



COUNCIL ORDER No. 0015471

**BEFORE THE BUILDING SUB-COUNCIL
On November 17, 2016**

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

AND IN THE MATTER OF the Order Pursuant to Section 49(1) of the Safety Codes Act, issued August 23, 2016 by the Accredited Municipality (Respondent) against the Home Building Company (Appellant).

UPON REVIEWING the Issued Order **AND UPON HEARING** the Appellant and the Respondent, **THIS COUNCIL ORDERS THAT** the Order is **CONFIRMED**.

Issue:

1. The Appeal concerns the residence within the Accredited Municipality, Alberta.
2. The issue on appeal is the need to comply with Sentence 9.10.15.5 (2) and Sentence 9.10.15.4 (1) of the 2006 Alberta Building Code.

Appearances, and Preliminary, Evidentiary or Procedural Matters:

3. Appearing for the Appellant, the Appeal Panel heard from the representatives for the appellant.
4. Appearing for the Respondent, the Appeal Panel heard from the representatives for the respondent.
5. Attending as observers were several individuals for education purposes.
6. A safety expert from the Accredited Municipality attended as Technical Advisor.
7. At the commencement of the hearing, the Appellant and Respondent confirmed there were no objections to any members of the Appeal Panel, and that the Safety Codes Council (Council) in general and the Appeal Panel in particular had jurisdiction to hear and decide the appeal.
8. The Appeal Panel Chair (the "Chair") then explained the process to be followed in hearing

this appeal, and read out a list of the written material before the Appeal Panel, consisting of the documents listed below in The Record, paragraph 10 as items a) to j). The Appellant and Respondent confirmed that there were no objections to any of the written material submitted to the Appeal Panel prior to the hearing.

9. At the hearing the Respondent submitted additional written documentation, identified as Exhibit 1 Respondent (2 pages), and Exhibit 2 Respondent (8 pages). The Appellant had no objection to these documents being included in the Record. The Respondent also pointed out an error in the Order, which referenced the 2014 Alberta Building Code. The Code in force at the time this project was begun was the 2006 Alberta Building Code. After a brief *in camera* session the Appeal Panel Chair allowed the hearing to proceed with the proviso that the Technical Advisor from the Accredited Municipality would cross reference the applicable provisions (in the 2014 and 2006 Codes) to ensure there was no substantive change between the two. This has since occurred and the Technical Advisor has confirmed this to be true.

The Record:

10. The Appeal Panel considered, or had available for reference, the following documentation:
 - a) Order and Notice of Appeal (pages 1 to 4)
 - b) Request for a Stay of the Order (page 5)
 - c) Stay of the Order Letter dated September 27, 2016 (page 6)
 - d) Acknowledgement Letter dated September 27, 2016 (page 7)
 - e) Appeal Hearing Brief Preparation Guide (page 8)
 - f) Written Notification of Hearing (pages 9 to 10)
 - g) Written Brief of the Appellant (pages 50 to 59)
 - h) Written Brief of the Respondent (pages 150 to 154)
 - i) Exhibit 1 Respondent (2 pages)
 - j) Exhibit 2 Respondent (8 pages)

Provisions of the Safety Codes Act:

11. The *Safety Codes Act* (S-1, RSA 2000), as amended provides, *inter alia*:

Part 1

Responsibilities

Owners, care and control

5 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.

Part 5
Orders, Appeals
Council considers appeal

- 52(2) The Council may by order
- (a) Confirm, revoke or vary an order, suspension or cancellation appealed to it and as a term of its order may issue a written variance with respect to any thing, process or activity related to the subject-matter of the order if in its opinion the variance provides approximately equivalent or greater safety performance with respect to persons and property as that provided for by this Act.

Provisions of the Permit Regulation 204/2007:

The Permit Regulation 204/2007 provides, *inter alia*:

- 24 On the issuance of a permit, the permit holder must
- (a) comply with the terms and conditions of the permit,
 - (b) undertake the construction, process or activity in accordance with the Act and applicable codes and standards.

Provisions of the Alberta Building Code 2006 (ABC 2006):

12. The Alberta Building Code 2006 provides, *inter alia*:

Division A

1.2.1.1. Compliance with this Code

- 1) Compliance with this Code shall be achieved by
 - a) Complying with the applicable acceptable solutions in Division B, or
 - b) Using *alternative solutions* that will achieve at least the minimum level of performance required by Division B in the areas defined by the objectives and functional statements attributed to the applicable acceptable solutions (see Appendix A).

