapply for the Garage.
6. The Garage was completed before the Stop Order was issued.
7. They considered building a compliant Garage by excavating the site to the rear of the property, but due to an existing Atco gas line, it was not possible.

8. The great difference in grade between the rear lane and the subject Site presents a unique challenge.
9. Neighbours are in complete support of the development.
10. The property was purchased in September 2010 without a Garage on Site.
11. There were numerous hurdles to obtaining a permit from Sustainable Development.
12. They admitted that when they applied the second time, construction of the Garage was already completed, so the second application was for a leave-as-built permit.
13. The second application was refused on April 30, 2015, and appealed on June 15, 2015.
14. Two neighbours to the north, and two to the south support the development. The abutting property owners supported the development as well, but one could not send a response because he did not have a computer. All others were verbally supportive.

The Board heard from, Ms. Kailey Lamont, Development Officer from the City of Edmonton Sustainable Development, who provided the following information:

1. There are two deficiencies on the Site: one is the aisle width to allow for the turning radius for the driveway. The width should be 7 metres, but it is only 4.88 metres, resulting in a 2.1 metres deficiency.
2. The Garage flanks a public roadway and requires a 2.44 metres Side Yard. The existing Side Yard is only 0.61 metres, which is deficient by 1.83 metres.

The Appellants provided the following information in rebuttal:

1. The Owner would like the Garage to stay.
2. Edmontonians need a Garage in the winter.
3. They now understand the process required to obtain a development approval.

**Decision:**

The appeal is DENIED and the decision of the Development Authority is CONFIRMED. The Stop Order is UPHeld.

**Reasons for Decision:**

The Board finds the following:

1. The Board is required to assess Stop Orders on the basis of whether they were properly issued.
2. In this case the structure was built and has been completed without a development permit.
3. The Board was provided no evidence and can find no reason to question the reasonableness of the Stop Order,
4. The Stop Order was issued correctly in accordance with Section 645 of the *Municipal Government Act*.
5. The Appellant failed to file an appeal of the decision to refuse the application for a development permit to leave as built within the required statutory time limit. However sympathetic the Board may be to the Appellant's position, the matter under appeal is the



decision of the Development Authority to issue a Stop Order, not the decision to refuse the development permit. As such, the Board has no jurisdiction to consider the merits of the development permit application.

6. For the above reasons, the appeal is denied and the decision of the Development Authority is upheld.
7. The Board notes that under the terms of the Stop Order, the Appellant will have the opportunity to make a proper application with “as built” plans for a development permit prior to the May 30, 2016 deadline for demolition of the existing Garage.

---

### **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. 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.
3. 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