



**EDMONTON
TRIBUNALS**

*Subdivision &
Development
Appeal Board*

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Date: June 8, 2017
Project Number: 242715687-001
File Number: SDAB-D-17-081

Notice of Decision

- [1] On May 25, 2017, the Subdivision and Development Appeal Board heard an appeal that was filed on **April 5, 2017**. The appeal concerned the decision of the Development Authority, issued on March 22, 2017, to refuse the following development:

Construct an addition to an Accessory building (11.51m x 14.94m addition to a barn).

- [2] The subject property is on Plan 7521733 Blk 2 Lot 2, located at 2360 - 28 Avenue SW, within the (RR) Rural Residential Zone. The Decoteau Area Structure Plan applies to the subject property.
- [3] The following documents were received prior to the hearing and form part of the record:
- A copy of the Development Permit application with attachments, proposed plans, and the refused Development Permit;
 - The Development Officer's written submission; and
 - The Appellant's written submissions.
- [4] The following exhibits were presented during the hearing and form part of the record:
- Exhibit A – 1995 Approved Development Permit submitted by the Appellant;
 - Exhibit B – Letter of support submitted by the Appellant;
 - Exhibit C – Letter of opposition submitted by the Development Officer;
 - Exhibit D – Photographs of the area submitted by the Appellant; and
 - Exhibit E – Aerial photograph submitted by the Appellant.

Preliminary Matters

- [5] 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.

- [6] The Presiding Officer outlined how the hearing would be conducted, including the order of appearance of parties, and no opposition was noted.
- [7] 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 Development Officer, Ms. J. Kim, who was accompanied by Ms. M. Ziober

- [8] They confirmed that there is no approval for a non-commercial farm on the property; therefore, the proposed building is Accessory to the existing Single Detached House. There is no approval for a Recreational Acreage Farm.
- [9] With regard to deeming the proposed addition to the existing barn as a Recreational Acreage Farm, they indicated that the Appellant could re-apply for a non-commercial farm development. However, the City has always deemed the existing barn as an Accessory building; therefore, section 50 of the *Edmonton Zoning Bylaw* applies to the proposed addition.
- [10] They did not have any record of when the Single Detached House was built.
- [11] They agreed that the subject site could potentially allow for both a Single Detached House Use with a Recreational Acreage Farm Use.

ii) Position of the Appellant, Mr. D. Kuefler, who was accompanied by Mr. T. Davies, the Construction Manager

- [12] In their view, the barn with the proposed addition is a non-commercial farm building and should be designated as a Recreational Acreage Farm. Under section 240.4(4) of the (RR) Rural Residential Zone, the maximum height is 10.0 metres. They used this information to design the proposed development.
- [13] The subject site was used as a farm when Mr. Kuefler moved to the subject site in 1988. The property has two tax roll numbers; one for the house and one for the agricultural component of the property. Their property is not a commercial farm so they applied for an Accessory building.
- [14] They spoke to a City Inspector who indicated that the proposed development (an addition to a barn) was a listed Use under farm land and that a development permit was not required.
- [15] They had an approved permit to build a barn and now they would like to make an addition and the development permit was refused.

- [16] They have some animals, and they grow hay for their own use.
- [17] They did not agree with the City describing their scope of application as an addition to an Accessory building when the application was made.
- [18] They provided the Board with an approved City of Edmonton development permit (*Exhibit A*) to “construct accessory buildings (12.2m x 14.6m & 4.57m x 3.05m Barn and dog kennel)” dated July 20, 1995.
- [19] Their neighbours have taller buildings compared to the proposed development. In their view, there will be no impact to adjacent properties.
- [20] The excess height is required to maneuver a hay wagon and bales into the building and will allow natural light from the south to enter the building to reduce electricity.
- [21] The proposed addition matches the exterior of the principal dwelling.
- [22] Mr. Kuefler spoke to his neighbour south of the subject site that provided a letter of support for the proposed development (*Exhibit B*) and in his view, this addition will not affect the other neighbours as they cannot see the building from their property. Adjacent properties in the area consist of five, seven, and 10 hectare parcels.
- [23] They provided the Board with photographs of neighbouring properties in the area that have barns or large Accessory buildings (*Exhibit D*).

