



**EDMONTON
TRIBUNALS**

*Subdivision &
Development
Appeal Board*

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Date: June 9, 2016
Project Number: 188620849-001
File Number: SDAB-D-16-128

Notice of Decision

- [1] On May 25, 2016, the Subdivision and Development Appeal Board heard an appeal that was filed on **April 29, 2016**. The appeal concerned the decision of the Development Authority, issued on April 20, 2016, to refuse the following development:

Construct a Semi-Detached House with front verandas, fireplaces, rear uncovered decks (5.03 metres by 2.29 metres and 5.23 metres by 1.83 metres) and to demolish an existing Single Detached House and accessory building (rear detached garage)

- [2] The subject property is on Plan 1738HW Blk 38 Lot 4, located at 8142 - 78 Avenue NW, within the RF3 Small Scale Infill Development 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:
- A Development Permit Application, including the plans of the proposed Development;
 - The refused Development Permit; and
 - The Development Officer's written submissions;

Preliminary Matter

- [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.

Summary of Hearing*i) Position of the Appellant, Jai Kumar*

- [6] The Appellant purchased the property approximately 8 months ago. This property is zoned RF3 and is in the Mature Neighbourhood Overlay. He spoke with someone in the Sustainable Development Department who advised him to prepare plans for a Semi-detached because variances would be granted for the deficiency in the minimum required Site Width and the excess in maximum allowable Site Coverage as similar Sites had been granted similar variances. Numerous plan revisions were submitted to the Development Officer in the course of a 4 to 5 month time period.
- [7] The Appellant requires a larger Site Coverage because of the narrowness of the lot. With a variance granted, he would be able to build larger rooms which provide greater functionality. He is under the maximum allowable Site Coverage for the proposed Accessory building (14 percent) and under the maximum allowable Total Site coverage (42 percent).
- [8] The proposed Accessory Building can fit 4 cars and perhaps a small car on the driveway.
- [9] Upon questioning from the Board, the Appellant did agree that the deficiency in Site Width was most likely creating the Site Coverage issue. However, the proposed development complies with all setback requirements, including front, rear and side setbacks. At the request of the Development Officer, he did site the proposed development further back so the Front Setback aligned with other Front Setbacks on the blockface.
- [10] The Appellant states there are numerous Semi-detached developments in the neighbourhood. On 78th Avenue, there are two Semi-detached on the block, at most a couple of years old. Also, at 7947-79 Avenue, there is a newly built Semi-detached.

ii) Position of the Development Officer, Brandon Langille

- [11] The Development Officer confirmed that the proposed development complies with all the requirements of the Mature Neighbourhood Overlay.
- [12] The Development Officer clarified there was an error on the Permit Detail; this was not a Class A Permit, but a Class B Permit.
- [13] The Development Officer stated the Parking spaces are slightly deficient by 4 centimeters total. The Driveway appears short for parking, but might be sufficient for a small car. Generally, a Driveway is used for access, but typically can be used for parking because it is not located in the Front Yard.

- [14] Upon questioning from the Board, the Development Officer conceded the covers over top of the verandas were causing the Site Coverage issue. Covering a veranda may create a massing effect.
- [15] If the Board decides to approve it, he has submitted his standard list of conditions.
- [16] The Development Officer never considered whether the granting of the variance would unduly interfere with the amenities of the neighbourhood or materially interfere with or affect the use, enjoyment or value of neighbouring parcels of land, but did concede the variances are minimal in this case. The Sustainable Development Department has granted permits with lots of this width.
- [17] The Development Officer stated this lot could not be subdivided because it is not wide enough. Also, secondary suites are not allowed within Semi-detached Housing.

