



**EDMONTON
TRIBUNALS**

*Subdivision &
Development
Appeal Board*

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Date: December 8, 2016
Project Number: 228096013-001
File Number: SDAB-D-16-296

Notice of Decision

- [1] On November 23, 2016, the Subdivision and Development Appeal Board (the “Board”) heard an appeal that was filed on **October 31, 2016**. The appeal concerned the decision of the Development Authority, issued on October 19, 2016, to refuse the following development:

**Change the Use of a Personal Service Shop to a Specialty Food Service
(Public Space 44.12 square metres - JASMINE BELLE CAFE)**

- [2] The subject property is on Plan 873EO Blk 5 Lot 14, located at 8702 - 118 Avenue NW, within the CB2 General Business Zone. The Alberta Avenue Pedestrian Commercial Shopping Street Overlay and Alberta Avenue / Eastwood Area Redevelopment Plan apply to the subject property.
- [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; and
 - The Development Officer’s written submissions.
- [4] The following exhibits were presented during the hearing and form part of the record:
- Exhibit A – Photographs showing similar business operating under the same parking restrictions and the interior of the proposed business

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*, R.S.A 2000, c. M-26.

Summary of Hearing

i) Position of the Appellants, Ms. J. Nguyen-Savoie and Mr. M. Savoie

- [8] The Appellants plan to operate a minor café and bubble tea establishment. They consulted with neighbouring businesses and received all positive feedback. They also have the support of the Alberta Avenue Business Association. The only reason for refusal was the lack of parking. Other businesses in the area are allowed to operate with the same parking constraints so they do not understand why their application was refused.
- [9] There is no parking allocated to their building and they are focusing on walk-in clients as 118 Avenue has a lot of pedestrian traffic. They do not anticipate that this business will draw traffic to Alberta Avenue from outside the area.
- [10] They are planning on operating a café that caters to the neighbouring residential area where people can come to read, play board games and just hang out while enjoying a cup of coffee and some simple food. No alcohol will be served. There are four or five multi-residential buildings right behind their location.
- [11] Ms. Nguyen-Savoie has operated a nail salon next door to the proposed site for the last five years and has never had a problem with the lack of parking. She understands the area and feels the proposed business will bring a good flavour to the area and much needed family space.
- [12] She has been involved with the Alberta Avenue Business Association as Chair for the past few years. The main problem they dealt with was always how to bring more pedestrian traffic to 118 Street to create more business opportunities. She feels that a café is a great way to do this; there is already an existing popular café at the other end of 118 Avenue. Parking problems never came up as an issue during her time on the Board.
- [13] A number of photos were shown of other successful businesses in the area that also have no on-site parking, marked Exhibit A. Another photo showed what the interior of their business will look like. They have modeled their plan on other businesses that have been proven to work. They have already been paying rent for three months but cannot continue with the rest of the work as the Development Permit application was refused.
- [14] They acknowledged that they should have applied for a permit prior to starting any work but didn't feel there would be any problem as a restaurant had operated at this same location about 10 years ago.

- [15] The café will seat a maximum of 20 customers at any one time at 10 tables (2 people per table). They feel that on average there would be 6 to 10 seated customers at any one time. They also plan to have a take-out component to the business so customers might walk in for a cup of coffee and leave right away.
- [16] The most recent business at this location was a hair salon with five stations. Clients would be there anywhere from 30 minutes to 3 hours. The owners of this business never complained about the lack of parking.
- [17] There is a rear lane but the only parking located there is for the apartment building condos behind them.
- [18] They completed a parking study and found that the peak time for on-street parking use was in the morning between 7:00 a.m. and 9:00 a.m. After that there is a lot less demand for on-street parking, even at lunch time. A recreation centre about 2 blocks away uses on-street parking later in the evening. There are usually 3 stalls available on their side of the street during the day as well as a lot of parking in the residential area since residents are away at work. The Appellants do not have a designated parking stall for themselves.
- [19] There is a bus stop right in front of their proposed shop and they plan on hiring students who are from the area or who would take the bus to work. The Appellants do not plan to be at the business full time although initial training will require them to be there more often at the start.
- [20] There is a designated loading zone just across 87 Street near the Portuguese Bakery that is meant to be shared by all the area businesses.
- [21] Their planned hours of operation are 9:00 a.m. to 6:00 p.m. except Fridays & Saturdays when they will operate from 9:00 a.m. to 11:00 p.m.

ii) *Position of the Development Officer, Ms. C. Li*

- [22] Ms. Li advised there were no 311 parking complaints in the system. The Transportation Department operates all on-street parking and Sustainable Development does not have access to complaints regarding on-street parking so is unable to comment on this issue.
- [23] When questioned by the Board, the Development Officer agreed that the constraints of the site do create a hardship as per Section 54.1.2.g of the *Edmonton Zoning Bylaw* and there is no Use that would be able to meet on-site parking requirements. She qualified this by pointing out that certain businesses such as hair salons or doctors' offices operate by appointment only and have less of an impact on parking as client visits are spread out.

- [24] There is an existing restaurant as well as a bakery in the near vicinity. The proposed development is a similar type of business and there would be an overlap of operating hours which would add to the parking stress.
- [25] The Development Officer showed a map of the 60 metre notification area. She received two letters of support from the residential area along 87 Street and no negative feedback. The Community League expressed concern about the proposed development.
- [26] The required parking for the previous business (Personal Service Shop) was two parking spots. The present application requires ten parking spots. She feels that customers parking along 87 Street will impact the single family residential area. She did agree that many of people living in the residential area are away at work during the day.
- [27] The Board asked if she is aware of any future plans to amend the parking requirements for this area similar to what is currently in place for Whyte Ave (one parking stall for every 33 square metres of public space). She was not able to provide confirmation of this.

iii) Rebuttal of the Appellant

- [28] The only issue with the proposed development is the lack of on-site parking. All of Alberta Avenue has the same problem so this should not interfere with the good they are trying to do for this area.
- [29] If the parking was sufficient for the previous business it will definitely work for the proposed development.
- [30] They have no issues with the recommended conditions proposed by the Development Officer.

