



**EDMONTON
TRIBUNALS**

*Subdivision &
Development
Appeal Board*

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Date: September 22, 2017
Project Number: 256252327-001
File Number: SDAB-D-17-165

Notice of Decision

- [1] On September 7, 2017, the Subdivision and Development Appeal Board (the “Board”) heard an appeal that was filed on **August 13, 2017**. The appeal concerned the decision of the Development Authority, issued on August 9, 2017, to refuse the following development:

Construct an Accessory Building (detached Garage 7.92m x 7.92m, 6.44m in Height).

- [2] The subject property is on Plan 5887HW Blk 20 Lot 11, located at 14443 - 110 Avenue 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:
- A copy of the Development Permit application with attachments, proposed plans, and the refused Development Permit;
 - The Development Officer’s written submission; and
 - The Appellant’s written submission.

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, Mr. G. Abma*

- [7] Mr. Abma would like to build a double-car detached garage with a loft on the second storey.
- [8] The location of the garage is to park his RV parallel to the rear lane.
- [9] The loft space in the garage will be utilized for storage and an exercise room.
- [10] The loft will be heated but it will not have plumbing.
- [11] He would like to have a workshop in the garage and the attic area will not be used as livable space.
- [12] The proposed garage could be developed with a barn-style roof, but he would like to build a standard-style garage, which is characteristic of the neighbourhood. The previous garage had a flat roof with a patio on the east side and a carport to the south.
- [13] A 9-foot high ceiling will allow him to park his work truck in the garage.
- [14] The lot has a grade that is approximately three feet higher than the rear lane. The garage will be lowered into the grade by one foot.
- [15] They spoke to neighbouring property owners in the 60-metre notification radius and received 22 signatures in support of the proposed development.
- [16] The neighbours east and west of the subject site have garages similar to the proposed development. There are approximately 12 garages in the neighbourhood that are similar to the proposed development.
- [17] There are many older houses in the area and neighbours are replacing old garages to accommodate larger vehicles.
- [18] A neighbour across the street is building a Garage Suite.
- [19] There is a three-storey walk-up apartment immediately behind their house and there are several other apartments in the neighbourhood.

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

- [20] Ms. Watts was not able to vary height and the separation space variance would have been granted if she was able to vary height.

- [21] With regard to the grade elevation, she calculated the top of the slab and measured 6 inches down to the mid-point of the roof.
- [22] Development Officers generally do not require geodetic surface elevations for garages.
- [23] In her opinion, the design is aesthetically pleasing and the applicant is trying to mitigate the impact on neighbouring property owners. In her opinion, the proposed development will fit in better with the neighbourhood compared to a barn-style garage.
- [24] The Appellant completed the community consultation requirement with all neighbouring property owners and there was no opposition to the proposed garage.
- [25] The proposed garage will be similar to the previous garage.
- [26] In her opinion, using the attic space for storage, an art studio, or exercise area is acceptable. The attic space will not be used for a Garage Suite since there will be no plumbing in this area.
- [27] There are other garages in the neighbourhood that are similar or larger than the proposed garage.

iii) Rebuttal of the Appellant, Mr. G. Abma

- [28] He is agreeable to any conditions suggested and imposed by the Board.

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, subject to the following **CONDITIONS**:
1. The proposed Accessory Building development shall NOT be used as an additional Dwelling. An additional Dwelling shall require a new Development Permit application.
 2. Eave projections shall not exceed 0.46m into required Setbacks or Separations spaces less than 1.2m. (Section 44.1(b)).
- [30] In granting the development the following variances to the *Edmonton Zoning Bylaw* are allowed:
1. The maximum allowable Height is 4.3 metres. The Height of the proposed detached Garage is 6.44 metres and an excess of 2.14 metres is allowed. (Section 50.3(2)).

