

Edmonton Subdivision and Development Appeal Board

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Date: June 25, 2015
Project Number: 170952632-001
File Number: SDAB-D-15-117

Notice of Decision

This appeal dated May 19, 2015, from the decision of the Development Authority for permission to:

Construct an Accessory Building (detached Garage - 7.92 metres by 9.14 metres) and to demolish an existing Accessory Building (detached Garage)

on Plan 6045HW Blk 28 Lot 54, located at 9767 - 65 Avenue NW, was heard by the Subdivision and Development Appeal Board at its hearing held on June 10, 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*, R.S.A 2000, c. M-26.

The Board heard an appeal of the decision of the Development Authority to refuse an application to construct an Accessory Building (detached Garage - 7.92 metres by 9.14 metres) and to demolish an existing Accessory Building (detached Garage) located at 9767 – 67 Avenue NW. The subject site is zoned RF1 Single Detached Residential Zone and is within the Mature Neighbourhood Overlay.

The development permit was refused due to an excess in the maximum allowable Height for an Accessory Building and the rear detached Garage is not fully contained within the rear 12.8 metres of the Site.

The Board notes that no letters were received in support or opposition to the proposed development.

The Board heard from Mr. Peterson, the Appellant, who made the following points:

1. He has lived in the area for six years until last year.

2. He used to live on a property adjacent to the subject property. The subject property had a garage which was demolished by the previous owner without permits. He purchased the subject property so he could build a detached garage that would accommodate his needs.
3. He needs a larger garage to park his one-ton truck and have additional storage space for his family.
4. His truck has been broken into when it was parked on the street or in the rear lane.
5. The detached garage will be taller than the maximum allowable height.
6. The other Zoning Bylaw requirements including the minimum required setback and maximum site coverage of 12 percent have been met.
7. The detached garage will be located further from the rear lane as there are two telephone poles across the rear lane which limits the turning radius into the garage.

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

1. If the entrance of the garage was closer to the rear lane, the turning radius would be reduced and maneuvering the vehicle into the detached garage would be difficult.
2. He cannot use the neighbour's driveway across the rear lane to accommodate the turning radius.
3. He spoke to his immediate neighbours and one neighbour across the street and received letters from them in support of the proposed development, marked Exhibit "A".
4. There are other garages in the area that are similar to the proposed development but he did not have any photographs of those garages.
5. The detached garage will have a cottage style roof, which will have less of an impact on neighbouring property owners than a standard roof pitch would have.
6. He requires a 12 foot high garage door to accommodate his 10 foot high truck. A 10 foot high garage door is not quite tall enough to accommodate his truck.
7. The portion of the garage that protrudes into the rear yard is the side in which his truck will be parked. He needs that length for his truck.
8. His wife's vehicle will be parked in the west side of the garage, which is shorter in length.
9. He provided a photo of his one-ton truck that is used for his hydro seeding business, marked Exhibit "B".

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

1. He is not aware of other oversized garages in the area and did not conduct a site inspection or a survey of the neighbourhood.
2. A cottage style roof configuration may be less intrusive than the standard pitched roof for a garage.
3. He is concerned that an oversized garage that is located at the required setback will have an impact on the neighbour to the east.
4. He confirmed that he does not have the authority to grant a variance in height.

5. He did not consider the telephone poles across the rear lane when reviewing the development permit application. However, he agreed that the telephone poles across the lane could make maneuvering into the detached garage difficult, depending on the length of the vehicle.
6. He was not sure if reversing the configuration of the detached Garage so the extended portion of the garage was on the west side of the property would make a difference.
7. He agreed that if the setback on the east side of the property was larger, there would be less of an impact on the neighbour to the east.

In rebuttal, Mr. Peterson made the following points:

1. There are similar problems with telephone poles in the rear lane on a property west of the subject site.
2. The detached garage could be reversed so the larger parking space is on the other side; however, there is more amenity space in the rear yard with the proposed location.
3. The neighbour east of the subject site has a similar setback as the proposed development.
4. He referred to a text message he received from the neighbouring property owner to the east indicating that the neighbour was aware of the height and location of the detached Garage and indicated that his neighbours concern was addressed. He was unable to provide the Board with a copy of the text message.
5. Mr. Peterson indicated that no letters were received in opposition to the proposed development and no one appeared in opposition at the hearing.
6. The detached garage could have been placed further to the west; however, he would like to keep this area for his children to play.

