

Edmonton Subdivision and Development Appeal Board

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Date: June 12, 2015
Project Number: 163482172-002
File Number: SDAB-D-15-104

Notice of Decision

This appeal dated April 29, 2015, from the decision of the Development Authority for permission to:

construct exterior alterations to an existing Single Detached House, existing without permits (front paved area, 3.20m x 8.05m)

on Plan 2814HW Blk 31 Lot 5, located at 6040 - 106 Street NW, was heard by the Subdivision and Development Appeal Board at its hearing held on May 28, 2015. The decision of the Board was as follows:

Summary of Hearing:

At the outset of the appeal hearing, the Presiding Officer asked the parties in attendance if there was any opposition to the composition of the panel. The Appellant felt the panel may be biased because they are paid by the City of Edmonton. The Presiding Officer advised that all Board members receive remuneration set by City Council. The Appellant decided to proceed with the appeal as he had no alternative.

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 exterior alterations to an existing Single Detached House, existing without permits (front paved area, 3.20m x 8.05m) located at 6040 - 106 Street NW. The subject Site is zoned RF1 Single Detached Residential Zone and is within the Mature Neighbourhood Overlay.

The development permit was refused because the proposed development does not lead to an overhead Garage door or Parking Area; the Front Yard is being used for parking; front vehicular access is not permitted where a rear lane exists and Front Yards/Front Setbacks must be landscaped.

Prior to the hearing the following information was provided to the Board:

- A submission from the Appellant dated April 29, 2015
- A written submission from the Development Authority dated May 22, 2015
- A Memorandum from Transportation Services dated April 14, 2015

The Board heard from the Appellant, Mr. J. Dionne, who provided the following information:

1. His written explanation provided adequate details.
2. The City of Edmonton took five weeks to provide him with a decision but he had only 15 days to respond and file an appeal. In his opinion, 15 days is not enough time to respond and most municipalities give 30 days. The Board advised that this timeline is contained within provincial legislation.
3. He received a letter from the City of Edmonton which stated that if his parking issue was not resolved, the application for his secondary suite permit would not be issued. In his opinion, there was no transparency in this letter.
4. The parking area in the front yard was a “vested right” as this parking area along with a roll face curb has existed since 1951. It provides no negative impact to anyone in the neighbourhood.
5. He advised that there are garages in the area located in the front yard that are not maintained and do not look good.
6. He is concerned that the City uses the *Edmonton Zoning Bylaw* but does not state when the bylaw was adopted. The City needs to give historical data on bylaws to enable citizens to make a defense against the City’s action.
7. The parking area in the front yard adds value to his house. It allows a person, including his wife who has disabilities, to enter the home more easily as the distance to the house entrance is shorter than from the rear driveway.
8. There is a separate entrance at the rear of the house.

Mr. Dionne provided the following responses to questions:

1. A community consultation was completed. He met with four neighbours that have front vehicular access and parking but he did not have anything in writing from them. He advised there were no objections.
2. Access to the secondary suite is at the rear of the property; the front driveway is for his personal use only.
3. The Appellant confirmed that all consultation with the neighbours was within the 60 metres radius other than one property.
4. The onus is on the City to prove any violation of bylaws.

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

1. He reviewed archived records which indicated no historical curb crossing permit or the existence of a front driveway.
2. A Real Property Report dated June 7, 2002, showed no parking area in the front yard and he confirmed that this was the same site plan that was submitted when the subject permit was applied for.
3. The permit for the secondary suite contained conditions that parking was not permitted in the front yard and the front yard shall be landscaped. There are sufficient parking spaces in the rear for the secondary suite.

4. The front yard parking concern was complaint based and the City feels their records are consistent with their decision. He did not work on the notice of violation file and based his decision on the 2002 Real Property Report. As a parking pad was not shown in this report he assumed it was not in place in 2002. Therefore, the bylaw which governs parking in the front yard predates the development.

