



**EDMONTON
TRIBUNALS**

*Subdivision &
Development
Appeal Board*

10019 – 103 Avenue NW
Edmonton, AB T5J 0G9
P: 780-496-6079 F: 780-577-
3537
sdab@edmonton.ca
edmontonsdab.ca

Date: November 30, 2017
Project Number: 245989122-002
File Number: SDAB-D-17-217

Notice of Decision

- [1] On November 15, 2017, the Subdivision and Development Appeal Board (the “Board”) heard an appeal that was filed on **October 25, 2017**. The appeal concerned the decision of the Development Authority, issued on October 18, 2017, to refuse the following development:

Leave as built an Accessory Building (front detached Garage, 6.76m x 4.35m).

- [2] The subject property is on Plan 2280KS Blk 12 Lot B, located at 10943 - 60 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:
- A copy of SDAB-D-03-334;
 - A copy of the Development Permit application with attachments, Real Property Report, and the refused Development Permit;
 - The Development Officer’s written submission; and
 - The Appellant’s written submissions.

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 Appellant, Ms. M. Morris, accompanied by Mr. D. Meardi, Legal Counsel for the Appellant*

- [7] Ms. Morris was shocked when the surveyor explained to her that the garage was built 10 inches closer to the street than what was allowed.
- [8] When the garage package was first ordered she realized that the original surveyor did not consider the overhang of the house in the proposed site plan. To prevent the house overhang overlapping the garage overhang, the contractor shifted the concrete slab.
- [9] As a homeowner, she relied on the professionals to build her garage according to the rules and it was not her intent to not comply with the plans.
- [10] Ms. Morris went door-to-door with a photograph of the house and the garage to explain to neighbours within the 60-metre radius, the non-compliance issue. She received overwhelming support for her appeal and received 31 signatures. The past president of the Pleasantview Community League advised her that the Pleasantview Community League does not get involved with the appeal process.
- [11] She has received compliments from neighbours about how aesthetically pleasing her property is and how attractive the garage and house are.
- [12] Ms. Morris provided the following information in response to questions from the Board:
- a. The most affected property owners to the east are in support of the garage.
 - b. The lot does not have a lane and because of the placement of the house, building a compliant garage is limited. She ordered the smallest garage package possible because of the small lot.
 - c. In 1988 there was a carport on the property but there was an agreement with her neighbour to turn onto their property in order to use the carport.
 - d. There has never been a complaint with regard to her driveway and there are other similar driveways in the neighbourhood.
 - e. Tearing down the garage would be a financial hardship.
 - f. There is a retaining wall on the west side of the property as the lot slopes down, which is why the garage was not placed on that portion of the yard.
 - g. She does not have any issues with the conditions attached to the Development Officer's written submission.

h. Mr. Meardi indicated that the garage complies with all of the other regulations of the *Edmonton Zoning Bylaw* including height.

ii) *Position of the Development Officer, Mr. G. Robinson*

[13] Mr. Robinson provided a written submission and did not attend the hearing.

Decision

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

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

1. Section 50.3(5)(a) states:

an Accessory building or structure shall be located not less than 18.0 m from the Front Lot Line, unless it complies with the Setback requirements for a principal building.

Section 50.3(5)(a) is waived to allow the existing detached Garage in the Front Yard per the stamped Real Property Report.

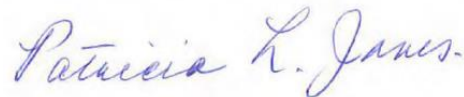
Reasons for Decision

[16] A detached Garage is Accessory to a Permitted Use in the (RF1) Single Detached Residential Zone.

[17] The Garage was built in 2003. Prior to pouring the pad, the overhang of the House and the Garage overlapped and in order to have separation, the Garage was moved 10 inches (25.4 centimetres) closer to the Front Lot Line.

[18] The Appellant had purchased the smallest Garage package possible because of the small lot and based on the Real Property Report, the Board finds that there was no other place on the lot that a Garage could have been located.

