

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: June 18, 2015
Project Number: 166949164-002
File Number: SDAB-D-15-110

Notice of Decision

This appeal dated May 11, 2015, from the decision of the Development Authority for permission to:

Construct an addition (side covered deck 2.85m x 13.4m) to a Single Detached House, existing without permits

On Plan 1904NY Blk 5 Lot 17, located at 3119 - 112 Avenue NW, was heard by the Subdivision and Development Appeal Board at its hearing held on June 3, 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 refuse an application to construction an addition (side covered deck 2.85 m by 13.4 m) to a Single Detached House, existing without permits, located at 3119 – 112 Avenue NW. The subject site is zoned RF1 Single Detached Residential Zone and is within the Mature Neighbourhood Overlay. The development permit application was refused because of a deficiency in the minimum required Side Setback and an excess in the maximum allowable projection of eaves into the required Side Setback.

The Board notes that a photograph of the existing covered deck and elevation drawings were submitted with the appeal on May 11, 2015, copies of which are on file.

The Board notes that two affected property owners who reside within the 60 metres notification radius provided responses through the online filing system. One of the property owners opposed the proposed development and the other provided support.

The Board heard from the Appellants, Ms. Corey and Ms. Franklin, who provided the following information in support of the appeal:

1. They purchased the property in June, 1996 and received copies of a development permit and building permit that had been issued for the existing deck.
2. The only issue before the Board is the glass cover that has been erected over the deck.
3. The Appellants submitted photographs of the existing covered deck, marked Exhibit "A" and copies of the previously issued development and building permits for the uncovered deck, marked Exhibit "B".
4. At the request of the Presiding Officer the Appellants submitted a copy of the legal documents that they received when they purchased the property in June, 1996, marked Exhibit "C".

Ms. Corey and Ms. Franklin provided the following responses to questions:

1. They confirmed that this is the only cover that has been installed on their deck.
2. The canopy is rated for a weight load of 50 pounds per square inch.

The Board then heard from Mr. Jeff Booth, representing the Sustainable Development Department, who provided the following responses to questions:

1. The approved development permit is for an uncovered deck.
2. The existing addition, the covered deck, was built without a development permit.
3. Due to the length of the covered deck which extends approximately 13 ½ metres, it was his opinion that the existing structure creates a massing impact on the adjacent property owner.
4. However, he did concede that the transparency of the glass roof mitigates the massing impact.
5. He referenced inspection photographs to illustrate the extension of the covered deck into the rear yard, marked Exhibit "D".
6. The covered deck with the protrusion into the required Side Setback is also visible from the front streetscape.

The Appellants made the following points in rebuttal:

1. There is a rose bush and a large blue spruce tree located at the rear of their neighbour's property that screens the existing covered deck.
2. There are also large trees located in the front yard that screen the structure from the front streetscape.

The Board asked the Development Officer about the existing ham radio antenna and guide wires located on the adjacent property.

Mr. Booth told the Board that he did not have any information regarding the ham radio equipment located on the adjacent property or any drainage concerns.

The Appellants reiterated that the existing mature landscaping on their property and their neighbour's property provides screening for the existing covered deck and reduces the impact of the required variances.

Decision:

The Appeal is ALLOWED and the decision of the Development Authority is REVOKED. In granting the development, the following variances to the Edmonton Zoning Bylaw are allowed:

1. The deficiency of 0.29 metres in the minimum required (east) Side Setback.
2. The excess of 0.3 metres in the maximum allowable eave projection into the required (east) Side Setback.

Reasons for Decision:

The Board finds the following:

