

Edmonton Subdivision and Development Appeal Board

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Date: June 25, 2015
Project Number: 154924225-001
File Number: SDAB-D-15-096

Notice of Decision

This appeal dated April 23, 2015, from the decision of the Development Authority for permission to:

Comply with a Stop Order to cease any construction on the land.

on Plan 1222257 Unit 7, located at 70 - Sylvancroft Lane NW, was heard by the Subdivision and Development Appeal Board at its hearing held on May 20, 2015 and June 10, 2015. The decision of the Board was as follows:

May 20, 2015 Hearing

MOTION:

“that the appeal hearing be scheduled for June 10, 2015.”

June 10, 2015 Hearing

“that SDAB-D-15-096 be raised from the Table.”

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 comply with a Stop Order to cease any construction on the land located at 70 - Sylvancroft Lane NW. The subject Site is zoned RF3 Small Scale Infill Development Zone and is within the Mature Neighbourhood Overlay.

The Board notes that a written submission was received from the Appellant at the originally scheduled hearing on May 20, 2015 that was subsequently postponed to June 10, 2015.

The Board also notes that a detailed written submission was provided by Legal Counsel for the affected property owners on June 5, 2015, a copy of which is on file.

The Board heard from Mr. Jamie Thompson, representing the Appellant, The House Company, who referenced his written submission and provided the following information in support of the appeal:

1. The Stop Order was appealed in an attempt to have the development permit issued so that construction can begin.
2. He referenced Section 17.1(3)(c) of the *Edmonton Zoning Bylaw* and stated that he was never notified by the Development Authority that the development permit was suspended and therefore had no opportunity to appeal that decision.
3. At the initial appeal hearing, the Chairperson indicated that the Board did have the authority to waive the requirement for community consultation. However, it was unclear if the Board was waiving the consultation requirement during the development review process or as part of the Board process.
4. It was his opinion that community consultation was not required because the development permit was refused.
5. The consultation requirements set out in Section 814.3(24) of the *Edmonton Zoning Bylaw* were discussed at the initial hearing before the Board.
6. He acknowledged that the City does have authority to issue a Stop Order and in fact he asked that a Stop Order be issued so that he could have an appeal hearing before the Board.
7. Mr. Thompson asked the Board to overturn the provisions of Section 17.1(3)(c) of the *Edmonton Zoning Bylaw* because suspending the development permit serves no purpose in the Court of Appeal process.
8. At the Leave to Appeal hearing, the Justice of the Court disallowed the Appellant's appeal against the validity of the permit saying it had no chance of success. This means that the Appeal Court will not decide that the Subdivision and Development Appeal Board should not have heard the appeal.
9. The Justice of the Court allowed an appeal to determine the authority of the Board pursuant to Section 687(3)(d) of the *Municipal Government Act* to waive a procedural Bylaw, specifically the community consultation.
10. The affected neighbours filed the Leave to Appeal based on the ability of the Board to hold an appeal hearing and not the validity of the permit itself.
11. The neighbours feel privileged as a group and have contested every variance granted for each development on this street.

Mr. Thompson provided the following responses to questions:

1. He clarified that he requested Sustainable Development to issue the Stop Order so that he could file an appeal to bring the matter back before the Board.
2. He would like the Board to overturn Section 17.1(3)(c) of the *Edmonton Zoning Bylaw* regarding the suspension of a development permit. However, he could not reference a specific section of the *Municipal Government Act* that would provide authority to the Board to overturn that section of the Bylaw.
3. In his opinion, given that the substance of the matter before the Court of Appeal relates to the interpretation of the *Municipal Government Act*, the development permit will be ultimately allowed to proceed.
4. The Board has the power to overturn the suspension which in his opinion is unfair.

5. The appeal to the Court of Appeal is not an appeal of the development permit but an appeal of authority to waive community consultation.
6. All of the requirements for community consultation contained in the Mature Neighbourhood Overlay were satisfied during the Board hearing and he questioned the need for any further consultation.
7. Mr. Thompson acknowledged that if the appeal is successful, the worst result would be that the development permit would be invalidated. If this occurred they would just reapply with one variance and there would be nothing to argue about.
8. The problem is that they will be forced to wait another year before building the house as proposed.
9. Therefore, to enable the development to proceed immediately, he would like the Board to either cancel the Stop Order and reactivate the suspended development permit or issue a new development permit.

The Board then heard from Mr. Craig, representing the Sustainable Development Department, who provided the following information:

1. He confirmed that Mr. Thompson had requested the issuance of a Stop Order because a date had not been set at the Court of Appeal and he wanted a chance to come to the Board.
2. Sustainable Development inspected the site and discovered that stakes had been installed on the site and as such the Stop Order was issued in accordance with Section 645 of the *Municipal Government Act*.
3. Because Leave to appeal to the Court of Appeal had been granted no activity should be occurring on the site.
4. It was his opinion that the Stop Order is valid pursuant to Section 17.1(3)(c) of the *Edmonton Zoning Bylaw* which states that “The Development Officer shall suspend a Development Permit upon receipt of a filed notice of appeal to the City of Edmonton from the Subdivision and Development Appeal Board in accordance with the Municipal Government Act, and Section 21.1 of this Bylaw. The Development Permit remains suspended until the Alberta Court of Appeal has granted leave to appeal, heard the appeal on the merits, made its decision, and any appeal to the Supreme Court of Canada from that determination of the Alberta Court of Appeal has been finally determined.”
5. In his opinion, there was no precedent for waiving the requirements of Section 17.1 of the *Edmonton Zoning Bylaw*.

