



**EDMONTON
TRIBUNALS**

*Subdivision &
Development
Appeal Board*

*10019 - 103 Avenue NW
Edmonton, AB T5J 0G9
P: 780-496-6079 F: 780-577-
3537
sdab@edmonton.ca
edmontonsdab.ca*

Date: December 21, 2016
Project Number: 228839673-001
File Number: SDAB-D-16-317

Notice of Decision

- [1] On December 8, 2016, the Subdivision and Development Appeal Board (the “Board”) heard an appeal that was filed on **October 27, 2016**. The appeal concerned the decision of the Development Authority, issued on October 25, 2016, to refuse the following development:

Park a Recreational Vehicle in the Front Yard of a Single Detached House

- [2] The subject property is on Plan 3414TR Blk 38 Lot 17, located at 7108 - 39 AVENUE NW, within the RF1 Single Detached Residential Zone.
- [3] The following documents were received prior to the hearing and form part of the record:
- Copy of the Development Permit application with attachments, proposed plans, and the refused Development Permit;
 - The Development Officer’s written submissions; and
 - The Appellant’s written submissions.

Preliminary Matters

- [4] 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.
- [5] The Presiding Officer outlined how the hearing would be conducted, including the order of appearance of parties, and no opposition was noted.
- [6] The appeal was filed on time, in accordance with Section 686 of the *Municipal Government Act*, R.S.A 2000, c. M-26.

Summary of Hearing*i) Position of Legal Counsel, Mr. Van Doesburg, for the Appellant, Mr. Joritsma*

- [7] The Appellants have resided at the property since 1974, longer than their neighbours in the area.
- [8] The property is a wedge shape and is wider at the front than at the back. The rear of the property is too narrow to park a Recreational Vehicle (RV).
- [9] A concrete pad was poured in 1979. The RV has been parked at this location since 1978 prior to the concrete pad being poured.
- [10] They have not received any complaints from neighbouring property owners. The property is nicely landscaped and nothing is stored in or under the RV. There is no obstruction of sight lines and no safety issues.
- [11] They do not want to pay for storing the RV in the winter.
- [12] The concrete pad and parking of the RV has existed for many years and should be grandfathered in.
- [13] They submitted seven letters in support of the proposed development.
- [14] The RV does not interfere with the amenities of the neighbourhood nor the use and enjoyment of neighbouring properties.
- [15] They confirmed that the RV is 34 feet long, including the hitch.
- [16] The RV does not project over the side lot line and there is a 12-foot easement from the front property line to the sidewalk.
- [17] They confirmed that the RV is still parked on the property.
- [18] There is no fence between the neighbouring property and the subject Site but there is a fence behind the trailer.
- [19] This trailer is larger than the first trailer they owned, which was about 20 feet long.
- [20] They advised that they poured a concrete pad that is longer than their existing RV.
- [21] There is four feet between the house and the RV. If the RV was moved further back from the street, it would be hard to walk between the fireplace area and the RV. Moving the RV back would not take it off the City right-of-way.

