



**EDMONTON  
TRIBUNALS**

*Subdivision &  
Development  
Appeal Board*

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Date: March 15, 2018  
Project Number: 112538672-004  
File Number: SDAB-D-18-037

**Notice of Decision**

- [1] On February 28, 2018, the Subdivision and Development Appeal Board (the “Board”) heard an appeal that was filed on **February 5, 2018**. The appeal concerned the decision of the Development Authority, issued on January 11, 2018, to approve the following development:

**Operate two Major Home Based Businesses (Administration Offices for a Travel Agency and a Property Management Agency - Di-Co Ltd & SOS Travel Ltd.)**

- [2] The subject property is on Plan 0523597 Blk 34 Lot 8, located at 5608 - 205 Street NW, within the (RSL) Residential Small Lot Zone. The Grange Area Structure Plan and The Hamptons Neighbourhood Structure Plan apply to the subject property.
- [3] The following documents were received prior to the hearing and form part of the record:
- A copy of SDAB-D-11-194;
  - A copy of the Development Permit application with attachments and the approved Development Permit;
  - The Development Officer’s written submission and
  - The Appellant’s written submission.
- [4] The following exhibit was presented during the hearing and forms part of the record:
- Exhibit A – Photographic evidence and supporting material from an affected property owner.

**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, Ms. B. Woosaree*

- [8] Ms. Woosaree has lived in the neighbourhood for approximately 10 years. She does not live directly across the street from the Respondent's property but is strongly opposed to the home based businesses and is concerned her property value will be affected.
- [9] She is concerned with the extra traffic these businesses would generate as 56 Avenue is already busy. This is a young neighbourhood and many children walk along 56 Avenue to the schools in the immediate area.
- [10] She has concerns regarding privacy and noise. She works during the day but has noticed noise coming from the rear yard of the subject site during the summer. She was not able to confirm what generates the noise and if it was related to the businesses.
- [11] She also has concerns regarding the large shed in the rear yard of the subject site and questioned its purpose.
- [12] Parking for the businesses does not directly affect the roadway on her street. However, she felt there was traffic congestion at the T-intersection located at 56 Avenue and 205 Street and it might be compounded by the businesses.
- [13] Ms. Woosaree indicated that she did not understand the meaning of discretion or of a Discretionary Use.

The Presiding Officer explained the terms are not synonymous. This appeal involves a Discretionary Use. Discretionary Use is a legal term in planning law used in the *Edmonton Zoning Bylaw* (the *Bylaw*) and the *Municipal Government Act*. Discretionary Uses must be reasonably compatible with surrounding properties.

#### *ii) Position of an Affected Property Owner in Support of the Appellant, Mr. G. Daignault*

- [14] Mr. Daignault owns a property two lots to the north of the subject site. This is the fifth or sixth application for a Home Based Business from this same property owner.
- [15] Although he does not agree with Major Home Based Businesses in general, he only has concerns related to parking in this application.

- [16] Mr. Daignault provided two maps and eight photographs to provide some context of the neighbourhood. (*Exhibit A*).
- a. The side street along 205 Street rarely gets graded and is very congested.
  - b. Photograph #1 shows a lamp post with a no-parking sign on it. The sign is not very visible and people constantly park along this inside street making it difficult for him to back out of his driveway. He could not confirm if the cars parked illegally were related to the Respondent's businesses.
  - c. He was the Appellant for the original Travel Agency business, which was approved in 2011 and the Board added a condition to the approval which required that all parking for the business be located on the driveway. He wants to ensure that this same condition is included if the proposed development is approved.
  - d. Photograph #3 shows how the Respondent's property is located on a curve which is not conducive to parking.
- [17] He has not noticed any noise being generated from the subject site and has not observed any clients coming or going.
- [18] The Presiding Officer referred Mr. Daignault to the Development Regulations for Major Home Based Businesses and section 54 of the *Bylaw*. The current application with the Dwelling would require two on-site parking spaces and there are currently four parking spaces available on the site.
- [19] The Presiding Officer also pointed out that the approved permit already includes a clause like the one in the 2011 Board approval which states that all parking related to the businesses must be located on the subject site. After noting this, Mr. Daignault confirmed he has no problem with the permit as issued.

