

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: March 4, 2016
Project Number: 184742186-001
File Number: SDAB-D-16-056

Notice of Decision

[1] On February 18, 2016, the Subdivision and Development Appeal Board heard an appeal that was filed on January 20, 2016. The appeal concerned the decision of the Development Authority, issued on January 12, 2016, to approve the following development:

To construct exterior and interior alterations (new doors and windows) and develop a Secondary Suite in the Basement of an existing Single Detached House.

[2] The subject property is on Plan 3614NY Blk 58 Lot 10, located at 11427 - 38 Avenue NW, within the RF1 Single Detached Residential Zone. The Mature Neighbourhood Overlay applies to the subject property.

[3] The following documents were received prior to the hearing:

- Development Permit Application;
- Development Officer's Written Submissions;
- Development Officer's photographs, plans, and supporting information; and
- Current Planning Waiver.

Summary of Hearing

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

i) Position of the Appellant, Mr. B. Lange

[6] Mr. Lange is opposed to the proposed development because he believes the Secondary Suite will bring new tenants and strain the already limited on-street parking.

[7] Parking is limited because of seasonal flooding and the close proximity of a school.

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

- [8] The Driveway of the proposed development encroaches on City property (the rear laneway) because two of the three parking spaces do not meet the minimum length of 5.5 metres required by Section 54.2(4)(a)(i) the *Edmonton Zoning Bylaw*.
- [9] The shortfall in overall length is an issue of definition, not practical application, as the rear Driveway can still fit two small vehicles.
- [10] In this case, the variance has even less impact given the configuration of the rear lane.

iii) Position of the Respondents, Mr. Z. Stelmack and Ms. M. Mallett

- [11] The Respondents seek a variance to the minimum required length of the parking spaces in order to preserve mature trees and retain the integrity of the mature neighbourhood.
- [12] As shown in photographs submitted to the Board, they have a large truck that fits on the rear Driveway and only one space on the rear Driveway impacts access the Garage.

Decision

- [13] The appeal is DENIED and the decision of the Development Authority is CONFIRMED. The development is GRANTED as approved by the Development Authority. In granting the development the following variance to the *Edmonton Zoning Bylaw* are allowed:
- i) A variance of 0.21 metres under Section 54.2(4)(a)(i) to the required length of both on-Site parking spaces located on the rear Driveway as indicated on the attached site plan.

Reasons for Decision

- [14] The proposed development is Accessory to a Permitted Use in the RF1 Single Detached Residential Zone.
- [15] The Appellant failed to raise any valid planning reasons to establish that a variance of 0.21 metres in the length of two of the on-Site parking spaces would have any material adverse impact or interference.
- [16] If the variance is granted, the subject Site provides all three required on-Site parking spaces: one in the single detached Garage and two on the rear Driveway. Accordingly, the requested variance will alleviate any potential on-street parking congestion, which was the sole concern cited by the Appellant at the hearing.

- [17] The two on-Site parking spaces on the rear Driveway are 0.21 metres short of the required length. However, based on the photographic evidence provided by the Appellant and the Site conditions it appears that two full-sized vehicles may be parked on the existing rear Driveway without impact on access in the rear laneway.
- [18] In addition, one of the two parking spaces for which a variance is granted is not a tandem parking space and has no impact on accessing the parking space in the Garage.
- [19] The Board notes that in granting the variance of 0.21 metres, the owners are able to use the existing Driveway for parking space and consequently to preserve mature trees which would otherwise have to be removed to provide a parking space in the rear yard. The variance thus maintains the integrity of the mature neighbourhood
- [20] Given the above, the Board finds that the proposed Secondary Suite meets the requirements for on-Site parking and the development has no material adverse impacts and would not unduly interfere with the amenities of the neighbourhood, or materially interfere with or affect the use, enjoyment or value of neighbouring parcels of land.

Ms. K. Cherniawsky, Presiding Officer
Subdivision and Development Appeal Board

Enclosure

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.

