



**EDMONTON
TRIBUNALS**

*Subdivision &
Development
Appeal Board*

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Date: October 19, 2017
Project Number: 255024506-003
File Number: SDAB-D-17-178

Notice of Decision

- [1] On October 4, 2017, the Subdivision and Development Appeal Board heard an appeal that was filed on **September 12, 2017**. The appeal concerned the decision of the Development Authority, issued on September 8, 2017, to refuse the following development:

To construct exterior alterations to a Single Detached House (Driveway extension, 2.94 metres by 5.8 metres), existing without permits.

- [2] The subject property is on Plan 9724015 Blk 33 Lot 55, located at 5231 - 157 Avenue NW, within the (RF1) Single Detached Residential Zone. The Pilot Sound Area Structure Plan and the Hollick Kenyon Neighbourhood Structure Plan apply to the subject property.
- [3] The following documents were received prior to the hearing and form part of the record:
- A copy of the Development Permit application with attachments, proposed site plan, and the refused Development Permit;
 - The Development Officer's written submission; and
 - The Appellant's written submissions.

Preliminary Matters

- [4] At the outset of the appeal hearing, the Presiding Officer confirmed with the parties in attendance that there was no opposition to the composition of the panel.
- [5] The Presiding Officer outlined how the hearing would be conducted, including the order of appearance of parties, and no opposition was noted.
- [6] The appeal was filed on time, in accordance with section 686 of the *Municipal Government Act*, RSA 2000, c M-26.

Summary of Hearing*i) Position of the Appellants, Mr. & Mrs. Coley:*

- [7] The driveway was extended in 2009 to provide additional parking for their children while they lived at home. Running extension cords over the sidewalk in the winter created a safety concern and a friend recommended extending the driveway.
- [8] They discussed the possibility with their adjoining neighbour who did not have any concerns. At the time they researched the driveway requirements and did not find any restrictions or permit requirement for the extension.
- [9] Numerous other driveway extensions existed in their neighbourhood at the time and they proceeded to hire a professional company to pour the concrete.
- [10] Vehicles are not parked on the driveway extension during the summer.
- [11] Mr. and Mrs. Coley provided the following information in response to questions from the Board:
- a) Their house is currently up for sale.
 - b) The driveway extension leads to an area between their house and the neighbour's house. There is a gate located on that side that provides access to the rear yard.
 - c) There is not enough space to park a vehicle between the driveway extension and the driveway on their neighbour's property.
 - d) If the appeal is allowed they are prepared to comply with the recommended conditions of the Development Officer.
 - e) Their driveway is characteristic of other driveway extensions in their neighbourhood as evidenced by the submitted photographs.
 - f) Snow is cleared onto the grass located between their driveway and the adjacent driveway. If there is a large amount of snow it is cleared onto their front yard.
 - g) The driveway extension is sloped to provide adequate drainage.

ii) Position of the Development Authority:

- [12] The Development Authority provided a written submission and did not attend the hearing.

Decision

[13] 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 **CONDITION**:

1. Parking is not allowed in the required Front Yard as per the yellow highlighted extension shown on the approved site plan.

Reasons for Decision

- [14] The proposed Driveway extension is Accessory to Single Detached Housing, which is a Permitted Use in the (RF1) Single Detached Residential Zone.
- [15] The Board accepts the evidence provided by the Appellant that reasonable efforts were made to determine whether or not a Development Permit was required before hiring a contractor to extend the Driveway in 2009.
- [16] Section 6.1(31) of the *Edmonton Zoning Bylaw* defines a Driveway as “an area that provides access for vehicles from a public or private roadway to a Garage or Parking Area and does not include a Walkway.”
- [17] Section 6.1(122) of the *Edmonton Zoning Bylaw* defines a Walkway as “a path for pedestrian circulation that cannot be used for vehicular parking”.
- [18] Based on the evidence provided that the Driveway extension provides access to the Rear Yard through a gate on the northeast side of the Garage and the imposition of a condition that parking is not permitted in the required Front Yard, the Board deems the proposed development to be a “Walkway”, pursuant to section 6.1(122).
- [19] The Board finds that the Driveway extension has existed for 8 years without any known complaints or concerns. The most affected property owner has provided written support. There were no letters received in opposition to the proposed development and no one appeared in opposition.
- [20] Based on a review of the photographic evidence provided, the proposed development is characteristic of other similar Driveway extensions that exist in this neighbourhood.