The Board then heard from Mr. Wakefield, Legal Counsel for affected property owners, who provided the following information:

1. He clarified that he was representing affected property owners who reside immediately east of the subject site.
2. He referenced his written submission and reviewed his clients’ attempts to move the appeal forward in a timely fashion.
3. The Court of Appeal processing time has been reduced by half in an attempt to have this matter dealt with expeditiously.
4. Mr. Wakefield referenced Section 17.1 of the *Edmonton Zoning Bylaw* and indicated that if the appeal at the Court of Appeal is successful, the development permit will be nullified and the permit application process will start again.

5. In his opinion, it is a red herring to give consideration to the grounds for appeal that were denied on the Leave to Appeal application.
6. There is no case law to support the authority of the Board to waive the consultation process.
7. It was his opinion that The House Company is asking the Board to issue a new development permit and is trying to re-litigate the matter previously before the Board on the initial development permit refusal.
8. It is not within the authority of the Board provided by Section 645(3) of the *Municipal Government Act* to circumvent an appeal to the Court of Appeal.
9. The House Company has not been receptive to various options presented by his clients to deal with this matter outside of the Court of Appeal.
10. The development permit has been suspended in accordance with Section 17 of the *Edmonton Zoning Bylaw* until the Court of Appeal renders a decision and it is beyond the authority of the Board to overturn Section 17 or to issue a new development permit that mirrors the development permit that is currently under appeal.

Mr. Thompson made the following points in rebuttal:

1. He questioned why the use of the word “shall” in Section 17 is considered mandatory when the Development Authority can waive or vary other sections of the *Edmonton Zoning Bylaw* which include the word “shall”.
2. It was his opinion that the *Municipal Government Act* provides authority for the Board to overturn Section 17 of the *Edmonton Zoning Bylaw*.
3. If the neighbours are successful at the Court of Appeal, it will simply delay the construction of a house that will be built one way or another.
4. Mr. Thompson was asked if consideration had been given to revising the plans to make the development comply with the development regulations and reapply pursuant to Section 18 of the *Edmonton Zoning Bylaw*. He indicated that different options had been investigated but that practical difficulties made it impossible to be fully compliant with the development regulations.

Mr. Wakefield responded to this new information and agreed that a fully compliant development would be acceptable to his clients because it would remove the variance in the minimum required rear setback that was granted by the Subdivision and Development Appeal Board. It was his opinion that there is nothing preventing The House Company from making a fully compliant development permit application at any time.

Decision:

that the appeal be DENIED and the Stop Order CONFIRMED

Reasons for Decision:

1. The Board finds that this Stop Order has been issued for a development that is the subject of a Court of Appeal hearing to be heard at a later date and for which an outcome has yet to be determined.
2. The Board accepts the evidence provided by the Development Authority that the Stop Order was properly issued pursuant to Section 645 of the *Municipal Government Act*.
3. Section 17.1(3)(c) of the *Edmonton Zoning Bylaw* states that “The Development Officer shall suspend a Development Permit upon receipt of a filed notice of appeal to the City of Edmonton from the Subdivision and Development Appeal Board in accordance with the *Municipal Government Act*, and Section 21.1 of this Bylaw. The Development Permit remains suspended until the Alberta Court of Appeal has granted leave to appeal, heard the appeal on the merits, made its decision, and any appeal to the Supreme Court of Canada from that determination of the Alberta Court of Appeal has been finally determined”.
4. Section 5.1(1) of the *Edmonton Zoning Bylaw* states that “no person shall commence, or cause or allow to be commenced, a Development without a Development Permit therefor issued under the provisions of section 12 of this Bylaw; shall carry on or cause or allow to be carried on a development without a Development Permit therefor issued under Section 12 of this Bylaw”.
5. Based on evidence provided by the Development Authority from a site inspection, the subject site is being prepared for development.
6. The Appellant failed to provide any valid information that would persuade the Board to waive the requirements of Section 17.1(3)(c) of the *Edmonton Zoning Bylaw* and acknowledged that if the appeal is successful at the Court of Appeal, the Development Permit could be nullified or changed.
7. The Board cannot intercede nor presume a conclusion in an ongoing Court of Appeal application.
8. Neither the *Municipal Government Act* nor the *Edmonton Zoning Bylaw* provides any authority for the Board to reinstate the suspended Development Permit or issue a separate Development Permit.
9. For the above reasons, the Board finds that the Stop Order was issued correctly, pursuant to Section 645 of the *Municipal Government Act*.

Important Information for 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 Stop Order 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.

Mr. V. Laberge, Presiding Officer
Subdivision and Development Appeal Board