



**EDMONTON
TRIBUNALS**

*Subdivision &
Development
Appeal Board*

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Date: October 4, 2016
Project Number: 178340926-011
File Number: SDAB-D-16-229

Notice of Decision

- [1] On September 21, 2016, the Subdivision and Development Appeal Board heard an appeal that was filed on August 17, 2016. The appeal concerned the decision of the Development Authority, issued on August 17, 2016, to refuse the following development:

Construct a two-storey Accessory building (rear detached Garage - 8.99m x 9.60m)

- [2] The subject property is on Plan 935KS Blk 1 Lot 18, located at 7813 - Saskatchewan Drive NW, within the RF1 Single Detached Residential Zone. The Mature Neighbourhood Overlay and the McKernan/Belgravia Station Area Redevelopment Plan apply to the subject property.

- [3] The following documents, which were received prior to the hearing and are on file, were read into the record:

- Copies of the Development Permit application with attachments and the refused Development Permit;
- Original Building Plans from March 2016, and revised Building Plans from August 2016;
- Revised Site Plan from April 2016;
- Plot Plan with the proposed Tunnel and Garage;
- 60 metre notification map;
- Registered Mail receipt confirming delivery of the decision on August 19, 2016;
- Development Officer's Written Submissions dated September 20, 2016 with information pertaining to the neighbourhood consultation; and
- Various documents including photographs and Google Maps Images from the Appellant.

Preliminary Matter

- [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 Appellant, Habitat Studio

- [7] The Appellant was represented by Mr. T. Hoover. He was accompanied by Ms. S. Parker and Mr. P. Whincup, also from Habitat Studio, as well as Ms. J. de Caen, owner of the subject property.

Development Application History

- [8] Mr. Hoover explained that when the development application was made, it was suggested that the Applicant obtain approval for the principal Dwelling first, as the house would be approved quicker than the detached garage. As a result, in March 2016, the Applicant applied for a development permit for an underground tunnel and rear detached garage.
- [9] At the time, the Appellant was unaware that Section 50.1(4) had been amended in December 2015 to read as follows:

Where any building or structure on a Site is attached to a principal building on the Site by a roof, an open or enclosed structure above Grade, a floor or a foundation which is above Grade, or any structure below Grade allowing access between the buildings such as a Parking Garage or a corridor or passageway connecting the buildings, it is a part of the principal building and is not an Accessory building.

- [10] Mr. Hoover explained that had they been aware of this provision, they could have applied for both the house and the garage as one entire principal building.

Reason for Refusal 1: Garage Location

- [11] Referring to Appendix A of his documents, also submitted as Exhibit "A" during the hearing, Mr. Hoover provided an overview of the various types of garages along the block, which included both rear attached and detached garages, front attached garages, and rear detached garages projecting into the rear setback. Based on these examples, he submitted that there is precedent for the type of garage that is being proposed.

- [12] Mr. Hoover acknowledged that the proposed garage is contained within the rear 18.75 metres of the Site, rather than within the rear 12.8 metres. However, this was done to mitigate the impact upon neighbouring properties.
- [13] He explained that the subject property is located at the intersection of two rear lanes. This intersection is impeded by a power pole located at the southwestern portion of the intersection.
- [14] The proposed location of the garage on the northern section of the subject Site allows for better driver sightlines at this intersection. Should the garage be located further south, access to the garage would be negatively impacted by the obstruction caused by the power pole. As well, locating the garage further inside the lot keeps it away from the rear lane, providing more space for a Driveway that could serve as additional off-street parking.

