

# **Edmonton Subdivision and Development Appeal Board**

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Date: July 30, 2015  
Project Number: 170465146-003  
File Number: SDAB-D-15-125

## **Notice of Decision**

This appeal dated May 24, 2015, from the decision of the Development Authority for permission to:

Construct an uncovered deck (1.95m x 4.90m at 1.10m in height), existing without permits

on Plan 2028AO Blk 51 Lot 22, located at 15012 - 109 Avenue NW, was heard by the Subdivision and Development Appeal Board at its hearing held on June 18, 2015 and July 15, 2015. The decision of the Board was as follows:

### **June 18, 2015 Hearing:**

#### **Motion:**

“that the appeal hearing be postponed to July 15 or 16, 2015 at the written request of the Respondent and in agreement with the Appellant.”

### **July 15, 2015 Hearing:**

#### **Motion:**

“that SDAB-D-15-125 be raised from the table.”

### **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*, RSA 2000, c M-26.

The Board heard an appeal of the decision of the Development Authority to approve an application to construct an uncovered deck (1.95m x 4.90m at 1.10m in height), existing without permits, with a variance granted in the allowable projection into the Side Setback, subject to conditions, located at 15012 – 109 Avenue NW.

The subject Site is zoned RF1 Single Detached Residential Zone and is within the Mature Neighbourhood Overlay. The approved permit was subsequently appealed by an adjacent property owner.

Prior to the hearing, the following information was provided to the Board, copies of which are on file:

- A written submission from the Appellant on May 24, 2015.
- A written submission from Sustainable Development on June 11, 2015.

At the outset of the hearing, the Presiding Officer indicated that Ms. Armistead, the Appellant, was not in attendance at the hearing. Administrative staff attempted to contact Ms. Armistead with no success.

The Presiding Officer indicated that the Board would proceed with the appeal hearing, and base their decision on the information provided at the hearing as well as the Appellant's written submission.

The Board then heard from Mr. Cooke, representing Sustainable Development, who answered questions from the Board:

1. He clarified the calculation for the Side Setback.
2. While the actual minimum north side setback to the principal building on the subject lot is 2.10 metres, the minimum required side setback under section 110.4(10)(a) is only 1.2 metres. Under section 44.3(b), platform structures may project a maximum of 0.6 metres into that 1.2 metre side setback, allowing platform structures to come within 0.6 metres of the property line. Since the closest point of the platform structure is 0.18 metres clear of the property line, the resulting variance 0.42 metres.
3. He confirmed that the calculation in the Appellant's submission is not correct.
4. With regard to whether or not the deck could be considered a landing due to the access point of the doors, he stated that it could be considered a landing and therefore exempt from Site Coverage requirements; however, he did not have the maximum dimensions for landings available for the Board's consideration.

The Board then heard from Mr. Vallee, representing the Respondent, R. Vallee Holdings Inc., who made the following points:

1. He is willing to fix any of the deficiencies required.
2. He confirmed that the existing deck was built earlier than 2007 as he purchased the house in 2005.
3. He made arrangements with an existing tenant to replace the back entry and deck as they were in need of repair. The deck was made larger.
4. In his opinion, the existing deck does not affect the property owner to the north as the deck's side is along the neighbour's entire driveway.
5. He confirmed that the existing deck is accessible from underneath and he is able to control the weeds.

6. He is willing to comply with any conditions imposed by the Board.

In response to questions by the Board, Mr. Vallee provided the following information:

1. With regard to the compromise 1 metre width outlined in the Appellant's submission, he stated that this is not feasible and that the subject Site has already been sold and he would like the deck to be approved as it exists.
2. He provided the Board with photographs of the existing deck showing that the property has a chain link fence along the entire north property line and the area under the deck that is accessible, marked "Exhibit A".
3. The stairs on the deck leading to the rear yard had to be moved to the north due to the gas meter located between the edge of the deck and a basement window as shown in the photographs. This is why the deck has a width of 1.95 metres.
4. The deck abuts the neighbouring property and is not an eyesore.
5. The deck was made larger to accommodate a barbeque area.
6. The original deck was not on the Real Property Report when he purchased the property.
7. He clarified that the addition of one foot was for the length of the deck, and the 1.95 metres is the width of the deck.
8. He is prepared to replace the railing on the deck to comply with the building code and cut down the lattice as required.
9. He reiterated that he is willing to comply with any conditions imposed by the Board.

