

## EDMONTON SUBDIVISION AND DEVELOPMENT APPEAL BOARD

Citation: David Van Meter v Development Authority of the City of Edmonton, 2019 ABESDAB 10199

Date: November 29, 2019  
Project Number: 341983846-001  
File Number: SDAB-D-19-199

Between:

David Van Meter

and

The City of Edmonton, Development Authority

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Board Members

Vincent Laberge  
Shari LaPerle  
Robert Hobson  
Louise Gibson  
Elaine Solez

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### DECISION

[1] On November 14, 2019, the Subdivision and Development Appeal Board (the “Board”) heard an appeal that was filed on October 29, 2019 for an application by David Van Meter. The appeal concerned the decision of the Development Authority, issued on October 9, 2019, to refuse the following development:

Leave as built a Garden Suite (over height)

[2] The subject property is on Plan 4978HW Blk 13 Lot 36, located at 13923 - 108 Avenue 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:

- Copy of the Development Permit application with attachments, proposed plans, and the refused Development Permit;
- The Development Officer's written submissions; and
- The Appellant's written submissions and photos.

### **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 (the "*Municipal Government Act*").

### **Summary of Hearing**

#### *i) Position of the Appellant, D. Van Meter*

- [7] There was no intent to have the garden suite to be built non-compliant and the Appellant assumes there was an error in calculation made by his contractor; the slab was 6 inches too high. The Appellant only became aware of the error after he moved into the house and his father in law had moved into the Garden Suite.
- [8] The Garden Suite was designed to complement the house and the character of the neighbourhood.
- [9] The Garden Suite has no negative impact on any neighbours. Letters of support were provided from the two immediately adjacent neighbours. Neither of these neighbours is negatively impacted by shadowing created by the Garden Suite.
- [10] A series of photographs was submitted to provide context to the location of the Garden Suite in relation to the immediately surrounding neighbours. These photos confirm that there is no negative impact to any of these neighbours.
- [11] The Appellant requests that the Board allow the appeal and grant the required variances.

#### *ii) Position of the Development Officer, K. Bauer*

- [12] The Development Authority did not attend the hearing and the Board relied on Ms. Bauer's written submission.

### **Decision**

- [13] The appeal is ALLOWED and the decision of the Development Authority is REVOKED. The development is GRANTED as applied for to the Development Authority.

- [14] In granting the development, the following variance to the *Edmonton Zoning Bylaw* is allowed:
1. The maximum allowable Height for a Garden Suite of 6.5 metres as per Section 87.2(a) is varied to allow an excess of 0.2 metres, thereby increasing the maximum allowed Height to 6.7 metres.

### **Reasons for Decision**

- [15] A Garden Suite is a Permitted Use in the RF1 Single Detached Residential Zone.
- [16] The Board acknowledges that this was a contractor error and the garage slab was put in too high and did not meet the original design. The amount of the variance at 0.2 metres is not significant in this case.
- [17] The Applicant received support from the most affected neighbours to the northwest and southeast.
- [18] No one appeared before the Board in opposition and no written opposition was received.
- [19] Based on photographic evidence provided, the Board has determined allowing this variance would not have a negative impact on any neighbouring property owners. The Garage Suite is located in a very large backyard and is not in close proximity to any other structures or neighbours.
- [20] Based on photographic evidence, design features such as the construction belly band and sloped roofline, minimize the massing and perception of Height of the Garden Suite.
- [21] 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.

Vincent Laberge, Presiding Officer  
Subdivision and Development Appeal Board

cc: Development & Zoning Services – K. Bauer / A. Wen

**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.*

## EDMONTON SUBDIVISION AND DEVELOPMENT APPEAL BOARD

Citation: Mike Baran v Development Authority of the City of Edmonton, 2019 ABESDAB 10183 and 2019 ABESDAB 10184

Date: November 29, 2019  
Project Numbers: 283125801-014 and 283126372-014  
File Number: SDAB-D-19-183 and SDAB-D-19-184

Between:

Mike Baran

and

The City of Edmonton, Development Authority

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Board Members

Vince Laberge, Presiding Officer  
Shari LaPerle  
Robert Hobson  
Louise Gibson  
Elaine Solez

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### DECISION

[1] The Subdivision and Development Appeal Board (the “Board”) at a hearing on November 14, 2019, made and passed the following motion:

“That the appeal hearings be scheduled for November 13 or 14, 2019, with written agreement from both parties.”