*iii) Position of Affected Property Owners in Opposition to the Proposed Development,
Jim and John Podridske*

- [18] The individuals in opposition to the proposed development are affected parties as they own a house right behind the subject site, located at 8139-79 Avenue.
- [19] Although it was clarified the proposed garage is not currently before the Board and under a separate application, they are concerned there is not enough room to park in the garage. The distance from the garage to the Rear lot line is 4.02 metres, which is too small a distance for a proper turning radius. The neighbourhood already has problems with the back alley and parking.
- [20] If the proposed development is approved, it opens up the potential for more Semi-detached housing to be built. The other Semi-detached Houses in the neighbourhood are located on bigger lots.
- [21] They wanted to ensure that petroleum products were not used for exterior finishing because it was a fire hazard and preferred that stucco be used.
- [22] In summary, the proposed development is too big for the lot.

iv) Rebuttal of the Appellant, Jai Kumar

- [23] The Appellant suggested he has room to increase the driveway. He can also push the proposed development forward to increase the driveway length even further. The Presiding Officer stated the Board will not consider any revisions and confirmed the proposed Accessory Building is under a separate application and cannot be considered under this appeal.

- [24] The Appellant is planning on using stucco because it is energy efficient and a better quality product.
- [25] The Appellant confirmed many garages are not utilized in the neighbourhood because of the preponderance of pick-up trucks. He is providing a nice garage that he assumes will be used.
- [26] The Appellant confirmed that verandas are covered to assist with water run-off.

Decision

- [27] 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 Height of the principal building shall not exceed 8.6 metres as per the Height definition of Section 6.1(49) of the Edmonton Zoning Bylaw 12800.
 2. A Secondary Suite is NOT authorized under this Development Permit. Therefore, cooking facilities shall not be developed in the basement unless a separate Development Permit has been approved to authorize a Secondary Suite.
 3. Platform Structures greater than 1.0 metres above Grade shall provide privacy screening to prevent visual intrusion into adjacent properties. (Reference Section 814.3(8))
 4. Any future basement development may require development and building permit approvals.
 5. All yards, visible from a public roadway other than a lane, shall be seeded or sodded within eighteen (18) consecutive months of the issuance of an Occupancy Certificate for the development. Alternative forms of landscaping may be substituted for seeding or sodding as specified in Section 55.2(4)(b).
 6. Notwithstanding the Landscaping regulations of Section 55 of this Bylaw, where new development consists of replacement or infill within areas of existing housing, Landscaping shall be implemented as a component of such new development in order to replace vegetation removed during construction or to reinforce an established Landscaping context in the area (Reference Section 140.4(18)).
 7. The area hard surfaced for a driveway, not including the area used for a walkway, shall comply with Section 54.6 of the Zoning Bylaw 12800.

8. The Basement elevation of structures of two or more Storeys in Height shall be no more than 1.2 metres above Grade. The Basement elevation shall be measured as the distance between Grade level and the floor of the first Storey.
9. Immediately upon demolition of the building, the site shall be cleared of all debris.

Advisements:

- i.) Lot grades must comply with the Edmonton Drainage Bylaw 16200. Contact Drainage Services at 780-496-5500 for lot grading inspection inquiries.
- ii.) Any future deck development greater than 0.6 metres (2 feet) in height will require development and building permit approvals
- iii.) Any future deck enclosure or cover requires a separate development and building permit approval.
- iv.) The driveway access must maintain a minimum clearance of 1.5 metres from any service pedestal and all other surface utilities.
- v.) Any hoarding or construction taking place on road right-of-way requires an OSCAM (On-Street Construction and Maintenance) permit. It should be noted that the hoarding must not damage boulevard trees. The owner or Prime Contractor must apply for an OSCAM online at: http://www.edmonton.ca/bylaws_licences/licences_permits/oscam-permit-request.aspx
- vi.) Unless otherwise stated, all above references to "section numbers" refer to the authority under the Edmonton Zoning Bylaw 12800.
- vii.) 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.

In granting the development, the following variances to the *Zoning Bylaw* are allowed:

1. The deficiency of 0.6 metres in the minimum allowable Site Width;
2. The excess of 4.76 square metres in maximum allowable Site Coverage for a Principal Building;

Reasons for Decision

- [28] Section 140.2(8) of the Edmonton Zoning Bylaw provides that a Semi-detached House is a Permitted Use in the RF3 Small Scale Infill Development Zone.

