



**EDMONTON
TRIBUNALS**

*Subdivision &
Development
Appeal Board*

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Date: December 7, 2017
Project Number: 261536006-001
File Number: SDAB-D-17-225

Notice of Decision

- [1] On November 22, 2017, the Subdivision and Development Appeal Board (the “Board”) heard an appeal that was filed on October 30, 2017. The appeal concerned the decision of the Development Authority, issued on October 19, 2017 to refuse the following development:

Construct exterior alterations to a Single Detached House, existing without permits (Driveway extension, 0.9m to north Side Lot Line and 0.9m to south Side Lot Line)

- [2] The subject property is on Plan 0940298 Blk 18 Lot 1, located at 3631 - 15A Street NW, within the RSL Residential Small Lot 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:
- Copies of the refused permit and permit application with attachments;
 - Development Officer’s written submissions dated November 14, 2017;
 - Correspondence from Transportation; and
 - Appellant’s supporting materials, including a petition 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.

Summary of Hearing

i) Position of the Appellants, Mr. K. Bariar and Ms. K. Bariar

- [7] The Appellants built the house with a legal Secondary Suite and poured the Driveway extension at the time of the original construction. The only access to the Secondary Suite is an exterior entrance halfway along the north side of the house.
- [8] The original purpose of the Driveway extension was to provide parking for the Secondary Suite as two “No Parking” signs were located in front of their property; one near the utility box and one near the corner of 36A Avenue and 15A Street. These signs were later removed by the City at the request of the Appellants.
- [9] Mr. Bariar provided signatures of support for the development from eleven property owners within the 60 metre notification area, including the most immediately affected neighbour to the north.
- [10] There is one foot of space between the edge of their Driveway and the adjacent property line to the north. The Appellants have not discussed snow removal with the neighbours to the north.
- [11] The Appellants have sold the subject property and no longer live there, but they confirmed that the Secondary Suite is still in place. A Real Property Report was required at the time of sale, which identified that a permit was required for the Driveway extension.
- [12] There was some confusion as to the size of the extension being applied for, as extra lines had been hand drawn on the Real Property Report by the Appellants. Upon comparing the photo of the property against the Real Property Report it was determined that the original version of the report was correct. The hatched area was an accurate portrayal of the Driveway extension as it exists, not the lines drawn by the Appellants.
- [13] The Appellants also confirmed that they do not intend to add any additional concrete to what is already in place.

ii) Position of the Development Officer, Mr. J. Xie

- [14] The Development Officer did not attend the hearing and the Board relied on his written submissions.

Decision

- [15] 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 Board revises the Scope of Application as follows:

Construct exterior alterations to a Single Detached House, existing without permits (Front Driveway and two contiguous Walkway extensions, 0.9m to the north and 0.9m to the south)

- [16] The development is subject to the following CONDITION:

Conditions

1. The Driveway extensions identified in the Real Property Report are approved as Walkways connecting the main entrance of the principal building to the sidewalk and the entrance of a Secondary Suite to a sidewalk. These Walkways may not be used for parking.

Advisements

1. All proposed residential driveways, located in close proximity to any surface utility, do not have city enforced at grade offsets and therefore must be located to meet the at grade offset requirements of the associated utility company.
2. There is an existing Shaw pedestal in close proximity to the driveway extension. Should relocation of the pedestal be required, all costs associated with relocation of the surface utility will be borne by the owner/applicant. The applicant must contact Shaw Cablesystems at planningedmonton@sjrb.ca regarding minimum clearances to be maintained from the existing Shaw pedestal located adjacent to the existing gravel access.
3. There may be utilities within road right-of-way not specified that must be considered during construction. The owner/applicant is responsible for the location of all underground and above ground utilities and maintaining required clearances as specified by the utility companies. Alberta One-Call (1-800-242-3447) and Shaw Cable 1-866-344-7429; www.digshaw.ca) should be contacted at least two weeks prior to the work beginning to have utilities located. Any costs associated with relocations and/or removals shall be at the expense of the owner/applicant.

Reasons for Decision

- [17] The proposed development is Accessory to a Permitted Use in the RSL Residential Small Lot Zone.

