



**EDMONTON  
TRIBUNALS**

*Subdivision &  
Development  
Appeal Board*

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Date: November 8, 2018  
Project Number: 286679106-001  
File Number: SDAB-D-18-159

**Notice of Decision**

[1] The Subdivision and Development Appeal Board (the “Board” or “SDAB”) at a hearing on October 3, 2018, made and passed the following motion:

“That SDAB-D-18-159 be TABLED to October 25, 2018 at the written request of the Appellant.”

[2] On October 25, 2018, the Board made and passed the following motion:

“That SDAB-D-18-159 be raised from the table.”

[3] The Board heard an appeal that was filed on September 6, 2018. The appeal concerned the decision of the Development Authority, issued on August 16, 2018, to refuse the following development:

**Construct an Accessory building (detached Garage, 7.62 metres by 6.25 metres)**

[4] The subject property is on Plan 2064S Blk 2 Lot 7, located at 11422 - 77 Avenue NW, within the RF1 Single Detached Residential Zone. The Mature Neighbourhood Overlay and the McKernan / Belgravia Station Area Redevelopment Plan apply to the subject property.

[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 refused Development Permit;
- The Development Officer’s written submissions;
- The Appellant’s written submissions; and
- Online responses.

**Preliminary Matters**

- [6] At the outset of the appeal hearing, Ms. Jones indicated that she sat on a previous SDAB Hearing for the proposed site but felt she did not have a conflict to sit on the panel for this appeal. Mr. Lotzgeselle and Dr. Fairbanks did not have an issue with Ms. Jones sitting on the panel.
- [7] The Presiding Officer confirmed with the parties in attendance that there was no opposition to the remaining composition of the panel.
- [8] The Presiding Officer outlined how the hearing would be conducted, including the order of appearance of parties, and no opposition was noted.
- [9] 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. Lotzgeselle, who was accompanied by Dr. Fairbanks, the property owner*

- [10] Mr. Lotzgeselle represents Rosecrest Homes who is the builder for Dr. Fairbanks.
- [11] The size and footprint of the proposed garage was reduced from the previous application.
- [12] The garage ceiling was reduced to 8 feet instead of the standard 9 feet.
- [13] The foundation of the garage was reduced to keep in line with the grade of the house. There will be minimum slope to the rear lane for drainage.
- [14] Dr. Fairbanks would like to keep the original shape of the garage.
- [15] The garage door openers will need to be mounted on the side walls due to the reduced ceiling height.
- [16] Dr. Fairbanks referred to the photographs in his submission showing the subject dwelling that has two dormers on the roof.
- [17] Dr. Fairbanks has a large family and the attic area in the garage will be used for storage only.
- [18] Currently, they can park two vehicles and a small cargo trailer on the existing cement pad at the rear of the property.
- [19] The garage will have a drive through door for them to access their back yard where they will park a small cargo trailer.

- [20] If they reduced the size of the garage to the footprint allowed, there will be no storage and not much room to park the cars.
- [21] The dormers on the garage allow for natural light in the upper area of the garage and will match the subject dwelling.
- [22] The photographs submitted show mature trees that will screen the proposed garage from the street.
- [23] He referred to the two online responses received in opposition. Dr. Fairbanks stated that he has support from one of those neighbors who submitted concerns.
- [24] He canvassed the neighbourhood and spoke to 18 of the neighbours within the 60 metre notification radius. The majority of the neighbouring properties are rental properties. One of the neighbours indicated that developments should follow the regulations.
- [25] He does not agree with the concerns received from the neighbour who provided an online response. This neighbour rents out her property. He confirmed that the garage does not encroach on the side property setback as stated in her concerns.
- [26] He was not surprised by the opposition from the McKernan Community League as they do not usually support developments in the area.
- [27] The subject Site is three houses away from an LRT station.
- [28] His son lives in the main floor of the subject dwelling and there is a legal three bedroom basement suite that he rents out.
- [29] He referred to photographs in his submission showing other properties in the neighbourhood that are similar to the proposed development. Some of the garages in the area are taller than the proposed garage.
- [30] The attic area of the proposed garage will not be used as a suite.
- [31] The proposed garage will be characteristic of the neighbourhood, will not block the sun or the view of neighbouring properties.
- [32] Mr. Lotzgeselle and Mr. Fairbanks provided the following information in response to questions by the Board:
- a. Mr. Lotzgeselle confirmed that the dormers on the garage will be slightly smaller than in their previous application.
  - b. The roof line of the garage will have the same slope and the dormers will match the roof line of the dwelling.

