



**EDMONTON  
TRIBUNALS**

*Subdivision &  
Development  
Appeal Board*

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Date: July 14, 2016  
Project Number: 189323003-001  
File Number: SDAB-D-16-150

**Notice of Decision**

- [1] On June 29, 2016, the Subdivision and Development Appeal Board heard an appeal that was filed on **June 6, 2016**. The appeal concerned the decision of the Development Authority, issued on May 19, 2016, to approve the following development:

**To construct a Single Detached House with a front veranda, a fireplace, a rear attached Garage, and Secondary Suite in the Basement.**

- [2] The subject property is on Plan 1322503 Blk 15 Lot 17, located at 1564 - Kinross Road NW, within the GLG Griesbach Low Density (Garage Suite) Residential Zone. The Griesbach Special Area and the Griesbach Area Neighbourhood Area Structure Plan apply to the subject property.
- [3] The following documents, which were received prior to the hearing and are on file, were read into the record:
- Photos submitted by the Appellant;
  - A letter in support of the Appeal;
  - A copy of the approved development permit;
  - A consent letter sent to the Development Authority;
  - Elevations and plans;
  - A plot plan;
  - The Development Officer's written submissions;
  - The Respondent's written response;
  - Additional documents submitted by the Respondent; and
  - The Griesbach Neighbourhood Area Structure Plan.

**Preliminary Matter**

- [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*, R.S.A 2000, c. M-26.

### **Summary of Hearing**

#### *i) Position of the Appellant, Mr. C. Blades*

- [7] The Appellant reiterated the Grounds for Appeal included in the Notice of Appeal.
- [8] When he purchased his property, it was indicated to him by the builder that all homes on Kinross Road would have a front detached house, a yard space and a rear detached Garage. A significant factor in his decision to purchase the property was that the layout of the neighbourhood represented to him would allow for a view of a significant park space through his back yard. His expectation was that he would continue to enjoy that view.
- [9] He then received a letter from the City stating that a development had been granted in the neighbourhood that was too large for the proposed lot and would require a variance.
- [10] Once the builder had poured the foundation of the proposed development, it appeared that the house would be an unbroken structure spanning from the front of the property to the back. Instead of a view of the park, he would now be looking at the side of a Garage.
- [11] When looking at the layout of the foundation, it appeared that the house was going to take up a significant part of the lot. It also seemed as though the house was going to be significantly higher than other homes in the area.
- [12] Drainage could also become an issue. As opposed to other houses in the neighbourhood that have yards with detached Garages, the proposed development is solid from front to back with hard, impermeable scape, which could lead to water pooling.
- [13] Parking is also a concern. The proposed development has a hydrant in front of it and an alley beside it. Both will limit the availability of on-street parking.

#### *ii) Position of the Development Officers, Mr. J. McArthur & Mr. G. Robinson*

- [14] The Development Officers confirmed that the proposed development represents a Permitted Use in the GLG Griesbach Low Density (Garage Suite) Residential Zone.
- [15] Three letters in support of the variance required for the proposed development were received from affected neighbours. It is the Development Authority's opinion that the proposed development would not unduly interfere with the amenities of the neighbourhood. It is in step with the Griesbach Neighbourhood Area Structure Plan.

- [16] All parking requirements have been met. Two vehicles can be parked in the Garage, as well as two on the Driveway. The location of the subject Site is also near public transit.
- [17] With respect to the attached Garage blocking sunlight or a view of the park, the impact of the proposed development should not be a significant concern. The rear-attached Garage actually steps down from the house to a lower plane, which should minimize any blocking effect.
- [18] A variance was missed when the initial approval was made. The Height to the midpoint of the roof of the Garage is 5.4 metres. When the Garage exceeds a Height of 4.6 metres, however, the rear Setback is required to be 7.5 metres. In the current plans, the Height of the Garage roof is 6.05 metres. Therefore, in accordance with Section 940.9(5)(g), a variance would be required for the rear Setback.

*iii) Position of the Respondent, Mr. C. Garrioch*

- [19] The Respondent addressed the Appellant's main concerns.
- [20] With respect to parking, the Development Officer determined that the proposed development had sufficient parking in accordance with the *Zoning Bylaw*.
- [21] Also, drainage will not be an issue once the proposed development is further along in the construction stage. It is common for water pooling to happen before the grading is done, and that will be taken care of. Once grading is finished, construction will not be able to proceed until it receives the approval of a City inspector.
- [22] What is being built is a Permitted Use in this particular zone. The Respondent cannot control what representations were made to the Appellant by his builder when he purchased his home.
- [23] Additionally, when the Respondent measured the Height of the Garage to its midpoint, it was determined that the Garage was only 4.4 metres in Height and, therefore, would not require a variance to the rear Setback.

