



**EDMONTON
TRIBUNALS**

*Subdivision &
Development
Appeal Board*

10019 - 103 Avenue NW
Edmonton, AB T5J 0G9
P: 780-496-6079 F: 780-577-3537
sdab@edmonton.ca
edmontonsdab.ca

Date: April 2, 2019
Project Number: 302932958-001
File Number: SDAB-D-19-037

Notice of Decision

- [1] On March 20, 2019, the Subdivision and Development Appeal Board (the “Board”) heard an appeal that was filed on **February 21, 2019**. The appeal concerned the decision of the Development Authority, issued on February 15, 2019, to refuse the following development:

Construct an Accessory Building (detached Garage (7.62m x 6.96m)) and to demolish an existing Accessory Building (rear detached Garage, 6.61m x 4.41)

- [2] The subject property is on Plan RN43 Blk 17 Lot 7, located at 11521 - 96 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 Development Permit application with attachments, proposed plans, and the refused Development Permit;
 - The Development Officer’s written submissions; and
 - The Appellant’s reasons for appeal and rendering of proposed development.

Preliminary Matters

- [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*, RSA 2000, c M-26.

Summary of Hearing*i) Position of the Appellant, K. Beal*

- [7] Mr. Beal was accompanied by Ms. L. Sharman.
- [8] The existing garage is in bad shape and needs replacement. The Appellants would like to build a double garage with an artist studio above the garage for Mr. Beal, who is a professional artist. This would allow Mr. Beal to work from home without having to rent outside space.
- [9] There is no parking permitted along the block on their side of the street. They currently park their vehicles in front of a neighbour's property on the opposite side of the street. Both of their vehicles were broken into within one month of moving into the neighbourhood; parking inside the garage would provide security for their vehicles and would free up street parking in front of their neighbour's property.
- [10] While there are other double garages in the vicinity, they acknowledge that the proposed development is taller than any of the existing surrounding garages. They do not believe the height would really impact anyone or would have much of an effect on sunlight penetration due to the east / west orientation of the proposed garage. There is a large church located directly to the north across 116 Avenue which is much taller than their proposed development.
- [11] The roof does not have much slope, as Mr. Beal wants to maximize the available wall space for his art work. There will be no windows facing the immediate neighbours and light will be brought in through the use of skylights, eliminating any privacy concerns. There will be an internal staircase leading to the art studio.
- [12] They hope that the new construction will discourage some of the unwanted nocturnal activities currently occurring at the rear of their property.
- [13] The illustration submitted with their appeal shows the metal cladding proposed for the outside walls of the accessory building. They acknowledge that there are no other accessory buildings clad with this material in the immediate vicinity; however, there are a variety of architectural styles and finishes within the immediate neighbourhood.
- [14] The Appellants provided the following responses to questions from the Board:
- a) They did not speak with any of their neighbours. Both immediately adjacent neighbours are renters, and the Appellants do not know who the property owners are.
 - b) They confirmed that the proposed development exceeds the minimum required side setbacks.
 - c) Electricity and possibly a gas line will be run to the accessory building. There is no plan to bring water into the building.

- d) There will still be an adequate amenity area in the back yard; the proposed development is wider than the existing garage by approximately 10 feet but no deeper.
- e) While they would be open to dropping the height of the garage portion of the building if this is feasible, the studio area only has 8 foot high ceilings and would not be functional if the ceiling is lowered.
- f) The neighbor to the south has a shed and parks about four vehicles in the rear part of their lot. The neighbor to the north has a strip of grass adjacent to the Appellant's property and then a garage on the north portion of their rear yard.
- g) They intend to install a metal roof on their house this summer that will tie in with the design of the garage. The colour of the metal cladding on the accessory building will be chosen to closely match the exterior colour of the house.
- h) They will seek permission from the neighbor to the north to have an arborist trim an overhanging tree. A diseased tree located on the south side of their rear yard will be removed.
- i) There is an existing garage with a suite across the alley and a few houses to the north.
- j) Mr. Beal confirmed that clients never visit his studio. He holds exhibitions, which are usually out of town. Although Mr. Beal's reasons for appeal made mention of a "Minor Home Based Business", the Presiding Officer clarified that such a business would require a separate application and did not form part of the appeal before the Board.
- k) The Appellants confirmed they have no objections to any of the suggested conditions of the Development Officer should this development be approved.
- l) They would describe their neighbourhood as semi-inner city with a mixture of established residents, younger people and families. There are several drop-in centres in the vicinity, and there is a homeless population moving through their neighbourhood.

ii) Position of the Development Officer, E. Lai

- [28] The Development Authority was not in attendance, and the Board relied on the written submission of the Development Officer, E. Lai.

