

Edmonton Subdivision and Development Appeal Board

Churchill Building
10019 - 103 Avenue NW
Edmonton, AB T5J 0G9
Phone: 780-496-6079 Fax: 780-577-3537
Email: sdab@edmonton.ca
Web: www.edmontonsdab.ca

Date: July 9, 2015
Project Number: 170767785-001
File Number: SDAB-D-15-131

Notice of Decision

This appeal dated May 27, 2015, from the decision of the Development Authority for permission to:

Erect a fence higher than 1.2 metres in the front and flanking Side Yard (1.83 metres) on Plan 1841KS Blk 15 Lot 1, located at 10212 - 66 Street NW,

was heard by the Subdivision and Development Appeal Board at its hearing held on June 24, 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 erect a fence higher than 1.2 metres in the front and flanking Side Yard (1.83 metres) located at 10212 – 66 Street NW. The subject site is zoned RF1 Single Detached Residential Zone and is within the Mature Neighbourhood Overlay.

The development permit was approved subject to conditions with a variance granted in the maximum allowable height of a fence and was subsequently appealed by an adjacent property owner.

The following information was provided to the Board prior to the hearing:

- Two e-mails in support of the proposed development received June 15 and June 22, 2015.
- A written submission from the Development Authority received June 18, 2015.
- Four on-line responses: two in support from affected property owners, one in support from the property owner and one in opposition from an affected property owner.

- Two letters of opposition received June 24, 2015.
- Additional information from the Appellant received on June 24, 2015.

The Board heard from the Appellant, Ms. L. Walden, who provided the following information:

1. Although a four foot high fence is allowed in the Front Yard, there are no four foot or six foot high fences in the area. This area is very open and friendly and the proposed development will change the character of the neighbourhood.
2. A six foot high fence would be unsightly and may decrease the value of her property.
3. There are many houses for sale in the neighbourhood and a six foot fence around the site would deter potential buyers.
4. There are better and cheaper solutions for child care. She has done some research and found that a four foot high fence could keep a child safe in a backyard.
5. The proposed development could possibly be a traffic safety concern.
6. There are no windows on the side of the house where the majority of the play area would be located; however there are windows at the back and side of the house which overlook the rear as well as the area between house and garage. Children require supervision; therefore, windows are essential for this.
7. A six foot high fence gives the impression that they are putting up a barricade between themselves and the rest of community.
8. It is known that one of the children has Down's Syndrome, therefore many neighbours feel they cannot complain and are afraid to say something contrary to this family.

Ms. Walden provided the following responses to questions:

1. The two letters she presented opposing the six foot high fence were from neighbours within the 60 metre notification radius.
2. Several neighbours did not like the proposed development but would not sign her petition and one neighbour was in favour of the six foot high fence.
3. She lives across the street and three houses down, but will see this fence to the left every time she opens her front door.
4. There is a yield sign on the corner of 66 Street and 102A Avenue (facing 66 Street) but a tree covers it almost completely.
5. The fence will be set back from the property line providing a green space on the boulevard between the sidewalk and the fence.
6. She was advised she would have to come to the office to see the plans of the proposed development; it could not be sent to her due to privacy concerns.
7. She and another neighbour spoke with the Respondents but still feel that a six foot fence is not in character with the neighbourhood.
8. The area between the house and the garage or the area facing the alley are unprotected areas with no fencing, so people can walk on and off the property in these areas.
9. A three year old child cannot climb over a four foot high fence.

10. She agreed that the fence would likely be of a good quality but is still opposed to the height. She would be opposed to any fence even though she knows a four foot high fence is permitted.

The Board heard from Ms. K. Mark, representing the City of Edmonton Sustainable Development Department who provided the following information:

1. The proposed fence will be fully contained within the property line, therefore the City of Edmonton Transportation Services Department has no safety concerns.
2. Section 49(4)(a) of the *Edmonton Zoning Bylaw* states that “A fence... on a Site in a Residential Zone shall be less than or equal to 1.2 m in Height for the portion of the fence... that extends beyond the foremost portion or portions of the principal building on the Site, into... the Front Yard.”
3. The Development Officer felt it was reasonable to grant a variance and allow a six foot high fence on this site as it is a corner lot and the positioning of the garage and the driveway creates a hardship situation.
4. She clarified that the Height of the proposed fence is 1.83 metres.

