



**EDMONTON  
TRIBUNALS**

*Subdivision &  
Development  
Appeal Board*

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Date: February 23, 2017  
Project Number: 223402350-003  
File Number: SDAB-D-17-029

**Notice of Decision**

- [1] On February 8, 2017, the Subdivision and Development Appeal Board heard an appeal that was filed on January 15, 2017. The appeal concerned the decision of the Development Authority, issued on June 5, 2017, to refuse the following development:

Construct an Accessory structure (rear detached Shed, 18.29m x 11.58m)

- [2] The subject property is on Plan 0824617 Blk 1 Lot 2B, located at 3127 - 28 Avenue SW, within the RR Rural Residential Zone. The Decoteau Area Structure Plan applies 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 and plans;
  - Development Officer's decision of refusal;
  - Canada Post receipt confirming delivery of the refusal decision on January 11, 2017;
  - Development Officer's written submissions, dated February 3, 2017; and
  - Four form letters in support of the development.

**Preliminary Matters**

- [4] At the outset of the appeal hearing, the Chairman confirmed with the parties in attendance that there was no opposition to the composition of the panel.
- [5] The Chairman 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*, RSA 2000, c M-26.

## Summary of Hearing

### *i) Position of the Appellant, Ms. O. Cokan*

- [7] Ms. Cokan was accompanied by Mr. S. Cokan.
- [8] The application for the proposed shed was rejected due to the height of the structure being 10 centimetres higher than the maximum allowable height of 4.3 metres. The 5/12 roof pitch was recommended by the architect who designed the structure.
- [9] The shed is located on the southeast corner of a 2.8 acre lot. The neighbouring properties are also acreages. The shed is visible from 28 Avenue to the north, but is located approximately 600 feet from the road. Farmland is located to the south of the property, and large spruce trees line both the south and east property lines. The site is accessed via a long driveway off 28 Avenue.
- [10] Ms. Cokan explained that the principal dwelling will have a 3-car attached garage, which will be used by her two adult children and herself. Her husband's vehicle will be parked in the shed. As well, since her husband recently retired and closed his business, the shed will be used to store his old tools. Furniture, a tractor and small bobcat will also be stored in the shed. The machinery will not be used to run a business.
- [11] Ms. Cokan noted that four letters of support were signed by neighbouring property owners within the 60 metre notification area.
- [12] The Appellant also expressed frustration about the development application process. She applied for the Accessory permit on June 7, 2016, and eight months later, she still does not have a resolution. By contrast, two of her neighbours applied for permits two months after she made her application. Those neighbours have been able to begin development while her application remains unresolved.

### *ii) Position of the Development Authority*

- [13] The Development Authority was represented by Mr. J. McArthur. He was accompanied by Mr. M. Doyle, Development Compliance Officer.
- [14] Mr. McArthur clarified that the Accessory structure is actually 0.24 metres overheight, not 10 centimetres. The Height calculation was measured from the finished floor to the midpoint of the roof, plus six inches to Grade.
- [15] Mr. McArthur explained that due to the location of the principal structure and the construction of a new curb access off 28 Avenue, the application for the Single Detached House had to be circulated to the Transportation Department. Circulation to the Drainage Department also resulted in a sanitary sewage trunk assessment; however, the Drainage Department was unable to provide the exact amount for the fees, yet the fees were

required as a “prior to release” condition. As a result, the permit for the principal dwelling was delayed. At the same time, the Development Authority was unable to approve the application for an Accessory structure without an approved principal dwelling. Furthermore, a Development Officer has no authority to grant variances to height under the *Edmonton Zoning Bylaw*.

[16] Upon questioning by the Board, Mr. McArthur expressed the view that the required variance of 0.24 metres would not have an undue impact upon neighbouring properties. He pointed out that the characteristics of the site mitigate the impact of a minor height variance.

[17] He also had no concerns about the use of the shed for storage of machinery such as the bobcat. The site is served by a long driveway, and it is logical to use a bobcat for snow removal. However, to prevent the shed from being used for the purposes of a Major Home Based Business, one of the conditions of the permit was that such developments would require a separate permit application.

*iii) Rebuttal of the Appellant*

[18] The Appellant confirmed that there were no concerns with the condition requiring a separate application for Home Based Businesses. Ms. Cokan noted that she has spoken with neighbours who have applied for Home Based Business development applications, and she understands the process thoroughly.