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Date: March 4, 2016
Project Number: 181646896-002
File Number: SDAB-D-16-057

Notice of Decision

- [1] On February 18, 2016, the Subdivision and Development Appeal Board heard an appeal that was filed on January 26, 2016. The appeal concerned the decision of the Development Authority, issued on January 7, 2016, to approve the following development:

To construct an overheight fence (maximum height at 2.29m).

- [2] The subject property is on Plan 6773MC Blk 12 Lot 98, located at 4003 - 125 Street NW, within the RF1 Single Detached Residential Zone. The Mature Neighbourhood Overlay applies to the subject property.
- [3] The following documents were received prior to the hearing:
- Development Permit Application;
 - Minor Development Permit;
 - Development Officer's Written Submissions; and
 - Letter of opposition from M. Heatherington.

Preliminary Matter

- [4] Prior to hearing the substantive elements of the appeal, the Board determined it could accept jurisdiction of the matter because the appeal had been filed within the legislated time limits required under Section 686(1) of the *Municipal Government Act*.
- [5] The Development Officer's decision was made on January 7, 2016, the decision was mailed on January 12, 2016, and the appeal was filed on January 26, 2016.
- [6] The Board relied on Section 23(1)(a) of the *Interpretation Act*, which provides that service of a document is presumed effected seven days from the date of mailing the document (within Alberta) unless the contrary is proved. In the absence of contrary evidence to rebut the presumption in the *Interpretation Act*, the Board accepts that service was effected January 19, 2016, and that the Appellant had 14 days from that date to file a Notice of Appeal, which he did.

Summary of Hearing

[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 Appellant did not appear at the hearing. The Subdivision and Development Appeal Board office called the Appellant on the telephone number he provided with his appeal form and left him a voicemail message. A few minutes later, he contacted the Board's office and advised: he was in the Dominican Republic; he would not be attending the hearing; and, the Board could proceed in his absence on the basis of his written submissions.

i) Position of the Appellant, Mr. D. Lamarche

[9] Given that Mr. Lamarche did not attend the hearing and asked the Board to proceed on the basis of his written submissions, the Presiding Officer read his reasons for appeal into the record. They are as follows:

“If this fence is built to a height of 2.29m, it will cause:

- A sun-shadowing effect, in our garden and backyard.
- I will be unable to see the bus stop, and street from my office.
- It will create a massing effect for our home, and we will feel closed in.
- It will reduce light into our home windows, and visibility out of our windows.
- It would ruin our aesthetics, streetscape and affect our property value.
- We presently have a black chain link fence, built on our property.

Photos to follow over next few weeks.” [unedited]

ii) Position of the Development Officer, Ms. K. Bauer

[10] Ms. Bauer confirmed that the appeal concerns only a fence along the rear Lot Line adjacent to the rear lane. It does not apply to the portions of the fence along the side Lot Lines.

[11] Fence Height is calculated by standing approximately one-foot back from the fence. She is satisfied that the highest point of the fence is 2.29 metres.

[12] She granted a variance of 2.29 metres to the fence Height for four reasons. First, the impact of the fence along the rear lane on the neighbouring properties is minimal. Second, a pre-existing shed in the corner of the property already creates a sun shadowing effect and the fence will add little to this effect. Third, the fence is aesthetically pleasing and well-constructed. Fourth, there are grade variations along the rear Lot Line which make fence construction challenging.

