



**EDMONTON  
TRIBUNALS**

*Subdivision &  
Development  
Appeal Board*

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Date: February 8, 2018  
Project Number: 230508286-002  
File Number: SDAB-D-18-010

**Notice of Decision**

- [1] On January 24, 2018, the Subdivision and Development Appeal Board (the “Board”) heard an appeal that was filed on January 26, 2018. The appeal concerned the decision of the Development Authority, issued on December 13, 2017, to refuse the following development:

Construct exterior alterations to an Accessory Building (rear greenhouse  
(14.02m x 7.93m)

- [2] The subject property is on Plan 1320325 Blk 3 Lot 71, located at 3392 - Cutler Crescent SW, within the RSL Residential Small Lot Zone.

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

- Copies of the refused permit and permit application with attachments and plans;
- Canada Post Registered Mail receipt;
- Development Officer’s written submissions dated January 17, 2018;
- Appellant’s written submissions and supporting materials; and
- One online response in opposition to the development.

- [4] The following exhibits were presented during the hearing and form part of the record:

- Exhibit A – Plot Plan submitted by the Appellant
- Exhibit B – Certification of As-built Grades submitted by the Appellant

**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, Mr. Antony*

- [8] Mr. Antony read from the written submissions that he had provided to the Board, and provided background details about the history of the development.
- [9] His family has lived at the subject Site since 2014. The initial development permit and building permit were issued on September 10, 2016, and a permit for a Secondary Suite was issued in 2015. The second stage of the development started and the concrete pad was poured in June 2017. The framing started in August 2017.
- [10] He subsequently changed the roof plan, the design of the door, and the location of one door to save a pine tree. A cheaper overhead door was incorporated. He made an application for these alterations on September 21, 2017.
- [11] He was informed that the building was not developed in accordance with the approved plans. He received a revised stamped permit on October 12, 2017 based on the site inspection and completed the development accordingly.
- [12] He does not intend to develop a Garden Suite in the proposed development, and confirmed there is an existing Secondary Suite in the principal Dwelling. He is aware that the subject development cannot be used as a Garden Suite while there is an existing Secondary Suite in the principal Dwelling.
- [13] With respect to the Height variance, he explained that the Height was originally calculated using the average Grade calculated from eight different elevations. There will be an excess in Height if the Grade is calculated instead based on the five corners of the lot.
- [14] To mitigate impacts upon neighbouring properties, architectural features on the proposed development will enhance its aesthetics. The design and siting of the building will reduce the impact and massing on neighboring properties. The building is also setback from the neighbouring property, which will reduce any sun shadowing effect on the neighbouring property. A retaining wall has already been constructed on the south side of the structure to prevent drainage into the adjacent neighbour's property.
- [15] He confirmed that the building will be used as a greenhouse and a shed. The attic space will be used for storage. He will be growing plants and vegetables in the building even without services installed in the building. In his opinion, there will be sufficient sunlight to grow the vegetables. The plants and vegetables are for his family and he does not intend to sell them.

- [16] He confirmed that the initial development permit application did not outline any services for the building.
- [17] When asked by the Board to clarify both his oral and written submissions with respect to the statement that “We know that someone is corruptive in an authority [*sic*]”, he clarified that it was his belief that the Development Officer was pressured by the complaints received from neighbouring property owners to refuse the development. He did not present any evidence in support of this point.

*ii) Position of the Development Authority*

- [18] The Development Authority was represented by Ms. Ziober, Development Officer, and Mr. McArthur, Development Compliance Officer.
- [19] Mr. McArthur inspected the Site and took multiple Height measurements and found that there were discrepancies which needed a revised drawing.
- [20] Ms. Ziober referenced her written submission and provided the Board with the background of the proposed development.
- [21] A development permit application was made for an Accessory Building and approved in September 2016. A Development Compliance job was created on August 31, 2017 due to a complaint. At that time, no further inspection took place and the compliance job was closed on September 1, 2017.
- [22] A second complaint was received in October 05, 2017 and a Development Compliance job was created. An inspection was done on October 12, 2017. It was verified that the building did not reflect the approved elevation plans. Extra windows had been added, a door was removed, and the roof structure had changed.
- [23] The Appellant informed the Inspector that revised plans were submitted.
- [24] Ms. Ziober explained that it was generally the Development Authority’s practice to allow one restamp for minor changes, but when a second request for re-stamp was received on November 6, 2017, it was decided that a new Development Permit application to construct exterior alterations would be required. Under this new application, it was determined that the building was over-height, and a Development Officer has no authority to vary Height.
- [25] She outlined Section 52.4 of the *Edmonton Zoning Bylaw* and how she used the five corners of the lot to determine Height. This method would have been used to calculate the Grade for the Single Detached House. Once determined, this same Grade would be used for all other developments on the Site.