*iii) Position of the Development Officer, Mr. C. Kennedy*

- [20] The Development Authority provided a written submission and did not attend the hearing.

*iv) Position of the Respondent, Mr. I. Daraban*

- [21] Mr. Daraban is the owner of the subject site and the owner of the two small businesses operating there.
- [22] Neither the management company, nor the travel agency creates any parking or noise that would disturb the neighbourhood and neither business involves any outdoor activities.
- [23] His company manages buildings in different locations of the city and these properties all have storage areas. Nothing is stored at the subject property and no clients visit his

house. The travel agency also does not generate any client visits as everything takes place on-line. Only a desktop computer, a laptop computer and a phone are used to run the businesses.

[24] He acknowledged that sometimes there is noise in the yard related to residential living including grass cutting, property improvements and yard repairs.

[25] There are no outside employees. The two businesses are run by himself, his wife and his son and they own three cars. They all live at the subject site.

[26] He provided the following responses to questions from the Board:

a. While his application form referred to a tailoring business, he confirmed that this business is currently not in operation, but could possibly replace the travel agency in the future depending on financial considerations. He is aware that a new application would have to be made to conduct another business (including a tailoring business) at this location.

b. He confirmed there is a shed in the rear yard which contains an office which is used in part for an office for one of the businesses. While this building is also used for storage, none of the stored items are related to the businesses; they are personal tools.

c. While the application states there could be five client visits per week and five employee visits per week he understands that this level of activity fully complies with the applicable regulations and in any event there are currently no client or employee visits. He did not wish to limit client or employee visits.

v) *Rebuttal of the Appellant, Ms. B. Woosaree*

[27] Ms. Woosaree indicated that she remains confused about discretion, the number of businesses at this location and what the rear yard office is used for.

## **Decision**

[28] The appeal is **DENIED** and the decision of the Development Authority is **CONFIRMED**. The development is **GRANTED** as approved by the Development Authority, subject to the conditions listed on the approved Development Permit.

## **Reasons for Decision**

[29] The proposed development involves two Major Home Based Businesses and is a Discretionary Use in the (RSL) Residential Small Lot Zone. It conforms to all applicable development regulations for Major Home Based Businesses in the *Edmonton Zoning Bylaw* (the *Bylaw*).

- [30] As the proposed development is a Discretionary Use with no variances, the Board considered whether or not the Major Home Based Businesses are reasonably compatible with the surrounding properties and whether there are any valid planning reasons to deny the application as submitted.
- [31] In assessing compatibility, the Board first considered that both Major Home Based Businesses have been in continuous operation for many years. The travel agency business was approved by the Board in 2011 and the property management business was approved by a Development Officer in 2008. Further, these businesses have operated with no official record of any complaints whatsoever to the City.
- [32] The Appellant argues that the businesses negatively affect her property value and her privacy, but she gave no evidence to substantiate these assertions. Accordingly, the Board is unable to find this belief constitutes a valid planning basis upon which the application should be denied.
- [33] The Appellant argues that significant noise emanates from the rear yard of subject site, particularly in the summer. However, she could not confirm that the noise was caused by business, as opposed to residential-related, activities. The neighbouring property owner two lots north indicated he believes that the noise is associated with the normal residential use of the property. This owner lives closer to the subject site and shares a block face with it, and therefore, is more likely to be affected by the businesses. The Respondent stated that the on-site business activities are exclusively administrative in nature and do not create any noise or nuisance impacts. Taking these statements and factors into account, the Board finds that the proposed Major Home Based Businesses do not create nuisance impacts that would constitute either a lack of compatibility or a valid planning reason to deny the application.
- [34] The Appellant objected to an Accessory building located in the rear yard of the subject site. This Accessory building has a valid Development Permit approved in 2011 and does not form part of this appeal. The current appeal concerns an application to renew two Major Home Based Businesses. While the Respondent acknowledged that some of the administrative services of the businesses occur within this Accessory building, the Board notes that the activities as described by the Respondent comply with the *Bylaw*. The existence of a permitted Accessory building is not a planning reason to deny this application.
- [35] The Appellant raised traffic and parking issues. The Board does not find these concerns relevant for the following reasons:
- a. While the Board received evidence from the Respondent that currently all three employees of the businesses are residents of the subject site and that no clients visit the site, he requested approval to permit one client visit per day and one off-site employee visit per day. Based on the information in the application, no parking variances are required for the proposed development and the number of