Mr. Sifat provided the following responses to questions:

1. The Real Property Report would typically show a driveway and other building structures.
2. If the Board accepts that the driveway was built in 1951, it would then be considered a legal, non-conforming driveway.
3. He could not confirm that there was a prohibition of front driveways in 1951.
4. A report from Transportation Services noted that the lot width is less than 15.5 metres, which is one of the reasons listed in Section 814.3(10) to deny front access if an abutting lane exists.
5. Less than 50 percent of the houses on the street have front vehicular access, which is another reason in Section 814.3(10) to deny front access.
6. Front vehicular access became a non-conforming use when the Mature Neighbourhood Overlay was enacted in 2001. Prior to that date, front driveways were compliant when they led directly to garages.
7. There are no other front parking areas in the neighbourhood that do not lead to a garage.

In rebuttal Mr. Dionne made the following points:

1. He requests that the City of Edmonton complete their due diligence in making field measurements.
2. In his opinion the City of Edmonton had little concern about sidewalks in 1970.
3. The fact that the City built the curb the way they did shows they accepted the driveway.
4. He confirmed he purchased the house in 2005. The previous owner informed him that the parking pad was always there when he bought it.
5. The material of the driveway is granular / gravel in nature and does not shift in the spring.

Decision:

The appeal is DENIED and the decision of the Development Authority is CONFIRMED. The development is REFUSED.

Reasons for Decision:

The Board finds the following:

1. The proposed development is Accessory to Single Detached Housing, which is a Permitted Use in the RF1 Single Detached Residential Zone, Section 110.2(4).

2. The Appellant argued that this Parking Area in the Front Yard was a “vested right” because it has been in existence since 1951. The Board takes the Appellant’s position to be that the front Parking Area is a prior Non-conforming Building.
3. The Appellant did not move into the property until 2005 and his evidence regarding the actual date of when the Parking Area was built is anecdotal at best.
4. The Board does not accept the conclusion of the Development Officer that, because the Real Property Report dated June 7, 2002 does not show a Parking Area, no such Parking Area existed on the property when the survey was completed. That Report does not specifically identify the Driveway leading to the Garage at the rear of the property, which may indicate that the Report cannot be relied on as solid evidence as to the existence of the Front Parking Area. However, there is also no reliable evidence before the Board that the Parking Area was in existence prior to the enactment of the Mature Neighbourhood Overlay in 2001. Accordingly, the Board does not accept that the Parking Area is a prior Non-conforming Building.
5. The Board notes that this development permit application was generated because there was a complaint about parking in the Front Yard. This is evidence that at least one member of the neighbourhood is not in support of the development.
6. The Mature Neighbourhood Overlay provides that community consultation be conducted if the proposed development does not comply with the regulations contained in the Overlay. The Board is of the view that there was not sufficient community consultation done in this matter. No written evidence regarding discussions with neighbours was submitted and most of the neighbours consulted already had front vehicular access to their properties so their views may not be representative of the majority of the neighbours.
7. While there are front Driveways in the neighbourhood, there are no other Front Yard Parking Areas; therefore, Front Yard Parking Areas are not typical of this neighbourhood.
8. This lot is only 14.02 metres wide, meaning that the Parking Area takes up a considerable portion of the Front Yard.
9. Based on the above, it is the opinion of the Board that the proposed development will unduly interfere with the amenities of the neighbourhood.

Important Information for 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.

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. M. Young, Presiding Officer
Subdivision and Development Appeal Board

CC: City of Edmonton, Sustainable Development, Attn: Sajid Sifat

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Date: June 12, 2015
Project Number: 154014087-002
File Number: SDAB-D-15-105

Notice of Decision

This appeal dated April 30, 2015, from the decision of the Development Authority for permission to:

Construct exterior alterations (front parking pad, 3.04m x 9.75m) to an existing Single Detached House, existing without permits

on Plan 7922524 Blk 28 Lot 89, located at 16311 - 98 Street NW, was heard by the Subdivision and Development Appeal Board at its hearing held on May 28, 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 refuse an application to construct exterior alterations (front parking pad, 3.04m x 9.75m) to an existing Single Detached House, existing without permits located at 16311 - 98 Street NW. The subject Site is zoned RF1 Single Detached Residential Zone.

