

Edmonton Subdivision and Development Appeal Board

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Date: April 7, 2016
Project Number: 172475179-005
File Number: SDAB-D-16-081

Notice of Decision

[1] On March 23, 2016, the Subdivision and Development Appeal Board heard an appeal that was filed on **February 24, 2016**. The appeal concerned the decision of the Development Authority, issued on **February 12, 2016**, to refuse the following development:

construct an Accessory Structure (gazebo, 4.87m x 4.87m)

[2] The subject property is on Plan 1125611 Blk 36 Lot 35, located at 9528 - 206 STREET NW, within the RSL Residential Small Lot Zone. The Lewis Farms Area Structure Plan and Webber Greens Area Structure Plan apply to the subject property.

[3] The following documents, which were received prior to the hearing and are on file, were read into the record:

- A registered mail delivery notification;
- A refused development permit with plans attached;
- The Development Officer's written submissions;
- A photograph of the Site;
- A letter in opposition to the development;
- The Lewis Farms Area Structure Plan; and
- The Webber Greens Neighbourhood Structure Plan.

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. T. Wong

- [6] The Appellant reiterated the Grounds for Appeal included in the Notice of Appeal.
- [7] His family has gone through many different gazebos over the years that have not been able to hold up to the weather. The proposed development was built to stand up to the elements.
- [8] The proposed development would be very difficult to move. The foundational poles are cemented approximately four feet deep into the ground, and the structure weighs hundreds of pounds.
- [9] With respect to the effect the proposed development would have on the value of neighbouring properties, he stated that appraisers take into account attractive, viable structures outside of the Dwelling. The gazebo is not ugly. It is flashed, sided and matches the other structures in the neighbourhood.
- [10] He also stated that he had a petition signed by neighbours having no objection to the development. He advised that, aside from the immediately adjacent neighbours who appeared at the hearing in opposition to the development, all affected neighbours signed the petition.
- [11] In response to questions regarding whether or not he could peer into his neighbour's yard due to the Height of the Gazebo, he stated that he has put privacy screening in place to address that issue.

ii) Position of the Development Officer, Ms. E. Lai

- [12] The Development Officer appeared at the hearing to answer the Board's questions.
- [13] She confirmed that, if the structure was moved over 0.5 metres, such that it would then be 0.9 metres removed from the property line, it would comply with the *Zoning Bylaw*.
- [14] She further confirmed that, if only the foundational posts were moved 0.5 metres further into the subject Site and away from the fence, the proposed development would become compliant because the *Zoning Bylaw* allows for a 0.46-metre eave projection.

iii) Position of Affected Property Owners in Opposition to the Development

- [15] Mr. and Mrs. Lau, the neighbours directly adjacent to the subject Site, appeared at the hearing to support the refusal of the proposed development. They agreed with the Development Officer's reasons for refusal.
- [16] They stated that they had a conversation with the contractor about the positioning of the posts for the gazebo. This conversation also included asking the contractor if a development permit was required or if one had been obtained. The contractor admitted that there should be a development permit and that he had notified the Appellant regarding this. Nevertheless, the contractor had been instructed to proceed with the present plans.

- [17] They also suggested that it should be refused for safety reasons. The Gazebo is a fire hazard. If it catches fire, the fire will run along the fence line to their house and all other houses in the neighbourhood.
- [18] They contended that the Appellant knew that the proposed development was in contradiction to the *Zoning Bylaw* and built it anyway. The Bylaws were written for a reason and should be enforced.
- [19] Additionally, they have not noticed any privacy screening. They can see the proposed development over the fence in their back yard.

iv) Rebuttal of the Appellant

- [20] Regarding the fire hazard concern, the Appellant stated that the location of the proposed Gazebo will make no difference in the event of a fire. The fences are made of wood, and the fire will jump to the fence whether it starts on the deck or the gazebo.
- [21] He also stated that there are numerous existing structures in Edmonton that touch the fence line of their respective properties. To force him to move the structure for the sake of such a minimal deficiency does not seem necessary.
- [22] He also denied knowing, prior to commencing construction, that the proposed development would violate the *Zoning Bylaw*. However, he acknowledged continuing to shingle the roof after receiving notice to stop construction in order to finish the task at hand and minimize damage that could have resulted from not completing the shingling of the roof.

Decision

- [23] The appeal is **ALLOWED** and the decision of the Development Authority is **REVOKED**. The development is **GRANTED** in accordance with the plans submitted. In granting the development, the following variance to the *Zoning Bylaw* is allowed:
- i)* The distance requirement of Section 50.3.4(b) with respect to the Side Lot Line is varied 0.5 metres from 0.9 metres to 0.4 metres.

Reasons for Decision

- [24] The proposed development is an accessory to a Permitted Use in the RSL Residential Small Lot Zone.

- [25] The Appellant submitted plans that were reviewed by the Board, and the Board accepts the variance of 0.5 metres into the required side yard.
- [26] The Appellant was aware that there was a problem and continued to build at his own peril, and the Board has not taken into consideration any hardship involved in moving the structure in making its determination.
- [27] The Board acknowledges that the Appellant received support from adjacent neighbours and provided a copy of the petition with signatures from eight residents, including three adjacent property owners who had no objection to the structure.
- [28] The proposed development is a gazebo with a covered, solid roof, four supporting posts and no walls. At issue is the location of the posts. Under the *Zoning Bylaw*, were the posts moved to be compliant with the *Bylaw*, the roof could remain at its proposed location. The Board does acknowledge that the immediately adjacent neighbour, who appeared in opposition, has a concern with the location of the structure. However, the structure would comply with eave projections that are allowed under the *Bylaw* if not for the posts' location in relation to the fence line. Thereby, as this structure has no eaves, it is the Board's opinion that it would be appropriate to grant this minor variance to the regulation.
- [29] The Appellant has taken steps to provide privacy screening to the adjacent neighbour so that there is not any oversight into their yard.
- [30] Based on the evidence, the Board is satisfied that the proposed development would not unduly interfere with the amenities of the neighbourhood, nor would it materially affect the use, enjoyment or value of the neighbouring parcels of land.

Mr. B. Gibson, 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.

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SDAB-D-16-062

Application No. 176691253-001

An appeal by **Re/mex Excellence** to operate an Automotive/Minor Recreation Vehicle Sales/Rental and to relocate an existing mobile office (Peace Motors) on Plan 0520041 Blk 60A Lot 8, located at 9115 - 127 Avenue NW and Plan 0520041 Blk 60A Lot 9, located at 9035 - 127 Avenue NW, was **TABLED TO APRIL 20 or 21, 2016.**