Reason for Refusal 2: Garage Height

- [15] Referring back to Section 50.1(4), Mr. Hoover submitted that if the proposed garage is now considered a part of the principal building by virtue of the underground tunnel that connects the two structures, then the Garage could technically be as tall as the principal Dwelling, or approximately 28 feet in Height.
- [16] He explained that the property owner creates pottery, and the taller garage would provide loft space for a workshop. Were the garage to comply with the Height regulations governing Accessory buildings, the garage would have to be expanded outward to accommodate the workshop.
- [17] Referring to Appendix C, Mr. Hoover noted that there are rear detached garages in the neighbourhood that comply with the Height regulations, but are more impactful upon neighbouring properties, as they are typically located closer to the rear lane and appear more dominant. The proposed garage avoids this dominating effect. In support, he referenced Appendix F.1, which compared the proposed garage with a hypothetical garage that would meet the Height requirement while maximizing the building's footprint. Mr. Hoover submitted that the comparison demonstrates that the proposed garage is the least impactful option, notwithstanding the required Height variance.
- [18] Mr. Hoover then referred to several pictures of immediately adjacent properties. The pictures showed that existing mature trees on both the subject property and on neighbouring properties block the view of the proposed garage from the neighbouring properties.

Mature Neighbourhood Overlay: Community Consultation

- [19] Upon questioning by the Board, Mr. Hoover confirmed that only one official community consultation was conducted with respect to the required variance under Section 814.3(20)

of the Mature Neighbourhood Overlay (“MNO”). However, Ms. De Caen also confirmed that she had spoken with the immediately adjacent property owners about the proposed garage and underground tunnel. The neighbours expressed no objections. Although she did not speak with the Community League, she noted that the neighbour to the north is the president of the Community League, and expressed support for the proposal.

ii) Position of the Development Authority

- [20] The Development Authority was represented by Mr. G. Robinson.
- [21] Mr. Robinson reviewed his Written Submissions and provided a brief history of the development application. He explained that the initial application did include the principal Dwelling, underground tunnel, and garage structure. At the time, the garage structure complied with all development regulations pertaining to Accessory structures, therefore, the application was approved.
- [22] Subsequent to the approval, the Applicant submitted revised plans for a two-floor garage located further in on the lot so as to provide more Driveway space, which resulted in the required variances to Sections 814.3(20) and 50.3(2). Community consultation was conducted, with 10 of the 15 property owners within the 60 metre notification area responding. On the whole, the response was positive.
- [23] Mr. Robinson also reviewed the revised plans, identifying the studio space on the second floor loft of the garage, and noting that based on the elevation drawings, the proposed garage appears to be fairly characteristic of neighbouring properties.
- [24] Upon questioning by the Board, he confirmed that if the second floor space were converted to a Garage Suite rather than a workshop, it would meet the Height requirements for a Garage Suite.
- [25] He also explained that the requirement under Section 814.3(20) for a rear detached garage to be fully contained within the rear 12.8 metres of the Site is intended to ensure several outcomes: it ensures sufficient separation between the principal Dwelling and the Accessory structure; it leaves room for Amenity Space; and it helps to prevent a long Driveway. Upon questioning, he confirmed that the proposed garage does not raise these issues, as the underground tunnel allows for at grade Amenity Space.
- [26] Regarding the power pole located in the rear lane intersection, he stated that the Development Authority does consider surface facilities when reviewing applications. At minimum, a one metre clearance from the Driveway is required, as recommended by Epcor, while the City’s Urban Transportation department advises a clearance of 1.5 metres.
- [27] He acknowledged that orienting the Garage on the northern portion of the Site, as proposed, is perhaps more prudent for both Site access and driver visibility. He noted that

according to the Site plan, a portion of the southeast corner of the lot has been eliminated so as to provide a sufficient turn radius for drivers at that intersection.

iii) Rebuttal of the Appellant

[28] Upon questioning by the Board, the Appellant confirmed that Saskatchewan Drive prohibits parking on the west side, and has restricted parking on the east side. The Appellant had no concerns with the recommended conditions as set out in the Development Officer's Written Submissions.