- [18] The Board finds that the provision of Walkways connecting the sidewalk to both the entrance of the principal residence and the entrance of the Secondary Suite are in accordance with section 6.1(122), which defines Walkway as “a path for pedestrian circulation that cannot be used for vehicular parking”. The proposed development is more accurately characterized as two Walkways totaling 0.9 metres in width, a size that makes it prohibitive for parking purposes. Accordingly, based on the definitions of Walkways and Driveways per the Zoning Bylaw, the proposed development is for two Walkways, and not for extensions to the Driveway.
- [19] The Edmonton Zoning Bylaw 12800 contains separate definitions for Walkway and Driveways, but these definitions do not preclude Walkways and Driveways abutting each other.
- [20] The practice of pouring Driveways and Walkways contiguously is common in residences with front access Garages, and is done for economic reasons to reduce the amount of formwork required as well as to facilitate pouring of all front concrete at the same time.
- [21] The Board notes the signatures of support for the development from eleven adjacent property owners, including the most affected neighbour immediately to the North.
- [22] The Board further notes that the Transportation Department took no exception to the Walkways or Driveway extensions *per se*, but only to the proximity of the north Walkway to a service pedestal, which has been noted in the attached advisement.
- [23] The Board concludes 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.

Noel Somerville, Presiding Officer
Subdivision and Development Appeal Board

Board Members in Attendance

Ms. K. Cherniawsky, Mr. A. Bolstad, Ms. S. LaPerle, Ms. D. Kronewitt Martin

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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SDAB-D-17-226

Application 253125927-002

An appeal to move on a storage building (6.1 m x 2.4 m) Accessory to a General Retail Stores was POSTPONED to January, 2018. Date to be determined.



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Date: December 7, 2017
Project Number: 257148833-001
File Number: SDAB-D-17-227

Notice of Decision

- [1] On November 22, 2017, the Subdivision and Development Appeal Board (the “Board”) heard an appeal that was filed on October 29, 2017. The appeal concerned the decision of the Development Authority, issued on October 20, 2017, to approve the following development:

Construct a Single Detached House with an Unenclosed Front Porch, rear attached Garage, rear partially covered deck, fireplace, Secondary Suite, and to demolish the existing rear detached Garage

- [2] The subject property is on Plan 707HW Blk 20 Lot 28, located at 11300 - 58 Street NW, within the RF1 Single Detached Residential Zone. The Mature Neighbourhood Overlay applies to the subject property.

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

- Copies of the approved permit and permit application with attachments;
- Appellant’s written submissions;
- Respondent’s written submissions with supporting materials, including a PowerPoint presentation;
- Two letters from neighbouring property owners in opposition to the development;
- One online response expressing neither support nor opposition; and
- Development Officer’s written submissions dated November 16, 2017, with various plans and drawings.

- [4] The following exhibits were submitted by Ms. L. Traynor and Mr. C. Traynor during the hearing and form part of the record:

- Exhibit “A” – Map of Area showing Assessment Values
- Exhibit “B” – Survey of their lot
- Exhibit “C” – Photo of their home
- Exhibit “D” – Their home in relation to the lot next door

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 Appellant, Ms. A. Coffin

- [8] The original homes in Highlands were built from 1912 into the 1940s and 1950s. Some of these older homes have not been well maintained including the original home that was on the subject lot. New owners often demolish older homes and rebuild, while other homes are salvaged or maintained by the current owners.
- [9] The proposal for the pedway is at the centre of her appeal. The total length of the house, pedway and attached garage makes the total frontage too large and overbearing in relation to the rest of the homes in the neighbourhood, particularly in relation to the 1912 Buttercup farmhouse, a photo of which was included in her appeal.
- [10] If the pedway were eliminated the garage could be re-located further towards the lane which would allow more room for a garden or an inviting space.
- [11] The proposed development will obscure the view of the neighbouring property to the west and allowing this development would be precedent setting.
- [12] While she understands that minimum setback requirements have been met, allowing everything to be built to the maximum standard is a poor way to design something. Edmonton should re-think its approach of allowing developers to always build to the maximum allowable.

ii) Position of Affected Property Owners in Support of the Appellant

- [13] Ms. L. Traynor and Mr. C. Traynor appeared in support of the appeal. They live immediately west and adjacent to the proposed development and agree with the Appellant that the scale of the proposed home is out of context with the majority of the houses in the neighbourhood. Their home will be dwarfed and their morning light will be restricted.
- [14] The proposed development will have a footprint of 2,100 square feet with a total living area of approximately 7,000 square feet with the Garden Suite. It is their understanding

that a basement suite is also planned which would enable three separate households to reside in the building.

