



**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

Date: September 18, 2019
Project Number: 261991333-012
File Number: SDAB-D-19-143

Notice of Decision

- [1] On September 11, 2019, the Subdivision and Development Appeal Board (the “Board”) heard an appeal that was filed on August 13, 2019. The appeal concerned the decision of the Development Authority, issued on August 9, 2019, to refuse the following development:

Construct exterior alterations (increased finished floor elevation) to an existing Garden Suite

- [2] The subject property is on Plan 3792KS Blk 9 Lot 37, located at 13827 - 90 Avenue NW, and is 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:
- Copy of the Development Permit application with attachments, proposed plans, and the refused Development Permit;
 - The Development Officer’s written submissions;
 - A written document and petition in support of the proposed development submitted by the Appellant at the start of the hearing; and
 - Three letters from neighbouring property owners in opposition to the proposed development. One of the neighbours later retracted their opposition.
- [4] The following exhibits were presented during the hearing and form part of the record:
- Exhibit A – Picture showing the vegetation on the neighbour’s property.

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, Mr. and Mrs. Watt

- [8] Mr. and Mrs. Watt started to develop on their property two years ago. Upon almost completion of their new home, it burned down.
- [9] They were not aware that the detached garage was built 8 inches too high and this extra Height will not benefit them in any way.
- [10] The Development Officer suggested that they should apply for a new Development Permit for exterior alterations. They understood that the Development Officer could not approve a variance in Height and was told to file an appeal.
- [11] They spoke to neighbouring property owners who are in support of the proposed development. They were not aware of any opposition to the proposed development until letters were received at the Board office.
- [12] One of the neighbours in opposition to the proposed development later retracted their opposition once they understood that they were not increasing the Height of the existing garage. This neighbour’s garage backs onto their garage.
- [13] The neighbours believed they were building a roof top deck until the Appellants clarified what the proposed development is for.
- [14] Their intention was to mitigate any visual impact on the neighbours when the garage was built.
- [15] The Landscape Plan shows that there are several mature trees on the subject Site that will mitigate any visual impact on the neighbours.
- [16] They referred to a photograph showing the vegetation on the property, marked Exhibit A.
- [17] There are solar panels on top of the garage and feel that it will be costly to reduce the Height of the existing Garden Suite.
- [18] Mr. and Mrs. Watt provided the following information in response to questions by the Board:
- a. They confirmed that the landscaping and vegetation will mitigate any impact on the neighbouring property.

- b. The one neighbour will see trees on the property when they face the garage.
- c. They chose trees and hedges that will grow tall and mitigate any impact.
- d. The photograph provided to the Board is looking into the neighbour's yard.
- e. They are in agreement to the suggested condition of the Development Officer.

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

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

Decision

[20] 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. The development shall be constructed in accordance with the stamped and approved drawings.

[21] In granting the development, the following variance to the *Edmonton Zoning Bylaw* is allowed:

1. The maximum allowable Height of 6.2 metres as per Section 87(2)(b) is varied to allow an excess of 0.2 metres, thereby increasing the maximum allowed to 6.4 metres.

Reasons for Decision

[22] The proposed development, a Garden Suite, is a Permitted Use in the RF1 Single Detached Residential Zone.

[23] The Garden Suite was approved with one variance in Floor Area at a compliant Height (as per the Development Officer's written submission). After construction, it was discovered that the structure was built in error at a Height 0.2 metres higher than allowed as per section 87(2)(b). Based on evidence provided, the structure complied in all other respects with the approved Development Permit.

[24] The Appellants submitted a signed petition from neighbouring property owners in support of the proposed development and a submission with the background for the proposed development.

- [25] The submission included a detailed Landscaping Plan outlining the vegetation that would mitigate any visual impact on the neighbouring property.
- [26] The Board received some opposition to the proposed development from properties across the rear lane from the subject site. The letters suggest a concern based on the belief that the Appellants are seeking to add to the Height of the Garden Suite as it currently exists. One of those neighbours retracted their opposition once they realized the structure was already built and they were not seeking approval to increase the Height over and above what had been constructed.
- [27] Based on the submitted plans and the photographs, the Board finds that any impact of the excess in Height of 0.20 metres is mitigated by the rear lane; mature vegetation; the pie shape configuration of the subject site; and the abutting lot to the north which is located between the subject site and the property owned by the objecting neighbour and limits the sightlines between them.
- [28] Based on the foregoing, 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. W. Tuttle, Presiding Officer
Subdivision and Development Appeal Board

Board Members in Attendance:

Ms. K. Cherniawsky; Mr. A. Peterson; Ms. E. Solez; Mr. J. Kindrake

CC: City of Edmonton, Development & Zoning Services, Attn: Mr. K. 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 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: September 18, 2019
Project Number: 314861304-001
File Number: SDAB-D-19-144

Notice of Decision

- [1] On September 11, 2019, the Subdivision and Development Appeal Board (the “Board”) heard an appeal that was filed on August 18, 2019. The appeal concerned the decision of the Development Authority, issued on July 29, 2019, to refuse the following development:

Construct a rear addition to a Duplex (breezeway between House and Garage, 4.23 metres by 7.06 metres)

- [2] The subject property is on Plan 4172HW Blk 14 Lot 2, located at 10307 - 78 Street 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;
 - The Appellant’s written submissions; and
 - One letter in opposition from a neighbouring property owner.
- [4] The following exhibits were presented during the hearing and form part of the record:
- Exhibit A – Photographs submitted by the Appellant
 - Exhibit B – Notice to Enter 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, Ms. A. Lopata, who was accompanied by Mr. S. Kirby

[8] The breezeway has been in existence for 40 years.

