



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

SDAB-D-19-161

Application No. 315278379-001

An appeal to construct exterior alterations (new front access, Driveway and parking space, 4.57m x 17.37m) was **TABLED TO NOVEMBER 6 or 7, 2019.**



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Date: October 11, 2019
Project Number: 316178173-001
File Number: SDAB-D-19-162

Notice of Decision

- [1] On October 2, 2019, the Subdivision and Development Appeal Board (the “Board”) heard an appeal that was filed on September 5, 2019. The appeal concerned the decision of the Development Authority, issued on August 30, 2019, to refuse the following development:

Construct an Accessory Building (detached Garage, 7.32 metres by 6.71 metres)

- [2] The subject property is on Plan 2000U Blk 3 Lot 5, located at 9116 - 78 Avenue NW, within the RF3 - Small Scale Infill Development Zone. The Mature Neighbourhood Overlay applies to the subject property.

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

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

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

- Exhibit A – Drawing of the proposed garage 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 (the “*Municipal Government Act*”).

Summary of Hearing

i) Position of the Appellant, D. Menard

[8] The house was built approximately four years ago.

[9] The Appellant has used attic trusses in the past.

[10] The attic space will be used for storage purposes only.

[11] The garage will be 22 feet by 24 feet with space for two cars to be parked in the garage.

[12] There is an excess of 0.9 metres of height to the ridge line of the roof.

[13] The Appellant could build a Garden Suite that is higher than the proposed development and is a Permitted Use.

[14] The Appellant provided the following information in response to questions by the Board:

- a. The Appellant spoke to the immediately adjacent and approximately 90 percent of the neighbours and received verbal support from them. No opposition was provided.
- b. The house is a two-storey and the roof design will match the proposed garage.
- c. The ceiling height will be seven feet through the dormers and then will slope down.
- d. The double garage door will face the lane with a door that will access the rear yard.

ii) Position of the Development Officer, A. Seltz

[15] The Development Authority did not appear at the hearing and the Board relied on Mr. Seltz’s written submission.

Decision

[16] 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** and **ADVISEMENTS**:

1. Eave projections shall not exceed 0.46 metres into required Setbacks or Separations spaces less than 1.2 metres. (Reference Section 44.1(c)(ii)).

ADVISEMENTS:

1. The driveway access must maintain a minimum clearance of 1.5 metres from any service pedestal and other surface utilities.
2. A Building Permit is required for any construction or change in use of a building. Please contact the 311 Call Centre for further information.

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

1. The maximum allowable Height of 4.30 metres as per Section 50.3.3 is varied to allow an excess of 0.7 metres, thereby increasing the maximum allowed to 5.0 metres.
2. The maximum ridge line of the roof of 5.8 metres as per Section 52.2(c) is varied to allow an excess of 0.9 metres, thereby increasing the maximum allowed to 6.7 metres.

Reasons for Decision

[18] The proposed development, an Accessory Building (detached Garage) is Accessory to a Permitted Use in the RF3 Small Scale Infill Development Zone.

[19] The two variances relate to Height. The first variance is to the Height at the midpoint of the sloped roof. The proposed development exceeds the allowable by 0.7 metres. The second variance is to the Height to the ridge line of the roof. The proposed development exceeds that maximum allowable by 0.9 metres.

[20] The Board considers both of the variances in this case to be minor in nature. The Board accepts the evidence submitted by the Appellant he spoke to approximately 90 percent of neighbouring property owners within the 60-metre notification zone and none of them were opposed to the proposed development.

[21] The Board notes that, if the proposed development were for a Garden Suite, the allowed Height would be considerably greater than the proposed development.