- [29] The Board confirms this is a Class B Permit.
- [30] The Board finds, based on the evidence submitted, the proposed development would 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, because:
- i. The Board is of the opinion that a proposed development requires a minimum Site Width to ensure all other development regulations can be met and not trigger a cascade of variances. Although the Site Width is deficient in this case, the total Site area and Site depth is well in excess of the minimum required. Further, the proposed development complies with all regulations, including those under the Mature Neighbourhood Overlay, for setbacks and amenity area. Thus, the Board finds the proposed development is not an overdevelopment of the Site.
 - ii. The Board finds that the excess in maximum allowable Site Coverage for a Principal Building is caused by the covered verandas. However, the Board is of the opinion that covering the verandas enhances the streetscape and aesthetics of the neighbourhood and does not create any massing effect.
 - iii. Based on the verbal evidence submitted to the Board, the proposed development is characteristic of the neighbourhood.
- [31] The Board acknowledges the concerns of the neighbouring property owners. However, their main issue concerned the proposed Accessory Building and access, which is currently not before the Board. As set out above, the proposed development meets all Setback requirements and is not an overdevelopment of the Site.
- [32] Further, the Board is satisfied that the conditions imposed will mitigate any potential adverse effects from the proposed development.

Winston Tuttle, Presiding Officer
Subdivision and Development Appeal Board

Board Members: Ms. C. Chiasson, Mr. L. Pratt, Mr. V. Laberge, Mr. A. Nagy

CC: City of Edmonton Sustainable Development – Attn: B. Langille
Jim and John Podridske

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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Capital Car & Truck Sales Ltd.
9116 - 157 Avenue NW
Edmonton AB T5Z 3R6

Date: June 9, 2016
Project Number: 172854843-001
File Number: SDAB-D-16-129

Notice of Decision

[1] On May 25, 2016, the Subdivision and Development Appeal Board heard an appeal that was filed on **March 24, 2016**. The appeal concerned an Order of the Development Authority, issued on February 26, 2016, to:

Meet all conditions of Development Permit No. 139511609-001 before April 1, 2016; OR cease the Use (operation of automotive and minor recreation vehicle sales / rentals and any subsequent use) before April 1, 2016 and remove all stored material and equipment associated with the use; including: vehicles, tires and vehicle parts before April 1, 2016.

[2] The subject property is on Plan 1428NY Blk 21 Lots 1 and 2U, located at 8115 - 137 Avenue NW, within the CB1 Low Intensity Business Zone.

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

- Copy of the Stop Order

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

- Exhibit A – The Development Officer’s written submission.

Preliminary Matter

[5] At the outset of the appeal hearing, the Presiding Officer confirmed with the parties that SDAB-D-16-129 and SDAB-D-16-130 would be heard together.

[6] 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.

[7] Prior to the hearing, the Board raised a jurisdictional issue regarding the time at which 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)(i) of the *Municipal Government Act*, R.S.A 2000, c. M-26 (“*Municipal Government Act*”).

Summary of Hearing on Preliminary Matter*i) Position of the Appellant, Muhammad Saeed on behalf of Parminder Grewal*

- [8] The Appellant stated he received the Stop Orders one to three (1-3) days prior to filing this Appeal.
- [9] The Appellant argued there is no record of the date the City actually delivered the Stop Orders because it was sent by regular mail, to his home address 9116 – 157 Avenue NW, which is also the corporation's Registered Office address.
- [10] The Appellant resides with his parents, who pick up mail from the Canada Post superbox every two to three (2-3) days, but do not open it.
- [11] The Appellant has no recollection of having any contact with the Development Compliance Officer as set out in Exhibit A.
- [12] Specifically, the Appellant's agent, Muhammad Saeed, has no recollection of having any contact with the Development Compliance Officer on March 14, 2016 regarding the Stop Orders, as set out in Exhibit A.

