

Edmonton Subdivision and Development Appeal Board

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Date: August 6, 2015
Project Number: 162843124-002
File Number: SDAB-D-15-156

Notice of Decision

This appeal dated June 30, 2015, from the decision of the Development Authority for permission to:

Construct exterior alterations to a Single Detached House (Driveway extension 9.40m x 15.24m - existing without permits)

On Plan 9823743 Blk 39 Lot 38, located at 3722 - 28A Street NW, was heard by the Subdivision and Development Appeal Board at its hearing held on July 22, 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 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 refuse an application to construct exterior alterations to a Single Detached House (Driveway extension 9.40m x 15.24m - existing without permits), located at 3722 - 28A Street NW. The subject Site is zoned RF1 Single Detached Residential Zone and is within the Meadows Area Structure Plan.

The development permit was refused due to an excess in the allowable Width; the existing Driveway does not lead directly from a Garage or Parking Area; and parking is not allowed in the Front Yard and should be landscaped. It is the opinion of the Development Authority 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 properties.

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

- A written submission from the Development Authority dated July 17, 2015.

The Board heard from Mr. Goel who appeared on behalf of the Appellant, Mr. Gill, who was also in attendance. Mr. Goel provided the following information in support of the appeal:

1. Mr. Gill has lived at this residence since 2002.
2. He decided to proceed with the driveway extension last year.
3. Mr. Goel submitted 23 photographs of similar driveway extensions that exist in this neighbourhood, marked Exhibit "A".
4. Parking on the street is difficult during the winter months because the house is located at a T-intersection and Mr. Gill's car has been damaged on several occasions.
5. Mr. Goel provided a list of names of nine property owners who do not oppose the existing driveway extension, marked Exhibit "B".
6. He also submitted a letter from Mr. Gill's children's physician outlining the health issues of one of his children, marked Exhibit "C".

Mr. Goel provided the following responses to a question:

1. The driveways illustrated in the photographs are all located within several blocks of the subject site but he did not know whether they had valid development permits.

The Board then heard from Mr. Christian Lee, representing the Sustainable Development Department, who provided the following information:

1. He provided inspection photographs of the subject site to illustrate the number of vehicles parked at the residence, marked Exhibit "D".
2. The driveway extension came to the attention of the Sustainable Development Department as the result of two registered complaints. One complaint violated a condition that was placed on the approved Minor Home Based Business permit that outdoor business activity and outdoor storage of materials or equipment associated with the business was not allowed on the Site.
3. He refused the development permit application because it was his opinion that the driveway extension would have a negative impact on the neighbourhood.
2. Mr. Lee referenced a photograph of the subject site that was taken prior to the construction of the driveway extension, marked Exhibit "E".

He provided the following response to a question:

1. A development permit for a Minor Home Based Business was approved at this residence with all of the required conditions.

Mr. Goel made the following points in rebuttal:

1. Mr. Gill now operates his business from another location and no longer operates a minor home based business from his residence.

2. The four vehicles illustrated in Exhibit “D”, referenced by the Development Officer, are all personal vehicles that belong to Mr. Gill and his family.

Decision:

The appeal is **DENIED** and the decision of refusal by the Development Authority is **UPHELD**.

Reasons for Decision:

The Board finds the following:

1. The proposed development is an addition to a Single Detached House which is a Permitted Use in the RF1 Single Detached Residential Zone.
2. The Board acknowledges the photographic evidence provided by the Appellant to illustrate 23 similar driveway extensions that have been developed in this neighbourhood. However, information could not be provided to determine whether or not valid development permits had been issued for any or all of these driveway extensions.
3. Section 55.4(1) of the *Edmonton Zoning Bylaw* states that “All open space including Front Yards... Setback areas and Separation Spaces shall be landscaped...” Section 6.1(55) defines Landscaping to mean, in part, “decorative hardsurfacing elements... excluding monolithic concrete and asphalt”. In short, Front Yards and Front Setbacks must be landscaped, but monolithic concrete cannot be used for landscaping purposes.
4. Based on a review of the photographic evidence provided, the existing driveway extension is located in the front of the property which does not comply with the landscaping regulations, pursuant to Section 55.4(1) of the *Edmonton Zoning Bylaw*.
5. Based on the evidence provided by the Development Officer, the property owner was advised to apply for a development permit for the driveway extension as a result of complaints received from neighbouring property owners.
6. The Board acknowledges the list of names for nine neighbouring property owners who support the development provided by the Appellant, marked Exhibit “C”, but notes that the signatures of these property owners were not included and information about the required variances was not included on the petition of support. As well, one of the nine property owners is not within the 60m notification radius.
7. Section 54.2(2)(e) of the *Edmonton Zoning Bylaw* states the following:

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 be located in accordance with the following:

- i. parking spaces shall not be located within a Front Yard; and
- ii. ...