Decision

[29] The appeal is **ALLOWED** and the decision of the Development Authority is **REVOKED**. The development is **GRANTED**, subject to the following **CONDITIONS**:

1. An Accessory building or structure shall not be used as a Dwelling. (Reference Section 50.3(1))
2. Eave projections shall not exceed 0.46m into required yards or Separations spaces less than 1.2m. (Reference Section 44.1(b))
3. Every Driveway, off-street parking or loading space, and access provided shall be Hardsurfaced. The area required to be Hardsurfaced may be constructed on the basis of separated tire tracks, with natural soil, grass, or gravel between the tracks, but shall be constructed so that the tires of a parked or oncoming vehicle will normally remain upon the Hardsurface area (Reference Section 54.6(2)).

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

1. Section 814.3(20) is varied to permit a rear detached Garage to be contained within the rear 18.75 metres of the Site instead of the required 12.8 metres.
2. Section 50.3(2) is varied to permit a Garage of 5.52 metres in Height instead of the required 4.3 metres.

Reasons for Decision

[31] The subject development was reviewed by the Development Authority as a rear detached Garage. The Board struggled with this characterization, as it could be argued that the underground tunnel connecting the principal Dwelling with the garage structure could make the proposed development a rear attached Garage requiring no variances.

- [32] However, the Board recognizes that the Development Authority reviewed the proposed development as a detached Garage, and that rear attached Garages are not permitted in the Mature Neighbourhood Overlay. The Board therefore grants the required variances to the regulations governing rear detached Garages.
- [33] The Board is of the view that the proposed development will not negatively impact neighbouring property owners. The immediately adjacent property owners to the east and south are separated from the subject Site by a rear laneway. Impact upon the property immediately to the north will be mitigated by the existing mature trees. No residential properties lie to the west of the subject Site, as it is fronted by Saskatchewan Drive.
- [34] The Board heard evidence that Saskatchewan Drive has limited on-street parking on its east side, and prohibits parking along the west side. The Board is of the view that the proposed development, which allows for additional Driveway space, will alleviate some of the on-street parking concerns and provide a benefit to the community.
- [35] The Board is also of the view that the proposed underground tunnel connecting the principal Dwelling to the rear detached Garage prevents the neighbour's view from being obstructed by an at Grade walkway or breezeway. The below Grade tunnel also eliminates any sun-shadow effect that might otherwise be caused by an at Grade walkway or breezeway.
- [36] Finally, the Board accepts that the response from the community consultation was generally positive, and that no one appeared at the hearing in opposition to the proposed development.
- [37] For 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. The appeal is allowed, and the development is granted.

Brian Gibson, Presiding Officer
Subdivision and Development Appeal Board

Board members in attendance:

Mr. V. Laberge, Mr. R. Hachigian, Ms. E. Solez, Ms. S. LaPerle

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 5th Floor, 10250 – 101 Street, Edmonton.
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*, R.S.A. 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 5th Floor, 10250 – 101 Street, Edmonton.

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 4, 2016
Project Number: 219652866-001
File Number: SDAB-D-16-230

Notice of Decision

- [1] On September 21, 2016, the Subdivision and Development Appeal Board heard an appeal that was filed on August 24, 2016. The appeal concerned the decision of the Development Authority, issued on August 10, 2016, to refuse the following development:

Construct an Accessory Building (rear detached Garage, 6.40m x 5.59m)
and demolish existing Accessory Building (rear detached Garage)

- [2] The subject property is on Plan RN22B Blk 47 Lot 12, located at 10814 - 126 Street NW, within the DC1 Direct Development Control District for the Westmount Architectural Heritage Area (Bylaw 11421). The West Ingle Area Redevelopment Plan applies to the subject property.

- [3] The following documents, which were received prior to the hearing and are on file, were read into the record:

- Copy of the Development Permit application with attachments, and the refused Development Permit;
- Development Officer's written submissions, dated September 15, 2016, and a copy of the Blockface Plan;
- Appellant's PowerPoint presentation; and
- Four letters in support of the development.