Division C

2.2.2.4. Dimensional Tolerances

- 1) If life safety will not be reduced, the *authority having jurisdiction* may accept minor variation, not more than 2%, in a dimension given in this Code.

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.

Division B

9.10.15. Spatial Separation between Houses

9.10.15.4. Glazed Openings in Exposing Building Face

- 1) Except as provided in Sentence (6), the maximum aggregate area of glazed openings in an *exposing building face* shall
 - a) conform to Table 9.10.15.4.,
 - b) conform to Subsection 3.2.3., or
 - c) be equal to or less than the *limiting distance* squared where the *limiting distance* is not less than 1.2 m.

Division B

9.10.15.3. Limiting Distance where Firefighting Facilities are Inadequate

- 1) Except for the purpose of applying Sentence 9.10.15.5. (1), a *limiting distance* equal to half the actual *limiting distance* shall be used as input to the requirements of this Subsection, where
 - a) the time from receipt of notification of a fire by the fire department until the first fire department vehicle capable of beginning suppression activities arrives at the *building* is greater than 10 minutes in not less than 10% of all calls to the *building*, and
 - b) any *storey* in the *building* is not *sprinklered*.

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Table 9.10.15.4.
Maximum Area of Glazed Openings in Exterior Walls
 Forming Part of Sentence 9.10.15.4.(1)

Maximum Total Area of Exposing Building Face, m ²	Maximum Aggregate Area of Glazed Openings, % of <i>Exposing Building Face Area</i>											
	<i>Limiting Distance, m</i>											
	Less than 1.2	1.2	1.5	2.0	4.0	6.0	8.0	10.0	12.0	16.0	20.0	25.0
30	0	7	9	12	39	88	100	-	-	-	-	-
40	0	7	8	11	32	69	100	-	-	-	-	-
50	0	7	8	10	28	57	100	-	-	-	-	-
100	0	7	8	9	18	34	56	84	100	-	-	-
Over 100	0	7	7	8	12	19	28	40	55	92	100	-

9.10.15.5. Construction of Exposing Building Face of Houses

2) Except as provided in Sentence (3) and (4), where the *limiting distance* is less than 1.2 m, the *exposing building face* and any exterior wall located above the *exposing building face* that encloses an *attic or roof space* shall have a *fire-resistance rating* of not less than 45 min, and

- a) where the *limiting distance* is less than 0.6 m, the cladding shall
 - i) be of a *noncombustible* material conforming to Section 9.20., 9.27., or 9.28. (See Appendix A-9.10.14.5.(1), or
 - ii) conform to Clause 3.2.3.7. (3)(d)'
- b) where the *limiting distance* is not less than 0.6 m and less than 1.2 m, the cladding shall
 - i) be of a *noncombustible* material conforming to Section 9.20., 9.27., or 9.28. (see Appendix A-9.10.14.5.(1), or
 - ii) conform to Clause 3.2.3.7. (3) (c) or (d), or
- c) the wall assembly shall satisfy the criteria of Sentences 3.1.5.5. (2) and (3) when subjected to testing in conformance with CAN/ULC S134, "Fire Test of Exterior Wall Assemblies."

Position of the Parties

Appellants

From the Appellants' submissions and testimony the Appellants' position may be summarized as follows:

- 13. The Home Building Company has been building in the Accredited Municipality for more than 18 years and this is the first time this issue has arisen.
- 14. The survey pin was missing on the southwest corner of the property (see page 51 of the Record) and the fence was off slightly which may have contributed to the discrepancy.
- 15. The foundation is encroaching into the four foot setback allowed by approximately ½ inch, except in the back corner which it is acknowledged is greater.
- 16. The Panel Members were referred to the Real Property Report (RPR) dated August 12, 2016

(page 51 of the Record), showing the NW corner of the residence, from the property line is 1.09 from the siding and 1.15 from the foundation, a discrepancy of only 0.05 metres.