Decision

[29] The appeal is ALLOWED and the decision of the Development Authority is REVOKED. The development is GRANTED as applied for to the Development Authority, subject to the following CONDITIONS:

1. The development shall be constructed in accordance with the stamped and approved drawings.
2. Eave projections shall not exceed 0.46m into required yards or Separations spaces less than 1.2m. (Section 44.1)
3. The area hard surfaced for a driveway, not including the area used for a walkway, shall comply with Section 54.6. The driveway shall be located in accordance with the stamped approved site plan.
4. The Driveway shall lead directly from the roadway to the Garage or Parking Area and shall not be wider than the width of the Garage or Parking Area.

ADVISEMENTS:

1. The driveway access must maintain a minimum clearance of 1.5 m from the service pedestal and all other surface utilities. The applicant or property owner is responsible for the location of all underground and above ground utilities and maintaining the required clearance as specified by the utility companies. Alberta One-Call, Shaw, and Telus should be contacted at least two weeks prior to the work beginning to have utilities located. Any costs associated with the relocation or removal of the service pedestal shall be at the expense of the applicant or property owner.
2. An approved Development Permit means that the proposed development has been reviewed only against the provisions of the Edmonton Zoning Bylaw. It does not remove obligations to conform with other legislation, bylaws or land title instruments such as the Municipal Government Act, the ERCB Directive 079, the Edmonton Safety Codes Permit Bylaw or any caveats, covenants or easements that might be attached to the Site.
3. Unless otherwise stated, all above references to section numbers refer to the authority under the Edmonton Zoning Bylaw 12800.
4. A Building Permit is required for any construction or change in use of a building. For a Building Permit, and prior to the Plans Examinations review, you require construction drawings and the payment of fees. Please contact the 311 Call Centre for further details.

[30] In granting the development the following variances to the Zoning Bylaw are allowed:

1. The maximum allowable Height (to midpoint) of 4.3 metres as per Section 50.3(3) is varied to allow an excess of 1.5 metres, thereby increasing the maximum allowable Height to 5.8 metres.
2. The maximum allowable Height (to peak) of 5.8 metres as per Sections 50.3(3), which allows a maximum Height of 4.3 metres, and 52.2(c), which permits the ridge line of the roof to extend an additional 1.5 metres beyond the maximum permitted Height, is varied to allow an excess of 0.3 metres, thereby increasing the maximum allowable Height (to peak) to 6.1 metres.
3. The maximum allowable Site Coverage of 12 percent for the Accessory Building as per Section 140.4.10(a) is varied to allow an excess of 2 percent, thereby increasing the maximum allowable Site Coverage to 14 percent.

Reasons for Decision

[31] This is an appeal of an application for an Accessory Building (detached Garage) to a Permitted Use requiring a variance to Site Coverage and Height. The Board notes that no variances are required to the Mature Neighbourhood Overlay regulations.

[32] The Board allows the variances to Site Coverage and Height for the following reasons:

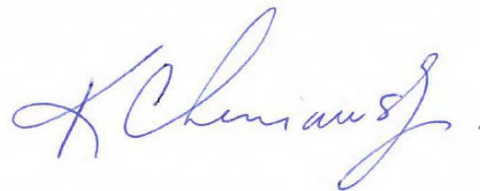
1. The Board received no objections to the proposed development from any property owners, including the two most affected owners to the immediate north and south of the proposed development.
2. While the Site Coverage of the Accessory Building exceeds the allowed maximum, the total combined Site Coverage for both the Accessory building and principal structure are within the total allowable Site Coverage. Furthermore, no other variances that would typically signal an overdevelopment of a lot are required.
3. There is a significant distance between the rear of the principal dwelling and the garage. Even with the garage, there is ample outdoor amenity space in the rear yard and opportunity for sunlight penetration.
4. The minimum required side Setbacks have been exceeded, which will mitigate some of the massing and sun shadowing impact.
5. The proposed garage will replace an existing dilapidated garage that is inadequate to provide parking for two vehicles. Security is a concern in this neighbourhood. The proposed garage will create two secure on-site parking spaces at the rear of the property off the lane. It will also add to the amenities of the area by reducing the

ongoing demand for street parking by residential users, particularly given that there is no parking permitted along the east side of the street in front of the subject site.

6. While the building is over-height, privacy concerns have been addressed. Light will be brought into the garage through skylights rather than windows facing either of the adjacent rear yards.
7. The Height variance is in part due to the low grade roof design. This roof design facilitates activity and oversight in the rear of the lot close to the lane and may add to security in the lane, which the Board heard is currently an issue in the immediate area.

[33] For the reasons above, the Board finds that the proposed development 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.

[34] While the Appellant made reference to a Minor Home Based Business in his reasons for appeal, the Board notes that the only matter before it relates to an Accessory Building, which has been approved. This is in no way an approval for other Use classes, such as a Minor or Major Home Based Business. The Appellants are reminded that any other Uses must be properly applied for and vetted through the normal process.



Kathy Cherniawsky, Presiding Officer
Subdivision and Development Appeal Board

Board Members in Attendance:

Ms. P. Jones, Mr. J. Jones, Mr. A. Nagy, Mr. W. Tuttle

cc: Development & Zoning Services – E. Lai / A. Wen

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

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.