Preliminary Matter

- [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 Appellant, Ms. M. Gordon and Mr. G. Wowk

Existing Garage

- [7] It was the Appellant's understanding that the principal building was built in 1914. In the 1970s, the building was renovated, and a single detached Garage was constructed by the previous owners. Referring to photographs of both the interior and exterior of the existing Garage, Ms. Gordon noted that the building materials indicate it is of fairly recent construction and does not possess any heritage characteristics.
- [8] The photographs also showed that the existing Garage roof slopes upward toward the laneway, and is in need of repair. The Appellant submitted that the new proposed Garage will provide a more structurally sound building, while maintaining the existing sloped appearance and keeping it in character with surrounding rear detached Garages.

Advantages of the Proposed Garage

- [9] It was the Appellant's view that the existing Garage presents various hardships, which the proposed Garage could help mitigate. First, due to the historical character of the neighbourhood, streets are quite narrow. If property owners on both sides of the street were to park in front of their homes, people driving down the street would have to pull over to let oncoming traffic pass.
- [10] Second, Mr. Wowk is an engineer and drives a truck for work. The truck is currently too large to fit inside the single detached Garage and must park on-street instead. The proposed development would allow him to park off-street, creating more space on the street.
- [11] Third, vehicular theft is an ongoing problem in the neighbourhood, and Mr. Wowk's truck has been broken into several times. This is particularly concerning as he stores his engineering tools in his truck. The proposed double detached Garage would provide them with additional peace of mind.
- [12] Finally, during the winter, snow drifts further impact the available on-street parking space in the neighbourhood. Allowing the proposed Garage will reduce the on-street parking stresses and provide greater convenience for the Appellant during the winter months.

Development Officer Failed to Follow Directions of Council

[13] The Appellant submitted that the Development Officer failed to follow the directions of Council, and therefore, the Board should substitute its decision and grant the development, pursuant to its powers under Section 641(4) of the *Municipal Government Act*.

a) *Development Officer Erred in Determining that Architectural Guidelines are Compulsory*

[14] The Development Officer's decision noted that the proposed development was circulated to a Heritage Planner, who did not approve of the development and expressed the opinion that it was not consistent with the architectural guidelines of the DC1 provisions. The Development Officer also concluded that "the proposed development... does not meet the traditional character of the neighbourhood."

[15] However, the Appellant noted that pursuant to Section 1 of the DC1 provision, the Architectural Guidelines are voluntary, not compulsory. It was an error to refuse the development based on the Heritage Planner's opinion. Furthermore, a review of surrounding properties demonstrate that rear detached garages along the rear lane are not historical in character. Ms. Gordon explained that in the past, the community had been consulted about whether alleys should maintain a historical architectural appearance, but there was no community interest in such a project.

b) *Development Officer Erred in not Granting a Variance to the Rear Setback*

[16] One of the Development Officer's reasons for refusal noted that the rear setback was 1.98 metres instead of 4.88 metres, as required under Section 4(d)(i) of the DC1 provision. However, Section 4(d)(i) grants the Development Officer the discretionary power to reduce the required rear setback, if the proposed garage "is consistent with the location of other garages in the same block face".

[17] The Appellant referred to the blockface plan which had been previously submitted to the Development Officer. The plan demonstrated that the average rear setback was 2.56 metres, and 1.97 metres with the removal of the outliers. On this basis, the proposed 1.98 metres rear setback is not inconsistent with the other garages on the block face, and the Development Officer should have exercised his discretion to grant the variance.

[18] Upon questioning by the Board, the Appellant confirmed that the eaves do encroach upon the neighbouring property to the north. However, the proposed development actually eliminates this issue. Ms. Gordon also explained that one of the motivations behind the proposed garage orientation is to keep the mature trees currently existing in the rear yard.

c) Development Officer Erred by not Granting a Variance to the Site Coverage

- [19] The Appellant noted that the principal Dwelling is quite large, relative to the narrow lot size. As such, the required Site Coverage variance is likely due to the size of the house, and not the actual Accessory building itself. The small lot size likely makes it necessary to grant a variance to the Site Coverage for any development proposal. The Development Officer therefore erred by failing to consider the unique lot size and shape.
- [20] Upon questioning by the Board, the Appellant confirmed that the proposed development meets the maximum 12% site coverage for an Accessory building under Section 110.4(7)(a).

