



**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: March 9, 2017
Project Number: 231953918-002
File Number: SDAB-D-17-040

Notice of Decision

- [1] On February 23, 2017, the Subdivision and Development Appeal Board heard an appeal that was filed on **January 31, 2017**. The appeal concerned the decision of the Development Authority, issued on January 19, 2017, to refuse the following development:

Construct Exterior Alterations (Driveway Extension) to an existing Single Detached House, existing without permits.

- [2] The subject property is on Plan 1026123 Blk 12 Lot 14, located at 4203 - Westcliff Court SW, within the (RSL) Residential Small Lot Zone. The Windermere Area Structure Plan and Windermere Neighbourhood Structure Plan apply to the subject property.
- [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;
 - Canada Post Receipt; and
 - The Appellant's written submissions and additional support materials.
- [4] The following exhibits were presented during the hearing and form part of the record:
- Exhibit A – Photo of driveway / walkway marked up at hearing.

Preliminary Matters

- [5] 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.
- [6] The Presiding Officer outlined how the hearing would be conducted, including the order of appearance of parties, and no opposition was noted.

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

Summary of Hearing

i) Position of the Appellant, R. Toor

- [8] Mr. Toor was accompanied by Mr. S. Sahota who was there to assist with questions regarding the revised measurements.
- [9] The driveway and walkway were constructed at the same time by an experienced contractor. When the work was completed Mr. Toor realized the driveway was larger than the 7.4 metres he had applied for. His contractor indicated that the greater width was in line with what was permitted and allowed for the safer maneuvering of vehicles. Also, the wider driveway was more in line with existing driveways in the neighbourhood. The contractor advised Mr. Toor he may need to apply for a Minor Development Permit for the extension, but did not feel this would be a problem.
- [10] Mr. Toor stated that since he has three on-site parking spaces in his garage, the Bylaw allows a driveway width of 9.3 metres (based on 3.1 metres per parking space) plus walkway space of more than 2 metres to go to his front stairs. The maximum width of his combined driveway / walkway is only 11.1 metres. Many homes in this neighbourhood have driveway / walkway combinations that are 12 metres wide or more. Mr. Toor displayed a series of pictures of other properties to illustrate this. He indicated that the majority of the properties were within 50 metres of his property. Some pictures showed driveways on corner lots with similar access points, some in close proximity to the subject Site and others further away. He was unaware if legal permits were in place for these developments.
- [11] The Appellant referred to the Real Property Report attached to the memorandum from the City of Edmonton Transportation Department which stated the following Condition:
- Vehicular access located through the corner radius is unacceptable. No portion of the driveway shall encroach within the corner radius of the roadway. Further to this, the owner/applicant shall install a permanent barrier or landscaping feature within property lines, as shown on the Enclosure, to prevent the use of the existing curb ramp for access purposes to Westcliff Court SW roadway from the subject site and alleviate parking within the front yard.
- [12] Mr. Toor argued that no vehicles will drive over the curb ramp. He believes the curb ramp is limited to the sloped, central triangular portion of scored cement and does not include the portion of the sidewalk which tapers down to meet that triangular portion. Mr. Toor believes that Transportation's comments were based on the yellow mark-up on the

enclosed Real Property Report which incorrectly shows the driveway as touching the curb ramp. Mr. Toor had Pal's Survey come out and provide the correct location of the curb ramp on the same Real Property Report (marked revised January 20, 2017). This stamped and certified revised report shows that there are 2.5 metres from the corner of the driveway to the curb ramp. He confirmed that the yellow highlighted area is covered in concrete.

- [13] He did not provide the revised Real Property Report to the Transportation Department, but uploaded it to the appeal website when he filed his appeal. There is landscaping between the edge of the driveway and the curb ramp making it impossible for anyone to back out of the driveway and over the curb ramp to get to the street. He disputes that the driveway is over his property line.
- [14] In his view, the blue markings outlining the curb ramp on the aerial photograph submitted by the Development Officer are not to scale and the area shown is much too large. His understanding of a curb ramp is that it consists of the small triangular area which slopes toward the street for ease of wheelchair access.
- [15] A photograph (Exhibit "A") was displayed on which the Appellant delineated the following:
- a. A 2.5 metre separation distance from the edge of the walkway to the edge of the curb ramp;
 - b. The perimeter of the landscaping; and
 - c. The start of the driveway.

The Appellant pointed out the curb ramp on the photo and said that the frontage of the driveway stops well short of it. He recognized that a further portion of the sidewalk closer to the driveway is tapered to meet the access ramp.

