



**EDMONTON
TRIBUNALS**

*Subdivision &
Development
Appeal Board*

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Project Number: 186048017-001
File Number: SDAB-D-17-106

Notice of Decision

- [1] On June 15, 2017, the Subdivision and Development Appeal Board (the “Board”) heard an appeal that was filed on **May 23, 2017**. The appeal concerned the Order of Development Services, issued on May 1, 2017, to comply with an Order to:

Obtain an approved Development Permit for a three Dwelling Apartment House OR Decommission one of the Dwellings and obtain a Development Permit for a Secondary Suite in a Single Detached House OR Decommission both Dwellings and revert the building back into a Single-detached house with only one Dwelling.

- [2] The subject property is on Plan 0225483 Blk B Lot 1, located at 12649 - 70 Street NW, within the RF3 Small Scale Infill Development Zone. The Mature Neighbourhood Overlay applies to the subject property.

- [3] The following documents were received prior to the hearing and form part of the record:

- Copy of the Stop Order;
- The Development Compliance Officer’s written submissions;
- The Appellant’s written submissions; and
- One letter in support of the Stop Order.

- [4] The following exhibits were presented during the hearing and form part of the record:

- Exhibit A – PowerPoint Presentation from the Development Compliance Officer

Preliminary Matters

- [5] At the outset of the appeal hearing, the Chairman confirmed with the parties in attendance that there was no opposition to the composition of the panel.

[6] The Chairman outlined how the hearing would be conducted, including the order of appearance of parties, and no opposition was noted.

[7] Prior to the hearing, the Board raised a jurisdictional issue regarding when the appeal was filed. The Board explained to the Appellant that it is constrained by the 14-day limitation period prescribed by Section 686(1)(a) of the *Municipal Government Act*, R.S.A 2000, c. M-26 ("*Municipal Government Act*"), which states:

686(1) A development appeal to a subdivision and development appeal board is commenced by filing a notice of the appeal, containing reasons, with the board within 14 days,

(a) in the case of an appeal made by a person referred to in section 685(1), after

(i) the date on which the person is notified of the order or decision or the issuance of the development permit...

[8] The Board must therefore determine whether the Appellant filed her appeal within the 14-day limitation period. If the appeal was filed late, the Board has no authority to hear the matter.

Summary of Hearing on Preliminary Matter

i) Position of the Appellant, Ms. McCullough

[9] She received the Stop Order by regular mail on Saturday, May 6, 2017, spoke to Sustainable Development on May 10, 2017, and filed the appeal on May 23, 2017.

ii) Position of the Development Officer, Mr. Bolstad

[10] Mr. Bolstad confirmed that the Stop Order was sent by regular mail but could not confirm the date it was mailed.

[11] He spoke to the Appellant by phone regarding the Stop Order shortly after she received it and informed her of the *Interpretation Act*, which sets out when a document is received, if there is no proof as to the actual date.

iii) Rebuttal of the Appellant, Ms. McCullough

[12] Ms. McCullough did not have anything to add in rebuttal of the preliminary matter.

Decision on Preliminary Matter

[13] The appeal was filed on time, in accordance with Section 686 of the *Municipal Government Act*.

Reasons for Decision on Preliminary Matter

[14] Ms. McCullough received the Stop Order on May 6, 2017 and filed the appeal on May 23, 2017. The 14 day appeal period ended on May 20, which was a Saturday, and the Board Office was closed. The Board Office was also closed on May 22, 2017 due to a statutory holiday. Having filed it on May 23, 2017, Ms. McCullough filed it within the proper timeframes.

Summary of Hearing

iv) Position of the Appellant, Ms. McCullough

[15] Ms. McCullough was unaware of what Development Permits were required. But she concedes the Stop Order was properly issued.

[16] She would like an extension to be able to comply with the Stop Order.

[17] She is willing to comply with the Stop Order but has tenants in the suites with a fixed term lease to the end of September.

