

***Edmonton Subdivision and
Development Appeal Board***

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SDAB-D-15-031

Application No. 147598066-001

An appeal by McCoy Real Estate Ltd. VS Hartwig Architecture Inc. construct a 250 Dwelling Unit Apartment Housing Development with ground floor commercial units (General Retail Stores) and underground parkade (Corners 1) on Plan RN23 Blk 1 Lot 1, located at 10225 - 95 STREET NW and Plan 1221938 Blk 1 Lot 2, located at 10225 - 95 STREET NW was **TABLED TO FEBRUARY 25, 2015.**

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DATE: February 27, 2015
PROJECT NO.: 161959978-002
FILE NO.: SDAB-D-15-032

NOTICE OF DECISION OF THE SUBDIVISION AND DEVELOPMENT APPEAL BOARD

This appeal dated January 16, 2015, from the decision of the Development Authority for permission to:

Construct a rear uncovered deck (irregular, 6.10 metres by 6.10 metres at 1.32 metres in Height), hot tub, and swimming pool (all existing without permits)

on Plan 0626545 Blk 15 Lot 70, located at 815 - Hardy Place NW, was heard by the Subdivision and Development Appeal Board at its hearing held on February 12, 2015. The decision of the Board was as follows:

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, R.S.A. 2000, c. M-26.

The Board heard an appeal of the decision of the Development Authority to approve an application to construct a rear uncovered deck (irregular, 6.10 metres by 6.10 metres at 1.32 metres in Height), hot tub, and swimming pool (all existing without permits), with variances granted in the allowable projection into the Rear Setback and the deficiency in the minimum required Side Setback, subject to conditions. The subject Site is zoned RSL Residential Small Lot Zone. The approved development permit application was subsequently appealed by an adjacent property owner.

The Board notes that no letters were received in support or in objection to the proposed development.

The Board heard from Mr. Brown, the Appellant, who made the following points:

SUMMARY OF HEARING CONTINUED:

1. In his opinion, there is a calculation error. A rear setback of 7.50 metres is allowed in the RSL Residential Small Lot Zone and a 2.00 metres projection is allowed. Therefore, there should be a 5.50 metres distance between the rear edges of the deck to the property line.
2. He has utilized a measuring tape and determined that there is approximately 4.4 metres from the rear edge of the deck to the fence, and therefore, an additional 1.10 metres is required.
3. The Respondent can see over the fence and peer into his backyard when standing on the deck, which creates a privacy impact.
4. He provided the Board with photographs 1 to 4 showing the height of the neighbouring deck taken from his kitchen window, marked Exhibit "A".
5. He has also utilized Google Maps and determined that there is approximately 4.78 metres from the rear edges of the deck to the fence line. By either of these two calculations, the information stated within the development permit was incorrect.
6. The subject property is for sale and this was the opportunity to address his concerns.
7. The grade on the subject property slopes toward the south rear fence line.
8. He is concerned about the saturation of his grass west of the hot tub and swimming pool. He was unsure if the water was derived from leaking or splashing of water by the users of the swimming pool.

In response to questions by the Board, Mr. Brown provided the following information:

1. He stated that there is a significant north-south slope of the grade commencing approximately at the mid-point of the house.
2. The saturation of his rear yard along the fence line spans approximately 4 to 5 feet.
3. There has been water pooling on the sidewalk south of the Respondent's property.
4. He confirmed that elevated decks are characteristic of the neighbourhood.
5. He stated that while it is possible to see into the neighbouring properties' backyards when he is sitting on his deck; it is not possible to see his neighbours sitting on their deck from inside his home.

The Board then heard from Mr. M. Bastura, the Respondent, who made the following points:

SUMMARY OF HEARING CONTINUED:

1. He purchased the property in 2009 without any landscaping completed. However, a standard deck was provided by the builder of the house.
2. Landscaping in the front and rear yards of the property was professionally completed in 2010.
3. He provided the Board with a site plan and photographs of his house and the neighbouring properties, marked Exhibit "B".
4. He referred to his photographs which depicted a direct view of the Appellant's kitchen from his deck; a direct view of the neighbour's deck to the east; and decks of neighbouring properties to the south across Hemingway Road, which are visible above the fence line.
5. He stated that the development of two-storey houses on small lots is common in new subdivisions which results in no privacy between neighbouring properties.
6. He referred back to his photographs and stated that he could easily look into the Appellant's rear yard from the second floor window of his home.
7. He stated that the noise generated from the Appellant's rear yard can be heard from the second floor window of his home in the summer. It is an unavoidable situation given the lack of separation space between both houses.
8. He referred to Photograph #7 from Exhibit "B" which was taken at ground level and shows a clear view into the Appellant's property.
9. Photograph #7 also shows a red mark placed on the existing deck depicting where the deck would be allowed to project as per the requirements of the Zoning Bylaw.
10. In his opinion, the additional projection of his deck does not make a difference in privacy on the Appellant's property.
11. The rear yard of the Appellant's property is flat along the fence line which impedes proper drainage on the lot which is the cause of saturation.
12. In terms of privacy issues, he stated that the Appellant's rear yard does not have any vegetation and could plant some poplar or deciduous trees to address the privacy issue.
13. The Appellant has never discussed his concerns of the development with him.
14. He constructed the deck, hot tub, and pool for his children, and it is his belief that the development will increase the property value of his home.
15. He referred to a voicemail message on his cellular phone from the neighbouring property owner to the east stating that she did not have concerns with the development.

