



**EDMONTON
TRIBUNALS**

*Subdivision &
Development
Appeal Board*

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Date: September 23, 2016
Project Number: 222119127-002
File Number: SDAB-D-16-219

Notice of Decision

- [1] On September 8, 2016, the Subdivision and Development Appeal Board heard an appeal that was filed on August 10, 2016. The appeal concerned the decision of the Development Authority, issued on August 3, 2016, to refuse the following development:

Construct exterior alterations (Driveway extension, overall 7.97m x 5.57m) to an existing Single Detached House existing without permits

- [2] The subject property is on Plan 1322917 Blk 66 Lot 39, located at 16259 - 138 Street NW, within the RSL Residential Small Lot Zone. The Carlton Neighbourhood Structure Plan and Palisades Area Structure 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:
- Copy of the Development Permit application with attachments, proposed plans, and the refused Development Permit; and
 - Development Officer's written submissions, dated August 20, 2016.

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. C. Hodson

[7] Ms. Hodson was represented by her father, Mr. J. Mederios.

[8] Mr. Mederios stated that he built the house that is located on the subject Site, and that the existing Driveway extension was intended to be part of a concrete swale. Prior to the swale's construction, he had spoken with a City employee, Leo, who confirmed that he could use concrete for the entire swale. However, partway through the swale's construction, he decided to fill the swale with rocks instead, leaving behind the 1.2 metre concrete extension to his Driveway.

[9] He submitted Exhibit "A", a digital photograph from his mobile phone, which showed that the swale has been filled with rocks, with the existing 1.2 metre Driveway extension abutting the swale. He stated that the Driveway extension serves no purpose, and is not being used for parking. Upon questioning by the Board, he confirmed that the extension could feasibly serve as a walkway leading directly to the front entrance of the house. In his view, it would not be possible to grow grass or other types of vegetation on this extension, due to the limited space.

[10] Referring to an image of the overhead view of the subject property and surrounding homes, he noted that properties immediately to the north of the subject Site also do not have grass in the front yard. Upon questioning by the Board, he confirmed that one tree has been provided for landscaping purposes on the south side of the subject property.

ii) Position of the Development Officer, Ms. S. Watts

[11] Ms. Watts clarified that the city employee, Leo, whom the Appellant spoke with, works in the drainage department. Therefore, while it may be true that the entire swale can be constructed with concrete, that does not mean the entire Front Yard can be paved over.

[12] She stated that the issue is not the swale itself, but the possibility of the Driveway extension being used for parking. When the house was first approved, a variance was granted, permitting a slightly wider Driveway at 6.77 metres rather than the standard 6.2 metres (or 3.1 metres per parking space in the garage). The additional 1.2 metres extension would result in a Driveway of 7.97 metres in width, which could be used to park three small cars.

[13] In her view, the extension cannot be considered a walkway. Even though it leads directly to the front entrance, it is connected to the existing Driveway, and therefore considered as a Driveway extension.

- [14] Regarding the three properties to the north of the subject Site which the Appellant had identified as having paved Front Yards, Ms. Watts noted that these other properties have narrower Front Yards, which presents a hardship which would justify a variance to the landscaping requirements. She referred the Board instead to the property located at 13812 – 163 Avenue, which in her view, was comparable to the subject property. She noted how the comparable property was able to accommodate greenery on its Front Yard. It was her opinion that the subject Site presents no hardship.
- [15] Upon questioning by the Board, she stated that greenery such as shrubs and trees could be planted on the portion of the yard taken up by both the swale and the 1.2 metre extension. There are three other properties to the north which would have variances granted due to hardship of the lot. However, all others as shown in the DO's report do not have these variances and all have greenspace. There is no hardship to this subject Site.
- [16] She stated that the Driveway extension was brought to the City's attention when the Applicant applied for a compliance certificate.

iv) Rebuttal of the Appellant

- [17] The Appellant declined to provide rebuttal.

