

Edmonton Subdivision and Development Appeal Board

Churchill Building
10019 - 103 Avenue NW
Edmonton, AB T5J 0G9
Phone: 780-496-6079 Fax: 780-577-3537
Email: sdab@edmonton.ca
Web: www.edmontonsdab.ca

Date: September 17, 2015
Project Number: 165900281-002
File Number: SDAB-D-15-197

Notice of Decision

This appeal, dated August 11, 2015, from the decision of the Development Authority for permission to:

Construct an addition to a General Industrial building (Gilead chemical synthesis plant),

On Plan 1220538 Blk 1 Lot 2, located at 1021 Hayter Road NW, was heard by the Subdivision and Development Appeal Board on September 2, 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 an addition to a General Industrial building (Gilead chemical synthesis plant), located at 1021 Hayter Road NW. The subject Site is zoned IM Medium Industrial Zone and is within the Edmonton-Strathcona County Joint Planning Study Area Secondary and Garage Suites Overlay and the Yellowhead Corridor Area Structure Plan.

The development permit application was refused because of an excess in the maximum allowable Building Height.

Prior to the hearing, the Board received the following information, copies of which are on file:

- A written submission from the Development Authority dated August 24, 2015; and
- A written submission from the Appellant dated August 28, 2015.

The Board heard from Mr. Doug Erickson and Mr. Ralph Bierschwale, representing the Appellant, Jacobs Architecture and Mr. Greg Klak, representing Gilead, who provided the following information in support of the appeal:

1. A variance is required because the Height of the proposed building is 23.4 meters, which exceeds the maximum allowable Height requirement of 18.0 metres.

2. The Height is required in order to install piping and equipment that will facilitate the safe operation of their chemical processing facility.
3. It would be impossible to comply with the maximum allowable Height requirement and ensure the safe operation of their business.
4. The extra Height will allow adequate space to be provided between the piping to allow servicing and maintenance.
5. Extended horizontal piping is not an option given the limited building footprint of the subject site.

They provided the following responses to questions:

1. There is an existing building on the subject site that is 1 metre lower than the Height of the proposed building.
2. Construction on that building began in 1995 and was completed in 1997. To the best of their knowledge, a variance for the maximum allowable Height requirement was not required.
3. The extra Height is required to facilitate the processing of chemicals and to address safety concerns. In case of a catastrophic event, space is required around the pipes for a “blast zone”.
4. Reducing the building footprint or Height of the building would result in a 25 percent reduction in processing which is not acceptable.
5. Neighbouring business owners located north and east of the subject site were consulted. Many of them have structures of a similar Height or taller than the proposed building on their sites and they did not object to the required variance in Height.

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

1. He could not provide any information regarding the existing building on site that was constructed in 1995. He did not review the history of the site because the development permit application was refused.
2. He would have allowed the variance in the maximum allowable Height if Development Officers had the authority to vary maximum allowable Height.
3. The variance would have been granted because of the constraints placed on the site by the tight building footprint.
4. It would be a hardship for this business to install horizontal piping instead of vertical piping because it would not meet their business requirements.
5. He could not provide any information regarding the rationale for the maximum allowable 18.0 metre building Height requirement in the IM Medium Industrial Zone.
6. There is no requirement to notify neighbouring municipalities about the required variance.
7. Environmental concerns fall under the authority of the Provincial Government.
8. Environmental regulations are typically addressed in the planning stages prior to the application for a development permit.

Mr. Erickson had nothing further to add in rebuttal

Decision:

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 THE RELEASE OF DRAWINGS FOR BUILDING PERMIT REVIEW, the Applicant or property owner shall pay a Sanitary Sewer Trunk Fund fee of \$30,431.74. All assessments are based upon information currently available to the City. The SSTF changes are quoted for the calendar year in which the development permit is granted. The final applicable rate is subject to change based on the year in which the payment is collected by the City of Edmonton.
2. PRIOR TO THE RELEASE OF DRAWINGS FOR BUILDING PERMIT REVIEW, the property owner shall enter into a Servicing Agreement to pay the applicable Sanitary Servicing Strategy Expansion and Permanent Area Contribution Assessments as follows:
 - EA (SESS): \$20,426/ha
 - There may also be PAC over-expenditure payment which can only be determined at the time the applicant/owner is ready to enter into a servicing agreement.

