



**EDMONTON
TRIBUNALS**

*Subdivision &
Development
Appeal Board*

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Date: July 17, 2018
Project Number: 257865509-001
File Number: SDAB-D-18-085

Notice of Decision

June 13, 2018 Hearing

Motion:

- [1] The Subdivision and Development Appeal Board made and passed the following motion on June 13, 2018:

“That SDAB-D-18-085 be **TABLED** to July 11 or 12, 2018 at the written request of the Appellant.”

Reasons For Decision:

- [2] The Appellant advised he is unable to attend the hearing due to illness.
[3] This is the first postponement request made by the Appellant.

July 11, 2018 Hearing:

Motion:

That SDAB-D-18-085 be raised from the table.

- [4] On June 13, 2018, the Subdivision and Development Appeal Board (the “Board”) heard an appeal that was filed on **May 18, 2018**. The appeal concerned the decision of the Development Authority, issued on **September 20, 2017**, to refuse the following development:

Construct a two-Storey Accessory building (main floor Garage, 11.43 metres by 7.32 metres; second floor Garden Suite, 8.84 metres by 7.32 metres)

- [5] The subject property is on Plan 4830Q Blk 17 Lot 12, located at 12936 - 85 Street NW, within the RF4 Semi-Detached Residential Zone. The Mature Neighbourhood Overlay applies to the subject property.
- [6] The following documents were received prior to the hearing and form part of the record:
- Copy of the Development Permit application with attachments, proposed plans, and the refused Development Permit;
 - The Development Officer's written submission; and
 - Online responses.

Preliminary Matters

- [7] 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.
- [8] The Presiding Officer outlined how the hearing would be conducted, including the order of appearance of parties, and no opposition was noted.
- [9] The Presiding Officer referenced Section 686(1) of the *Municipal Government Act*, RSA 2000, c M-26 which states that:
- a development appeal to a subdivision and development appeal board is commenced by filing a notice of the appeal, containing reasons, with the board
- a) in the case of an appeal made by a person referred to in section 685(1)
- i) with respect to an application for a development permit,
- (A) within 21 days after the date on which the written decision is given under section 642, [...]
- [10] It was noted that the decision of refusal by the Development Officer is dated September 20, 2017 and the Notice of Appeal was filed on May 18, 2018. It appears that the Board does not have authority to hear the appeal. The Presiding Officer indicated that the appeal could be withdrawn and a new development permit application could be submitted without the required six month re-application period. However, if the Board proceeds with the hearing, a development permit application requiring variances potentially cannot be made for six months from the date of the Board's decision, if the Board determines that the appeal was filed late.

Summary of Hearing

- i) *Position of the Appellant, Mr. J. Kumar:*

- [11] Mr. Kumar acknowledged that the appeal was filed outside of the 21 day appeal period, because his mother was ill and because of that he was out of the country.
- [12] Mr. Kumar stated that the plans for this development and the size of the proposed Garden Suite were prepared based on information that he received during discussions with Development & Zoning Services. However, the *Edmonton Zoning Bylaw* was amended after he submitted his application and the Garden Suite cannot be larger than 450 square feet in size. He felt that this was unfair because he was provided misleading information.
- [13] After a short recess to consider the Appellant's request, the Presiding Officer advised that it was the decision of the Board not to grant a further postponement.
- [14] The Presiding Officer reiterated that the Development Officer's decision of refusal was issued on September 20, 2017 and that Mr. Kumar received notice of the refusal on September 25, 2017, as indicated by the registered mail receipt. The appeal was not filed until May 18, 2018, well outside of the 21 day appeal period, and therefore the Board does not have jurisdiction to hear the appeal.

ii) *Position of the Development Officer, Mr. K. Yeung:*

- [15] The Development Authority did not appear at the hearing and the Board relied on Mr. Yeung's written submission.

Decision

- [16] The Board does not assume jurisdiction.

Reasons for Decision

- [17] Section 686(1) of the *Municipal Government Act*, RSA 2000, c M-26 states that a development appeal to a subdivision and development appeal board is commenced by filing a notice of the appeal, containing reasons, with the board, (a) in the case of an appeal made by a person referred to in section 685(1), (i) with respect to an application for a development permit within 21 days after the date on which the written decision is given under section 642, [...]
- [18] The Board applied the provisions of Section 686(1) of the *Municipal Government Act*, and finds that the appeal was filed outside of the allowable 21 days.
- [19] Based on the evidence provided, the Board determined that the Development Authority issued the decision of refusal on September 20, 2017. The Appellant received notice of the decision of the Development Authority on September 25, 2017 and the appeal was not filed until May 18, 2018, approximately eight months after the issuance of the refusal which is well beyond the allowable 21 day appeal period.

[20] The Board does not have the ability to extend the time for filing an appeal. The appeal was filed more than 21 days following the date on which the Appellant received notice of the decision of the Development Authority and, therefore, the Board cannot assume jurisdiction to hear this appeal.

A handwritten signature in blue ink, appearing to read "Winona Tuttle".

Mr. W. Tuttle, Presiding Officer
Subdivision and Development Appeal Board

Board Members in Attendance: Mr. B. Gibson, Mr. J. Jones, Ms. S. LaPerle, Mr. J. Wall

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 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.