

# **Edmonton Subdivision and Development Appeal Board**

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Date: January 15, 2016  
Project Number: 174800949-008  
File Number: SDAB-D-16-012

## **Notice of Decision**

This is an appeal dated December 9, 2015, from the decision of the Development Authority for permission to develop a Secondary Suite in the Basement of an existing Single Detached House.

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.

The subject Site is located on Plan 1522312 Blk 5 Lot 20, located at 10817 - 123 Street NW, and is zoned RF3 Small Scale Infill Development Zone and is within the Mature Neighbourhood Overlay.

The appeal was filed on time, in accordance with Section 686 of the Municipal Government Act, R.S.A 2000, c. M-26.

The appeal was heard on January 8, 2016.

### **Summary of Hearing:**

1. 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.
2. The following documentation was provided to the Board and referenced during the hearing, copies of which are on file:
  - A written submission from the Development Officer dated December 23, 2015; and
  - A written submission from the Appellant which includes a letter dated December 21, 2015 from the Westmount Community League and a petition containing the signatures of 20 neighbours in support of the development.

### **Position of the Appellant**

3. Mr. Dylan Handy, the developer of the proposed development, appeared at the hearing to present the position of the Appellant.
4. Mr. Handy explained that the subject lot was recently created by subdividing a larger lot into two. The other new lot will keep the original house and a new house in the character

of the neighborhood will be built on the subject lot. He submitted that the subdivision of the larger lot into two smaller lots and the proposed development of a basement suite are in accordance with the City's goal for increased density in mature neighbourhoods.

5. Mr. Handy presented five arguments in favour of allowing the proposed development:
  - This project is in line with the City's goal of increased densification.
  - The subject house includes several environmentally friendly features which are in line with the City's green initiatives.
  - The proposed development provides for more affordable housing which is in line with the City's goals. The smaller lot is more affordable and the existence of a basement suite provides a "mortgage helper".
  - Parking is not an issue. If a parking were a reason for refusal, he would be willing to move the garage forward.
  - There is significant community support as evidenced by the neighborhood consultation he conducted. Within the 60 metre notification radius there was only one neighbor who expressed opposition.

#### Position of the Development Authority

6. Mr. Benny Liang of the City's Sustainable Development department appeared at the hearing to answer questions from the Board.
7. Mr. Liang confirmed that the only regulation that has not been fully complied with is the minimum Site area of 360 square metres. When asked by the Board what he thought was the justification for the minimum Site area, Mr. Liang said that he believed it was to ensure that there is sufficient parking, setback and amenity space. He further noted that in this case, there is sufficient parking, setback and amenity space.
8. The Board asked Mr. Liang about the General Purpose of the Small Scale Infill Development Zone and what he believed was meant by the "certain conditions" that are referenced as a prerequisite for Secondary Suites in this zone. Mr. Liang suggested that the "certain conditions" refer to the regulations for Secondary Suites in section 86 and the parking regulations in section 54.
9. The Board asked Mr. Liang how the slight deficiency in the Site area had an impact on the neighbourhood. Mr. Liang said that because he was not the development officer who reviewed and refused the application, he could not offer any more than what is stated on the written submission provided by the reviewing development officer.

**Decision:**

The appeal is **ALLOWED** and the decision of the Development Authority is **REVOKED**.

Based on its own calculations, the Board grants a corrected variance of 16.87 square metres in the minimum Site Area.

The development is **GRANTED** as applied for to the Development Authority.

**Reasons for Decision:**

1. Secondary Suites are a Permitted Use in the RF3 Small Scale Infill Development Zone.
2. With the single exception of minimum Site Area, all the regulations for Secondary Suites set out in section 86 of the Edmonton Zoning Bylaw are met.
3. When considering granting the variance to the minimum Site Area, the Board considered the effect that the shortfall of 16.87 square meters would have on the property and the neighbourhood. The Board accepts the submission of the Development Authority that the minimum Site area was set at 360 square metres to ensure compliance with parking regulations and to provide adequate private amenity space and setback. In this specific application there are no variances sought with respect to parking, amenity space or setback.
4. The Board considered section 687(3) of the *Municipal Government Act* which states that the Board “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, the proposed development would 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, and the proposed development conforms with the use prescribed for that land or building in the land use bylaw”. The Board was presented with no compelling evidence of how the proposed development would materially interfere with or affect the use, enjoyment or value of neighbouring parcels of land. The Board was satisfied that the proposed development would not create an undue negative impact.
5. The Board notes the significant community consultation and support. The Board also notes that that the appellant sought input from the community league.