iii) Position of the Respondent, Ms. L. Chen

- [13] Ms. Chen addressed each of the Appellant's concerns as set out in his reasons for appeal, noting that the Appellant had failed to substantiate any of his allegations:
- i) With respect to the sun shadowing effect cast on the Appellant's home, Ms. Chen provided photographs of the sun shadowing effect at various times of the day to show that the fence does not shadow the Appellant's property which is located to the south and east of her property. Any sun shadow cast on his property is as a result of his own home.
 - ii) With respect to the Appellant not being able to see the bus stop from his home, Ms. Chen provided bus route information showing that the bus route is visible from the front of the Appellant's home. Given the location of the bus routes, the Chen home cannot possibly obstruct the view of any bus stop from the Appellant's home.
 - iii) With respect to the Appellant's assertion that the Respondent's fence creates a massing effect or negative impacts on sightlines, Ms. Chen provided photographs establishing that there is no such effect given the location of the Appellant's house in relation to the fence and given that the Appellant's house is taller than her house.
 - iv) With respect to the Appellant's contention that the fence would ruin the aesthetic of the neighbourhood, Ms. Chen provided photographs evidencing the difference between the former fence and the new fence. The former fence was worn out, leaning, and non-compliant with the property line. The new fence has been built using quality construction materials and complies with the property line.
- [14] Ms. Chen canvassed her neighbours to determine whether they supported or objected to the fence. Twenty-four of twenty-six neighbours responded. None of them objected to the fence and they all agreed that the alleged negative impacts were non-existent.
- [15] The fence was built with 6-foot boards. There was no intent to disregard the Bylaw.
- [16] There is a change in elevation along the rear Lot line and a difference in elevation between the subject Site and rear lane. These factors impacted the design and Height of the fence.
- [17] One neighbour submitted a letter of opposition the Board regarding the proposed development, contending that changes to the grade elevation of Ms. Chen's home present drainage and snow removal issues which impact her access. In response, Ms. Chen provided photographs of her yard and explained that the disruption of the soil was only for the purposes of constructing the fence and that there is no change in the grade elevation. She also argued that there is no parking or access issue because, unlike the old fence which encroached on the rear lane, the new fence is located entirely within her property line.

Decision

- [18] The appeal is DENIED and the decision of the Development Authority is CONFIRMED. The development is GRANTED as applied for to the Development Authority. In granting the development the following variance to the *Edmonton Zoning Bylaw* is allowed:
- i) The maximum fence Height of 1.85 metres required in Section 49.3 is varied to allow a fence Height of 2.29 metres.

Reasons for Decision

- [19] The fence is Accessory to a Permitted Use in the RF1 Single Detached Residential Zone.
- [20] The Board accepts the Development Officer's calculation that the highest point of the fence is 2.29 metres in Height.
- [21] The Board also accepts the submissions of the Development Officer, who justified the variance based on the unique grade characteristics of the lot and the quality of construction and location of the fence. The Board accepts the Development Officer's submissions that the impacts of the proposed development are minimal, if any.
- [22] The Appellant failed to provide any evidence to support his objections to the proposed development, which included sun shadowing effect, obstructed view of a bus stop, massing effect, reduction of sunlight and visibility, and negative impact on the aesthetics and streetscape.
- [23] The Board accepts the Respondent's evidence, including photographic evidence, refuting each of the Appellant's unsupported objections.
- [24] The Board also accepts the Respondent's evidence of overwhelming support of neighbours who also specifically refuted the existence of the adverse impacts alleged by the Appellant.
- [25] The proposed development will replace a worn out fence, which was non-compliant with the property line. The new fence has been constructed entirely within the property line and has no adverse impacts on the streetscape of the alleyway.
- [26] The Board finds the additional objections contained in the letter of the neighbour across the rear laneway are irrelevant as the sole requested variance is for Height, not location. Also according to the evidence, the fence is now located entirely within the subject Site.
- [27] The Board has not imposed the conditions contained in the Minor Development Permit approval, as the Board finds that they do not relate to the fence which, according to the evidence, is the sole development at issue in this appeal. Further, the conditions are

within the purview of Transportation Services. Accordingly, the Board makes no comment about their merit or enforceability.

- [28] Based on the above, the Board finds that the proposed development does not unduly interfere with the amenities of the neighbourhood, or materially interfere with or affect the use, enjoyment or value of neighbouring parcels of land.

Ms. K. Cherniawsky, Presiding Officer
Subdivision and Development Appeal Board

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