**Decision:**

The appeal is DENIED and the decision of the Development Authority is CONFIRMED. The development is GRANTED as approved by the Development Authority, subject to the following CONDITIONS:

1. The development shall be constructed in accordance with the stamped and approved drawings.
2. Any future deck enclosure or cover requires a separate development and building permit approval.

In granting the development the following variance to the *Edmonton Zoning Bylaw* is allowed:

A variance of 0.42 metres to the maximum allowable projection in the required (north) Side Setback is granted.

**Reasons for Decision:**

The Board finds the following:

1. The proposed development is an Addition to a Permitted Use in the RF1 Single Detached Residential Zone.
2. The Board accepts that the Width of the existing deck is the consequence of a gas meter located on the west side of the deck, between the stair and the Dwelling.
3. The deck, which has existed for several years provides a required access to the principal building and, as such, is analogous to a required landing, which would normally be excluded in terms of Site Coverage.
4. The Board acknowledges the extensive written submission from the Appellant; however, many of the Appellant's concerns relate to building code issues and not planning issues.
5. Based on the above reasons, it is the opinion of the Board that the proposed development would not unduly interfere with the amenities of the neighbourhood, nor materially interfere with or affect the use, enjoyment or value of neighbouring parcels of land.

**Important Information for Applicant/Appellant**

1. This is not a Building Permit. A Building Permit must be obtained separately from the Sustainable Development Department, located on the 5<sup>th</sup> Floor, 10250 – 101 Street, Edmonton.
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*, RSA 2000, c S-1;
  - c) the requirements of the *Permit Regulation*, Alta Reg 204/2007;
  - d) the requirements of any other appropriate federal, provincial or municipal legislation; and
  - 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 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 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.*

Mr. N. Somerville, Presiding Officer  
Subdivision and Development Appeal Board

CC:

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Date: July 30, 2015  
Project Number: 170098691-009  
File Number: SDAB-D-15-150

## **Notice of Decision**

This appeal dated June 23, 2015, from the decision of the Development Authority for permission to:

Construct an Accessory Building (Detached Garage 7.32m x 7.62m)

on Plan 2700R Blk 55 Lot 36, located at 9756 - 80 Avenue NW, was heard by the Subdivision and Development Appeal Board at its hearing held on July 15, 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 Presiding Officer first addressed the issue of jurisdiction and whether the appeal was filed within the allowable 14-day appeal period, pursuant to section 686 of the *Municipal Government Act*, RSA 2000, c M-26.

The Presiding Officer indicated that there is a Canada Post confirmation that the registered mail was picked up on June 13, 2015 and the Appeal was filed on June 23, 2015, which is within the allowable 14 days appeal period.

### **Motion:**

“that the Board assume jurisdiction pursuant to Section 686(1)(a)(i) of the *Municipal Government Act*.”

### **Reasons for Decision:**

The Board finds the following:

1. Based on the evidence provided, the Board determined the Appellant was notified of the refused development permit on June 13, 2015 and the appeal was filed on June 23, 2015.

Therefore, pursuant to section 686(1)(a)(i) of the *MGA*, the appeal was filed within the allowable 14 days.

**Summary of hearing continued:**

The Board heard an appeal of the decision of the Development Authority to refuse an application to construct an Accessory Building (Detached Garage 7.32m x 7.62m), located at 9756 - 80 Avenue NW. The subject site is zoned RSL Residential Small Lot Zone.

The development permit was refused due to an excess in the maximum allowable Height; a deficiency in the flanking Side Setback for the Accessory Building; and an excess in the maximum allowable Site Coverage for an Accessory Building

Prior to the hearing the following information was provided to the Board, copies of which are on file:

- A written submission from the Appellant on July 14, 2015.