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**Important Information for the Applicant/Appellant**

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1. This is not a Building Permit. A Building Permit must be obtained separately from the Sustainable Development Department, located on the 5<sup>th</sup> 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*, R.S.A. 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. V. Laberge, Presiding Officer  
Subdivision and Development Appeal Board

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2031-33B street  
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T6T0L3

Date: January 15, 2016  
Project Number: 176306309-002  
File Number: SDAB-D-16-013

### **Notice of Decision**

This is an appeal dated December 9, 2015, from the decision of the Development Authority for permission to construct exterior alterations to an existing Single Detached House (Driveway extension, 1.2m x 15.48m), existing without permits.

The development permit application was refused because the existing concrete extension does not lead to an overhead garage door or parking area, Front yards must be landscaped and Monolithic concrete is not considered a form of landscaping, and parking on areas that should be landscaped is not in keeping with the character of the neighbourhood.

The subject Site is located on Plan 0927123 Blk 8 Lot 30, located at 2031 - 33B Street NW. The subject Site is zoned RSL Residential Small Lot Zone.

The appeal was filed on time, in accordance with Section 686 of the Municipal Government Act, R.S.A 2000, c. M-26.

The appeal was heard on January 8, 2016.

### **Summary of Hearing:**

1. 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.
2. The following documentation was provided to the Board and referenced during the hearing, a copy of which is on file:
  - A written submission from the Development Officer dated December 9, 2015

### **Position of the Appellant**

3. The Board heard from the Appellant, Balwinder Chahal. Mr. Chahal had no formal presentation, but agreed to answer questions from the Board.

4. Mr. Chahal said that the purpose of the driveway extension is to park an extra car. When asked if he knew of other houses in his neighbourhood with a similar driveway extension, he said that he did not see any.

#### Position of the Development Authority

5. Ms. Kerry Bauer of the City's Sustainable Development department appeared at the hearing. Ms. Bauer relied on her written submissions, which include the following information and opinions:
  - This application was generated through a complaint on the driveway extension.
  - The property is in a new subdivision, is the only house on the street that has extended the driveway.
  - The extensive concrete which covers the majority of the front yard is unsightly. Other than areas designated for driveway, the rest of the front yard should be landscaped. Parking on areas that should be landscaped takes away from curb appeal. This driveway extension is not in keeping with the character of the neighbourhood.
  - Sufficient on-site parking is provided through the provision of a 2-car front attached garage, additional parking space creates a negative impact to the site, the surrounding neighbourhood and removed 'on street' parking space.
  - Runoff may drain onto neighbouring properties creating a negative impact.
  - This sort of driveway extension is not characteristic of the neighbourhood, nor permitted in the City of Edmonton.
6. In answer to a question about the allowable width of a walkway, Ms. Bauer indicated that the Zoning Bylaw does not define "walkway", but a width of three or four feet might be reasonable.
7. When asked whether the subject driveway extension could in fact be deemed a walkway, Ms. Bauer said that it is not being used as a walkway.

#### **Decision:**

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

#### **Reasons for Decision:**

1. The Board was provided with no planning reasons to justify the driveway extension. In fact, the reason provided for the driveway extension is for additional parking within the front yard, which contravenes section 54.2(2)(e) of the Edmonton Zoning Bylaw.

2. The Board accepts the conclusion reached by the Development Officer that if this extension were to be allowed it would have the effect of removing one on-street parking space from the neighbourhood.
3. The driveway extension contravenes the landscaping requirements as set out in section 55.4(1) of the Edmonton Zoning Bylaw.
4. This application arose out of a complaint from a neighbor, which suggests that there is at least some undue negative effect on the neighbourhood. Further, there is no evidence of any kind of support from affected neighbours.
5. Based on photographic evidence provided by the Development Officer, this sort of driveway extension is not typical of the neighborhood.
6. Based on the foregoing, the Board is of the view that the driveway extension would unduly interfere with the amenities of the neighbourhood.

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### **Important Information for the Applicant/Appellant**

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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*, R.S.A. 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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**SDAB-S-16-001**

Application No. 177008943-001

An appeal to create two detached single family dwelling lots from one single family dwelling lot to allow for the construction of two detached single family dwellings, located at 12819 - Woodbend Place NW, was **WITHDRAWN**.