[2] On November 14, 2019, the Board made and passed the following motion:

“That SDAB-D-19-183 and SDAB-D-19-184 be raised from the table.”

[3] On November 14, 2019, the Board heard appeals that were filed on October 9, 2019 for applications by Phoenix Homes Ltd. The appeals concerned the decisions of the Development Authority to approve the following developments:

SDAB-D-19-183 (issued September 12, 2019)

To increase the height of a previously approved rear uncovered deck to a Single Detached House (deck 5.18 metres by 4.27 metres @ 0.95 metres in Height, with Privacy Screening @ 1.83 metres in Height on the north side).

SDAB-D-19-184 (issued September 17, 2019)

To increase the Height of a previously approved rear uncovered deck with Privacy Screening to a Single Detached House (deck, 5.18 metres by 4.27 metres @ 0.94 metres in Height and privacy screen @ 1.83 metres in Height).

- [4] The subject properties are on Plan 1821120 Blk 18 Lot 32A, located at 9214 - 81 Street NW, and on Plan 1821120 Blk 18 Lot 32B, located at 9212 - 81 Street NW, within the RF1 - Single Detached Residential Zone. The Mature Neighbourhood Overlay applies to the subject properties.
- [5] The following documents were received prior to the hearing and form part of the record:
- Copy of the Development Permit application with attachments, proposed plans, and the approved Development Permit;
  - The Development Officer's written submissions; and
  - The Appellant's PowerPoint Presentation.

**Preliminary Matters**

- [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] The Presiding Officer outlined how the hearing would be conducted (including that SDAB-D-19-183 and SDAB-D-19-184 would be heard together) and the order of appearance of parties, and no opposition was noted.
- [8] The appeals were filed on time, in accordance with Section 686 of the *Municipal Government Act*, RSA 2000, c M-26 (the "*Municipal Government Act*").
- i) *Position of the Appellant, M. Baran*
- [9] Mr. Baran reviewed a PowerPoint presentation with the Board.
- [10] He began by respectfully acknowledging that we are located on Treaty 6 territory, a traditional gathering place for diverse Indigenous peoples including the Cree, Blackfoot, Metis, Nakota Sioux, Iroquois, Dene, Ojibway/ Saulteaux/Anishinaabe, Inuit, and many others whose histories, languages, and cultures continue to influence and enrich our vibrant community.

- [11] Mr. Baran is the homeowner of the property immediately to the north of the subject sites and has been a Holyrood resident for close to 10 years. He serves in a volunteer capacity with the community level infill development committee. Holyrood is a mature neighbourhood in southeast Edmonton and the typical homes are smaller bungalows.
- [12] Guidelines and design matter and are supported by regulations which should be upheld. Mr. Baran quoted from several City documents:
- a. The City of Edmonton's Policy Number C551 states "The City of Edmonton strives to achieve high quality residential infill that is welcomed by neighbours . . . ."
  - b. The Appellant referred to The Municipal Development Plan Document "The Way We Grow" and quoted the following passage: "Support redevelopment and residential infill that contribute to the livability and adaptability of established neighbourhood . . . . . and which are **sensitive to existing development.**"
  - c. City Policy Number C588 states that the City supports five winter design principles including: "Maximum exposure to sunshine through orientation and design".
- The subject properties do not meet any of these objectives. They have design problems and the variances contribute to the problems.
- [13] The deck built by Phoenix Homes Ltd. is not in accordance with their permit or the zoning bylaw, and this builder refuses to accept responsibility. As the final grading has not been done, no one knows the exact height of the decks. The deck at 9214 has not yet been built, so there is an opportunity to avoid making the same mistakes as what were made at 9212.
- [14] As per the City of Edmonton's Construction Site Management Practices Acknowledgment: "The owner shall not deviate nor authorize a deviation from conditions of a permit without first obtaining permission in writing to do so from the authority having jurisdiction." No such permission was obtained.
- [15] Mr. Baran met with the original Development Officer when he learned of these infill developments and was advised that they were Class A developments which fully comply with the *Edmonton Zoning Bylaw*. They were then changed to Class B developments before the projects were completed.
- [16] The Mature Neighbourhood Overlay states "The purpose of this Overlay is to regulate residential development in Edmonton's mature residential neighbourhoods, while responding to the context of surrounding development". Responding to the context of surrounding development has not been done here.
- [17] There was a problem with the initial development notice as reference to the Mature Neighbourhood Overlay was omitted and no correction was ever issued. If public engagement had been done properly, letters mailed out would have indicated that this variance was to cover the mistake of a developer.