*iv) Clarification by Development Officers*

- [24] The Development Officers returned and stated that, even after re-evaluating the Height of the Garage based on the Respondent's submissions, the Height of the Garage actually remains higher than 4.6 metres. The actual Height of the Garage is 4.89 metres. Therefore, the variance to the rear Setback is still required.

*v) Rebuttal of the Appellant*

- [25] In rebuttal, the Appellant reiterated that the Height of the Garage affects his view, and this is only further supported by the fact that, due to the Height of the Garage, a further variance to the *Zoning Bylaw* is required.

[26] While, understandably, the Respondent cannot control what was represented to homeowners in the area at the time their properties were purchased, it seems unfair to have homeowners make purchases based on those representations only to have them taken away without consultation.

### **Decision**

[27] The appeal is DENIED and the decision of the Development Authority is CONFIRMED. The development is GRANTED as approved by the Development Authority with one additional variance that was identified by the Development Authority during the hearing.

[28] The development is therefore GRANTED with the following variances:

- i) The Site Area requirement of Section 86.1 is varied from 360 square metres to 310 square metres, as indicated in the approved development permit; and
- ii) The Rear Setback prescribed by Section 940.9(5)(g) is varied from 7.5 metres to 6.05 metres, an additional required variance brought to the Board's attention by the Development Authority during the hearing.

### **Reasons for Decision**

[29] Single Detached Housing and Secondary Suites are both Permitted Uses in the GLG Griesbach Low Density (Garage Suite) Residential Zone. Attached rear Garages are also permitted in this Zone.

[30] The proposed development meets the required Site Coverage, being less than 49% where the Garage is attached to the principal building (Section 940.9(5)(i)).

[31] Based on the plans presented to the Board, it would appear that the dimensions of the proposed development would be in line with other houses in the neighbourhood.

[32] The developer confirmed that the appropriate drainage, which would have been a concern of the Appellant, would be taken care of in the final grading of the property, which has yet to take place.

[33] The Board notes that there were three letters were received by the Development Authority from affected neighbours in support of the proposed development. One letter in opposition to the proposed development was received.

[34] The Board notes the Appellant's concern regarding parking associated with the proposed development. The Board determines, however, that the proposed development meets all parking requirement prescribed by the *Zoning Bylaw*.

[35] During the hearing, the Development Authority advised that there is an additional required variance to the rear setback that was missed upon their initial review of the file. The Board finds that allowing this additional variance, as identified by the Development Authority, is appropriate. The difference in Garage Height, from 4.6 metres to 4.89

metres, triggering the need for a variance to the rear Setback, will have a minimal impact on neighbouring properties.

- [36] The Board is of the view that the proposed development, along with the additional 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.

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

Board Members in attendance: Ms. P. Jones, Ms. N. Hack, Mr. A. Peterson, Mr. J. Wall

**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 5<sup>th</sup> 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.*



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Date: July 14, 2016  
Project Number: 185855286-001  
File Number: SDAB-D-16-151

**Notice of Decision**

[1] On June 29, 2016, the Subdivision and Development Appeal Board heard an appeal that was filed on **June 1, 2016**. The appeal concerned the decision of the Development Authority, issued on May 20, 2016, to refuse the following development:

**To construct a Semi-detached House with front verandas, balconies, fireplaces, Basement developments (NOT to be used as additional Dwellings), and to install a Renewable Energy Device (Solar - Electrical) (P.V.) on the Semi-detached House.**

[2] The subject property is on Plan RN23 Blk 22 Lot 8, located at 10834 - 93 Street NW, within the DC1(Area 6) - McCauley Direct Development Control Provision. The Boyle Street/McCauley Area Redevelopment Plan applies to the subject property.

[3] The following documents, which were received prior to the hearing and are on file, were read into the record:

- The Appellant's written submissions;
- The refused development permit;
- The development permit application;
- The final lot grading proposal;
- The final revised drawings;
- The final revised lot grading plan;
- Registered mail delivery notification;
- The initial revised drawings, revised lot grading plan and revised plot plan;
- The Development Officer's written submissions;
- On online response in opposition to the appeal;
- The Boyle Street/McCauley Area Redevelopment Plan; and
- The DC1 (Area 6) – McCauley direct control provisions.