ii) Position of the Development Compliance Officer, Richard Williams

- [13] The Development Compliance Officer referred the Board to Section 23(1)(a) of the *Interpretation Act*, RSA 2000, c. I-8 ("*Interpretation Act*"), which states that if an enactment authorizes or requires a document to be sent, given or served by mail and the document is properly addressed and sent by prepaid mail other than double registered or certified mail, unless the contrary is proved the service shall be presumed to be effected 7 days from the date of mailing if the document is mailed in Alberta to an address in Alberta.
- [14] In this case and with the absence of any clear and convincing evidence to the contrary, service should be presumed to be effected on March 4, 2016 and the Appeal should have been filed by March 18, 2016.
- [15] The Development Compliance Officer submitted in Exhibit A, a copy of a Land Titles Search and Corporate Registry Search, as evidence of the Corporation's legal address at 9116 – 157 Avenue NW. This is where the Stop Orders were mailed to by way of regular mail. The property in violation is located at 8115-137 Avenue NW. The address of 8230-112 Avenue NW found in the Stop Orders was an error.

Decision

- [16] The Board does not assume jurisdiction. The appeal was not filed on time, in accordance with Section 686(1)(a)(i) of the *Municipal Government Act*.

Reasons for Decision

- [17] Section 686(1)(a)(i) of the *Municipal Government Act*, states (in part) that 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, in the case of an appeal made by a person referred to in section 685(1), after the date on which the person is notified of the order or decision or the issuance of the development permit.
- [18] Section 23(1)(a) of the *Interpretation Act* states that if an enactment authorizes or requires a document to be sent, given or served by mail and the document is properly addressed and sent by prepaid mail other than double registered or certified mail, unless the contrary is proved the service shall be presumed to be effected 7 days from the date of mailing if the document is mailed in Alberta to an address in Alberta.
- [19] The Board accepts the evidence of the Development Compliance Officer that he mailed out the Stop Orders on February 26, 2016.
- [20] The Board does not accept the evidence of the Appellant and his agent that the Stop Orders were received one to three (1-3) days prior to filing this Appeal, on the basis of the evidence of the Development Compliance Officer that he had contact with the Appellant's Agent on March 14, 2016 to discuss the Stop Orders.
- [21] In the absence of any clear and convincing evidence to the contrary, the *Interpretation Act* should govern and service shall be presumed to be effected 7 days from the date of mailing. Thus service is presumed to be effected on March 4, 2016 and the Appeal should have been filed by March 18, 2016, but was filed on March 24, 2016, outside the allowable 14 days as per Section 686(1)(a)(i) of the *Municipal Government Act*.
- [22] The Board does not have jurisdiction to extend the time for filing an appeal. Having determined that the appeal was filed more than 14 days following the date on which the Appellant received notice of the Stop Orders, the Board cannot take jurisdiction to hear this appeal.

Winston Tuttle, Presiding Officer
Subdivision and Development Appeal Board

Board Members: Ms. C. Chiasson, Mr. L. Pratt, Mr. V. Laberge, Mr. A. Nagy

CC: City of Edmonton Sustainable Development – R. Williams, A. Jabs, J. Young, I Welch
RCD Consulting – Muhammad Saeed

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*, 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.
2. 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.

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Capital Car & Truck Sales Ltd.
9116 - 157 Avenue NW
Edmonton AB T5Z 3R6

Date: June 9, 2016
Project Number: 175846220-001
File Number: SDAB-D-16-130

Notice of Decision

[1] On May 25, 2016, the Subdivision and Development Appeal Board heard an appeal that was filed on **March 24, 2016**. The appeal concerned an Order of the Development Authority, issued on February 26, 2016, to:

Remove all advertising signs located on the building before April 1, 2016; OR submit a complete development permit application which reflects the current sign(s) installed on the building before April 1, 2016

[2] The subject property is on Plan 1428NY Blk 21 Lots 1 and 2U, located at 8115 - 137 Avenue NW, within the CB1 Low Intensity Business Zone.

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

- Copy of the Stop Order

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

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- [17] Section 686(1)(a)(i) of the *Municipal Government Act*, states (in part) that 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, in the case of an appeal made by a person referred to in section 685(1), after the date on which the person is notified of the order or decision or the issuance of the development permit.
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