available on-site parking spaces exceeds the minimum requirements under the *Bylaw*.

- b. The Appellant could not attribute the traffic and parking issues which concern her specifically to the businesses even though they have been operating for many years. The Board notes that the Appellant resides three lots to the northwest on a property within the notification zone that fronts onto 206 Street. The subject site fronts onto 215 Street and there is no rear lane for either property. The Appellant agreed that to her knowledge, no one associated with these businesses has ever parked along 206 Street.
- c. Further, the Appellant's submissions about parking and traffic were specifically refuted by the property owner two lots to the north on 205 Street who indicated these businesses have not caused any parking or traffic concerns over the years. The Board notes that this neighbour also confirmed that he is not opposed to the Development Permit after being made aware of a provision in the permit which states:

“All parking for the Dwelling and Home Based Business must be accommodated on site unless a parking variance has been granted for this Major Home Based Business.”

- [36] The Board concludes that the proposed Major Home Based Businesses are reasonably compatible with the surrounding properties and there are no planning reasons to deny the application as requested.
- [37] Finally, the Board notes that while the application refers to a “future tailoring business,” this tailoring business does not form any part of the current scope of application and was not approved or authorized in any way by the Development Officer or the Board. Any additional changes or approvals to the two approved businesses would require a separate Development Permit application.

Ms. K. Cherniawsky, Presiding Officer  
Subdivision and Development Appeal Board

Board Members in Attendance:

Mr. V. Laberge; Mr. A. Nagy; Ms. L. Gibson; Ms. D. Kronewitt Martin

**Important Information for the Applicant/Appellant**

1. This is not a Business Licence. A Business Licence must be obtained separately from the Sustainable Development Department, located on the 2nd Floor, Edmonton Tower, 10111 – 104 Avenue NW, Edmonton, AB T5J 0J4.
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 2nd Floor, Edmonton Tower, 10111 – 104 Avenue NW, Edmonton, AB T5J 0J4.

*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: March 15, 2018  
Project Number: 267660433-001  
File Number: SDAB-S-18-001

**Notice of Decision**

- [1] The Subdivision and Development Appeal Board (the “Board”) at a hearing on February 1, 2018, made and passed the following motion:

“That SDAB-D-18-001 be tabled to February 28, 2018, at the written request of the Appellant and with the consent of the Subdivision Authority.”

- [2] On February 28, 2018, the Board made and passed the following motion:

“That SDAB-D-18-001 be raised from the table.”

- [3] On February 28, 2018, the Board heard an appeal that was filed on **January 3, 2018**. The appeal concerned the decision of the Subdivision Authority, issued on December 21, 2017, to refuse the following subdivision application:

**Create one (1) additional Single Detached Residential Lot.**

- [4] The subject property is on Plan 4311HW Blk 27 Lot 16, located at 10719 - 130 Street NW, within the (RF1) Single Detached Residential Zone. The West Ingle Area Redevelopment Plan applies to the subject property.

- [5] The following documents were received prior to the hearing and form part of the record:

- A copy of the refusal of the Subdivision Authority; and
- The Appellant’s submission and subsequent written documents.

- [6] The following exhibit was presented during the hearing and forms part of the record:

- Exhibit A – Conditions and Advisements provided by Subdivision Authority should the appeal be granted.