[21] For all of the above reasons, 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. D. Kronewitt-Martin, Mr. R. Hachigian, Mr. J. Wall, Mr. N. Somerville

Important Information for the Applicant/Appellant

1. This is not a Building Permit. A Building Permit must be obtained separately from the Sustainable Development Department, located on the 2nd Floor, Edmonton Tower, 10111 – 104 Avenue NW, Edmonton, AB T5J 0J4.
2. Obtaining a Development Permit does not relieve you from complying with:
 - a) the requirements of the *Edmonton Zoning Bylaw*, insofar as those requirements have not been relaxed or varied by a decision of the Subdivision and Development Appeal Board,
 - b) the requirements of the *Alberta Safety Codes Act*,
 - c) the *Alberta Regulation 204/207 – Safety Codes Act – Permit Regulation*,
 - d) the requirements of any other appropriate federal, provincial or municipal legislation,
 - e) the conditions of any caveat, covenant, easement or other instrument affecting a building or land.
3. When an application for a Development Permit has been approved by the Subdivision and Development Appeal Board, it shall not be valid unless and until any conditions of approval, save those of a continuing nature, have been fulfilled.
4. A Development Permit will expire in accordance to the provisions of section 22 of the *Edmonton Zoning Bylaw, Bylaw 12800*, as amended.
5. This decision may be appealed to the Alberta Court of Appeal on a question of law or jurisdiction under section 688 of the *Municipal Government Act*, RSA 2000, c M-26. If the Subdivision and Development Appeal Board is served with notice of an application for leave to appeal its decision, such notice shall operate to suspend the Development Permit.
6. When a decision on a Development Permit application has been rendered by the Subdivision and Development Appeal Board, the enforcement of that decision is carried out by the Sustainable Development Department, located on the 2nd Floor, Edmonton Tower, 10111 – 104 Avenue NW, Edmonton, AB T5J 0J4.

NOTE: The City of Edmonton does not conduct independent environmental checks of land within the City. If you are concerned about the stability of this property for any purpose, you should conduct your own tests and reviews. The City of Edmonton, when issuing a development permit, makes no representations and offers no warranties as to the suitability of the property for any purpose or as to the presence or absence of any environmental contaminants on the property.



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Date: October 19, 2017
Project Number: 246474011-001
File Number: SDAB-D-17-179

Notice of Decision

- [1] On October 4, 2017, the Subdivision and Development Appeal Board heard an appeal that was filed on **September 7, 2017**. The appeal concerned the decision of the Development Authority, issued on August 30, 2017, to refuse the following development:

To construct a Single Detached House with an Unenclosed Front Porch (8.18 metres by 1.46 metres), fireplace, rear attached Garage and Basement Development (NOT to be used as an additional Dwelling).

- [2] The subject property is on Plan 6054HW Blk 7 Lot 17, located at 14368 - 92 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 Development Permit application with attachments, proposed plans, and the refused Development Permit;
 - The Development Officer's written submission;
 - The Appellant's written submissions including community consultation; and
 - An on-line response in support of the proposed development.

Preliminary Matters

- [4] At the outset of the appeal hearing, the Presiding Officer confirmed with the parties in attendance that there was no opposition to the composition of the panel.
- [5] The Presiding Officer outlined how the hearing would be conducted, including the order of appearance of parties, and no opposition was noted.
- [6] The 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. F. Rajwani & Mrs. N. Rajwani:*

