

Edmonton Subdivision and Development Appeal Board

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Date: September 18, 2015
Project Number: 171475852-002
File Number: SDAB-D-15-201

Notice of Decision

This appeal dated August 12, 2015, from the decision of the Development Authority for permission to:

Construct exterior alterations (front concrete extension, 4.27m x 10.98m), existing without permits

on Plan 0622910 Blk 18 Lot 64, located at 6015 - 164 Avenue NW, was heard by the Subdivision and Development Appeal Board on September 9, 2015.

Summary of Hearing:

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.

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

The Board heard an appeal of the decision of the Development Authority to refuse an application to construct exterior alterations (front concrete extension, 4.27m x 10.98m), existing without permits located at 6015 – 164 Avenue NW. The subject site is zoned RF1 Single Detached Residential Zone and is within the Matt Berry Neighbourhood Structure Plan and the Pilot Sound Area Structure Plan.

The development permit application was refused because the concrete extension to the east side property line does not lead to an overhead garage door or parking area, parking is not allowed in the Front Yard, there is an excess in the maximum allowable width of the driveway, monolithic concrete is not a form of landscaping, and the concrete extension covering nearly the entire front yard is unsightly.

Prior to the hearing the following information was provided to the Board:

- A written submission from the Appellant submitted on August 12, 2015, submitted with the original appeal
- A memorandum from the City of Edmonton Transportation Services Department dated July 27, 2015
- A written submission from the Development Officer received on September 4, 2015

A written submission from the Appellant received on September 4, 2015

The Board heard from Ms. M. Walter who was representing the Appellants, Mr. C. Grzeszczuk and Ms. M. Grzeszczuk, who were also present. They provided the following information:

1. Ms. Walter is a realtor and a family friend.
2. The driveway was poured in 2008 and the applicants were not aware of the permit requirement.
3. Their intention was to make sure the neighbourhood looked good and to raise the value of the property. They feel concrete is nicer than grass.
4. A number of houses in the neighbourhood have driveway extensions. Ms. Walter is currently selling a home with a driveway extension in the immediate neighbourhood.
5. All but two neighbours in the 60 metre notification area indicated their support of the proposed development. No one was in opposition and no one appeared to oppose the application today.
6. Eighty percent of the neighbours have extended driveways which led them to believe that it was acceptable.
7. They referred to the pictures they had submitted which showed:
 - a. Existing extended driveways
 - b. Unattractive landscaping in lieu of driveways including uncut grass, unkempt stones and shrubs with garbage in them

The Appellants provided the following responses to questions:

1. All pictures submitted were taken within a short walk of their house.
2. All the people listed on the petition in support of the development are from within the 60 metre notification area. They had not received responses from two property owners; one was never home and the other one did not speak English.
3. They were not aware that the landscaping requirement in the initial development permit was not complied with.
4. They clarified the time line:
 - a. The home was constructed in 2006 / 2007
 - b. They were the original owners and took possession in 2007.
 - c. There was originally a double driveway and the extension was added in 2008.
5. They received a letter in 2015 with their valuation and applied for the permit at that time. They noted that their permit application in 2015 included a map with the driveway dimensions set out.
6. Their submission referred to a Bylaw which was enacted in 2011 – after they poured the driveway extension in 2008.

The Board heard from Mr. J. Xie, representing the City of Edmonton Sustainable Development Department who provided the following responses to questions:

1. The existing driveway does not comply with original development permit for the single detached house.
2. The concrete in front of the house does not comply with sections 54 and 55 of the current *Edmonton Zoning Bylaw*.
3. The two areas of concrete were poured at different times. The original driveway was poured in 2007 and the extension was poured in 2008.
4. While the new bylaws have specific definitions that apply to the current situation regarding concrete and landscaping, the bylaws in 2008 still implied that parking in the front yard was not permitted and concreting the front yard was not permitted.
5. It is his opinion that a number of the existing driveways shown in the photos were built without permits and therefore he did not consider extended driveways as characteristic of the neighbourhood.
6. The amount of the front lot covered with concrete (approximately 90%) is also not characteristic of the neighbourhood.