The Board heard from the respondents, Ms. H. Miller and Mr. D. Traverse, who provided the following information:

1. They provided five signatures of support (marked Exhibits “A1” to “A3”) from neighbours directly affected by the proposed fence. They were unable to contact one of the directly affected neighbours.
2. The two letters of opposition provided by the Appellant are from houses further down the block.
3. They provided several photos (marked Exhibits “B1” to “B8”) showing properties within the community that have similar fences to what they are proposing.
4. The fence will be contained within their property line and will not be close to the yield sign at the corner. There will be a green buffer between the fence and the sidewalk.
5. The high quality of the fence will increase their property value.
6. They confirmed that one of their two children does have Down’s Syndrome. They read part of a letter into the record from a pediatrician who works at the Stollery Children’s Hospital who indicated a six foot high fence is required for safety. Children with Down’s Syndrome have cognitive difficulties and need a secure play area. A six foot high fence would provide security for this child until he was at least a teenager.
7. An adjacent neighbour gives music lessons and a six foot high fence would increase privacy when students come and go for their lessons.
8. The fence will be solid white vinyl and they provided a brochure (marked Exhibit “C”) showing what it will look like.

9. One of the two neighbours who came to see them about the fence did not write a letter of objection and one neighbour who initially opposed the fence changed their mind after speaking with them.

Ms. Walden made the following points in rebuttal

1. She approached the Respondents with another neighbour and learned that a 3 year old child has Down's Syndrome but she still prefers a four foot high fence.
2. She felt many neighbours were opposed to the proposed development but did not want to provide signatures of opposition as they did not want to appear unreasonable.
3. The pictures of similar fences shown by the Respondents were not within her vision and are not along 102A Avenue.
4. People like the openness and friendliness of the neighbourhood.
5. She is aware that four foot fences are permitted; however she does not like them and she finds six foot fences very objectionable.
6. When the owners bought the site they knew it did not have much of a back yard and she questioned why they had purchased it.

Decision:

The appeal is DENIED and the decision of the Development Authority is CONFIRMED. The development is GRANTED as approved by the Development Authority.

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

1. The proposed fence may be up to 1.83 metres in Height.

Reasons for Decision:

The Board finds the following:

1. A fence is considered an Accessory Use to a Single Detached House which is a Permitted Use in the RF1 Single Detached Residential Zone.
2. Section 49(4)(a) of the *Edmonton Zoning Bylaw* states that "A fence... on a Site in a Residential Zone shall be less than or equal to 1.2 m in Height for the portion of the fence... that extends beyond the foremost portion or portions of the principal building on the Site, into... the Front Yard."
3. However, Section 49(6) of the *Edmonton Zoning Bylaw* states that "the Development Officer may vary the height of the fence... to a maximum of 2.44 m in order to provide additional screening from public roadways or incompatible adjacent land uses."
4. The Board acknowledges there were three people who had voiced opposition to the proposed development but they would not be directly affected.
5. The Site poses a hardship situation for providing Amenity Areas due to the Corner Lot location and the way the house, existing Garage and Driveway are situated.

6. The City of Edmonton Transportation Services Department has no concerns relating to traffic with the proposed development.
7. All abutting property owners indicated their written support of the proposed development.
8. The Board finds that the proposed development 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 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*, 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, 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. Brian Gibson, Presiding Officer
Subdivision and Development Appeal Board

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Date: July 9, 2015
Project Number: 170972405-001
File Number: SDAB-D-15-132

Notice of Decision

This appeal dated May 27, 2015, from the decision of the Development Authority for permission to:

Construct exterior alterations to a Single Detached House (Decorative hardsurfaced area in the Front Yard, 6.05m x 6.79m) existing without permits, on Plan 0720564 Blk 58 Lot 3, located at 13604 - 160 Avenue NW,

was heard by the Subdivision and Development Appeal Board at its hearing held on June 24, 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 (decorative hardsurfaced area in the Front Yard, 6.05m x 6.79m) existing without permits located at 13604 – 160 Avenue NW. The subject site is zoned RF1 Single Detached Residential Zone and is within the Carlton Neighbourhood Structure Plan and the Palisades Area Structure Plan.

