

CITY OF GRANDE PRAIRIE
SUBDIVISION & DEVELOPMENT APPEAL BOARD
NOTICE OF DECISION

Board Members:	Linda Murphy, Chairperson Paulo Cerol, Member Dwight Logan, Member
Also present:	Kimberly Brock, Planning & Development, City of Grande Prairie Stuart Wright, Planning & Development, City of Grande Prairie Aquisha Khan, Engineering Services, City of Grande Prairie Noreen Zhang, Secretary of the Board Amanda Van Beekveld, Legislative Services, City of Grande Prairie Nabeel Smilley, Appellant & Property Owner Kyle Magee, Adjacent Property Owner
Appeal No.:	SDAB 2017 – 004D
Appeal by:	Nabeel Smilley
Hearing date:	July 21, 2017
Decision issued:	July 25, 2017

1. The following documents were received prior to the hearing, distributed to the Board in advance and form part of the record:
 - a. Copy of the Appellant's Appeal Application and reasons for appeal;
 - b. Copy of the Stop Order;
 - c. The Development Officer's written submission.
2. The following exhibit were presented during the hearing and form part of the record:
 - a. Exhibit A – Power Point presentation by Kimberly Brock, Development Officer;
 - b. Exhibit B – Appellant written submission.
3. The Board heard oral submissions from:
 - a. Kimberly Brock, Development Officer, City of Grande Prairie and;

- b. Nabeel Smilley, Appellant and Property Owner;
- c. Kyle Magee.

Subject matter of the appeal:

- 4. This is an appeal to the Subdivision and Development Appeal Board (the “SDAB”) by the Appellant on the STOP ORDER issued by the Development Authority, on June 9, 2017, regarding a CONTRAVENTION OF LAND USE BYLAW NO. C-1260, located at Lot 42, Block: 4, Plan: 0728514; 8817 – 88B Street, Grande Prairie, AB.
- 5. Notice was given on July 11, 2017 to the interested parties, and a hearing was held at 10205 – 98 Street, Grande Prairie, AB on July 21, 2017.

Summary of the Hearing:

Position of the Development Authority

- 6. The Development Authority presented written and oral submissions to the Board. In summary, the Development Officer submitted that the SDAB should deny the appeal and uphold the Stop Order issued to the Appellant for the unauthorized widening of the driveway at 8817 – 88B Street, Grande Prairie, AB.
- 7. The Development Authority submitted that the subject property is located in the Riverstone Neighbourhood, in a Small Lot Residential zoned RS.
- 8. The Development Authority informed the Board that on Wednesday, May 31, 2017, a letter was prepared by the City of Grande Prairie (the “City”) Traffic Technologist and hand delivered to the property owner by the City’s Enforcement Officer. A call was received on the same day from the Appellant in regards to the letter that had been delivered to both himself and the neighbouring property (8821 – 88B Street).
- 9. The Development Authority submitted that on June 1, 2017, an Enforcement Officer notified the Traffic Technologist that the concrete had been poured. A letter from the Engineering Department and a Stop Order from the Planning and Development Department was hand delivered to the property owner by an Enforcement Officer on June 9, 2017.
- 10. The Development Authority submitted that the development permit approved in 2009 for the property’s driveway has the width of 7.315. At that time, the Land Use Bylaw did not control the width of the driveway in relation to the lot size. Driveway width approval were based on the information provided by the engineered detailed drawings for that subdivision. It was not until August 2015 that the Land Use Bylaw C-1260 was amended to limit the driveway width to 60% of the lot width. The subject property has a lot width of 11.58m, 60% is 6.948m. The approved driveway width is 7.315m, which is 64%. Currently, 8.57m covers 74% of the lot width.
- 11. The Development Authority explained to the Board that Section 81 (Small Lot Residential District) – RS states:

81.4 Site Standards

a) Single Detached dwellings

Driveway Width (Maximum) – 60% of lot width, not to exceed 10m

81.5 Additional Requirements

f) Low density residential driveways shall meet the following requirements:

Driveways shall be setback a minimum of 0.5m from the side property lines

12. The Development Authority also submitted to the Board that Section 69 Parking for Residential Purposes of the Land Use Bylaw C-1260 stated that:

69.3 Unless otherwise authorized by the Development Authority, only those areas approved for parking shall be hard surfaced and/or utilized for parking of motor vehicles.

13. The Development Authority further informed the Board of the impacts of an excessively wide driveway such as:
 - a) Negatively impacting the appearance of the neighbourhoods;
 - b) Contributing to a reduction of the supply of on-street parking;
 - c) Increase in impervious surface can cause drainage problems and place a greater demand on the City's storm water system and;
 - d) Insufficient space to store snow cleared from the driveway.

Position of the Appellant Nabeel Smiley.