The Board heard from Mr. Liske, representing the Appellant, Liske Developments Ltd., who was accompanied by Mr. Lidkea, the property owner, who together made the following points:

1. They referenced the garage as being a two Storey Accessory Building and referred to TAB 2 of the Appellant's submission showing examples of other two-storey garages in the area.
2. The garage will be used as a workshop and storage area.
3. The Site Plan indicates that the principal Dwelling has a 1.22 metre Side Setback and the proposed development will have a 1.79 metre Setback; the required Setback is 2.01 metres.
4. They confirmed that the location of the garage was 0.95 metres closer to the property line on the east side of the property. This was done to leave more useable space between the street and the accessory building.
5. There is an excess in the Site Coverage to accommodate parking for a truck and car, and a stairwell area within the accessory building.
6. The Height variance is required to accommodate an attic and workshop.
7. They referenced TAB 3 of the Appellant's submission, a petition with 11 signatures in support of the proposed development from neighbouring property owners.
8. No letters were received in opposition to the proposed development.

In response to questions from the Board, Mr. Liske and Mr. Lidkea provided the following information:

1. They confirmed that there is a difference of 1.22 metres between the principal Dwelling and the property line.
2. The Side Setback for the garage is 1.79 metres.
3. There is less of a variance required for the Garage Side Setback.

4. They provided neighbouring property owners with a copy of the proposed plan and discussed the variance with them.
5. They stated that north of the subject Site, there is a two Storey garage currently under construction and the neighbouring property owner east of the subject Site has a one Storey double garage that is aligned closer to the subject lot on the west side.
6. They confirmed that the proposed lot is 130 feet by 33 feet.

The Board then heard from Mr. Sheahan, representing Sustainable Development, who made the following points:

1. He informed the Board of the recent amendment to Section 52 of the *Edmonton Zoning Bylaw* with regard to Height.
2. He confirmed that the amendment removed reference to “Storeys” from the Height calculations; therefore, the proposed development does not require a variance in the number of Storeys.
3. He revised the calculations based on the new method for Height calculation, which resulted in an overall Height of 5.33 metres rather than 5.94 metres. Therefore, the required variance is reduced from 1.64 metres to 1.03 metres.

In response to questions from the Board, Mr. Sheahan provided the following information:

1. With regard to the streetscape massing and the look of the proposed development in comparison to how a Garage Suite would look, he stated that they would look similar.
2. He would consider granting a variance in Height if the Bylaw allowed him to do so.
3. He confirmed that the Board is not required to consider hardship when granting a variance; however, in his opinion, there is hardship on the property since it is a 33 feet corner lot.
4. The smaller than usual width has created the need for the requested variances.
5. He confirmed that the proposed development complies with the Ritchie Neighbourhood Improvement Plan.

In rebuttal, Mr. Liske made the following points:

1. He confirmed that there is a sidewalk on the west side of the property and a boulevard on the west flanking Side Yard.

**Decision:**

The appeal is ALLOWED and the decision of the Development Authority is REVOKED. The development is GRANTED as applied for to the Development Authority. In granting the development the following variances to the *Edmonton Zoning Bylaw* are allowed:

1. A variance of 1.03 metres in the allowable Height for the Accessory Building;
2. A variance of 0.22 metres to the flanking Side Setback for the Accessory building to allow for the proposed flanking Side Setback of 1.79 metres;



3. A variance of 7.17 square metres (1.77 percent) to the Site Coverage of the Accessory Building to allow for a Site Coverage of 55.71 square metres (13.77 percent); and
4. A variance of 5.30 square metres (1.31 percent) to the proposed total Site Coverage to allow for a total Site Coverage of 167.16 square metres.

