

Edmonton Subdivision and Development Appeal Board

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Date: September 24, 2015
Project Number: 169683062-001
File Number: SDAB-D-15-204

Notice of Decision

This appeal dated August 13, 2015, from the decision of the Development Authority for permission to:

Construct a Single Detached House with a rear attached Garage, front veranda, fireplace, covered balcony (irregular shape - 8.23m x 3.96m), rear covered deck (irregular shape), Basement development (NOT to be used as an additional Dwelling), and to demolish an existing Single Detached House and two Accessory Buildings (detached Garages)

on Plan 1323584 Blk 118 Lot 7A, located at 9924 - 144 Street NW, was heard by the Subdivision and Development Appeal Board on September 10, 2015.

Summary of Hearing:

At the outset of the appeal hearing, the Chairman confirmed with the parties in attendance that there was no opposition to the composition of the panel.

The appeal was filed on time, in accordance with section 686 of the *Municipal Government Act*, RSA 2000, c M-26.

The development permit was refused because the proposed veranda with eaves exceeds the maximum allowed projected in the required Front Setback, a deficiency in the minimum required Rear Setback, the proposed development does not meet the general purpose of the Mature Neighbourhood Overlay and rear attached Garages are not permitted.

Prior to the hearing the following information was provided to the Board, copies of which are on file:

- Documentation submitted with the original appeal on August 13, 2015;
- A written submission received from Sustainable Development on August 9, 2015 that indicates there is no longer a variance for the proposed veranda with eaves into the Front Setback; and
- Five on-line responses in support of the proposed development.

The Board heard from Mr. Walter and Mr. Johnson, representing Boss Designs, who made the following points:

1. There are two power poles with guide wires on both sides of the lot that limit the placement of the driveway to the garage.
2. There are two possible locations for the garage on the property. One option is the proposed plan and the other option would be to face the garage west on the property which will take up the optimal yard space and reduce the south exposure.
3. They proceeded to read from the letter they provided with their submission.
4. In their opinion, the subject Site is unique as it is bordered by two lanes and a road which gives the site the feel of a corner lot.
5. They referred to examples of similar rear attached garages and stated that there are four properties with rear attached garages that border on two lanes and a street. Three of these properties are in the Crestwood area.
6. The owners of the subject Site own the property directly south.
7. In their opinion, the Community Consultation was reflected by the on-line responses from property owners in the 60 metre notification radius provided to the Board.
8. In their opinion, property owners that have infill developments want attached garages.
9. The connection between the attached garage and the house will be small and low in height.
10. They believe the proposed development meets the spirit of the Mature Neighbourhood Overlay as it complies with the maximum allowable Site Coverage.
11. They referenced the elevation drawings showing the right (north) elevation of the subject Site stating that they attempted to make the connection between the house and the garage aesthetically pleasing by including a lower pitch on the garage and various trim and door finishing.
12. They referred to three photographs provided to the Board showing neighbouring houses in the area that are each approximately 5000 square feet in size that have an attached rear garage that is similar to the proposed development and approved with variances.
13. Access and the setback to the rear lane will be better with an attached garage and will provide for additional safety.

In response to questions by the Board, Mr. Walter and Mr. Johnson provided the following information:

1. With regard to how the proposed development will fit in with the neighbourhood, they stated that there are several infill developments in the upscale area.
2. The neighbourhood has a unique character and the design of the house will have a traditional look.
3. The proposed development is 6045 square feet in size on the main and second floor which is larger than typical homes on single lots.
4. They did not speak to the Community League regarding the proposed development.
5. They were asked why they proceeded with the proposed development given the prohibition against rear attached garages in the Mature Neighbourhood Overlay. They reiterated that, in their opinion, locating the garage with access on the west facing lane will take up the south facing portion of the rear yard.
6. In their opinion, there will not be as much of an impact on neighbouring properties as the proposed development is on a double lot.

7. If the garage was detached there would be a small gap between the house and the garage and it could have been placed closer to the rear and north boundaries of the property line.
8. They completed a sun shadow study which concluded that the only affected area that would have sun shadowing would be the rear lane.
9. In their opinion, the massing effect of the proposed development would not change significantly if the garage was detached.
10. Property owners in this neighbourhood want to maximize the Site Coverage given the area and the cost of the lots.
11. The location of the proposed garage will provide for a more secure yard which is a concern of the property owners.

The Board heard from Mr. and Mrs. Bailey, the property owners, who made the following points:

1. They have lived in the area for 10 years and like the feel and look of the community.
2. They want to preserve as many of the mature trees as possible and will work with an arborist during the construction phase.
3. They want to keep the proposed development characteristic of the neighbourhood.
4. An attached garage will enhance the security of their lot.
5. Several of the neighbours like the traditional style of the proposed development and are not as concerned with the size.
6. They did not receive any opposition to the proposed development when they spoke to neighbouring property owners.

In response to questions by the Board, Mr. and Mrs. Bailey provided the following information:

1. In their opinion, access to the garage meets the requirements of the Mature Neighbourhood Overlay.
2. They prefer to preserve the mature trees on the property.
3. They spoke with all of the neighbouring property owners except for one in the 60 metre notification radius and showed them the plans of the proposed development.
4. They received support from all of the neighbouring property owners they spoke to.
5. They attempted to contact the neighbour north on Summit Drive but were not able to reach them.
6. One neighbour indicated they wanted to remain neutral regarding the proposed development but were not opposed to the development. This neighbour stated that they would prefer that the proposed development complied with the regulations of the *Edmonton Zoning Bylaw*.
7. They were not aware that they were required to contact the Community League.
8. They asked all their neighbours to register their support on the SDAB on-line response and four property owners had done that.
9. They reviewed the verbal conversations they had with neighbouring property owners in the 60 metre notification radius from August 25, 2015 to September 5, 2015.