**Decision**

[19] The appeal is **ALLOWED** and the decision of the Development Authority is **REVOKED**. The development is **GRANTED** as applied for to the Development Authority.

[20] In granting the development, the following **VARIANCE** to the *Edmonton Zoning Bylaw* is allowed:

- 1) Section 50.3(2) is relaxed to permit a variance of 0.24 metres in Height to the Accessory building, for a maximum Height of 4.54 metres instead of 4.3 metres.

Advisement:

Any Home Based Business will require a separate development permit.

**Reasons for Decision**

- [21] The proposed structure is a 18.29 metre x 11.58 metre rear detached shed, an Accessory Use to the permitted Use of Single Detached House within the RR Rural Residential Zone.
- [22] The Development Authority confirmed that the only deficiency was the Height of the proposed Accessory structure. Section 50.3(2) states that an Accessory building or structure shall not exceed 4.3 metres in Height. The proposed shed exceeds the maximum allowable Height by 0.24 metres, for a total Height of 4.54 metres.
- [23] The Board has granted the required variance to section 50.3(2) for the following reasons:
- a) The subject lot is located in the Rural Residential Zone, and is approximately 1.01 hectares in size.
  - b) The proposed structure is approximately 183 metres from 28 Avenue SW, which is the nearest developed road.
  - c) The shed is screened by vegetation both to the east and south of the subject site. The Board notes that the property to the east of the subject lot, which is closest to the proposed Accessory structure, is approximately two hectares in size, and that the property to the south of the subject lot is comprised of farmland.
  - d) When questioned, the Development Officer confirmed that he could see no negative impact upon the surrounding properties caused by the variance. He also confirmed that the Development Officer has no ability to grant Height variances.
  - e) The application has the support of the adjacent landowners.
- [24] For the above reasons, the Board finds that granting this variance 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. The appeal is allowed.

Mr. I. Wachowicz, Chairman  
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 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*,
  - 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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Date: February 23, 2017  
Project Number: 111305898-001  
File Number: SDAB-D-17-007

**Notice of Decision**

- [1] The Subdivision and Development Appeal Board, at a hearing on January 12, 2017, made and passed the following motion with the consent of all parties:

“That the hearing for SDAB-D-17-007 be TABLED to February 8, 2017 at the written request of Legal Counsel for the Appellant and in agreement with the City of Edmonton, Sustainable Development.”

- [2] On February 8, 2017, the Subdivision and Development Appeal Board heard an appeal that was filed on December 14, 2016. The appeal concerned the decision of the Development Authority, issued on November 28, 2016, to:

Comply with an Order to revert the building back to a Single Detached House AND acquire a Development Permit for interior alterations to complete the work AND reduce the number of occupants living in the building down to a single Household. This Order must be complied with before January 17, 2017

- [3] The subject property is on Plan 3816P Lot 11, located at 9267 - 110A Avenue NW, within the DC1 Area 6 McCauley Direct Development Control District. The Mature Neighbourhood Overlay, the Medium Scale Residential Infill Overlay and the Boyle Street / McCauley Area Redevelopment Plan apply to the subject property.

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

- Copy of Stop Order 111305898-001, dated November 28, 2016;
- Copy of the Board’s 2009 decision for the subject property, reference file number SDAB-D-09-289;
- 2014 Application to amend Bylaw 17249 Area 6 within the Boyle Street/McCauley Area Redevelopment Plan;
- 2015 Report to Council regarding Bylaw 17249 Area 6 rezoning;
- Development Authority’s written submissions, dated December 22, 2016, including supporting materials; and
- Appellant’s written submissions, including supporting materials.

## Preliminary Matters

[5] The Board made and passed the following motion:

“That SDAB-D-17-007 be raised from the table.”

[6] At the outset of the appeal hearing, the Chairman disclosed that as a lawyer, he was acquainted with legal counsel for the Appellant, as the two were opposing counsel for a matter before the Alberta Court of Queen’s Bench, unrelated to this appeal. The Chairman confirmed with the parties in attendance that there was no opposition to the composition of the panel, and no opposition was noted.

[7] The Chairman outlined how the hearing would be conducted, including the order of appearance of parties, and no opposition was noted.

[8] The Appellant confirmed that notice of the decision was received on December 1, 2016. As the appeal was filed on December 14, 2016, the Board was satisfied that the appeal was filed within the 14 day limitation period, in accordance with section 686(1)(a)(i) of the *Municipal Government Act*, RSA 2000, c M-26.