A letter of opposition was submitted by the Development Officer and provided to the Board and the Appellants for review (*Exhibit C*).

- [24] They addressed the letter of opposition and stated that the neighbour has an oversized building on their property that was approved by the Subdivision and Development Appeal Board. Mr. Kuefler stated that he objected to his neighbour’s proposed development.
- [25] He confirmed that the proposed development was situated in the middle of the property. At this location the elevation is 13 feet lower than the elevation on which the principal dwelling is located. This was shown on the photographs that were submitted.
- [26] The neighbour’s principal residence, who is opposed, is not located close to the property line and the view is also is blocked by mature spruce trees as shown in the photographs provided.
- [27] He provided the Board with an aerial photograph showing the layout of his property and the distance to each property line (*Exhibit E*).

iii) Continued position of the Development Officer, Ms. Kim, who was accompanied by Ms. Ziober

- [28] Ms. Kim stated that even if the 1995 approved permit was provided at the time of the subject application, it would not have changed her decision.
- [29] Development Officers are restricted from approving a variance in height, which has the most impact on neighbouring properties.
- [30] The proposed development is located on an acreage and has a large setback from neighbouring properties.
- [31] If a proposed development already exists, they take into consideration feedback from neighbouring property owners before making their decision.
- [32] They agreed that, given the location of the proposed development to the neighbouring property in opposition, the mature trees on the subject site will provide screening to mitigate any impact from the excess height.
- [33] They agreed that there will not be any massing on adjacent properties from the proposed development.

iv) Rebuttal of the Appellant, Mr. Kuefler and Mr. Davies

- [34] The main issue for the proposed development is the interpretation of the *Edmonton Zoning Bylaw*.
- [35] In their opinion, the information they provided regarding the height issue demonstrated that it will not impact anyone.

Decision

- [36] 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 maximum allowable Height of 4.3 metres as per section 50.3(2) is varied to allow an excess of 2.82 metres, thereby increasing the maximum allowed to 7.12 metres.

Reasons for Decision

- [37] The proposed development is an addition to an Accessory building, which is Accessory to a Single Detached House. The proposed development is a Permitted Use in the (RR) Rural Residential Zone.
- [38] The Appellant provided the Board with a copy of an approved City of Edmonton development permit to “*construct accessory buildings (12.2m x 14.6m & 4.57m x 3.05m Barn & dog kennel)*” dated July 20, 1995.
- [39] The proposed addition to the existing barn is located in the middle of the subject Site and is a considerable distance from all four property lines. The mature trees along the east side of the Site will block part of the view of the proposed addition from the adjacent neighbour.
- [40] Based on the evidence submitted, the proposed addition is approximately 4 metres lower than the existing Single Detached House, which will reduce the massing effect on neighbouring properties.
- [41] Based on the evidence submitted, there are over height buildings on adjacent properties to the east and west.
- [42] One letter was received in opposition to the proposed development from a neighbouring property owner. Based on the photographic evidence submitted, the Board finds that the proposed development is compatible with developments on surrounding properties.
- [43] Based on the 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.



Ms. P. Jones, Presiding Officer
Subdivision and Development Appeal Board

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.



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Date: June 8, 2017
Project Number: 242022741-001
File Number: SDAB-D-17-092

Notice of Decision

- [1] On May 25, 2017, the Subdivision and Development Appeal Board heard an appeal that was filed on **May 2, 2017**. The appeal concerned the decision of the Development Authority, issued on April 27, 2017, to refuse the following development:

Construct an Accessory Building (main floor Garage irregular in shape (91.36 square metres) with Garage Suite on second floor).