- [18] The Appellant invited the Development Officer, Mr. K. Payne, to visit the site to allow him to review the context of neighbouring properties and to meet face to face with an affected neighbour. This invitation was declined; therefore the Development Officer had insufficient information to determine that the proposed developments 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.
- [19] A compounding effect is created by trying to build a house at or near maximum for rear projection and adding a deck which exceeds the permitted rear projection as per section 44 of the *Edmonton Zoning Bylaw*.
- [20] Variances should be rare and should be justified and explained. In this instance, the variances were not asked for in advance; they were just taken and the builder asked for variances after the fact.
- [21] A rectangle imposed on one of the photos shows the impact of the proposed privacy screening and the excess projection into the rear yard. The deck extends so far back into the yard, that there is virtually no yard space to where the neighbour's garage begins.
- [22] The whole point of keeping rear projections reasonable is to minimize and mitigate effects of walling in neighbours against their will. The Appellants discussed a mediated solution with the Development Officer, but Phoenix Homes was not interested in stepping down the deck.
- [23] The Appellant believes that the excess height of the deck is due to incorrect lot grading. The Chair explained that lot grading is not within the purview of this Board.
- [24] The developments have created negative financial impacts:
- a. A realtor they consulted stated: "It may be more difficult to sell your property than comparable homes with no tall skinny homes or McMansions next door".
  - b. The Appellant has had an 8.3% increase in property taxes while the overall residential market in Edmonton saw a 1.7% decrease in value from July 1, 2017 to July 1, 2018. The only thing that has changed on this street is the construction of two large houses.
- [25] Signatures in opposition from one dozen neighbours were provided.
- [26] The Appellant does not believe that concerns of the neighbours have been addressed nor has the character of single family developments in this mature neighbourhood been protected as per the infill audit of June, 2019.
- [27] The Appellant provided the following responses to questions from the Board:
- a. The required variance of approximately 1 metre has a negative impact on him because nothing exists in isolation. There is a very dramatic difference in grade level between his back yard and the subject properties which raises the decks. By



- projecting an extra metre towards the alley, there is now a 10 foot tall wall in what should be empty air space. There are no design criteria on what that it will look like.
- b. No one likes to look at walls and this 10 foot high wall will reduce the enjoyment of his yard. Trees and the view of the sky have been taken from him.
  - c. The Appellant confirmed that the rectangle superimposed on the photograph in his PowerPoint presentation was simply to show the size, scale and location of the privacy wall. He does not know what construction material will be used.
  - d. The deck at the south property (9212) has already been built and impacts him negatively as there is still a 10 foot high wall that lowers the enjoyment of his yard. The developer has applied for and received permission to repeat all of the same mistakes on the north property (9214).

*ii) Position of an Affected Property Owners in Support of the Appellant (J. Johnston)*

- [28] Ms. Johnston shares the same house as the Appellant.
- [29] Ms. Johnston and Mr. Baran purchased their home in 2009 and knew that the house to the north would be torn down. A large home was built in its place but the homeowners built in such a way as to be sensitive to their Ms Johnston's and Mr. Baran's needs and concerns.
- [30] The neighbours to the south intended to rebuild their 1950's bungalow but decided to sell after encountering too much red tape from the City. Phoenix Homes purchased the lot to build two skinny homes.
- [31] The Appellants met with both the home builder and the Development Officer in an effort to understand what was planned. While they asked for changes, they were informed that the projects had been approved as Class A developments.
- [32] As building progressed, they realized that their privacy would be compromised much more than they first thought. When they saw the deck was over-height, they met with Mr. Rozner who offered to build steps down to the approved deck height. They also learned that the approved deck did not even include a privacy screen.
- [33] When they approached the Development Officer about the non-compliant deck height, they were informed they would have to wait until final grading was completed.
- [34] Ms. Johnston asks that both permits be overturned.

*iii) Position of Affected Property Owners in Support of the Appellant (J. Forester)*

- [35] Ms. Forester lives ones block north (outside of the 60 metre notification zone) and is an avid participant in the community.

[36] Mr. Baran's presentation was very thorough and she had nothing further to add.

*iv) Position of the Development Officer, Mr. K. Payne*

[37] The Development Authority did not appear at the hearing and the Board relied on Mr. Payne's written decision.

*v) Position of Mr. J. Rozner, representing Phoenix Homes Ltd.*

[38] Mr. J. Rozner, the owner of Phoenix Homes Ltd., appeared before the Board. He was accompanied by Ms. A. Rozner.