The development permit was refused because the Front Yard of any at-grade Dwelling unit in any Residential Zone may include a maximum of one Driveway, the Driveway shall lead directly to the Garage or Parking Area, parking spaces, not including Driveways are not permitted within a Front Yard, and because a large Recreational Vehicle is only allowed in a Front Yard for as long as it is reasonably necessary to load or unload such vehicle.

Prior to the hearing the following information was provided to the Board:

- A written submission from the Development Authority dated May 22, 2015
- An e-mail of support from an affected party in the 60 metre notification range

The Board heard from the Appellants, Mr. J. Smith and Ms. C. Smith, who provided the following information:

1. Their argument is contained in their prior written submission.
2. Mr. Smith also looked at the City of Edmonton's website and notes that the applicable sections of the *Edmonton Zoning Bylaw* are as confusing today as they were four years ago when the pad was constructed.
3. The *Edmonton Zoning Bylaw* changed on September 26, 2011, but the paving of the parking pad was completed in May 2, 2011.
4. They provided Exhibit "A", which included Bylaw 15634; Section 54.6 of the *Edmonton Zoning Bylaw*; an excerpt on Recreational Vehicle Parking from the City of Edmonton's webpage; and an article from CTV Edmonton, *Parking on your lawn now a no-no* dated September 26, 2011. He noted that Bylaw 15634 was enacted on September 26, 2011, and as a result, a driveway cannot encompass the entire front yard.
5. Prior to the changes, recreational vehicle owners, whose properties do not have a back lane, were permitted to park on a driveway if there was no sidewalk and if the vehicle was parked outside a certain setback.
6. The new definition in the *Edmonton Zoning Bylaw* also seems to differentiate between driveways and parking areas.
7. They believed they had stayed within the requirements of the *Edmonton Zoning Bylaw* at the time.
8. They provided receipts of bank drafts, marked Exhibit "B", to prove construction was completed prior to the bylaw changes.
9. They were negligent in failing to ensure that the contractor had pulled a proper permit. The obligation of the contractor to get the proper permits was part of their verbal agreement with the contractor.

Mr. Smith provided the following responses to questions:

1. He could not provide any documentation of the bylaw that existed at the time when his parking pad was completed.
2. They were unaware that there was ever any complaint about their recreational vehicle parking and no one has said they were not in favour of the development.
3. He believes there was an unrelated complaint regarding a commercial vehicle parked two doors down from his property.
4. He has spoken with the directly adjacent neighbours and three of them have signed a petition in favour of the development, marked Exhibit "C". His neighbour immediately to the north and closest to the parking pad has submitted a separate letter of support. He did not contact any additional neighbours.
5. The photos in the Development Officer's report are a fair representation of the site.
6. There are other neighbours who park similar recreational vehicles including motor homes, travel trailers and camper trailers in the immediate area. There are three properties located down the block, but outside the 60 metre notification area, that have such vehicles parked on their properties. Two of the three mentioned properties have parking pads on the flanking roadway. The other property, located on the blockface, has a driveway extension on which the recreational vehicle is parked on during the summer time and it is parked in the rear yard during the winter.
7. He had been parking his recreational vehicle on the front yard parking pad since 2011 until he received notice that it cannot be parked there from November 1 to March 31.

This notice came as a result of contact with the Development Authority regarding another unrelated complaint about a commercial vehicle parked two doors down.

The Board heard from Ms. F. Hetherington, representing the City of Edmonton Sustainable Development Department, who provided the following information:

1. She clarified the timing and content of the changes to the *Edmonton Zoning Bylaw* and submitted Exhibit "D" as written documentation thereof.
2. The reasons for refusal (Nos. 1, 2, 4 and 5) relate to sections of *the Edmonton Zoning Bylaw* in which wording was amended in September 26, 2011.
3. Reason for Refusal No. 3 refers to Section 45(7) of the *Edmonton Zoning Bylaw*. This section of the Bylaw was added in September 26, 2011.