[22] 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. M. Young, Presiding Officer
Subdivision and Development Appeal Board

Board Members in Attendance:

Ms. G. Harris; Mr. R. Hachigian; Mr. R. Hobson; Mr. J. Wall

CC: City of Edmonton, Development & Zoning Services, Attn: Mr. A. Seltz / 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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Date: October 11, 2019
Project Number: 147373923-005
147373923-003
147373923-004
147373923-001
File Number: SDAB-D-19-163
SDAB-D-19-164
SDAB-D-19-165
SDAB-D-19-166

Notice of Decision

- [1] On October 2, 2019, the Subdivision and Development Appeal Board (the “Board”) heard an appeal that was filed on September 10, 2019. The appeal concerned the decision of the Development Compliance Officer, issued on March 13, 2019, to comply with Orders to:

Demolish and remove the Accessory Building before July 1, 2019 (rear of the property)

Demolish and remove the covered addition (cold storage addition located at the northeast side of the principal building measuring 10 metres by 10.4 metres) before July 1, 2019

Demolish and remove the Accessory Building before July 1, 2019 (centre of property)

Cease the Temporary Storage Use and REMOVE all related materials by July 1, 2019

- [2] The subject property is on Plan 2069RS Lot 2, located at 5904 - 51 Avenue NW, within the A Metropolitan Recreation Zone and AGI Industrial Reserve Zone. The North Saskatchewan River Valley and Ravine System Protection Overlay applies to the subject property.

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

- Copy of the Stop Orders with attachments;
- The Development Compliance Officer’s written submissions; and

- The Appellant's written submissions.

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

- Exhibit A – PowerPoint Presentation submitted by the Development Compliance Officer
- Exhibit B – Canada Post Delivery Confirmations submitted by the Development Compliance Officer.

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 Chair advised the Appellant that the Board must first determine if the appeal was filed on time in accordance with Section 686 of the *Municipal Government Act*, RSA 2000, c M-26 (the "MGA"), which states:

Appeals

686(1) A development appeal to a subdivision and development appeal board is commenced by filing a notice of the appeal, containing reasons, with the board,

(a) in the case of an appeal made by a person referred to in section 685(1)

...

(ii) with respect to an order under section 645, within 21 days after the date on which the order is made, or...

- [8] The Stop Orders are dated March 13, 2019, and the appeals are dated September 10, 2019.
- [9] It appears to the Board that the 21-day appeal period began to run on March 13, 2019, which means that the time for filing the appeal expired on April 3, 2019. The appeals were filed on September 10, 2019, considerably outside of the 21-day appeal period. On the face of it, it appears that the appeal is out of time. The Board asked the Appellant to address this issue.

Summary of Hearing on Preliminary Matter*i) Position of the Appellant, Mr. K. Anderson, who was accompanied by Mr. D. Morie*

- [10] They are the new property owners of the subject Site.
- [11] In their opinion, when they received verbal extension that the 21 days to file an appeal was no longer valid.
- [12] They received extensions for the July 1, 2019 deadline and thought the Stop Order was just for a review of the property.
- [13] The Stop Orders were issued 18 days from the time they purchased the property.
- [14] The Development Compliance Department was investigating the property long before they purchased the property.

ii) Position of the Development Compliance Officer, Mr. Gowda, who was accompanied by Ms. E. Peacock

- [15] Mr. Gowda referred to his PowerPoint presentation that was submitted to the Board (marked Exhibit A).
- [16] An aerial photograph showed the subject Site.
- [17] The Property has a zoning boundary line that has a split zoning. The east: (AGI) Industrial Reserve Zone: General Industrial Use is neither Permitted nor Discretionary. The West: (A) Metropolitan Recreation Zone: General Industrial Use is neither Permitted nor Discretionary. The property is within the North Saskatchewan River Valley and Ravine System Protection Overlay
- [18] A Zoning Map shows the area of the Site within the zone it falls.
- [19] The first Stop Order was issued on March 13, 2019 to Sound Alliance Ltd. The investigation revealed the property was being as a Temporary Storage Use (fenced storage of commercial trucks, industrial machinery, tools, construction equipment) at the north portion of the property developed without a Development Permit. Compliance was to Cease the Temporary Storage Use and Remove all related materials by July 1, 2019.
- [20] An aerial photograph shows the boundary of the subject Site.
- [21] The second Stop Order was issued on March 13, 2019 to Sound Alliance Ltd. An investigation revealed a covered Addition (cold storage Addition located at the Northeast side of the principal building measuring 10 m x 10.4m) has been developed without a Development Permit.

