



**EDMONTON
TRIBUNALS**

*Subdivision &
Development
Appeal Board*

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Date: July 14, 2017
Project Number: 251528002-001
File Number: SDAB-D-17-124

Notice of Decision

- [1] On July 6, 2017, the Subdivision and Development Appeal Board heard an appeal that was filed on **June 13, 2017**. The appeal concerned the decision of the Development Authority, issued on May 30, 2017, to refuse the following development:

Construct an Accessory Building (rear detached Garage, 7.32m x 7.32m).

- [2] The subject property is on Plan 1056HW Blk 4 Lot 8, located at 12329 - 106 Street NW, within the (RF1) Single Detached Residential Zone. The Mature Neighbourhood Overlay applies to the subject property.
- [3] The following documents were received prior to the hearing and form part of the record:
- A copy of the Development Permit application with attachments, proposed plans, and the refused Development Permit; and
 - The Development Officer's written submission.
- [4] The following exhibit was presented during the hearing and forms part of the record:
- Exhibit A – Revised drawings from 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. M. Anderson*

- [8] Mr. Anderson provided the Board with revised plans, marked *Exhibit A*, and spoke to the changes in the roofline.
- [9] His preference is to have the stairwell outside the building to allow for more space inside the garage.
- [10] His preference is to build a barn-style garage with a gambrel roof.
- [11] The top of the roof is under the maximum allowable height requirement.
- [12] The attic in the garage will be used for storage only. He does not intend to use the attic as a suite.
- [13] With respect to questions from the Board, Mr. Anderson provided the following:
- a. He spoke to two neighbours to the north and two neighbours to the south of the subject site regarding the height variance and he received verbal support from them.
 - b. The proposed development will not block sunlight to any of the neighbouring properties.

ii) Position of the Development Officer, Ms. S. Watts

- [14] Ms. Watts indicated that she does not have the authority to vary height.
- [15] She confirmed that the proposed development complies with all regulations in the *Edmonton Zoning Bylaw*, except for the height.
- [16] The proposed development will have a larger massing effect compared to a gable roof.
- [17] If the Board were to accept the revised plans, the height would still exceed the maximum allowable, and property owners would need to be re-notified of the design change.

iii) Rebuttal of the Appellant, Mr. M. Anderson

- [18] Mr. Anderson would like the Board to review the original plans under appeal.

Decision

- [19] The appeal is **ALLOWED** and the decision of the Development Authority is **REVOKED**. The development is **GRANTED** as applied for to the Development Authority.
- [20] In granting the development the following variance to the *Edmonton Zoning Bylaw* is allowed:
1. The maximum allowable Height of 4.3 metres per section 50.3(2) is varied to allow an excess of 0.77 metres, thereby increasing the maximum allowable Height to 5.07 metres.

Reasons for Decision

- [21] The proposed development, a detached Garage, is Accessory to a Permitted Use in the (RF1) Single Detached Residential Zone.
- [22] The proposed development meets all of the regulations of the Mature Neighbourhood Overlay and the (RF1) Single Detached Residential Zone. However, the Development Officer could not vary Height and refused the detached Garage.
- [23] Based on the evidence, the detached Garage is characteristic of the neighbourhood and the gambrel roofline will provide articulation to the design.
- [24] The proposed development has the verbal support of the most affected neighbours and there were no letters received in opposition.
- [25] 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, and will not materially interfere with or affect the use, enjoyment or value of neighbouring parcels of land.



Mr. B. Gibson, Presiding Officer
Subdivision and Development Appeal Board

Important Information for the Applicant/Appellant

1. This is not a Building Permit. A Building Permit must be obtained separately from the Sustainable Development Department, 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 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.



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Date: July 14, 2017
Project Number: 243807558-001
File Number: SDAB-D-17-125

Notice of Decision

- [1] On July 6, 2017, the Subdivision and Development Appeal Board heard an appeal that was filed on **June 9, 2017**. The appeal concerned the decision of the Development Authority, issued on June 9, 2017, to refuse the following development:

Construct an Accessory Building (rear detached Garage, 8.4m X 11.12m) and with an exterior fireplace attached to the Garage, and to demolish an existing Accessory Building (6.8 m X 4.97m).