In rebuttal Ms. Walter made the following points:

1. She reiterated that the driveway was completed prior to the bylaw change in 2011.
2. A number of properties in the neighbourhood had driveway extensions or landscaping consisting solely of stone or bricks.

Decision:

The appeal is **ALLOWED IN PART** and the decision of the Development Authority is **VARIED**. The development is **GRANTED** with the following changes:

The development is subject to the following **CONDITIONS**:

1. The proposed concrete extension is approved as per the revised Site Plan (“Enclosure I”).
2. The highlighted portion of the Site Plan must be Landscaped, as per the definition of Landscaping, section 6.1(55) of the *Edmonton Zoning Bylaw*.
3. Landscaping is defined to mean “the preservation or modification of the natural features of a Site through the placement or addition of any or a combination of the following:
 - a. soft landscaping elements such as trees, shrubs, plants, lawns and ornamental plantings;
 - b. decorative hardsurfacing elements such as bricks, pavers, shale, crushed rock or other suitable materials, excluding monolithic concrete and asphalt, in the form of patios, walkways and paths; and
 - c. architectural elements such as decorative fencing, walls and sculpture.”

Advisement:

Section 17.1(2) of the *Edmonton Zoning Bylaw* states “When an application for a Development Permit has been approved by the Subdivision and Development Appeal Board, it shall not be valid until any conditions of approval, except those of a continuing nature, have been fulfilled.”

Reasons for Decision:

The Board finds the following:

1. The proposed development is Accessory to Single Detached Housing which is a Permitted Use in the RF1 Single Detached Residential Zone, section 110.2(4) of the *Edmonton Zoning Bylaw*.
2. The Board has determined that pursuant to section 6.1(40) of the *Edmonton Zoning Bylaw* the Front Yard is the portion that exists between the Front Lot Line, the Side Lot Lines, and the front edge of the Garage.
3. As noted on Enclosure I and highlighted in green must adhere to all Landscaping requirements pursuant to section 6.1(55) of the *Edmonton Zoning Bylaw* which will enhance the look and streetscape of the neighbourhood.
4. The Board accepts the Development Officer's conclusions that the amount of coverage of concrete in the Front Yard is excessive.
5. The Board acknowledges the neighbourhood support provided by the Appellants but believes the amount of concrete does have a material impact on the neighbourhood. The Board notes there is no existing Landscaping in the Front Yard.
6. Despite the many photographic submissions provided by the Appellant, the Board could not confirm that these were legal and permitted concrete extensions. The Board further notes that some of the photos were taken outside the 60 metre notification area.
7. With the conditions imposed, 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.

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*, 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 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.

Vincent Laberge
Subdivision and Development Appeal Board

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Date: September 18, 2015
Project Number: 174408720-001
File Number: SDAB-D-15-202

Notice of Decision

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

Develop a Secondary Suite in the Basement of a Single Detached House

on Plan 1124065 Blk 29 Lot 37, located at 5122 - 1B Avenue SW, was heard by the Subdivision and Development Appeal Board on September 9, 2015.

Summary of Hearing:

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.

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

The Board heard an appeal of the decision of the Development Authority to refuse an application to develop a Secondary Suite in the Basement of a Single Detached House located at 5122 – 1B Avenue SW. The subject site is zoned RPL Planned Lot Residential Zone and is located within the Charlesworth Neighbourhood Structure Plan and the Southeast Area Structure Plan.

The development permit application was refused because of a deficiency in the minimum required Site Area for a Single Detached House containing a Secondary Suite and a deficiency in the minimum required number of parking spaces.