Compliance was to Demolish or remove the covered Addition (cold storage Addition located at the Northeast side of the building measuring 10m x 10.4 m) before July 1, 2019.

- [22] An aerial photograph shows the building on the subject Site.
- [23] The third Stop Order was issued on March 13, 2019 to Sound Alliance Ltd - Investigation revealed an Accessory building (grey steel building located centrally in the property measuring 12 m x 15 m) has been developed without a Development Permit. The Compliance was to Demolish or remove the Accessory building before July 1, 2019.
- [24] An aerial photograph shows the location of the building on the subject Site.
- [25] The fourth Stop Order was issued on March 13, 2019 to Sound Alliance Ltd. Investigation revealed an Accessory building (grey steel building located along the north portion of the property measuring 9.2 m x 12.4 m) has been developed without a Development Permit. Compliance was to Demolish and remove the Accessory building before July 1, 2019.
- [26] An aerial photograph shows the location of the building on the subject Site.
- [27] All of the Stop Orders were issued in accordance with Section 645 of the *Municipal Government Act* (MGA).
- [28] Section 686(1)(ii) of *Municipal Government Act* reads: A development appeal to a subdivision and development appeal board is commenced by filing a notice of appeal, containing reasons, with the board with respect to an order issued under section 645, within 21 days after the date on which the order is made.
- [29] All of the Stop Orders were delivered by registered mail to property owner on March 13, 2019. Canada Post Delivery Confirmations were marked Exhibit B.
- [30] The Stop Orders were appealed to the Subdivision and Development Appeal Board on September 10, 2019 which exceeds the allowable 21-day appeal period.
- [31] On September 21, 2019, an LDA has been initiated for re-zoning of the subject property from A / AGI to DC2.
- [32] Mr. Gowda spoke to a Senior Planner on September 30, 2019 and noted that, although the LDA has been initiated, the application is incomplete and has not been accepted.
- [33] Mr. Gowda provided the following information in response to questions by the Board:

- a. With regard to the time extension on the date to comply with the Stop Order, each case is evaluated separately. No formal rezoning application was received. He did not hear about any application until September 21, 2019, after the appeal was filed.
- b. Any extended time is for the Applicant to comply with the Stop Order, not to appeal a Stop Order.
- c. The Appellants had 21 days to file an appeal. He was not aware an appeal was filed until he received notice from the SDAB Office.
- d. They met with the Appellant in March to discuss a rezoning application but nothing was formally submitted.
- e. He could not speak to any previous development permits on the site from years ago. He could only speak to the Uses of the subject Site.
- f. The Appellant would need to show that something is being done to the property for the Development Compliance Branch to extend the time to comply with a Stop Order.

vi) *Rebuttal of the Appellant, Mr. K. Anderson*

- [34] He agrees that there were 21 days to file the appeal. However, he thought they had an extension to comply with the Stop Order so the appeal was not filed.
- [35] The Presiding Officer confirmed that the Stop Orders were issued on March 13, 2019 and the appeal should have been filed on April 3, 2019.

Decision on Preliminary Matter

- [36] The appeals were not filed on time, in accordance with Section 686 of the *Municipal Government Act*.

Reasons for Decision

- [37] This appeal involves four Stop Orders issued on March 13, 2019. Section 686(1)(a)(ii) of the *Municipal Government Act* states that with respect to a Stop Order appeal there is a 21-day appeal period after the date on which the Order is made. The evidence before the Board is that the appeals were not filed until Sept 10, 2019, well outside the 21-day limit.

