

Edmonton Subdivision and Development Appeal Board

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Date: February 5, 2016
Project Number: 159269966-003
File Number: SDAB-D-16-037

Notice of Decision

This is an appeal dated October 21, 2015, from the decision of the Development Authority for permission to construct an exterior alteration to an existing Single Detached House, (driveway extension 2.8m x 8.4m) existing without permits.

The development permit application was refused because the proposed concrete area is not part of the Driveway, parking spaces are not permitted within the Front Yard and because monolithic concrete is not considered a decorative hardsurfacing element to comply with the requirements of Section 55 of the Edmonton Zoning Bylaw.

The subject site is on Plan 9322204 Blk 38 Lot 101, located at 3639 - 30 Street NW, 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.

The appeal was heard on January 21, 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. The following documentation was provided to the Board and referenced during the hearing, copies of which are on file:
 - a written submission dated January 19 from the Appellant; and
 - a written submission dated January 20 from the Development Officer.

Position of the Appellant

3. The Board heard from Bronson Padmore who appeared for his mother, the Appellant.
4. Ms. Padmore needs additional off-street parking to facilitate the operation of her home based hair salon business which occupies the front attached garage.

5. The family owns three vehicles. The cement pad was built to provide a parking space for the third vehicle. Ms. Padmore was unaware she required a permit.
6. The effective encroachment into the Front Yard is approximately four feet rather than the entire nine foot width of the concrete extension. This is because a portion of the width aligns with the front entrance of the house and can be regarded as a walkway.
7. Mr. Padmore presented several pictures from the neighbourhood showing concrete driveway extensions and encroachments onto Front Yards.
8. All the neighbours on the street were consulted. None expressed opposition to the extended concrete. A copy of a petition containing neighbours' signatures was presented.
9. In answer to questions from the Board, the following additional information was provided:
 - Most of the photos presented of houses with extended concrete hardsurfacing are not in the immediate 60 metre notification zone. One other house in the 60 metre radius was identified as having extended concrete hardsurfacing.
 - There are no other similar cement pads on other lots on his cul de sac.
 - Many homes have walkways that project directly from the front entrances, but extended driveways similar to the photographs are not present on his cul de sac.
 - There is an extension on one pie shaped lot at the end of the cul de sac on the bulb.
 - The extended concrete hardsurfacing was installed in 2014.
 - Seven people live in the subject house and there are three vehicles registered to the address.
 - The home based hair salon business is operated out of the garage and services between five and 15 clients per day. The business has a valid and existing development permit. The business has been in operation for five or six years.
 - The on-street parking is not particularly problematic. They want to park their own vehicles off the street to allow clients to park on street.
 - The house next door has a gravel front yard and vehicles are regularly parked there.

Position of an Affected Neighbour

10. The Board heard from Nestor Slipchuk who lives at 3652 30 Street, directly across the street from the subject Site and believes he is the most affected neighbour.
11. He supports the appeal and believes that the extended concrete pad should be allowed. He also noted that the neighbourhood generally supports it, as evidenced by the petition.
12. Mr. Slipchuk reiterated Mr. Padmore's argument that the encroachment into the Front Yard is not really 2.8 metres, but closer to one metre. A large portion of the extended surface is in front of the entrance and can be regarded as a walkway.

13. In answer to a question from the Board, Mr. Slipchuk indicated that there was not a problem with available on-street parking.

Position of the Development Authority

14. The Board heard from Stephen Cooke of the City of Edmonton's Sustainable Development department. He reviewed the following information from his written submission:

- The extended concrete hardsurfacing does not meet the definition of "Driveway" as provided by section 61.(26).
- Section 54.2(2)(e) prohibits parking in Front Yards. The Front Yard of this property is being used for parking. This area should be landscaped and parking is not allowed on the Front Yard.
- The maximum allowable width for the driveway is 6.86 metres, as per section 54.1(4). The existing driveway including the extended portion is 9.6 metres.
- The Front Yard is not landscaped in keeping with section 55.4(1).
- Given the above observations, 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 properties.
- A Violation Notice was issued by Development Compliance on July 22, 2015 for the driveway. This Violation Notice is for "Parking on front yard and front yard has been hard surfaced".