- [2] The subject property is on Plan 1125KS Blk 5 Lot 45, located at 8928 - 146 Street NW, within the (RF1) Single Detached Residential Zone. The Mature Neighbourhood Overlay applies to the subject property.
- [3] The following documents were received prior to the hearing and form part of the record:
- A copy of the Development Permit application with attachments, proposed plans, and the refused Development Permit;
 - The Development Officer's written submission; and
 - The Appellant's written submissions with photographs and community consultation.

Preliminary Matters

- [4] 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.
- [5] The Presiding Officer outlined how the hearing would be conducted, including the order of appearance of parties, and no opposition was noted.
- [6] 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, Ms. C. Shufflebotham*

- [7] The detached Garage was designed for use, aesthetics, and functionality. The design has an exterior fireplace for a courtyard setting.
- [8] The excess height is due to a 12-foot high wall to accommodate a 10 feet by 10 feet door for their small RV. The proposed 4/12 cottage-style roof is consistent with the roof of their house and will have a low visual impact from grade level.
- [9] The variance in site coverage is due to the three-car garage. The larger garage will allow her family to park cars, and provide storage and work space.
- [10] The proposed detached Garage will increase the value of her property.
- [11] The garage was placed closer to the house to allow for a full driveway, which will not shade their neighbour's garden.
- [12] With respect to questions from the Board, Ms. Shufflebotham provided the following:
- a. She spoke to neighbouring property owners and showed them the proposed plans and discussed the variances for the proposed garage.
 - b. All of the neighbours she spoke to were in support of the proposed development. She did not receive any opposition from neighbouring property owners.
 - c. She is in agreement to the conditions suggested by the Development Officer.

ii) Position of Affected Property Owners, Mr. D. Hite and Ms. D. Hucal, in support of the Appellant

- [13] They live across the rear lane from the subject site.
- [14] Ms. Shufflebotham spoke to them in detail about the proposed garage.
- [15] They are confident that the proposed development will add character to the subject site and will be aesthetically pleasing.
- [16] The excess in height is minimal. The excess in height is to match the roof of the existing house.
- [17] There are other large vehicles in the area that are higher than the proposed garage.

- [18] In their opinion, the proposed development will increase the value of the subject site and the surrounding neighbourhood.
- [19] The proposed three-car garage is lower than the height of other garages in the area. There is a garage in the rear lane, west of the subject site that is two storeys.

iii) Position of the Development Officer, Mr. B. Liang

- [20] He confirmed that the community consultation conducted by the Appellant meets the requirements of the Mature Neighbourhood Overlay.

iv) Rebuttal of the Appellant, Ms. C. Shufflebotham

- [21] Ms. Shufflebotham did not have anything to add.

Decision

- [22] 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 development shall be constructed in accordance with the stamped and approved drawings.
 2. The Accessory Building shall not be used as a Dwelling (Section 50.3.1).
 3. Eave projections shall not exceed 0.46 m into required Yards or Separation Spaces less than 1.2 m. (Section 44.1.b).
 4. The design and use of exterior finishing materials used on the Accessory Building shall be similar to, or better than, the standard of surrounding development (Section 57.2.1).
- [23] In granting the development the following variances to the *Edmonton Zoning Bylaw* are allowed:
1. The maximum allowable Height of 4.3 metres per section 50.3(2) is varied to allow an excess of 0.4 metres, thereby increasing the maximum allowed to 4.7 metres.

2. The maximum allowable Site Coverage of 12 percent per section 110.4(7)(a) is varied to allow an excess of 2 percent, thereby increasing the maximum allowed to 14 percent.
3. The containment within the rear of 12.8 metres per section 814.3(20) is varied to allow the rear detached Garage to be located within the rear 13.2 metres, thereby allowing an excess of 0.4 metres.

