

Edmonton Subdivision and Development Appeal Board

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Project Number: 180753048-002
File Number: SDAB-D-16-073

Notice of Decision

[1] On March 10, 2016, the Subdivision and Development Appeal Board heard an appeal that was filed on **February 12, 2016**. The appeal concerned the decision of the Development Authority, issued on **February 2, 2016**, to refuse the following development:

construct exterior alterations to an existing Single Detached House, conversion of an existing carport to a partially covered deck (4.66m x 6.22m), to install a hot tub and to add an addition (Side attached Shed, 1.76m x 4.98m), existing without permits.

[2] The subject property is on Plan 5631MC Blk 5 Lot 63, located at 6103 - 138 AVENUE NW, within the RF1 Single Detached Residential Zone. The Mature Neighbourhood Overlay 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 Minor Development Permit Application;
- The Development Officer's written submissions;
- The refused development permit with attached plans; and
- The Appellant's supporting documents.

Summary of Hearing

[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 appeal was filed on time, in accordance with Section 686 of the *Municipal Government Act*, R.S.A 2000, c. M-26.

i) Position of the Appellant, Mr. D. Stults

- [6] Mr. Stults appeared at the hearing on behalf of the Appellant and reiterated the arguments made in the Grounds for Appeal included in the Notice of Appeal.
- [7] He stated that property in question was sold in 2014 and the compliance letter received from the City indicated that the Single Detached house, the covered area and the detached garage were all compliant. However, there was no approval for the deck or hot tub. The Appellant was advised that the deck and hot tub required development permits. Therefore, the application submitted to the Development Authority related only to the hot tub and deck.
- [8] The Appellant is appealing the Development Authority's refusal of that application because the reasons provided for refusal are unconnected to the subject matter of the permit application. The reasons for refusal speak to driveway circumstances and a moveable shed.
- [9] The Appellant does not believe that the proposed development would unduly interfere with the amenities of the area or materially affect the use, enjoyment or value of neighbouring properties. Letters were sent out to the neighbourhood with information pertaining to the proposed development, but the Appellant did not receive any response. Further, the properties surrounding the subject Site have similar front access to the property, making the front access to the subject Site characteristic of the neighbourhood.

ii) Position of the Development Officer, Mr. B. Langille

- [10] The Development Officer stated that two elements resulted in his decision to introduce his unrelated reasons for refusal: the Use of the Carport changed and the Shed was determined to be attached to the principal building.
- [11] Because the Use had changed inside the Carport, the driveway no longer leads to a parking area and should therefore no longer exist. Further, although there were some other properties within the neighbourhood with front access Driveways, he would not consider it to be characteristic of the neighbourhood.
- [12] With respect to the Shed, a City inspector determined that the Shed was actually attached to the side of the home and this is why he included it in his calculation revealing a deficient Side Setback.
- [13] He confirmed that the subject Site is legal non-conforming. As such, alterations can only be made to the Site that would make it conforming. Although both the hot tub and the deck are measured as being less than 10 m², they require development permits because they are considered to be alterations to a non-conforming structure.

[14] He also confirmed that hot tubs are not defined in the *Zoning Bylaw* but stated that they are typically classified as Accessory structures as a matter of internal policy.

[15] Finally, he referred to Section 11.3(3) in stating that the *Zoning Bylaw* grants the Development Officer the authority to consider elements of the Site that may not have been included in the initial application. In this case, he considered the Shed and the Driveway.

iii) Rebuttal of the Appellant

[16] In rebuttal, Mr. Stultz stated that, although the Development Officer was discussing matters related to the single family Dwelling, the City's compliance letter to the Appellant stated that the Dwelling was compliant.

[17] He also reiterated that the Shed was identified as moveable on the Real Property Reports submitted to the Board.

Decision

[18] The appeal is ALLOWED and the decision of the development authority is REVOKED. In granting the development, the following variances to the *Zoning Bylaw* are allowed:

- i)* The right Side Setback is varied 1.03 metres from 1.20 metres to 0.17 metres (Section 110.4(10)(a)).
- ii)* The minimum Site Width of the Side Setback is varied from 20% to 12.47% (Section 110.4(10)(a)).

Reasons for Decision

[19] Exterior alterations to a single-detached house in a RF1 Single Detached Residential Zone are permitted.

[20] The Board notes that the application was for a permit for a hot tub and a partially covered deck only. There was no reference in the permit of the shed or the development officer's assertion that a change of Use has occurred.

[21] The Board accepts the Appellant's presentation that they applied for what was noted in a compliance certificate as being required: the hot tub and covered deck permits.

- [22] With respect to the deck, the Board notes that it is less than 0.6 metres in Height. Therefore, pursuant to Section 12.2(16), a permit is not required.
- [23] With respect to the hot tub, there are not provisions that directly refer to a hot tub in the *Zoning Bylaw*. The Development Authority determined that it was an Accessory structure. The Board accepts that interpretation and notes that the hot tub is less than 10 m² pursuant to Section 12.2(3). Therefore, it too does not require a permit.
- [24] As noted, the application was for a hot tub and deck, but the Board has found that no permits are required.
- [25] With respect to the additional reasons for refusal provided by the Development Authority, the Board has determined that that the reasons relating to Sections 814.10(3) and 54.1(5) are not applicable. The Board, based on photographic evidence, accepts that the attached carport and garage door have been part of the original principal building since its construction. The Board does not accept the Development Authority's assertion that a change of Use has occurred, bringing into question portions of the mature neighbourhood overlay and parking requirements.
- [26] Pursuant to the Real Property Report of 2014, the Board notes that there is a clear section, 4.66 metres x 6.22 metres, existing as covered open space. The Board accepts that this space can be used for the parking of vehicles, which would include small cars, motorcycles and bicycles.
- [27] Photographic evidence provided at the hearing clearly indicates a garage door is the access point for the carport and, therefore, the Board finds that the driveway leads to a parking area and is not in contravention of Section 54.1(5). The Board also notes that, pursuant to Section 54.2(4)(a)(iii), the minimum length of a small-car parking space has been identified as 4.6 metres.
- [28] With respect to the attached Shed, the Board accepts that the shed is moveable, as clearly identified on the Real Property Report. However, the Shed is non-compliant, and a variance of 1.03 metres is required. In considering granting the variance, the Board considered, based on photographic evidence, that the highest point of the shed appears to be lower than the fence separating the two properties. The Board did not receive any objections to this Shed and notes that the appellants provided letters to the affected neighbours, of which copies were not provided to the Board. The Board feels that ample notice was provided and that, if any affected party wanted to object, they had the opportunity to do so.

[29] For the above reasons, the Board believes that this development will not unduly interfere with the amenities of the neighbourhood or materially affect the use, enjoyment or value of neighbouring parcels of land.

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

CC:

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.

SDAB-D-16-048

Application No. 183991922-001

An appeal by Pattison Outdoor Advertising to construct a Freestanding Off-premises Sign on Plan 5718AE Blk 27 Lots 27-28, located at 7026 – 109 Street NW, was **TABLED TO APRIL 6 or 7, 2016.**