Based on a review of the photographic evidence provided by the Development Officer, the Board finds that vehicles were parked on the driveway extension which does not comply with Section 54.2(2)(e) of the *Edmonton Zoning Bylaw*.

8. The Board acknowledges the medical evidence provided regarding the health concerns of one of the residents of this property but finds that there are other types of landscaping materials that can be used to landscape the Front Yard to address these health concerns while complying with the requirements of Section 54.2(2)(e) of the *Edmonton Zoning Bylaw*.
9. The Appellant did not provide any planning reasons that would allow the Board to grant the required variances.
10. Based on the above, it is the opinion of the Board, that the proposed development will unduly interfere with the amenities of the neighbourhood and materially interfere with and affect the use, enjoyment and value of neighbouring parcels of land.

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.
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.

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

Edmonton Subdivision and Development Appeal Board

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7523 - 168 Avenue NW
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Date: August 6, 2015
Project Number: 138379212-002
File Number: SDAB-D-15-157

Notice of Decision

This appeal dated June 30, 2015, from the decision of the Development Authority for permission to:

Construct exterior alterations to a Single Detached House (concrete Driveway extension 13.20m x 11.92m)

on Plan 0521874 Blk 4 Lot 5, located at 7523 - 168 Avenue NW, was heard by the Subdivision and Development Appeal Board at its hearing held on July 22, 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 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 refuse an application to construct exterior alterations to a Single Detached House (concrete Driveway extension 13.20m x 11.92m), located at 7523 - 168 Avenue NW. The subject Site is zoned RF1 Single Detached Residential Zone.

The development permit was refused because the existing concrete extension on either side of the approved Driveway does not lead to an overhead Garage door or Parking Area; the Front Yard is not landscaped; parking spaces are not permitted within a Front Yard; parking on areas that should be landscaped detracts from desirable curb appeal; and the conditions imposed on the approved Development Permit for the Single Detached House have not been fulfilled.

Prior to the hearing, the following information was provided to the Board, a copy of which is on file:

- A written submission from the Development Authority dated July 17, 2015

The Board heard from the Appellant, Mr. Tom Ho, who provided the following information:

1. Mr. Ho asked for clarification regarding what portion of the concrete was under dispute.
2. The Presiding Officer advised Mr. Ho that the concrete extensions on both sides of the driveway were the subject of the hearing.
3. Mr. Ho was not aware that a development permit was required for the driveway extension.
4. He decided to extend his driveway to provide additional parking when his children lived at home.
5. Mr. Ho has health problems, including allergies, and the driveway extension reduces the amount of yard work.
6. The driveway was extended because it was similar to other extended driveways in his neighbourhood.
7. He understands that the City has concerns about vehicles parking on the concrete extension.
8. Street parking is limited, particularly when his neighbours have parties and during the winter months when the snow is piled up on the street.
9. His children have moved out of his house so the amount of parking he once required has decreased.
10. He appealed the refusal because the Sustainable Development Department did not provide clear instructions about the driveway extension, and he would like to know what he should do to ensure that his property complies with City requirements.
11. He asked for clarification as to what type of landscaping materials could be used.
12. He referenced a hand drawn plan of his proposal to remedy the situation, marked Exhibit "A". This includes removing sections of the concrete on both sides of the driveway. Trees and other plants would then be planted in these cut outs.
13. He has had discussions with a contractor about cutting the concrete, and the cost of cut outs is less prohibitive than the cost of removing the entire concrete driveway extension.
14. He is willing to make alterations to comply with the City requirements without removing all of the concrete, but the Development Officer told him that he would have to remove all of the concrete driveway extensions.
15. He no longer parks vehicles on the driveway extensions.
16. He expressed frustration that he had no contact with Sustainable Development for six or seven months after he submitted his development permit application.

Mr. Ho provided the following responses to questions:

1. He has lived at the subject property for approximately 8 years.
2. The driveway extension was constructed in 2008.
3. Other driveways in his neighbourhood have similar extensions but he does not know whether or not they have valid development permits.
4. He currently owns two vehicles.
5. The driveway extension was added to enable his children to park on site, but they no longer live at home and extra parking is not required.
6. He is prepared to compromise by adding landscaping to prevent vehicle parking on the extension without having to completely remove the concrete.

