

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

Churchill Building  
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Date: January 29, 2016  
Reference Number: 163697695-001  
File Number: SDAB-D-16-500

### **Notice of Decision**

This appeal is dated November 26, 2015, from an Order issued by a Municipal Enforcement Officer to remove a recreational vehicle from a required front yard (driveway).

The subject Site is on Plan 3414TR Blk 38 Lot 17, located at 7108 – 39 Avenue NW. The subject Site is zoned RF1 Single Detached Residential Zone.

The appeal was filed on time, in accordance with Section 686 of the *Municipal Government Act*, R.S.A 2000, c. M-26, and was heard by the Subdivision and Development Appeal Board on January 14, 2016.

#### **Summary of Hearing:**

1. 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.
2. Prior to the hearing the following information was provided to the Board:
  - A petition from C. & M. Jorritsma indicating 22 neighbours have no objection to having the RV parked on the Subject Property year round; and
  - An Email from K. Wallace indicating he is a close neighbour who plans to attend the hearing, received by the Board on January 14, 2016.

#### **Position of Mr. and Mr. Jorritsma, the Appellants:**

3. They have lived on the subject Site since 1974 and have parked an RV on the concrete pad in front of the house since that time.
4. They landscaped around the RV, keep it tidy, take care of the surrounding area, respect the neighbourhood, and are confident the neighbours are supportive of the RV being parked on the concrete pad year round.
5. They would like to park the RV in front of their house year round because they use it as a storage space during the winter months to avoid paying storage fees.
6. They were asked by the Board to explain exactly where the RV is parked. They responded that they have a wedge-shaped lot with no room to park the RV in the backyard, and that the RV is parked in front of the side fence in the front yard, leaving the house clearly visible.

**Position of Mr. Wallace, a neighbour:**

7. Mr. Wallace advised the Board that the RV is parked in what would be considered a front driveway in many newer neighbourhoods in the City. The RV causes no obstructions to sight lines or safety issues.
8. He described the RV as a “beautiful, new trailer” which is well-kept and creates no image issue for the neighbourhood.

**Position of Municipal Enforcement Officers, Mr. A. Sapytma and Mr. J. Lazaruk:**

9. The Municipal Enforcement Officers advised the Board that a series of events took place with respect to the removal of the RV prior to the hearing. They are as follows:
  - a. November 7, 2014: Violation Notice issued pursuant to Section 45(3) of the *Edmonton Zoning Bylaw* because no development permit exists for the RV;
  - b. November 14, 2014: the Appellants were given a one week extension to submit a development permit application;
  - c. December 12, 2014: site inspection. There was no change in the location of the RV;
  - d. January 20, 2015: Mr. Jorritsma was advised that he could park his RV in front of his home between April 1<sup>st</sup> and October 31<sup>st</sup>, but that a permit is required any other time of the year. He was also advised that he could leave his RV where it was until the late fall since it is allowed to be parked on the concrete pad during the summer months;
  - e. November 3, 2015: site inspection. The RV was still parked in the front of the house, resulting in a Violation Notice and a Stop Order being issued pursuant to Section 23.2(3) of the *Edmonton Zoning Bylaw* and Section 645 of the *Municipal Government Act*, respectively.
10. The Municipal Enforcement Officers confirmed that they were authorized to issue a Stop Order under Section 645 of the *Municipal Government Act* and that the Stop Order was issued properly.

**Mr. and Mrs. Jorritsma Provided the Following Submissions in Rebuttal:**

11. They have been parking their RV on the concrete pad in front of their house since 1979.
12. For a variety of reasons, including the fact that he was told by a Planning Technician from the City that he could “just leave [the RV] until somebody complains”, Mr. Jorritsma did not apply for a development permit.
13. They have since paid the fine and have not applied for a development permit.
14. The Appellants understand they are legally entitled to keep their RV parked in front of their home during the summer months, and ask the Board for a permit to authorize them to keep their RV parked in front of their home year round.

**The Municipal Enforcement Officers Provided the Following Responses to New Information Presented in the Rebuttal:**

15. The Officers could not say if the Land Use Bylaw in effect in 1979 when the Appellants poured the concrete RV pad and began to park their RV on it year round allowed or prohibited either the pad or the parking. Therefore they could not confirm whether year-round parking might be a legal non-conforming use.

**Decision:**

The Stop Order issued pursuant to Section 645 of the *Municipal Government Act* is UPHeld IN PART. The Board varies the time in which the Appellants must comply with the Stop Order to March 31, 2016, to allow the Appellants adequate time to apply for a development permit in accordance with provisions of the *Edmonton Zoning Bylaw*.