**Preliminary Matters**

- [7] 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.
- [8] The Presiding Officer outlined how the hearing would be conducted, including the order of appearance of parties, and no opposition was noted.
- [9] The appeal was filed on time, in accordance with section 678 of the *Municipal Government Act* (the *Act*), RSA 2000, c M-26.

**Summary of Hearing***i) Position of the Appellant, Ms. T. Adatia*

- [10] Ms. Adatia acknowledged that the two proposed lots do not meet the minimum 15-metre site width requirement, but her architect has advised them that there would be no issues with developing livable houses on each of the two subdivided lots. The lots are very long and each house would be 16 feet wide and between 1,600 to 2,000 square feet of above grade living space and fully developed basements. The proposed developments would be fully compliant with the development regulations of the *Edmonton Zoning Bylaw* (the *Bylaw*).
- [11] A rough sketch of the proposed homes contained in her submission shows that no variances would be required for the setbacks or the site coverage.
- [12] Ms. Adatia tried to consult with the four neighbours located immediately adjacent. While they were unable to contact everyone, the two most affected properties to the north and south have no issues with the subdivision and infill development. As shown in her submitted materials, one neighbor expressed concern regarding parking, but the current parking issue is due to an apartment which is located two lots down the blockface.
- [13] Most of the property owners in the vicinity support subdivisions and infill development as it increases their land values. Ms. Adatia spoke to the president of the Westmount Community League who indicated that community members do not favour duplexes but are comfortable with skinny homes. The Community League president lives in a skinny home himself. A map of the area contained in their submission shows that skinny homes are common in the immediate area.
- [14] They originally bought the property with the intention of building a duplex, but found out duplexes are not permitted. They plan to live in one of the homes and the other will be occupied by her parents.
- [15] Their submission included a previous Board decision (SDAB-S-17-001). In that case a subdivision had been refused by the Subdivision Authority because the minimum site

depth requirement was not met. The Board determined there was no negative impact to neighbours and approved the subdivision. She believes this case is similar.

- [16] Further, unlike the situation in that appeal, in this case Ms. Adatia believes that there would be no issues with the utility servicing.

ii) *Position of the Subdivision Authority*

- [17] Mr. M. Beraldo and Mr. K. Witiw of the Subdivision Authority appeared to answer questions from the Board.

- [18] In the past they had a two percent variance policy for site width, but more recently Council has struggled with lot limits for infill and has changed the *Bylaw*. Section 11.3(1)(c) states:

On rectangular shaped lots, there shall be no variance from the minimum Site Width, for new Single Detached Housing in the RF1 Single Detached Residential Zone, RF2 Low Density Infill Zone, RF3 Small Scale Infill Development Zone, and RF4 Semi-Detached Residential Zone Zones for all Sites which received subdivision approval after June 12, 2017.

Therefore, while the variance requested in site width is very small, they had no choice but to refuse the subdivision following current policy and Council direction. It is also the internal policy of their section to not pass problems or hardships down to the Development Authority. If they were to approve this subdivision, section 11.3(1)(a) could be triggered.

- [19] The Board asked Mr. Beraldo what the Subdivision Authority's interpretation of the word "adjacent" is per section 653(3)(b) of the *Act* which states:

On receipt of an application for subdivision approval, the subdivision authority must give notice of the application to owners of the land that is adjacent to the land that is the subject of the application.

Mr. Beraldo advised that "adjacent" does not just mean touching and that notice from his section was provided to at least four properties surrounding the subject site. He was not able to provide the exact number of property owners that had been notified, but confirmed that they did not send notice to all property owners within a 60-metre radius.

- [20] In Mr. Beraldo's opinion, granting a 0.18-metre deficiency in the required site width would not unduly interfere with the amenities of the neighbourhood or materially interfere with or affect the use, enjoyment or value of neighbouring parcels of land. Regardless, he but did not have the authority to grant the required variance based on Council guidance.