SUMMARY OF HEARING CONTINUED:

16. In his opinion, the development does not negatively impact the neighbouring properties.

In response to questions by the Board Mr. Bastura provided the following information:

1. The Site Plan in Exhibit "B" shows the measurement submitted to the Development Authority, which is the correct measurement.
2. The grade on his property slopes south toward the rear fence and slightly to the west toward the Appellant's property.
3. He was not aware that the development did not have a development or building permit until he began the process of selling his house.
4. The height of the deck matches the height of the swimming pool.
5. In response to whether the hot tub and the swimming pool are temporary structures, he conceded that it was a portable structure although it is located on a cement pad. He stated that the swimming pool can be disassembled.
6. He stated that there was a past incident in 2010 where one of the fittings on the hot tub was leaking and had to be replaced which could have created some of the saturation of grass in the Appellant's rear yard.

In rebuttal, Mr. Brown made the following points:

1. He tried to speak to the Respondent on several occasions regarding the saturation of grass on his property; however, the Respondent indicated that there was no issue.
2. He confirmed the southeast corner of his rear yard is above the final grade requirement as stated in his development permit and is finished with washed rock, drainage material, and fake grass.
3. He confirmed that the southeast corner of his rear yard is saturated along the south fence line from the hot tub.
4. Although he could plant trees to mitigate privacy issues, in his opinion, the Bylaw is in place for a reason and mitigating the privacy concern should not come at his expense.
5. In his opinion, privacy is an amenity within the neighbourhood. Although Hemingway Road is a busy street with a large amount of vehicular traffic, drivers cannot view past the fence of neighbouring properties. In addition, the orientation of the neighbouring houses and decks prevent intrusion of privacy when one is utilizing its deck.

SUMMARY OF HEARING CONTINUED:

In response to questions by the Board, Mr. Brown provided the following information:

1. With regard to whether or not the hot tub and swimming pool are temporary or portable, he stated that he was unsure; however, it appears to be portable.
2. He reiterated that his main concern is the additional 1.10 metres projection of the deck which will impact his privacy.

DECISION:

that the appeal be DENIED and the decision of approval by the Development Authority CONFIRMED.

Variances:

1. Section 44.3(a) relaxed - Platform Structures provided such projections do not exceed 2.0 metres into Setbacks or Separation Spaces with a depth of at least 4.0 metres

Allowable Projection into the required Rear Setback:	2.00 metres
Existing Projection into the required Rear Setback:	2.03 metres
Deficient By:	0.03 metres

2. Section 50.3(4)(b) relaxed – an Accessory building or structure shall be located not less than 0.9 metres from the Side Lot Line, except where it is a mutual Garage erected on the common property line to the satisfaction of the Development Officer, or where a Garage is placed on the common property line in accordance with the provisions of the RPL Zone, or where the Accessory Building does not exceed the permitted fence height or in the case of Garage Suites, where the minimum Side Setback shall be in accordance with Section 87.

Minimum required Setback from the Side Lot Line (to hot tub):	0.90 metres
Existing Setback from the Side Lot Line (to hot tub):	0.30 metres
Deficient By:	0.60 metres

Minimum required Setback from the Side Lot Line (to swimming pool):	0.90 metres
Existing Setback from the Side Lot Line (to swimming pool):	0.60 metres
Deficient By:	0.30 metres

DECISION CONTINUED:

Conditions

Any future deck enclosure or cover requires a separate development and building permit approval.

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. (Reference Section 5.2 of the Edmonton Zoning Bylaw 12800).

REASONS FOR DECISION:

The Board finds the following:

1. The proposed development is Accessory to a Permitted Use in the RSL Residential Small Lot Zone.
2. Based on the evidence submitted, elevated Platform Structures are characteristic of the neighbourhood.
3. The Appellant's main concern is the projection of the Platform Structure into the required Rear Setback.
4. The Board determined that the Rear Yard measured from the foundation of the house to the Rear Lot Line is 11.57 metres based on the Real Property Report submitted as part of the Development Application.
5. The subject Platform Structure projects 6.10 metres from the rear foundation of the house. Therefore, a distance of 5.47 metres is provided from the rear edges of the deck to the Rear Lot Line. The minimum required Rear Setback is 7.50 metres and the maximum projection of a Platform Structure is 2.00 metres. Therefore, a Rear Yard of 5.5 metres in length is required. The correct variance (5.50 metres – 5.47 metres) is 0.03 metres.
6. The Board accepts the evidence of the Respondent that there is less privacy between neighbouring properties in the RSL Residential Small Lot Zone due to the size and width of the lots.
7. There is no objection to the proposed development from the immediate neighbour east of the subject Site and there is no letter of objection received from any neighbours south of the Site.

REASONS FOR DECISION CONTINUED:

8. Immediately south of the proposed development is an arterial road, which minimizes the impact for neighbours to the south of the site.
9. The Board is not satisfied that any water saturation concerns are due solely to the proposed development or that it would have any impact on the use or value of neighbouring properties
10. 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.

IMPORTANT INFORMATION FOR 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. 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.
3. A Development Permit shall expire and shall no longer be valid after one year from the date of approval of the Permit, if no construction has been initiated. However, if the permit holder is unable to proceed pending a court decision involving the proposed development, time shall not run until such proceedings are finally completed. For further information, refer to Section 22 of the Edmonton Zoning Bylaw, 12800.
4. Notwithstanding clause (3) above, if a Building Permit is issued for the development within the twelve month period, the Development Permit issued therefore shall not lapse unless and until the Building Permit so issued is cancelled or allowed to lapse by virtue of work not having commenced within the statutory minimum period.
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.

Ms. D. Poon Phillips, Presiding Officer
SUBDIVISION AND DEVELOPMENT
APPEAL BOARD

CC:

NOTE: Citizens can call 311, 24-hours a day, every day of the year for access to City of Edmonton information, programs and services.