[18] She spoke to the tenants to see if they would be agreeable for her to comply with the Stop Order in August, 2017. She is a teacher and locating contractors and working in the suites in September is not a good time for her. The tenants are in agreement to the work being done in August.

[19] In response to questions by the Board, she confirmed that the tenants would like to rent the suite until the end of September. However, she spoke to them regarding the best time for her to do the work was in August. They agreed to an August date.

[20] She would like August 14 or 15, 2017 as the date to comply with the Stop Order.

[21] The only safety concern for the tenants to remain in the suite past the compliance date would be that there is no hood vent for the stove.

[22] She confirmed that she had a previous extension of the Stop Order to June 6, 2017.

v) *Position of Development Officer, Mr. Bolstad*

[23] Ms. McCullough contacted him to request an extension from June 6, 2017 to July 6, 2017.

[24] He is not willing to extend an additional request to the end of September to accommodate the fixed term lease for the suites.

[25] He referenced a PowerPoint presentation, marked "Exhibit A", and summarized what was previously sent to the Board.

[26] He referenced an aerial photograph showing the property and the location of the doors to access the suites and the main dwelling.

[27] He referenced the photograph of the front of the house showing two mailboxes, and inside the house showing details of the rooms in each area.

[28] He referenced previous Development Permits and the history of those permits.

[29] He referenced the regulations and definition of a Single Detached House and a Secondary Suite. Only one Secondary Suite is allowed in a Single Detached House or it would be considered an Apartment House.

[30] A copy of the definitions and regulations were sent to Ms. McCullough with the Stop Order.

[31] He read the purpose of the RF3 Small Scale Infill Development Zone.

[32] The last Development Permit issued was for a Single Detached House and there were no permits for an Apartment House to accommodate the three dwellings. Ms. McCullough had the option to obtain a Development Permit to keep all three suites, decommission one suite and obtain a permit for a Secondary Suite, or revert the building back to a Single Detached House.

[33] One month is the standard amount of time provided to comply with a Stop Order. Ms. McCullough has made some progress to comply with the Stop Order. He is in agreement to extend the Stop Order but not to September because of the fixed term lease.

[34] In response to questions by the Board, he stated that the key regulation for an Apartment House is met as the property is on a corner lot. However, he would have to review the Setbacks and the variances required.

[35] He stated that if there was one suite in the Dwelling, a Development Permit would be issued.

[36] He is agreeable to an extension to August 15, 2017 but not to the end of September, 2017.

vi) Rebuttal of the Appellant, Ms. McCullough

[37] Ms. McCullough did not have anything to add in rebuttal.

Decision

[38] The appeal is ALLOWED IN PART and the decision of the Development Compliance Officer is VARIED to extend the date of the Stop Order to August 15, 2017.

Reasons for Decision

[39] The Appellant conceded that the Stop Order was issued correctly.

[40] Based on the evidence provided to the Board, the development was built in 1947 with a Development Permit for a Single Detached House. No Development Permits were issued for an Apartment House or a Single Detached House with a Secondary Suite.

[41] Based on the photographic evidence provided to the Board, there are three separate dwellings in the Dwelling making it an Apartment House but could be considered a Single Detached House with a Secondary Suite if one of the suites were decommissioned.

[42] Based on the evidence submitted, the Board finds that the Use of the Dwelling does not comply with any Development Permits issued for the subject Site.

[43] Based on the evidence submitted, the Board varies the Stop Order to amend the date of compliance to August 15, 2017 due to the existence of tenants in the building.

[44] While the Development Compliance Officer did not consent to the extension of the Stop Order, an extension to August 15, 2017 is “more reasonable” than the initial extension request to the end of September, 2017.

[45] Based on the above, it is the opinion of the Board that the Stop Order is upheld and confirmed to be complied with by August 15, 2017.

Mr. I. Wachowicz, Chairman
Subdivision and Development Appeal 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*, 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.

2. When a decision 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 2nd Floor, Edmonton Tower, 10111 – 104 Avenue NW, Edmonton, AB T5J 0J4.