



**EDMONTON
TRIBUNALS**

*Subdivision &
Development
Appeal Board*

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Date: January 22, 2019
Project Number: 290990505-001
File Number: SDAB-D-19-005

Notice of Decision

- [1] On January 9, 2019, the Subdivision and Development Appeal Board (the “Board”) heard an appeal that was filed on **December 17, 2018**. The appeal concerned the decision of the Development Authority, issued December 14, 2018 to refuse the following development:

To leave as built two (2) Dwellings to an existing Apartment House (total 20 Dwellings) and to construct interior alterations

- [2] The subject property is on Plan 7922359 Blk 6 Lot 1, located at 3632 - 34 Avenue NW, within the RA7 Low Rise Apartment Zone.
- [3] The following documents were received prior to the hearing and form part of the record:
- Copy of the Development Permit application with attachments, proposed plans, and the refused Development Permit;
 - The Appellant’s written submissions; and
 - Two online responses in opposition to the proposed development.
- [4] The following exhibits were presented during the hearing and form part of the record:
- Exhibit A – A copy of the Phase 1 Environmental Assessment
 - Exhibit B – A copy of the Building Inspection & Consulting Report

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 (the “*Municipal Government Act*”).

Summary of Hearing

i) Position of the Appellant, Mr. Issa & Ms. Gill, representing 1681137 Alberta Ltd.:

[8] The building will not be altered or changed in any way even though the scope of the development permit application includes interior alterations.

[9] The building was purchased from the original builder in August 2018 as a 20 suite apartment complex. All of the previous tax notices and city assessments were based on an income of 20 units. However, the development permit only included approval for 18 suites, 14 one bedroom units and 4 two bedroom units.

[10] A development permit application for the two additional units was refused because of an excess in density and a parking deficiency.

[11] There are 21 electrical meters, one for the building and one for each of the 20 dwelling units.

[12] Each dwelling unit has one assigned parking space. There are two extra parking spaces that are used to provide visitor parking.

[13] A temporary shed that is located in one of the parking spaces will be moved off site in the spring to provide one additional on-site parking space. Thus, a parking variance is not required.

[14] A copy of a Phase 1 Environmental Site Assessment dated July 23, 2018 was submitted and marked Exhibit A. Aerial photographs that were taken in 1984, 1997 and 2017 were referenced that the site and the building have not changed since it was originally constructed.

[15] A Building Inspection & Consulting report prepared in June, 2018 was submitted and marked Exhibit B. The Inspector noted that there were 22 parking stalls and 21 electrical metres, one for each suite and one for the house service.

[16] A copy of the Floor Plan was referenced to illustrate that all four floors have the exact same footprint and that all of the suites are a similar size.

[17] It was their assumption that the two dwelling units not included on the original development permit may be in the basement close to the laundry and utility rooms. Both of these units are self-contained with their own kitchen and bathroom, are the same size as the other dwelling units and are finished with the same materials.

[18] Mr. Issa and Ms. Gill provided the following information in response to questions from the Board:

- a) The temporary shed will be removed from the site because it does not comply and that will provide one more parking space.
- b) A copy of the original blue prints or floor plans could not be located.
- c) Tax reporting has not changed since the building was originally constructed.
- d) There are three two-bedroom units, 16 one-bedroom units and 1 bachelor suite. Twenty-four parking spaces are required and once the shed is removed there will be 24 onsite parking spaces.
- e) They could not confirm how many parking spaces are less than 5.5 metres long.
- f) There are three landings located in the stairwell of the building. The balconies have patio doors but with a railing and no outdoor space.
- g) The cabinets, flooring and finishes are the same in all 20 dwelling units.
- h) Based on the lease information provided, all of the units, including the two-bedroom units only have one assigned parking space.

ii) *Position of the Development Officer, Mr. K. Yeung:*

[19] Mr. Yeung did not attend the hearing.

Decision

[20] The appeal is **ALLOWED** and the decision of the Development Authority is **REVOKED**. The development is **GRANTED** as applied for to the Development Authority.

[21] In granting the development, the following variance to the *Edmonton Zoning Bylaw* is allowed:

- a. The maximum allowable Density of 125 Dwellings/hectare as per section 210.4(2) is varied to allow an excess, thereby increasing the maximum allowed number of Dwellings from 18.26 Dwellings to 20 Dwellings.

Reasons for Decision

- [22] The proposed development is to leave as built two Dwellings to an existing Apartment House and to construct interior alterations. Apartment Housing is a Permitted Use in the (RA7) Low Rise Apartment Zone under section 210.2(1) of the *Edmonton Zoning Bylaw*.
- [23] The Board accepts the parking requirement calculations provided by the Development Authority. Based on a review of the submitted Site Plan, 24 onsite parking spaces will be provided when the temporary storage shed is removed from the site. Therefore, a parking variance is not required.
- [24] The Board grants the variance required to the maximum allowable Density for the following reasons:
- a) Based on the evidence provided, including tax assessment and rental agreements, the building has operated as a 20 unit Apartment House since it was constructed in 1982.
 - b) All of the dwelling units are a similar style and size, the same finishing materials have been used in all of the units and each unit has a separate electrical meter.
 - c) No exterior changes to the building are proposed.
- [25] The Board acknowledges the two online responses received from neighbouring property owners in opposition to the proposed development but notes that both addressed parking concerns and not the increase in the maximum allowable Density. These concerns will be alleviated because the proposed development complies with the parking requirements.
- [26] No valid planning reasons were provided to persuade the Board not to grant the required variance and approve the existing two dwelling units.
- [27] Based on all of the above, the Board finds that the required variance in maximum allowable Density is de minimis and the development will not unduly affect the amenities of the neighbourhood nor materially interfere with the use, enjoyment of value of neighbouring parcels of land.