**Reasons for Decision:**

The Board finds the following:

1. The Board finds that the Municipal Enforcement Officers were duly authorized to issue the Stop Order under Section 645 of the *Municipal Government Act*.
2. The Parties agreed that this situation would be best resolved by applying for a development permit if necessary. Therefore, the Board has granted the Appellants additional time to apply for a development permit authorizing them to park the RV in the Front Yard pursuant to Section 645 of the *Municipal Government Act*.
3. The Board finds that there is insufficient evidence to find that year round parking constitutes a legal non-conforming use, thereby allowing the Appellants to continue to park their RV year round.
4. The Board notes that the Stop Order dealt only with the seasonal parking restrictions on the large recreational vehicle and does not address the legality of the concrete pad that was poured in 1979 to accommodate the vehicle.

**Important Information for the Applicant/Appellant**

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  - 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,
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  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.

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Mr. Vince Laberge, Presiding Officer  
Subdivision and Development Appeal Board

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Date: January 29, 2016  
Project Number: 179344911-002  
File Number: SDAB-D-16-020

## **Notice of Decision**

This appeal is dated December 16, 2015, from the decision of the Development Authority for permission to construct an Accessory Building (shed, 3.66m x 3.5m), existing without permits.

The development permit application was refused because of deficiencies in the required distances to the Front Lot Line, the principal building and the lot line running parallel to any flanking public roadway other than a Lane.

The subject Site is on Plan RN24A Blk 1 Lot 1, located at 10902 - 130 Street NW. The subject Site is zoned RF1 Single Detached Residential Zone and is within the Mature Neighbourhood Overlay.

The appeal was filed on time, in accordance with Section 686 of the *Municipal Government Act*, R.S.A 2000, c. M-26, and was heard by the Subdivision and Development Appeal Board on January 14, 2016.

### **Summary of Hearing:**

1. 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.
2. Prior to the hearing the following information was provided to the Board:
  - Appellant's supporting documents;
  - Building Combo Permit Application;
  - Refused Development Permit;
  - Development Officer's written submissions; and
  - Canada Post Registered Mail delivery confirmation signed by "J Latimer" on December 15, 2015.

### **Preliminary Jurisdictional Matter**

#### **Position of the Appellant, Ms. Latimer:**

3. Sustainable Development received a complaint about Ms. Latimer's shed. Ms. Latimer was surprised to learn she required a development permit for her shed; she applied for one.

4. Ms. Latimer received a telephone call from the Development Officer, Ms. Hamilton, on November 27, 2015, informing her that the development permit she applied for was refused. She advised Ms. Hamilton that she was leaving on holidays to which Ms. Hamilton responded “no problem, you have fourteen days from the date you picked up the letter, not the date of the decision [to file a Notice of Appeal]”.
5. When she returned from holidays on December 7, 2015, she was informed it was too late to file the Notice of Appeal.
6. Asked by the Board if she was advised by the Development Officer about the reasons for the refused development permit, she said she was not sure if they discussed everything in detail, but that they discussed the location of the shed and its proximity to the house.

**Position of the Development Officer, Ms. Hamilton:**

7. Ms. Hamilton confirmed she spoke with Ms. Latimer about the refusal. She does not recall speaking with her about specific numbers, but provided her with information that the shed did not comply with the regulations in the *Edmonton Zoning Bylaw* and advised her she would receive a written notice of refusal for the development permit.
8. Asked if they discussed the legislated Notice of Appeal Period, Ms. Hamilton advised the Board that she explained to Ms. Latimer that she had 14 days from the date she received the written notice to file the Notice of Appeal.
9. Asked if she objected to the Canada Post Registered Mail delivery confirmation that confirmed that Ms. Latimer received the decision on December 15, 2015, she advised she had no objection.

**Decision about Preliminary Jurisdictional Issue:**

10. The Board determined that the appeal had been filed within the legislated Notice Period and proceeded on that basis.

**Substantive Planning Matters**

**Position of the Appellant, Ms. Latimer:**

11. Ms. Latimer had a shed on her corner lot property for a number of years.
12. Recently she built a larger shed to store her garden tools and equipment. She presented several photographs showing the design and location of the new shed (Exhibit A).
13. The development permit was refused because the shed is required to be set back 18.0 metres from the Front Lot Line, and it is set back 17.8 metres from the Front Lot Line.
14. Ms. Latimer canvassed her neighbours within the 60 metres notification radius (and a few outside of the radius); she received 32 signatures of neighbours supporting her shed.
15. The sidewalk adjacent to Ms. Latimer’s Rear Yard is about four feet wide; her fence is approximately 25-30 feet from the street.
16. Ms. Latimer was concerned that a mature tree located in the Side Yard of her house was going to fall, so she removed it and intends to plant new trees (which will eventually provide privacy to her yard from the sidewalk and street).