1. The proposed development is an addition to a Single Detached House, which is a Permitted Use in the RF1 Single Detached Residential Zone.
2. The Development Officer refused the development permit application for the following reasons:
 - a) The covered portion of the existing deck projects into the minimum required Side Setback, and because the covered portion of the deck extends into the Rear Yard beyond the rear wall of the house on the adjacent lot east of the subject site, it affects the amenity area of that lot.
 - b) The protrusion of the covered deck into the Side Yard is visible from the streetscape on 112 Avenue.
3. The Board has granted the required variances for the following reasons:
 - a) The roof covering the deck consists of clear glass.
 - b) The Development Officer conceded that the transparency of the glass mitigates any massing effect of the structure which was one of the primary reasons for refusing the development permit application.
 - c) Based on a review of the photographic evidence provided, there are no windows located on the west elevation of the most affected house (east of the subject site) that overlook the existing deck.
 - d) The submitted photographs also illustrate that the existing structure is screened by mature vegetation and landscaping that mitigates the impact of the extension of the existing covered deck into the Rear Yard beyond the rear wall of the House on the adjacent property.
 - e) The covered deck is also screened by mature trees in the Front Yard which will reduce the impact of the existing structure from the streetscape.
4. Based on the above, it is the finding of the Board, that the proposed development with the variances that have been granted, would 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.

The Board notes that lot grading and drainage must comply with the Drainage Bylaw, Bylaw 16200, which is outside the purview of the 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 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.

Subdivision and Development Appeal Board

c.c.

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: June 18, 2015
Project Number: 167654749-003
File Number: SDAB-D-15-111

Notice of Decision

This appeal dated May 7, 2015, from the decision of the Development Authority for permission to:

Park a Commercial Vehicle, loaded or unloaded, having a maximum gross vehicle weight (G.V.W.) exceeding 4500 kg in the rear of a residential property.

On Plan 5844HW Blk 18 Lot 30, located at 12124 - 141 Street NW, was heard by the Subdivision and Development Appeal Board at its hearing held on June 3, 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 refuse an application to park a Commercial Vehicle, loaded or unloaded, having a maximum gross vehicle weight (G.V.W.) exceeding 4500 kg in the rear of a residential property, located at 12124-141 Street NW. The subject site is zoned RF1 Single Detached Residential Zone and is within the Mature Neighbourhood Overlay. The development permit application was refused because a Commercial Vehicle, loaded or unloaded having a maximum gross vehicle weight (G.V.W.) exceeding 4,500 kgs is not permitted in any part of a Site in any Residential Zone.

The Board notes that three affected property owners who reside within the 60 metres notification radius provided responses to support the proposed development through the online filing system, copies of which are on file.

The Board heard from the Appellant, Mr. Marcinew, who provided a petition of support containing 18 signatures, marked Exhibit "A". Mr. Marcinew provided the following information in support of the appeal:

1. His parents bought this property in 1953 and his father parked his gravel truck in the rear yard from that day forward.

2. He began to drive for his father in 1973 and took over the property and the operation of the gravel truck in 1978 following the death of his father.
3. The gravel truck has been parked at this location for over 62 years.
4. The commercial gravel truck weighs 8900 kilograms unloaded.
5. The truck is always empty when he returns to his residence.
6. There are other commercial vehicles as well as motorhomes and recreational vehicles parked on residential properties in this area that are larger and heavier than his gravel truck.
7. The truck is not used during the winter months. His business is only operated from May to November every year.
8. There is a commercial/industrial zone located just east of this neighbourhood across 142 Street with many truck shops and other industrial uses that create some noise and nuisance.
9. The truck is plugged in when it is on site to reduce idling and allow him to leave the site quickly after the vehicle is started.
10. He always exits the neighbourhood onto 142 Street by travelling approximately three blocks down the rear lane.
11. Mr. Marcinew is aware of other commercial truck drivers who have received permission to park their trucks on their residential sites. They verbally advised him that they received permission through the appeal process.
12. He has never received any complaints from his neighbours about the truck that has been parked at this location for the past 62 years.
13. The truck is his livelihood and having the truck parked at his residence provides secure storage for his truck.

Mr. Marcinew provided the following response to a question:

1. He could not provide any written evidence to support the information provided by other commercial truck drivers that permits were issued to allow the parking of overweight commercial vehicles on their residential sites.

The Board then heard from Mr. Jeff Booth, representing the Sustainable Development Department, who provided the following responses to questions:

1. Parking a gravel truck that exceeds 4500 kilograms in GVW is neither a Permitted nor Discretionary Use in the RF1 Single Detached Residential Zone and is not compatible with the neighbourhood.
2. This matter came to the attention of the Sustainable Development Department following a complaint received from a neighbour about the noise and smell associated with the gravel truck. However, he could not confirm whether or not the neighbour resided within 60 metres of the subject site.
3. Mr. Booth could not provide any information regarding the issuance of development permits to allow commercial vehicles in excess of 4500 kgs GVW to be parked on other residential sites in this area.