**Reasons for Decision:**

The Board finds the following:

1. The proposed development is Accessory to a Permitted Use in the RF3 Small Scale Infill Development Zone.
2. The Board notes that although the proposed development is higher than the maximum allowed for Accessory Buildings, the dimensions are nevertheless within the parameters for what would be allowed for a Garage Suite.
3. The proposed development, from a massing and streetscape perspective appears to look similar to a Garage Suite rather than a Garage.
4. Because of the orientation of the subject site on the west end of the block, most of the sun shadowing created by the accessory building will fall on the flanking street or the rear lane.
5. The appellant provided photographic evidence of several similar over-height accessory buildings in the surrounding area.
6. The deficiency in the Side Setback is significantly less than the existing flanking Side Setback to the Principal Dwelling, which has previously been approved.
7. Given the relatively small size of the property, the Board finds that the excess in the total Site Coverage is warranted for the following reason:
  - a. The excess in the Site Coverage for the Garage is related to the interior access to the upper level, which is preferable to providing an exterior stair which could create over-siting problems.
  - b. The narrowness of the lot is mitigated because it is a corner lot with a boulevard between the lot and the flanking roadway.
8. The Appellant submitted an extensive Community Consultation from neighbouring property owners in support of the proposed development.
9. The Board accepts the evidence submitted that a similar development is being constructed across the rear lane north of the subject Site.
10. No letters were received in support or opposition to the proposed development and no one appeared in opposition at the hearing.
11. Based on the above reasons, it is the opinion of the Board that the proposed development would not unduly interfere with the amenities of the neighbourhood, nor materially interfere with or affect the use, enjoyment or value of neighbouring parcels of land.

**Important Information for Applicant/Appellant**

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  - c) the requirements of the *Permit Regulation*, Alta Reg 204/2007;
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4. A Development Permit will expire in accordance to the provisions of Section 22 of the *Edmonton Zoning 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 the Sustainable Development Department, located on the 5th Floor, 10250 – 101 Street, Edmonton.

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Mr. N. Somerville, Presiding Officer  
Subdivision and Development Appeal Board

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Date: July 30, 2015  
Project Number: 167822014-001  
File Number: SDAB-D-15-155

## **Notice of Decision**

This appeal dated June 15, 2015, from the decision of the Development Authority for permission to:

Construct an Accessory Building (detached Garage, 6.71m x 7.32m) existing without permits

on Plan 1982HW Blk 1 Lot D, located at 9351 - 90 Street NW, was heard by the Subdivision and Development Appeal Board at its hearing held on July 15, 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 Presiding Officer first addressed the issue of jurisdiction and whether the appeal was filed within the allowable 14 days appeal period, pursuant to Section 686 of the *Municipal Government Act*, RSA 2000, c M-26.

The Chair reviewed the information provided: the refusal was dated April 30, 2015 and the appeal was filed 46 days later on June 15, 2015. Accordingly, the appeal appeared to have been filed 32 days over the allowable 14 days appeal period.

The Board heard from Mr. Cormier, representing the Appellant, GarageCo Builders Inc., who provided the following information with regard to the timing of filing the appeal:

1. The refused Development Permit was received in early May by mail.
2. He does not recall the exact date when he received notification but recalls it was shortly after the decision date of April 30, 2015
3. He did not receive a letter form Can post but UPS bus mailbox
4. He thought he had emailed a PDF document within the 14 days, but was unable to find a record of it.
5. He advised he was getting married during this time and acknowledged the delay.

In response to a question by the Board, Mr. Cormier was unable to provide any compelling reason or the late filing.

Ms. Ziober, representing the Sustainable Development Department, did not have anything to add with regard to the date of the appeal being filed.

When asked if this notice was sent by registered mail or the normal mail, she stated there is no requirement for notices to be sent by registered mail.

She further stated there was no indication on file of an email from the appellant.

**Decision:**

The Board does not assume jurisdiction to hear the Appeal.

**Reasons for Decision:**

The Board finds the following:

1. Pursuant to Section 23(1)(a) of the *Interpretation Act*, RSA 2000, c I-8, the Board determined the Appellant was notified of the refusal of the development permit no later than May 21, 2015, and filed the appeal on June 15, 2015. Therefore, pursuant to Section 686(1)(a)(i) of the *Municipal Government Act*, the appeal was not filed within the allowable 14 days.

**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*, 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.

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Mr. N. Somerville, Presiding Officer  
Subdivision and Development Appeal Board

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