Decision:

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

Pursuant to Section 50.3(2), a variance of 0.52 metres is granted to the maximum allowable Height of 4.3 metres.

Pursuant to Section 814.3(20), a variance of 1 metre is granted to the locational requirement of the rear detached Garage to be fully contained within the rear 12.8 metres of the Site.

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. Based on the evidence submitted, the Appellant requires a 3.66 metres (12 feet) Garage door to accommodate his truck.
3. The Height of the detached Garage will be visually reduced by the cottage style roof.
4. The Setback into the Rear Yard is required to accommodate the turning radius into the detached Garage due to the existing telephone poles in the rear Lane.
5. Based on the evidence submitted, although the detached Garage is not contained within the rear 12.8 metres of the Site, the detached Garage is within the maximum allowable Site Coverage of 12 percent, which will provide sufficient amenity space in the Rear Yard between the detached Garage and the Principal Dwelling.
6. The storage of a vehicle in the detached Garage will reduce the need for on-street parking, and improve the amenities of the neighbourhood.
7. Four letters were provided from neighbouring property owners in support of the proposed development.
8. No letters were received in opposition to the proposed development and no one appeared in opposition at the hearing.
9. Based on the above, it is the opinion of the Board, that the proposed development with the requested variances will 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 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*,
 - 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*, R.S.A. 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.

Ms. P. Jones, Presiding Officer
Subdivision and Development Appeal Board

CC:

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Date: June 25, 2015
Project Number: 162865621-002
File Number: SDAB-D-15-118

Notice of Decision

This appeal dated May 13, 2015, from the decision of the Development Authority for permission to:

Construct an Accessory Building (bird aviary, 3.66 metres by 5.79 metres), existing without permits.

on Plan 1888NY Blk 17 Lot 6, located at 3411 - 105 Avenue NW, was heard by the Subdivision and Development Appeal Board at its hearing held on June 10, 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*, R.S.A 2000, c. M-26.

The Board heard an appeal of the decision of the Development Authority to approve an application to construct an Accessory Building (bird aviary, 3.66 metres by 5.79 metres), existing without permits located at 3411 – 105 Avenue NW. The subject site is zoned RF1 Single Detached Residential Zone and is located within the Mature Neighbourhood Overlay.

The development was approved with conditions with a variance granted in the minimum required distance from the Front Lot Line. 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:

- Documents submitted with the Appeal on May 13, 2015.
- A letter received from a neighbouring property owner withdrawing their support on May 25, 2015.
- A written submission received from the Respondent on June 4, 2015, individual letters of support from adjacent property owners.

The Board heard from Mr. and Mrs. Scott, the Appellants, who made the following points:

1. In their opinion, the bird aviary is attached to a lean-on shed that is attached to the garage, and is an unsightly structure.
2. They are concerned with the noise coming from the bird aviary and the smell of the birds.
3. The bird aviary was built without a permit indicating the problems that occur when rules are not followed.
4. The issues with the bird aviary vary from day to day. A recording of the bird noises recorded yesterday was played to the Board from their electronic device.

In response to questions by the Board, Mr. and Mrs. Scott provided the following information:

1. They stated that moving the bird aviary further away from the front property line by 5 inches to eliminate the necessary variance would not alleviate their concerns.
2. The fence separating the two properties is 5 feet 10 inches high. The bird aviary is visible from their bedroom and the elevated deck in their rear yard.
3. They could not confirm whether the bird aviary is attached to the fence or the garage or just abutting the structures.
4. There are trees and birds in the area in addition to the bird aviary.
5. They could not provide any evidence to support their statement that the bird aviary will negatively impact their property value.