- c. A garage two doors down from the subject site has large dormers across the width of the garage. The proposed garage will have two individual dormers, one on each side.
- d. The head space in the attic area will be 7 feet.
- e. They confirmed that the drive through door will accommodate the cargo trailer to be parked in the rear yard. There will be room to park small vehicles in the garage.
- f. They could not confirm the height of the other garages in the area and if they were granted variances.
- g. The neighbour in opposition is across the lane from the subject Site. There is no garage on this property and the back yard is used for parking for the renters of the property. Adjacent to this property is an older house with a small garage.
- h. When Mr. Fairbanks purchased the property, the house was in need of repair and he built an infill development. There was no garage on the property at that time.
- i. He does not see an excess of pedestrian traffic due to the LRT station in close proximity.
- j. The front of the house faces a cul-de-sac with access to the rear lane. Permitted parking is allowed on the street.
- k. A ladder will be used to access the attic area of the garage.
- l. The dormer is approximately 6 inches lower than the peak line of the roof.
- m. They confirmed that reducing the floor and incorporating a 6 inch concrete curb will be lower than the grade on the side of the garage.
- n. In their opinion, any sun shadowing on the adjacent property will be from the south. The garage will be built on the north side of the property and will not impact the properties across the rear lane.
- o. The roof pitch of the garage will be the same as the dwelling which is characteristic of the neighbourhood.

*ii) Position of the Development Officer, Mr. Yeung*

- [33] The Development Authority did not appear at the hearing and the Board relied on Mr. Yeung's written submission.

**Decision**

[34] The appeal is ALLOWED and the decision of the Development Authority is REVOKED. The development is GRANTED as applied for to the Development Authority, subject to the following CONDITIONS:

1. The development shall be constructed in accordance with the stamped and approved drawings.
2. Eave projections shall not exceed 0.46 metres into required yards or separation spaces less than 1.2 metres (Reference Section 44.1(b)).

Advisement:

1. The driveway access must maintain a minimum clearance of 1.5 metres from all surface utilities.

[35] In granting the development, the following variances to the *Edmonton Zoning Bylaw* are allowed:

1. The maximum allowable building Height of 4.3 metres (to midpoint) as per Section 50.3(3) is varied to allow an excess of 0.17 metres, thereby increasing the maximum allowed Height to 4.47 metres.
2. The maximum allowable building Height of 5.8 metres as per Section 52 is varied to allow an excess of 0.45 metres, thereby increasing the maximum allowed Height to 6.25 metres.

**Reasons for Decision**

[36] A Detached Garage is Accessory to a Permitted Use in the RF1 Single Detached Residential Zone.

[37] The Board recognizes that previously there was a proposed development at this location for a Detached Garage, which was not supported on appeal. The proposed development has been modified requiring less variances, both in the number of variances and the sizes of the variances, from the previous development permit.

[38] The Board finds that the two variances required for this development are inter-connected and the Board considered both individually and together.

[39] The Board accepts the photographic evidence submitted that there are taller detached garages in the neighbourhood and the proposed development is characteristic of the neighbourhood.

- [40] The Board accepts the evidence that the detached garage is designed in keeping with the roof lines and style of the newly constructed dwelling.
- [41] The proposed garage will be situated in the north portion of the lot. The design and setback of the detached garage will not have a sun shadowing effect on adjacent properties.
- [42] The Board finds, based on the approved plans, that there will not be a direct staircase or services to the attic area which will be used only for storage purposes and not a Garden Suite.
- [43] The Board was provided with 16 signatures in support from neighbouring property owners within the 60 metre notification radius.
- [44] The Board acknowledges the two online responses in opposition to the proposed development as well as a letter from the McKernan Community League. The Board finds that the concerns raised with respect to side yards and setbacks were not relevant. The Board considered the relevant concerns when determining whether or not the variances would have an impact on the neighbourhood.
- [45] The Board was not provided with any planning reasons that by granting the variances it would negatively impact adjacent property owners.
- [46] Based on the above, it is the opinion of the Board 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.