[9] They spoke to neighbours within the 60 metre notification radius who did not have any opposition to the breezeway. The neighbours were not aware that the breezeway even existed.

[10] They received a letter at the hearing from one neighbour in opposition. The letter indicated that the breezeway will impact the sale of their house. In their opinion, the breezeway will not impact their view.

[11] They provided the Board with photographs showing other properties in the neighbourhood that have a similar development.

[12] The property is a Duplex and occasionally water drains by one of the entrances.

[13] The breezeway will leave the back entrances clear during the winter and provide a clear emergency exit.

[14] The breezeway is finished and is currently being used for storage.

[15] They provided the Board with photographs showing the inside of the breezeway, marked Exhibit A.

[16] They intend to clean the breezeway of the storage items.

[17] Ms. Lopata and Mr. Kirby provided the following information in response to questions by the Board:

- a. The confirmed that no changes were made to the breezeway since 1975.
- b. They were not the property owners at the previous SDAB hearing, but Ms. Lopata was in attendance. She confirmed that she currently owns the house.
- c. She received a notice by a Development Compliance Officer regarding the breezeway. However, she did not receive the letter until after the property was inspected.
- d. She spoke to the Development Compliance Officer who indicated that she needed to apply for a Development Permit.

- e. During the winter snow blows in from the northwest. A wall on the north side of the breezeway stops the snow from piling up at the rear entrance.
- f. They are willing to remove the north wall of the breezeway if required.
- g. They are agreeable to the suggested condition of the Development Officer and any other conditions imposed by the Board. However, they would prefer to complete the finishing rather than remove the north wall.
- h. Removing the entire portion of the breezeway will have an impact on the property.
- i. They were not the owners of the property when the previous SDAB hearing took place. Ms. Lopata has since taken ownership and felt that it was not up to her to comply with the previous SDAB decision as she was not the owner at the time.
- j. She is not aware of the reasons and conditions in the previous SDAB decision. She believes the breezeway adds to the value of the property.
- k. She reiterated that there are several properties in the neighbourhood within walking distance that have a similar structure.

ii) *Position of the Development Officer, Ms. F. Hetherington*

[18] The Development Authority did not appear at the hearing and the Board relied on Ms. Hetherington's written submission.

Decision

[19] The appeal is **ALLOWED IN PART** 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. The Appellant shall remove the north wall of the rear addition to the Duplex (breezeway between House and Garage, 4.23 metres by 7.06 metres).

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

2. The minimum allowable Rear Setback of 40 percent of Site Depth as per Section 814.3(4) is waived as per the submitted stamped plans.
3. The prohibition that Rear attached Garages shall not be allowed as per Section 814.3(19) is waived as per the submitted stamped plans.

4. The maximum allowable Site Coverage for Principal building with attached Garage of 40 percent as per Section 140.4 is waived as per the submitted stamped plans.
5. The minimum allowed Side Setback as per Section 814.3(3) and Section 140.4 is waived as per the submitted stamped plans.

Reasons for Decision

- [21] The proposed development is an addition to a Duplex which is a Permitted Use in the RF3 Small Scale Infill Development Zone which requires variances to the Rear attached Garage, Rear Setback, Site Coverage, and Side Setback.
- [22] The Board finds the requirement for Community Consultation under Section 814.5(1) has been met.
- [23] The Board considered the following factors in deciding whether to grant the required variances.
- [24] As indicated on the refused application, the proposed development is for a breezeway connecting the Duplex to the Garage in the rear yard.
- [25] The breezeway has existed for over 30 years without an issued development permit.
- [26] The neighbour to north of the subject Site submitted a letter in opposition on the day prior to the hearing which was reviewed by the Board and included the following four concerns:
- i) The breezeway and garage addition appear unfinished and include exposed plywood which is not in keeping with the neighbourhood.
 - ii) The breezeway and garage materially interfere with the use and enjoyment of their property as they are visible from their yard and materials stored in the breezeway block the door and window facing their property.
 - iii) Their realtor indicated that their property value will be negatively impacted by the existing breezeway and garage. The Board notes no further detail or documentation was provided about this comment.
 - iv) They question whether the additions to the property are structurally sound, compliant with safety code or a fire hazard.

- [27] The Board notes that scope of application in this matter is for the breezeway connecting the Duplex and the Garage. Accordingly, the Board has not considered any alterations to the Garage in this appeal and makes no comment about them. Further, development permits merely address compliance with the *Edmonton Zoning Bylaw*. Matters pertaining to safety codes and fire are dealt with in other forums and no permit can relieve the applicants from any applicable obligations under those other provincial and municipal laws.
- [28] The Appellant provided written and oral evidence including a petition and individual letters which demonstrate that there is support from at least ten neighbouring property owners within the notification zone, including the most directly affected neighbours to the south and to the east across the lane.
- [29] Recently the Appellants had used the breezeway area for temporary storage, but the area is principally for sheltered access to the garage and will remain clear as shown in their submitted photos.
- [30] The Board also considered a 2009 decision of the Board concerning this breezeway and noted that it appears the breezeway was left in place but also altered in accordance with the wishes of that neighbour as articulated before that Board. Further, the Appellant who is now the current applicant and owner, is willing to address the current concerns of the neighbour immediately to the north by agreeing to a specific condition which had not been previously considered that the plywood wall along the north side lot line be removed entirely to open up the structure.
- [31] The Board finds that with the imposition of the condition to remove the north wall, the massing effect and “closed-in feeling” will be reduced and the variances 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. W. Tuttle, Presiding Officer
Subdivision and Development Appeal Board

Board Members in Attendance:

Ms. K. Cherniawsky; Mr. A. Peterson; Ms. E. Solez; Mr. J. Kindrake

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