



October 6, 2017

Project Number: 256065457-001
File Number: SDAB-D-17-174

RE: Project No. 256065457-001 / SDAB-D-17-174 – to construct a two-Storey Accessory building (main floor Garage 11.58 metres by 7.01 metres, second floor Garage Suite, 9.14 metres by 7.01 metres) and to demolish the existing detached Garage on Lot, Block 28, Plan 6227HW, located at 9907 – 82 Street NW.

Please find attached a copy of an amended Notice of Decision. Page 3, Item 20, of the Notice of Decision should read as follows:

[20] They will be adding features such as cedar and an added roof line so the proposed development does not look like a box. To mitigate privacy impacts, the bedroom windows on the south and north side will be frosted. The window on the west faces the back yard.

Yours truly,

Ms. N. Coco Alberta, Board Officer
Subdivision and Development Appeal Board



Date: October 5, 2017
Project Number: 256065457-001
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REVISED NOTICE OF DECISION

- [1] On September 21, 2017, the Subdivision and Development Appeal Board heard an appeal that was filed on August 29, 2017. The appeal concerned the decision of the development Authority, issued on August 28, 2017, to refuse the following development:

Construct a two -Storey Accessory building (main floor Garage 11.58 metres by 7.01 metres , second floor Garage Suite , 9.14 metres by 7.01 metres) and to demolish the existing detached Garage

- [2] The subject property is on Plan 6227HW Blk 28 Lot 2, located at 9907 - 82 Street NW, 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:

- Copies of the refused permit, permit application, and plans;
- Development Officer's written submissions dated September 15, 2017;
- Appellant's submissions and supporting materials;
- One online response and three letters in support of the development;
- One online response in opposition to the development; and
- PowerPoint presentation with supporting materials from a neighbouring property owner.

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, Niche Homes

- [7] The Appellant was represented by Mr. Philipenko. He was accompanied by property owner, Mr. Turnbull.
- [8] The Turnbolls intend for their son to live in the Garage Suite with his wife. Once their son starts a family and the space becomes too small for their son's family, the Turnbolls will then move into the Garage Suite.
- [9] The Garage Suite will have two bedrooms, an open concept living room/kitchen, a balcony for amenity space, and an interior stairwell that can be turned into a lift in the future. The triple garage will be used to park three vehicles that are owned by the Turnbolls and their son's family. No vehicles will be parked on the street.
- [10] Mr. Philipenko outlined the reasons for the refusal and the required variances. This information was disclosed during the community consultation process, which involved attendance at a Forest Heights Community League meeting. The Community League was neutral about the development, as it was their general policy that these types of developments have neighbour-specific impacts as opposed to community-wide impacts. The Appellant also spoke with 26 property owners within the 60 metre notification area. They received 24 signatures or letters in support of the development.
- [11] Upon questioning by the Board, the Appellant confirmed that Ms. Gouveia-Parker and Mr. Parker (neighbours appearing at the hearing in opposition to the development) were consulted after the appeal was filed. During that meeting, they reviewed the proposed plans and the variances that would be required following the September 1, 2017 amendments to the Garage Suite regulations.
- [12] The proposed Garage Suite will be shifted closer to the rear lane than the current Garage and the Driveway will be reduced accordingly, as they no longer require a long Driveway to park their vehicles with the new triple garage. All setbacks are compliant with the regulations, and the south side of the second Storey of the Garage Suite is actually set back further to reduce massing.
- [13] Following the recent September 1, 2017 amendments to the regulations governing Garage Suites, the only variances required for the proposed development are the Floor Area and total Floor Area of the Garage Suite. Mr. Philipenko confirmed that the Garage Suite will be 690 square feet, and will not be developed over the entire three bays of the triple garage. The excess in Site Coverage stems from the three car garage.
- [14] In the Appellant's view, sunshadow upon the neighbour to the north will not be an issue in the summer, but could be an impact during the winter. On the whole, there will be minimal sunshadow impact. Also, the windows on the north and south sides of the development will be frosted and the balcony that faces east will have privacy screening.