15. In answer to questions from the Board, Mr. Cooke provided the following additional information:

- The concrete hardsurfacing was brought to the attention of the Sustainable Development department through a violation notice issued by a roaming compliance officer.
- Other non-conforming and unpermitted parking and concrete hardsurfacing may also be subject to violation notices. However, he has no knowledge of any others that may have been identified for compliance action.
- He cannot confirm if the driveways shown in the Appellant's photographs have been issued development permits.
- A walkway should be separated from a driveway by soft landscaping. The driveway and walkway should not be an uninterrupted span of monolithic concrete.
- Parking on walkways is prohibited in any event.
- They have evidence the concrete extension is being used for parking. The concrete extension is best described as a Parking Area.
- The City has received no complaints from neighbours about the concrete extension.

Rebuttal

16. In rebuttal, Mr. Padmore said that they use the concrete extension for parking, they also use it as a walkway and at times it is not used at all. They would like to have permission to continue parking on the concrete extension if at all possible, but they would be open to a condition that there be no parking on it.

Decision:

The appeal is DENIED and the decision of the development authority is CONFIRMED.

Reasons for Decision:

1. The proposed development is for a Driveway extension, an accessory to Single Detached House which is a Permitted Use in the zone.
2. Section 6.2(26) of the Edmonton Zoning Bylaw defines Driveway as “an area that provides access for vehicles from a public or private roadway to a Garage or Parking Area”.
3. Section 6.2 (29) defines Parking Area as “an area that is used for the parking of vehicles. A Parking Area is comprised of one or more parking spaces, and includes a parking pad, but does not include a Driveway.”
4. Based on the photographic evidence of the subject Site and the presented testimony, the Board finds that the proposed development is a Parking Area and is not a Driveway for the following reasons:
 - a. The proposed development is a rectangular concrete pad measuring 2.8 metres by 8.4 metres.
 - b. The concrete pad is located in the Front Yard abutting the public sidewalk between the front street and the front entryway of the Principal Dwelling.
 - c. The concrete pad does not provide access to a Garage or a Parking Area, but in fact is a separate Parking Area for the Appellant’s vehicles.
 - d. The concrete pad is not designed as a walkway; it does not connect the front entry of the Principal Dwelling to either the Driveway or the public sidewalk.
 - e. The concrete pad was constructed to provide an additional on-site parking space and is currently being used as a Parking Area.
5. Section 54.2(2)(e)(i) of the Edmonton Zoning Bylaw prohibits this type of development: “except as otherwise provided for in this bylaw, parking spaces, not including Driveways, that are required in accordance with the minimum standards of this Bylaw shall not be located within a Front Yard.”
6. The Board acknowledges that 19 of 21 neighbours in the Appellant’s cul de sac have signed a petition indicating they have no objections to the issuance of a permit for the proposed development.

7. However, the Board has not granted a variance to this regulation because:
 - a. The cement pad eliminates a significant portion of Landscaped area of Front Yard and creates the appearance of a monolithic cement parking lot in the Front Yard of the subject Site.
 - b. There are no other similar cement pads in Front Yards along the Appellant's cul de sac.
 - c. The Appellant acknowledged that the cement pad is not characteristic of the immediate neighbourhood.
 - d. The Appellant acknowledged that the presented photos are of properties located at significant distances from the subject property.
 - e. The Board finds that there is no hardship in this case because three on-site parking spaces are required and four are provided.
 - f. Further, there is no evidence of a notable lack of on-street parking.

8. Based on the above reasons, the Board finds that allowing the concrete extension will unduly interfere with the use, value and enjoyment of neighbouring parcels of land.

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*, 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.

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.

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

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SDAB-D-16-038

Project No. 182667676-001

An appeal to add (2) Minor Digital On-premises Signs to an existing Freestanding On-premises Sign (2 sided facing North/South – McDonalds), located at 8415 – 109 Street NW was **WITHDRAWN**