

TALES FROM THE TRENCHES™

BY BARRY C. MCGUIRE

Mar 2020

“TRAPPED IN A PERMIT MAZE.”

This *Tale from the Trenches* is the second in our ongoing mini-series on permits for real estate. You know, those sometimes-nasty bits of paper that towns, cities, counties, and other municipalities require before you can do certain types of work on a property. From my perspective as a real estate lawyer, I think it's fair to say that the permit landscape has changed over the last few years in Alberta (and elsewhere across Canada), so it's good to survey recent developments. In this episode, a client of mine faces off against municipal bureaucracy to get a legal secondary suite approved, getting snagged up by rules and regulations for parking.

Steps to Get a Permit for Changing Real Estate

Typically, you start with a development permit at the Planning Office in your municipality. The development permit reviews what you plan to do and secures a broad brushstroke approval or perhaps a conditional approval for your concept. That's the first step.

The second—and more important—step is the actual building permit. Whereas the development permit is a more general document, the building permit gets into the details of your project.

Changing Municipal Attitudes on Permits

Where permits, or the requirement for permits, were often ignored in the past, municipalities are now much more vigorous about enforcing permit requirements. As an example, the City of Edmonton formerly did not pay much attention to illegal secondary suites. They would only take action if someone complained. Then, in the face of demand for more rental accommodation, the City changed the zoning bylaw to allow secondary suites in almost all areas of the city. That change from not allowing secondary suites, (or garage suites or garden suites) to allowing suites almost everywhere led the City to now enforce their bylaw. Instead of not really caring whether permits were issued, the City of Edmonton now actively pursues illegal secondary suites. On the other hand, the City is very cooperative about working with owners to legalize existing suites or add new suites.

Struggling to Secure Permits for a Secondary Suite

Recently, a client emailed to tell me about his experience in trying to get a permit for his new secondary suite. Rather than me paraphrasing, I thought it would be better and more descriptive to hear about the issues from the horse's mouth. Here's what he said:

Subject: Permit experience

Good morning Barry,

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I finally found a minute to sit down and write this out for you.

We came across a house in Fort Saskatchewan that we then discovered would be perfect for adding a secondary suite. It was on a corner lot and also had a double driveway with a double detached garage. The property had enough room to park plenty of vehicles before impeding on any neighboring properties. I looked into the zoning, and it was zoned to accommodate a secondary home. Perfect because I have the experience and time to install the suite.

We purchased the house in June with a possession date of Aug 7th. While we were waiting for our possession date, I looked into getting all the permits set up and ready to go so we could start the renovation process on our possession day. After talking to the City, they said we did not meet the parking requirements, and we would need to add an additional double-size parking pad to get the permits approved. In addition, we could not apply for the permits until the day we owned it (Aug 7th), and then we could not start any construction until approval of the permits, which would be four to six weeks. I had a three-month timeline to complete the entire project, so this was a huge setback.

After looking into some other suited properties in Fort Sask, I found that very few of them had the proper parking requirements but were still legal. I looked into this a little further and found out that the last 20 permits had been appealed on the parking issue. They all won because of adequate existing parking and therefore did not require additional parking.

I talked to the City about appealing the parking, and they said it was fairly common and again said it would be about a six-week timeline and no work could start until permits were approved.

I went back to Planning & Development and we came up with a solution that would allow me to start construction on possession day as well as potentially save me money on adding additional parking.

What we did was applied for the secondary suite with the intention of it getting denied. Then we would appeal the additional parking requirement pretty confident we would win our appeal as the last 20 of 20 have won.

As well, we would apply for a basement development permit in order to start the construction. You can develop a basement to the same standards as a secondary suite, but you just can't install the stove wiring until you have the secondary suite permit.

After 6 weeks of owning the property, I had my parking appeal. I went into it with all kinds of information including recent approvals in the area, the less strict parking guidelines in neighbouring cities, as well as photos showing how much street parking we

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have, showing the ETS bus stop out front and proof showing newer duplex developments have almost no parking.

I came out of the appeal feeling pretty confident I should win. I was shocked when I got my denial a week later!

As you have taught us at your Focus Workshops, “always have a Plan B.” Very glad I did have a Plan B, because when I lost the appeal, I was already prepared.

So off to plan B I went. I would just meet the parking requirements and get a standard permit. No issues, or so I thought.

I called the city and asked what the minimum parking requirements would be so I could obtain the permit and move forward. Then they dropped a bomb on me when they said that, because I lost my appeal, I cannot reapply for the same permit for 6 months!

This didn't make sense, because now I was just asking for a permit where I would meet all requirements. Not asking for any relaxations whatsoever. I kept asking questions because I really thought that if I was going to comply with all requirements, there must be something that could be done. Firm NO!

I tried again by talking to the Manager of Planning & Development, and he said he would talk to the Director. But he wasn't sure if there was anything that could be done. A week later, I got a call from the Director, and he said the only thing I can do was again reapply for the permit. Once they denied the new permit application (based on their rule that once a permit is denied you can't apply for 6 months), then I could file another appeal. This time my appeal would ask for a relaxation on the six-month clause.

In the meantime, I actually constructed the parking pad, which met the additional on-site parking requirement.

On Nov 7th, exactly my three-month mark, I was sitting in front of the appeal board once again asking them to allow this permit. I showed them that I had built the parking pad and now comply.

The next week was a little stressful not knowing which way they would decide to go, but they went in my favor, and I won my appeal.

So now for the third time (at almost \$600 each time), I was able to reapply for the secondary suite permit and wait for the approval.

The approval just came in on Nov 27th and I had the final inspections on Nov 28th.

Long story short, I learned a lot about how the permit process works—the hard way.

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I hope you can share this story with others in hopes that they don't make the same costly mistakes that I made.

Thanks again for all your help Barry!

Sam and Wendy (names changed).

An Expensive-but-Valuable Experience with Permits

So, to some extent, all is well that ends well. But it would've been so much better had the municipality agreed with how my client proposed to deal with the parking issue. It just seems so obvious that the application should have resulted in an approved permit just like so many similar permit applications before his. And he wouldn't have had to go to the effort and major expense of pouring concrete for the extra required spaces. I think that final bill was about \$8,000 for the parking spot, but what about the extra time, big stress, and two extra permit application fees at \$600 each?

LESSONS LEARNED:

1. **Any permit application that doesn't meet the rules needs a variance.**

Variance of municipal bylaws is a discretionary matter. When something is discretionary, to a large extent, the decision is wide open. Further, municipalities have Development Appeal Boards (DAB). If you disagree with the decision of the Planning Officer, you can appeal to the DAB. When membership of the DAB changes, however, policies change, and that's actually what happened to my client. To sum up this lesson, when asking for a variance, you can't depend on previous positive discretionary decisions being applied in your favour.

2. **Permits equal bureaucracy and rules.**

Bureaucrats live by the code that "rules are not meant to be broken," which leads to illogical circumstances. Specifically, I am pointing to the rule in this Tale about losing an appeal and not being able to apply for the same permit for six months. The silly part is that my client would have been re-applying for the permit without a variance. In other words, he would have met all the permit requirements exactly. Why did they say he had to wait six months? Because it's the Rule! You have to know the rules.

3. **You need a Plan B.**

I know many of you have heard this from me before, but you always need a backup plan. Most of us don't make permit applications on any kind of regular basis, so, understandably, we just aren't as familiar with the rules and subtleties as we might be. When you don't know the subject upside down, backwards, and forwards, things come up, stuff happens. Insure yourself against unexpected circumstances by always having a Plan B... and maybe even a Plan C!