- [22] The aerial photograph shows the width and length of the back yard. The distance between the rear double garage and the side lot line is only 15 feet, which is not enough room to back in an RV of any size.
- [23] The rear lane curves by their property and the ground slopes, which makes it impossible to park in this area.
- [24] Although the concrete pad at the front is nine feet wide and the space in the back yard is 15 feet wide, the Appellant is able to park on the concrete pad because the front street is more open, which allows room to maneuver the RV. Also, he uses part of his neighbour's property, with permission, to back over when he parks the RV on the pad. The rear lane is narrow with fence posts that would get in the way. He cannot use the rear driveway to maneuver the RV because there is a retaining wall beside the driveway and the ground slopes from the back corner of the garage to the lane.
- [25] There are 12 feet of City property in front of the lots in this neighbourhood. He stated that most neighbours park their vehicles on the City right-of-way because their driveways cross the right-of-way. The City requires them to maintain the right-of-way so they should be able to use it.
- [26] He referred to the map of the neighbourhood showing the 60-metre notification radius and pointed out that, out of 22 houses, 16 have front driveways. In the entire neighbourhood, there are 73 houses with 47 front driveways.
- [27] With regard to sight lines, the Appellant stated that there is no safety issue for traffic or pedestrians as the RV is parked far enough from the sidewalk.
- [28] The most affected neighbours east of the subject Site have no issues with the RV parked on the concrete pad.
- [29] There are seven letters in support of the development. Two are from the immediate neighbours to the west, two from the immediate neighbours to east and two from the neighbours directly across the street. The last letter was submitted by Mr. Wallace (in attendance), who lives at the end of the block east of the subject Site.
- ii) Position of Affected Property Owners in Support, Mr. Wallace*
- [30] He has lived in the area since 1998. The Appellant's property is well kept. He lives four houses from the subject Site and drives past the property several times a day. In his opinion, the RV does not interfere with sight lines for traffic and does not over hang the sidewalk. There are other fifth wheels parked on driveways in the area.
- [31] You would need a turning radius of approximately 40 feet to back the trailer into the rear yard, which is not possible in this back lane. There are other neighbours who have attempted to park RVs off the rear lane and they have damaged fences and lawns.

- [32] The RV has been there for several years with no complaints. In his opinion, the RV will not be parked there for many years to come.
- [33] He confirmed that he has an RV but is unable to park it at his property and stores it at a friend's property. The Appellant's RV is the only RV that is parked on the street year round. However, during the summer there are several RVs parked on the street or on driveways in the neighbourhood.

iii) Position of the Development Officer, Ms. Ziober

- [34] A file was created after a complaint was received.
- [35] The property is in the Millwoods Development Concept Plan.
- [36] There was a previous Stop Order issued that was before the Subdivision and Development Appeal Board.
- [37] The proposed development will not be compatible in the neighbourhood because the RV is parked in the front yard and projects onto the City right-of-way.
- [38] Section 45.3 of the *Edmonton Zoning Bylaw* states that no person shall keep an RV in a front yard for any longer than is necessary to load or unload it. Section 45.4 states that on Sites with no rear lane, RVs may be parked to within 2.0 metres of the interior edge of the sidewalk from April through October.
- [39] Parking an RV is not characteristic of the block face.
- [40] All the front driveways on this street are on the opposite side of the street from the Appellant's property. Driveways are often on only one side of the street to allow for easy access when entering and exiting driveways.
- [41] The subject Site has a rear lane access and some RVs could be stored in the back yard off of the rear lane.
- [42] It was her opinion that the RV could interfere with sight lines for traffic on the street. She did not circulate this application to Transportation for their opinion about sight lines.
- [43] She does not have any recommended conditions if the Board decides to approve the proposed development. However, the RV is too close to the sidewalk so requiring the RV to be moved back two metres could be a condition.

- [44] The Presiding Officer referred Ms. Ziober to the newspaper advertisement of notices for proposed developments submitted by the Appellant. A Development Officer approved a development permit allowing an RV to be parked year round in the front yard. She stated that it is not unheard of to allow this but the situation may have been different. The approved permit had a front attached garage whereas in this case there is a rear lane. She indicated that, although she stated in her written submission that parking an RV year round in a front yard is neither a Permitted nor a Discretionary Use, that is not the issue. The permit approved in the advertisement may have had no abutting lane, so the only option was to park in the front yard, which is an Accessory use to a Single Detached House. However, she could not confirm if that was the reason why it was approved.
- [45] She confirmed that the proposed development started with a complaint by a Municipal Enforcement Officer and not a neighbour.
- [46] She did not require a development permit for the concrete pad because it was poured in 1979 before a permit was required. The concrete pad was grandfathered in when the Bylaw changed in 2011.
- [47] She could not confirm if there was a prohibition for parking an RV in the Front Yard in 1979. A development permit may not have been required at that time.
- [48] She confirmed her decision to deny the development permit would have been the same even though several letters of support were received for the proposed development.
- [49] She stated that there is a reason why there is supposed to be at least a 2.0-metre setback from the lot line if there is no lane.
- [50] If the Board approves the proposed development she encourages the property owner to park the RV as far back as they can on the concrete pad.

iv) Rebuttal of the Appellant, Mr. Joritsma

- [51] He is agreeable to a 10-year limit on the development permit if it is approved by the Board.