Decision

- [18] 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 with **CONDITIONS**:
- 1) The development shall be constructed in accordance with the stamped and approved drawings.
 - 2) The 1.2 metre Driveway extension shall not be used as a parking area.

Reasons for Decision

- [19] The development matter before this Board pertains to a Driveway extension to a Single Detached House, which is a Permitted Use in the RSL Residential Small Lot Zone.
- [20] The Development Officer stipulated two reasons for refusal: first, the Driveway extension does not lead directly from the roadway to the Garage, in contravention of Section 54.1(5) of the *Edmonton Zoning Bylaw*. However, the Board notes that the extension leads to the front entrance of the subject property, and therefore can be characterized as a walkway or sidewalk. Neither of these terms are defined in the *Edmonton Zoning Bylaw*,

but the Board accepts the Appellant's submission that the 1.2 metre extension serves no other purpose other than access to the front door. As such, the Board finds that the 1.2 metre path constitutes a walkway or sidewalk, and does not contravene Section 54.1(5). A variance to this section is therefore not required.

- [21] The Development Officer's second reason for refusal states that the extension is in contravention of Section 54.2(2)(e)(i), as parking spaces shall not be located within a Front Yard. The Board, having accepted that the Appellant uses the 1.2 metre extension only for access to the front door, finds that no parking spaces are located within the Front Yard. Based on the photographic evidence provided by the Appellant, the Board finds that the Front Yard has been replaced by a swale. This swale has been filled with decorative rocks, which is an acceptable form of landscaping under the *Edmonton Zoning Bylaw*. Based on these findings, no variance is required to Section 54.2(2)(e)(i).
- [22] The Board also disagrees with the Development Officer's contention that the subject Site presents no hardship. The Board is of the view that the creation of the swale for necessary drainage purposes creates a difficulty for the property owner, as it leaves little to no room for greenery landscaping.
- [23] The Board has also reviewed the map and overhead view of the surrounding neighbourhood, and finds that the extension is similar to the three adjacent properties to the north of the subject development. These three properties have Front Yards similar to the subject development. The Board also notes that there was no opposition from neighbouring property owners. Taken together, the Board finds that the proposed development is characteristic of the neighbourhood.
- [24] 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 subject development therefore meets the test established under Section 687(3)(d) of the Municipal Government Act, and the appeal is allowed.

Brian Gibson, Presiding Officer
Subdivision and Development Appeal Board

Board Members in Attendance

P. Jones; K. Hample; E. Solez; M. McCallum

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: September 23, 2016
Project Number: 222695011-001
File Number: SDAB-D-16-198

Notice of Revoked Permit

Re: Project No. 222695011-001; Operate a Major Home Based Business for a General Contractor (AAA VINYL DECKING AND RAILING LTD)

On September 8, 2016, the Subdivision and Development Appeal Board made the following decision:

“That the approved permit for Project No. 222695011-001 be REVOKED at the request of the Applicant”.

Reasons for Decision:

[1] The Subdivision and Development Appeal Board received a written request from the Applicant, which stated in part:

This letter is in regards to file #SDAB-D-16-198 at 2923-89st Edmonton, AB.

I would like to withdraw my application for the major home-based business at 2923 89th St., Edmonton

[2] Section 687(3)(c) of the *Municipal Government Act*, RSA 2000, c M-26, provides as follows:

687(3) In determining an appeal, the subdivision and development appeal board

...

(c) may confirm, revoke or vary the order, decision or development permit or any condition attached to any of them or make or substitute an order, decision or permit of its own;

- [3] Pursuant to its powers under Section 687(3)(c), the Board grants the Applicant's request to withdraw Permit No. 222695011-001. The aforementioned permit is therefore revoked.

Brian Gibson, Presiding Officer
Subdivision and Development Appeal Board

Board Members in Attendance

P. Jones; K. Hample; E. Solez; M. McCallum

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