



**EDMONTON
TRIBUNALS**

*Subdivision &
Development
Appeal Board*

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Date: November 17, 2016
Project Number: 228177480-001
File Number: SDAB-D-16-271

Notice of Decision

- [1] On November 2, 2016, the Subdivision and Development Appeal Board heard an appeal that was filed on **October 7, 2016**. The appeal concerned the decision of the Development Authority, issued on September 16, 2016, to refuse the following development:

Construct an addition to a detached Garage (Carport, 3.40m x 7.85m), existing without permits.

- [2] The subject property is on Plan RN98 Blk 5 Lot 2, located at 11907 - 71 Street NW, within the RA7 Low Rise Apartment Zone. The Medium Scale Residential Infill Overlay and the Montrose / Santa Rosa 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;
 - A Registered Mail Delivery Confirmation submitted by the Development Officer; and
 - The Appellant's written submission.
- [4] The following exhibit was presented during the hearing and forms part of the record:
- Exhibit A – A letter from a neighbour in support of the carport development.

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. D. Panizzon

- [8] Mr. Panizzon indicated that the subject property was sold and needed a Real Property Report for a Compliance Certificate for the sale to proceed.
- [9] The carport has been existing for many years with no complaints. The carport was built to protect vehicles from the elements and is not a load bearing structure.
- [10] In his opinion, the carport has stood the test of time and there is no reason to remove it. He indicated that the new property owner prefers that it remain.
- [11] With respect to questions from the Board, Mr. Panizzon provided the following:
- a. He purchased the property in December, 2015 and the carport was in existence at that time.
 - b. There was no Real Property Report involved when he purchased the property as the sale was done privately.
 - c. He sold the property in August 2016 and that is when the Compliance Certificate issue arose.
 - d. He submitted a letter in support of the carport from the neighbour immediately to the north. (Exhibit "A").
 - e. He attempted to contact the most affected neighbour to the south, but was unsuccessful.
 - f. He was unaware if the adjacent neighbours are renters or owners.
 - g. With regard to the possibility of the Board denying his appeal, he indicated he would have to remove the carport structure or make minor alterations to comply with the regulations.

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

- [12] Ms. Watts' main concern is the lack of a Side Setback. If the carport were only over the maximum Site Coverage for Accessory buildings and over the maximum Total Site Coverage, she might have granted those variances.
- [13] She indicated that the Side Setback issue can potentially cause drainage issues.
- [14] She indicated that Safety Codes personnel do not support the carport being this close to the property line because it is flammable. She indicated that, if the Board approved this development, the carport would still have to go through a Safety Codes review.

She noted that it was unfortunate the Appellant could not get the views of the neighbour to the south who is most affected by the carport. The Chair noted that the property owner to the south would have been sent a notice of this appeal and, if they had concerns, they most likely would have sent something to the SDAB office.

- [15] With respect to questions from the Board, Ms. Watts provided the following:
- a. With regard to condition #2 provided in her written submission that states "Eave projections shall not exceed 0.46m into required Setbacks or Separations spaces less than 1.2m. (Reference Section 44.1(b))", the Chair asked if the carport required another variance because of this section. Ms. Watts agreed that another variance probably would be required because of the projecting eave.
 - b. She clarified that the shed shown on the Real Property Report was included in her Site Coverage calculations.
 - c. With regard to her permit refusal only providing Site coverage variances in percentages as opposed to square metre numbers, she indicated that the Current Planning Branch is reviewing their Permit process to provide more information on their permit decisions.
 - d. She indicated that she did do Site coverage calculations in square metres in her technical review document, however she did not bring that document to the hearing.
 - e. She referred to a photograph on page 13 of the Appellant's submission that shows where the eaves trough is located on the carport.

iii) Rebuttal of the Appellant

- [16] Mr. Panizzon indicated that the shed has been removed from the property.
- [17] He advised that the photographs in the Development Officer's submission are out of date as they show the carport before he painted it.

- [18] With regard to drainage concerns, he indicated that the property slopes toward the alley and water from the carport drains into the alley.
- [19] He realizes that, even if the Board grants him a development permit, because of the Safety Codes issues he may not be able to get a building permit but he is willing to make changes if required.
- [20] He indicated that he did not add downspouts to the carport but the garage has them and water drains into the alley without them.