- [15] They submitted Exhibit “A”, which is a map of the surrounding properties and their assessment values. Their home, at 1,250 square feet, has one of the top three assessment values in the immediate vicinity. The home which was previously on the subject site and most homes on this block are approximately 1,000 square feet. There has been other infill of a smaller scale in the neighbourhood, which they welcome, as it helps renew the neighbourhood and increases property values.
- [16] They feel the minimum required front setback of the proposed development has been improperly calculated and submitted the following documents to support this:
- Exhibit “B” – Survey of their lot
 - Exhibit “C” – Photo of their home
 - Exhibit “D” – Photo of their home in relation to the lot next door

Their lot is triangular and as a result, the Front Setback of their home has been calculated at only 4.5 metres when in reality it is closer to 9.0 metres. The proposed development will protrude well past the front of their home, obscuring half of their Front Yard. There are no other examples in the neighbourhood of other infill homes that are built so far beyond the adjacent home.

- [17] The Mature Neighbourhood Overlay states that the Front Setback of a home must be within 1.5 metres of the adjacent homes and the proposed development is not compliant with this regulation. They would prefer that the entire development be pushed further back on the lot towards the lane.
- [18] The construction of such a large structure could damage the existing large boulevard trees, particularly the one closest to their home. The previous home had a much larger Front Setback so the tree roots would have grown quite far into the Front Yard. When she stands at the 4.5 metre property line she is still well under the canopy of the elm trees. She would like the City to do a full assessment of these valuable trees before any development is granted.
- [19] They are opposed to the pedway as it adds unnecessarily to the building width on the lot and results in a reduction of the required Rear Setback. The proposed development is already at the minimum setback on the other three sides; to exceed the minimum requirement at the rear is too much. They would like to see the pedway removed and the house pushed back further on the site. They would have no problem with an attached Garage.
- [20] While they initially indicated that they were in favour of the variances, granting them is what allows a 2000 square foot home to be developed on this site.

iii) Position of the Development Officer, Mr. G. Robinson

- [21] The Development Officer did not attend the hearing and the Board relied on his written submission. A short recess was called to allow the parties in attendance time to review the Development Officer's written submission.
- [22] Ms. Coffin referred to the community consultation summary in the Development Officer's report. A letter that she had sent to the Respondent and copied to the Development Officer on October 22, 2017 was not included in this summary, and the opinion of the residents of 11302 – 58 Street has now changed.
- [23] Ms. Traynor commented that their initial comments were included in the Development Officer's document report but their opinion changed once they had a chance to review the Mature Neighbourhood Overlay regulations and the building plans.

vi) Position of the Respondent, Mr. R. Soni

- [24] Mr. Soni has lived in Edmonton all of his life and has always aspired to live in Highlands. The area is beginning to go through infill and he has been as transparent as possible with his development plans. The neighbours have been very welcoming.
- [25] Except as noted, the home complies with all regulations of the Mature Neighbourhood Overlay. The Development Officer has allowed the Garage to be attached via a small pedway; therefore, two variances are now required to comply with the Edmonton Zoning Bylaw. If this pedway were eliminated, the proposed development would comply completely and no variances would be required. They are under the maximum permitted Height and could build closer to the east property line.
- [26] The proposed development has been designed to meet the section 93 requirements for inclusive design in the Edmonton Zoning Bylaw to accommodate a family member with mobility issues. The pedway contains no living space and its purpose is to allow no-step entry to the garage. The pedway is only one Storey and is intentionally designed to be small, avoiding any massing effect. It has been situated closer to the east side of the property to respect the immediately adjacent neighbours to the west.
- [27] Other than an existing Garage and Driveway that will be demolished, this lot has been vacant for some time. Neighbours they spoke to were happy that a single family home was planned for the site. The Respondents have designed a home compatible with the Highlands neighbourhood and are including traditional architectural features such as sloped roofs, a wrap-around porch and a stone facade.
- [28] Photos of other nearby attached Garages were included in the Respondent's submission to demonstrate that such developments are not uncommon in the area. The proposed attached Garage will exit into the back lane rather than onto 58 Street, as is the case with the existing Garage. This increases safety for pedestrians and protects the large boulevard

trees. One of the reasons the Sonis were attracted to this lot was because of these beautiful trees and they will work with the City to protect them.

