



**EDMONTON  
TRIBUNALS**

*Subdivision &  
Development  
Appeal Board*

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Date: March 13, 2019  
Project Number: 269093356-005  
File Number: SDAB-D-19-022

**Notice of Decision**

[1] On February 27, 2019, the Subdivision and Development Appeal Board (the “Board”) heard an appeal that was filed on **January 30, 2019**. The appeal concerned the decision of the Development Authority, issued on January 15, 2019, to refuse the following development:

**Construct an Addition to an existing Accessory Building (7.37m x 1.10m covered area), existing without permits**

[2] The subject property is on Plan B4 Blk 15 Lot 189, located at 11502 - 107 Avenue NW, within the (RA7) Low Rise Apartment Zone. The Medium Scale Residential Infill Overlay and the Central McDougall / Queen Mary Park Area Redevelopment Plan apply to the subject property.

[3] The following documents were received prior to the hearing and form part of the record:

- 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 submissions including Google images.

[4] The following exhibit was presented during the hearing and forms part of the record:

- Exhibit A – Justification Letter from Appellant’s Counsel

**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 (the “MGA”)

### **Summary of Hearing**

#### *i) Position of the Appellant, Mr. R. Colistro*

[8] Mr. Colistro, representing the Applicant, explained that the existing detached garage (Accessory Building) is a non-conforming building as outlined in the Compliance Report.

[9] The fence along the (north) property line abutting the adjacent property is 6 feet high.

[10] Mr. Colistro noted that the Development Officer’s refusal suggests that the development is deficient by 0.98 metres in its location to the side lot line. However, he believed that was incorrect and should read 0.9 metres, not taking into consideration the 0.08 metres that falls on the adjacent property.

[11] Mr. Colistro stated that the test for the Board is Section 687(3)(b) of the *MGA* whether or not the variance will materially interfere with or affect the use, enjoyment or value of neighbouring parcels of land.

[12] He took the Board through the area of the subject Site using Google Maps, noting specifically the neighbouring property and the state of the community generally.

[13] He noted that the subject Site is along 107 Avenue which is a busy arterial road.

[14] Proceeding through the Google images, he noted that immediately west of the subject Site is a 7-11 and gas station and one block east is a Hughes car wash and car dealership. There is an apartment building immediately north of the subject Site. The detached garage is along the parking area for the apartment building.

[15] He could not confirm how old the detached garage was but he believed it was evident that it has existed for several years.

[16] Through Google Maps, he further showed the view of the house and garage along 107 Avenue. The detached garage is screened from 107 Avenue by mature vegetation. There is a rear lane west of the detached garage and the addition, which are both separated by a commercial property.

[17] The apartment building is setback from the rear lane and the detached garage together with the addition is along the parking area of the apartment building. The detached garage faces commercial property across the rear lane.

[18] There is not an amenity area at the rear of the apartment building.

- [19] Mature vegetation screens the covered area of the detached garage from the windows of the apartment building.
- [20] The properties north of the subject Site consist of apartment buildings and surface parking. There are no amenity areas along the rear lane.
- [21] The Development Officer referenced the General Performance Standard regulations in her written submission. In Mr. Colistro's opinion, when taking that regulation under consideration, specific attention must be paid to the overall state of the area.
- [22] Mr. Colistro noted the Board's test again being set out in Section 687(3) of the *MGA* and he believed that this development meets that test and 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.
- [23] He submitted that the appearance and materials of the detached garage is consistent with other garages in the area.
- [24] The Development Officer referenced drainage in her written submission; however, it was not one of the reasons for refusing the development permit application. Mr. Colistro gave verbal evidence that drainage would not be an issue.
- [25] As shown in the photographs submitted, the eaves on the detached garage are on the subject Site where water will drain. If water drainage was on the adjacent property, it will be onto a parking area not a resident's rear yard.
- [26] During the application process, Mr. Colistro was asked to provide a justification letter. In his opinion, that would not determine the Development Officer's decision. He provided the Board with a copy of the justification letter that was provided to the Development Officer during the application process. ("Exhibit A").
- [27] Mr. Colistro noted that no letters were received in opposition to the proposed development and no one appeared in opposition at the hearing.
- [28] He referred to the suggested conditions of the Development Officer. In his opinion, conditions 1 to 3 are not necessary as the detached garage is already developed.
- [29] Mr. Colistro provided the following information in response to questions by the Board:
- a. The *Edmonton Zoning Bylaw* deals with Setbacks from the property lines and encroachments are dealt with between the neighbours. The Development Officer suggested that a variance of 0.98 metres was required but the Board can only deal with the minimum required 0.90 metre Setback requirement.
  - b. The photographs provided to the Board reflect what currently exists on the property despite that they are from an earlier date.