- [19] The previous decision of the Board (SDAB-D-03-334) allowed the Garage to be 2.74 metres from the Front Lot Line. However, because of the surveyor's error, the Garage was built 2.48 metres from the Front Lot Line, which is approximately a difference of 10 inches (25.4 centimetres) and does not have an impact on the abutting properties or the neighbourhood.
- [20] The Appellant canvassed the community and had overwhelming support and there was no opposition to the existing Garage.
- [21] Based on the photographic evidence, the exterior of the Garage matches the Principal Building and the Board finds that the Garage is aesthetically pleasing.
- [22] As the Board is permitting the Garage to remain, no other conditions need to be applied.
- [23] 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

Board Members in Attendance

Mr. V. Laberge; Mr. A. Bolstad; Ms. D. Kronewitt Martin; Ms. G. Harris

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: November 30, 2017
Project Number: 256668550-002
File Number: SDAB-D-17-218

Notice of Decision

- [1] On November 15, 2017, the Subdivision and Development Appeal Board (the “Board”) heard an appeal that was filed on **October 23, 2017**. The appeal concerned the decision of the Development Authority, issued on October 4, 2017, to refuse the following development:

Construct exterior alterations to a Single Detached House (Driveway extension, 2.30m x 8.75m).

- [2] The subject property is on Plan 1225096 Blk 2 Lot 14, located at 8120 - 217 Street NW, within the (RSL) Residential Small Lot Zone. The Lewis Farms Area Structure Plan and Rosenthal Neighbourhood Structure Plan apply 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;
 - A Canada Post Delivery Confirmation;
 - The Appellant’s written submissions; and
 - An on-line response from an adjacent property owner in opposition to the proposed development.

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 Presiding Officer referenced a Canada Post Delivery Confirmation submitted by the Development Authority to show that the Notice of the Decision was received October 10, 2017. Mr. Manucci confirmed that the signature on the Canada Post Delivery Confirmation was by the receptionist at their law firm.
- [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 Appellant, Mr. S. Manucci, Legal Counsel for Mr. C. Pullano and Ms. C. Bossio*
- [8] This matter was raised because of a real estate transition that required a Real Property Report compliance certificate.
- [9] His clients bought the house from a reputable builder and the driveway with the extension was poured at the same time. His client was unaware of the legislation at the time.
- [10] They canvassed the idea of adding permanent planters on the extension and the Development Officer indicated that she could approve the extension with this condition. However, the purchaser did not want this condition and wanted the driveway extension to remain as is.
- [11] They canvassed neighbours within a 60-metre radius and there were 21 properties within that radius. They received 18 signatures of support for the driveway extension. Of the three properties that did not sign; his client made several attempts at one property; one property owner did not speak English; and another neighbour needed time to speak with her husband.
- [12] In his opinion, the neighbour who responded in opposition is not affected by the driveway extension.
- [13] The front yard currently is landscaped with trees, shrubs, and sod; and the neighbour who is most affected by the extension and has signed in support of it, has green space abutting the driveway extension. In his opinion, the property is aesthetically pleasing and blends in with the rest of the neighbourhood.
- [14] Removing the concrete slab would be a financial hardship for his client.
- [15] Mr. Manucci provided the following information in response to questions from the Board:

- a. The driveway extension is used for parking and to access the rear yard. There has never been a complaint.
- b. He reiterated that his client was originally agreeable to adding planters to the extension, but his client will risk litigation by the purchaser if this condition is added.
- c. In his opinion, the paved walkway to the front door is under the eaves, which is why the Real Property Report does not show the walkway.
- d. He does not believe his client has shoveled snow into the abutting property (Lot 13).
- e. There is another similar driveway extension in the neighbourhood but he does not have a photograph.

ii) *Position of the Development Officer, Ms. J. Kim*

[16] Ms. Kim provided a written submission and did not attend the hearing.

Decision

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

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

1. Section 54.1(4)(a) and (c) is waived to allow a total Driveway width of 8.45 metres and to allow the Driveway extension not to lead directly to the Garage per the stamped Real Property Report.

Reasons for Decision

[19] The existing Driveway extension is Accessory to a Permitted Use in the (RSL) Residential Small Lot Zone.

[20] The Driveway with the extension was poured at the same time and there is no division line between the Driveway and the extension as it is one area of concrete.

[21] The original Development Permit was not presented by either the Development Officer or the Appellant and the Board has no way of knowing if the original Development Permit was only for the Driveway portion leading directly to the Garage.