The development permit application was refused because the existing decorative hardsurfaced area located west of the Garage overhead doors does not lead to a Garage door or parking area, parking is not allowed in the Front Yard and the decorative hardsurfaced area does not comply with the landscaping conditions that were attached to the approved development permit for the single Detached House.

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

- A written submission from the Appellant received on June 17, 2015.

The Board heard from the Appellant, Mr. J. Chang, who provided the following information:

1. He developed this front hardsurfaced area in 2010 and was not aware that a permit was required.
2. He wanted a clean surfaced front yard because he is allergic to grass.
3. He had driven around the neighbourhood and had seen a number of paved front yards, some with patio brick. He did not realize this was illegal.
4. He feels that paving stones are an alternate form of landscaping and are permitted under a Bylaw that came into effect in 2011.
5. He was not aware that he could not use this space for parking. He has not parked in this area since he was made aware of this restriction and does not plan to park there in the future.
6. He wants to leave the paving stones where they are and has placed heavy planters across the front that require two people to move them.

Mr. Chang provided the following responses to questions:

1. He is amenable to placing more planters along the length of the driveway to prevent cars from parking on the paving stone area.
2. He currently has four vehicles which he parks either on the street or on the driveway. He does have a useable garage which is used mainly in the winter.

The Board heard from Mr. J. Xie, representing the City of Edmonton Sustainable Development Department, who provided the following responses to questions:

1. Paving stones are allowable as decorative hardsurfacing in the Front Yard.
2. His objection was to the use of the space for parking.
3. He cautioned that planters cannot be placed on the City right-of-way at the front of the property.
4. He saw no problem with placing planters along the driveway to prevent parking on the paving stones.

In rebuttal, Mr. Chang made the following points:

1. He suggested that he may be able to use other landscaping options such as a tree combined with planters to break up the solid surface, which would prevent cars from parking on the paving stones.

Decision:

The Appeal is ALLOWED and the Decision of the Development Authority is REVOKED. The development is GRANTED with the following conditions:

Parking shall not be permitted in the Front Yard and the Appellant is to provide landscaping materials sufficient to prevent parking and vehicular access to the paving stone area in the Front Yard.

Reasons for Decision:

The Board finds the following:

1. Single Detached Housing is a Permitted Use in the Single Detached Residential Zone, as per Section 110.2(4) of the *Edmonton Zoning Bylaw* and the existing paving stone Landscaping is an Accessory to a Permitted Use.
2. Landscaping as defined under Section 6.1(55)(b) of the *Edmonton Zoning Bylaw* contemplates “decorative hardsurfacing elements such as bricks, pavers, shale, crushed rock or other suitable materials... in the form of patios, walkways and paths”.
3. Paving stones are an acceptable form of decorative hardsurfacing as per Section 6.1(55)(b) of the *Edmonton Zoning Bylaw* and therefore are not an extension to an existing Driveway.
4. The Board concluded that Front Yard Parking is not permitted and would unduly interfere with the amenities of the neighbourhood.
5. The existing Garage and Driveway provide adequate Parking for this site.
6. The paving stone area abuts the existing Driveway; therefore, a condition shall be imposed to prevent parking and vehicular access to the paving stone area in the Front Yard.
7. The Appellant will install landscaping materials such as planters or a tree and garden, as suggested by Mr. Chang, to prevent parking on the paving stone area to the satisfaction of the Development Authority.

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 - 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, Bylaw 12800*, as amended.
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