- [38] The Board heard evidence that the Appellant was in discussion with Development Compliance Officer after the Stop Orders were issued and that several extensions on the enforcement of the Stop Orders were granted while those discussions were taking place. The Appellant was under the impression that those extensions related to the appeal period for the Stop Orders. However, the Board is satisfied that the extensions related to the enforcement of the Stop Orders. In any event, Development Compliance does not have the authority to extend the appeal period mandated by the *Municipal Government Act*.
- [39] Accordingly this Board has no jurisdiction to hear these appeals.



Mr. M. Young, Presiding Officer
Subdivision and Development Appeal Board

Board Members in Attendance:

Ms. G. Harris; Mr. R. Hachigian; Mr. R. Hobson; Mr. J. Wall

CC: City of Edmonton, Development & Zoning Services, Attn: Mr. S. Gowda / Mr. A. Escudro
/ Ms. E. Peacock

Important Information for the Applicant/Appellant

1. 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.
2. 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.

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Date: October 11, 2019
Project Number: 271309389-001
File Number: SDAB-D-19-167

Notice of Decision

- [1] On October 2, 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 Compliance Officer, issued on April 8, 2019, to comply with an Order to:

Acquire a Development Permit for the addition to Accessory Building (structure developed south of detached garage) before May 6, 2019 or demolish and remove the Addition to Accessory Building (structure developed south of detached garage) and clear the site of demolition materials before May 6, 2019

- [2] The subject property is on Plan 5850R Blk 3 Lot 23, located at 11414 - 81 Street NW, within the (RA8) Medium Rise Apartment Zone. The Parkdale Area Redevelopment Plan applies to the subject property.

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

- The Development Compliance Officer’s written submissions which included a copy of the Stop Order; and
- The Appellant’s reason for appeal

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 Chair advised the Appellant that the Board must first determine if the appeal was filed on time in accordance with Section 686 of the *Municipal Government Act*, RSA 2000, c M-26 (the “*Municipal Government Act*”), which states:

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(b) in the case of an appeal made by a person referred to in section 685(1)

...

(ii) with respect to an order under section 645, within 21 days after the date on which the order is made, or...

[7] The Stop Order is dated April 8, 2019, and the appeal is dated September 4, 2019.

[8] It appears to the Board that the 21-day appeal period began to run on April 8, 2019, which means that the time for filing the appeal expired on April 29, 2019. The appeal was filed on September 4, 2019, considerably outside of the 21-day appeal period. On the face of it, it appears that the appeal is out of time. The Board asked the Appellant to address this issue.

Summary of Preliminary Matter*i) Position of the Appellant, C. Paszewski*

[9] The Appellant was accompanied by Mr. G. Babski, the real estate agent who has listed the subject property. Mr. Babski only became aware of the Stop Order a few days ago and is not familiar with any of the details surrounding it.

[10] The Appellant visited the Edmonton Tower several times but was not able to get any assistance.

[11] The Appellant was not able to provide any reasons for waiting until September 21 to file the appeal and was not able to state if the 21-day time limit was miscalculated.

[12] Mr. Babski believes that the Appellant was not aware of the 21-day appeal period.

ii) Position of the Development Compliance Officer, J. Hogberg

[13] Mr. Hogberg discussed the appeal period with the Appellant on the phone; however, there may have been some communication barriers.

Decision on Preliminary Matter

[14] The appeal was not filed on time in accordance with Section 686 of the *Municipal Government Act*.

Reasons for Decision

[15] This appeal involves a Stop Order issued on April 8, 2019. Section 686(1)(a)(ii) of the *Municipal Government Act* states that with respect to a Stop Order appeal there is a 21-day appeal period after the date on which the Order is made. The evidence before the Board is that the appeal was not filed until Sept 4, 2019, well outside the 21-day limit.

[16] Accordingly this Board has no jurisdiction to hear this appeal.



Mr. M. Young, Presiding Officer
Subdivision and Development Appeal Board

Board Members in Attendance:

Ms. G. Harris; Mr. R. Hachigian; Mr. R. Hobson; Mr. J. Wall

CC: City of Edmonton, Development & Zoning Services, Attn: Mr. J. Hogberg / Mr. A. Jabs

Important Information for the Applicant/Appellant

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