In the Appellant's view, potential impacts upon neighbouring properties have been mitigated, and a multi-generational Garage Suite will enhance the neighbourhood.

ii) Position of Affected Property Owners in Opposition, Mr. Parker and Ms. Gouveia-Parker

- [15] The Parkers were unaware of the proposed Garage Suite until they received a notice in the mail. Ms. Parker confirmed that she spoke with both Mr. Philipenko and Mr. Turnbull regarding the proposed plans. However, she was concerned that other neighbouring property owners were not fully aware of the variances required, particularly following the amendments to Garage Suite regulations in effect on September 1, 2017.
- [16] Ms. Parker referenced photographs in her supporting materials which showed drainage problems on both her property and the Turnbolls' property. The Parkers also submitted concerns about the Garage Suite operating as a rental unit in the future, and the potential privacy impacts. However, their main concern is the Height of the proposed development and the potential sunshadow effect, which will be particularly pronounced in the winter.
- [17] Upon questioning by the Board, they confirmed that the two west-facing bedroom windows will overlook their property.

iii) Rebuttal of the Appellant

- [18] In the Appellant's opinion, once Community Consultation was complete, neighbouring property owners were supportive of the proposed development. Detailed information was provided and feedback was welcomed.
- [19] The Appellant had discussed the drainage issues with the Turnbolls, who are willing to develop a retaining wall with internal swell to ease drainage concerns.
- [20] They will be adding features such as cedar and an added roof line so the proposed development does not look like a box. To mitigate privacy impacts, the bedroom windows on the south, , and north side will be frosted. The window on the west faces the back yard.

Decision

- [21] 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 **CONDITIONS**:

1. Prior to any demolition or construction activity, the applicant must post on-site a development permit notification sign (Section 20.2).

2. Immediately upon demolition of the building, the site shall be cleared of all debris.
3. Frosted or opaque glass treatment shall be used on the north and south faces of the second Storey windows to minimize overlook into adjacent properties (Section 87.13).
4. Platform Structures greater than 1.0m above Grade shall provide Privacy Screening to reduce overlook onto Abutting properties (Section 87.16).
5. Façades facing a Lane shall have exterior lighting (Section 87.19).
6. Garden Suites shall have a covered entrance feature over the main door (Section 87.20).
7. Only one of a Secondary Suite or Garden Suite may be developed in conjunction with a principal Dwelling (Section 87.21).
8. Notwithstanding the definition of Household within this Bylaw, the number of unrelated persons occupying a Garden Suite shall not exceed three (Section 87.22).
9. A Garden Suite shall not be allowed within the same Site containing a Group Home or Limited Group Home, or a Major Home Based Business and an associated principal Dwelling, unless the Garden Suite is an integral part of a Bed and Breakfast Operation in the case of a Major Home Based Business (Section 87.23).
10. A Garden Suite shall not be subject to separation from the principal Dwelling through a condominium conversion or subdivision (Section 87.25).

ADVISEMENT:

11. The driveway access must maintain a minimum clearance of 1.5m from all surface utilities.
12. Lot grades must match the Edmonton Drainage Bylaw 16200 and/or comply with the Engineered approved lot grading plans for the area. Contact Drainage Services at 780-496-5576 or lot.grading@edmonton.ca for lot grading inspection inquiries.
13. Unless otherwise stated, all above references to "section numbers" refer to the authority under the Edmonton Zoning Bylaw 12800.

14. An approved Development Permit means that the proposed development has been reviewed against the provisions of this bylaw. It does not remove obligations to conform with other legislation, bylaws or land title instruments including, but not limited to, the Municipal Government Act, the Safety Codes Act or any caveats, restrictive covenants or easements that might be attached to the Site.
15. A Building Permit is required for any construction or change in use of a building. Please contact the 311 Call Centre for further information.
- [22] In granting the development the following VARIANCES to the *Edmonton Zoning Bylaw* are allowed:
- 1) Section 87(4) is varied to permit the maximum total floor area for the Garden Suite to be 137.22 square metres instead of 120.0 square metres.
 - 2) Section 87(5)(d) is varied to permit the maximum second Storey floor area to be 56.02 square metres instead of 50.0 square metres.

