

Edmonton Subdivision and Development Appeal Board

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Date: May 29, 2015
Project Number: 162509298-001
File Number: SDAB-D-15-081

Notice of Decision

This appeal dated March 25, 2015, from the decision of the Development Authority for permission to:

Construct (3) Accessory Buildings, Accessory to an existing General Industrial Use (3 concrete silos)

on Plan 0020287 Blk 1 Lot 5, located at 22235 - 115 Avenue NW, was heard by the Subdivision and Development Appeal Board at its hearing held on April 23, 2015 and May 14, 2015. The decision of the Board was as follows:

April 23, 2015 Hearing:

The Board heard from Ms. Kenny, Counsel for the Appellant, Rolling Mix Concrete (Edmonton) Ltd., who provided the following information:

1. Senior Counsel, Mr. Murphy, has been recently retained by the Appellant and is asking for further time to prepare.
2. Mr. Murphy is currently out of the country.
3. Request is to May 13 or 14, 2015.

The Board heard from Mr. Rutherford, City of Edmonton Sustainable Development Department, who provided the following information:

1. There is no objection to the adjournment request.

Motion:

“That the matter be adjourned to May 13 or 14, 2015.”

Reason for Decision:

1. The Appellant and Sustainable Development have consented to the adjournment.
2. No other parties were in attendance at the hearing.

May 14, 2015 Hearing:

Motion:

“That SDAB-D-15-081 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 refuse an application to construct (3) Accessory Buildings, Accessory to an existing General Industrial Use (3 concrete silos), located at 22235 - 115 Avenue NW. The subject Site is zoned IM Medium Industrial Zone and the Winterburn Industrial Area Structure Plan. The development permit was refused because of an excess in the maximum allowable Building Height.

The Board notes that a written submission was received from the Development Authority on April 20, 2015.

The Board heard from Mr. James Murphy, Legal Counsel for the Appellant, Rolling Mix Concrete (Edmonton) Ltd., who used a PowerPoint presentation, marked Exhibit “A” to provide the following information:

1. The proposed development was refused solely because the Development Authority does not have the authority to vary Height, Density or Floor Area Ratio.
2. City Council has limited this variance power through the *Edmonton Zoning Bylaw*.
3. However, the *Municipal Government Act* provides discretionary power that will allow the Board to grant the required variance in Building Height.
4. The Development Officer has indicated that he would have granted the required variance if he was allowed to vary the Height requirement.
5. This parcel of land was acquired in the 1990s and construction is ongoing to facilitate an expansion.
6. The building season is short and concrete is currently in high demand.
7. Rolling Mix Concrete (Edmonton) Ltd. is one of three major concrete suppliers operating in this area.
8. The silos will be used to store materials during the winter months.
9. Mr. Murphy referenced a photograph of the subject site prior to construction of the proposed silos to illustrate an existing tower that is higher than the proposed structures.
10. He then referenced a photograph of the subject site to illustrate the silos which have already been constructed.
11. The concrete silos are adjacent to the existing tower and are only slightly higher than the tower which has existed on the site for many years.

12. The silos exist without permits because of some confusion that arose during the permitting process.
13. There are towers existing on the Lafarge site, which is located south of the subject site that are higher than the proposed silos.
14. The Lafarge site is zoned IM Medium Industrial Zone and the accessory structures would have been subject to the same height restrictions.
15. Both of these sites will be zoned IM Medium Industrial Zone well into the future.
16. It was his opinion that the proposed development is appropriate for the subject site because it is in keeping with the Winterburn Industrial Area Structure Plan.

Mr. Murphy provided the following responses to questions:

1. The silos will be the tallest buildings on the subject site.
2. There is currently some disruption on the subject site because of the ongoing construction but the silos will not create any excessive noise, odors or toxic emissions.
3. The subject site is not located close to any residential zones.
4. It was clarified that the existing tower on Lafarge's site is approximately 104 feet in height.

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

1. The existing tower on the subject site was constructed before the City of Edmonton annexed the land from the County of Parkland and the development regulations that existed at that time were satisfied.

Mr. Rutherford provided the following response to a question:

1. He would have approved this development permit application if discretion was provided to vary the maximum allowable Height requirement.

In rebuttal, Mr. Murphy agreed that any of the accessory structures existing on the subject site prior to this development, were on annexed lands and are therefore exempt from the height restrictions contained in the *Edmonton Zoning Bylaw*.