- [2] The subject property is on Plan 0024459 Blk 50 Lot 12A, located at 10637 - 69 Street NW, within the (RF1) Single Detached Residential 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:
- A copy of the Development Permit application with attachments, proposed plans, and the refused Development Permit;
 - The Development Officer's written submission;
 - The Appellant's written submissions; and
 - An e-mail and letter in opposition from two adjacent properties.

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 Appellants, Mr. D. and Mrs. J. Dorward*

- [7] Mr. and Mrs. Dorward referenced their documentation that included the relative heights of adjacent buildings to show the proposed Garage Suite is similar in height to other buildings, photographs of the neighbourhood, renderings of the proposed Garage Suite, and a letter that was circulated to neighbours.
- [8] They support the City's plans to have people build suites as part of a move to increase density in mature neighborhoods. They have lived in their house for 35 years and want to continue to live there.
- [9] They circulated a letter to 60 neighbours advising them of their intentions allowing them to look at the proposed plans. They spoke with some neighbours that provided the following:
- a. The neighbour to the north had concerns about windows and shadowing;
 - b. A neighbour across the alley was concerned about privacy, property depreciation and altered views;
 - c. Another neighbour was concerned about parking; and
 - d. A neighbour several properties to the north was interested in a Garage Suite and advised them that his neighbours are in favour of Garage Suites.
- [10] In consideration of their neighbour to the north, they eliminated all but a small bedroom window that we will be glazed half way up. They did this to alleviate concerns of their neighbour on that side, as their garage is on the far side of their lot. Their garage is 3.9 meters from the property line. This is three times the allowed setback.
- [11] On the south side, they will half glaze the windows in the living area, although on that side, the view is looking directly at the neighbour's garage and back driveway, not their living areas.
- [12] They have laid out the suite to have the living areas of the suite to the west that is looking toward their bungalow, not to the alley side. The windows on the east view over the alley are the 2 bedroom windows. They were considering a balcony on the alley side, but in consideration of the neighbour's privacy across the alley they took this out of the design. For the most part the view from the bedrooms is into the garage of the east neighbour across the alley.

- [13] They referenced photograph 4 and 5 of their submission. The home immediately to the north of their property is 8.03 meters tall not including the chimney which is another metre. That home sits a half metre above the home on this site due to the slope of the land. It is therefore approximately 9 metres tall from where it comes out of the ground. Their principal dwelling peaks at 4.41 metres, less than half the height of their immediate neighbour to the north. The height of the proposed Garage Suite is 6.05 metres. It will be approximately 3 metres shorter than the neighbour's home.
- [14] Across the alley and a bit to the south there is garage with a sharp peak roof. It is 5.2 meters high. Their requested Garage Suite will be 0.8 meters higher than that garage.
- [15] The third house to the south from them also increased the height of their home a few years ago. It sits at 8 metres. Their Garage Suite will be almost 2 metres short of that residence. In their view, they have created a Garage Suite that fits reasonably well into the neighbourhood. They did everything they could to work on the height of the Garage Suite and stayed within the maximum height guideline of 6.5 metres.
- [16] Because of the cottage roof on their house, it is impossible to meet the 1.5-metre differential requirement. It does not make sense for them to add a second floor to their house to be able to build a Garage Suite.
- [17] They attended the Urban Planning Committee meeting and the committee has accepted a recommendation to fix the 1.5-metre rule.
- [18] One tree will have to be removed from their yard; however this tree will be removed regardless of the Board's decision.

ii) *Position of Mr. R. LaPlante, the Appellants' designer*

- [19] Mr. LaPlante referenced his written submission. He and Mr. and Mrs. Dorward began designing the Garage Suite in 2016 and had a pre-application meeting with a Development Officer that provided valuable insight into their project. They meet all of the *Edmonton Zoning Bylaw* requirements except for the 1.5-metre height differential.
- [20] With regard to sightlines and setbacks, the upper floor windows along the side yards will be partially filmed to maintain privacy; larger windows are concentrated on the lane and rear yard; and the side setbacks exceed the requirements by two to three times.
- [21] There is no balcony in the design.
- [22] With regard to massing and interest, the building will have a 4:12 gable roof pitch that integrates into the neighbourhood; there will be a push-pull of volumes to break up large walls; positive-negative space affects massing, larger glazing and strategic windowing

added; and more expensive, physically separated overhead doors to provide aesthetic value.