- [16] All landscaping was done to the full satisfaction of the developer in compliance with the architectural guidelines, and was designed to blend in with the neighbourhood. The architectural guidelines required organic shapes rather than just a rectangular driveway. A \$10,000 landscaping deposit was not released until the final inspection report was completed satisfactorily.
- [17] Mr. Toor spoke to all of his immediate neighbours and received no objections to his driveway extension. Many of these neighbours also have extended driveways. He submitted a set of letters indicating their support.
- [18] He referred to a safety study which states that most fatalities of toddlers happen on residential driveways by reversing vehicles. His extended driveway allows enough turning radius to bring a vehicle (particularly a truck) in or out safely, and drivers make it a point to face the street when exiting the driveway.

ii) Position of the Development Officer, K. Yeung

- [19] Mr. Yeung attended on behalf of Mr. J. McArthur, the Development Officer who had refused this application.
- [20] The width of the driveway was not cited as a reason for refusal. Transportation Department was concerned about driveway access and the landscaping requirements. He confirmed that there is a required 4.5 metre side yard which must be landscaped and cannot contain any portion of a driveway.
- [21] The revised Real Property Report was not submitted to the Transportation Department by the Development Officer as he had already issued the refusal based on the materials submitted with the application. Mr. Yeung agrees that the curb ramp seems to be located in a different position on the two drawings. He is not sure how the Transportation Department defined the ramp or if the surveyor included the blended part of the ramp in the revised drawing.
- [22] He pointed out on an aerial photograph where he believes the ramp is located. His sketch was based on the submission circulated to Transportation. He does not know why the lines are not symmetrical and would require clarification from the Transportation Department.
- [23] No complaints have been received regarding the extended driveway, and the development (as existing without permits) was brought to the City's attention due to a request for compliance certification.
- [24] He has no concerns with the hard landscaping in place along the curved edge of the development; however, because the driveway was approved at 7.4 metres, the excess width needs to be landscaped.
- [25] He confirmed that a walkway is permitted to be attached to the driveway, but the current application is for a driveway extension only and makes no mention of a walkway. While a walkway portion could be distinguished by a unique pattern, different from the rest of the driveway, here this pattern is also repeated on other parts of the driveway. There is nothing to prevent a vehicle from driving onto the walkway area.
- [26] He could not comment on whether the current driveway (existing without a permit) increased safety. Nor could he comment on why the Transportation Department had concerns in regards to the curb ramp at the corner. He is also not aware of Transportation's definitions of a curb ramp or a corner radius. However the Transportation Department denied the application based on the location of the corner radius, not strictly on the basis of proximity to the curb ramp, however that may be defined.

- [27] Mr. Yeung indicated on the Real Property Report which part of the driveway extension is not permitted because it encroaches onto City property and confirmed that vehicle access located through the corner radius is not acceptable. He confirmed that regardless of the Board's decision Transportation could require that this portion of the extension be removed and for landscaping to be provided at the Applicant's expense.
- [28] Mr. Yeung felt that a solution could be achieved by placing a permanent barricade or a landscaping feature along the blue X's marked on the Real Property Report as an alternative to hammering out the concrete.
- [29] If a driveway is permitted some additional variances such as the prohibition on parking in the front yard under section 45(7)(b) could be triggered.
- [30] Upon questioning by the Board, Mr. Yeung confirmed that given the potential discrepancies between the two Real Property Reports he would not oppose an adjournment to this hearing to provide the Appellant with an opportunity to submit the new information (the new Real Property Report) to the Transportation Department for their review.
- [31] After a short recess, the Appellant declined the opportunity for an Adjournment. He expressed the view that he has already provided all the information available to him, all the required information, and therefore the hearing should proceed.

iii) Rebuttal of the Appellant

- [32] Mr. Toor reiterated that the curb ramp will not be used to access the driveway, and that the increased width of the driveway has made it safer to maneuver vehicles.
- [33] Putting up a barricade to mark the distinction between the walkway and the driveway would interfere with vehicles backing out of the garage and would be visually unappealing.
- [34] He confirmed that the stamped, extension area is part of the turning radius for vehicles exiting the driveway and that the entire hard-surfaced area will be used for vehicles and by pedestrians.

Decision

- [35] The appeal is **DENIED** and the decision of the Development Authority is **CONFIRMED**. The development is **REFUSED**.