Mr. Marcinew made the following points in rebuttal:

1. He reiterated the fact that a commercial truck has been parked at this location for 62 years without complaint.
2. He was shocked that a complaint was made because the majority of his neighbours provided signatures of support.
3. None of his neighbours complained about the excess noise and activity associated with the Kenworth Truck Sales Centre that was located west of 142 Street until last year.
4. Mr. Marcinew reiterated the fact that he is very considerate of his neighbours by using the rear lane to access 142 Street, approximately three blocks from his residence.

Decision:

The appeal is DENIED and the decision of the Development Authority is CONFIRMED. The development is REFUSED.

Reasons for Decision:

The Board finds the following:

1. The proposed development to park a commercial vehicle, loaded or unloaded, having a maximum Gross Vehicle Weight (G.V.W.) exceeding 4500 kilograms in the rear of a residential property is neither a Permitted nor a Discretionary Use in the RF1 Single Detached Residential Zone.
2. Based on the evidence provided by the Appellant, the vehicle to be parked on the subject site is a commercial gravel truck with an unloaded Gross Vehicle Weight (G.V.W.) of between 8900 and 9000 kilograms, which is well in excess of maximum 4500 kilograms.
3. Section 45.1(a) of the *Edmonton Zoning Bylaw* states that no person shall keep in any part of a Site in any Residential Zone any commercial vehicle, loaded or unloaded, having a maximum gross vehicle weight (G.V.W.) exceeding 4,500 kilograms.
4. The Board has also considered the definition of Accessory, in Section 6.1(2) of the *Edmonton Zoning Bylaw* which states that Accessory means, when used to describe a Use or a building, a Use or building naturally or normally incidental, subordinate, and devoted to the Principal Use or building, and located on the same lot or Site.
5. The Board finds that parking a commercial vehicle, exceeding 4,500 kilograms in weight, on the subject site is not natural, subordinate or devoted to the Principal Use or building on the subject site which is a Single Detached House.
6. Section 687(3)(d)(ii) of the *Municipal Government Act*, RSA 2000, Chapter M-26, states “in determining an appeal, the subdivision and development appeal board may make an order or decision or issue or confirm the issue of a development permit even though the proposed development does not comply with the land use bylaw if, in its opinion, the proposed development conforms with the use prescribed for that land or building in the land use bylaw.”
7. Pursuant to Section 687(3)(d)(ii) of the *Municipal Government Act*, the Board cannot approve the proposed development because it does not conform with the Use prescribed for that land or building in the *Edmonton Zoning Bylaw*.

8. The Board acknowledges that the Appellant received wide community support for the appeal as evidenced by the petition of support that was submitted and that the commercial vehicle has been parked on the subject site for more than 62 years without any known complaint.
9. However, the Board can only approve permits for Uses that are either Permitted or Discretionary for the Zone in which the subject site is situated.
10. The proposed development is neither a Permitted nor a Discretionary Use in the RF1 Single Detached Residential Zone and cannot be approved by the Board.

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.

Subdivision and Development Appeal Board

c.c.

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: June 18, 2015
Project Number: 168250159-002
File Number: SDAB-D-15-112

Notice of Decision

This appeal dated May 11, 2015, from the decision of the Development Authority for permission to:

Leave as built a Single Detached House

On Plan 3313EO Blk 1 Lot 5, located at 9511 - 99B Street NW, was heard by the Subdivision and Development Appeal Board at its hearing held on June 3, 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, subject to conditions and a variance in the minimum required Side Yard, an application to leave as built a Single Detached House, located at 9511 – 99B Street NW. The subject site is zoned RF3 Small Scale Infill Development Zone and is within the Mature Neighbourhood Overlay. The approved development permit application was appealed by an adjacent property owner.

The Board notes that a written submission was received from the Development Authority on May 26, 2015 as well as a submission from the Respondent on May 29, 2015, copies of which are on file.