ii) Position of the Development Authority

- [21] The Development Authority was represented by Mr. J. McArthur.
- [22] In response to a previous question of the Board, Mr. McArthur confirmed that the Scope of Application should have been amended, as the proposed Garage is 24 feet x 21 feet. He requested that should the Board grant the development, that the Board's decision reflect this correction.
- [23] In response to the Appellant's submissions, Mr. McArthur acknowledged that the Architectural Guidelines are voluntary. However, although the Heritage Planner's opinion was one factor that he considered when deciding to refuse the application, it was not the driving factor.
- [24] With respect to the rear setback variance, he explained that the deficiency was listed in his reasons for refusal because a variance would be required. However, in his view, the variance was not a concern for him, as the proposed development did appear consistent with the blockface along the rear lane.
- [25] He also confirmed that the Site Coverage should be amended to 41.5% as per his Written Submissions, and that the variance was required simply because the principal Dwelling is too large for the narrow lot. The proposed Garage has a Site Coverage of 11.9%, which falls within the development criteria under Section 110.4(7)(a).
- [26] Ultimately, while the required variances are small in nature, they were still required, and when considered together with the Heritage Planner's opinion, he was of the view that the development should be refused.
- [27] Upon questioning by the Board, he explained that although the DC1 referenced development regulations in the underlying RF1 Single Detached Residential Zone, the DC1 provision provided no explicit discretionary powers. It was therefore his understanding that he could only apply the RF1 regulations, and that varying those

regulations would go against the directions of Council. However, he acknowledged that the *Edmonton Zoning Bylaw* does grant Development Officers with discretionary powers to vary regulations within the RF1 Zone.

iii) Rebuttal of the Appellant

- [28] The Appellant declined to provide rebuttal, but confirmed for the Board that they had no concerns with respect to the recommended conditions in the Development Officer's Written Submissions. Ms. Gordon did note that the condition that the proposed garage be less than 4.3 metres in Height was a moot point, as the proposed Garage falls within this restriction.

Decision

- [29] The appeal is ALLOWED and the decision of the Development Authority is REVOKED. The development is GRANTED as applied for to the Development Authority, with the exception of a correction to the scope of application, to be amended as follows:

Construct an Accessory Building (rear detached Garage (**irregular shape, 24 feet x 21 feet**) and demolish existing Accessory Building (rear detached Garage) [emphasis to highlight the correction]

- [30] The development shall be subject to the following CONDITIONS:

1. An accessory building or structure shall not exceed 4.3m in height(Reference Section 6.1(49) and 50.3(2))
2. The driveway access must maintain a minimum clearance of 1.5m from all surface utilities.

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

1. Section 4(d)(i) of DC1 (11421) is varied to permit the distance from the rear detached Garage to the rear property line to be 1.98 metres instead of the required 4.88 metres.
2. Section 110.4(7)(a) of the *Edmonton Zoning Bylaw* is varied to permit a Site Coverage of 41.5% instead of the required 40%.
3. Section 50.3(4)(b) is varied to permit a reduced Side Setback to the property line shared with 10820 – 126 Street NW of 0.3 metres instead of the required 0.9 metres.

4. Section 44(1)(b)(1) is varied to permit a distance of 0.10 metres instead of 0.44 metres from the eaves to the property line shared with 10820 – 126 Street NW.

Reasons for Decision

[32] Single Detached Housing is a Listed Use under Section 3 of this DC1 direct control district (Bylaw 11421) – Westmount Architectural Heritage Area.

[33] Because the proposed development is in a direct control district, the discretion of the Board is constrained by the provisions of Section 641(4)(b) of the Municipal Government Act, which reads:

641(4) Despite section 685, if a decision with respect to a development permit application in respect of a direct control district

...

(b) is made by a development authority, the appeal is limited to whether the development authority followed the directions of council, and if the subdivision and development appeal board finds that the development authority did not follow the directions it may, in accordance with the directions, substitute its decision for the development authority's decision.