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.
- [22] In granting the development the following variances to the *Edmonton Zoning Bylaw* are allowed:
1. The maximum Site Coverage for Accessory buildings of 12 percent (45.97 square metres) as per section 50.3(3)(a) is varied to allow an excess of 1.6 percent (6.2 square metres), thereby increasing the maximum Site Coverage for Accessory buildings to 52.17 square metres.
 2. The minimum Setback of 0.9 metres between an Accessory building and the Side Lot Line as per section 50.3(4)(b) is varied to allow a deficiency of 0.62 metres, thereby decreasing the minimum Setback to 0.28 metres.
 3. The maximum eaves projection into a Setback, as per section 44.1(b) is waived.

Reasons for Decision

- [23] The proposed development is Accessory to a Discretionary Use in the RA7 Low Rise Apartment Zone.
- [24] The Board accepts the evidence of the Appellant that the carport has existed for many years with no complaints.
- [25] The Appellant attempted to contact the most affected neighbour to the south but was unable to. The Board notes that property owner to the south would have been notified of the SDAB hearing and would have had an opportunity to voice concerns either by writing to the Board or by attending the hearing but chose not to do so. From that the Board infers that the neighbour does not have any strong concerns related to the carport.

- [26] The Board heard evidence that the shed shown on the Real Property Report has been removed. Accordingly the Total Site Coverage for this Site is now only 39.8 percent, meaning that no variance is required with respect to section 150.4(5) of the *Edmonton Zoning Bylaw*.
- [27] The Board finds the variance of 1.6 percent with respect to the maximum Site Coverage for Accessory buildings is minor and the Board is satisfied there will be no significant impact on neighbours or the amenities of the neighbourhood because of this variance.
- [28] With respect to the variance with regard to the Side Setback, the Board is satisfied that the eaves trough on the carport will divert any rainwater from the neighbouring parcel of land and into the alley. Further, because the carport does not have walls, the incursion of the structure into the Side Setback does not result in any massing effect. The Board finds there will be no significant impact to the neighbours.
- [29] The Board notes there still may be Safety Codes issues with this development, but those issues will be dealt with by Safety Codes officers.
- [30] For the above reasons, the Board finds 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.

Mr. M. Young, 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 5th Floor, 10250 – 101 Street NW, 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*, 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 NW, 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.



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Date: November 17, 2016
Project Number: 172976306-009
File Number: SDAB-D-16-272

Notice of Decision

- [1] On November 2, 2016, the Subdivision and Development Appeal Board heard an appeal that was filed on **October 4, 2016**. The appeal concerned the decision of the Development Authority, issued on September 15, 2016, to approve the following development:

Construct a rear uncovered deck (irregular shape, 7.85m x 3.68m at 1.83m in Height).

- [2] The subject property is on Plan 1323984 Blk 10 Lot 35, located at 2628 – Wheaton Close NW, within the RSL Residential Small Lot Zone.
- [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 approved Development Permit;
 - The Development Officer's written submission;
 - Photographs submitted by the Appellant.
- [4] The following exhibits were presented during the hearing and form part of the record:
- Exhibit A – A photograph submitted by the Appellant.

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. O. Kavara*

- [8] Mr. Kavara indicated he feels the variance to allow the Deck to project into the rear Setback is excessive and it will affect his privacy.
- [9] The proposed Deck would be too close to his property line.
- [10] The Setback issue would not be such an issue if the elevation of the subject Site was not so high.
- [11] He estimated the Deck platform would be approximately 2.4 metres in height, which is considerably higher than the 1.8-metre tall fence separating the properties.
- [12] Because of the slope of the Respondents' lot and the height of the main floor of the house, the Deck will tower over his rear yard.
- [13] He understands people want nice large Decks, however, the Respondents initially built their Deck without a permit and it was already oversized and very close to his property.
- [14] At the time the first Deck was constructed, he did some research on City bylaws and felt that there was no way the City would allow such a large deck. After discussions with the City, they required the Respondents to remove the Deck although the posts remain.
- [15] Sometime later he received a notice that the Respondents had been granted a development permit for a Deck with a variance allowing an incursion into the rear Setback that he felt was substantial.
- [16] He felt that the Development Officer did not address or consider his privacy concerns when granting the Setback variance.
- [17] He referred to photographs of the previous Deck. He indicated that the new Deck will not extend as far into the rear Setback but the projection toward his rear yard is still excessive.
- [18] Even if the Deck were to comply with the *Edmonton Zoning Bylaw*, his privacy would still be affected due to the Height of the Deck.
- [19] He referred to the privacy screen requirements in Section 49 of the *Edmonton Zoning Bylaw* that were amended in August 2016. In his view, the City is starting to take privacy issues more seriously now than ever before.