## Summary of Hearing

i) *Position of the Appellant, 1223382 Alberta Ltd.*

[9] Mr. D. Severin appeared on behalf of the Appellant, which was also represented by legal counsel, Mr. M. Kirk.

[10] In 1961, the then property owner received an approved development permit for a Single Detached House (“One Family Dwelling”) and a foster home for six children. In 1981, a permit was granted for the construction of rooms in the basement of a One Family Dwelling. This 1981 permit was the most recent approved permit on record, and it was the Appellant’s understanding that the property has continued to operate as a Single Detached House.

[11] When Mr. Severin purchased the home in 2009, the property contained 12 suites. It was derelict, required numerous renovations, and Mr. Severin had to coordinate with Capital Health to remove the transient individuals occupying the premises. In 2009, he applied for a development permit to change the Use from a Single Detached House to Six Dwelling Apartment House. The application was refused by both the Development Authority and the Subdivision and Development Appeal Board.

- [12] In 2010, Mr. Severin submitted a request for rezoning of the subject Site, which if approved, would have allowed him to operate the subject property as an Apartment House with six Dwellings. However, he did not follow through with the rezoning application. Upon questioning by the Board, Mr. Severin was unable to provide an explanation as to why he did not pursue the rezoning application further.
- [13] The Appellant now seeks a variance to the Stop Order for a minimum three month extension (though six months would be preferable), which would provide the Appellant enough time to submit a development application for a Secondary Suite development, while also applying for rezoning of the subject Site. The extension would also provide Mr. Severin's tenants sufficient time to seek alternative low-income accommodation.
- [14] The Appellant submitted that allowing the property to continue operating in the short term would 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. An informal survey of about 10 properties in close proximity demonstrate that there is a mix of multi-unit properties in the area. One of Mr. Severin's neighbours who owns a property with four suites has commented that he has never had difficulties with tenants from Mr. Severin's property. Mr. Severin also referred to his ability to be flexible with rent payment for his low-income tenants. He emphasized that he is not a slum landlord, and referred to email correspondence from his tenants in support.
- [15] Upon questioning by the Board, Mr. Severin clarified that three suites in the house are currently occupied by unrelated tenants. One of the suites will be vacant by the end of the month, and he has no intention of filling the remaining vacancies until this development permit matter is resolved.
- [16] The Board noted that this appeal concerns the stop order that was issued, and questioned the Appellant as to whether there were any concerns about the wording of the stop order, specifically the use of the terminology "to *revert* the building back to a Single Detached House" [emphasis added]. Mr. Kirk submitted that the subject property has always had a permit for a Single Detached House, and that the stop order is effectively requiring Mr. Severin to *continue* the Single Detached House Use. He noted that the 2009 application to change the Use to an Apartment House was refused, and that the property has continued to exist as a Single Detached House.

*ii) Position of the Development Authority*

- [17] The Development Authority was represented by Mr. B. Bolstad, Development Compliance Officer.



- [18] Mr. Bolstad provided a summary of the subject property's current state. Upon entry from the front door, a common hallway provides access to the second floor, which houses three Dwellings each with an individual door number. Two other Dwellings exist on the main floor, and one more in the basement. The basement is accessible from a separate entrance on another side of the building.
- [19] Of the six suites, he was able to obtain access into one of the suites, and confirmed that it contained all the components comprising of a Dwelling as defined under the *Edmonton Zoning Bylaw*. These components included accommodation for sanitary and cooking facilities. Although he was unable to access the remaining suites, he confirmed that all suites were independent Dwellings, accessible only by the tenants renting those units. In his view, it was "plain as day" that the property was not operating as a Single Detached House.
- [20] Upon questioning by the Board, Mr. Bolstad acknowledged that other development options are available for the Appellant. For example, Secondary Suites, Semi-detached Housing and Duplex Housing are listed Uses within this direct control district. Garage Suites and Garden Suites are also possible options. However, he reiterated that what is existing now is Apartment Housing, which is not a listed Use in this direct control district.
- [21] Mr. Bolstad also reviewed the planning policies set out in the Boyle Street/McCauley Area Redevelopment Plan (the "ARP"), and noted that the rationale of the DC1 Area 6 McCauley Direct Development Control District is "To provide a district which will accommodate affordable housing options designated to promote the family-oriented character of the neighbourhood..." Map 3 of the ARP designates family-oriented housing opportunities, which includes residential developments with individual and private access to at-Grade entryways, as well as direct access to private amenity areas. In his view, the subject property does not meet these guidelines.
- [22] The Board pointed out that under Bylaw 17249, passed on June 22, 2015, Single Detached Housing was not a listed Use in this direct control district. It was only after Bylaw 17664, passed on June 13, 2016, that Single Detached Housing was added. The Board questioned whether as a result of the omission of Single Detached Housing from Bylaw 17249, the property became a legally non-conforming use. Noting that the Development Authority has characterized the existing property as Apartment Housing, the Board further questioned whether the non-conforming use ceased for a period greater than six months, and if so, whether it is appropriate to issue a stop order to "revert" the development to a Single Detached House.
- [23] Mr. Bolstad did not have information pertaining to the omission of Single Detached Housing from Bylaw 17249, nor had he considered that the property might have been a legally non-conforming use at one point. He therefore provided no comment in this regard, but confirmed that the stop order requires that the property be reverted to the Single Detached House pursuant to the 1981 development permit.

