



**EDMONTON
TRIBUNALS**

*Subdivision &
Development
Appeal Board*

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Date: November 6, 2019
Project Number: 309470115-001
File Number: SDAB-D-19-168

Notice of Decision

- [1] On October 17, 2019, the Subdivision and Development Appeal Board (the “Board”) heard an appeal that was filed on **September 4, 2019**. The appeal concerned the decision of the Development Authority, issued on August 22, 2019, to refuse the following development:

To construct an Unenclosed Front Porch, exterior alterations (new windows and facade improvements), interior alterations (Basement development, NOT to be used as an additional Dwelling), a rear addition (rear attached garage, 6.09 metres by 12.18 metres), and a front driveway (existing without permits, 8.85 metres by 32.42 metres) to a Single Detached House.

- [2] The subject property is on Plan 5596KS Blk 8 Lot 28, located at 12942 - Sherbrooke 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 the refused Development Permit and the proposed plans;
- The Development Officer’s written submission;
- The Appellant’s reasons for appeal; and
- One online response in opposition and one e-mail in opposition to the proposed development.

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

- Exhibit A – Supporting documentation;
- Exhibit B – Site plan of existing development vs. proposed site plan; and
- Exhibit C – Letters of support for the proposed development.

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, Mr. B. Duclos and Ms. L. Rich*

- [8] The Appellants are aware that the present buildings and driveway do not conform to current zoning regulations but were allowed in 1960 when they were built. They are proposing renovations that respect past permit approvals and are sensitive to current zoning bylaws to maintain the integrity of the mature neighbourhood.
- [9] The intention of the renovations is to update the house to current housing standards and improve its value and utilization.
- [10] The Appellants then addressed the Development Officer's reasons for refusal in *Exhibit A*. *Exhibit B* was referenced to clarify what is being proposed.

Non-conforming Front Setback

- [11] The proposed renovations aim to update the front access to the house. The proposed enclosed climate controlled space extends two feet past the existing structure, improves the appearance of the house and is a safe landing for the front steps. The encroachment setback is marginal and the neighbours support it.
- [12] The front addition was designed to cover the existing forced walk-out into the basement, to prevent snow buildup on the stairway and increase safety. (A photograph was shown to provide context as to what is proposed).

Rear Setback

- [13] The shape and depth of the subject lot is unique and it is not fair to use the standard metric rules on this lot. If the proposed garage had rear access there would be three garages right at the dead end part of the alley creating congestion.
- [14] A larger rear setback also allows more space for utility vehicles (garbage trucks and maintenance vehicles) that need to back into the end of the alley as well as snow removal

vehicles in the winter. Leaving more space at the end of the loop also permits the City to push snow safely to the end of the dead end back alley without impeding access to the surrounding properties; in the winter there is usually a very large snow pile right at the end of the alley.

- [15] Photos were submitted to show the dead end portion of the alley, the power pole located at the corner, and the uneven fencing.

Vehicular Access

- [16] The plan was never to connect the front driveway to the back yard and this would not be possible as the width from the house to the property line on the east side is only 4.6 feet at the rear of the house.

- [17] The front driveway has existed since the house was built in 1960 and is supported by the neighbours. The front driveway allows for reduced street parking near the intersection of 129 Street and Sherbrooke Avenue, increasing sightlines at the intersection. This improves safety for vehicles driving across or turning at the corner and increases safety for pedestrians crossing the street to the school park at the elementary school. Photographs were used to show the limited parking in front of the subject site and the clear sightlines.

- [18] The front driveway allows for vehicle parking off the street, creating more room for the City bus and snow clearing vehicles.

Rear Attached Garage

- [19] A rear attached garage maximizes the useable amount of yard space while still allowing for a reasonably sized garage.

- [20] There would be 20 feet behind the garage which would allow a vehicle to be parked off the street. This is consistent with the objectives of current zoning bylaws.

- [21] With the exception of sun shading concerns to one window of the neighbouring house to the west, all neighbours approached have been very supportive. This window presently gets limited direct lighting in the late afternoon (approximately 1-2 hours depending on the time of year). There would be no yard shading effects due to a line of mature cedars on the neighbour's property and any afternoon shading would be on the subject property. A series of photographs taken on August 7, 2019 shows the current shadowing on the neighbour's window at 10:30 a.m., 11:00 a.m., 11:30 a.m., 12:00 p.m. and 12:30 p.m. The afternoon shading falls on the subject property.

Rear Projection

- [22] The Appellants have been deliberate in keeping projections at two feet and recognize that the attached garage does not conform to current zoning bylaws.