- [7] Mr. F. Rajwani and Mrs. N. Rajwani chose the design for their development after seeing a house with a rear attached garage in their neighbourhood.
- [8] The attached rear garage has been included in the design because of the convenience and added security that it will provide to them and their family.
- [9] The house has been designed to meet their long term needs, including the possibility of accommodating their parents with an additional bedroom in the basement. The proposed attached garage will also provide easy access in this situation.
- [10] Overwhelming support was received from all of the neighbours who responded and reside within the 60-metre notification radius. None of the neighbours objected to the proposed development.
- [11] The development permit application and the refusal were based on the previous requirements of the Mature Neighbourhood Overlay which was amended on September 1, 2017.
- [12] Based on the amendments, they were only required to provide feedback from properties that abut the subject site. All of these property owners were contacted and support the proposed development.
- [13] The impact of the proposed development on abutting neighbours was considered throughout the design process. Individually, the house and garage would not require any variances. It is only the 3.6 metre long breezeway that connects the garage to the house that has resulted in the required two variances.
- [14] The breezeway was designed with a vaulted ceiling in order to reduce the height from grade compared to the adjacent house and mitigate any massing or sun shadow impact. The peak height of the breezeway is approximately 4.3 metres from grade, which is less than the height of an existing tree on that side of the property.
- [15] The results of the sun shadow impact study were reviewed to illustrate that the difference in shadowing on the adjacent property to the east with the breezeway connecting the garage to the house. The difference between the shadowing created by the proposed development and a house and a detached garage that would not require any variances is minimal.
- [16] In their opinion, a 6-foot high fence and the existing mature trees will create shadowing during the evening hours.

- [17] Rear attached garages were allowed on corner lots at the time of application and initial review before the *Edmonton Zoning Bylaw* was amended on September 1, 2017.
- [18] The subject corner lot is only 100 feet deep while the majority of corner lots are between 110 and 120 feet deep.
- [19] The proposed design maximizes the outdoor amenity space.
- [20] Mr. and Mrs. Rajwani provided the following information in response to questions from the Board:
- a) They attempted to contact everyone within the 60 metre radius. The elevation drawings and plans were reviewed and the required variances were explained. If they were unable to contact the property owner on the second attempt, a letter with their contact information was left in the mailbox.
 - b) They currently do not have any landscaping plans for the side of the house with the unbroken wall.
- [21] Mr. Rajwani questioned the inclusion of section 140.4(16) in Condition No. 8 that was recommended by the Development Officer because it pertained to a development regulation for the RF3 Zone.
- [22] In their opinion, the information on inclusive design contained in section 4 of the Development Officer's written submission is not relevant to their application.
- [23] The Presiding Officer acknowledged the concern but advised that the Development Officer must consider hardship, which is a different test to the Board. The Board's test is contained in section 687(3) of the *Municipal Government Act*.
- ii) *Position of the Development Authority:*

- [24] The Development Authority provided a written submission and did not attend the hearing.

Decision

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

- [26] In granting the development the following variances to the *Edmonton Zoning Bylaw* are allowed:
1. The minimum required Rear Setback is 12.19 metres (40 percent of Site depth). The proposed Rear Setback is 1.22 metres and a deficiency of 10.97 metres is allowed. (Section 814.3(4)).
 2. Section 814.3(19) is waived to allow a rear attached Garage.

Reasons for Decision

- [27] The proposed development, a Single Detached House is a Permitted Use in the (RF1) Single Detached Residential Zone.
- [28] The Board has considered the appeal and based its decision on the amendments included in Bylaw 18013 that came into effect on September 1, 2017.
- [29] The requirement of section 814.3(19) have been waived because the Board considered the subject Site as a Corner Lot, the Garage doors face the rear lane and the proposed development was supported by the most affected property owner to the east. The Board also notes that there is a park located across 92 Avenue to the south, which will mitigate the impact of the variances required for the proposed breezeway on residential properties.
- [30] The Board notes that the proposed House and Garage individually, do not require any variances to the requirements of the *Edmonton Zoning Bylaw*. It is only the proposed breezeway that connects the Garage to the House that results in both of the required variances.
- [31] The Board accepts the findings of the Sun Shadow Impact Study that the proposed breezeway will have a minimal impact on the shadowing that will occur on the adjacent property to the east. The existing mature trees and a 1.83-metre high fence create a similar shadowing on the adjacent property.
- [32] The Board notes the extensive community consultation undertaken by the Appellant and the overwhelming support of property owners who reside within the 60-metre notification radius. There were no letters in opposition and no one attended in opposition to the proposed development.

[33] For all of the above reasons, 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: Mr. J. Wall, Mr. R. Hachigian, Mr. N. Somerville, Ms. D. Kronewitt-Martin

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