Mr. V. Laberge, Presiding Officer
Subdivision and Development Appeal Board

Board members in attendance: Ms. L. Delfs, Mr. J. Kindrake, Mr. R. Handa, Mr. R. Hobson

Important Information for the Applicant/Appellant

1. This is not a Building Permit. A Building Permit 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: January 22, 2019
Project Number: 115091167-004
File Number: SDAB-D-19-006

Notice of Decision

- [1] On January 9, 2019, the Subdivision and Development Appeal Board (the “Board”) heard an appeal that was filed on **December 12, 2018**. The appeal concerned the decision of the Development Authority, issued on November 29, 2018 to refuse the following development:

To install one (1) Fascia On-premises Sign (LORENZO LAWRENCE SALON)

- [2] The subject property is on Plan 108HW Lot C, located at 10903 - 77 Avenue NW, within the DC2.771 Site Specific Development Control Provision. The 109 Street Corridor Area Redevelopment Plan applies to the subject property.
- [3] The following documents were received prior to the hearing and form part of the record:
- A copy of the Development Permit application with attachments, proposed plans, and the refused Development Permit;
 - The Development Officer’s written submission;
 - The Appellant’s appeal submission and photo; and
 - One e-mail in opposition from the McKernan Community League.

Preliminary Matters

- [4] 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.
- [5] The Presiding Officer outlined how the hearing would be conducted, including the order of appearance of parties, and no opposition was noted.
- [6] The appeal was filed on time, in accordance with section 686 of the *Municipal Government Act*, RSA 2000, c M-26.

- [7] The Presiding Officer referenced section 685(4) of the *Municipal Government Act* which limits the authority of the Board.
- [8] The Appellant was asked to explain how the Development Officer did not follow the directions of Council in refusing this development permit application.

Summary of Hearing

i) Position of the Appellant, L. Scott

- [9] The subject sign has been up since 2006. Mr. Scott hired a company to install the sign and assumed that this company had obtained the necessary permits. He assumed that the height and placement of the subject sign was in compliance and other buildings in the area have similar signs with the same height.
- [10] He opened for business in 2001 in Scotia Place. After leasing for five years he decided to buy a building and applied for re-zoning as he wanted to both live and work out of this building.
- [11] There were no issues until 2012 when he installed a 30 foot banner. Complaints were received regarding this banner as people incorrectly assumed he was advertising “coke”. The current refusal may be referring to this banner rather than the subject sign. The banner was removed in 2012.
- [12] The Presiding Officer clarified that the issue is that the Development Officer determined that the copy is over height and the Appellant had to explain how the Development Officer did not follow the directions of Council.
- [13] Mr. Scott stated that the calculations made by the Development Officer are correct but believes today’s rules may be different than what was in place at the time the sign was installed.

ii) Position of the Development Officer, K. Mercier

- [14] The Development Authority did not attend the hearing and the Board relied on Ms. Mercier’s written submission.

Decision

- [15] The appeal is **DENIED** and the decision of the Development Authority is **CONFIRMED**.

Reasons for Decision

[16] Section 685(4) of the *Municipal Government Act* states:

Despite subsections (1), (2) and (3), if a decision with respect to a development permit application in respect of a direct control district

(a) ...

(b) is made by a development authority, the appeal is limited to whether the development authority followed the directions of council, and if the subdivision and development appeal board finds that the development authority did not follow the directions it may, in accordance with the directions, substitute its decision for the development authority's decision.

[17] DC2.771.4.p states "Signs shall be provided in accordance with Schedule 59B of the Edmonton Zoning Bylaw."

[18] Schedule 59B.2(1)(c) states "Fascia On-premises Signs shall not extend higher than 75 cm above the floor of the second Storey. [...]"

The Development Officer determined that the proposed Fascia On-premises Sign extends higher than 75 centimetres above the floor of the second Storey and refused the proposed development.

[19] Pursuant to section 685(4) of the *Municipal Government Act* the Board finds that the Development Officer followed the directions of Council.

[20] The Appellant could not disagree with the required variance calculated by the Development Officer and there was no evidence provided to determine where the Development Authority did not follow the directions of Council.

[21] Based on the above, the appeal is denied.

V. Laberge, Presiding Officer
Subdivision and Development Appeal Board

Board Members in Attendance: R. Handa, L. Delfs, R. Hobson, J. Kindrake

Important Information for the Applicant/Appellant

1. 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.
2. 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.