- [20] He understands that Residential Small Lot Zones contain small lots, but he believes every neighbour has to be fair with their developments and the Respondents' wants and needs should not outweigh his privacy concerns.
- [21] When he was dealing with the Bylaw officer who dealt with the original Deck, she assured him that, if there was any future development on the subject property, his privacy concerns would be addressed and his photographs and letters were on file.
- [22] In his opinion, his privacy concerns were not considered by the Development Officer who issued this development permit and she was unaware of the prior Deck construction until he brought it to her attention.
- [23] He referred to the development permit application form where the Respondents stated that the Deck would be six feet (1.83 metres) high. This is wrong because the slope of the Site is such that the Deck would be approximately 2.4 metres in Height at the edge closest to his property.
- [24] In his opinion, the Development Officer did not consider the slope of the Respondents' property towards his property. He indicated that, if a lot grading plan had been submitted by the Respondents, the real Height of the Deck would have been apparent.
- [25] He reiterated that he deserves privacy.
- [26] With respect to questions from the Board, Mr. Kavara provided the following:
- a. He would be in favour of adding Privacy Screening as a condition if the Deck is allowed. He believes any Deck that is higher than a fence should require Privacy Screening. He indicated that the size of the proposed Deck would be excessive even with screening.
 - b. With regard to the subject Site having an abnormal shape, he understands that, based on the configuration of the lot, the Respondents' house needed to be pushed back towards the rear of the lot. However, that means that any Deck in the smaller rear yard must be an appropriate size and cannot be too large.
 - c. He has planted trees along his rear property line to help alleviate his privacy concerns.
 - d. With regard to Section 49, he indicated that the Development Officer did not properly apply this section because Privacy Screening is required for any Deck higher than 1.85 metres.
 - e. He indicated that the subject House was granted a variance with respect to the Height of the main floor because of the slope of the Site.

- f. He indicated that he already has drainage issues because of the slope of the land. In his opinion, by allowing a large Deck, it would mean less grass to absorb rainwater, which would make the drainage problems worse.
- g. He referred to a photograph he took while standing on his deck facing toward the Respondents' rear yard when the previous Deck was still up. This photograph shows how much higher the Deck will be than his fence and how it will affect his privacy.

ii) *Position of the Development Officer, Ms. D. Perkons*

- [27] Ms. Perkons indicated that she does not have the resources to research in depth the history of certain properties.
- [28] She indicated from her research it was not evident there was a large grade difference between the properties.
- [29] Based on the aerial photographs she reviewed, she felt the variance allowing the proposed Deck to project into the rear Setback would not have a large impact on adjacent neighbours.
- [30] Regarding the previous Deck that was removed, she indicated that, once a Compliance job is closed, the situation is considered to have been resolved and she does not refer to that file. This is why she was not aware of the Appellant's privacy concerns before she issued the development permit.
- [31] If there are any issues with grading, they are dealt with by a different City department.
- [32] At the time she issued the Development Permit, the permit application stated the Height of the Deck would be 1.83 metres (six feet). Based on the evidence presented to her now, she knows that the Deck will be over that. The Deck was approved based on false information. She would not have approved the application if she had been aware of the Height of the Deck relative to the Appellant's property.
- [33] When asked why she did not cancel the development permit pursuant to Section 17.2(1)(c) of the *Zoning Bylaw* because material facts had not been disclosed in the application, she stated that she had been advised that she could not cancel it at this stage.
- [34] When she learned that the Deck would be higher than six feet, she contacted the Respondents about the misinformation they had provided and asked how they intended to address the Appellant's concerns. They told her they would get back to her but they never did.
- [35] With respect to questions from the Board, Ms. Perkons stated the following:

- a. The Board referenced the Site Plan to show that the House without the Deck is 7.59 metres from the Rear Lot Line and a minimum Rear Setback of 7.5 metres is required. With regard to granting a variance to allow the Deck to project into the rear Setback, she stated that she felt there was a hardship with the configuration of the Site. The Board indicated that, if the lot shape requires the House to be pushed towards the rear of the lot, the projection of the deck into the rear setback is correspondingly reduced.
- b. She indicated that there is no Site Coverage issue because of the Deck.
- c. With regard to the two aerial photographs she submitted, she indicated that it shows a before and after view of the area and indicated that these were the only images she had at the time of her decision.
- d. It was only after she was contacted by the Appellant that she found a Plot Plan with Lot grading that showed the slope of the Site.

iii) Position of the Respondent, Mr. Z. Tan and Ms. K. Tran representing Ms. L. M. Huang