- [24] Upon questioning by the Board, Mr. Bolstad stated that as the enforcement date of the original stop order has passed, an additional 30 days would be appropriate. Thirty days would also provide time for the Appellant to appeal the stop order to the Court of Appeal, should the Appellant choose to do so.

*iii) Rebuttal of the Appellant*

- [25] The Appellant confirmed that the current tenants are aware of the stop order, but a precise vacate date has not been provided to them yet. The Appellant reiterated that a minimum three months extension on the enforcement date would be preferable. This time would be used by Mr. Severin to apply for the required development permits, seek rezoning, and provide the tenants an opportunity to seek alternative accommodations if needed.
- [26] Mr. Severin also expressed frustration over the inconsistent communication from the City. He noted that while he received notice of the 2014 violation ticket and \$1,000 fine, all other notices related to enforcement never reached him.
- [27] Upon questioning by the Board, Mr. Severin confirmed that all six suites have their own sanitary and cooking facilities.

**Decision**

- [28] The appeal is **ALLOWED IN PART** and Stop Order 111305898-001 is **UPHELD**, subject to the following **AMENDMENT**:

Comply with an Order to revert the building back to a Single Detached House **AND** acquire a Development Permit for interior alterations to complete the work **AND** reduce the number of occupants living in the building down to a single Household. This Order must be complied with before **May 29, 2017**. [emphasis added to highlight amended date]

**Reasons for Decision**

- [29] The subject property is located within the DC1 Area 6 McCauley Direct Development Control District. Within this direct control district, Apartment Housing is not a listed Use.
- [30] It was acknowledged by all parties that the most recent approved development permit for the subject Site was granted in 1981. The 1981 permit described the following development: "To construct rooms in the basement of a single detached house." The approved permit included a stamped notation: "NOT TO BE USED AS A SUITE".

This 1981 permit follows the issuance of a 1961 permit for a “One family dwelling [and] foster home for 6 gov’t wards (ages 6 to 15 years)”. Accordingly, Apartment Housing was never allowed at any time by the City of Edmonton for the subject Site.

- [31] Section 6.1(27) of the *Edmonton Zoning Bylaw* defines Dwelling as “a self contained unit comprised of one or more rooms accommodating sitting, sleeping, sanitary facilities, and a principal kitchen for food preparation, cooking, and serving. A Dwelling is used permanently or semi-permanently as a residence for a single Household.” The evidence of the Appellant made it clear that there are six self-contained units comprised of one or more rooms that accommodate sitting, sleeping, sanitary and food preparation facilities. As there are six Dwellings in the principal building on the subject Site, the Use of the subject Site is that of Apartment Housing, which is defined under section 7.2(1) as “development consisting of one or more Dwellings contained within a building in which the Dwellings are arranged in any horizontal or vertical configuration, which does not conform to the definition of any other Residential Use.”
- [32] As a result, the current Use of the subject Site is not permitted under the *Edmonton Zoning Bylaw* and the DC1 Area 6 McCauley Direct Development Control District. The Development Authority was correct in issuing a stop order requiring the cessation of that illegal Use.
- [33] To allow the orderly compliance with the stop order, given the existence of current tenants in the apartment, the Board is amending the stop order to require compliance within 90 days from the date of the issuance of this Board’s written decision. As the 90<sup>th</sup> day falls on Sunday, May 28, 2017, the amended enforcement date has been set for Monday, May 29, 2017. In all other respects, the appeal is denied.

Mr. I. Wachowicz, Chairman  
Subdivision and Development Appeal Board

**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 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.*