[39] After purchasing the property, he introduced himself to the Appellant and his partner and agreed to show them the plans. He was met with resentment right from the start.

[40] The deck projection was shown on the original plan. The only thing that changed was the height of the deck which was originally shown to be 60 centimetres off the ground on the blueprints. When the blueprints were put together everything was drawn on a flat line; however the elevation of the lot at the front sidewalk is higher than at the back alley. The surveyor did not catch this elevation difference. If the lot had been perfectly flat, the deck would have been at the 60 centimetres.

[41] When the neighbours expressed their concerns regarding the deck height, Mr. Rozner approached the Development Officer and explained what had happened.

[42] He was surprised to learn that the deck projection was too large. The last four properties he developed had the exact same size of deck. Those lots were 18 feet shorter than the subject sites and he never had to apply for a variance. When he spoke to Development Officer, he was advised to apply for a variance.

[43] The Appellant added the privacy screening as a goodwill gesture; however, now the Appellants are complaining it is just another wall. As the deck is less than one metre from the ground, privacy screening is not required and he can remove it.

[44] Mr. Rozner provided the following responses to questions from the Board:

1. The previous owner to the south of the subject lots did not move out of the house because of the skinny houses. They retired and moved back to England. The frame of the deck was built while they were still living there and they did not voice any objections.
2. He has not received any comments from the current owners of the property to the south.
3. He has also not received any objections from the neighbours across the alley. They often come on to the job site for a look.

4. Other than the Appellants, he has received no concerns from anyone else.

v) *Rebuttal of the Appellant, Mr. Baran*

- [45] In response to Mr. Rozner's offer to remove the privacy screen, the Appellants want to be clear that this screen is required. This appeal is about mitigation. If the variance is overturned, it will limit the magnitude of the privacy screen.
- [46] The previous owners at 9208 were very much opposed to aspects of this development. The new neighbours have only been there for a few months and the developer acknowledged he has not spoken to them. The non-compliant deck was there when they first moved in and they lack the historical perspective. They have adopted a policy of neutrality and do not support or oppose the development.
- [47] He is not aware of a single resident in Holyrood who supports these developments.
- [48] It is confusing that Mr. Rozner indicates that all the neighbours across the alley support the development when three of these neighbours have signed the petition in opposition.

**Decision**

- [49] The appeals are DENIED and the decisions of the Development Authority are CONFIRMED. The developments are GRANTED as approved by the Development Authority.

**Reasons for Decision**

- [50] The Board heard that both the original permit applications were Class A developments under the *Edmonton Zoning Bylaw*. The subsequent applications were to seek approval for an increased Height in decks, which is not over Height as defined in the *Edmonton Zoning Bylaw*.
- [51] Notwithstanding the decks do not exceed the maximum allowable Height; it did lead to a non-compliance with Section 44.3 of the *Edmonton Zoning Bylaw* that provides regulations to Platform Projections into required Yards or Setbacks. This specific regulation is contained within the underlying regulations of the *Edmonton Zoning Bylaw* and is not part of the Mature Neighbourhood Overlay.
- [52] The Appellant expressed concerns over the Lot Grading not being completed and that the dimensions provided of 0.94 metres, which the Board has accepted, and the current site condition of the grading could not be confirmed until the Lot Grading is complete. These developments are subject to an approved Lot Grading Plan and inspections by the City of Edmonton Drainage department to ensure compliance and receive a final grade certificate. This process needs to be completed. The Board has no ability to circumvent this process and cannot provide any direction as this is outside the purview of the Board.