- [26] It was noted that the initial application on September 13, 2016 was approved as a Class A development permit, with no variances required to the Height. Although she could not confirm whether five corners or eight corners of the lot were used to calculate Grade and Height for that application, she noted that her written report to the Board lays out the calculation for Grade using a variety of methods. In all instances, a Height variance would be required.
- [27] In her view, both the Use and size should also be considered for a building that is Accessory to a Permitted Use. The proposed development is not a typical shed or a greenhouse. Although she could not confirm where drainage would occur on the subject Site, a sanitary sewer trunk fee would be applied for a greenhouse. She acknowledged that while there is a commercial Use class definition for “Greenhouses, Plant Nurseries and Garden Centres”, there is no definition for residential greenhouses developed as Accessory buildings.
- [28] Regarding concerns about the building being used as a Garden Suite, she noted that interior walls and proper plumbing would need to be installed for the building to be habitable, and proper permits would be required. Currently, no services have been installed. However, due to the location of the subject development, it may be that the installation of services will not be possible, or would be cost-prohibitive.
- [29] The Board referenced section 17.2 of the *Edmonton Zoning Bylaw* and questioned whether the facts of this case would justify cancelling the original approved development permit on the grounds of material misrepresentation. Ms. Ziober stated that although possible, she would prefer to consult with the legal department before cancelling a permit pursuant to section 17.2. In this case, no such consultation has occurred.
- [30] She confirmed that the building is not in the original approved location on the subject Site. However, when the inspection was conducted in 2017, Mr. McArthur was unable to measure any of the Setbacks as the building was at the framing stage. Should it later be confirmed that the structure has also been built with the incorrect setbacks, the Appellant would need to make a new application for a “leave as built” permit.
- [31] In response to some of the Appellant’s comments, Ms. Ziober stated that while complaints from neighbouring property owners were taken into consideration, they were not the primary reason for why she refused the proposed development. Her primary concerns lie with the Height, which she does not have the authority to vary, and the Use or potential Use of the proposed development. She was not the original development officer who approved the application, and in her view, there should have been more thorough discussion with the Appellant when the first development permit application was made for the Use of the building.
- [32] She was not aware of any Home Based Business applications for the subject site. However, a Major Home Based Business application cannot be approved with the existing Secondary Suite in the principal Dwelling.

*iii) Position of Affected Property Owner in Opposition to the Development, Mr. Goktas*

- [33] Mr. Goktas stated that due to the Grade of the subject property, his backyard gets flooded. After the compliance inspection occurred, landscaping was completed and he was therefore unable to confirm whether the drainage issues were being caused by the landscaping.
- [34] In his view, the proposed development will not be used as a greenhouse. The structure has opaque walls and roof, an attic and regular windows. Without the proper greenhouse windows, plants will not grow. The building is on a concrete foundation so plants will not be planted in the ground and there is no place for plants to drain. If the Appellant intends to grow plants in boxes or planters, then a greenhouse facility would not be needed.
- [35] The Height of the building will also negatively impact his privacy and will block his view.
- [36] Other neighbours had concerns with the proposed development, and he expressed surprise that no others were at the hearing or had submitted feedback in opposition.

*iv) Rebuttal of the Appellant, Mr. Antony*

- [37] In his opinion, the proposed development is Accessory to the Principal Dwelling.
- [38] He is concerned with the different calculations that were provided by the Development Officer.
- [39] The Height of the Accessory Building is lower than the Principal Dwelling.
- [40] In his opinion, he has addressed all the concerns that were submitted to the Development Authority.

**Decision**

- [41] The appeal is **ALLOWED** and the decision of the Development Authority is **REVOKED**. The development is **GRANTED** as applied for to the Development Authority, subject to the following **CONDITIONS**:
- 1) The proposed development shall be built in accordance with the plans stamped and approved by the Subdivision and Development Appeal Board.

- 2) Eave projections shall not exceed 0.46m into required yards or Separations spaces less than 1.2m. (Reference Section 44.1(b))

Advisements:

An approved Development Permit means that the proposed development has been reviewed against the provisions of this bylaw. It does not remove obligations to conform with other legislation, bylaws or land title instruments including, but not limited to, the Municipal Government Act, the Safety Codes Act or any caveats, restrictive covenants or easements that might be attached to the Site. (Reference Section 5.2)

- [42] In granting the development the following variance to the *Edmonton Zoning Bylaw* is allowed:

- 1) Section 50.3(3) is varied to permit the proposed development to exceed the maximum allowable Height by 0.36 metres, for a total Height of 4.66 metres.

**Reasons for Decision**

- [43] The proposed development is for an Accessory Building (rear greenhouse (14.02 metres by 7.93 metres) to a Single Detached House, which is a Permitted Use in the RSL Residential Small Lot Zone.