The Board then heard from Mr. Lee, representing the Sustainable Development Department, who provided the following information:

1. He submitted photographs, marked Exhibit “B”.
2. He noted that Mr. Ho’s neighbour has received three violation notices for a driveway extension and lack of landscaping.
3. He referenced a photograph contained in his submission to illustrate that the subject site and the immediately adjacent property are the only properties in this area with driveway extensions of this nature.
4. Based on this information, he refused the development permit application because in his opinion it was not characteristic of the neighbourhood.
5. He had previously discussed non-feasible alternative solutions with the Appellant, specifically the inclusion of planters on the driveway extension. However, the proposal presented by the Appellant today was not discussed.

Mr. Lee provided the following responses to questions:

1. The City is willing to make some compromises with respect to the required landscaping but wants to ensure that vehicles cannot be parked on the driveway extension.
2. He referenced a condition contained in his written submission regarding the provision of a landscaping plan.
3. He agreed that the extension on the right side of Photograph 1 of Exhibit “B” could be considered a walkway. However, monolithic concrete cannot be used for walkway.
4. The *Edmonton Zoning Bylaw* does not regulate the maximum allowable width of a walkway.
5. The driveway extension came to the attention of the Sustainable Development Department through a complaint.
6. It was his opinion that the front face of the house containing the front entrance is the front portion of the building and not the front wall of the attached garage. This means that the portion of the driveway extension located between the front door and the front of the attached garage is not compliant.

The Appellant had nothing further to add in rebuttal but asked that additional time be provided to make the required changes if his appeal is denied.

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, subject to the following **CONDITIONS**:

1. The portion of the driveway extension identified in Schedule A of this decision (attached) shall be removed, and landscaping shall be provided to comply with the requirements of Section 55.1 of the *Edmonton Zoning Bylaw* on or before October 31, 2015.

2. The portion of the driveway extension identified on Schedule B of this decision (attached) shall be removed, and landscaping shall be provided to comply with Section 55.1 of the *Edmonton Zoning Bylaw* on or before October 31, 2015.
3. Absolutely no parking shall be allowed within the required Front Yards/Setbacks other than the approved Driveway, pursuant to Section 54.2 of the *Edmonton Zoning Bylaw*.

Reasons for Decision:

The Board finds the following:

1. The proposed development is Accessory to a Permitted Use in the RF1 Single Detached Residential Zone.
2. While the *Edmonton Zoning Bylaw* contains specific requirements regarding the width of a Driveway, it does not contain specific requirements such as location, composition or maximum allowable width for walkways,
3. The Board finds that the portion of the concrete driveway extension located on the west side of the lot, excluding the portion to be removed pursuant to Schedule A, is a walkway because it provides direct access to the front entrance and is similar in width to the front landing and front entry.
4. The condition imposed will ensure that the extension will not be used to park vehicles in the Front Yard and will provide some additional landscaping in the Front Yard.
5. Section 6.1(40) of the *Edmonton Zoning Bylaw* defines a Front Yard as “the portion of a Site abutting the Front Lot Line extending across the full width of the Site, situated between the Front Lot Line and the nearest wall of the principal building, not including projections.”
6. The Board finds that the nearest wall of the principal building is the wall containing the overhead garage doors. Therefore, all portions of the existing driveway extension located north of that line are located in the Front Yard.
7. The conditions imposed will ensure that the existing sections of the driveway extension that do not comply will be removed.
8. Based on the evidence provided, the Board could not determine if there was an entry door located on the east side of the attached Garage. Therefore, the Board could not determine whether or not this portion of the driveway extension could be classified as a walkway.
9. The condition imposed provides additional time for the Appellant to remove the required sections of the driveway extension to comply with the requirements of the *Edmonton Zoning Bylaw*.
10. The Board recognizes and supports the Appellant’s proposal to provide additional landscaping on the walkway located in the Front Yard.
11. There were no letters of objection received and no one appeared in opposition to the proposed development.
12. Based on the above, it is the opinion of the Board that the proposed development will not unduly interfere with the amenities of the neighbourhood or materially interfere with or affect the use, enjoyment and 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 5th 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.

