



**EDMONTON
TRIBUNALS**

*Subdivision &
Development
Appeal Board*

*10019 – 103 Avenue NW
Edmonton, AB T5J 0G9
P: 780-496-6079 F: 780-577-3537
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SDAB-D-19-503

Application No. 313613678-001

An appeal to comply with an order to remove and refrain from parking any vehicles and / or trailers in the required front yard area, will be reheard on **SEPTEMBER 25, 2019**.



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Date: September 17, 2019
Project Number: 315200466-001
File Number: SDAB-D-19-137

Notice of Decision

- [1] On September 4, 2019, the Subdivision and Development Appeal Board (the “Board”) heard an appeal that was filed on **August 12, 2019**. The appeal concerned the decision of the Development Authority, issued on July 15, 2019, to approve the following development:

Construct exterior alterations to a Single Detached House (pergola, 3.04m x 7.5m) and to install a Hot Tub in the Side Yard (2.43m x 2.34m).

- [2] The subject property is on Plan 6455RS Blk 6 Lot 14, located at 3452 - 86 Street NW, within the (RF1) Single Detached Residential Zone.
- [3] The following documents were received prior to the hearing and form part of the record:
- A copy of the approved Development Permit and the proposed plans;
 - The Development Officer’s written submission;
 - The Appellant’s reasons for appeal, site plan and photographs;
 - The Respondent’s written submission; and
 - One online response in support of the 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 Appellant, J. Duong*

- [7] Mr. Duong has been living in the neighbourhood for 20 years and has never had any basement flooding issues prior to the subject development being installed. Mr. Duong does not mind what is built as long as it is developed properly and does not create a lot of problems.
- [8] His basement flooded during the recent heavy rainfall because the Respondent's raised the elevation of their property. This caused the water to drain towards his lot rather than towards the street.
- [9] In his opinion, the patio was not built in accordance with the permit that was granted. The Development Officer granted a variance to allow the patio to be built 0.6 metres from the property line. The photographs he submitted show it is less than two inches from the property line.
- [10] Mr. Duong currently lives in Toronto and has travelled to Edmonton twice at great expense to try and resolve the situation. In addition to travel expenses, the repairs to his basement cost him \$8,000.00. He does not want to incur such an expense again.
- [11] He referred the Board to the site plan and photographs he submitted. Mr. Duong recently dug a channel to direct the water towards the street but he is not sure that this is sufficient if the Respondents do not correct the problem on their site.
- [12] Mr. Duong provided the following responses to questions from the Board:
- a) The flooding occurred in early August.
 - b) He reiterated that this is the first time the basement has flooded in more than 20 years. It has not flooded again since he dug the channel but there has not been another prolonged period of rain as there was earlier in the summer.
 - c) The water came in through his basement window which is only an inch or two above ground level and is located next to the driveway. The driveway is relatively flat.
 - d) In his opinion, the flooding was caused because the Respondents raised their foundation and there is no proper drainage under their patio.
 - e) He would like the Respondents to respect the bylaw and have the development set back the required 0.6 metres from the property line.
 - f) The signature of consent contained in the Development Officer's submission is from his father-in-law who is not the owner of the house and is not fluent in English.

ii) Position of the Development Officer, F. Hetherington

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

iii) Position of the Respondents, N. McGarrigle and A. McGarrigle

[14] They do not believe that their development was the cause of the Appellant's recent basement flooding and believe the main issue is the record amounts of rainfall this past summer that no one could foresee.

[15] Before proceeding with their development they consulted with the City, looked at the bylaws and had a contractor come to the site and do an assessment.

[16] Originally a concrete pad was located between the fence and their house (along the full length of the house). Earlier this year, the concrete pad cracked and heaved so they removed it and corrected the grade so it no longer back-sloped towards their house. They did not raise their grade above the level of the original concrete pad and maintained proper drainage as per the City's specifications. Due diligence was taken to maintain the slope towards the street.