Decision

- [52] The appeal is **ALLOWED** and the decision of the Development Authority is **REVOKED**. The development is **GRANTED** as applied for to the Development Authority, subject to the following **CONDITIONS**:

1. The permit has been approved for 10 years and will expire on December 21, 2026.

2. Any Recreational Vehicle parked in the Front Yard shall not project over the sidewalk.

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

1. The prohibition on any large Recreational Vehicle being kept in the Front Yard pursuant to Section 45.3 is waived to allow the proposed development.
2. The prohibition on any large Recreational Vehicle being parked within 2.0 metres of the interior edge of the sidewalk pursuant to Section 45.4(a) is waived to allow the proposed development.

Reasons for Decision

[54] The proposed development is to allow parking of an RV in the Front Yard year round in an RF1 Single Detached Residential Zone.

[55] Section 45.3 and 45.4 of the *Edmonton Zoning Bylaw* set out the limits on when an RV may be parked in Front Yards.

[56] The Appellant has owned this property since 1974 and he poured the concrete pad in his Front Yard in 1979 so he could store his RV there. An RV has been parked on the concrete pad since that time on a year round basis for the past 37 years.

[57] This application for a development permit was made necessary because of a complaint by a Bylaw Enforcement Officer. There have been no complaints from anyone in the neighbourhood.

[58] The Board accepts the Appellant's evidence that all the property owners in the 60-metre notification radius are in support of the proposed development.

[59] Several neighbours wrote letters of support expressing their view that the RV does not present any detriment to the neighbourhood and some felt it was positive for the neighbourhood.

[60] The Board accepts the Appellant's submission that, although there is rear lane access, the lane is too narrow to allow him to maneuver the RV into the Rear Yard and the Front Yard is the only place on his property he can park it.

[61] The area in the Front Yard adjacent to the RV has been landscaped, which mitigates the impact of having the RV parked in the Front Yard.

- [62] The Board accepts the evidence of the Appellant and the neighbour who attended in support of the proposed development that the parked RV does not interfere with the sight lines for traffic or with pedestrians using the sidewalk. The Board is satisfied that the RV can be parked far enough from the sidewalk that it does not have any negative impact on traffic or pedestrians.
- [63] The Board finds that, by imposing a ten-year expiry date on the approved Development Permit, this will limit any long term negative effect of allowing the RV to be parked in the Front Yard. The expectation is that, when the Appellant no longer occupies the property, RV parking in the Front Yard will cease.
- [64] Based on the above, it is the opinion of the Board that the proposed development will not unduly interfere with the amenities of the neighbourhood nor materially interfere with or affect the use, enjoyment or value of neighbouring parcels of land.

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

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*, RSA 2000, c M-26. If the Subdivision and Development Appeal Board is served with notice of an application for leave to appeal its decision, such notice shall operate to suspend the Development Permit.
6. When a decision on a Development Permit application has been rendered by the Subdivision and Development Appeal Board, the enforcement of that decision is carried out by the Sustainable Development Department, located on the 5th Floor, 10250 – 101 Street, Edmonton.

NOTE: The City of Edmonton does not conduct independent environmental checks of land within the City. If you are concerned about the stability of this property for any purpose, you should conduct your own tests and reviews. The City of Edmonton, when issuing a development permit, makes no representations and offers no warranties as to the suitability of the property for any purpose or as to the presence or absence of any environmental contaminants on the property.



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P: 780-496-6079 F: 780-577-
3537
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edmontonsdab.ca*

Date: December 21, 2016
Project Number: 182548244-007
File Number: SDAB-D-16-318

Notice of Decision

- [1] The Subdivision and Development Appeal Board (the “Board”) at a hearing on September 29, 2016, made and passed the following motion:

That the appeal hearing be tabled to December 7 or 8, 2016.