The PACs must be paid by entering into a servicing agreement, which will be prepared by the Sustainable Development. The applicant/owner should contact Jordan Wachter (780-442-7042), upon issuance of the Development Permit when he/she is ready to initiate the servicing agreement and make payment.

The assessment area is 4.1108 ha (4.3583 ha - 0.0539 ha - 0.1936 ha). There are two previous Servicing Agreements for this property (Clover Bar Industrial PAC-199 & Clover Bar Area PAC-297) for a total assessment area of 0.2475 ha (0.0539 ha + 0.1936 ha). The total area of Plan 122 0538 Blk 1 Lot 2 is 4.3583 ha and is obtained from the City's information computer program called POSSE.

The above is for information purposes. The rates shown are the year 2015 rates. The final PAC and EA amounts will be based on the prevailing rates at the time the applicant/owner pays and enters into a servicing agreement with the City.

Should such information change in the future, a new assessment will have to be made.

In addition to the above items, if required, the applicant/owner shall pay for the installation cost of sewer services to property line. For detail, please contact Derek Kucy of Public Services Section at 7804965450.

More information about PAC, EA, and SSTC assessments can be found on the City of Edmonton's website: www.edmonton.ca

3. All access locations and curb crossings shall have the approval of the City Transportation and Streets Department prior to the start of construction. Reference Section 53(1).
4. Access from the site to Hayter Road exists, as shown on Enclosure I. Any modification to the existing accesses requires the review and approval of Transportation Services.

5. The proposed gate must not swing out over road right-of-way, as shown on Enclosure I. It must either swing into the property or slide along the fence. No objects are permitted to encroach onto, over or under road right-of-way.
6. Any boulevard damage occurring as a result of construction traffic must be restored to the satisfaction of Transportation Services, as per Section 15.5(f) of the Zoning Bylaw. The boulevard will be inspected by Transportation Services prior to construction, and again once construction is complete. All expenses incurred for repair are to be borne by the owner.
7. All activities or operations of the proposed development shall comply to the standards prescribed by the Province of Alberta pursuant to the Environmental Protection and Enhancement Act and the regulations pertaining thereto.
8. The development shall comply with the performance standards for the IM District in accordance to Section 57 of the Edmonton Zoning Bylaw. (Reference Section 410.4(4)).
9. An approved Development Permit means that the proposed development has been reviewed only against the provisions of the Edmonton Zoning Bylaw. It does not remove obligations to conform with other legislation, bylaws or land title instruments such as the Municipal Government Act, the ERCB Directive 079, the Edmonton Safety Codes Permit Bylaw or any caveats, covenants or easements that might be attached to the Site.

Notes:

- i) Signs require separate Development Applications.
- ii) A Building Permit is required for any construction or change in use of a building. For a building permit, and prior to the Plans Examination review, you require construction drawings and the payment of fees. Please contact the 311 Call Centre for further information.
- iii) The City of Edmonton does not conduct independent environmental checks of land within the City. If you are concerned about the suitability of this property for any purpose, you should conduct your own tests and reviews. The City of Edmonton, in issuing this 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.

In granting the development the following variance to the *Edmonton Zoning Bylaw* is allowed:

Section 420.4(4) is varied to allow a maximum building Height of 23.4 metres.

Reasons for Decision:

The Board finds the following:

1. The proposed development is a Permitted Use in the IM Medium Industrial Zone.
2. The variance in the maximum allowable Height of the proposed building has been granted for the following reasons:
 - a) Even though the required variance is 5.4 metres, the proposed building is only 1 metre taller than an existing building on the subject site that was built in 1995.
 - b) The Board accepts the evidence of the Appellant that the extra Height is required to accommodate business operations and to address safety considerations.