[23] The proposed rear yard renovations would align the garage with the house allowing for better vision and fencing between the properties of 12942 and 12946 which has become an access for vagrants walking from the rear alley to the front street. A photograph was shown to illustrate the narrow space between these two properties and the existing cedar trees in the neighbour's yard.

Conclusion

[24] This neighbourhood is viewed positively for the treed boulevards and large yards. However, its location close to 118th Avenue is viewed negatively. The proposed renovations will make the neighbourhood a more desirable place to live.

[25] The black dots on the notification map (Document 2, *Exhibit A*) indicate which neighbours signed letters of support (provided to the Board as *Exhibit C*). A letter of support was also received from the Sherbrooke Community League. Ms. Rich personally knocked on neighbour's doors, showed the proposed drawings and explained the details of the proposed development. They also presented their plans at a Community League meeting.

[26] The Appellants provided the following responses to questions from the Board:

- a) They re-poured the driveway at the time of purchase (2011) as it was in bad shape. The driveway was also extended during the 2011 renovation. The photograph in the Development Officer's submission accurately portrays the current driveway; there are no plans to enlarge it further.
- b) Neighbourhood renewal was done in this area in 2011 at which time the City re-poured the driveway access. Despite the large driveway there is still a significant amount of green space on the subject site.
- c) The Appellants acknowledged that there are discrepancies as to the actual measurements of the driveway and the measurements shown on the refused drawings.
- d) The corner of the proposed addition will roughly line up with the rear corner of the neighbour's house.
- e) The existing house and proposed addition will result in a wall that is 76 feet in length. There are existing cedar trees on the neighbour's property which will provide some screening of this wall.
- f) The proposed design is intended to keep as much parking as possible behind the garage. There are a number of rental properties directly across the street and the occupants of those rentals often take up the limited street parking available in front of the subject site.
- g) The Appellants do not have any concerns with the proposed conditions of the Development Officer should the Board grant this appeal.

- h) It is not possible to drive far enough up the driveway to park a car alongside of the house.
- i) The Appellants have never had issues with backing out of the driveway onto Sherbrooke Avenue as there are very clear sightlines. Neighbours, some of whom have lived here for 40 years, confirmed that there have never been any incidents regarding people backing out of this driveway.
- j) The Appellants confirmed that three properties within the 60-metre notification area have front access driveways.
- k) The Appellants have a holiday trailer which is parked on the front driveway during the summer months and stored behind the garage in the winter.

At this point the Board called for a short adjournment.

- [27] After re-convening, the Board stated that there are substantial inaccuracies on the plans as to the distance between the garage and the alley and with respect to what is actually hard-surfaced in the front yard. They requested the Appellants obtain a professionally prepared site plan by a surveyor that shows accurate dimensions of what currently exists on site and what is proposed.
- [28] The Appellants agreed to this request and felt they could provide the required information to the SDAB office by October 28, 2019. The Presiding Officer requested that the Board be advised as soon as possible if this date cannot be met.
- [29] The Appellants provided a revised site plan in accordance with the directions of the Board by email on October 25, 2019.

ii) Position of the Development Officer, Mr. R. Zhou

- [30] The Development Authority did not attend the hearing and the Board relied on Mr. Zhou's written submission.

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, subject to the following **CONDITIONS**:

1. **The development shall be constructed in accordance with the stamped and approved drawings including in accordance with the site plan provided by the Appellants on October 25, 2019.**
2. Immediately upon completion of the addition, the site shall be cleared of all debris.
3. As far as reasonably practicable, the design and use of exterior finishing materials used shall be similar to, or better than, the standard of surrounding development.
4. Frosted or translucent glass treatment shall be used on windows to minimize overlook into adjacent properties (Reference Section 814.3.8).
5. The proposed Basement development shall NOT be used as an additional Dwelling. An additional Dwelling shall require a new Development Permit application.
6. The proposed wet bar shall only be used by the household which uses the principal kitchen on the main floor.
7. Dwelling means a self contained unit comprised of one or more rooms accommodating sitting, sleeping, sanitary facilities, and a principal kitchen for food preparation, cooking, and serving. A Dwelling is used permanently or semi-permanently as a residence for a single Household. (Reference Section 6.1)
8. Household means: one or more persons related by blood, adoption, foster care, marriage relationship; or a maximum of three unrelated persons; all living together as a single social and economic housekeeping group and using cooking facilities shared in common. For the purposes of this definition, two people living together in an adult interdependent relationship shall be deemed to be in a marriage relationship and each of the relatives of the parties to an adult interdependent relationship shall be considered to be related to the partners and to the other relatives thereof. One domestic worker or one boarder may be deemed the equivalent of a blood relative (Reference Section 6.1).
9. There may be an inspection in the future to ensure that no illegal suite has been developed.
10. This development permit shall be revoked if the conditions of this permit are not met.

