



**SAFETY CODES COUNCIL**

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**COUNCIL ORDER No. 0015412**

**ORDER**

**BEFORE THE BUILDING TECHNICAL COUNCIL  
On March 7, 2012**

**IN THE MATTER OF** the Safety Codes Act, Revised Statutes of Alberta 2000, Chapter S-1.

**AND IN THE MATTER OF** an Order dated December 8, 2011 issued by an Accredited Municipality (“Respondent”) against a Property Owner (“Appellant”).

**UPON REVIEWING** the Order **AND UPON HEARING** the Appellant and the Respondent; **THIS COUNCIL ORDERS THAT** the Order is **VARIED**.

Replacing the Order’s directive:

From:

*“1. Correct the location of the garage as indicated in the above schedule to comply with plans submitted for Building Permit (BP2010-05108) in accordance with the requirements of Sentence 2.2.9.9.(1) of Division C of the Alberta Building Code 2006 by no later than 16:00 hours on the 31<sup>st</sup> day of January 2012.*

*OR*

*2. Submit revised plans and modify “as built” construction to comply with the attached High Intensity Residential Fire (HIRF) fire protection requirements of Sentence 9.10.15.1.(9) of Division B of the Alberta Building Code 2006 by no later than 16:00 hours on the 31<sup>st</sup> day of January 2012.”*

To:

1. Correct the location of the garage as indicated in the above schedule to comply with plans

submitted for Building Permit (BP2010-05108) in accordance with the requirements of Sentence 2.2.9.9.(1) of Division C of the Alberta Building Code 2006 **by no later than June 30, 2012.**

OR

2. Submit revised plans and modify “as built” construction to comply with the attached High Intensity Residential Fire (HIRF) fire protection requirements of Sentence 9.10.15.1.(9) of Division B of the Alberta Building Code 2006 **by no later than June 30, 2012.**

**Issue:**

1. The Appeal concerns the limiting distance of the roof soffits and the limiting distance of the exposing building face of a detached garage located within the Municipality.

**The Record:**

2. The Appeal Panel considered, or had available for reference, the following documentation:
  - a) A letter dated February 16<sup>th</sup>, 2012, from the Safety Codes Council to the Appellant acknowledging receipt of request for appeal and providing notice of the appeal hearing.
  - b) A letter from the Building Technical Council to the Appellant dated January 17, 2012, granting a stay of the order.
  - c) A letter dated December 21, 2011, from the Appellant requesting an appeal and a stay of the order.
  - d) A drawing and design of the private residence custom garage.
  - e) A copy of the Accredited Municipality’s order dated December 8, 2011.
  - f) A copy of the building permit # BP2010-05108.
  - g) Architectural Design Firm documents received by the Safety Codes Council on February 29<sup>th</sup>, 2012, including the Appellant’s rationale and summary brief, with exhibits A, B, C, D & E.
  - h) Exhibit #1 – Appellant – submitted at table, a drawing of garage plans – sheet number 9, job # 08-959, dated January 19, 2010.
  - i) Exhibit #2 – Appellant – submitted at table, a drawing of site plan – dated January 18, 2010
  - j) Exhibit #3 – Appellant – submitted at table, a drawing of garage plans – sheet #A9.

**Position of the Parties**

*Appellant*

3. The Appellant’s position is that:

- (a) There is an issue with the roof overhang on one side of the garage. The situation became apparent after the garage was built.
- (b) The original development permit for the house, which included the garage and its eave overhang, was approved and released from the Respondent without objection.
- (c) The subsequent building permit for the house and garage were approved and released as well with the pre-fabricated truss plans included in the application.
- (d) The Respondent should not have issued the development permit and building permit until all conditions were met and approved.
- (e) The Respondent failed twice to alert the Appellant of the new fire code issue, first in the Development Permit stage and then in the Building Permit process.
- (f) The only documentation from the Respondent that mentions the requirement that the roof soffits be no closer than 0.45 m from a property line, is a brochure issued by the Accredited Municipality. There is no mention of the requirement in the Municipality's Land Use Bylaw.

*Respondent*

4. The Respondent's position is that:

- (a) The Alberta Building Code 2006 requirements do not permit roof soffits within 0.45 m (1' 6") of the property line.
- (b) The Appellant was advised during the permitting process that the projection of the roof soffits on the garage were non-compliant with the requirements of the Alberta Building Code 2006.
- (c) The Permit Conditions document (The Record, Item G, Exhibit B) provided to the Appellant during the permit review process, indicates that "Roof soffits are not permitted within 0.45 m (1' 6") of the property line."

**Findings of Fact:**

5. All areas of Alberta are subject to the laws, codes, regulations and policies of the *Safety Codes Act*. The applicable code is the Alberta Building Code 2006.

