

Edmonton Subdivision and Development Appeal Board

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Date: June 26, 2015
Project Number: 153010716-004
File Number: SDAB-D-15-128

Notice of Decision

This appeal dated May 20, 2015, from the decision of the Development Authority for permission to:

construct a two Storey Accessory Building with a Garage Suite on the second floor (11.89m x 7.32m) and to demolish an existing Accessory Building (6.78m x 7.34m)

On Plan 2440KS Blk 9 Lot 11, located at 8512 - 70 Avenue NW, was heard by the Subdivision and Development Appeal Board at its hearing held on June 18, 2015. The decision of the Board was as follows:

Summary of Hearing:

At the outset of the appeal hearing, the Chair 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 a two Storey Accessory Building with a Garage Suite on the second floor (11.89m x 7.32m) and to demolish an existing Accessory Building (6.78m x 7.34m) located at 8512 – 70 Avenue NW. The permit was approved subject to conditions with variances granted in the maximum allowable Floor Area for a Garage Suite (above Grade) and the minimum required number of on-site Parking Spaces. The approved development permit application was subsequently appealed by an adjacent property owner.

The subject site is zoned RF1 Single Detached Residential Zone and is located within the Mature Neighbourhood Overlay and the Southeast Area Plan.

Prior to the hearing the following information was provided to the Board:

- An E-mail from the Appellant received May 20, 2015.
- A letter of opposition from an affected party received May 22, 2015.
- A written submission from the Appellant including a petition containing supporting signatures received May 25, 2015.
- A written submission from Development Officer received Jun 10, 2015.

The Board heard from the Appellant, Ms. H. Church, who was representing her mother, who owns the abutting property to the subject development. She provided the following information:

1. She summarized the general purpose of the Mature Neighbourhood Overlay as outlined in Section 814.1 of the *Edmonton Zoning Bylaw* and expressed her view that the proposed development is not consistent with this section of the bylaw.
2. The proposed development is a very large structure, which will reduce the value of her mother's property and restrict the view that her mother has.
3. The staircase on the south side of the garage suite will provide a platform, which will be very invasive of the privacy of properties to the east.
4. The surrounding area in this section of Avonmore consists mainly of post war single detached bungalows. The proposed development is out of character with the area and there is already another garage suite development occurring in the area. The community wants to preserve the character of single detached housing in the neighbourhood.
5. She has concerns with regard to privacy issues because of the windows in the secondary suite and also the traffic problems that would result.
6. The owners of the subject property already have four vehicles on the property and the garage suite will increase this.
7. The area has parking problems because of the adjacent park and off-leash area, which brings many visitors into the community. Also many people park on the street rather than in their garages.
8. Another element complicating parking is there are many elderly residents with caretakers visiting on a regular basis.
9. The proposed development will cause sunlight shading on her mother's yard.
10. The owners of the subject property run a contracting business from their home and the new garage includes a sizeable workshop area. She has concerns regarding the noise that such a workshop might generate.
11. The Light Rail Transit (LRT) system will be extended into the area in the near future which will create further parking issues, particularly around 69 Avenue.

Ms. Church provided the following responses to questions:

1. Information about the proposed development had been given to those who signed the petition. She acknowledged that the petition addressed a variety of multi-family dwellings such as fourplexes, duplexes and not just garage suites.
2. She conceded that most of the signatures were from outside of the notification area and only the Appellants and the Appellant's neighbour are within that area. It was difficult to get signatures within the notification area because of the number of rental homes and the fact that the residents across the lane are planning on building a similar garage suite.
3. She acknowledged that her opposition to the proposed development would remain even if the variances were not required because it is uncharacteristic of the area.
4. The only parties within the 60 metre notification zone appearing in opposition were the Appellant and one neighbour.

The Board heard from Ms. W. MacLeod, the mother of the Appellant and of one of the co-owners of the subject property.

1. She is very disappointed with the proposed development that is being considered.
2. It is difficult to imagine such a large structure being introduced into the neighbourhood.