ADVISEMENTS:

1. Any future basement development requires development and building permit approvals.
2. Any future additional dwelling such as Secondary Suite shall require a separate development permit application.

3. The driveway access must maintain a minimum clearance of 1.5m from all surface utilities.
4. Unless otherwise stated, all above references to section numbers refer to the authority under the Edmonton Zoning Bylaw 12800.

[32] In granting the development, the following variances to the *Edmonton Zoning Bylaw* (the *Bylaw*) is allowed:

1. Section 814.3(1) is waived to allow a proposed front addition in the existing non-conforming Front Setback per the approved stamped plans.
2. Section 814.3(4) is waived to allow a deficient Rear Setback per the approved stamped plans.
3. Section 814.3(17) is waived to allow vehicular access off of Sherbrooke Avenue NW per the approved stamped plans.
4. Section 814.3(19) is waived to allow a rear attached Garage.
5. Section 44.1(a) is waived to allow rear eaves to project into the required Rear Setback per the stamped approved plans.
6. Section 54.2(2)(e)(i) is waived to allow parking spaces in the front access Driveway off of Sherbrooke Avenue NW.

Reasons for Decision

[33] This is an appeal of a development application to allow interior and exterior alterations to a Single Detached House which includes a rear attached Garage and Unenclosed Front Porch, and to allow a front Driveway (existing without permits). The subject Site is located in the (RF1) Single Detached Residential Zone. Single Detached Housing is a Permitted Use in the (RF1) Zone per section 110.2(7)).

[34] The subject Site has an irregular inverted pie shape. It is located at the dead end of a rear lane. Although the subject Site is an interior lot, it is located at the intersection of Sherbrooke Avenue and 123 Avenue NW.

[35] The Development Officer cited non-compliance with five development regulations in his reasons for refusal. Three of the cited regulations are from the Mature Neighbourhood Overlay (the "MNO") and required community consultation. Based on the Development Officer's report, the Board finds that the Development Officer complied in substance with the obligation for consultation with neighbours and the Sherbrooke Community League prior to rendering the refusal.

- [36] The Board considered two responses received as part of the required consultation: one in favour of the proposed development in its entirety and one in support of all aspects of the project other than the rear attached Garage and side yard windows.
- [37] In addition, the Board considered two letters of opposition received prior to the hearing. The first was from the abutting neighbour to the west who objected solely to the rear attached Garage mirroring the results of the community consultation (her concerns were that the windows would reduce privacy and limit sunshine and create massing). The second was from the Trustees for the School Board responsible for the school located kitty corner to the south east of the intersection next to the subject Site who by email stated the following “concerns over the front driveway and proximity to intersection, is there enough sightlines from the driveway to intersection thank you for the opportunity to provide a response.”
- [38] The Board also considered evidence provided by the Appellants who had canvassed all their neighbours within a 60 metres radius and had showed them the proposed plans. The Appellants provided several letters of support from neighbours within the notification area. To their knowledge, the sole objection was made by the adjacent neighbour to the west who supported the development with the exception of the rear attached Garage. The Appellants also attended a meeting of the Sherbrooke Community League to explain the proposed development and provided a letter of support for the proposed development from the president of the organization.
- [39] During the hearing it became clear that the submitted and refused site plan did not accurately reflect the proposed development, particularly with respect to the proposed Rear Setback and the dimensions of the existing Driveway. The Board adjourned to allow the Appellants the opportunity to provide a professionally prepared site plan with dimensions that accurately reflected the location of the proposed rear attached Garage and the existing paved area described as a Driveway. The Board considered the submitted revised site plan in these reasons and has made its decision on the basis of the revised site plan.
- [40] In accordance with its authority under section 687(3)(d) of the *Municipal Government Act*, the Board considered each of the variances separately and makes the following decisions.
- [41] The Board grants the variance to allow a front addition in the existing non-conforming Front Setback per section 814.3(1) of the *Bylaw* for the following reasons:
- a. According to the evidence presented by the parties, the existing house was built in the 1960s. The house has become a non-conforming building as it no longer complies with the current MNO regulations due to its Front Setback of 22.9 metres.
 - b. As noted by the Development Officer, the magnitude of the non-conformity will be reduced by the addition of the front porch and this portion of the addition will not cause sun shadowing or massing concerns for the abutting neighbour’s rear yard.