The Board heard from Mr. Yaceyko, the builder, who made the following point:

1. He confirmed that there are four garages in the neighbourhood that exit onto the lane west of the subject Site.

The Board then heard from Mr. Booth, representing Sustainable Development, who made the following points:

1. In his opinion, the proposed development does not meet the requirements of the Mature Neighbourhood Overlay.
2. The proposed development is not sensitive in scale to the neighbourhood.
3. There is sufficient room on the property for a detached garage to be contained within the 12.8 metres of the Rear Yard.
4. There will be a 30 metre long wall with the house and attached garage which will create a massing effect.
5. There will be a privacy impact on neighbouring properties with the windows that are installed on that wall.
6. The proposed development is not considered a Corner Site.
7. There is no hardship involved with the subject Site to grant any variances.

In response to questions by the Board, Mr. Booth provided the following information:

1. He did not have any information regarding other attached garages in the neighbourhood; however, some of those properties have a greater Rear Setback which reduces the massing impact.

In rebuttal, Mr. Walter and Mr. Johnson made the following points:

1. The proposed development will increase neighbouring property values.
2. They agreed there will be a massing effect due to the 30 metre wall on the north side of the property.
3. Articulated doors will be installed on the garage to help mitigate the massing effect on neighbouring properties.
4. In their opinion, the massing impact will be reduced by landscaping and fencing on the north side of the property.
5. In their opinion, detaching the garage will increase the impact on the rear lane.

In rebuttal, Mr. and Mrs. Bailey made the following points:

1. In their opinion, the design of the proposed development is within the allowable Site Coverage.
2. All the houses immediately surrounding the subject Site are two Storey developments except one bungalow that has a rear garage.
3. The neighbouring property owner directly north of the subject Site did not have concerns regarding privacy.

4. They reiterated that the main concern outlined by neighbouring property owners was the preservation of mature trees and the look and appearance of the house design in relation to the neighbourhood in general.

Decision:

The appeal is DENIED and the decision of the Development Authority is CONFIRMED. The development is REFUSED.

Reasons for Decision:

The Board finds the following:

1. The proposed development, a Single Detached House is a Permitted Use in the RF1 Single Detached Residential Zone.
2. An issue before the Board is whether or not the Board would grant a variance to two regulations of the Mature Neighbourhood Overlay.
3. The first regulation is for a rear attached Garage in the Mature Neighbourhood Overlay and the second regulation requires the Principal Building to have a 40 percent Rear Setback.
4. The Board has to consider section 687(3)(d)(i) of the *Municipal Government Act* that states “In determining an appeal, the subdivision and development appeal board may make an order or decision or issue or confirm the issue of a development permit even though the proposed development does not comply with the land use bylaw if, in its opinion, the proposed development would not unduly interfere with the amenities of the neighbourhood, or materially interfere with or affect the use, enjoyment or value of neighbouring parcels of land.”
5. The Board heard evidence and the opinion of the Development Authority that the wall of the structure along the north side of the property is 30 metres in length.
6. The Board recognizes that the developer tried to reduce the impact of the 30 metre long wall through variations in height, architectural features, and roof articulations.
7. However, the Board finds that a solid 30 metre wall along a lane that will be visible to all traffic on that lane creates a massing effect that will cause an adverse impact to the neighbourhood and to the surrounding properties.
8. The Board notes that the Appellant made efforts to compile Community Consultation with neighbouring property owners; however documentation was not provided with comments, opinions or concerns.
9. The Board further notes that the President of the Community League was not contacted so there was not a complete consultation process in accordance with section 814.3(24) of the Mature Neighbourhood Overlay. Section 814.3(24)(a) states when a Development Permit application is made and the Development Officer determines that the proposed development does not comply with the regulations contained in this Overlay...the applicant shall contact the President of each affected Community League.

10. While the Board acknowledges that there are examples of other rear attached Garages in the neighbourhood, based on the photographic evidence provided by the Development Authority, the vast majority of the developments in the surrounding area have detached Garages.
11. It was acknowledged by all parties, and confirmed by the Board, that this is an Interior Site as per section 6.1(19) and 6.1(53) the *Edmonton Zoning Bylaw*.
12. The Board finds that rear attached Garages are not characteristic of the neighbourhood and this when combined with the massing effect of the building due to the north wall leads the Board to conclude that the proposed development will unduly interfere with the amenities of the neighbourhood, and materially interfere with or affect the use, enjoyment or value of neighbouring parcels of land.

Important Information for 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 the Sustainable Development Department, located on the 5th Floor, 10250 – 101 Street, Edmonton.

Mr. I. Wachowicz, Chairman
Subdivision and Development Appeal Board

CC:

***Edmonton Subdivision and
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SDAB-D-15-205

Application No. 148867147-007

An appeal by Rolande and Dennis Gartner VS Rococo Homes Inc. to construct a Single Detached House with a front veranda (1.83m x 5.18m), and rear uncovered deck (3.05m x 3.66m) on Plan 1420074 Blk 4 Lot 20B, located at 9511 - 87 Avenue NW, was **WITHDRAWN**.