**Position of Ms. P. Bradt and Ms. D. Bahker, Parties within the 60 Metres Notification Radius:**

17. They are supportive of Ms. Latimer's shed and describe it as "nice looking", "unobtrusive", "environmentally considerate" and "consistent with pre-infill neighbourhood aesthetic".
18. Ms. Bahker resides in the adjacent lot across the back lane and has the clearest view of the shed of any neighbour.
19. Ms. Bahker provided a photograph of the shed taken from her kitchen window (Exhibit B). She advised the Board that the shed does not provide a visual loss of privacy.
20. Ms. Bahker described the shed as "innocuous" and believes the complaint made about the shed is petty, given that it has no negative impact on the neighbourhood.

**The Position of Ms. F. Hamilton, the Development Officer:**

21. The Board asked Ms. Hamilton to elaborate on the nature of the complaint that brought the matter before the Development Officer and ultimately, the Board. She advised that the shed was protruding over the top of the fence and was visible from the street.
22. Having viewed the photographic evidence presented at the hearing together with the updated Plot Plan, Ms. Hamilton formed the opinion that the shed is actually further away from the Front Lot Line than she originally thought, which makes a difference in whether or not the refusal would stand. She advised the Board that it was safe to assume the front setback requirement has been met and that a variance was not required.
23. The Board noted that since it appears, as a result of the evidence presented at the hearing, that the front setback requirement has been met, the flanking side yard, which requires a variance of three metres, is the only reason for the refusal. Ms. Hamilton agreed.
24. The Board suggested that the shed may be more visible and its potential visual impact increased if it were moved more into the middle of the yard in order to comply with the side setback requirements. Ms. Hamilton agreed.
25. Asked whether it truly interferes with the amenities of the neighbourhood, Ms. Hamilton argued that it potentially interferes with the amenities of the neighbourhood.

**The Appellant's Position in Rebuttal:**

26. Ms. Latimer reiterated that only one person complained about the shed and 32 neighbours were supportive of it.
27. She advised the Board that the reality is that she cannot move the shed because it is sitting partially on the fence posts. She tried to use the space creatively and does not want to tear the shed down. She is asking the Board to approve the shed where it is, how it is.

**Decision:**

The appeal is GRANTED and the decision of the Development Authority REVOKED. The following variances are GRANTED:

1. The Board grants a variance of 2.95 metres, pursuant to Section 50.3(5)(a), which requires that the distance between an Accessory building and the lot line running parallel to any flanking public roadway, shall not be less than the Side Setback required for the principal building.

**Reasons for Decision:**

The Board finds the following:

1. The proposed development, a shed, is an Accessory Building to a Permitted Use, Single Detached Housing in the RF1 Single Detached Residential Zone. Therefore per Section 50.1(2) it is permitted in this zone.
2. The Board accepts the shed is located as shown in the updated Site Plan provided by the Appellant (see attached Schedule “A”).
3. Based on the updated Site Plan, the Board finds that the shed, as located, has met the Front Setback requirement. Therefore, the second reason for the refusal by the Development Officer pursuant to Section 50.3(4)(a) does not apply and does not require a variance.
4. Based on the photographic evidence provided at the hearing, the subject Site has an extensive Side Yard and boulevard separating the shed from the flanking street. The portion of the angled roof that protrudes above the fence is approximately 0.2 metres at its highest point. The Board finds that the shed does not have a material negative visual impact.
5. The 2.95 metres required setback in the flanking side yard, pursuant to Section 50.3(5)(a), is somewhat mitigated given that it is adjacent to a large side yard and boulevard, but also given close proximity to the existing fence, which actually helps buffer the impact of the shed.
6. The Appellant presented evidence indicating substantial community support for the proposed development. The Board notes there was one email opposition to the proposed development, but that was outweighed by the significant neighbourhood support, both in writing and in person at the hearing.
7. The adjacent neighbour to the West of the subject Site appeared in support of the proposed development and described it as “innocuous” and “consistent with the aesthetic of the mature neighbourhood”.
8. Based on the evidence provided, the Board does not find that the proposed development would unduly interfere with the amenities of the neighbourhood or materially interfere with or affect the use, enjoyment or value of neighbouring parcels of land.

**Important Information for the Applicant/Appellant**

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Date: January 29, 2016  
Project Number: 180800189-002  
File Number: SDAB-D-16-021

## **Notice of Decision**

This appeal is dated December 14, 2015, from the decision of the Development Authority for permission to construct a rear uncovered deck (irregular shape, 4.8m x 5.36m, 0.6 x 2.57m, 2.43 x 2.04m @ 2m in Height), and exterior alterations (Pergola, 4.80 m x 5.38 m) to a Single Detached House, existing without permits.