- c) The limited building footprint does not allow the design of a building to accommodate horizontal piping that will meet the needs of the Appellant.
 - d) The Development Officer confirmed that the development permit would have been issued with a variance in the maximum allowable Building Height if Development Officers had the authority to vary Height.
 - e) The Height of the proposed building is characteristic of the area, which is comprised of businesses with structures of a similar or greater Height on their sites.
 - f) The Appellant discussed the required variance with three neighbouring business owners who had no concerns with the proposed development.
 - g) There were no letters of opposition received and no one appeared in opposition to the proposed development.
3. 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.

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*, RSA 2000, c S-1;
 - c) the requirements of the *Permit Regulation*, Alta Reg 204/2007;
 - d) the requirements of any other appropriate federal, provincial or municipal legislation; and
 - 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 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.



Mr. W. Tuttle, Presiding Officer
Subdivision and Development Appeal Board

- c.c. Gilead, Attn: Mr. Klak and Mr. Zhang
City of Edmonton, Sustainable Development Department, Attn: Mr. P. Kowal

Edmonton Subdivision and Development Appeal Board

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Phone: 780-496-6079 Fax: 780-577-3537
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Web: www.edmontonsdab.ca

Date: August 27, 2015
Project Number: 170501713-001
File Number: SDAB-D-15-179

Notice of Decision

This appeal dated July 21, 2015, from the decision of the Development Authority for permission to:

Construct exterior alterations (extension of front Driveway) to a Single Detached House

on Plan 8021673 Blk 28 Lot 57, located at 4640 - 26 Avenue NW, was heard by the Subdivision and Development Appeal Board on August 12, 2015 and September 3 or 4, 2015.

August 12, 2015 Hearing:

Summary of Hearing:

At the outset of the hearing, the Presiding Officer noted that the Appellant was not in attendance at the hearing. Support staff for the Subdivision and Development Appeal Board contacted the Appellant, who indicated that she had misunderstood the Notice of Hearing letter and did not realize that the hearing would provide an opportunity for her to answer questions from the Board to clarify her position.

The Appellant requested a tabling of the hearing until September 2 or 3, 2015 so that she could be in attendance.

Ms. Hetherington, representing the City of Edmonton's Sustainable Development Department, was notified by email regarding the tabling request. Her email response indicated that she had no objections to the tabling request.

Motion:

SDAB-D-179 shall be TABLED to September 2 or 3, 2015.

Decision:

SDAB-D-15-179 shall be tabled to September 2 or 3, 2015 at the verbal request of the Appellant, to which the City of Edmonton's Sustainable Development Department provided no objections.

Reasons for Decision:

The Board finds the following:

1. The Appellant received the Notice of Hearing letter, but did not fully understand her right to be heard before an impartial panel at the hearing.
2. Upon being told by support staff for the Board that the hearing would provide her an opportunity to clarify her position and answer questions from the Board, the Appellant requested that the matter be tabled so that she could attend in person.
3. This is the first tabling request from the Appellant.
4. The Sustainable Development Department did not object to the tabling request.
5. There will be no prejudice to either the Appellant or the Sustainable Development Department should the matter be tabled.

September 2, 2015 Hearing:**Motion:**

SDAB-D-15-179 shall be raised from the table

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 (extension of front Driveway) to a Single Detached House, located at 4640 - 26 Avenue NW. The subject Site is zoned RF4 Semi-Detached Residential Zone.

The development permit was refused because parking spaces shall not be located within a Front Yard, the driveway shall lead directly from the roadway to the required Garage or Parking Area, and no Parking Area in any Zone shall be located within the Front Yard.

Prior to the hearing the following information was provided to the Board, copies of which are on file:

- Written submission from the Development Authority dated August 31, 2015; and
- On-line response from an affected property owner who resides within the 60 metre radius in opposition to the proposed development.

The Board heard from Mr. Rajeev Garg, who made the following points in support of the appeal:

1. Parking vehicles at the rear of his property is a challenge during the winter months because of the buildup of snow in the rear lane and the slope of his driveway.
2. He wants to extend his walkway because there is a seasonal parking ban on the street in front of his house, which creates a hardship. The extension will allow him to park a vehicle in the Front Yard.
3. He owns four vehicles that they use to get to and from work.
4. Up until 2 or 3 years ago, he could park on the front street because there were no parking restrictions.
5. His neighbour to the west has a front parking pad and a rear detached garage.
6. There is an existing walkway that leads to his front door.
7. He would like to extend the walkway so that it is wide enough to park a vehicle.