17. The land surveyor agrees with the Appellant, that it is not uncommon to find a bent survey pin, and errors of ½ - ¾ inches are not uncommon.
18. It was a neighbour who brought the discrepancy to the Accredited Municipality's attention.
19. Referring to page 52 of the Record, the Appellant said they complied with a request from the Safety Codes Officer (SCO) for non-vented soffits; and since an 18" (versus 24") overhang is now their standard, the 450 mm encroachment referred to, is not an issue.
20. While the Appellant did not have a copy of the floorplan, he confirmed there were two windows (bedrooms) along the wall in question, each likely 48 x 36 inches. There are also two basement windows along the same wall.
21. In response to a question from the Appellant, the Appeal Panel confirmed that the 10% variance referred to in several documents relates to the authority of the Development Officer and would not be applicable to decisions made by an SCO when applying the Alberta Building Code.
22. The Garage Door which exits on the same side is a standard, metal clad, fiberglass insulated exit door.
23. The Appellant confirmed he was aware of the reasoning behind the 1.20 metre *limiting distance*.
24. It was always their intent to follow the rules but there was an error which made it difficult to comply.

Respondent

From the Respondent's submissions and testimony, the Respondent's position may be summarized as follows:

25. A single family house with an attached garage and secondary suite was constructed, and encroaches within 1.2 metres of the property line.
26. Although the builder did change the house plan to minimize square footage (shaving off 6"), it did not resolve the problem.
27. The construction of the wall is in non-compliance with Sentence 9.10.15.5 (2) of the 2006 Alberta Building Code (ABC) for exposed building face where the *limiting distance* is not less than 0.6 metres and less than 1.2 metres.
28. The wall is combustible construction with vinyl siding and no protection provided.
29. There are glazed openings in the wall with 2 egress bedroom windows within the 1.2 metre *limiting distance*.
30. This matter was brought to the Municipality's attention by a neighbour, in response to which the former requested another RPR.
31. The Appellant had previously altered the floor plan to "shrink" the home by 6" to fit but unfortunately for whatever reason (human error/bent or missing survey pin), it was still too close to the property line.
32. The 2006 ABC requires that if the building is within the 1.2 metre *limiting distance*, the owner must provide protection, and even with the 2% allowance identified in the ABC, the residence does not meet minimum code standard.
33. Although the question of an *alternative solution* was discussed with both the owner and the builder, the owner said he would leave it up to the builder to address, and the Appellant

decided to pursue the appeal rather than further considering an acceptable *alternative solution*.

34. The Appellant remains of the opinion that a ½ - 3/8 inch error is not serious enough to address.
35. There is a secondary suite within the residence.
36. In response to a question from the Appeal Panel, the Respondent said they did not know the percent of increased risk resulting from the error and simply applied the minimum code requirement because of the life safety concerns involved.
37. While the Respondent has always been willing to consider an *alternative solution*; because of the acknowledged encroachment, the associated life safety concerns, and a neighbour who will likely pursue this further if not resolved, it was decided to issue the Order and allow the Appellant to seek resolution through the appeal process.

Reasons for Decision (Findings of Fact and Law):

The Appeal Panel makes the following findings:

38. All parties agree that the structure encroaches within 1.2 metres of the property line.
39. Notwithstanding the missing survey pin and fence being out of line, this does not alter the fact that the structure encroaches within 1.2 metres of the property line.
40. The 2006 ABC anticipated installation variations when it included Sentence 2.2.2.4. Dimensional Tolerances in the Code, allowing the *authority having jurisdiction* to accept minor variation, but only if it is not more than 2%, in a dimension given in the Code and life safety is not reduced.
41. While the Appellant considers the encroachment minor, information before the Appeal Panel confirms the encroachment runs from 0.01 meters on the NE corner to 0.05 metres on the NW corner, exceeding the maximum 2% dimensional tolerance that might be allowed by the Code.
42. There are two glazed openings in the north wall of this building. As per Table 9.10.15.4 (above), the maximum area of such openings, as a percentage of the *exposing building face*, is zero, when the limiting distance is less than 1.2 metres.
43. There is a secondary suite in the residence makes this more of a concern.
44. Early in the process, the builder was made aware the building would be too close to the property line, and while they thought they had addressed the issue by changing the house plan from the original to minimize square footage, they did not at the time order another survey to confirm this had achieved the required set-back from the property line.
45. The Appellant was made aware of the possibility of an *alternative solution*, but chose instead to pursue an appeal.

Dated at Edmonton, Alberta this 30 day of November, 2016

Chair, Building Sub-Council Appeal Panel