Ms. MacLeod provided the following responses to questions:

1. The proposed development would eliminate her view of the sunsets.

The Board heard from Mr. G. Robinson, on behalf of Mr. A. Sheahan, representing the City of Edmonton Sustainable Development Department, who provided the following information:

1. He is not the Development Officer who made initial decision. He reviewed the Development Officer's submitted report and the justification for each of the two variances.
2. The proposed development fully complies with all of the regulations of the Mature Neighbourhood Overlay. While a garage suite is a discretionary use this was considered as an appropriate site as it is a corner lot next to a park with no neighbours to the west or south.
3. Variances were granted to the maximum allowable floor area and the minimum required parking spaces.
4. The accessory building does not exceed the maximum allowable site coverage of 12 percent.
5. A variance of one on-site parking space was granted; there are two parking spaces available in the garage and an additional two parking spaces are available on the driveway apron, even though they are not fully located on the site and extend into the City Boulevard.

Mr. Robinson provided the following Responses to questions.

1. He clarified the definition of platform structures stating that landings are not typically considered platform structures as they are required for access.
2. Sheets 102 and 103 of the submitted site plan, show a landing (10 feet long by 3.5 feet wide) which faces the interior of the lot and might create oversight issues. The Development Officer acknowledged that a barbeque or a chair could be placed on this landing.
3. He explained the subject lot is very large, therefore the accessory building could be very large. The original size of the proposed garage was reduced and the proposed garage suite is significantly smaller than the floor area of the main floor of the garage.
4. The variance of 6.89 square metres to the maximum allowed floor area is justified because outdoor areas, which would have been allowed under the regulations, usually have more of an impact than an interior increase of floor area. It is the opinion of the Development Officer that a variance would allow for a better design of the building, which the respondent could speak to.
5. Section 11.4 of the *Edmonton Zoning Bylaw* allows a Development Officer to grant a variance in the case of unnecessary hardship. He conceded that the large size of the lot does not create an unnecessary hardship.

The Board heard from the Respondent, Mr. D. Soutar, owner of Metalta Design Builders, who provided the following information:

1. The variance to the maximum allowable floor area of the suite was preferable to the permitted platform structure as it is less detrimental to neighbouring properties.
2. The reduction in floor area of the suite would negatively impact the design and the suite would be less attractive to renters. The increased floor area makes a more livable space.
3. The bonus area (the excess in maximum floor area) is simply within the living room rather than on the outside of the suite.
4. The exterior landing must be a minimum width as per the Building Code; however, he is willing to reduce the length of the landing.
5. He would be willing to move the entire garage one metre south and relocate the stairs to face the lane or the flanking side of the structure.
6. Other than one translucent bathroom window required by the building code there are no other windows or doors that will face the adjacent lot.
7. The height of the proposed development complies with the *Edmonton Zoning Bylaw* and the proposed development is no higher than his house and lower than the neighbour's house.
8. In order to reduce the impact on the neighbours, he moved the proposed development east away from the property line and will plant cedars to block the view of the building.
9. The majority of the footprint of the proposed garage suite is adjacent to the Appellant's garage.

Mr. Soutar provided the following responses to questions:

1. He acknowledged that a platform structure would have to be oriented to the lane or the flanking street.
2. There is ample parking on-site. There are practically 8 metres of parking on the driveway apron. A third stall could be created entirely on-site if it could be oriented north / south.

Mr. Robinson provided further information to the Board:

1. While the proposed development will be in close proximity to the proposed LRT it was not reviewed in accordance with the minimum parking requirements for Transit Oriented Development.
2. Tandem on-site parking spots can only obstruct one other parking space. The proposed north / south tandem parking space would obstruct two spaces and would require a variance if allowed.
3. The Board could require privacy screening if they consider the landing to be a platform structure as per Section 814.3.8 of the Mature Neighbourhood Overlay.

Ms. Church made the following points in rebuttal:

1. She was still opposed to the proposed development and was particularly concerned about the noise that might be generated from the workshop at the back of the garage.

2. She did appreciate the Respondent's provision of landscaping but feels the age of the neighbours needs to be taken into account. They are unlikely to live long enough to be able to appreciate it.