- [29] They took care to follow all of the City's development approval processes exactly. They followed all suggestions made by the Development Officer including how to situate the house on the lot. Strong support was received from many neighbours during the community consultation process including support from the owner of the historic Buttercup Farm House that this appeal refers to. The bylaws allowed an attached garage on the flanking side road when they first began the application process; however, the Mature Neighbourhood Overlay has recently been updated and a variance is now required.
- [30] The Sonis have invested a significant amount of time, money and effort into this project and it is financially prohibitive to make any substantial design changes now. As the lot is a unique reverse pie shape, it is not possible to push the development further towards the lane as the required Side Setbacks would no longer be met. Mr. Soni acknowledges that this development is a large home but they are within their rights to develop it.
- [31] No work has been done on the lot since they purchased it other than the removal of some dead trees. They intend to create an attractive landscape design including planting two coniferous and two deciduous trees. A retaining wall may be required between the subject site and the immediately adjacent lot to the west to ensure there are no drainage issues. They would incorporate such a wall into some type of garden feature.
- [32] They are not developers, just a family looking to build a long-term home. They have no intention of building a separate suite in the basement and it has not been included in the plans. They intend to apply for the Cornerstone Grant Program for the Secondary Suite above the Garage, which requires that they own the property for a minimum of five years – otherwise this grant would have to be refunded.
- [33] The Garage Suite will be accessed by exterior stairs with privacy screening. This screening is a requirement of the City.
- [34] They strongly believe their home and the required variances 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. The proposed development conforms with the Use prescribed for that land as a single family home. It will complement and enhance the beauty of the neighbourhood.

v) *Rebuttal of the Appellant*

- [35] She believes the Garage orientation is a non-issue. Her issue is with the large, visually wide area. Even without the pedway the house is 25 percent wider than any other house in the area. When the pedway and the Garage are taken into account the combined width is double the width of the next widest house in the area.

- [36] The need for a pedway is temporary in nature but will become a permanent feature of the development.
- [37] She has genuine concerns regarding the proposed development and feels it is important for the City to look after needs and concerns of existing residents.

Decision

- [38] The appeal is DENIED and the decision of the Development Authority is CONFIRMED. The development is GRANTED as approved by the Development Authority.
- [39] In granting the development the following variances to the Zoning Bylaw are allowed:
- a. Section 814.3(4) is varied to permit a deficiency of 8.31 metres for the minimum required distance from the house to the rear property line, thereby increasing the minimum allowed to 7.53 metres (19% of site depth) instead of the required 15.84 metres (40% of site depth).
 - b. Section 814.3(19) is waived to allow the rear Garage to be attached.

Reasons for Decision

- [40] The proposed development is for a Single Detached House with Secondary Suite, both of which are Permitted Uses in the RF1 Single Detached Residential Zone. The proposed development is located both in the RF1 Zone and the Mature Neighbourhood Overlay.
- [41] The Board accepts the Respondent's rationale for the two variances granted.
- a. The minimum required distance from the house to the rear property line of 40 percent is only deficient because of the pedway attaching the principal residence and the garage. Without this connector the Rear Setback to the house would be in excess of the minimum required.
 - b. Further, the Board accepts the Respondent's rationale for the need for the connector between the house and the garage as the house has been designed to comply with the section 93 requirements for inclusive design to accommodate an elderly relative with mobility problems.
- [42] The Board acknowledges the concerns of the Appellant and other residents in the area, which relate largely to the scale and massing of the proposed development. However, issues with respect to scale and massing are typically associated with Height and Site Coverage overages, and in this case, the development complies with all Height, Site Coverage, and Front and Side Setback regulations.

- [43] The Board also acknowledges the concerns of the neighbours to the West about the projection of the proposed development beyond the front of their house. However, information provided to the Board indicates that the proposed development complies fully with the minimum required Front Setback of the Mature Neighbourhood Overlay. Furthermore, given the unique shape of the lot, if the development were moved back toward the rear Lot Line a portion of the home would project into the required interior Side Setback.
- [44] The Respondent has completed a comprehensive community consultation that generated substantial support even though two of the supporters have subsequently reversed their opinions. The Board also notes that the Respondents provided information that attached garages are characteristic of the area even though they are no longer permitted under the revised Mature Neighbourhood Overlay.
- [45] For the above reasons, the Board finds that the two variances granted 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.
- [46] Accordingly the Board denies the appeal.

Noel Somerville, Presiding Officer
Subdivision and Development Appeal Board

Board Members in Attendance

Ms. K. Cherniawsky, Mr. A. Bolstad, Ms. S. LaPerle, Ms. D. Kronewitt Martin

Important Information for the Applicant/Appellant

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