[17] Mr. and Mrs. McGarrigle submitted photographs to illustrate that there are problems on the Appellant's property which could have contributed to the basement flooding:

- a) Deficiencies with the downspout and lack of a splash pad.
- b) A retention structure with a plastic lining causes water to collect and the incorrect slope grading prevents the water from draining.
- c) Pavers in the Appellant's yard are not leveled and graded properly creating a negative slope that appears to be causing water to drain toward the foundation and causing water to pool.
- d) The Appellant has recently constructed new water retention structures which may have caused the grading to alter or shift on the subject site.
- e) It appears that a crack on the foundation of the Appellant's house has been covered up with cement. Driveway cracks may be allowing water to seep into the foundation.

[18] If water entered through the Appellant's window, there was no evidence to substantiate that it came from their property.

[19] Mr. and Mrs. McGarrigle could not provide specific comments as to where the pergola sits in relation to the variances that were granted. They hired a contractor to do the work and relied on his knowledge. They believe an existing gas line was a contributing factor as to where the posts could be located.

iv) Rebuttal of the Appellant

[20] Mr. Duong indicated that his driveway was replaced four years ago and he takes care of his property.

[21] With regard to the Respondents' photographs, the water shown in front of his garage is from the garden area of his property and the grade at the side of the house is a lot higher than the garden area. There would be no way for the water from the garden area to flood into his house.

[22] Contractors should know what the City bylaws are and build accordingly.

[23] Mr. Duong reiterated that the patio structure itself would not cause flooding but the soil underneath the patio has caused the flooding due to the grade.

[24] The pergola will negatively affect his enjoyment because it is too close to his property and faces his dining room window. Mr. Duong stated that the driveway between his house and his property line is narrow. If there was no window he would not have an issue with the pergola structure.

Decision

[25] The appeal is **DENIED** and the decision of the Development Authority is **CONFIRMED**. 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 0.90-metre Setback from the pergola post to the Side Lot Line per section 50.3(5)(b) is varied to allow a deficiency of 0.30 metres, thereby decreasing the minimum required Setback to 0.60 metres.
2. The minimum required 0.90-metre Setback from the pergola post to the principal building per section 50.3(5)(d) is varied to allow a deficiency of 0.30 metres, thereby decreasing the minimum required Setback to 0.60 metres.
3. Section 44.1(c)(ii) is waived to allow the pergola beams to project 0.20 metres from the Side Lot Line.

Reasons for Decision

- [27] The proposed development (pergola) is Accessory to Single Detached Housing, which is a Permitted Use in the (RF1) Single Detached Residential Zone.
- [28] The Appellant's main concern about the subject development is drainage due to the recent heavy rainfall that has flooded the basement. The Board notes that although there may be drainage issues based on photographic evidence provided by both the Appellant and the Respondent, drainage issues due to lot grading are beyond the Board's purview.
- [29] Further, any concerns regarding lot grading and development compliance are matters that relate to Bylaw Enforcement.
- [30] With respect to the variances, the Board notes that there is a single lane driveway that acts as a large separation space between the Appellant's house and the pergola and based on the photographic evidence, the Board finds that the deficiency in the setback from the pergola posts and beams to the Side Lot Line will have a minimal impact.
- [31] Based on the above reasons, the Board finds 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. B. Gibson, Presiding Officer
Subdivision and Development Appeal Board

Board Members in Attendance:

Ms. S. LaPerle; Ms. L. Delfs; Mr. V. Laberge; Mr. D. Fleming

cc: Development & Zoning Services – Ms. F. Hetherington / Mr. A. Wen

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: September 17, 2019
Project Number: 305727341-002
File Number: SDAB-D-19-138

Notice of Decision

- [1] On September 4, 2019, the Subdivision and Development Appeal Board (the “Board”) heard an appeal that was filed on **August 11, 2019**. The appeal concerned the decision of the Development Authority, issued on July 23, 2019, to approve the following development:

Construct an Apartment House building with 148 Dwellings and underground parkade.