Decision:

That the appeal is ALLOWED and the decision of the development Authority is REVOKED. The development is GRANTED as applied for to the Development Authority. In granting the development, the following variance to the *Edmonton Zoning Bylaw* is allowed:

1. The excess of 13.6 metres in the maximum allowable Building Height

Reasons for Decision:

The Board finds the following:

1. The proposed development is Accessory to a Permitted Use in the IM Medium Industrial Zone.
2. Section 420.1 of the *Edmonton Zoning Bylaw* states that the purpose of the IM Medium Industrial Zone is to provide for manufacturing, processing, assembly, distribution, service and repair Uses that carry out a portion of their operation outdoors or require outdoor storage areas. Any nuisance associated with such Uses should not generally extend beyond the boundaries of the Site. This Zone should normally be applied on the interior of industrial areas adjacent to collector and local industrial public roadways such that Uses are separated from any adjacent residential areas by a higher quality Industrial or Commercial Zone.
3. The Height of the proposed Accessory Buildings (3 concrete silos) do exceed the Height of a building that has existed on the Site for many years but the Board has determined the difference to be minimal based on photographic evidence presented which showed the proposed silos are in close proximity to the existing structure.
4. Based on the evidence provided, there is a similar business, with Accessory Buildings of a similar size and height operating in the Winterburn Industrial area and therefore the proposed development is characteristic of this area.
5. The Development Authority confirmed that the development permit would have been approved if variance powers to vary the maximum allowable Height were provided.
6. The subject site is not located in close proximity to any residential zones and is located adjacent to collector and local industrial public roadways.
7. The Board accepted the opinion of the Development Officer, in his written submission, that the proposed structures are located far enough away from a Major Highway, Yellowhead Trail, and would have no visual impact on traffic.
8. There were no letters of objection received and no one appeared in opposition to the proposed development.
9. Based on the above, it is the opinion of the Board, 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.

Important Information for 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 responsibility for complying with:
 - a) the requirements of the *Edmonton Zoning Bylaw*, insofar as those requirements have not been related 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 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.

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

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Date: May 29, 2015
Project Number: 170019693-001
File Number: SDAB-D-15-095

Notice of Decision

This appeal dated April 15, 2015, from the decision of the Development Authority for permission to:

Construct an Accessory Building (detached Garage - 7.62m x 8.53m).

On Plan 3734KS Blk 14 Lot 3A, located at 10826 - 60 Avenue NW, was heard by the Subdivision and Development Appeal Board at its hearing held on May 14, 2015. The decision of the Board was as follows:

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 approve, subject to conditions and with a variance granted to allow two Driveways in the Front Yard of an at-grade Dwelling in a Residential Zone, an application to construct an Accessory Building (detached Garage – 7.62 metres by 8.53 metres), located at 10826 – 60 Avenue NW. The subject site is zoned RF1 Single Detached Residential Zone and is within the Mature Neighbourhood Overlay. The approved development permit application was appealed by an adjacent property owner.

Based on a review of the file, the Board notes the following information:

1. The Appellant filed the appeal through the on-line service on April 15, 2015.
2. A letter acknowledging receipt of the appeal was sent to the Appellant on April 15, 2015, which included a tentative hearing date of May 13 or 14, 2015.
3. Notice of the hearing date and time was mailed to affected property owners within a 60 metre notification radius on April 24, 2015 and electronically mailed to the Appellant and Respondent at 9:32 a.m.
4. The initial request for a postponement was received via email from the Appellant on April 27, 2015 at 7:18 p.m., after the notices to affected property owners had been mailed.
5. It is the practice of the Board to have parties attend on the scheduled date and time to request a postponement if the request is made after the notices to affected property owners have been sent.

In the absence of the Appellant, Ms. Schwarz, the Board considered her written request to postpone the hearing to the first or second week of June, 2015.

In response to the postponement request, the Board first heard from the Respondent, Mr. Nisbet, who indicated that he did not agree with the requested postponement because he took time off work to attend the hearing and is anxious to proceed with his development.

The Board then heard from Mr. Sheahan, representing the Sustainable Development Department, who indicated that it was his preference to proceed with the hearing today. It was his opinion that the reasons for the appeal were outlined in the email received from the Appellant on May 12, 2015 and that postponing the matter to a later date would result in further hardship for the Respondent.

The Board recessed to consider the postponement request and when the hearing resumed the Presiding Officer advised that it was the decision of the Board to deny the request for a postponement for the following reasons:

1. The Board finds that the Appellant had sufficient time to request a postponement when the tentative hearing dates were provided.
2. A further postponement will result in unnecessary hardship to the Respondent.