Prior to the hearing the following information was provided to the Board:

- A copy of the Southeast Area Structure Plan and the Charlesworth Neighbourhood Structure Plan
- A written submission from the Development Authority received on September 4, 2015.
- One on-line response in opposition to the development and one on-line response that is neutral

The Board heard from the Appellant, Mr. F. Escobar and his partner, Mr. M. Ramirez, who provided the following information:

1. They provided a petition with 24 signatures from neighbours in support of the proposed development (Exhibit "A").
2. Only one person will live in the basement and he does own a car.
3. The driveway is 2.74 metres by 6.1 metres (9 feet by 20 feet) which would allow the resident of the secondary suite to park behind the garage if necessary.
4. The residents in the main house have made an agreement with the resident in the secondary suite to keep keys in the garage to allow for parking across the driveway.
5. Parking on the front street is available.

Mr. Escobar and Mr. Ramirez provided the following responses to questions:

1. Notwithstanding that the development application is for a 600 square feet secondary suite, the actual development will be less than 500 square feet. The suite was described as very comfortable for one person.
2. There is an existing side door allowing for entrance to the suite.
3. They spoke to neighbours and received no objection or complaint to the proposed development.
4. They explained the P1 to P4 parking labels on the Real Property Report attached to this application.
5. The current renter wants to live in the basement and has already rented out the main floor.
6. The owners of the property do not live in the house. The Applicant is the contractor building the basement.
7. It is very easy to find street parking on 1B Avenue SW.

The Board heard from Mr. J. Xie, representing the City of Edmonton Sustainable Development Department who provided the following responses to questions:

1. The minimum required site area of 360 square metres for a secondary suite allows for the required parking and amenity areas; the proposed secondary suite on the existing 318 square metre site results in a parking deficiency.
2. There is an existing garage which does not allow for any changes to accommodate the parking requirements.
3. Two parking spaces are required for the main dwelling regardless of how many bedrooms there are. A secondary suite requires one additional parking space for the first two bedrooms.
4. There is a difference in appearance in a Duplex as opposed to a Single Family Home with a Basement Suite.
5. A duplex, with two dwelling units, is permitted on a minimum 300 square metre site in the RF1 Single Detached Residential Zone. A primary dwelling unit with a secondary suite has a minimum site requirement of 360 square metres in most zones, including the RF1 Single Detached Residential Zone and the RPL Planned Lot Residential Zone. The intent of the RPL Planned Lot Residential Zone is to provide economically viable single family homes which afford privacy and independence.

6. There is no hardship associated with this site, which is a typical lot size in the RPL Planned Lot Residential Zone, and he could not see any reasons for allowing a secondary suite on this site.

In rebuttal Mr. Escobar and Mr. Ramirez made the following point:

1. They provided anecdotal evidence that there are sometimes greater parking issues with duplexes as opposed to secondary suites.

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. A Secondary Suite is a Permitted Use in the RPL Planned Lot Residential Zone, section 130.2(3) of the *Edmonton Zoning Bylaw*.
2. The Board has determined that the deficiency in overall site size has contributed to the inability to provide the required parking spaces to allow for a Secondary Suite.
3. The Board believes the deficiency of one parking space is an issue with the limited amount of on-street parking associated with a RPL Planned Lot Residential Zone. The Board received one on-line response in opposition to this application that indicated on-street parking is currently strained.
4. The Board accepts that pursuant to section 86 of the *Edmonton Zoning Bylaw*, the minimum site area of 360 square metres for a Secondary Suite was purposely dictated by Council to ensure compliance with parking, private amenity space and setback requirements.
5. The Board does not accept that perpendicular parking on the existing rear driveway is sufficient to provide the third required parking space for this overall development.
6. The general purpose of the RPL Planned Lot Residential Zone is to provide for small lot Single Detached Housing but makes no specific reference to other Use forms.
7. The Board notes, based on photographic evidence provided, that the south curb lane of 1B Avenue SW is zoned RSL Residential Small Lot Zone with front attached garages which may hinder on-street parking in the area.
8. The Board finds 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 the 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.

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Subdivision and Development Appeal Board