- [53] The reality of new developments is that the requirements of the Lot Grading regulations are to be complied with and this creates the Height difference with neighbouring properties as new development is to adhere to these guidelines while the existing properties may not.
- [54] Some of the concerns raised by the Appellant appeared to deal with the Principal Structures, which have been approved as Class A developments. These applications have one variance granted for each property and one variance only, the Platform Projections.
- [55] The Board has denied the appeals for the following reasons:
- a) The variance itself is fully contained within the Rear Yard, concealed by the Detached Garages and therefore has no impact on the neighbouring properties to the west.
  - b) The opinion provided by the real estate individual appears to deal more with the Principal Structure than the Platform Projection given there is no specific reference made to this variance.
  - c) The increase in deck height from the original Class A approval is to 0.94 metres from to 0.6 metres, a difference of 0.34 metres or 13.4". This has not made the deck over Height and the deck can be built to this Height and comply.
  - d) However, this increase in deck Height has now made the deck itself in non-compliance with Section 44.3 Platform Projections of the *Edmonton Zoning Bylaw*. The variances are for 1.0 metres and 1.1 metres respectively for each of the properties. The Board notes that the deck can have a length of 3.17 metres and 3.27 metres respectively and fully comply.
  - e) It is noted that pursuant to the approved site plan, that there is still 6.82 metres of clearance between the deck and the Detached Garage which is sufficient to provide additional Amenity Space.
  - f) As a condition of approval, the Development Officer asked that a Privacy Screen be provided to mitigate overlook which the Appellant wants and the Respondent is prepared to construct.
  - g) No one appeared in opposition to the application for 9212 – 81 Street and the Appellant did not provide specific information to this variance.
  - h) The Board acknowledges the petition presented by the Appellant but notes that several of the signees are outside the 60 metres notification zone and that the specific variance was not clearly identified.
- [56] The Board in reaching its decision considered the presentations of the Appellant and tried to apply each of them to the variance.

[57] The Board's authority in this appeal lies within Section 687(3)(d) of the *Municipal Government Act* which states:

**687(3)** In determining an appeal, the subdivision and development appeal board

- (d) may make an order or decision or issue or confirm the issue of a development permit even though the proposed development does not comply with the land use bylaw if, in its opinion,
  - (i) the proposed development would not
    - (A) unduly interfere with the amenities of the neighbourhood, or
    - (B) materially interfere with or affect the use, enjoyment or value of neighbouring parcels of land,
  - and
  - (ii) the proposed development conforms with the use prescribed for that land or building in the land use bylaw.

[58] The Board, in denying the appeals, was not given sufficient planning reasons to overturn the decisions of the Development Officer. There was not enough specific information provided to indicate how, by allowing the variances, they would have unduly interfered with the amenities of the neighbourhood, or will materially interfere with or affect the use, enjoyment or values of neighbouring parcels of land.

[59] Therefore, the appeals are denied, and the decisions of the Development Officer are upheld.

Vince Laberge, Presiding Officer  
Subdivision and Development Appeal Board

CC: Mike Baran  
City of Edmonton, Development & Zoning Services, Attn: Mr. K. Payne / Mr. A. Wen

**Important Information for the Applicant/Appellant**

1. This is not a Building Permit. A Building Permit must be obtained separately from Development & Zoning Services, 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 Development & Zoning Services, 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.*

## EDMONTON SUBDIVISION AND DEVELOPMENT APPEAL BOARD

Citation: Robert Strang v Development Authority of the City of Edmonton, 2019 ABESDAB 10200

Date: November 29, 2019  
Project Number: 327905411-001  
File Number: SDAB-D-19-200

Between:

Robert Strang

and

The City of Edmonton, Development Authority

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Board Members

Vincent Laberge  
Shari LaPerle  
Robert Hobson  
Louise Gibson  
Elaine Solez

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### DECISION

[1] On November 14, 2019, the Subdivision and Development Appeal Board (the “Board”) heard an appeal that was filed on October 22, 2019 for an application by Gursharanjit Singh. The appeal concerned the decision of the Development Authority, issued on September 23, 2019, to approve the following development:

Construct an Accessory Building (shed, 3.65 metres by 2.4 metres), existing without permits

[2] The subject property is on Plan 0720412 Blk 6 Lot 22, located at 1124 - 37A Avenue NW, within the RPL Planned Lot Residential Zone. The Tamarack Neighbourhood Structure Plan and the Meadows Area Structure Plan apply to the subject property.

[3] The following documents were received prior to the hearing and form part of the record:

- Copy of the Development Permit application with attachments, proposed plans, and the approved Development Permit;
- The Development Officer's written submissions; and
- The Appellant's written submissions.

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

- Exhibit A – Photos of the shed from the owner of the subject property

### **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 (the "*Municipal Government Act*").

### **Summary of Hearing**

#### *i) Position of the Appellant, R. Strang*

[8] Mr. Strang owns the adjacent property at 1118 – 37A Avenue and is disputing the subject development for the following reasons:

- a. The shed violates section 50.3(4)(b) of the *Edmonton Zoning Bylaw* as it is located less than the required 0.9 metres from the fence. This Bylaw is partially in place to allow for maintenance between the shed and the fence and due to fire codes. The subject shed appears to be a fire hazard.
- b. He objects to the appearance and general construction of the shed as per the photos he submitted. It appears to be made of objects that were not purchased as a whole project. The shingles are mismatched and the siding consists of four different colours. The City should uphold the architectural guidelines that were originally in place in this neighbourhood.
- c. The shed does not appear to meet building codes. It sits only partially on concrete blocks and is partially held up by 2 x 2 spruce piles. The shingles do not appear to be installed correctly, the fascia is warped, the siding is installed incorrectly or falling off and the window sills are not professionally done.