The Board proceeded with the merits of the appeal and the Presiding Officer noted that the Appellant had raised concerns regarding bias related to Board members who had previously heard appeals related to the subject site.

The Presiding Officer indicated that the fact that two of the current panel members sat on a previous appeal hearing for the subject site would not affect their ability to provide a fair and unbiased hearing.

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

1. The proposed driveway to the attached front Garage was previously approved and the portion of the driveway extension to service the proposed detached Garage in the rear yard constitutes a second driveway.
2. The already approved driveway complies with the maximum allowable width regulation pursuant to the *Edmonton Zoning Bylaw* because it does not exceed the width of the Garage that it serves. It was his opinion that common sense is required to establish the maximum allowable width of a driveway and explained that the definition contained in the *Edmonton Zoning Bylaw* is the product of 3.1 metres multiplied by the number of parking spaces provided inside the garage.
3. He further clarified that the Front Yard is defined using a line parallel to the front property line that passes through the foremost portion of the principal dwelling, which in this case is the proposed veranda.

4. It was his opinion that the proposed development will not adversely affect the amenities of the area because if the proposed rear detached garage was sited to face the rear lane, the entire development would be approved as a Class A permit without variance. Turning the proposed rear detached garage by 180 degrees does not in itself create an adverse effect on the neighbourhood or surrounding properties.
5. He agreed that monolithic concrete does not comply with the landscaping requirements and that Section 51.1(4) of the *Edmonton Zoning Bylaw* allows a maximum of one driveway. Accordingly, both of these regulations would require variances.

The Board heard from the Respondent, Mr. Dean Nisbet, who provided the following information in support of the proposed development:

1. He referenced photographs of similar developments in the neighbourhood with rear detached garages that are accessed from the front of the site and some that were accessed from the rear.
2. Providing access from the rear of his property to the proposed rear detached Garage is problematic particularly during the winter months when snow piles up at the end of the lane directly behind his property.
3. He referenced an aerial map to illustrate the limited access points to the rear lane.

Mr. Nesbit provided the following responses to questions:

1. His immediately adjacent neighbour to the east has two driveways on his site and does not object to his development.
2. He intends to plant shrubs in the front yard to screen the proposed driveway and the rear detached Garage from the front street.
3. He did not have a photograph of the development on the subject site because construction has not yet started.

Decision:

the appeal is DENIED and the decision of the Development Authority is CONFIRMED. The development is granted as approved by the Development Authority.

In granting the development the following variance to the *Edmonton Zoning Bylaw* is allowed:

Section 54.1(4) - The Front Yard of any at-grade Dwelling unit in any Residential Zone, may include a maximum of one Driveway.

- Proposed: Two Driveways

Reasons for Decision:

The Board finds the following:

1. The proposed development is Accessory to a Permitted Use in the RF1 Single Detached Residential Zone.
2. The Board accepts the Development Authority's interpretation of Section 54.1.4 of the *Edmonton Zoning Bylaw* in determining that the development application proposes two Driveways.
3. There is no specific correlation within the *Edmonton Zoning Bylaw* between the number of vehicular accesses and the number of Driveways permitted.
4. A very small portion of the new Driveway to the east, is located in the Front Yard. The largest portion of the new Driveway is located in the (east) Side Setback.
5. The Respondent advised that Landscaping will be completed to screen the proposed second Driveway from the front streetscape which will mitigate the required variance.
6. Based on a review of the photographic evidence provided by the Respondent, there are several properties in the area with front vehicular access to rear detached Garages, including the abutting property immediately west of the subject Site. The immediately adjacent property to the east has two vehicular accesses to an existing front Driveway and the Board finds that the proposed development is characteristic of the neighbourhood.
7. The rear Lane ends immediately behind the subject Site, is not well maintained, is used as a turnaround point for vehicles and a snow dump during the winter months which limits access from the rear Lane to the subject Site.
8. The Board reviewed the concerns of the Appellant contained in the written submission and finds that sufficient planning reasons were not provided that would justify overturning the approval of the Development Authority.
9. The proposed development is suitable for this wide lot that will be landscaped to comply with the requirements of the *Edmonton Zoning Bylaw*.
10. The Board notes that the front vehicular access was approved as part of a previously approved development permit application.
11. Based on the above, it is the opinion of the Board, 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.

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