- [23] With regard to stairs, interior stairs as opposed to exterior stairs were designed for more privacy for the occupant and the neighbours; less maintenance; and more security.
- [24] With regard to construction, the development will be prefabricated and panelized; will be built beyond Code requirements; sustainable materials will be used and the building will be fully insulated in a matter of a week or so.
- [25] He reiterated that the Urban Planning Committee has accepted that the height correlation regulation between the House and the Garage Suite is too restrictive.
- [26] Under the Municipal Development Plan, “The Way We Grow”, Garage Suites are recognized as infill housing.
- [27] The proposed development is an attractive housing solution that will provide comfort, security and privacy for its occupants and will support the Appellants long-term plans to age in place and maintain their property.

iii) Position of the Mr. G. Schendler, in support of the proposed development

The Presiding Officer advised Mr. G. Schlender that his property address is outside the 60-metre notification radius and that he needed to explain to the Board how he is affected by the decision of the Development Authority.

- [28] Mr. G. Schlender has lived in the neighbourhood for 16 to 17 years and is just outside of the 60-metre notification radius.
- [29] He is in favour of housing density in mature neighbourhoods. His kids attend school in the neighbourhood and without young families moving into the community, the school will close. He wants the neighbourhood to attract young families and make the community vibrant.
- [30] In his view, rejecting densification in the core will push families out into the suburbs.
- [31] If the Appellants lived in the two-storey house next door, there would be no variance and in his view would most likely not be an appeal hearing.

iv) Position of the Development Officer, Ms. C. Yeung

- [32] Ms. Yeung referred to her written submission and indicated that the proposed development meets all development regulations in the Mature Neighbourhood Overlay; therefore community consultation is not a requirement.

[33] She indicated that the purpose of section 87.2(a)(i) of the *Edmonton Zoning Bylaw* is to ensure that Accessory buildings are subordinate to the Principal building in massing.

[34] With respect to questions from the Board, Ms. Yeung provided the following:

- a. If she had the authority to grant a height variance for this application she would have done so. There is approximately a 7.6 percent difference between the second floor Garage Suite and the Principal building and in her opinion, this difference is relatively low.

v) *Position of Mr. P. Lobkowicz, an affected property owner in opposition*

[35] Mr. Lobkowicz lives in a two-storey house immediately north of the subject site. There is a 20-foot easement between his property and the Appellants' property. He and the Appellants, both purchased one half of the easement which is incorporated into their individual properties. This gives each additional yard space, but no development can occur on the easement addition.

[36] He disagrees with how the City is trying to bring people into older neighbourhoods by allowing Garage Suites off the lane. It is not the fault of people in mature neighbourhoods that not many people live there.

[37] The existing lots and the character of the neighbourhood is the reason why he and others moved to mature neighbourhoods.

[38] In his opinion, Garage Suites will not bring in younger people, but rather renters.

[39] This Garage Suite will block his sunshine, he will lose privacy, and his garden will die.

vi) *Position of Ms. S. Verbicki, an affected property owner in opposition*

[40] Ms. Verbicki lives to the rear of the subject site. She will lose her view of the downtown skyline, lose privacy and sunlight and the Garage Suite will depreciate her property value. She would have never bought her house if there had been a large Garage Suite as is being proposed.

[41] They are not opposed to building a garage but they do not like the height of the proposal.

vii) *Rebuttal of the Appellants, Mr. and Mrs. Dorward*

[42] They are also affected by garages that shade their property. Shadowing from adding the Suite component will not affect his neighbour as the proposed building will be shifted to allow more sunlight for his neighbour.