6. The *Safety Codes Act* provides:

5 Owners, care and control

The owner of any thing, process or activity to which this Act applies shall ensure that it meets the requirements of this Act, that the thing is maintained as required by the regulations and that when the process or activity is undertaken it is done in a safe manner.

6 Design duties

A person who creates, alters, has care and control of or owns a design or offers a design for use by others shall ensure that the design complies with this Act and that it is submitted for review or registered if required by this Act, and if the design is deregistered, the person shall provide notice of its deregistration in accordance with the regulations.

### 38Variances

(1) An Administrator or a safety codes officer may issue a written variance with respect to any thing, process or activity to which this Act applies if the Administrator or officer is of the opinion that the variance provides approximately equivalent or greater safety performance with respect to persons and property as that provided for by this Act.

#### 7. The Alberta Building Code 2006 provides:

##### Division C

##### 2.2.9.9. Responsibility for Compliance

1) Neither the issuance of a permit, nor inspections made by the authority having jurisdiction, shall in any way relieve the owner of a building from full responsibility for carrying out the construction or having the construction carried out in accordance with the requirements of the Safety Codes Act and regulations made pursuant to that Act, this Code, or the permit, including compliance with any special conditions required by the authority having jurisdiction.

2) The owner shall ensure that all activities that take place on the site meet the requirements of this Code.

5) The designer shall ensure that the plans and specifications comply with the requirements of this Code.

##### Division B

##### 9.10.15.5. Construction of Exposing Building Face of Houses

9) Where the limiting distance is more than 0.45 m, the face of roof soffits above the exposing building face are permitted to project to not less than 0.45 m from a property line.

8. In cross-examination, the Appellant and the Respondent provided the following information regarding permits for the garage and house: the Appellant applied for a development permit for the house and garage in 2009, the development permit for the house and garage was issued in March 2010, a building permit for the house was issued in April 2010, and a building permit for the garage was issued in May 2010.
9. The Appellant and Respondent both agree that the garage roof soffits, on one side of the garage, are projecting more than 0.45 m from the property line. (the overhang)
10. In presentation, the Appellant noted that the non-compliant position of the garage and overhang is an honest error and it could have been fixed before construction if the Appellant had been aware of the infraction. The Appellant indicated that the Respondent should not have issued permits if the garage was not compliant with the Alberta Building Codes 2006.
11. In presentation, the Respondent advised that the overhang was brought to the Appellant's attention prior to construction of the garage, and that it was noted on the Permit Conditions document. (The Record, Item G, Exhibit A)

12. In their presentations and in cross-examination, the Appellant and Respondent both indicated that an alternative solution to address the overhang was not pursued by the Appellant, nor considered by the Respondent.
13. Design drawings, or other supportive documentation for an alternative solution for the garage overhang was not provided for the Appeal Panel's consideration.
14. A copy of a municipal brochure submitted by the Appellant (The Record, Item G, Exhibit E) contemplates an alternative solution for a detached garage that must be 0.6 m from all property lines. In this contemplation, if the garage wall is constructed of maintenance-free materials and the wall is fire rated and equipped with downspouts and eaves troughs that direct water run-off onto the same lot, then, a required 0.6 m side yard can be reduced to 0.0 m.

**Reasons for Decision:**

15. The Alberta Building Code 2006 provides that the limiting distance from the face of roof soffits above the exposing building face to property line is to be not less than 0.45 m.
16. The Appellant was notified of the limiting distance requirement for roof soffits within the Permit Conditions document, prior to the construction of the garage. The permit holder's responsibility is to ensure work is compliant within the provisions of the issued permit including conditions.
17. The appeal panel noted that it is incumbent on the authority having jurisdiction to be clear and concise on indicating conditions of permit issuance and on identifying building design that is contrary to the Safety Codes Act and the Codes. In this instance, the Respondent did provide sufficient notice but could have done more to make the Appellant aware of the condition. The authorities having jurisdiction, by practice, may use varying methodology to bring conditions and infractions to the attention of applicants.
18. A permit applicant is expected to review and be aware of permit conditions and address them.
19. The Safety Codes Act and the Alberta Building Code 2006 is clear on responsibility for compliance. The issuance of a permit does not relieve the owner from full responsibility of ensuring that construction is in accordance with the requirements of the Safety Codes Act, regulations, the Alberta Building Code, or the permit.
20. The Appeal Panel believes that alternative solutions exist to address this issue. The Appellant can apply for a variance and the Respondent has the authority to issue a written variance if the Respondent is of the opinion that the variance provides approximately equivalent or greater safety performance with respect to persons and property.
21. The Appeal Panel in varying the Order has provided a reasonable and practical amount of time for the Appellant to comply with the directives of the Order as stated, or for the Appellant to seek a variance with the authority having jurisdiction for an acceptable alternative solution.

Dated at Edmonton, Alberta this 28th day of March, 2012

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Chair, Building Technical Council Appeal Panel