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Mr. V. Laberge, Presiding Officer
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17928 - 93 Avenue NW
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Date: August 6, 2015
Project Number: 152747801-002
File Number: SDAB-D-15-158

Notice of Decision

This appeal dated June 30, 2015, from the decision of the Development Authority for permission to:

Construct exterior alterations to an existing Single Detached House, existing without permits (driveway extension, 2.98m x 10.36m)

on Plan 7521610 Blk 40 Lot 13, located at 17928 - 93 Avenue NW, was heard by the Subdivision and Development Appeal Board at its hearing held on July 22, 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 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 refuse an application to construct exterior alterations to an existing Single Detached House, existing without permits (driveway extension, 2.98m x 10.36m), located at 17928 - 93 Avenue NW. The subject Site is zoned RF1 Single Detached Residential Zone.

The development permit was refused because the existing concrete driveway extension abutting the right side property line does not lead to an overhead garage door or parking area; the driveway extension is in the front and Front Yards must be landscaped and monolithic concrete is not considered a form of landscaping; parking is not allowed in the front yard; and it is the opinion of the Development Authority that the proposed development will unduly interfere with the amenities of the neighbourhood.

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

- Additional information received with the appeal on June 30, 2015.
- A Web response from a 60 metre owner in opposition to the proposed development.
- A written submission from the Development Officer dated July 20, 2015.

The Board heard from the Appellants, Mr. and Mrs. Calapre who provided the following information in support of the appeal:

1. They have lived at the residence since 2010.
2. The driveway was broken and cracked when they purchased the property.
3. They checked with their neighbours before repairing the driveway.
4. They were contacted by the City regarding a complaint about drainage from their property two years after the driveway was replaced.
5. The site was inspected and they received a Certificate of Lot Grading in 2013, a copy of which is marked Exhibit "A".
6. They were not aware that the driveway extension required a development permit and the issue was not raised at the time of the lot grading inspection.
7. The City received additional complaints regarding drainage several months ago.
8. They have made significant improvements to their house since 2010.
9. Their house sits higher than the surrounding houses.
10. They park their vehicles on the driveway extension because street parking is restricted due to the school located across the street. Their vehicles have also been vandalized in the past.

They provided the following responses to questions:

1. The extension existed before they purchased the subject property.
2. The entire driveway was replaced.
3. There is no side door on the garage.
4. The driveway existed in its current condition when the lot grading certificate was issued by the City.
5. On street parking is time restricted in front of the school.

The Board then heard from Mr. Paul Belzile, representing the Sustainable Development Department, who provided the following information:

1. The application is for a driveway extension to a single attached garage.
2. However, the existing driveway and parking pad width is typical of a double car garage.
3. He agreed that there is no way to interpret the driveway extension as being a walkway to the garage entry door because it is located at the back of the house and not at the side.

The Board then heard from Mr. Tyszko and Mrs. Tyszko, affected property owners who appeared in opposition to the proposed development and provided the following information:

1. They disputed the Appellant's submission that the driveway extension existed when they purchased the property.
2. They have lived in the neighbourhood for 25 years and when the Appellants purchased the subject property, there was a single driveway that led directly to the garage with landscaping in the front yard.

3. Water drainage from the Appellant's property causes ice buildup on their driveway and has flooded their basement, resulting in more than \$20,000 in damages.
4. They also have safety concerns because of the ice buildup on the driveway.
5. When the Appellants extended their driveway, they added a concrete slab that lined up directly with the Tyszkos' driveway.
6. The Tyszkos' basement flooded during July of a recent summer due to heavy rains.
7. They then decided to improve the landscaping and replace their driveway. However, these improvements do not prevent water from the Appellant's property from draining onto their driveway.
8. They attempted to discuss this issue with the Appellants before eventually filing a complaint with the City.
9. They were not aware of any records with respect to the state of the Appellant's property at the time of purchase.
10. They submitted a set of four photographs marked Exhibit "B". One of the photographs was taken this year to illustrate the extent of the icing on their driveway and the winter conditions.
11. The flooding of their property has been much worse since the driveway on their neighbour's property was extended.
12. Their houses face northwest and snow melt/freeze cycles make it difficult to remove the ice and makes it dangerous to access their house via the driveway.

Mr. and Mrs. Calapre provided the following information in rebuttal:

1. The photograph referenced by Mr. and Mrs. Tyszkos illustrated snow that had fallen and melted immediately.
2. They always use sand to address any icing issues.
3. They did not agree that snow melt from their property causes icing on their neighbour's driveway.
4. At the time of the lot grading inspection, they were asked to remove 6 inches of concrete between their driveway and their neighbour's driveway.