**Preliminary Matter**

- [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. He further advised the Appellant that, as the proposed development is located in a Direct Control District, under Section 641(4)(b) of the *Municipal Government Act*, the Appeal is limited to whether the Development Authority followed the directions of Council.
- [6] The appeal was filed on time, in accordance with Section 686 of the *Municipal Government Act*, R.S.A 2000, c. M-26.

**Summary of Hearing***i) Position of the Appellant, Mr. A. Larson*

- [7] The Appellant reiterated the Grounds for Appeal included in the Notice of Appeal.
- [8] Although the proposed Semi-detached House does not exceed the maximum allowable 10 metre Height requirement, the proposed dormer will exceed the maximum allowable number of storeys permitted. The proposed shape of the dormer, while lowering the roof line and creating more space within the structure, technically makes this a three-storey structure, which exceeds the two and one half storey limit prescribed by the Direct Control Provision.
- [9] Despite exceeding the storey limitation, the proposed development is in keeping with the City's vision of creating a more environmentally stable city. The dormer is positioned to support the solar power source positioned on top of the structure. As the City begins to rely more and more on solar energy, it must adapt its regulations to support this initiative. Such a project contributes to a socially responsible mature neighbourhood.
- [10] Recent changes to the *Edmonton Zoning Bylaw* have been made to the regulations for RF1, RF2 and RF3 zones to accommodate these types of developments. These changes allow for environmentally responsible designs that fit in with the older homes in these neighbourhoods.
- [11] The most important issue here is the definition of Height as it relates to the *Zoning Bylaw*. In other zones, this City would allow the proposed dormer roof as a gable-peaked dormer. In fact, what is being proposed is actually lower than what would be allowable in those circumstances. The City needs to re-examine the application of Height as it relates to this Direct Control District.



*ii) Position of the Development Officer, Mr. K. Leung*

- [12] The Development Officer advised that this Direct Control Provision is an often-changing document. It was last amended in June, 2015.
- [13] While Height requirements in other provisions of the *Zoning Bylaw* were changed in July of 2015 to remove the element relating to the storeys of a structure, that element remains in Height requirement provisions included in DC1 (Area 6) – McCauley. As this particular direct control district does not grant him discretion in varying its Height requirements, he was unable to approve the Appellant's development application.
- [14] The proposed development exceeds the requirements of Section 4(c) of DC1 (Area 6) McCauley as they relate to the maximum allowable number of storeys. The proposed development is technically a three-storey structure. The maximum allowable in this Direct Control District is two and one half storeys.
- [15] To his knowledge, the Development Authority has not made any indication to City Council that this Direct Control District should remove the storey element from its Height requirements.
- [16] He does not believe that he erred in interpreting the provisions of the Direct Control District.

*iii) Rebuttal of the Appellant*

- [17] In rebuttal, the Appellant stated that, despite what may be contained in the *Zoning Bylaw*, he would not qualify the excess Height of the proposed development as an additional storey.

**Decision**

- [18] The Board determines that it does not have jurisdiction to hear the appeal.

**Reasons for Decision**

- [19] The proposed development did not meet the guidelines associated with the 2.5-storey limitation dictated by the Direct Control District. Within the provisions of DC1 (Area 6) – McCauley, Section 4(c) prescribes that the maximum building Height shall not exceed 10 metres nor two and a half storeys. The Board does not have the authority to vary the provisions of that Direct Control District.
- [20] Further, the proposed development did not meet the requirement of Section 6.1(47) with respect to what constitutes a half storey in the *Zoning Bylaw*. The Appellant acknowledged that Height of the dormer associated with the proposed development

would exceed the half-storey limitation of 0.66 metres, making the proposed development a three-storey structure.

- [21] The Board finds that the Development Officer followed the direction of council, as articulated in Section 4(c) of DC1(Area 6) – McCauley. Therefore, in accordance with Section 641(4) of the *Municipal Government Act*, the Board does not have jurisdiction to hear this appeal.

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

Board Members in attendance: Ms. P. Jones, Ms. N. Hack, Mr. A. Peterson, Mr. J. Wall

**Important Information for the 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*, 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.
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.*