Mr. Garg provided the following responses to questions from the Board:

1. Three people currently live at his residence.
2. He has a total of four vehicles to park at the subject site. He parks two vehicles inside the detached garage but he cannot park any vehicles on the rear driveway behind the garage because of the slope of the driveway.
3. He confirmed that the walkway leading to the front door of the house is approximately 4 ½ feet wide.
4. The front driveway on his neighbour's property does not lead to the rear detached garage.
5. He currently parks in the Front Yard with the use of a rubber mat because there is no curb cut.
6. He owned two vehicles when he purchased this property in 2005, and the seasonal parking ban for the front street did not come into effect until 2009 or 2010.
7. The implementation of the seasonal parking ban is based on the amount of snowfall, but it typically comes into effect 3 to 4 times per week.
8. It was his opinion that his lot is not too narrow to accommodate vehicle parking in the Front Yard.

The Board expressed concern for pedestrian safety that could result from parking a vehicle in the Front Yard of the subject property.

The Board heard from Ms. Hetherington, representing the Sustainable Development Department, who provided the following information:

1. Her concerns are outlined in her written submission, a copy of which has been filed with the Board.
2. A front Driveway is atypical of this neighbourhood.
3. This neighbourhood is comprised of narrow lots. If this extension is approved, it would result in a 0.3 metre setback from the immediately adjacent property to the west, a 3.1 metre wide driveway and a 5.6 metre wide Front Yard, which is not characteristic of the neighbourhood.
4. It was her opinion that there is no unnecessary hardship for the property owner.

5. The driveway on the immediately adjacent property to the west was approved in 1991 and the Bylaw has subsequently been amended. The same development would in all probability be refused today.
6. In her opinion, the safety concern raised by the Board is valid.

In rebuttal, Mr. Garg made the following points:

1. He questioned why his neighbour is allowed to have a front driveway while his application was refused.
2. Parking four vehicles at his residence is a necessity.
3. There is no curb cut at the front of his property.

Decision:

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

Reasons for Decision:

The Board finds the following:

1. The proposed development is accessory to a Permitted Use in the RF4 Semi-detached Residential Zone.
2. The Board accepts the following evidence provided by the Development Authority:
 - a) There is no unnecessary hardship particular to the Site because this lot is typical in size and shape to the surrounding lots on the block.
 - b) There is a rear detached Garage accessed by a Driveway off the rear lane.
 - c) There are only a few properties in this neighbourhood with existing front driveways and the majority of these properties do not have rear parking, rear detached garages or rear lane access.
 - d) The existing front Driveway on the immediately adjacent property to the west was approved in 1991. Although it does not comply with the current Bylaw regulations, the driveway leads to the side of the house, allowing vehicles to be parked away from any neighbouring property which reduces the impact to the neighbourhood.
 - e) The proposed driveway would create parking directly in the Front Yard of the subject lot.
 - f) The subject lot is considerably narrower than any of the other lots on this block and is too narrow to accommodate a front driveway.
3. The Appellant failed to provide any planning reasons that would allow the Board to grant the required variances.
4. Based on a review of the photographic evidence provided, the proposed development is not characteristic of this neighbourhood.
5. The most affected property owner provided written opposition to the proposed development.
6. The development of a parking pad in the Front Yard could result in safety concerns for pedestrians and vehicles in this neighbourhood.

7. Any alleged hardship suffered by the Appellant is due to the fact that he owns four vehicles on a lot that can accommodate only two.
8. For the above reasons, it is the opinion of the Board that the proposed development will unduly interfere with the amenities of the neighbourhood, and materially interfere with and affect the use, enjoyment and value of neighbouring parcels of land.

Important Information for 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.
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Mr. W. Tuttle, Presiding Officer
Subdivision and Development Appeal Board

c.c.: City of Edmonton, Sustainable Development Department, Attn: Fiona Hetherington