Mr. V. Laberge, Presiding Officer  
Subdivision and Development Appeal Board

Board Members in Attendance:

Ms. P. Jones; Mr. J. Kindrake; Ms. S. LaPerle; Ms. K. Thind

CC: City of Edmonton, Development & Zoning Services, Attn: Mr. Yeung / Mr. 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 Development & Zoning Services, 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 8, 2018  
Project Number: 291156606-001  
File Number: SDAB-D-18-176

**Notice of Decision**

- [1] On October 25, 2018, the Subdivision and Development Appeal Board (the “Board”) heard an appeal that was filed on **October 1, 2018**. The appeal concerned the decision of the Development Authority, issued on September 5, 2018, to approve the following development:

**Construct an Accessory Structure (Shed 36.42 m<sup>2</sup>) to a Religious Assembly.**

- [2] The subject property is on Plan 8521333 Blk 106 Lot 1A, located at 495 – Rhatigan Road East NW, within the (US) Urban Services Zone. The Rhatigan Ridge Neighbourhood Structure Plan and Riverbend Area 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 approved Development Permit;
  - The Development Officer’s written submission; and
  - An on-line response in opposition to the proposed development.
- [4] The following exhibit was presented during the hearing and forms part of the record:
- Exhibit A – A PowerPoint presentation 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.
- [8] At the outset of the appeal hearing, the Presiding Officer indicated that it is not within the Board's purview to deal with some of the concerns of the Appellant regarding drainage and fire code issues.

### **Summary of Hearing**

*i) Position of the Appellant, Mr. G. Lischuk*

- [9] He referred to his PowerPoint presentation showing the location, footprint, and size of the proposed shed that he measured himself.
- [10] He added a strip of plywood placed vertically on the fence along the Church to show the height of the proposed shed. The roof of the shed will be as high as the soffit on the houses across the rear lane.
- [11] The shed will be large, over height, close to the rear lane, and finished with vinyl siding which will not match the Church.
- [12] In his opinion, there is a 45 degree grade from the shed to the rear lane property line.
- [13] He referred to a photograph showing the rear of his property that faces the back of the Church.
- [14] The mature tree in the rear of the property was removed for security reasons and the proposed shed will impact security in the area.
- [15] Mr. Lischuk provided the following information in response to questions by the Board:
- a. The massing and finishing of the shed and the location on the property are his main concerns.
  - b. There is an ATCO Gas pumping station at the rear of his property along with a concrete pad to park his RV.
  - c. He has full view of the existing shed from his driveway and back door and it will feel like the new large shed will be in his rear yard.
  - d. The roof of the shed will be lower than the roof of the Church.
  - e. In his opinion, building a large development on his property would not impact the Church as it is not a residential property.
  - f. The mature trees shown in the photographs are on his property.

- g. He does not have an issue with the use of the shed but the size of the shed. In his opinion, the shed could be located on another area of the site.
- h. He spoke to neighbouring property owners and they have indicated that they have no concerns with the proposed shed.
- i. There is an existing fence that runs from the ATCO Gas area along his property and along the lane. The concrete RV pad is not fenced. All of the properties along the rear lane have a fence and there is a fence along the property of the Church.
- j. He confirmed that the rear lane is a dead end and there is no access to Riverbend Road from the lane.
- k. There are large spruce trees in the area that will block the view of the shed from Riverbend Road.
- l. He could not confirm if there will be additional lighting installed for the location of the shed. The rear lane is well lit already.
- m. The property immediately facing the shed has no rear access to the lane unless they remove part of their fence.

*ii) Position of the Development Authority, Mr. M. Harrison and Mr. B. Liang*

- [16] The Development Authority did not appear at the hearing and the Board relied on Mr. Liang's written submission.