[9] The Appellant provided an opinion from an experienced realtor that this shed would negatively impact the value of neighbouring properties. The shed also interferes with the use, enjoyment or value of neighbouring parcels of land



[10] The Development Officer stated that in this area “smaller accessory buildings like sheds are commonly closer to property lines in order to provide more useable yard space”. An overhead photograph submitted by the Development Officer shows other sheds in the area located in close proximity to fences; however no measurements are provided on this photograph and the required separation distances from the fence may have been met for these comparables.

[11] The shed should be relocated or completely re-done.

[12] The Appellant provided the following responses to questions from the Board:

- a. He acknowledged that moving the shed to the required distance from the fence as per the Bylaw would have minimal impact on sightlines.
- b. The fence between the properties is just over 6 feet high.

*ii) Position of the Development Officer, M. Winget*

[13] The Development Authority did not attend the hearing and the Board relied on Mr. Winget’s written submission.

*iii) Position of the property owner, M. Kaur*

[14] Ms. G. Kaur, the sister of the property, owner made a presentation to the Board. The property owner was also in attendance.

[15] Ms. Kaur agreed that the shed is too close to the fence; however, initial approval was received and the inspector who came out had no issues with the shed or its foundation.

[16] The shed is constructed of new materials that were purchased from Home Depot.

[17] They chose the colours because they liked the colour scheme. Moving the shed to the required location has nothing to do with the colours.

[18] Ms. Kaur submitted two photographs (Exhibit A) and pointed to the Appellant’s shed. She submits the Appellant’s shed is also too close to the fence, was built without a permit, and is of no better quality than the subject shed.

[19] There is no difficulty with cutting the grass in between the shed and the fence and there is no fire hazard because there is no electrical socket on the shed.

[20] Ms. Kaur provided the following responses to questions from the Board:

- a. The shed colours were chosen by Ms. Kaur’s father. The shed is his project and is a work in progress.

- b. She is unsure if the shed is set on temporary blocks. The inspector had no issues with the way the shed was constructed and it meets the height requirements.
- c. While an e-mail of opposition was received from the property owner to the west the location of the shed has no effect on this neighbour.

*iv) Rebuttal of the Appellant*

- [21] It is difficult to believe that four different colours of siding would be purchased.
- [22] It was mentioned that this shed is a work in progress. The pictures submitted by the Appellant were taken over a month ago.
- [23] Notwithstanding the building does not have an electrical socket, it can still become a fire hazard. Mr. Strang was referring to fire codes.

**Decision**

- [24] The appeal is DENIED and the decision of the Development Authority is CONFIRMED. The development is GRANTED as approved by the Development Authority.

**Reasons for Decision**

- [25] The proposed development is Accessory to a Permitted Use.
- [26] The Board agrees with the reasons provided by the Development Authority as provided in his written submission:

The variance is considered to be minimal (0.36m difference).

The eave abutting the neighbouring lot is flush with the shed wall. There is no projection into the neighbouring yard.

The shed is under the maximum allowable height for an accessory building, and complies with all other zoning regulations.

In the opinion of the Development Officer, there will be minimal shading to the abutting yard.

As rear detached garages are common for the area, any existing sightlines would effectively be blocked by garages. The shed adds no additional impact to sightlines.

Separation space is given along the property line to allow for proper drainage from the site.

- [27] The Board was not provided with sufficient planning reasons to allow the appeal and deny the permit. Notwithstanding the presentation of the Appellant with respect to the structure itself, its quality of construction and its colour scheme are outside the purview of this Board. The Board considered the Accessory Building Setback variance from the Interior Side Lot Line.
- [28] The variance being sought is in a rear location in the yard and has no impact on other structures on the lot or on the adjoining lots. The shed could be relocated to comply; however, how it is constructed and how it looks would not change from the appearance it has now.
- [29] The Appellant acknowledged that moving the shed to be compliant would not materially enhance his visual sightlines.
- [30] 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.

Vincent Laberge, Presiding Officer  
Subdivision and Development Appeal Board

CC: Robert Strang  
Development & Zoning Services – M. Winget / A. Wen

**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.*