- c. The house was approved as a Single Family Dwelling. The Real Property Report indicates that it is a Dwelling. The Compliance Report states that it is a non-conforming building. The Use was not brought into play for this appeal. The building appears to be a Single Family Dwelling; however, he could not confirm if it is being used that way.
- d. The detached garage is Accessory to the subject Dwelling and the detached garage is allowed to be there as a non-conforming building. There is no concern whether or not the Dwelling or the detached garage is allowed to be on the property.
- e. He could not confirm who built the (north) fence. If the fence is removed the covered area will need to be removed.
- f. The Use is not non-conforming. The non-conforming building issue is for the Setback. They are not extending the non-conforming nature of the garage. The detached garage is 3.89 metres from the property line instead of 4.88 metres. Mr. Colistro explained that this particular addition does not extend the non-conformity of the garage.
- g. There is no evidence that the Use has been discontinued. The detached garage is not defined as a Use. The detached garage is an Accessory building to a Dwelling.
- h. In his opinion, the detached garage with the covered area and the fence between the adjacent property will not have a negative impact on neighbouring property owners.

*ii) Position of the Development Officer, Ms. K. Bauer*

[30] The Development Authority did not appear at the hearing and the Board relied on Ms. Bauer's written submission.

### **Decision**

[31] The appeal is **DENIED** and the decision of the Development Authority is **CONFIRMED**. The development is **REFUSED**.

### **Reasons for Decision**

[32] The proposed development, an addition to an existing Accessory Building, is an addition to an existing non-conforming building. In the (RA7) Low Rise Apartment Zone, the development is Accessory to a Discretionary Use.

- [33] The question before the Board is whether an addition of 0.9 metres along the North Side Lot Line would unduly interfere with the amenities of the neighbourhood or materially interfere with or affect the use, enjoyment or value of neighbouring parcels of land as outline in Section 687(3) of the *MGA*.
- [34] For the reasons that follow, the Board concludes that the proposed development fails to satisfy both prongs of the test.
- [35] The Board finds that the proposed development will unduly interfere with the amenities of the neighbourhood for the following reasons:
- a. The Board was presented with photographic evidence of the condition of the existing addition.
  - b. Submissions were made by the Development Officer that the proposed development did not satisfy the General Performance Standard regulation in Section 57.3(1) of the *Edmonton Zoning Bylaw* (the *Bylaw*).
  - c. The Board agrees with this submission by the Development Officer and finds that these General Performance Standards provide guidance on how a development may unduly interfere with the amenities of a neighbourhood.
  - d. The Board finds that the exterior finishing materials are not to the standard, or better than, the standard of surrounding developments, as is necessary under Section 57.3(1) of the *Bylaw*.
  - e. The Board heard evidence from the Appellant that the context of the neighbourhood must be considered when making its assessment. The Board accepts that interpretation as it is implicit in the language of the Section.
  - f. However, the Board does not accept the evidence submitted by the Appellant that the finishing materials used for the addition to the detached Garage are consistent with the surrounding developments.
  - g. In arriving at this conclusion, the Board observed that several of the surrounding developments were finished in stucco or siding. While the proposed addition appears to be wood siding, it is not constructed to the quality of siding on surrounding developments, including the quality found on the principal building as evidenced by the photographs submitted.
  - h. Moreover, the Appellant made submissions comparing the addition to a fence. The Board finds this to be a more reasonable comparison for the standard of finishing material employed on the proposed development.

- i. For these reasons, the Board concludes that the addition as constructed would negatively impact the amenities of the neighbourhood by failing to satisfy the General Performance Standards in the *Bylaw*.

[36] In the alternative, the Board finds that the proposed development will materially interfere with or affect the *use*, enjoyment or value of neighbouring parcels of land for the following reasons [*emphasis added*]:

- a. The Board heard evidence that the covered addition was attached to the fence. However, the photographic evidence before the Board suggests that the covered structure was separate from the fence. Regardless of interplay between the existing fence and proposed development, the Board is satisfied that the neighbouring property north of the subject Site will experience a material interference with the use of their property along the property line where the covered addition is located.
- b. The Board recognizes it is only considering a variance of 0.9 metres and the encroachment is not properly before the Board. Notwithstanding this understanding, and even in the absence of an encroachment, the Board finds that having a 7.38 metre structure along a property line renders significant difficulty for the adjacent property owner to utilize that portion of land. The Board finds that this amounts to a material interference.
- c. The Appellant led evidence that no letters were received in opposition. The Appellant made the suggestion this was evidence of acquiescence by the neighbouring property owner. The Board is not satisfied that this is the case.
- d. The Board took notice that there is an Apartment building on the adjacent property. Often the property owner may not be one of the residents. This is supported by the Appellant's letter (Exhibit A) which demonstrates a similar belief by the Appellant.
- e. In this same letter, the Appellant acknowledged an opportunity to speak to the adjacent property owner regarding the addition, but chose not to act on that opportunity. Here, the Appellant is seeking to gain the benefit of silence without addressing the burden identified in Exhibit A – namely that the owner may not reside in the apartment and may have a degree of complacency regarding their property.
- f. The Board does not believe that complacency or silence amounts to support for a development. There could be a myriad of reasons why the neighbouring property did not appear or enter a written submission. The purpose of this Board is not to speculate on what those reasons may be but to weigh the evidence before it.
- g. The evidence before the Board is that the Appellant did not seek out the owner for purposes of garnering support for the development.