Ms. Hetherington provided the following responses to questions:

1. She could not give an opinion about whether the Development Permit would have been granted if the parking pad had been applied for at the time it was built. She has not reviewed the development for compliance with the sections of the *Edmonton Zoning Bylaw* in place prior to the subsequent amendments.
2. There was very little information on file regarding the prior parking complaint. There was only an e-mail from the City's Enforcement Team indicating complaints had been received about recreational vehicle parking and commercial vehicle parking at two addresses (the appellant's property and one of the other addresses cited by Appellant.)

Mr. J. Smith and Ms. C. Smith declined the opportunity for rebuttal.

Decision:

The appeal is DENIED and the decision of the Development Authority is CONFIRMED. The development is REFUSED.

Reasons for Decision:

The Board finds the following:

1. The proposed development is Accessory to Single Detached Housing which is a Permitted Use in the RF1 Single Detached Residential Zone, Section 110.2(4).
2. The Board acknowledged that the Appellant provided evidence of steps he had taken to ensure the Parking Area was built lawfully. However, he failed to take the critical step of ensuring that the contractor had actually applied for a Development Permit. He now has to apply for a Development Permit and be governed by the *Edmonton Zoning Bylaw* as it now exists.
3. The Appellant provided evidence that the two neighbours on either side of him and the two neighbours directly across the street support his application; however, there is no evidence of

wider support in the neighbourhood. As the subject application was complaint driven, this shows that at least one person is unhappy about this development.

4. The Parking Area was constructed in the Front Yard specifically so the Appellants could store their large Recreational Vehicle there.
5. The Appellants gave evidence that they no longer store it there from November 1 to March 31 but it appears it is their intention to store it there for the rest of the year if this appeal is successful.
6. The photographic evidence, which the Appellants acknowledged is a fair representation of the Front Yard, shows two vehicles parked on the Driveway to the double front attached Garage and a boat parked to the side of the Driveway. It also shows that the Appellants' Recreational Vehicle is a very large vehicle parked on the separate Parking Area located on the other side of the Front Yard that, in the opinion of the Board dominates the Front Yard.
7. Based on the photographic evidence contained within the Development Officer's submission, the Board is of the opinion that the substantial size (3.04 metres by 9.75 metres) of the Parking Area and the presence of a large Recreational Vehicle in the Front Yard for extended periods unduly interferes with the amenities of the neighbourhood.

Important Information for 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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Mr. M. Young, Presiding Officer
Subdivision and Development Appeal Board

CC: City of Edmonton, Sustainable Development, Attn: Fiona Hetherington

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Date: June 12, 2015
Project Number: 169912743-001
File Number: SDAB-D-15-106

Notice of Decision

This appeal dated May 3, 2015, from the decision of the Development Authority for permission to:

construct an addition to a Single Detached House (sunroom 3.6m x 7.1m, existing without permits)

on Plan 7821797 Blk 63 Lot 1, located at 15438 - 98 Street NW, was heard by the Subdivision and Development Appeal Board at its hearing held on May 28, 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 refuse an application to construct an addition to a Single Detached House (sunroom 3.6m x 7.1m, existing without permits) located at 15438 - 98 Street NW. The subject Site is zoned RF1 Single Detached Residential Zone.

The development permit was refused because of an excess in the maximum allowable total Site Coverage and a deficiency in the minimum required Rear Setback.