- [21] While policies 4 and 5 of the West Ingle Area Redevelopment Plan encourage infill in the (RF3) Small Scale Infill Development Zone, subdivision approvals have also been granted in the (RF1) Single Detached Residential Zone areas in West Ingle, but only if the minimum required site width was met. It is not met in this case.
- [22] Semi-detached and duplex housing would not be compliant on this site due to locational criteria. They had explored re-zoning with the applicant but felt it would be much more cumbersome than refusing the application and having it go before the Board on appeal.
- [23] Mr. Beraldo submitted a draft subdivision approval letter (*Exhibit A*) and asked the Board to include the conditions and advisements contained therein should they grant this appeal.

*iii) Rebuttal of the Appellant, Ms. T. Adatia*

- [24] Ms. Adatia understands that the City has rules in place and that a lot must be a minimum of 15 metres wide to allow a subdivision; however, in her opinion, this rule is in place to prevent people from putting super skinny houses on these lots for re-sale.
- [25] The main floor of each house would be 900 to 1000 square feet with a second storey of the same size plus a basement. There is sufficient room for a rear yard and a garage on each lot.
- [26] Ms. Adatia reiterated that the homes are not meant for re-sale and she will occupy one home and the second will be occupied by her parents.
- [27] After reviewing the conditions of approval and advisements proposed by the Subdivision Authority, Ms. Adatia stated that she did not object to their imposition should the Board approve the subdivision application.

**Decision**

- [28] The appeal is **ALLOWED** and the decision of the Subdivision Authority is **REVOKED**. The subdivision is **GRANTED** as applied for to the Subdivision Authority, subject to the following **CONDITIONS** and **ADVISEMENTS** as proposed by the Subdivision Authority:
1. That the owner obtain a permit to demolish the existing dwelling and garage prior to endorsement of the final plan. Demolition permits can be obtained from Development Services located on the 2nd floor of Edmonton Tower at 10111 - 104 Avenue NW;
  2. That the owner pay all outstanding property taxes prior to the endorsement of the plan of survey.

## ADVISEMENTS

### Next Steps for Subdivision Approval

- The next step in the subdivision process is to have a legal instrument prepared (ie. Plan of Survey) in order to register the approved subdivision. The legal instrument is then forwarded to the City for endorsement along with the endorsement fee (\$662.00 - 2018 Fees Schedule) and subsequently released to the applicant for registration at the Land Titles Office.

### Transportation

- There are existing boulevard trees adjacent to the site on 130 Street NW that must be protected during construction. For information about tree protection please refer to the City of Edmonton's web site (Trees and Construction).
- Access for future development must be to the adjacent alley in conformance with the Mature Neighbourhood Overlay Sec. 814.3(17) of the Zoning Bylaw #12800. Further details of access will be reviewed upon submission of a detailed site plan or development permit application.

### Building / Site

- The owner shall ensure that any change in property boundaries does not cause any structures on site to become non-compliant with the Safety Codes Act and Alberta Building Code. Permits may be required for such changes. Please contact 311 for more information.

### Servicing

- The owner is required to make satisfactory arrangements for, and pay all costs associated with separate servicing to each lot, as well as the modification, relocation and/or removal of existing services. For further information, please contact: EPCOR Distribution & Transmission Inc. (780-412-4000), TELUS Communications (Edmonton) Inc. (Real Estate Division [Rights of Way] 780-508-2456), ATCO Gas (780-424-5222) and EPCOR Drainage Inc. (water and sewer servicing 780-496-5444).
- The existing services (water and sanitary) enter the proposed subdivision approximately 2.14 m north of the south property line of Lot 16 off of the lane. As per the Drainage and Waterworks Bylaws, these services cannot cross the proposed property line.

- If power service crosses the proposed property line the owner may be required to provide a blanket easement in favour of EPCOR Distribution & Transmission Inc. If required, said easement shall be registered prior to or concurrent with the final plan of survey (contact EPCOR Land Administration Group at 780-412-3252).