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

1. The Bylaw was primarily included to keep accessory buildings out of the front and side yard. This accessory building is completely compliant except for the 5 inch encroachment into the Front Setback. The requested variance is minor.
2. In his opinion, the bird aviary is a structure with mesh sides which will not have a negative impact on neighbouring properties.
3. The shed between the bird aviary and the garage is not shown on the site plan.
4. He calculated the Site Coverage with this accessory building at 10.4 percent. If the shed was added to the Site Coverage calculation, the Site Coverage would still be within the maximum allowable of 12 percent for Accessory Buildings or Structures.
5. There are no regulations in the *Edmonton Zoning Bylaw* stating the minimum separation distance between accessory buildings.

The Board then heard from Ms. Gergley, the Respondent, who was accompanied by Ms. Riley, her sister, who together made the following points:

1. The birds are not squawkers.
2. The yard of the subject site is beautifully kept.
3. She addressed the concerns of the Appellant and stated that the view of the bird aviary is not unsightly as it is well built.

4. The birds do not create excessive noise and the recording provided by the Appellant are of birds that are attracted to trees in the area as well as those in the aviary.

In response to questions by the Board, Ms. Gergley and Ms. Riley provided the following information:

1. With regard to the smell of the birds, they stated that the bird aviary and the room in the house where the birds are kept are cleaned on a regular basis.
2. Ms. Gergley has owned three birds for approximately eight years.
3. The birds can live approximately 50 to 80 years.
4. The birds are only outside on warm, calm days from approximately the middle of May to September, as they cannot tolerate cold weather or high winds.
5. Ms. Gergley did not think she needed a development permit because the bird aviary does not have walls and therefore a permit was not required.
6. There are two lilac trees and shrubs on her property and lilac trees on the Appellant's property that screen the bird aviary from the Appellant's property.
7. In their opinion, when the birds occasionally speak they do not create any more noise than when people are speaking.
8. Ms. Gergley conceded that moving the bird aviary 5 inches further into their property could be done but would be difficult to do.
9. She concurred that the side setback was the same as the existing garage.

In rebuttal, Mr. and Mrs. Scott made the following points:

1. It is difficult to describe the issues created by the birds. A person would have to live next to the subject site to experience the issues.
2. They conceded that the birds have existed on the neighbouring property for several years and the existence of the bird aviary has increased their concerns.
3. They conceded that the existence of the bird aviary is comparable to the existence of a dog run, but the effect of a dog run depends on the type of the dog.

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 CONDITION:

1. An Accessory Building or Structure shall not exceed 4.3 metres nor one Storey in height. (Reference Section 6.1(49) and 50.3(2).)

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

Pursuant to Section 50.3(4)(a), a variance of 0.14 metres is granted to the locational requirement of an Accessory building to be located not less than 18.0 m from the Front Lot Line, unless it complies with the Setback requirements for a principal building.

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. Although the Board appreciates the concerns of the Appellants, many of the concerns related to the use of the bird aviary do not deal with the *Edmonton Zoning Bylaw* but are a potential Bylaw Enforcement issues which would be enforced by the City of Edmonton's Bylaw Enforcement Team.
3. The Board notes the requested variance to the *Edmonton Zoning Bylaw* is minor and relaxes the locational requirement for the following reasons:
 - a. The Appellants were unable to provide evidence to the Board that the proposed development will have an adverse effect on their property value and has conceded that relocating the Accessory Building by 0.14 metres (5.5 inches) to comply with the *Edmonton Zoning Bylaw* will not make a difference.
 - b. The Board accepts the evidence submitted that the bird aviary is well built and screened by trees on both properties and a fence between the sites.
 - c. The Board notes the Site Coverage including the bird aviary, the shed, and the detached Garage is within the maximum allowable 12 percent allowable Site Coverage.
 - d. The Board notes there are no regulations in the *Edmonton Zoning Bylaw* stating a required minimum separation distance between Accessory Buildings.
4. The Board notes there is community support for the Accessory Building (bird aviary).
5. Based on the above, it is the opinion of the Board, that the proposed development, with the variance granted, will 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.

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Ms. P. Jones, Presiding Officer
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