- h. The Board finds that it would not be reasonable to conclude that there is no material interference arising from the addition simply because the owner chose not to voice an objection. The Board has to consider the totality of the evidence before it which includes the empirical evidence in the photographs.
- i. While the Board heard no evidence on whether the fence is owned by either one of the properties, the Board finds that the existence of the addition on the property line will affect whether new construction of a fence could occur or whether the neighbouring landowner could otherwise put this stretch of their property to use.

[37] The Board also considered the issue triggered by virtue of the structure being non-conforming. When dealing with a non-conforming building, Section 643(5) of the *MGA* is triggered.

[38] Specifically, that Section outlines where a non-conforming building may be enlarged, added to, rebuilt, or structurally altered. Here, we are dealing with Section 643(5)(c), which lays out the parameters where before the Board is not routine maintenance or an effort to make the building conforming. That Section states:

A non-conforming building may continue to be used but the building may not be enlarged, added to, rebuilt or structurally altered except in accordance with a land use bylaw that provides minor variance powers to the development authority for the purposes of this section.

[39] While the Appellant made submissions that the addition did not trigger the provisions on a non-conforming structure, the Board finds that it does. The legal non-conforming structure is a 6.43 metre wide detached garage built 3.89 metres from the rear property line instead of 4.88 metres. The effect of the proposed development is to create a 7.33 metre wide detached garage built 3.89 metres from the property line instead of 4.88 metres. The Board finds that this amounts to an enlargement as contemplated by Section 643(5) of the *MGA* by making the non-conforming part of the structure larger.

[40] Given the Board finds that Section 643(5) is engaged by the application, it must consider the minor variance power outlined in Section 643(5)(c) of the *MGA* found at Section 11.3(2) of the *Bylaw*. This test is similar to this Board's test in Section 687(3) of the *MGA*. Section 11.3(2) states:

The Development Officer may approve, with or without conditions as a Class B Discretionary Development, an enlargement, alteration or addition to a non-conforming building if the non-conforming building complies with the Uses prescribed for that land in this Bylaw and the proposed development would not, in their opinion:

- (a) unduly interfere with the amenities of the neighbourhood; or

- (b) materially interfere with or affect the use, enjoyment or value of neighbouring properties.

- [41] The Board finds that based on the above analysis regarding the Section 687 test, the enlargement to the non-conforming building should be rejected on these grounds as well.
- [42] Based on the foregoing, it is the opinion of the Board that this development fails to satisfy the test set out in Section 687 of *MGA*. Moreover, the Board finds that the development fails the test for determining whether a non-conforming building can be enlarged. For these reasons, the Board denies the appeal.

A handwritten signature in black ink, appearing to read 'R. Handa', with a stylized flourish at the end.

Mr. R. Handa, Presiding Officer  
Subdivision and Development Appeal Board

Board Members in Attendance

Ms. L. Delfs; Mr. R. Hachigian; Ms. G. Harris; Mr. J. Jones

CC: City of Edmonton, Development & Zoning Services, Attn: Ms. K. Bauer / Mr. A. Wen



**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.
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 Development & Zoning Services, located on the 2nd Floor, Edmonton Tower, 10111 – 104 Avenue NW, Edmonton, AB T5J 0J4.



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## **SDAB-D-19-023**

### **Application No. 300636906-003**

An appeal to acquire a Development Permit for the Recreational Acreage Farm building (large building storing hay bales located south of the principal dwelling next to the horse pens) before February 10, 2019 or demolish and remove the Recreational Acreage Farm building (large building storing hay bales located south of the principal dwelling next to the horse pens) and clear the site of demolition materials before February 10, 2019. This course of action will also require you to acquire a Development Permit for said demolition, was **WITHDRAWN**.



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## **SDAB-D-19-024**

### **Application No. 300636906-001**

An appeal to cease the excavation, stripping, and grading of the land immediately and acquire a development permit for the excavation, stripping, and grading of the land before February 10, 2019, was **WITHDRAWN**.