[29] In granting the subdivision, the Board acknowledges the following contravention of the *Edmonton Zoning Bylaw* (the *Bylaw*):

- a) The minimum required Site Width of 7.5 metres pursuant to section 110.4(1)(b) has not been met as each of the Lots are 7.32 metres in Site Width which is deficient by 0.18 metres per Lot.

### **Reasons for Decision**

[30] The Appellant applied for a subdivision to create one additional Single Detached Residential Lot by splitting a current Site into two Lots, each 7.32 metres in Site Width.

[31] According to the letter of refusal dated December 21, 2017, the Subdivision Authority refused the application because it will result in a Site Width of 7.32 metres for each of the Lots which does not comply with the minimum 7.5 metres required Site Width for the (RF1) Single Detached Residential Zone under section 110.4(1)(b) of the *Bylaw*.

[32] At the oral appeal hearing, the Subdivision Authority also raised section 11.3 of the *Bylaw* as an additional reason for refusal. The Subdivision Authority did not want to approve the subdivision and thereby download a problem to the Development Authority for two reasons. First, they did not wish to create an unnecessary hardship or practical difficulty per section 11.3(1)(a). Second, they noted that Council recently expressly limited the Development Authority's variance authority concerning Site Width in this Zone under section 11.3(1)(c) of the *Bylaw* which states:

On rectangular shaped lots, there shall be no variance from the minimum Site Width, for new Single Detached Housing in the RF1 Single Detached Residential Zone, RF2 Low Density Infill Zone, RF3 Small Scale Infill Development Zone, and RF4 Semi-Detached Residential Zone Zones for all Sites which received subdivision approval after June 12, 2017.

[33] The Board concurs that section 11.3 of the *Bylaw* limits Development Authority's discretion to grant variances for specific Development Permit Applications. However, the Subdivision Authority and the Board have a different authority. The Board is not obligated to refuse an application for subdivision on this basis.

[34] The Board's jurisdiction in this appeal comes from section 680(2) of the *Act* which outlines its responsibilities and authority in appeals of refused subdivision applications. It provides:

- (2) In determining an appeal, the board hearing the appeal
- (a) must act in accordance with any applicable ALSA regional plan;
  - (a.1) must have regard to any statutory plan;
  - (b) must conform with the uses of land referred to in a land use bylaw;
  - (c) must be consistent with the land use policies;
  - (d) must have regard to but is not bound by the subdivision and development regulations;
  - (e) may confirm, revoke or vary the approval or decision or any condition imposed by the subdivision authority or make or substitute an approval, decision or condition of its own;
  - (f) may, in addition to the other powers it has, exercise the same power as a subdivision authority is permitted to exercise pursuant to this Part or the regulations or bylaws under this Part.

[35] Per section 680.2(2)(f), the Board is delegated the same authority that the Subdivision Authority had when making the original decision. This authority is found in section 654 of the *Act* which provides in part:

- (1) A subdivision authority must not approve an application for subdivision approval unless
- (a) the land that is proposed to be subdivided is, in the opinion of the subdivision authority, suitable for the purpose for which the subdivision is intended,
  - (b) the proposed subdivision conforms to the provisions of any growth plan under Part 17.1, any statutory plan and, subject to subsection (2), any land use bylaw that affects the land proposed to be subdivided,
  - (c) the proposed subdivision complies with this Part and Part 17.1 and the regulations under those Parts, and
  - (d) all outstanding property taxes on the land proposed to be subdivided have been paid to the municipality where the land is located or arrangements satisfactory to the municipality have been made for their payment pursuant to Part 10.
- (1.1) A decision of a subdivision authority must state
- (a) whether an appeal lies to a subdivision and development appeal board or to the Municipal Government Board, and

- (b) if an application for subdivision approval is refused, the reasons for the refusal.

(1.2) If the subdivision authority is of the opinion that there may be a conflict or inconsistency between statutory plans, section 638 applies in respect of the conflict or inconsistency.