14. The Appellant submitted to the Board oral and written submissions.
15. The Appellant's grounds of appeal as stated in their appeal application are as follows:
 - a) Pleads ignorance on the City's bylaws and the Stop Order;
 - b) Wanting approval for the development as a functional walkway not a driveway;
 - c) The development was professionally completed and looks amazing in comparison to other similar developments in the same area and around Grande Prairie;
 - d) Was not made aware of the requirement for a permit for changes in landscaping;
 - e) Would like to have agreement with the City to further continue the walkway between the houses to the backyard as grass does not seem to grow due to sump pump constantly running;
 - f) Due to economic times, the appellant have no funds to return the concreted area into grass and continue paying for the yearly up keep of grass that was previously there.
16. The Appellant submitted to the Board a written statement with photographs to support the reasons of his appeal to the Stop Order. The written statements supported the Appellant's oral presentation in regards to Section 64.11 of the City's bylaw. Section 64.11 of the City's bylaw states:

64.11 All landscaped areas must meet the following requirements:

- a. *Be a soft surfaced or suitable, durable, decorative hard surfaced landscape material. Suitable hard surfaces may consist of, but are not limited to, paving stone, natural stone work, rip rap and rock, artificial grass, decorative concrete or architectural features. Hard surface areas must provide visual or pedestrian amenity and must be augmented with plant material or provide suitable visual character. The acceptable scope and scale of hard surface landscape areas is at the discretion of the Development Authority*

17. The Appellant further submitted to the Board his argument in regards to Section 23 of the City's bylaws, which addresses the requirement for a development approval, which may require an applicant to enter into an agreement with the City for a pedestrian walkway. The Appellant stated subject area of the contravention was not meant to be a driveway or a parking space but a walkway towards the backyard.
18. The Appellant submitted to the Board that there should not be a drainage problem since most of the water goes to the property owner's weeping tile causing the sump pump to constantly running. He further added that the sump pump hose is taken towards the driveway where there is no pooling of water on the street.
19. The Appellant also submitted that the concerns for storage of snow would not be an issue as the concreted surfaced is not going to be used as a driveway therefore the 8 ft. or 288 sq. ft. concreted space can still accommodate the cleared snow.
20. The Appellant stated to the Board that he has spoken to the Development Officer, Kimberly Brock, in regards to the using bricks was told would need approval for a functional walkway.
21. The Appellant submitted that the property or subdivision was built in 2009 and the current bylaw was passed in 2015, in which at least 2 more driveway extensions were poured but were not ordered to be removed and currently being used as driveway extensions which is a clear contravention to the City's current bylaw.
22. The Appellant further added that at least \$4,000 had been spent on the concreted space.

Position of the Adjacent Property Owner, Kyle Magee:

23. Mr. Magee submitted to the Board his support to uphold the appeal.

Findings of Fact

24. Based on the evidence before the SDAB, the SDAB finds the facts of this matter to be as follows:
 - a. The subject property is located in the City of Grande Prairie.

- b. The subject property is within the Small Lot Residential (RS) District.
- c. No application was filed with the City Development Services for a development permit regarding a driveway extension or functional walkway.
- d. Section 81.4 (Site Standards) and 81.5 Additional Requirements - (Small Lot Residential District – RS) of the City’s Land Use Bylaw C-1260 was amended in August 2015 to limit the driveway width for a two-car garage to 60% of the lot width and driveway setback minimum set at 0.5m from the side property lines.
- e. Section 69.3 (Parking for Residential Purposes) of the City’s Land Use Bylaw C-1260 states only approved areas can be hard surfaced upon approval of the Development Authority.

Decision of the Board

- 25. The SDAB DENIES the appeal and UPHOLDS the STOP ORDER issued by the Development Authority on June 9, 2017, and extends the compliance date to AUGUST 18, 2017.

Reasons for Decision

- 26. The Board notes that its jurisdiction is found in section 687(3) of the *Municipal Government Act*.
- 27. The Board considered the written and oral evidence submitted by the parties and notes that this appeal involves the Development Authority’s STOP ORDER regarding a CONTRAVENTION OF THE LAND USE BYLAW C-1260, located at 8817 – 88B Street.
- 28. The Board determined that the STOP ORDER issued was accordingly, that there was a breach in the City’s Land Use Bylaw C-1260 specifically Section 69.3, Section 81.4, and Section 81.5 for a Small Lot Residential District.

NOTE: (Excerpt from the Municipal Government Act, R.S.A. 2000, Ch. M-26)

688(1) Notwithstanding section 506, an appeal lies to the Court of Appeal on a question of law or jurisdiction with respect to

(a) a decision of the subdivision and development appeal board, and

(b) the Municipal Government Board on a decision on an appeal under section 619, an inter-municipal dispute under Division 11 or a subdivision appeal under this Division.

688(2) An application for leave to appeal must be filed and served within 30 days after the issue of the decision sought to be appealed, and notice of the application for leave to appeal must be given to

(a) the Municipal Government Board or the subdivision and development appeal board,

as the case may be and

(b) any other persons that the judge directs.

CITY OF GRANDE PRAIRIE SUBDIVISION & DEVELOPMENT APPEAL BOARD

PER: *Noreen Zhang* (signed)

BOARD SECRETARY

cc: SDAB Members
Development Officer
Nabeel Smilley
Kyle Magee