Reasons for Decision

- [23] Garden Suites are a Permitted Use in the RF1 Single Detached Residential Zone. Under section 3.2(1)(i), Garage Suites are deemed to be Garden Suites.
- [24] The proposed development conforms with all the development regulations for Garden Suites with two exceptions, namely section 87(4) pertaining to total Floor Area and section 87(5)(d) pertaining to maximum allowable second Storey Floor Area. The Appellant has requested a variance of 17.22 square metres to the total Floor Area, and 6.02 square metres for the maximum second Storey Floor Area.
- [25] The Board has decided to grant these two variances for the following reasons:
- a) The test for granting a variance is set out in section 687(3)(d) of the *Municipal Government Act*, which states in part:

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

...

(d) may make an order or decision or issue or confirm the issue of a development permit even though the proposed development does not comply with the land use bylaw if, in its opinion,

(i) the proposed development would not

(A) unduly interfere with the amenities of the neighbourhood, or

(B) materially interfere with or affect the use, enjoyment or value of neighbouring parcels of land...

The primary concerns raised by the Appellants were a) an overall massing effect of the proposed structure that would make the building out-of-scale with other developments in the area; b) loss of sunlight penetration into the adjacent lot to the north; and c) reduction of privacy and overlook concerns.

- b) With respect to the massing effect, the Board notes that the total Site Coverage for this Garden Suite is significantly within the maximums set in the development regulations, which allow 18% Site Coverage for Accessory buildings. The proposed Garage with Garden Suite is only 12.84% of the subject site. Further, the maximum Height allowed is 6.5 metres to the midpoint of the roof, whereas the proposed building is 6.2 metres to the midpoint of the roof.
- c) While this structure may have a greater Floor Area than the regulations prescribe, that larger Floor Area is mitigated by the reductions to the maximum of both the Height and Site Coverage.
- d) With respect to sunlight penetration concerns, the Board again notes that this structure, a Permitted Use, could have been 0.3 metres higher than the currently proposed Height, and located closer to the side lot line, meaning that steps have been taken by the Applicant to mitigate and reduce the potential sunshadow effect.
- e) In addition, the proposed Garage has been shifted toward the back lot line, which further reduces the impact the structure would have upon the lot immediately to the north both in terms of visual impact and sunlight penetration.
- f) The Board further notes that there is an Accessory Garage on the lot immediately to the north of the subject site that is close to the property line, which further reduces the impact of the proposed garage on the Amenity Area in the lot immediately to the north.
- g) With respect to the privacy concerns, the Board has placed a condition on this permit requiring the second Storey windows that directly overlook adjacent properties to be frosted, thereby significantly limiting privacy concerns.

[26] While the Board acknowledges the opposition of the property owners to the north of the subject site, the Board does note that there was widespread support for this development within the 60 metre notification area. As a result, and for the reasons cited above, the Board finds that the proposed development will not unduly interfere with the amenities of the neighbourhood or materially interfere with or affect the use, enjoyment or value of neighbouring parcels of land. The appeal is allowed.

Mr. I. Wachowicz, Chairman
Subdivision and Development Appeal Board

Board Members in Attendance:

Ms. K. Cherniawsky; Mr. A. Bolstad; Mr. A. Peterson

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.



**EDMONTON
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SDAB-D-17-175

Application No. 153328793-003

An appeal by Kristopher Maharaj to comply with an Order to apply for a Congregate Living Development Permit on or before September 14, 2017 or revert the property back to a Single Household on or before September 14, 2017 (3 unrelated tenants OR 1 Family and 1 unrelated tenant) was WITHDRAWN.