2. The maximum allowable distance from Grade to the ridge line of the roof is 5.8 metres. The proposed distance from Grade to the ridge line of the roof is 7.46 metres and an excess of 1.66 metres is allowed. (Section 52.2(c)).
3. The minimum required separation distance between the detached Garage and the Principal Dwelling is 3.0 metres. The proposed separation distance between the detached Garage and the Principal Dwelling is 1.23 metres and a deficiency of 1.77 meters is allowed. (Section 814.3(20)).

Reasons for Decision

- [31] The proposed development, a detached Garage, is Accessory to a Permitted Use in the (RF1) Single Detached Residential Zone.
- [32] In granting the variances to Height, the Board accepts the Appellant's submission that there are other similar sized two-storey Garages within the neighbourhood, which was supported by the Development Officer.
- [33] The Development Officer indicated that she would have considered granting the Height variance if she had the authority to do so.
- [34] The Appellant has located the Garage in such a way to mitigate the impact on neighbouring properties, particularly the immediate property to the west, by placing the the proposed Garage directly in line with the existing Garage.
- [35] The design to the roof system of the proposed Garage with the dormers will mitigate the massing effect and vision from neighbouring properties as well as from the rear lane.
- [36] The Board supports the Development Officer's conclusion that the proposed Garage is subordinate as required by the *Edmonton Zoning Bylaw* to the Principal Dwelling.
- [37] The Board accepts that the variance in Height will be the highest possible variance, given that the Appellant is actually lowering the foundation of the proposed Garage in such a way that it will lower the overall Height. However this calculation was indeterminable as geodetic surface elevations were not provided.
- [38] With respect to the separation distance regulation of the Mature Neighbourhood Overlay, the Board notes that the previous Garage had a similar distance from the Principal Dwelling as the proposed distance.
- [39] The Board accepts that the community consultation requirement was completed and this was confirmed by the Development Officer as per section 814.5(2)(Tier 3) of the Mature Neighbourhood Overlay. The Board was provided with significant support from the neighbourhood and there was no opposition to the proposed Garage.

- [40] The Board notes that the proposed Garage meets the minimum Setback requirements and the proposed Garage is under the maximum allowable Site Coverage.
- [41] The Board notes that there is a three-storey walk-up Apartment House located immediately south of the subject Site that is higher than the proposed detached Garage, which mitigates any effect of the Height variance.
- [42] Based on the 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.

Mr. V. Laberge, Presiding Officer
Subdivision and Development Appeal Board

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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SDAB-D-17-166

Application No. 253720148-001

An appeal by Platinum Living Homes to construct a Single Detached House with a front Rooftop Terrace, fireplace, Basement development (NOT to be used as an additional Dwelling), and rear uncovered deck (4.72m x 7.47m) was **TABLED TO SEPTEMBER 28, 2017.**



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Date: September 22, 2017
Project Number: 189278990-001
File Number: SDAB-D-17-167

Notice of Decision

- [1] On September 7, 2017, the Subdivision and Development Appeal Board (the “Board”) heard an appeal that was filed on **August 10, 2017**. The appeal concerned the decision of the Development Authority, issued on August 1, 2017, to refuse the following development:

Construct additions to a Single Detached House (front, side, and second Storey), and exterior alterations (extended roofline over front balcony), existing without permits.

- [2] The subject property is on Plan 2923R Blk B Lot 15, located at 12761 - 115 Street NW, within the (RF2) Low Density Infill 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:
- A copy of the Development Permit application with attachments, proposed plans, and the refused Development Permit;
 - The Development Officer’s written submissions and a technical review; and
 - The Appellant’s written submission.
- [4] The following exhibits were presented during the hearing and form part of the record:
- Exhibit A – Photographs showing the original house and photographs showing the new additions submitted by the Appellant;
 - Exhibit B – Community Consultation submitted by the Appellant; and
 - Exhibit C – Calculations submitted by the Development Officer.

Preliminary Matters

- [5] 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.
- [6] The Presiding Officer outlined how the hearing would be conducted, including the order of appearance of parties, and no opposition was noted.

[7] 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, Mr. E. Zinati, who was accompanied by his son, Mr. L. Zinati*

[8] Mr. L. Zinati stated that the balcony was in place when they purchased the property in 1990.