- [22] The Driveway extension does not affect the (north) abutting property owner, as that property owner supports the Driveway extension.
- [23] The Driveway extension does not affect on-street parking because the length of the extension is smaller than the length of a vehicle.
- [24] The Appellant canvassed the neighbourhood and received 18 signatures out of 21 signatures of support for the development and there was one response in opposition. The Board finds that they are not directly affected.
- [25] Based on the evidence, the Appellant has parked on the Driveway extension for sometime with no known complaints.
- [26] The other portion of the Front Yard is landscaped with trees, shrubs, and grass and the property that is immediately abutting the Driveway extension is landscaped with grass.
- [27] 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

Board Members in Attendance

Mr. V. Laberge; Mr. A. Bolstad; Ms. D. Kronewitt Martin; Ms. G. Harris

Important Information for the Applicant/Appellant

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 - 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.
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Date: November 30, 2017
Project Number: 000854982-003
File Number: SDAB-D-17-219

Notice of Decision

- [1] On November 15, 2017, the Subdivision and Development Appeal Board (the “Board”) heard an appeal that was filed on **October 26, 2017**. The appeal concerned the decision of the Development Authority, issued on October 25, 2017, to refuse the following development:

Construct exterior alterations to an existing Apartment condominium unit (Balcony Enclosure, 4.31m x 2.05m).

- [2] The subject property is on Plan CD1774 Unit 41, located at 1603, 11920 - 100 Avenue NW, within the DC1 Direct Development Control Provision (Area 7 of the Oliver Area Redevelopment Plan) (the “DC1”). The Oliver Area Redevelopment 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 SDAB-D-12-132;
 - 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 on-line response from a condominium owner in support of the appeal.
- [4] The following exhibits were presented during the hearing and form part of the record:
- Exhibit A – Photographs of the condominium building submitted by an affected condominium owner in support of the appeal; and
 - Exhibit B – A brochure from the supply company 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, Mr. J. Angeles*

- [8] Mr. Angeles appreciates the proposed design changes to the balcony; however the proposal is deemed to be an enclosure, which is part of the Floor Area Ratio (“FAR”) calculation. The DC1 states that the maximum FAR is 3.0.
- [9] The building is non-conforming and it is already more than the maximum allowable FAR. The proposed development will increase the FAR to 5.26.
- [10] He has no authority to vary FAR both in the DC1 and in any other Zone.
- [11] Mr. Angeles provided the following information in response to questions from the Board:
- a. The 5.26 FAR calculation does not include any of the balconies except for the proposed development.
 - b. In his opinion, adding windows to the balcony encloses the building.
 - c. A photograph of the subject building was referenced (*Exhibit A*) to show other similar balconies. Mr. Angeles indicated that most of the enclosures do not have permits. There is one enclosed patio on the main floor that is not included in the FAR.
 - d. All of the units with glass enclosures are at risk with Bylaw Enforcement.
 - e. Mr. Angeles agreed that interpreting what is an enclosure depends on the Development Officer.
 - f. The proposed development is considered an enclosure because all sides and the top have been covered. He acknowledges that the windows can open, but other times it will be closed.

- g. Heating is not a factor when it comes to the definition of Floor Area and FAR.
- h. With respect to a remedy for the Appellant, there has to be a permanent opening on the balcony. In his opinion, rezoning would be difficult because this is a DC1.
- i. The sole reason for refusal is because of the FAR variance.
- j. With regard to ventilation gaps and the Lumon Glazing System report submitted by the Appellant, he indicated that he can only interpret the drawings and not engineering terms. He reiterated that because the enclosure goes from top to bottom on all sides, it is considered enclosed.
- k. With regard to privacy screening, if air can freely flow through the screenholes he would not deem it to be an enclosure. However, screening is not the same as a glass panel. Glass is solid.

ii) Position of the Appellant, Ms. N. Swinton

- [12] Ms. Swinton would like to enclose the balcony to reduce the wind so the space can be utilized more often. The balcony will not be fully enclosed as there will be space between the glass panels. There are other balconies in the building that are enclosed.
- [13] The building already exceeds the FAR and the Height, which violates the Oliver Area Redevelopment Plan.
- [14] There is a curb around the balcony that is 8 inches high and the panels will sit on top of that curb. The curb has holes in the bottom to accommodate water drainage from rain and melting snow.
- [15] She provided the Board with a brochure of the product that will be used for the enclosure, including how the glass panels will sit above the drainage holes, marked *Exhibit B*.
- [16] There will be eight glass panels along the front of the balcony.
- [17] The Condominium Board has approved glass enclosures for balconies. The Condominium Bylaw does not allow for an enclosed balcony to be used as living space.
- [18] There is a ventilation gap above the glass panels.

iii) Position of Mr. B. Walker, an affected condominium owner in support of the Appellant

- [19] Mr. Walker provided the Board with photographs showing existing balcony enclosures in the building.