The Board heard from the Appellant, Mr. Smith, who provided the following information in support of his appeal:

1. The house on the subject site was built 8 inches too close to the property line of the estate property that he owns next door.
2. He expressed concern that the siting of the house on the subject site will affect his ability to sell his property.
3. There is currently an offer pending on the property. The prospective purchasers are doing their due diligence and he is concerned that this issue will devalue the property or cause the pending deal to fall through.

4. The required variances may have an impact on the redevelopment of the property once it is sold and the existing house is demolished.
5. The variance required in the minimum required Side Yard may affect his ability to obtain fire insurance.
6. Mr. Smith also wanted assurances from the City and the builder that he would be compensated if any of these issues arose.
7. It was his opinion that this problem could have been avoided if the City changed the inspection process to visit a site after the footings are in place and before the concrete is poured.
8. He questioned how this fairly large builder could allow an error of this magnitude to occur. A number of variances were granted with the initial approval and now additional variances are being sought.

Mr. Smith provided the following responses to questions:

1. He has not made any inquiries regarding his ability to insure his property because of this issue or consulted with a realtor because of the pending offer on his property.

The Board then heard from Mr. Stephen Cooke and Mr. Adam Sheahan, representing the Sustainable Development Department, who provided the following information:

1. This application was approved with a 1.21 metres side setback on both sides of the property.
2. The siting of the house was shifted 0.22 metres to the north.
3. The cantilever should be 0.6 metres from the property line and the existing is 0.46 metres from the property line.
4. The Development Authority had the authority to vary the Zoning Bylaw and granted the required variances.
5. Mr. Sheahan indicated that there is a margin of error in any construction process and the builder was advised to be more diligent in the future.

The Board then heard from Mr. Colin Shillabeer, representing Parkwood Master Builder, who provided the following information:

1. Parkwood Master Builder is embarrassed about the siting of the house on this lot which has resulted in the deficiency in the minimum required north Side Setback.
2. They build approximately 150 houses per year and have encountered similar problems for three or four other development projects.
3. The originally approved house has not been enlarged but the building is slightly askew on the lot and is closer to the north property line than originally designed.
4. He is currently working with the Current Planning Branch to ensure that the encroaching part of the building meets all Building Code requirements for fire resistance to ensure that there is no added fire exposure to any adjacent structures on adjoining properties.
5. This application will not receive approval from the Current Planning Branch until all building Code requirements are fully met.

Mr. Smith provided the following information in rebuttal:

1. He reiterated his opinion that the City should change their process and conduct inspections after footings have been installed and before any concrete is poured.
2. This house is owned by Parkwood Master Builder.
3. He is not familiar with the Building Code requirements for fire resistance or how they should be changed in this situation.

Decision:

The appeal is DENIED and the decision of the Development Authority is CONFIRMED. In granting the development the following variances to the *Edmonton Zoning Bylaw* are allowed:

The deficiency of 0.22 metres in the minimum required (north) Side Setback.

The variance of 0.14 metres in the maximum allowable cantilevered projection into the (north) Side Setback.

Reasons for Decision:

The Board finds the following:

1. The existing Single Detached House is a Permitted Use in the RF3 Small Scale Infill Development Zone.
2. Based on a further review by the Development Authority, an additional variance is required pursuant to Section 44.2(a) of the *Edmonton Zoning Bylaw* to allow the excess of 0.14 metres in the maximum allowed cantilevered projection into the Side Setback.
3. The Board has granted both of the required variances to allow the building to remain as built for the following reasons:
 - a) The Board did not hear evidence to demonstrate that the requested variances would cause a material interference with the use, value or enjoyment of neighbouring properties or the amenities of the neighbourhood.
 - b) The Appellant raised a concern that the required variances could result in a potential loss in the value of his immediately adjacent property but failed to provide any expert evidence to support this concern.
 - c) The Appellant acknowledged that there is an offer pending on his property and there is no indication that the variances required for the subject site would impact that offer.
 - d) The Respondent is working with the Current Planning Branch to ensure that the deficiency in the minimum required Side Setback will not impact any of the adjacent properties.
4. Based on the above, it is the opinion of the Board, that the proposed development with the required variances, would 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*,
 - 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.

Subdivision and Development Appeal Board

c.c.