*iii) Position of Mr. D. Burnstad, representing the Respondent, Burnstad Consulting, who was accompanied by Mr. J. Bexfield, neighbouring property owner*

- [17] The proposed shed is to provide additional storage for the Church.
- [18] If the Church was to expand, it would expand in approximately five years.
- [19] There is a nursery area in the Church which is also used for other functions. Furniture and supplies for the nursery will be stored in the shed. The current shed is in disrepair and is used for maintenance items.
- [20] The closest corner of the rear lane will be adjacent to the proposed shed. The shed will be situated closer to the Church than Rhatigan Road.

- [21] The shed will not be heated and they have not considered if lighting will be installed for the shed.
- [22] Mr. Burnstad and Mr. Bexfield provided the following information in response to questions by the Board:
- a. They are not aware of any other opposition from adjacent property owners. A neighbour approached the Church to obtain more information and verbally supported the proposed shed.
  - b. In their opinion, the location of the shed will have less of an impact than if it was along Riverbend Road.
  - c. In their opinion, the shed will be hidden by the fence and additional lighting will not enhance security. They are concerned that additional lighting could increase vandalism in the area.
  - d. The Church is finished with stucco and may need to be replaced in the future. The shed will be finished with vinyl siding.
  - e. They referred to photographs submitted showing the length of the rear lane along the Church fence.
  - f. In their opinion, a garage in the rear lane is no different than the proposed shed.
  - g. They agreed that the floor drawings of the shed submitted by the Appellant are accurate.

*iv) Rebuttal of the Appellant, Mr. Lischuk*

- [23] Traffic in the rear lane is used only by the Church.

**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, subject to the following **CONDITIONS**:
1. An accessory building or structure shall not exceed 4.3m nor one storey in height. (Reference Section 6.1(35) and 50.3(2)).

2. Eave projections shall not exceed 0.46m into required yards or Separations spaces less than 1.2m. (Reference Section 44.1(b)).
- [25] In granting the development the following variance to the *Edmonton Zoning Bylaw* is allowed:
1. The minimum required Side Setback of 4.5 metres per section 510.4(3) is varied to allow a deficiency of 4.05 metres, thereby decreasing the minimum required Side Setback to 0.45 metres.

### **Reasons for Decision**

- [26] The proposed development is Accessory to a Permitted Use in the (US) Urban Services Zone.
- [27] The Board considered the size of the variance and finds that the requirement is for 4.5 metres and the Side Setback is 0.45 metres with a variance of 4.05 metres. This location is unique as it is on a dead end rear lane with minimal access from adjacent properties, which limits the amount of traffic in the rear lane by not having direct access to Riverbend Road.
- [28] The location of the shed in the rear of the Religious Assembly and within the current building line of the Religious Assembly on Riverbend Road would be concealed significantly. The existing mature landscaping in the area will further obscure the view to the shed from Riverbend Road.
- [29] The Board recognizes that the existing parking area is needed to ensure compliance with the *Edmonton Zoning Bylaw* regulations and the operations of the Religious Assembly.
- [30] The proposed shed will not exceed the regulation for Height and complies with all the other regulations of the *Edmonton Zoning Bylaw* except for the subject Side Setback.
- [31] With respect to the massing effect concerns, the Board finds that the size of the Principal Building will make the appearance of the shed smaller.
- [32] The Board finds that the proposed shed would be similar to a detached Garage that may be built on a property along the rear lane of neighbouring properties.
- [33] The Board acknowledges the Appellant's concerns and the concerns of the neighbour that submitted an on-line response. However, many of the concerns had to do with drainage and building code requirements that are issues outside the Board's purview.
- [34] The Board was not provided with any planning reasons that the proposed shed will negatively impact the neighbourhood.

[35] Based on the above, it is the opinion of the Board 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.

Mr. V. Laberge, Presiding Officer  
Subdivision and Development Appeal Board

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CC: City of Edmonton, Development & Zoning Services, Attn: Mr. M. Harrison / Mr. A. Wen  
/ Mr. B. Liang

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