[34] The Board must first determine if the Development Officer followed the directions of Council when he refused to grant a development permit for the proposed development.

[35] The Development Officer indicated in his reasons for refusing the application that the proposed development did not meet the rear setback requirement of 4.88 metres under Section 4(d)(i) of DC1 (11421). This provision provides, in part, that:

[No] portion of the garage shall be located less than 4.88 m (16.0 ft.) from the rear property line, *except that the distance may be less if, in the opinion of the Development Officer, it is consistent with the location of other garages in the same block face*" [emphasis added].

[36] However, during the hearing, the Development Officer stated that in his opinion, the proposed garage is consistent with the blockface. Based on this conclusion, he should have exercised his discretionary powers under Section 4(d)(i) of DC1 (11421) and granted the variance. By refusing to exercise his discretion, the Development Officer erred and failed to follow Council's directions.

[37] In addition, within DC1 (11421), there is explicit reference to the development regulations under the RF1 Zone. The Board is of the view that in those instances where the direct control provision explicitly references the RF1 regulations, the Development

Officer's normal discretionary powers granted under Section 11.2(5) of the *Edmonton Zoning Bylaw* are triggered. Section 11.2(5) directs that

The Development Officer shall receive all applications for development and... *may relax a regulation in a Zone or other Section of this Bylaw in accordance with the regulations contained in that Zone or Section, or may relax regulations in accordance with Sections 11.3 and 11.4* [emphasis added].

- [38] Sections 11.3 and 11.4 further set out the scope and limitations upon the Development Officer's discretionary powers.
- [39] However, the Board heard that the Development Officer refused to grant variances to the regulations under the RF1 Zone because in his view, DC1 (11421) only allowed him to apply those regulatory provisions, with no authority to grant any relaxations. This was an error, as Sections 11.2(5) and 11.3 do indeed grant him such authority.
- [40] Since the Board has determined that the Development Officer failed to follow the directions of Council, it steps into the role of the Development Authority, and must determine whether there are valid planning reasons for exercising its discretionary powers to grant the required variances.
- [41] In this regard, the Board notes that the architectural considerations as referenced by both the Heritage Planner and DC1 (11421) are voluntary guidelines. Based on information presented, the Board finds that the rear laneway is not historical in appearance, and that the proposed development is consistent in aesthetic appearance to the surrounding properties.
- [42] Regarding the Site Coverage, the Board notes that the Accessory building itself has a coverage of 11.9%, which is below the maximum of 12%. The Board further accepts that the principal Dwelling is large, relative to the size of the subject lot. Unless the principal Dwelling is reduced in size, any future development on this narrow lot will require a variance to the Site Coverage by virtue of the size of the principal Dwelling. In this case, since the required variance to the Site Coverage stems from the existing legally non-conforming house, and not from the proposed Accessory building, a variance is appropriate.
- [43] With respect to the required variances to the Side Setback, the Board notes that the proposed development will actually eliminate the issue of the eave projection onto the neighbouring property to the north. The Board also heard evidence that on-street parking is a concern within this neighbourhood. The proposed development will remove at least one additional vehicle from the streets. The Board is therefore of the view that the proposed development will have a positive impact upon the community and neighbouring property owners.

- [44] Finally, the Board notes that four letters in support of the development were submitted, and that no one appeared at the hearing in opposition to the proposed development.
- [45] Having determined that the development authority did not follow the directions of council pursuant to Section 641(4)(b) of the *Municipal Government Act*, and having determined that the proposed development will not unduly interfere with the amenities of the neighbourhood, or with the use and enjoyment of neighbouring properties, this Board exercises its authority under Section 641(4)(b) and substitutes its decision for that of the development authority's. The appeal is allowed and the development is granted.

Brian Gibson, Presiding Officer
Subdivision and Development Appeal Board

Board members in attendance:

Mr. V. Laberge, Mr. R. Hachigian, Ms. E. Solez, Ms. S. LaPerle

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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 5th Floor, 10250 – 101 Street, Edmonton.

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