- [43] With respect to privacy, they reiterated that they have a small window on the north side and they do not have a balcony.
- [44] They mentioned the 3.90-metre distance to show that they already are quite a distance back from the fence line.
- [45] There is no evidence that their neighbour's property value will decrease. They discussed the proposed development with a realtor who indicated that their property value will increase because of new development on the site.
- [46] With respect to their neighbour losing the skyline view, privacy works both ways. If she observes the river valley, it means they have to close their curtains as she would be looking into their home.
- [47] There is ample parking in the neighbourhood and they have the required number of on-site parking spaces.
- [48] They have no issue with the Development Officer's list of conditions if their proposed development is approved.

Decision

- [49] 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. An accessory building or structure containing a Garage Suite shall not exceed 6.5m in height. (Reference Section 6.1(49) and 87.2(a))
 3. Windows shall be located to minimize overlook into Abutting properties or the development and shall incorporate design techniques such as translucent window treatment or raised windows. (Reference Section 814.3.4)
 4. Eave projections shall not exceed 0.46m into required yards or Separations spaces less than 1.2m. (Reference Section 44.1(b))
 5. Only one of a Secondary Suite, a Garage Suite or Garden Suite may be developed in conjunction with a principal Dwelling.

6. A Garage Suite shall not be allowed within the same Site containing a Group Home or Limited Group Home, or a Major Home Based Business and an associated principal Dwelling, unless the Garage Suite is an integral part of a Bed and Breakfast Operation in the case of a Major Home Based Business.

7. Notwithstanding the definition of Household within this Bylaw, the number of unrelated persons occupying a Garage Suite shall not exceed three.

8. The Garage Suite shall not be subject to separation from the principal Dwelling through a condominium conversion or subdivision.

ADVISEMENTS:

1. Lot grades must comply with the Edmonton Drainage Bylaw 16200. Contact Drainage Planning and Engineering at 780-496-5576 or lot.grading@edmonton.ca for lot grading inspection inquiries.

2. The driveway access must maintain a minimum clearance of 1.5m from all surface utilities.

3. 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

5. Unless otherwise stated, all above references to "section numbers" refer to the authority under the Edmonton Zoning Bylaw 12800.

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

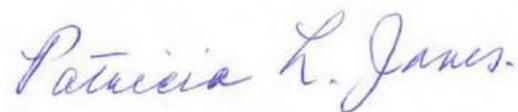
1. Section 87.2(a)(i) is waived to allow a Height of 6.04 metres.

Reasons for Decision

[51] The proposed development, a Garage Suite, is a Discretionary Use in (RF1) Single Detached Residential Zone.

[52] This development meets all requirements of the Mature Neighbourhood Overlay and meets all other *Edmonton Zoning Bylaw* requirements other than section 87.2(a)(i). This variance is the difference between the Height of the House and the Garage Suite being more than 1.5 metres above the Height of the Principal Dwelling.

- [53] The Garage Suite will be situated at the rear of the lot and will not provide a large massing effect when viewed from the street.
- [54] Based on the evidence, there are other two-Storey structures in the neighbourhood.
- [55] There is a 3.90-metre easement between the subject Site and the property to the north, which mitigates privacy concerns. The proposed development exceeds the minimum Setback requirements, which mitigates the massing effect.
- [56] The existing Principal Dwelling was built with a low cottage roof, which is not typical of bungalows today. The Board finds that the 0.81-metre overage will have minimal impact from the street level.
- [57] The concerns raised by the neighbours in opposition did not reference the variance and were related to issues with which the Garage Suite complies. They did not address the Height correlation between the House and the Garage Suite and how it would impact them.
- [58] The proposed development meets all the Setback requirements, Site Coverage and is under the maximum allowable Height of 6.50 metres. The windows will be frosted and there is no balcony and the Board finds there is no justification for saying that there will be sunshadowing and privacy issues.
- [59] Based on the 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.



Ms. P. Jones, Presiding Officer
Subdivision and Development Appeal Board

Important Information for the Applicant/Appellant

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 - b) the requirements of the *Alberta Safety Codes Act*,
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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.

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