**(2) A subdivision authority may approve an application for subdivision approval even though the proposed subdivision does not comply with the land use bylaw if, in its opinion,**

- (a) the proposed subdivision would not**

- (i) unduly interfere with the amenities of the neighbourhood, or**

- (ii) materially interfere with or affect the use, enjoyment or value of neighbouring parcels of land,**

**and**

- (b) the proposed subdivision conforms with the use prescribed for that land in the land use bylaw. [Emphasis added]**

[36] Based on the submissions of the Appellant and the Subdivision Authority and considering the *Bylaw* and the West Ingle Area Redevelopment Plan, the Board finds that the proposed Use, Single Detached Housing is not inconsistent with the applicable statutory plan and also that the subdivision conforms with the Uses for land prescribed in sections 110.2 and 110.3 of the *Bylaw*.

[37] In this case the Lots created by the proposed subdivision will not comply with the specific development regulation of the *Bylaw* regarding minimum Site Width found in section 110.4(1)(b).

[38] However, based on the statements and materials submitted by the parties, the Board finds that the creation of two Lots (each deficient by 0.18 metres in Site Width) will not unduly interfere with neighbourhood amenities, nor create a material adverse interference or material impact on the use, enjoyment or value of neighbouring properties and approves it pursuant to section 654(2)(a) of the *Act* for the following reasons:

- a) While each of the proposed Lots are deficient in Site Width by 0.18 metres, both will exceed the minimum required Site Area for Single Detached Housing of 250.8 square metres by over 62 square metres and also exceed the minimum required Site Depth of 30 metres by 12.7 metres.
- b) The Appellant provided a submission to show that taking all dimensions of the proposed Lots into consideration, Single Detached Houses could comfortably be built on each Lot with a livable floor area in excess of 2000 square feet (185.81 square

- metres) that complies with all required Setbacks and Site Coverage limits as set out in the development regulations of the *Bylaw*. In other words, developments that apart from Site Width would be Class A Developments were easily feasible on each of the Lots.
- c) While one neighbour indicated a general concern with parking, the Board notes that the Appellant's submission also shows that the minimum number of on-site parking spaces can be met and potentially exceeded for each lot.
  - d) The Appellant spoke with the two most affected, adjacent neighbours as well as other neighbours in close proximity. Evidence was provided that those neighbours are not in opposition to the proposed subdivision.
  - e) The Board notes that notices of this appeal hearing were sent to all property owners within a 60-metre radius, which exceeds the minimum required notification under the *Act* and no parties appeared and no correspondence was received in opposition to the proposed subdivision.
  - f) The Appellant provided evidence that she had reviewed the proposed subdivision with a Westmount Community League representative and the Community League was also in support of the proposed subdivision.
  - g) The Subdivision Authority indicated that while the subdivision would result in the Lots not in compliance with section 110.4(1)(b) due to the 0.18 metres deficiency in Site Width, they, nonetheless did not believe there would be any material adverse impact by approving the proposed subdivision in this particular situation. The application was denied based on a generally applicable policy precluding any deficiency in Site Width.
- [39] The Board concludes that the proposed subdivision, despite non compliance with minimum Site Width required in the *Bylaw*, 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 pursuant to section 654(2) of the *Act* and allows the appeal.
- [40] The Subdivision has been approved subject to the conditions and advisements provided by the Subdivision Authority and reviewed by the Appellant. The Appellant expressed no objections to any of the conditions or advisements.
- [41] During the hearing, the Appellant asked the Board to consider her intention to continue to own one of the properties and to sell the other to her parents after their redevelopment.



The Board has not taken this factor into consideration in making its decision as the Board's rulings apply to land and in no way restrict subsequent ownership of the subject properties.

Ms. K. Cherniawsky, Presiding Officer  
Subdivision and Development Appeal Board

Board Members in Attendance:

Mr. V. Laberge; Mr. A. Nagy; Ms. L. Gibson; Ms. D. Kronewitt Martin

**Important Information for the Applicant/Appellant**

1. When an application for a subdivision 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.
2. 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.