- [2] The subject property is on Plan RN22 Blk 8 Lot 1, located at 10549 - 123 Street NW and Plan RN22 Blk 8 Lots 2-3, located at 10543 - 123 Street NW, within the DC1 Direct Development Control Provision (Bylaw 18099 – Area 4). The 104 Avenue Corridor Area Redevelopment Plan 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, documents from other City Departments and the approved Development Permit;
 - The Development Officer’s written submission;
 - The Appellant’s written submissions; and
 - Numerous emails and online responses opposed to the 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.
- [7] The Presiding Officer explained that, because the proposed development is located within a Direct Development Control Zone, the authority of the Board is limited by section 685(4) of the *Municipal Government Act*, which states:
- 685(4) Despite subsections (1), (2) and (3), if a decision with respect to a development permit application in respect of a direct control district
- (a) ...
- (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.
- [8] The parties in attendance were advised that the Board cannot vary the Development Authority's decision unless it is satisfied that the Development Authority did not follow Council's directions. Accordingly, the Appellant was asked to indicate how the Development Authority failed to follow Council's directions, specifically with respect to the parking variance that was granted.

Summary of Hearing

i) Position of the Development Officer, K. Yeung

- [9] Ms. K. Bauer attended the hearing on behalf of Mr. Yeung. She responded to questions from the Board.
- [10] Ms. Bauer indicated that the Development Officer followed the directions of Council and referenced the direction provided to the Development Officer by Transportation Services.
- [11] A parking demand study was not done because Transportation Services advised that it was not necessary.
- [12] Ms. Bauer confirmed that the only variance before this Board is visitor parking. There is an excess of six parking stalls overall; however because of the way the developer has chosen to designate parking stalls there is a deficiency of eight visitor parking stalls.
- [13] All requirements outlined in the Direct Development Control Provision have been met.

ii) Position of the Appellant, L. McVeigh

[14] Ms. McVeigh was accompanied by Mr. L. Petryshyn.

[15] Upon receiving further clarification regarding Direct Control Districts and the authority of the Board, the Ms. McVeigh and Mr. Petryshyn were not able to provide any evidence as to how the Development Officer did not follow the directions of Council.

iii) Position of Affected Property Owners in Support of the Appellant

[16] No one in the attendance had anything further to add.

iv) Position of the Respondent, Gardner Architecture

[17] Mr. B. Gardner appeared to represent Gardner Architecture.

[18] He believes that the Development Officer followed the directions of Council.

v) Rebuttal of the Appellant

[19] Ms. McVeigh declined the opportunity for rebuttal.

Decision

[20] The Appeal is **DENIED** and the decision of the Development Authority is **CONFIRMED**. The development is **GRANTED** as applied for to the Development Authority.

Reasons for Decision

[21] This is an appeal of a decision made by the Development Authority with respect to a Development Permit application for an Apartment House building in the DC1 Direct Development Control Provision (Bylaw 18099 – Area 4) (the “DC1 Zone”). Apartment Housing is a listed Use in this DC1 Zone.

[22] Section 685(4) of the *Municipal Government Act* states that:

685(4) Despite subsections (1), (2) and (3), if a decision with respect to a development permit application in respect of a direct control district

(a) ...

(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.

[23] Accordingly, the Board does not have the authority in such a case to vary the decision of the Development Authority unless it determines that the Development Authority did not follow the directions of Council. No parties at the hearing provided evidence that Council's directions were not followed.

[24] The Development Officer waived the requirement for a parking impact study because upon review of the application, Transportation Services determined that such a study was not required. While there is a deficiency of eight visitor parking stalls there is an overall excess of six parking stalls provided for the proposed development.

[25] The Board notes that numerous emails and online comments in opposition to the proposed development were received; however, all regulations contained within the DC1 Zone, other than the visitor parking requirement, have been met.

[26] Based on the above, the appeal is denied.



Mr. B. Gibson, Presiding Officer
Subdivision and Development Appeal Board

Board Members in Attendance:

Ms. S. LaPerle; Ms. L. Delfs; Mr. V. Laberge; Mr. D. Fleming

cc: Development & Zoning Services – Mr. K. Young / Mr. H. Luke

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