



**Subdivision and
Development Appeal Board**

Office of the City Clerk
Main Floor, Churchill Building
10019 – 103 Avenue NW
Edmonton, AB T5J 0G9
Telephone: (780) 496-6079
Fax: (780) 496-8175

DATE: January 29, 2015
APPLICATION NO: 146026839-005
FILE NO.: SDAB-D-15-009

NOTICE OF DECISION OF THE SUBDIVISION AND DEVELOPMENT APPEAL BOARD

This appeal dated December 12, 2014, from the decision of the Development Authority for permission to:

Construct a rear uncovered deck (irregular shape – 7.32 metres by 10.97 metres at 3.05 metres in Height)

on Lot 32, Block 13, Plan 1320806, located at 5808 Edworthy Cove NW, was heard by the Subdivision and Development Appeal Board at its hearing held on January 14, 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 refuse an application to construct a rear uncovered deck (irregular shape – 7.32 metres by 10.97 metres at 3.05 metres in Height), located at 5808 Edworthy Cove NW. The subject site is zoned RSL Residential Small Lot Zone. The development permit application was refused because of an excess in the maximum allowable total Site Coverage and an excess in the maximum allowable projection of a Platform Structure into a Setback.

Prior to the hearing the Board received a submission from the Development Officer, two e-mails of opposition from adjacent property owners, and a submission with several photographs from the Appellant.

SUMMARY OF HEARING (CONTINUED):

The Board heard from the Appellant, Mr. Steve Wiersema who provided the following information in support of the appeal:

1. He purchased the subject property approximately two years ago because of the walk-out basement.
2. The Development Authority indicated that the proposed development will be denied but suggested that a smaller relaxation into the required Setback might be more favourably considered.
3. He had collected signatures from neighbours within the 60 metres radius although several properties were not consulted as the owners were not home or the properties were not occupied.
4. He indicated that his immediate neighbours to the north and south did have concerns.
5. The primary concern of the south neighbour was the interference of sightlines towards the lake.
6. He would be prepared to address the concerns of the south neighbour by angling the south side of his deck to minimize that interference.
7. In his opinion, the neighbour to the north was less affected in that the deck would not interfere with their sightlines.
8. The neighbour to the north, who is a real estate agent, had consulted with an inspector who advised her that the larger deck would devalue her property.
9. The neighbour to the north was concerned that the size of the deck could accommodate 40 people who would all be looking into her backyard.

Mr. Wiersema provided the following responses to questions:

1. He conceded that the footprint of his house was built to the maximum front and rear required Setback, and there is little to no developable area in the Front or Rear Yard. Any future development will most likely require a variance.
2. He agreed that the neighbour to the north does have serious concerns and had indicated that his proposed deck may have an adverse effect on the value of her property.
3. He would be prepared to address her concerns regarding privacy by providing landscaping along the north border of his property.
4. The privacy problem could also be addressed by privacy screens on the north side of the deck.

SUMMARY OF HEARING (CONTINUED):

5. He completed his consultation based on possible deck configurations but conceded that the appeal before the Board was for a deck that projected 13 foot into the Rear Yard and 10 foot into the north Side Yard.
6. All of the residences built in the vicinity of Edworthy Cove have walk-out basements and main floor decks. Approximately 30 percent of such decks had been built by the builders and are characteristic of the neighbourhood.
7. He conceded that the requested projections would have a greater impact on the north neighbour.

Ms. V. Gordychuk, representing the Sustainable Development Department, provided the following responses to questions:

1. She does not have the authority to relax Site Coverage variance.
2. She would have granted a relaxation and allowed a 9 foot projection into the required Rear Setback in order to provide an opportunity for affected neighbours to be consulted and appeal if necessary.

Mr. Wiersema declined the opportunity to provide rebuttal.

DECISION:

That the appeal be DENIED and the decision of refusal by the Development Authority CONFIRMED.