- [2] On December 8, 2016, the Board made and passed the following motion:

That SDAB-D-16-318 be raised from the table.

- [3] On December 8, 2016, the Board heard an appeal that was filed on **September 26, 2016**. The appeal concerned the decision of the Development Authority, issued on September 20, 2017, to approve the following development:

Construct an Accessory Building (Shed, 3.20 metres by 3.12 metres), existing without permits

- [4] The subject property is on Plan 8021676 Blk 46 Lot 20, located at 4123 - 27 AVENUE NW, within the RF1 Single Detached Residential Zone.

- [5] The following documents were received prior to the hearing and form part of the record:

- Copy of the Development Permit application with attachments, proposed plans, and the approved Development Permit;
- The Development Officer’s written submissions;
- The Appellant’s supporting documents;
- The Respondent’s supporting documents;
- An additional submission from the Appellant; and
- An additional submission in rebuttal to the Respondent’s submission.

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

- Exhibit A – Aerial map of the neighbourhood.

Preliminary Matters

- [7] 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.
- [8] The Presiding Officer outlined how the hearing would be conducted, including the order of appearance of parties, and no opposition was noted.
- [9] The appeal was filed on time, in accordance with Section 686 of the *Municipal Government Act*, R.S.A 2000, c. M-26.

Summary of Hearing*i) Position of the Appellant, Ms. Chan*

- [10] The existing shed does not comply with the *Edmonton Zoning Bylaw*. The distance to the Side Lot Line is less than 0.9 metres. The Site Coverage of the Accessory buildings is more than the 12 percent allowable.
- [11] The shed is not freestanding. The shed foundation is not stable, it is uneven, not properly built and the floor is in bad condition. The photographs submitted show that the shed is made from different kinds of materials.

The Presiding Officer asked the Appellant to address planning issues as the Board does not deal with the materials that were used to build the shed or the condition of the shed.

- [12] Ms. Chan stated that the materials used to build the shed are relevant because, if it is poorly built, she is concerned that it will collapse. If the shed collapses, with only a 0.1-metre setback, it will damage the fence.
- [13] If there are three feet between the shed and the property line she will not have to worry about damage to the fence.
- [14] With only a 0.1 metre setback, the area between the fence and the shed cannot be maintained.
- [15] The Respondents had another shed that was leaning on the fence between the properties, resulting in damage to her siding. When the new fence was constructed, it was built on her property.
- [16] She referred to the photographs submitted. The other shed had to be demolished. She is concerned that the exiting shed will also collapse and cause damage.
- [17] In her opinion, if the shed is in good condition as the Respondent claims, there should be no reason it cannot be moved three feet from the fence.

- [18] In her opinion, the existing shed has a negative impact on her property.
- [19] In response to questions by the Board, she stated that the new fence was built in 2015 and the shed is touching the fence.
- [20] The other shed was leaning on the fence, which pushed on her gate and damaged her siding. It also cracked her sidewalk. The other shed had to be demolished.
- [21] The previous fence was demolished because it was leaning toward her house and the shed was demolished at the same time.
- [22] The new fence was built on her property and she has a survey showing that the fence is on her property.
- [23] The Presiding Officer noted that the photographs appear to show that the eaves trough on the subject shed appears to be close to the fence but not to touch it. She responded that it depends on the angle from which you look at the shed. She referred to a piece of wood that had been attached to the fence that she said touched the shed. Now that the fence is on her property, the Respondent would have had to access her property to add this piece of wood.
- [24] The 0.1 metres between the fence and the shed is four inches. The typical eaves trough is between four and five inches wide. Based on this, she believes the eaves trough is touching the fence.
- [25] She stated that water running off the shed had been draining onto her property for several years until she made a complaint to the Drainage Department. She requested that a letter be sent to the Respondent to install an eaves trough on the shed so water would drain away from her property.
- [26] When asked how the shed affects her property, she stated that the shed is touching the fence and it is a matter of time before it collapses and damages her property.
- [27] The location of the shed is affecting the work she does in her yard. However, if the shed was moved three feet there will be no issues.
- [28] The fence was built in 2015 by a contractor with her help.
- [29] The existing shed is over 30 years old. She was not living at the property when the shed was built so she could not object to the location of the shed when it was built.
- [30] She acknowledged that, if the shed were three feet from the fence and collapsed, it could still damage the fence.