Reasons for Decision

- [36] This appeal involved an application for an extended Driveway, Accessory to a Single Detached House (a permitted Use), in the RSL Residential Small Lot Zone.
- [37] The Single Detached House is located on a corner lot. It has a front attached garage with three adjacent, side-by-side parking spaces oriented east toward the flanking street. The Driveway curves to the south and the roadway access faces the Front Lot Line. Due to this configuration, all vehicles must make a 90 degree turn to access the parking spaces in the Garage from the street.
- [38] The front entrance to the house is located just east of the attached Garage at the centre of the front wall of the building and abuts the centre of the Driveway.
- [39] A pedestrian access ramp for the street is located on the sidewalk at the corner of the front and flanking streets adjacent to the southeast portion of subject Site.
- [40] The Appellant obtained a Development Permit approving a regular, rectangular-shaped Driveway for vehicular access to the triple attached front Garage at 7.4 metres wide.
- [41] The Appellant built a more organic, irregularly shaped Driveway and integrated walkway incorporating uniquely decorated and contrasting segments. This development was not in accordance with the approved Development Permit.
- [42] Subsequently, the Appellant applied for a Development Permit for a Driveway extension, existing without permits. In support of that application he submitted a Real Property Report dated December 19, 2016. The application was refused based on the documentation provided by the Appellant for lack of landscaping in the front yard and based on the Transportation Department's opinion that vehicular access through the corner radius abutting the Site was unacceptable.
- [43] The Transportation Department was concerned that no portion of the Driveway should encroach on the corner radius of the roadway. Therefore they proposed the addition of a condition that the Appellant install permanent barriers or landscaping features within the property lines to prevent the use of the existing curb ramp for access purposes and to alleviate parking within the Front Yard.
- [44] The Appellant objected to the imposition of a condition requiring the erection of any kind of permanent barrier or landscaping which would prevent vehicular access over any portion of the proposed development for the following reasons:
- a) Under the current configuration, vehicles do not need to use the access ramp when accessing the property;

- b) The entire extended hard-surfaced area was required for safe vehicular maneuvering and the Appellant intends the entire hard-surfaced area to be used for vehicles at times; and,
- c) Permanent barriers or landscaping erected to separate the walkway from the Driveway would interfere with the look of the Driveway.

[45] At the hearing, the Appellant further argued that the Driveway extension should be approved for the following reasons:

- a) The existing Driveway was fully compliant with the applicable architectural guidelines.
- b) Submitted photographic evidence shows that Driveways of a similar or greater width were typical in the immediate area and similarly situated Driveways could be found on other corner sites.
- c) The neighbours support the development.
- d) Although 7.0 metres is the minimum turning radius required by the City for his attached garage, 11.1 metres is needed for proper maneuvering to safely exit the Site.
- e) At a maximum width of 11.1 metres, the Driveway/walkway was compliant with the Bylaw.
- f) Transportation's objections were based on erroneous information and vehicles using the Driveway will not drive over the access ramp.

[46] The Board notes that architectural guidelines and compliance with those guidelines are private matters between the developer and the property owners. Guidelines may demonstrate what is intended to be characteristic for an area, but they are a separate matter from the applicable development regulations enacted by City Council in the Bylaw.

[47] The Appellant provided pictures of several Driveways of similar or greater widths, some similarly situated on corner lots. Many of these Driveways appeared to be in clear contravention of the development regulations in Bylaw. As the Appellant conceded, there was no evidence before the Board concerning the legality of those developments. The parties could not say if permits and variances had been granted, or if the photographed Driveways had been built in compliance with approved permits.

[48] While the neighbours may be supportive and while there may be other examples of similarly wide Driveways, the Board must consider each case that it hears on its own

merit. Here, the width of the proposed development together with the location of the subject Site raises the concerns identified by the Transportation Department.

- [49] Based on the presented evidence, the maximum width of the hardsurfaced area which comprises the proposed development is 11.1 metres.
- [50] Based on the submissions of the parties, the Board finds that the proposed development requires a variance to the maximum width of Driveways allowed under Section 54.1(4), and a variance to Section 53.1 which requires Transportation Department approval for all vehicular accesses and curb crossings.
- [51] The Board declines to allow these variances for the reasons that follow.
- [52] Section 6.1 (29) defines Driveway as “an area that provides access for vehicles from a public or private roadway to a Garage or Parking Area”. Walkway is not defined under the Bylaw.
- [53] Section 54.1(4)(b) provides: “The area hardsurfaced for a Driveway, not including the area used as a walkway may have a maximum width that shall be calculated as the product of 3.1 metres multiplied by the total number of adjacent side-by-side parking spaces contained within the Garage.”
- [54] The Board acknowledges that a walkway may to be attached to a Driveway, thereby practically accommodating two distinct Accessory Uses. However, in this case, the Appellant seeks to use the entire 11.1 metres wide, hardsurfaced area for the purposes of maneuvering vehicles on and off the property. He specifically applied for an extension to a Driveway and he objects to any type of landscaping or barriers to separate the walkway Use or restrict the Driveway Use. Therefore, the Board finds the entire proposed development is to be used as a Driveway and the application was properly categorized as a Driveway extension.
- [55] Per Section 54.1(4)(b), the maximum permitted Driveway width is 9.3 metres. As 11.1 metres is the proposed width, the development requires a variance of 1.8 metres.
- [56] The Appellant argues that the extra width is necessary to safely maneuver vehicles accessing the Garage. The Board disagrees for the following reasons:
- a) Section 54.2(4)(a)(vi) of the Bylaw specifically addresses the issue of maneuverability and safety on this type of Driveway, it provides that “aisles shall be a minimum of 7.0 metres wide for 90° parking.” The initially approved driveway requested by the Appellant was approved with a width of 7.4 metres.
 - b) The Appellant provided the Board with an excerpt from an unidentified, undated article concerning injuries on driveways. The article identifies situations (based on some studies in the 1990s) where children have been injured by vehicles, including when they are struck by a reversing vehicle in a driveway. The article makes no