REASONS FOR DECISION:

The Board finds the following:

1. The proposed development is an Addition to a Permitted Use in an RSL Residential Small Lot Zone.
2. The Board notes the proposed deck as submitted has a Height of 3.05 metres above grade which is to be constructed with a significant portion projecting into the required 7.5 metre Rear Setback of the subject site.

REASONS FOR DECISION (CONTINUED):

3. The Board has determined that the proposed Height of 3.05 metres is a typical deck Height of most walk-out lots. However, the Height of the deck is higher than the fences of both adjoining properties and is visible by these properties as well as others in the neighbourhood given it backs onto a public walkway and storm water pond.
4. The Board finds that the projection of the deck into the Rear Setback exacerbates the Height of the deck as it brings the structure closer to the property lines, which will impact the privacy of adjacent lots.
5. The Board received two written notices of non-support for this development from the two most affected properties.
6. The Board acknowledges receipt of the Appellant's neighbourhood consultation but notes that the support is from property owners that will not be as impacted by this proposed development.
7. The Board accepts the Development Officer's opinion that a smaller projection into the required Rear Setback might lessen the impact on surrounding neighbours.
8. Based on the above, it is the opinion of the Board, that the proposed development will unduly interfere with the amenities of the neighbourhood and will materially interfere with and affect the use, enjoyment and value of neighbouring parcels of land.

IMPORTANT INFORMATION FOR 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*, 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.

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.

Mr. V. Laberge, Presiding Officer
SUBDIVISION AND DEVELOPMENT
APPEAL BOARD

cc:

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DATE: January 29, 2015
APPLICATION NO: 164380387-001
FILE NO.: SDAB-D-15-010

NOTICE OF DECISION OF THE SUBDIVISION AND DEVELOPMENT APPEAL BOARD

This appeal dated December 11, 2014, from the decision of the Development Authority for permission to:

Park a recreational vehicle in a required Front Yard

on Lot 98, Block 23, Plan 0226399, located at 389 Calderon Crescent NW, was heard by the Subdivision and Development Appeal Board at its hearing held on January 14, 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 refuse an application to park a recreational vehicle in a required Front Yard, located at 389 Calderon Crescent NW. The subject site is zoned RSL Residential Small Lot Zone. The development permit application was refused because recreational vehicle parking is not permitted in a Front Yard in any Residential Zone other than what is reasonably necessary to load or unload and because large recreational vehicles are only allowed to be parked in the Front Yard from April 1 through October 31 on a residential Site without rear Lane access.

SUMMARY OF HEARING (CONTINUED):

Prior to the hearing the Board received a submission from the Development Officer. The Board notes that two letters and one e-mail in opposition were received from adjacent property owners.

The Board heard from the Appellant, Mr. Wayne Tabb who provided the following information in support of the appeal:

1. He presented 6 photos (marked Exhibit A) and a document with 14 signatures (marked Exhibit B) in support of parking the recreational vehicle on his Driveway.
2. He conducted community consultation but was unable to obtain signatures from two neighbouring properties that did not answer the door, one neighbour who had communication issues, and one neighbour who was opposed.
3. In his opinion, the parking of a recreational vehicle on his Driveway will not unduly interfere with the amenities of the neighbourhood and will not materially interfere with and affect the use, enjoyment and value of neighbouring parcels of land.
4. As indicated in (Exhibit A: photo #6), the recreational vehicle is parked 2.6 metres from the municipal sidewalk and does not obstruct any sightline.
5. As indicated in (Exhibit A: photo #1), the recreational vehicle is the same height as the soffit line of the front attached garage. The two trees on the property provide screening to the recreational vehicle.
6. As indicated in (Exhibit A: photo #3 and #4), there are other large vehicles and trailers parked in the neighbourhood.
7. Most of the neighbours he had consulted with did not have an issue with the proposed recreational vehicle. One neighbour was unaware that there was a recreational vehicle parked on the subject Driveway.
8. He addressed the letters of opposition received by the Board and dismissed the concerns that were raised.
9. He stated that it is legal to park a recreational vehicle in the front Driveway from April to October and there is no need to restrict recreational vehicles from parking in the winter.
10. He can better maintain his recreational vehicle in the winter months if it was parked at his residence. This would result in less maintenance costs.
11. He has previously spoken with the resident of 399 Calderon Crescent and the resident was neutral to parking the recreational vehicle. However, a letter of opposition was submitted to the Board.
12. An e-mail submitted by a neighbour who did not provide an address stated there are problems but did not clarify what these problems were.