ii) Position of the Development Officer, Mr. Liang

- [31] Section 50.3(4)(b) of the *Edmonton Zoning Bylaw* is the regulation that governs side lot setbacks for all Accessory buildings, be they detached garages or sheds. Small sheds will not have the same impact on neighbouring properties as large detached garages.
- [32] It is not unusual for sheds to be located close to the property line. He submitted an aerial photograph, marked Exhibit A, of the neighbourhood showing 10 sheds that are located very close to the property line. This illustrated how common it is for smaller Accessory buildings like sheds to be closer than 0.9 metres to the side lot line.
- [33] In response to questions by the Board, he confirmed that, if a shed is under 10 square metres, it does not require a Development Permit. However, even a shed less than 10 square metres requires a development permit if it requires a variance. The existing shed requires a development permit because it does not meet the Side Setback requirement.
- [34] Sheds are often located close to property lines because this leaves more space in the yard.
- [35] He did not do a Site visit but a Development Compliance Officer did on several occasions. He believes there is space between the fence and the shed. The Site Plan submitted shows there is 0.13 metres between the fence and the shed.
- [36] With regard to Condition 5 that he imposed on the development permit stating that eave projections shall not exceed 0.46 metres, he acknowledged that this was larger than the 0.1 metre existing setback. He said this was a standard condition that he should not have imposed in this instance. An additional variance may be required if the Board confirms the development permit.
- [37] He advised that the *Zoning Bylaw* had been amended to make it clear that even an Accessory building less than 10 square metres requires a development permit if it requires a setback variance.

iii) Position of the Respondent, Mr. and Mrs. Nekolaichuk

- [38] They have lived at the subject Site since 1981.
- [39] The other shed referred to by the Appellant was demolished so they could pour a concrete pad at that location, not because it had collapsed.
- [40] The other shed did not fall or lean on anything but they demolished it on the advice of an Engineer.
- [41] The previous fence was 30 years old and was starting to lean so a new one needed to be built. This occurred in 2015. Four fences were built in the neighbourhood at that time by the same contractor.

- [42] He addressed the Appellant's submission that the shed is not even or level. The photographs submitted show that the shed is built with a gambrel or hip roof and is level. The photograph showing the inside of the shed demonstrates that the floor is intact and in good condition. However, the timbers under the floor are over 30 years old and would likely not survive an attempt to move the shed.
- [43] The photographs show that the shed has new shingles and stain. The five-inch wide eaves trough on the shed prevents drainage onto the Appellant's property.
- [44] The shed is not touching the fence.
- [45] The Appellant's property has been owned by four different people since 1988 and there have been no complaints about the shed until now.
- [46] He paid half the cost of the new fence so he is as motivated as the Appellant is to ensure that the shed does not cause damage to the fence.
- [47] The entire exterior of the shed has been sealed to keep it from deteriorating.
- [48] He referred to the photographs he had submitted showing other sheds in the neighbourhood that are close to the side property line. There are seven properties next to each other that have sheds close to the property line.
- [49] He did not circulate a form letter to neighbours as he did not want to get them involved.
- [50] He built the shed before the garage, which resulted in the Accessory building Site coverage being in excess of 12 percent.
- [51] In response to questions by the Board, he advised that the shed walls are two metres high and the Height of the peak is 2.26 metres.
- [52] When asked, he stated that he would not be opposed to a fence 2.44 metres high if the Appellant paid for it. He stated that the Appellant already has a seven-foot high fence in the rear yard that he is not opposed to.

iv) Rebuttal of the Appellant, Ms. Chan

- [53] Ms. Chan did not have anything to add in rebuttal.