Mr. and Mrs. Calapre provided the following responses to questions:

1. The driveway was smaller when they moved in and there was some landscaping located between their driveway and the Tyszkos' driveway.
2. They increased the size of the driveway by adding the extension when the driveway was replaced.
3. They talked to their neighbours before extending the driveway, but they were not aware of the City regulations.

Decision:

The appeal is **DENIED** and the decision of the Development Authority is **CONFIRMED**. The development is **REFUSED**.

The existing driveway extension shall be removed on or before October 31, 2015.

Reasons for Decision:

The Board finds the following:

1. The proposed development is Accessory to a Permitted Use in the RF1 Single Detached Residential Zone.
2. The appeal has been denied for the following reasons:
 - a) Section 6.1(26) of the *Edmonton Zoning Bylaw* defines a Driveway as “an area that provides access for vehicles from a public or private roadway to a Garage or Parking Area.”
 - b) Based on a review of the photographic evidence provided, the existing 3.0 metre wide concrete Driveway extension abutting the east side of the property line does not lead to an overhead Garage door or Parking Area.
 - c) Section 55.4(1) of the *Edmonton Zoning Bylaw* states, in part:

All open space including Front Yards, Rear Yards, Side Yards and Yards, at Grade Amenity Areas, Private Outdoor Amenity Areas, Setback areas and Separation Spaces shall be landscaped with trees, shrubs, flower beds, grass, ground cover or suitable decorative hardsurfacing...

- d) Section 6.1(55) of the *Edmonton Zoning Bylaw* defines Landscaping as follows:

...the preservation or modification of the natural features of a Site through the placement or addition of any or a combination of the following:

- a. soft landscaping elements such as trees, shrubs, plants, lawns and ornamental plantings;
 - b. decorative hardsurfacing elements such as bricks, pavers, shale, crushed rock or other suitable materials, excluding monolithic concrete and asphalt, in the form of patios, walkways and paths; and
 - c. architectural elements such as decorative fencing, walls and sculpture;
- e) The existing Driveway extension is in the front of the property. Based on the landscaping regulations, Front Yards and Front Setbacks must be landscaped. Monolithic concrete is not considered a form of landscaping pursuant to the definition of landscaping which specifically excludes monolithic concrete.
- f) Section 54.2(2)(e)(i) of the *Edmonton Zoning Bylaw* states that “parking spaces shall not be located within a Front Yard”.
- g) Based on evidence provided by the Development Authority, the Front Yard of the subject site located between the east property line and the east wall of the front

- attached Garage is being used for parking. Parking is not allowed within a Front Yard and this area should be landscaped.
- h) The Board recognizes the signatures of support provided by the Appellants, marked Exhibit “C”, but finds that 5 of the 7 signatures are located outside of the 60 metre notification radius.
 - i) The most affected property owner who resides in the adjacent property attended the hearing and spoke in opposition to the proposed development.
3. Based on the above, it is the opinion of the Board that the proposed development will unduly interfere with the amenities of the neighbourhood and materially interfere with and affect the use, enjoyment and value of neighbouring parcels of land.

Important Information for Applicant/Appellant

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Mr. V. Laberge, Presiding Officer
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744 - Welsh Drive SW
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Date: August 6, 2015
Project Number: 092482817-027
File Number: SDAB-D-15-159

Notice of Decision

This appeal dated June 26, 2015, from the decision of the Development Authority for permission to:

Construct an addition to an existing rear uncovered deck (irregular, 6.12m x 3.96m at 1.83m in Height)

on Plan 0820678 Blk 1 Lot 24A, located at 744 - Welsh Drive SW, was heard by the Subdivision and Development Appeal Board at its hearing held on July 22, 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 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 addition to an existing rear uncovered deck (irregular, 6.12m x 3.96m at 1.83m in Height), located at 744 - Welsh Drive SW. The subject Site is zoned RF5 Row Housing Zone.

The development permit was approved, subject to conditions, with a variance granted in the maximum allowable Site Coverage. The approved development 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 Development Authority dated July 17, 2015.

The Board heard from the Appellant, Ms. St. Hilaire, who provided the following information in support of the appeal:

1. Her main concern is the variance that has been granted for the maximum allowable site coverage.

2. The variance will result in approximately 78 square feet of additional deck space.
3. She complied with the maximum allowable 28 percent Site Coverage requirement when she developed her own deck.
4. It was her opinion that Bylaws are in place for a reason and to ensure that all homeowners are held accountable in developing their properties.
5. She spoke with two Real Estate professionals regarding the impact of the proposed development on the value of her property.
6. Although neither of them provided an opinion in writing, they verbally indicated that there may be a negative impact should her property and the subject site be listed at the same time.
7. The Respondent has already been granted a variance for his garage because it is sited too close to the rear lane.
8. She referenced an agreement that may have allowed the deck to be built closer to the property line.
9. It was her opinion that all property owners should be treated the same way and that Bylaws are in place to ensure the standardization of development.