Reasons for Decision

- [24] The proposed development is Accessory to a Permitted Use in the (RF1) Single Detached Residential Zone.
- [25] The Board accepts the evidence submitted that with the location of the proposed Garage, sun shadowing will not negatively impact the immediately adjacent neighbour to the north.
- [26] Based on the evidence submitted, the total Site Coverage is considerably less than the maximum 40 percent requirement.
- [27] Based on the photographic evidence, there are other Garages in the area that are over Height, including a two-Storey Garage immediately to the south. The proposed development will be characteristic of the neighbourhood.
- [28] There is support from neighbouring property owners and the Parkview Community League. The property owners across the rear lane to the west were in attendance at the hearing in support of the proposed development.
- [29] No letters were received in opposition and no one attended the hearing in opposition.
- [30] 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, and will not materially interfere with or affect the use, enjoyment or value of neighbouring parcels of land.



Mr. B. Gibson, Presiding Officer
Subdivision and Development Appeal Board

Important Information for the Applicant/Appellant

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 - 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.
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Date: July 14, 2017
Project Number: 233628888-002
File Number: SDAB-D-17-126

Notice of Decision

- [1] On July 6, 2017, the Subdivision and Development Appeal Board (the “SDAB”) heard an appeal that was filed on **June 12, 2017**. The appeal concerned the decision of the Development Authority, issued on May 25, 2017, to approve the following development:

Erect a Fence (1.68m in Height) along a public road way (146 Street and 106 Avenue).

- [2] The subject property is on Plan 5887HW Blk 4 Lot 22, located at 14516 - 106 Avenue NW, within the (RF1) Single Detached Residential Zone. The Mature Neighbourhood Overlay applies to the subject property.

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

- A copy of the Development Permit application with attachments, proposed site plan, and the approved Development Permit;
- The Development Officer’s written submission;
- The Appellant’s written submissions;
- The Respondent’s written submissions;
- An on-line response from a property owner in opposition to the proposed development.

- [4] The following exhibit was presented during the hearing and forms part of the record:

- Exhibit A – A Google Map of the area from the Respondent.

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, Ms. D. Donovan, who was accompanied by Mr. M. Onciul, a property owner in opposition to the proposed development

[8] Mr. Onciul lives two houses north of the subject site.

[9] He did not receive a notification for the development of the fence until he received a letter from the SDAB office regarding the appeal hearing.

[10] There is a four-foot high fence on his property and he feels that this type of fence is sufficient.

[11] In his opinion, a five-foot high fence should not be allowed as it changes the context of the neighbourhood.

[12] In response to a question from the Board, he stated that he did not speak to the Respondent as he was not aware of the proposed fence.

[13] Ms. Donovan stated that she lives across the rear lane to the east from the subject site.

[14] She provided the Board with a community consultation of the most affected neighbours that are in opposition to the subject fence.

[15] She does not have an issue with the fence if it was four feet in height. In her opinion, the rules should be followed.

[16] She did not speak to the Respondent regarding the fence as it was already being constructed.

[17] She referred to the notification map indicating that the neighbourhood is in a cul-de-sac. There are no fences along the front yards in the cul-de-sac between 146 Street and 145 Street.

[18] In her opinion, the fence will negatively impact her property as it is unsightly and poorly built.

ii) Position of the Development Officer, Mr. G. Robinson

[19] He reviewed the reasons for approving the proposed development from his written submission.

- [20] Section 49 of the *Edmonton Zoning Bylaw* allows a Development Officer to vary the height of a fence.
- [21] There are other properties in the area that have a six-foot high fence in the front yard and flanking side yard, which is characteristic of the neighbourhood.
- [22] In response to a question by the Board, he clarified that the correct height of the fence is 1.68 metres.
- [23] Section 49.1(a)(i) of the *Edmonton Zoning Bylaw* lists possible materials that could be used for a fence.
- [24] He referred to section 57.2(1) of the *Edmonton Zoning Bylaw*, General Performance Standards, that states:
- In all non-industrial developments, the design and use of exterior finishing materials shall be to the satisfaction of the Development Officer who shall ensure, as far as reasonably practicable, that materials shall be used that ensure that the standard of the proposed buildings and structures shall be similar to, or better than, the standard of surrounding development.
- [25] He referred to the stamped site plan showing the area of the property that has a five-foot high fence highlighted in yellow. A 3-metre by 3-metre corner cut was shown on the site plan as the property is on a corner site. However, he could not confirm if the corner cut has been completed.
- [26] The corner cut was required by Transportation Services.
- [27] Property owners often build a higher fence so they can utilize their property and the amenity space.
- [28] There is a 3.87-metre front setback from the front property line to provide additional visual space for drivers and pedestrians.
- [29] He confirmed that with corner lots such as this, the front yard is considered the rear yard. Houses in mature neighbourhoods have amenity space in the front yard.
- [30] A higher fence in the flanking side yard requires a variance. The portion on the north property line that has a six-foot high fence does not require a development permit.
- iii) *Position of the Respondent, Ms. J. Wong, who was accompanied by Mr. C. Johnson, tenant of the subject site*
- [31] Ms. Wong purchased the property in 2015. She does not live in the subject dwelling and rents out the property.