Decision

[54] The appeal is DENIED and the decision of the Development Authority is CONFIRMED. The development is GRANTED as approved by the Development Authority, subject to the following amendment:

1. Condition #5 that the Eave projection shall not exceed 0.46 metre into the required Yards or Separation Spaces less than 1.2 metres is REMOVED.

Reasons for Decision

[55] The proposed development is Accessory to a Permitted Use in the RF1 Single Detached Residential Zone and is, therefore, a Permitted Use. (Section 50.1(2))

[56] The Board accepts the evidence submitted by the Respondent that the shed has existed in this location for 31 years with no complaints until now.

[57] When the shed was constructed, a Development Permit was not required. Recently the *Edmonton Zoning Bylaw* was amended to make it clear that a Development Permit is required if a shed such as this requires a variance because of its location relative to the side property line. This shed also requires a variance with respect Accessory building Site Coverage.

[58] Although the combined Accessory building Site Coverage is 13 percent instead of the allowable 12 percent, the Total Site Coverage is only 34 percent, which is less than the allowable 40 percent. Accordingly, even with the excess in Site Coverage for Accessory buildings, there is still plenty of amenity space in the back yard. The Appellant did not express any concerns with the Site Coverage issue. Based on the evidence submitted, this variance will not have any significant impact on the amenities of the neighbourhood or on neighbouring parcels of land.

[59] The Appellant's main concern was that the shed is located 0.1 metre from the property line instead of 0.9 metres as required in Section 50.3.4(b) of the *Edmonton Zoning Bylaw*.

[60] The Appellant is concerned that the shed is touching the fence. Based on the photographic evidence submitted to the Board, the Board is satisfied that the shed is not touching the fence.

[61] The Appellant is concerned that the shed could lean and damage the fence. When the fence was built in 2015, it was paid for jointly by the Appellant and the Respondent. The Board accepts the Respondent's evidence that he is as concerned as the Appellant is that the fence not be damaged by the shed. The Board is satisfied that, if the shed starts to lean and touch the fence, the Respondent will take measures to fix it.

- [62] The shed is well under the maximum Height for an Accessory building and has a gambrel roof, which reduces the massing of the top of the structure and reduces the visibility of the shed from neighbouring properties. The shed will have no appreciable sun shadowing effect on the Appellant's property.
- [63] The shed has an eaves trough installed along the edge closest to the fence that redirects drainage away from the property line.
- [64] The Board is of the view that allowing the shed to be 0.1 metres from the Appellant's property will not have any significant impact on the Appellant.
- [65] The evidence establishes that there are many properties in the neighbourhood where sheds like the subject one are closer to the side property line than 0.9 metres. Allowing the shed to remain in its current location will not be uncharacteristic of the neighbourhood.
- [66] Further, the shed is barely visible from the street or the rear lane.
- [67] Based on the above, it is the opinion of the Board that the proposed development will not unduly interfere with the amenities of the neighbourhood, nor materially interfere with or affect the use, enjoyment or value of neighbouring parcels of land.

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

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4. A Development Permit will expire in accordance to the provisions of section 22 of the *Edmonton Zoning Bylaw, Bylaw 12800*, as amended.
5. This decision may be appealed to the Alberta Court of Appeal on a question of law or jurisdiction under section 688 of the *Municipal Government Act*, RSA 2000, c M-26. If the Subdivision and Development Appeal Board is served with notice of an application for leave to appeal its decision, such notice shall operate to suspend the Development Permit.
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P: 780-496-6079 F: 780-577-
3537
sdab@edmonton.ca
edmontonsdab.ca*

SDAB-D-16-264

Application No. 176981065-003

An appeal by 413140 Alberta Ltd. to construct exterior alterations to an approved Accessory Building (rear detached garage, 7.3 m x 6.1 m) was **TABLED TO JANUARY 5, 2017.**