- [44] To determine the variance to be granted, the following calculations were adopted by the Board:

Average Grade

- [45] The Board accepts the Development Officer's calculation for average Grade based on the five corners of the lot, pursuant to section 54.2(b) of the *Edmonton Zoning Bylaw*. Using this method, the Board arrived at an average Grade of 696.82.

$$(696.14 + 696.29 + 698.05 + 698.10 + 695.52)/5 = 696.82$$

Height of Accessory Building (from Grade to Midpoint)

- [46] Based on the plans stamped refused by the Development Authority on December 13, 2017, the Height of the structure from the Garage slab to the midpoint of the roof is 4.29 metres, a number confirmed by the Development Authority upon physical inspection and onsite measurements completed by the the Development Officers. This figure was added to the average Grade calculation of 696.82, for a total of 701.11.

$$\text{Grade} + \text{Height of Accessory Building} = 696.82 + 4.29 = 701.11$$

Height of Garage Slab

- [47] Based on the plans submitted, the Height of the garage slab from average Grade to the top of the Garage Slab is 0.36.

Height of Accessory Building (including Garage Slab)

- [48] The Board also concurs with the calculation by the Development Officer that the Garage slab Height is 697.18. When this figure is added to the Height of the Accessory building at 4.29, the resulting overall Height is 701.47.

$$\begin{aligned} & \text{Grade + Height of Accessory Building + Garage Slab Height} \\ & = 696.82 + 4.29 + 0.36 \\ & = 701.47 \end{aligned}$$

Variance Required

- [49] Under section 50.3(3) of the *Edmonton Zoning Bylaw*, “An Accessory building or structure shall not exceed 4.3 m in Height”. To determine the variance required, the Height of the Accessory Building at 701.11 was subtracted from the Overall Height of 701.47, for a total variance of 0.36 metres required.
- [50] Pursuant to section 687(3)(d), when determining whether to grant a variance, the Board must determine whether by granting the variance, 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.
- [51] The Board finds that no such material interference would result from the variance for the following reasons:
- a) No submissions were made with respect to any planning reasons for refusing the development.
  - b) The only opposition who appeared before the Board was an adjacent property owner who indicated that he was experiencing ongoing construction related concerns. He also expressed concerns about potential future impacts on drainage. However, the variance in Height has no relation to construction practices, safety or drainage.
  - c) The Board acknowledges that the opposing neighbour did express concerns about the potential impact upon his view. However, no further information was provided in support of this claim, and the Board notes that generally speaking, there is no statutory right to a view.

- d) The Board further notes that the Accessory building is located on a section of the Site that backs onto a major arterial road and a storm pond. No neighbours are therefore directly impacted by the location of the Accessory building.
- e) Although the structure backs onto a major arterial road, it is also setback somewhat further from the road, mitigating any visual impact from the roadway.
- [52] With the exception of the aforementioned neighbour, no other property owners appeared or submitted written comments in opposition to the development.
- [53] The Board also finds that the Appellant has twice gone through a review of his application and in both instances, was granted a Class A Development Permit without variances. At no time was the Appellant provided with any indication that he did not have a properly issued permit. This application before the Board, the third application for this Accessory Building, was specific to changes to windows and doors. No other changes were proposed to the overall Height of the Accessory Building. It is important to note that the Development Authority attended on site in October 2017, when the measurements used in determining Height were confirmed.
- [54] The Appellant also confirmed that there is no intent to change the proposed Use from a greenhouse structure to a Dwelling structure.
- [55] For the above reasons, the Board is satisfied that the proposed development for an Accessory structure meets the test under section 687(3)(d) of the *Municipal Government Act*. The appeal is allowed.

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

Board Members in Attendance

Ms. K. Cherniawsky; Mr. A. Peterson; Mr. C. Buyze; Ms. D. Kronewitt Martin

CC:



**Important Information for the Applicant/Appellant**

1. This is not a Building Permit. A Building Permit must be obtained separately from Development & Zoning Services, Urban Form and Corporate Strategic Development, located on the 2nd Floor, Edmonton Tower, 10111 – 104 Avenue NW, Edmonton, AB T5J 0J4.
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 Development & Zoning Services, Urban Form and Corporate Strategic Development, located on the 2nd Floor, Edmonton Tower, 10111 – 104 Avenue NW, Edmonton, AB T5J 0J4.

*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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**SDAB-D-18-011**

**Application No. 265858612-001**

An appeal by \_\_\_\_\_ to construct a Semi-Detached House with front uncovered deck, fireplace, rear uncovered deck (irregular shape), and to a demolish an existing Single Detached House and Accessory Building (rear detached Garage), located at 9706 - 69 Avenue NW, was **WITHDRAWN**.