- [20] It would be better for the building if all of the units had enclosed balconies for energy efficiency.
- [21] If the balconies were enclosed they would be used more throughout the year.
- [22] Not all of the balcony enclosures are fixed. They can be open or closed to accommodate windy days.
- [23] The Oliver Area Redevelopment Plan was not in place when the building was constructed approximately 50 years ago and the DC1 came into effect after that time.
- [24] The Pearl tower development adjacent to the subject site should have been a 12 storey development but it was rezoned to a Direct Control District.
- [25] Residents in the building who have balcony enclosures may not have a development permit but may have a building permit.
- [26] About 30 percent of the balconies in the building are already enclosed and are being enclosed to provide a wind block and/or safety.
- [27] In response to questions by the Board, Mr. Walker stated that this is the first time a proposed balcony enclosure was refused as several balconies in the building are already enclosed.
- [28] The Condominium Board has not looked into rezoning the property.
- [29] Ms. Swinton and Mr. Walker could not comment if the Development Officer failed to follow the directions of Council.
- [30] The Condominium Board has a Bylaw that does not allow for balconies to be heated.

Decision

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

Reasons for Decision

[32] Section 641(4)(b) of the *Municipal Government Act* states:

Despite section 685, if a decision with respect to a development permit application in respect of a direct control district is made by a development authority, the appeal is limited to whether the development authority followed the directions of council, and if the subdivision and development appeal board finds that the development authority did not follow the directions it may, in accordance with the directions, substitute its decision for the development authority's decision.

[33] Under section 6.1(39) of the *Edmonton Zoning Bylaw*, Floor Area means:

the total Floor Area of the building or structure, contained within the outside surface of the exterior and Basement walls, provided that in the case of a wall containing windows, the glazing line of windows may be used.

[34] Under section 6.1(40) of the *Edmonton Zoning Bylaw*, Floor Area Ratio means:

the numerical value of the Floor Area of the building or structure relative to the Site upon which it is located, excluding: (a) Basement areas used exclusively for storage or service to the building; (b) parking areas below Grade; (c) walkways required by the Development Officer; and (d) Floor Areas devoted exclusively to mechanical or electrical equipment servicing the development, divided by the area of the Site.

[35] The Development Officer determined the proposed development is permanently enclosed; therefore the balcony with the non-conforming building exceeds the maximum allowed Floor Area Ratio of 3.0 and therefore had no authority to vary the Floor Area Ratio.

[36] However, the Board finds that the proposed development is not permanently enclosed for the following reasons:

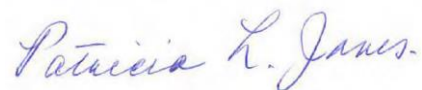
- (1) Based on the evidence provided there are:
 - (a) sliding glass panels which do not join together to form a solid wall, but have open spaces between them;
 - (b) drainage holes along the floor that allow for the removal of water and snow accumulation and which also provide ventilation; and,
 - (c) an open ventilation area across the top of the glass panels.

- (2) Although there are solid glass walls at each of the ends of the balcony, the front portion can be completely opened and even when closed, provide for open ventilation areas between the panels, along the top and at the floor level of the balcony.
- (3) The Condominium Board approves making the balconies more useable.
- (4) There are other permitted enclosed balconies associated with this building.

[37] For the above reasons the Board does not deem this an enclosure.

[38] Therefore, the Board finds that because the proposed development does not meet the definition of Floor Area, the balcony is not included in the Floor Area Ratio and no variance is required.

[39] Based on the above, the Development Officer did not follow the directions of Council and accordingly the Board has approved the proposed development.



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

Board Members in Attendance

Mr. V. Laberge; Mr. A. Bolstad; Ms. D. Kronewitt Martin; Ms. G. Harris

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