The development permit application was refused because:

- the Height of the existing deck impacts the privacy on adjacent properties;
- there is an excess in the maximum allowable Site Coverage for a Principal Building;
- there is a deficiency in the Rear Yard Setback; and
- the existing rear deck with pergola is not in accordance with the general purpose of the Planned Lot Residential Zone.

The subject Site is located on Plan 0523619 Blk 30 Lot 62, located at 5816 - 202 Street NW.

The appeal was filed on time, in accordance with Section 686 of the *Municipal Government Act*, R.S.A 2000, c. M-26, and was heard by the Subdivision and Development Appeal Board on January 14, 2016.

### **Summary of Hearing:**

1. 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.
2. Prior to the hearing the following information was provided to the Board:
  - Documents, photographs, and a petition from the Appellant;
  - Uncovered Deck Combo Permit Application;
  - Refused Development Permit;
  - Development Officer's written submissions; and
  - Canada Post Registered Mail delivery confirmation.

### **Position of the Appellant, Mr. R. Ischewski:**

3. Mr. Ischewski's deck and pergola were built nine years ago without a permit. Mr. Ischewski wants to sell the house and is having some trouble because the structure is not in compliance. He applied for a permit and was denied. The deck was built five percent

larger than is allowed under the *Edmonton Zoning* Bylaw and sits approximately five or six feet from the bottom floor of the house.

4. At the time the deck was built, no neighbours complained. More recently, the neighbour to the left of the property complained about decreased privacy as a result of the raised deck. In an attempt to provide a privacy shield, the neighbour planted some trees in between the houses.
5. Mr. Ischewski confirmed that there are no basement windows in the floor below the deck and that the property slopes slightly from the front to the back.
6. Asked if he is willing to make an alteration to the structure so it complies with the site coverage regulations, Mr. Ischewski agreed that the structure could be made smaller.
7. Asked if the pergola is permanently affixed to the structure or whether it can be removed, Mr. Ischewski agreed that it could be removed.

**Position of the Development Officer, Ms. E. Lai:**

8. Asked whether a privacy screen could be added on the top of the deck facing south to provide the neighbour with added privacy, Ms. Lai agreed that a non-permanent screen is permitted.
9. Asked what options home owners have with respect to building a deck at the rear of the house and whether their options are limited with respect to building a raised deck, she suggested the best practice is to garner support from the neighbours on either side of the property.

**Decision:**

The appeal is GRANTED IN PART. The decision of the Development Authority is REVOKED IN PART. The Development is approved subject to the following conditions:

1. The entire pergola structure attached to the deck must be removed.

The following variances are granted:

1. A variance of 15.12 m<sup>2</sup> is granted with respect to Maximum Site coverage required pursuant to Section 130.4(3)(a);
2. A variance of 1.25 meters is granted with respect to the Rear Setback pursuant to Section 130.4(6), which provides that the Rear Yard shall not be less than 4.0 metres.

**Reasons for Decision:**

The Board finds the following:

1. The Board finds that the proposed development is consistent with the general purpose of the RPL Planned Lot Residential Zone.
2. A deck is an Accessory structure to the Permitted Use of the RPL Planned Lot Residential Zone.

3. The Board finds, based on photographic evidence and presentations at the hearing, that the principal structure is a bi-level and has a finished floor height considerably higher than that is typical of a two-story or bungalow.
4. The attached sketches indicate the deck height is two metres above grade. The Board accepts the Appellant's indication that the grade is higher at the Front than it is at the Rear of the property, which would further increase the deck height.
5. When considering the Site Coverage coverage, the Board notes that this particular zone, the RPL Planned Lot Residential Zone, allows lots with very small dimensions. The height of the finished floor together with the size of the rear yard amenity space present practical difficulties for the Appellant. To bring the deck within the allowed site coverage would leave a gap between the deck and garage of little practical use. Further the introduction of a platform and stairs to lower the level of the deck would also use up a significant portion of the usable amenity space.
6. As the rear door is elevated due to the bi-level construction a platform structure must be created which permits oversight into the neighbouring properties regardless of the height of the remainder of the deck.
7. The Board finds that pergola has a material adverse impact and does interfere with the amenities of the neighbourhood, given its height, its sun shadow effect on the property to the North, and its overall massing effect on adjacent property owners. The Board has made its removal a condition of the issuance of this permit.
8. The rear Setback variance is necessitated by the fact that the deck has joined the principal building and the detached garage. But for the deck the detached garage would be in compliance with the Bylaw. The development does not change the location of the detached garage. Therefore the Board finds that there is no material adverse impact associated with granting this variance.

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**SDAB-D-15-022**

Application No. 173417068-003

An appeal by Dentons Canada LLP to operate a Minor Alcohol Sales Use and to construct interior alterations on Plan 1420932 Blk V Lot 1, located at 10503 - Kingsway NW was **TABLED** to February 19, 2016