reference to garage orientation, turning aisles or driveway widths as determinative factors. The Board also notes that, no matter how wide, nor how straight, all single access Driveways leading to garages necessarily require the use of the reverse gear and extra caution. In other words, the variance does not impact the need for vehicles to be driven with caution in reverse.

- [57] The Board notes that development regulations concerning Landscaping, the maximum width of Driveways and restricting Parking Areas in front yards have been enacted in general to prevent the potential for front yards to take on the appearance of parking lots, interfering with on-street parking and interfering with neighbourhood amenities.
- [58] The Transportation Department indicated that the proposed Driveway, at 11.1 metres in width, carries the concern that the extended width along the eastern portion of the hard-surfaced area may be used as additional Parking Areas in the front yard. The Board finds that the existing Driveway is 3.7 metres wider than what was approved; it does not lead to the Garage; and it could be used as a Parking Area without interference with the 7.0 metre aisle required to access the Attached Garage. This is contrary to section 45.7 which prohibits parking spaces, other than Driveways, in front yards and section 54.1(5) which requires that all Driveways lead directly from the roadway to the required Garages or Parking Areas.
- [59] Furthermore, section 53.1 provides that the Transportation Department must approve all vehicular accesses and curb crossings. Based on application information submitted by the Appellant, the Transportation Department declined to approve the vehicular access for the development as existing without the proposed condition. The Transportation Department has identified a safety concern; particularly that vehicle access through a corner radius is not acceptable.
- [60] The Appellant focused his arguments on vehicular interference with, and the Driveway's proximity to, the "access ramp" which he defined as the smallest triangular portion of the sloped sidewalk at the corner of the curb, rather than the larger shape depicted by the Transportation Department.
- [61] At the hearing the Appellant submitted a new Real Property Report dated January 20, 2017, which he argued conflicted with the one previously provided to the Transportation Department, with respect to the exact location of the access ramp. The Development Officer was uncertain about exactly what portion of the curb comprised the access ramp. However, he also concurred that there might be a discrepancy, but pointed out that the Transportation Department's objection was not based on any specific distance of separation from the access ramp (however ramp may be defined), but with interference with the corner radius, a larger area.
- [62] After arguing that the initial Real Property Report was inaccurate and providing a new Report which had not been circulated to the Transportation Department and after the Development Officer acknowledged a potential discrepancy, the Appellant elected to proceed with the appeal based on all the evidence before the Board rather than seeking an

adjournment to resolve the apparent discrepancy or to provide the additional information to the Transportation Department.

- [63] The Board finds that the memo provided by the Transportation Department depicts the access ramp differently than the January 20, 2017 Real Property Report which merely identifies a specific point. Based on the photographs, the tapered portion of the sidewalk encompasses more than the central triangular portion identified by the Appellant. Regardless of this difference, the Board finds that the Transportation Department's concerns were much broader and were based on the larger area identified as the "corner radius" and also on the issues identified above with respect to the extension to width of the Driveway.
- [64] Based on photographic evidence and the two Real Property Reports, the Board finds that the proposed development falls within the "corner radius" identified as prohibited by the Transportation Department and therefore concludes that the Department's objections concerning the access remain valid.
- [65] Finally, the Board notes that regardless of its decision with respect to this Development Permit, the Transportation Department retains full authority over the road right-of-ways and any portion of the proposed development which extends past the property line, as well as any authority delegated to it under any other Bylaws with respect to roadway accesses and curb cuts.
- [66] For the reasons above the Board concludes that granting the required variances would create a material, adverse impact and the appeal is denied.

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

Board Members in Attendance

Ms. P. Jones; Mr. J. Wall; Mr. R. Hobson; Mr. R. Hachigian

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*, 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.

2. 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 2nd Floor, Edmonton Tower, 10111 – 104 Avenue NW, Edmonton, AB, T5J 0J4.

SDAB-D-17-041

An appeal to construct a 371.61 M² second floor mezzanine addition and to increase the number of children from 92 to 120 children in an existing Child Care Services (Summerside Childcare Center), located at 1109 Summerside Drive SW was **WITHDRAWN**