- [36] They indicated that there are other properties in the neighbourhood with Decks the same Height as the proposed Deck.
- [37] They are willing to install a Privacy Screen around their Deck as long as it is a reasonable height.
- [38] They indicated that there are trees in the Appellant's backyard that do provide privacy and they are planning on planting trees along their rear property line.
- [39] With regard to the original Deck being built without a permit, they indicated that the Respondents are first-time buyers and there is a language barrier and, because of this, they were unaware they needed a permit.
- [40] They did not know that the Deck would be over six feet in height.
- [41] With regard to drainage concerns, any drainage into the Appellant's property is not their fault, as it is just the way the land is sloped.
- [42] They have talked to the other neighbour abutting their property along the rear fence line and he does not have any concerns about drainage issues or about the proposed Deck.
- [43] They indicated that the Deck they are proposing to build is roughly the same height and size as their neighbours'.
- [44] With respect to questions from the Board, Mr. Z. Tan and Ms. K. Tran provided the following:

- a. They do not have any photographs of the other Decks in the neighbourhood but indicated that they would be willing to provide them.
- b. They did not get anything in writing when they talked to the other neighbour at the rear about their proposed Deck.
- c. In their opinion, the photographs of the original Deck should not be used to evaluate the proposed Deck because it would be smaller and the photographs give a false impression of the proposed Deck.
- d. With regard to the misinformation on the application form, they reiterated that there is a language barrier and there might have been some confusion but stated that it was not an excuse.
- e. With regard to why they did not get back to the Development Officer about how they could mitigate the Appellant's concerns, they indicated that they thought they should wait until the appeal hearing.
- f. They are willing to resize their Deck if they are required to, but would prefer to have the same Deck size as their neighbours.
- g. Referring to an aerial photograph of the neighbourhood, they indicated that the House two lots north of theirs with approximately the same Rear Setback as theirs has a Deck of similar size to the proposed Deck.
- h. With regard to a Privacy Screen, they stated that a six-foot high screen would be too tall but they would be agreeable to a 1.2-metre high screen.

iv) Rebuttal of the Appellant

- [45] With regard to the misinformation of the Height issue, he does not blame the City as they were provided with the wrong numbers.
- [46] With regard to the Development Officer not knowing about the true Height of the deck, the permit application indicated there would be 11 steps from the Deck to ground level. In his opinion, that should have been a red flag for additional questioning about the Height of the Deck.
- [47] With regard to a language barrier, he understands because he also is not fluent in English being an immigrant to Canada, but that should not be an excuse for providing misinformation.
- [48] He understands that his drainage issues are not the fault of the Respondents as it is just the way the land is and how the buildings were constructed.

- [49] In response to the Respondents' claim that their neighbours have similar sized Decks, he provided a new photograph (*Exhibit "A"*) that was taken from his backyard showing the properties behind him. This photograph showed that the property two lots north of the Respondents has a Deck that is much smaller than the one the Respondents are proposing and appeared to maintain the required minimum rear setback.

Decision

- [50] The appeal is **ALLOWED** and the decision of the Development Authority is **REVOKED**. The development is **REFUSED**.

Reasons for Decision

- [51] The proposed development is Accessory to a Permitted Use in the RSL Residential Small Lot Zone.
- [52] The subject Site has a significant slope from the front to the rear. Because of this, although the Height of the proposed Deck would be about 1.8 metres where it would attach to the house, it would be considerably higher at the rear of the lot.
- [53] When the Respondents completed the development permit application form, they stated that the Deck would be 1.83 metres in Height. Because of the slope of the Site, this information was incorrect.
- [54] The Development Officer advised the Board that, at the time she approved the Development Permit, she was under the impression this was a six-foot high deck on a relatively flat lot. Because of this, she was of the view that the variance allowing the Deck to protrude into the rear Setback would not have an impact on neighbouring parcels of land.
- [55] The Development Officer further advised that, had she had known that the Deck was significantly higher than six feet on a sloped lot, she would have not issued the Development Permit.
- [56] Although the photographs of the Deck that was built without a development permit show a Deck that is larger than the proposed Deck, the Height of the proposed Deck would be the same as the Deck in the photographs. Based on these photographs, it is evident that the proposed Deck would be both too close to, and would tower over the 1.83-metre fence separating the Respondents' property from the Appellant's.

[57] In these circumstances, the Board is of the opinion that the variance allowing the Deck to protrude into the rear Setback will negatively impact the Appellant's privacy and will, therefore, materially interfere with and affect the use and enjoyment of this neighbouring parcel of land. Accordingly, the appeal is allowed and the Development Officer's decision is revoked.

Mr. M. Young, Presiding Officer
Subdivision and Development Appeal Board

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. 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.
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 the Sustainable Development Department, located on the 5th Floor, 10250 – 101 Street NW, Edmonton.