SUMMARY OF HEARING (CONTINUED):

13. He assumed when he purchased the home that he could park his recreational vehicle on the Driveway. He was not informed by his realtor that there would be an issue.
14. In his opinion, it is up to the Board to decide if refusing his appeal would create a financial hardship. The extra money required for off-site recreational vehicle parking is an expense he did not account for.

Mr. Tabb provided the following responses to questions:

1. He owns two additional vehicles, one of which is parked in the garage and the other is parked on the Driveway.
2. The recreational vehicle is parked on the Driveway throughout the winter. He occasionally moves the recreational vehicle back and forth on the Driveway.

Mr. J. Hogberg, representing the City of Edmonton Sustainable Development Department, provided the following responses to questions:

1. Some of the vehicles and trailers depicted in Exhibit A may not comply with Section 45 of the Zoning Bylaw.
2. Investigation is required to determine if there is an infraction. However, enforcement is completed on a citizen complaint basis.
3. He was not aware of Exhibit B which included 14 signatures of support prior to the hearing.
4. The Zoning Bylaw does not allow for relaxation of objects prohibited or restricted in residential zones.
5. There are no compelling factors presented that would change the original decision.

Mr. Tabb made the following points in rebuttal:

1. He reiterated that unless there is a complaint, most neighbours do not know that parking a commercial vehicle or a recreational vehicle on a Driveway is not allowed.
2. The Development Officer had indicated to him earlier that this is the only decision he could make.
3. In his opinion, the Bylaw was meant to deal with non-motorized vehicles. His recreational vehicle fits on the Driveway and did not cause a problem.

DECISION:

That the appeal be DENIED and the decision of refusal by the Development Authority CONFIRMED.

REASONS FOR DECISION:

The Board finds the following:

1. The proposed recreational vehicle is Accessory to a Permitted Use in the RSL Residential Small Lot Zone.
2. Section 45.3 of the Edmonton Zoning Bylaw states no person shall keep, in the Front Yard in any Residential Zone, or in the case of a Corner Site, in the Front Yard or the flanking Side Yard in any Residential Zone, any large recreational vehicle for any longer than is reasonably necessary to load or unload such vehicle.
Based on the evidence provided, the recreational vehicle is parked in the Front Yard, which contravenes Section 45.3.
3. Further, Section 45.4(a) of the Edmonton Zoning Bylaw states notwithstanding subsection 45.3, from April 1 through October 31 inclusive, on a residential Site with no rear Lane, large recreational vehicles may be parked to within 2.0 metres of the interior edge of the sidewalk, or within 2.0 metres of the curb if there is no sidewalk: where vehicular access is solely available through the Front Yard.
Based on the evidence provided, the recreational vehicle is parked on the subject site year round, which contravenes Section 45.4(a).
4. Based on the photographic evidence, recreational vehicle parking is not characteristic of the neighbourhood and affects the visual aesthetics of the streetscape.
5. The Board acknowledges the receipt of 14 signatures of support; however the Board agrees with the Development Authority that other vehicles and trailers depicted in Exhibit 'A' may contravene Section 45 of the Edmonton Zoning Bylaw, and an approval of a large recreational vehicle may proliferate the neighbourhood with large vehicles.
6. The Board acknowledges that moving the recreational vehicle to a storage facility may be a financial hardship for the Appellant. However, the Board can only consider waiving variances that relate to planning issues.
7. Based on the above, it is the opinion of the Board, that the proposed development will duly interfere with the amenities of the neighbourhood and will materially interfere with and affect the use, enjoyment and value of neighbouring parcels of land

IMPORTANT INFORMATION FOR APPLICANT/APPELLANT

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