- c. The evidence demonstrates support from all the neighbours and the Community League.
- d. The most affected abutting neighbour to the west specifically supports this variance as an improvement.

[42] The variances to the Rear Setback and projections into the Rear Setback are related and raise the same considerations. They are required for the proposed development as the Appellants intend to attach their Garage to the rear of the principal dwelling in order to maximize usable space in the rear yard.

[43] The Board waives the prohibition on rear attached Garages in section 814.3(19), reduces the Rear Setback in section 814.3(4) and reduces the corresponding required Setback for the eaves from the rear lot line in section 44.1(a) for the following reasons:

- a. The Development Officer refused the application noting in part it would reduce amenity space in the subject Site. The Board was not persuaded that this was a reason to refuse the variances under the test in section 687(3)(d) as the Appellants' indicate in their view that the small gap which would exist if they did not connect the two buildings would not be useable and because a significant portion of the lot remains available for amenity space.
- b. Due to the unusual shape of the lot, the required Setback of 2.4 metres was calculated based on the side lot line along the east side lot line which is significantly larger than the west side lot line toward the abutting neighbour.
- c. The Board considered the abutting owners concerns for massing, sun shadowing as well as loss of privacy due to additional windows.
- d. This neighbour did not provide any evidence concerning current or potential sun shadowing impacts.
- e. According to the submitted plans, the proposed Garage will be no higher than the existing bungalow which is well below the maximum allowed Height for a principal dwelling or a Garden Suite.
- f. Photos submitted by the Appellants show that the shadows cast by their existing home now impact this neighbour's lot in the morning hours. The photos also show that this neighbour's own eaves limit sunlight to the one window facing the subject Site. Finally, the Board finds that any potential sun shadowing impacts are limited by the fact the abutting neighbour has a detached Garage and thick mature cedars along a portion of the shared side lot line.
- g. The proposed development does include an unbroken, lengthy wall along the west side lot line facing the objecting abutting neighbour. Based on the photos in the

Development Officer's report and the Appellants' materials, this massing impact is also broken up by the location of that neighbour's Garage and the existing mature vegetation which includes several dense cedars.

- h. The neighbour's privacy concerns are not created by the requested variances as the windows are not located in the 40 percent Rear Setback MNO requirement and they are nonetheless addressed in Condition 4 to which the Appellants agreed. Condition 4 requires frosted or translucent glass treatment on windows to minimize overlook into adjacent properties per section 814.3(8) of the MNO.
- i. Overall, the Board finds there may be some limited impact on direct light and privacy for one window during a portion of the day, but finds that the impact attributable to the variance allowing the rear attached Garage is not material.

[44] The Board grants a variance to section 54.2(2)(e)(i) to allow parking spaces in the front access Driveway off of Sherbrooke Avenue NW for the following reasons:

- a. The proposed development includes a paved area described as a Driveway leading from the street to the side of the house creating parking spaces in the Front Yard, including alongside the new addition to the front of the house. This paved area is not connected to the rear attached Garage.
- b. The paved area has most likely been in place and used as a Driveway for over 30 years with no known complaints.
- c. The Board raised the issue of potential safety concerns, given the location of the subject Site relative to the intersection. The Appellants provided evidence that although it is located next to an intersection, the Driveway has clear sightlines as shown in their photographic evidence and neither they nor their neighbours are aware of any safety issues. The abutting neighbour and all other canvassed neighbours and the Community League supported the Driveway and raised no safety concerns. The Board also reviewed the Development Officer's report and notes that the Development Officer raised no concerns with respect to traffic or safety issues.
- d. The Driveway is screened by mature coniferous trees and fencing along the east side lot line.
- e. Due to the unusual, inverted pie type shape and size of the lot, the Driveway with a width according to the revised site plan of approximately 4.4 meters at the front lot line takes up a small portion of the Front Yard leaving a significant majority (more than two thirds) of the Front Yard area fully landscaped. This also leaves the subject Site similar in appearance to the front Driveways of two houses in close proximity on the block face identified in the photos provided by the Appellants.

[45] For the above reasons and based on the totality of the evidence before it, 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. K. Cherniawsky, Presiding Officer
Subdivision and Development Appeal Board

Board Members in Attendance:

Mr. V. Laberge; Mr. J. Jones; Ms. S. McCartney; Mr. A. Peterson

c.c. City of Edmonton, Development & Zoning Services, Attn: Mr. R. Zhou / 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.



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Project 324487918-001 SDAB-D-19-178

An appeal to change the Use from a Limited Contract Services Use to a Cannabis Retail Sales and to construct interior alterations located at 8203 – 127 Avenue NW was **Postponed** to November 14, 2019