[9] The roof over the balcony door retained snow and water and was in need of repair because of rotting. The lower part of the balcony collapsed and additional pillars were added to support the balcony. The arches between the pillars were added to enhance the property.

[10] They made the balcony larger to prevent water damage.

[11] In their opinion, the front addition is not an addition but a covered entrance. The new structure supports the balcony.

[12] They submitted and referred to photographs showing the pillars and additions that have been in place since 1990 when they purchased the property, marked *Exhibit A*.

[13] The photographs show the wood that needed to be replaced and how they replaced it to support the balcony.

[14] The side patio was built to replace the dirt area where water would leak into the basement. The side patio was covered for privacy.

[15] They provided the Board with Community Consultation, marked *Exhibit B*.

[16] Mr. L. Zinati indicated that the neighbouring property owners were not opposed to the additions.

[17] Mr. Zinati provided the following responses with respect to questions from the Board:

- a. They explained to the neighbours that the renovations were complete and they were waiting for permits from the City before finishing the exterior with stucco and some brick. The additions were not done at the same time and they are still finishing renovations to the interior of the house.
- b. They did not speak to any architects for feedback during the renovations.
- c. The balcony was covered to protect it from the weather elements. The floor area of the balcony is the same size as it was before they covered it.

d. Eaves have been installed on the house but the downspout currently drains on the neighbour's property to the south. They can move them if required.

e. In their opinion, they are trying to maintain the building.

ii) *Position of the Development Officer, Mr. J. McArthur*

[18] Mr. McArthur stated that the building has been non-conforming since 2001.

[19] He referred to photographs in his submission showing the pillars and the balcony.

[20] He referred to a Google photograph from June 2009 showing the pillars with no side addition. A Google photograph from July 2016 shows the pillars that have been painted white; the covered front entrance; the projected roof line; and the second storey at the rear of the house. Photographs in June 2017 show the same condition of the house but the covered side entrance has been removed.

[21] In his opinion, the addition is similar to a sunroom but is more enclosed.

[22] He referred to a photograph of what a typical veranda and enclosed patio generally looks like.

[23] On June 15, 2017 a site inspection was conducted and it appeared that the width of the side patio was increased and that the front opening has been partially enclosed. There is access from the side addition to the front yard.

[24] Drainage on the abutting property is a concern.

[25] With regard to the Front Setback calculation, the Appellant provided a Real Property Report that shows a 4.42-metre Front Setback, which was the same as the Real Property Report in 1990. The 4.42-metre Setback refers to the original foundation but not the pillars. The addition on the front projects 1.81 metres from the foundation.

[26] The average Front Setback of the two abutting lots is 8.02 metres, which means a minimum 6.52-metre Front Setback is required for the subject site.

[27] In his opinion, the community consultation requirement of the Mature Neighbourhood Overlay was complete.

[28] He stated that the fifth reason for refusal was regarding the exterior finish. He did not receive any information with the plans regarding materials. However, if the Board approves the proposed development with the stucco and brick finish, that reason for refusal would be eliminated.

[29] He clarified that only non-conforming portion of the building is the front part of the building.

[30] In his opinion, the front addition is more excessive than just routine maintenance.

iii) Rebuttal of the Appellant, Mr. L. Zinati

[31] Mr. Zinati confirmed that the width of the side patio was not increased it was just the way the picture was taken.

[32] They are agreeable to any conditions suggested by the Board.

[33] They stated that the neighbour to the south does not have an issue with the drainage taking place on their property. However, they will move the downspouts if required.

Decision

[34] 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. The development shall be constructed in accordance with the stamped and approved drawings.
2. As far as reasonably practicable, the design and use of exterior finishing materials used shall be similar to, or better than, the standard of surrounding development. (Section 57.2(1)).