Prior to the hearing the following information was provided to the Board:

- A written submission received from the Appellant on May 21, 2015
- A written submission from the Development Authority dated May 25, 2015

The Board heard from Mr. P. Martins, who was the spokesperson for the Appellant Mr. A. Fernandes, who was also present. The following information was presented:

1. He summarized his submission and requested that variances be granted to allow the sunroom to remain. He did not contest that the site coverage was exceeded, although his calculations were different than those provided by the Development Officer.
2. The history of the sunroom stems from a deck that was in this location. The sunroom is of the same dimensions as the original deck. A previous Real Property Report dated from 1979 does not show this deck.
3. The sunroom has existed for ten years and is basically there to provide sun exposure for the use and enjoyment of the home owners.
4. The immediate neighbours have made no complaints. The sunroom has minimal impact on adjacent neighbours and does not impact their privacy or safety.
5. He advised there is available access to the utility right of way from the neighbour's yard and the area is currently utilized as a vegetable garden.
6. The south facing wall of the sunroom is approximately 52 feet 6 inches away from the adjacent neighbour's nearest wall, and is separated by a seven foot high fence.
7. He requests that the Board look at the merits of the development as opposed to getting into negative input from neighbours who are not directly affected.

Mr. P. Martins provided the following information in response to questions:

1. He is not aware of an encroachment agreement being in place although he did acknowledge there was a clause on the title regarding the utility right-of-way.
2. He reiterated there were no objections from the most affected neighbours immediately adjacent to the west and the south. He has had discussions with them, although no formal letter of support was provided to the Board.

The Board heard from Mr. J. Booth, representing the City of Edmonton Sustainable Development Department, who provided the following responses to questions:

1. He confirmed that a complaint from a neighbouring property owner was the impetus for the Development Permit application for the sunroom.
2. The City circulates proposed Encroachment Agreements regarding utility right-of-ways to the affected utility companies. (E.g. Atco Gas, Epcor or Drainage). If these agencies have any objection, the City would refuse to enter into an Encroachment Agreement.
3. It appears there is a gas line running in this utility right of way but he could not confirm if it runs under the sunroom.
4. The initial calculation for the maximum total site coverage did not include the covered entry. As a result, he amended the calculation to show the allowed total site coverage has been exceeded by 26.1 square metres (4.04 percent).

Mr. P. Martins made the following points in rebuttal:

1. His calculations are different than those of the Development Officer but he agrees the maximum allowable site coverage has been exceeded.
2. There are no negative impacts to neighbours.
3. The real consideration is for the use and enjoyment of the sunroom.

Decision:

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 variances to the *Edmonton Zoning Bylaw* are allowed:

1. Pursuant to Section 110.4(7)(a):
An excess of 26.10 square metres (4.04 percent) in the maximum total Site Coverage.
2. Pursuant to Section 110.4(9):
A deficiency of 3.17 metres in the minimum required Rear Setback.

Reasons for Decision:

The Board finds the following:

1. The proposed development is an addition to Single Detached Housing which is a Permitted Use in the RF1 Single Detached Residential Zone, Section 110.2(4).
2. The Appellant's lot is a corner lot. This mitigates the impact of the development being over the maximum total Site Coverage limit by 26.10 square metres (4.04 percent).
3. The sunroom is located in the interior portion of the lot. Also, the photographic evidence shows that the sunroom is screened by adequate landscaping. This mitigates any effect the sunroom has on the amenities of the neighbourhood. The sunroom is located at the south end of the lot which means that there are no issues with sun shadowing on adjacent properties.
4. There is a seven foot fence separating the sunroom from the closest neighbour. This mitigates the impact of the deficiency in the minimum required Rear Setback.
5. This sunroom has existed for 10 years and this application was made necessary because of a complaint from an unidentified neighbour. However, no letters were received and no one attended the hearing in opposition so the Board does not have the benefit of the opinions of neighbours who feel the use, enjoyment or value of their land has been negatively impacted by this development. The Appellant has spoken with the two most affected neighbours who verbally indicated they did not have a problem with the sunroom although no written evidence was provided from them.
6. For all of the above reasons, the Board is of the opinion 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.
7. Any issues with respect to building codes and encroachment onto the utility right-of-way are beyond the purview of this Board.

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 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.

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Mr. M. Young, Presiding Officer
Subdivision and Development Appeal Board

CC: Kalgen Investments Inc.
City of Edmonton, Sustainable Development, Attn: Jeff Booth