- [32] The property and the house were in need of repairs and she has done work on the property to bring it up to living standards. In her opinion, the property value has increased.
- [33] She referred to the photographs she submitted to the Board to compare how the property looked when it was purchased and how it looks now.
- [34] The previous chain link fence was falling over and covered with garbage bags. The new fence was built with pressure treated wood.
- [35] The tenant has a young family and a dog. 106 Avenue is a busy roadway and the higher fence provides safety for his family. The tenant's garage has been broken into and people have jumped over the previous fence and looked in their windows.
- [36] She referred to the photographs submitted to the Board showing properties along 106 Avenue from 142 Street to 149 Street that have fences in the flanking side yard.
- [37] She disagreed that the property is located in a cul-de-sac and that she would not have built such a high fence if it was.
- [38] She provided the Board with a Google Map, marked *Exhibit A*, showing the location of high fences on properties along 106 Avenue.
- [39] She referred to a photograph showing the property to the south from their window.
- [40] She referred to photographs to show other fences in the neighbourhood.
- [41] She referred to a photograph showing two properties that have hedges that are over six feet high. In her opinion, a fence is not any different from a large bush or hedge.
- [42] She reiterated that the property has been upgraded, the fence is aesthetically pleasing, and it provides safety for the tenant's family.

iv) Rebuttal of the Appellant, Ms. D. Donovan

- [43] Ms. Donovan stated that the six-foot high fence along the property extends all along the north property line to the rear lane.
- [44] The fence on Lot 21 faces 146 Street and is five feet high. All of the fences shown in the photographs are along the side yard and there are none in the front yard. In her opinion, the photographs submitted by the Respondent are not accurate.
- [45] In response to questions by the Board, she stated that the neighbour immediately to the north that faces 146 Street is in opposition to the proposed fence.

[46] She does not have an issue with a large bush or hedge if it is maintained.

Decision

[47] 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. The fence shall be installed entirely on the subject property.
3. The fence shall not impede and sightlines for vehicular or pedestrian traffic.
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 (Reference Section 57.2.1).
5. Immediately upon completion of the development of the fence, the site shall be cleared of all debris.

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

1. The maximum allowable Height of 1.2 metres per section 49.1(e)(i)(ii) is varied to allow an excess of 0.48 metres, thereby increasing the maximum allowed to 1.68 metres.

Reasons for Decision

[49] The proposed development is Accessory to a Permitted Use in the (RF1) Single Detached Residential Zone.

[50] The Board accepts the evidence submitted that the Height of the Fence will be 1.68 metres as shown on the approved site plan.

[51] The Development Officer has the authority to vary the Height of the fence to 1.85 metres to provide additional screening from a public roadway. The Board finds that 106 Avenue is a busy collector road and the Fence will provide screening and safety for the subject site.

- [52] Based on the evidence submitted, the 3-metre by 3-metre corner cut requested by Transportation Services will alleviate any sightline impacts to drivers or pedestrians.
- [53] The Board acknowledges the concerns of the property owners that appeared in opposition that the Fence was not constructed appropriately. However, Section 49.1(a)(i) of the *Edmonton Zoning Bylaw* states:

the Height of the material used in the construction of a Fence, wall, or gate, such as but not limited to boards, panels, masonry, ornamental iron, and chain link, plus any additional elements used for screening, such as, but not limited to, lattice.

There are several properties in the area that have similar Fences such as the proposed development.

- [54] 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, and will not materially interfere with or affect the use, enjoyment or value of neighbouring parcels of land.



Mr. B. Gibson, Presiding Officer
Subdivision and Development Appeal Board

Important Information for the Applicant/Appellant

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