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

1. The minimum required Front Setback is 6.52 metres. The proposed Front Setback is 2.61 metres and a deficiency of 3.91 metres is allowed. (Section 814.3(1)).
2. The minimum required Side Setback is 1.2 metres. The proposed (south) Side Setback is 1.13 metres and a deficiency of 0.07 metres is allowed. (Section 814.3(3) and Section 120.4(10)(a)).
3. Section 44.3 is waived to allow the second storey balcony project per the stamped plans.
4. Section 44.1(a) is waived to allow the eaves to project per the stamped plans.

Reasons for Decision

[36] The existing Principal Building is non-conforming because of a deficiency in the minimum required Front Setback.

[37] Section 643(5) of the *Municipal Government Act* states:

A non-conforming building may continue to be used but the building may not be enlarged, added to, rebuilt or structurally altered except

- (a) to make it a conforming building,
- (b) for routine maintenance of the building, if the development authority considers it necessary, or
- (c) in accordance with a land use bylaw that provides minor variance powers to the development authority for the purposes of this section.

Pursuant to section 643(5)(c), the Board may approve an enlargement, alteration or addition to a non-conforming building if the non-conforming building complies with the Uses prescribed for that land in the *Edmonton Zoning Bylaw* and the proposed development would not, in their opinion unduly interfere with the amenities of the neighbourhood; or materially interfere with or affect the use, enjoyment or value of neighbouring properties.

[38] The proposed development, additions to a Single Detached House, is a Permitted Use in the (RF1) Single Detached Residential Zone.

[39] With respect to the Front Setback, the Board accepts the Development Officer's conclusions that the Front Setbacks of the abutting properties are 8.35 metres and 7.69 metres, respectfully. Therefore the minimum required Front Setback is 6.52 metres.

The Board notes that when reviewing photographs from 1990 and when compared to photographs taken in 2016, it appears that the front edge of the lower front porch did not substantially change. Therefore, the Board accepts that there is virtually no difference from 1990 to what exists currently. Therefore, that Board finds that the Front Setback will not negatively impact the neighbouring properties.

[40] Under section 6.1(36) of the *Edmonton Zoning Bylaw*, Enclosed Front Porch means:

an entrance structure typically located at the front or side of a Dwelling at the ground floor entry level, consisting of a roof and floor, where the front and sides of the structure have been enclosed by solid walls or windows.

Based on the photographic evidence, the Board finds that that front porch is not enclosed by solid walls or windows and the arches provide privacy with an open concept.

- [41] With respect to the (south) Side Setback, the Board notes that the Setback was rounded down from the specific site measurement shown on the Real Property Report and that the actual deficiency is 0.07 metres. The Board finds the difference to be *de minimis* and this variance is further supported by the neighbour's signature of support.
- [42] With respect to the front eaves and the front balcony, the Board was provided with information from the Appellant that the original balcony was in substantial disrepair and required a complete rebuilding. The balcony was enlarged and completely covered the original structure. The Board accepts this was done to prevent further snow and water accumulation that would lead to potential rotting and deterioration. The existing eaves meet the maximum allowable 0.60-metre projection.
- [43] The Board accepts the Development Officer's opinion that the Community Consultation requirement per section 814.5(2)(Tier 1) of the Mature Neighbourhood Overlay was complete and there was overwhelming support from the neighbourhood.
- [44] The Board notes that the Appellant has the support from the most immediately adjacent properties to the north and south and there was no opposition to the proposed development.
- [45] The Board notes that condition #2 will ensure that the exterior finish will be used to ensure that the standard of the proposed structures shall be similar to, or better than, the standard of surrounding development. The Board heard from the Appellant that their intention is complete the entire house with stucco and brick at a future date. Therefore, section 57.2(1) is no longer a reason for refusal.
- [46] Based on the 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.

Mr. V. Laberge, Presiding Officer
Subdivision and Development Appeal Board

Board Members in Attendance

Ms. P. Jones; Mr. R. Hobson; Mr. L. Pratt; Mr. R. Handa

CC: City of Edmonton, Sustainable Development, Attn: Mr. McArthur / Mr. Wen / Ms. Mohammadi
Mr. L. Zinati

Important Information for the Applicant/Appellant

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