Ms. St. Hilaire provided the following responses to questions:

1. The proposed addition to the existing rear uncovered deck will not directly impact the use and enjoyment of her property. However, she reiterated that there may be an impact on the value of her property and her ability to sell her property.
2. There is quite a variation of Grading within this Row Housing development.

The Board then heard from Mr. George Robinson, representing the Sustainable Development Department, who provided the following information:

1. He provided a copy of the original Plot Plan, marked Exhibit "A" and confirmed that the subject site conforms with the grading regulations. The front of the lot drains to the street, and the rear of the lot drains quite substantially to the rear lane.
2. The proposed development is an addition to an existing deck and there is some hardship within the subject site because of the grade and slope in the rear yard which creates a practical difficulty for the property owner.

The Board then heard from the Respondent, Mr. Masiwal and his builder, Mr. Duiltner, who provided the following information in support of the proposed development:

1. Mr. Duiltner referenced a diagram included in Exhibit "B" to illustrate the slope of the existing deck, based on a height of 30 inches from the existing deck to the ground, and 108 inches in length.
2. He referenced three photographs of the existing deck, included in Exhibit "B" to illustrate the slope of the rear yard.
3. Mr. Masiwal has a young child and wants to enlarge the deck to provide a play area in the rear yard.

Ms. St. Hilaire provided the following information in rebuttal:

1. It was her opinion that the Respondent was aware of the issues with the rear yard of this property and shouldn't have purchased the property if it was not suitable for his children.

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. Any future deck development greater than 0.6m (2ft) in height will require development and building permit approvals
2. Any future deck enclosure or cover requires a separate development and building permit approval.
3. Immediately upon completion of the exterior alterations, the site shall be cleared of all debris.
4. As far as reasonably practicable, the design and use of exterior finishing materials used shall be similar to, or better than, the standard of surrounding development.
5. Privacy screening to prevent visual intrusion onto abutting properties shall be provided to the satisfaction of the Development Officer.
6. Pursuant to Section 160.4(9)(b) of the *Edmonton Zoning Bylaw*, "the Outdoor Amenity Area shall be permanently retained as open space, unencumbered by an Accessory building or future additions".
7. Maintenance and/or drainage and utility easement(s) may be required between abutting buildings and/or through private yards of one or more Dwellings to ensure adequate access for property, drainage and utility maintenance. (Reference Section 160.4(12))

In granting the development, the following variances to the *Edmonton Zoning Bylaw* are allowed:

Maximum Site Coverage: 77.9 m² (28%)
Proposed: 85.24 m² (30.60%)
Relaxation: 7.25 m²

ADVISEMENTS:

- i. Lot grades must match the Engineered approved lot grading plans for the area. Contact Drainage Services at 780-496-5500 for lot grading inspection inquiries.
- ii. Unless otherwise stated, all above references to "section numbers" refer to the authority under the *Edmonton Zoning Bylaw 12800*.
- iii. An approved Development Permit means that the proposed development has been reviewed only against the provisions of the *Edmonton Zoning Bylaw*. It does not remove obligations to conform with other legislation, bylaws or land title instruments such as the *Municipal Government Act*, the ERCB Directive 079, the *Edmonton Safety Codes Permit Bylaw* or any caveats, covenants or easements that might be attached to the Site.

Reasons for Decision:

The Board finds the following:

1. The proposed development is an addition to a Permitted Use in the RF5 Row Housing Zone.
2. Based on a review of the photographic evidence provided, a practical difficulty particular to the subject Site exists because the grading of the Site limits utility of the rear Amenity Area.
3. The Respondent has agreed to add screening as a condition of approval.
4. The Respondent discussed the proposed development with the most affected, abutting property owners who have provided written support.
5. The Appellant failed to provide valid planning reasons to persuade the Board that the incremental excess in the maximum allowable total Site Coverage would have a material effect on the use or enjoyment of her property.
6. Based on the above, it is the opinion of the Board that the proposed development will not 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 Applicant/Appellant

1. This is not a Building Permit. A Building Permit must be obtained separately from the Sustainable Development Department, located on the 5th 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. V. Laberge, Presiding Officer
Subdivision and Development Appeal Board