Decision:

The appeal is DENIED and the decision of the Development Authority is VARIED. The Development is GRANTED as approved by the Development Authority subject to the following condition:

1. The landing at the top of the stairs, as shown on Sheet 101 in the submitted plans, shall have the eastern most 1.07 metres (3 feet 6 inches) removed as per the portion highlighted by the Board on Sheet 101.

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

1. A variance of 6.89 square metres to the maximum allowed Floor Area for a Garage Suite as per Section 87.3(a).
2. A variance of one parking space to the minimum required parking spaces as per Section 54.2 of Schedule 1(A)(2).

Reasons for Decision:

The Board finds the following:

1. A Garage Suite is a Discretionary Use in the RF1 Single Detached Residential Zone, Section 110.3(3).
2. The proposed Garage Suite complied with all the development regulations of the Mature Neighbourhood Overlay; however, it exceeded the maximum allowed Floor Area of 60 square metres and is deficient in one parking space. These variances were granted by the Board for the following reasons:
 - a) variance to the minimum number of parking spaces

The Board notes that there is plenty of on-street parking as well as parking on the Driveway apron which is predominately on site. As a result, the proposed development will not have any negative effect on on-street parking. Therefore, granting the requested parking variance 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.
 - b) variance to maximum allowable Floor Area
 - i. the footprint of the garage itself is not oversized and is less than the 12 percent of site area allowed for Accessory Buildings.
 - ii. The second Storey is significantly stepped back by 2.74 metres (9 feet) from the first Storey of the structure, which will reduce the massing effect created by the Garage Suite.

- iii. The most affected property, based upon area photos, has a Garage located immediately to the east of the proposed development. Any sun shadowing effect will largely affect only the neighbour's Garage and not the neighbour's Amenity Area between her Garage and her Principal Dwelling.
- iv. There are 10.75 metres between the Principal Dwelling and the proposed Garage Suite on the subject site which will allow for ample sunlight penetration on the adjacent lot, complying with Section 814.1 of the Mature Neighbourhood Overlay.
- v. The developer has complied with all of the regulations regarding windows for Garage Suites resulting in only one small bathroom window being located opposite the neighboring lot to the east. None of the remaining windows overlook the adjacent property. The Board is satisfied that the proposed development complies with Section 87.8 of the *Edmonton Zoning Bylaw*.

Therefore granting the requested variance to the maximum allowable Floor Area 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.

3. The Board notes that the Site Plan provides for the planting of cedar trees between the proposed development and the neighbouring property which will reduce the visual impact of the proposed structure on the neighbouring lot.
4. The Board was initially concerned that the landing at the top of the stairs, located to the south of the proposed Garage Suite, might have been large enough to be considered a Platform Structure or balcony. Section 87.10 of the *Edmonton Zoning Bylaw* requires Platform Structures, including balconies, to face the lane or a flanking roadway. To address this concern the Board has required that 1.07 metres (3 feet 6 inches) of the landing at the top of the stairwell, which is the portion of the landing closest to the neighbour's land, be removed. This will prevent the landing from being used as an Amenity Area of any sort and will leave only a small landing at the top of the flight of stairs which would not be considered a Platform Structure.
5. The Board notes that the proposed site is a Corner Lot and that corner lots are particularly suited for Garage Suites as one of the Side Yards flanks a public roadway.
6. The Board reviewed a petition of signatures presented by the Appellant and noted the acknowledgement of the Appellant that the text of the petition circulated did not mention in any way the variances that were requested by the developer and included statements eliciting opposition to multi-family housing in general, including duplexes and fourplexes which are not at issue in the proposed development. Further, the Board notes that only three of the signatures on the petition were from properties located within 60 metres of the subject site. Two of the signatures relate to the Appellant's own land and one to a neighbour who attended this hearing and submitted a letter of opposition to the 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 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.

Ian Wachowicz
Subdivision and Development Appeal Board

cc: Helen Church
City of Edmonton Sustainable Development Department, Attn: A Sheahan

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SDAB-D-15-129

Application No. 158972738-007

An appeal to develop a Secondary Suite in the basement of an existing Single Detached House on Plan 1423526 Blk 12 Lot 16B located at 8321 - 79 Avenue NW was **WITHDRAWN**