Decision

- [31] The appeal is **ALLOWED** and the decision of the Development Authority is **REVOKED**. The development is **GRANTED** as applied for to the Development Authority, subject to the following conditions/advisements/:

CONDITIONS

1. No parking, loading, storage, trash collection, outdoor service or display areas shall be permitted within a required Yard and loading, storage, parking and trash collection areas shall be screened from view from any adjacent site and public roadway in accordance with Section 55 of the Zoning Bylaw.

2. Exterior lighting shall be developed to provide a safe lit environment in accordance with Sections 51 and 58 and to the satisfaction of the Development Officer.
3. Bicycle parking shall be provided in accordance to Section 54.3 and to the satisfaction of the Development Officer.
4. All access locations and curb crossings shall have the approval of the City Transportation and Streets Department prior to the start of construction. (Reference Section 53(1)).

TRANSPORTATION ADVISEMENTS:

1. The garbage location has not been identified on the site plan. Garbage bins must be located so that all turning maneuvers for the waste management vehicles are accommodated on site.
 2. Any advertising signs for the development must be located entirely within private property.
- [32] In granting the development the following variances to the *Edmonton Zoning Bylaw* are allowed:
1. The minimum allowable number of Parking Spaces of 27 as per Section 821.3(7) is varied to allow a deficiency of 27 spaces, thereby decreasing the minimum allowable to 0 Parking spaces. Specifically, the minimum allowable number of Parking Spaces for the proposed development of 10 as per Section 821.3(7)(b) is varied to allow a deficiency of 0 spaces, thereby decreasing the minimum allowable to 0 Parking spaces.

Reasons for Decision

- [33] Specialty Food Services, for less than 100 occupants and 120 square metres of Public Space, is a Permitted Use in the CB2 General Business Zone.
- [34] The Board notes that while the proposed development application was not supported by the Community League because of parking concerns on residential streets, the community consultation revealed that all the neighbours that responded had no concerns about parking. The Appellant also has the support of the Alberta Avenue Business Association. The Board finds the community consultation provisions have been complied with.

- [35] The Board accepts the evidence of the Appellant and prefers it to that of the Transportation Department as the Appellant has operated a business in the area for several years. The Board accepts the submission of the Appellant that this particular business is aimed at pedestrian traffic. Indeed, if the business does not receive the pedestrian traffic it is counting on, it may fail, and any transportation concerns will be nullified. The Board notes there is an Alberta Avenue Eastwood Area Redevelopment Plan and a guiding principal of this plan is to increase pedestrian traffic in the area and to eliminate vacant storefronts. The proposed Development accomplishes both goals.
- [36] The Board accepts the evidence of the Appellant respecting a parking study they completed and finds there is parking available at all times. The Development Officer conceded that it was unlikely there would be a conflict with residents for parking as they would be at work during business operating hours.
- [37] The Board notes the availability of public transit immediately in front of the proposed development.
- [38] The Board reviewed Section 54.1.2.g of the *Edmonton Zoning Bylaw* during the hearing and finds the lack of on-site parking creates a hardship; therefore it would be reasonable for a Development Authority to vary parking requirements in these circumstances. The Development Officer acknowledged there was a hardship.
- [39] The Board finds that the proposed development 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.

Winston Tuttle, Presiding Officer
Subdivision and Development Appeal Board

Board Members Present:

M. Young; R. Hachigian; A. Peterson; C. Weremcuk

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 5th Floor, 10250 – 101 Street, Edmonton.
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 5th Floor, 10250 – 101 Street, Edmonton.

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: December 8, 2016
Project Number: 116341262-007
File Number: SDAB-D-16-297

Notice of Decision

[1] On November 23, 2016, the Subdivision and Development Appeal Board (the “Board”) heard an appeal that was filed on **October 20, 2016**. The appeal concerned the decision of the Development Authority, issued on October 7, 2016, to refuse the following development:

Construct a 2 Storey Accessory Building (Garage Suite on second floor, Garage on main floor, 10.36 metres by 6.81 metres), existing without permits

[2] The subject property is on Plan 2938HW Blk 10 Lots 29-30, located at 11623 - 73 Avenue NW, within the RF1 Single Detached Residential Zone. The Mature Neighbourhood Overlay and McKernan/Belgravia Station Area Redevelopment Plan apply to the subject property.

[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 Development Officer’s written submissions;
- The Appellant’s written submissions; and
- Online responses and one e-mail of opposition.

[4] The following exhibits were presented during the hearing and form part of the record:

- Exhibit A – A series of photographs showing the overall area as well as the immediate adjacent properties.
- Exhibit B – A Site Plan highlighting the separation area between the principal dwelling and proposed Garage Suite.
- Exhibit C – Revised drawings showing the interior layout of the Garage Suite

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*, R.S.A 2000, c. M-26.

Summary of Hearing

i) Position of the Appellant, B. Romanesky of Permit Masters representing T. Shaul

- [8] The Appellant advised he is an Urban Planner and is here representing the Owner who was unable to attend today. He was retained after the refused permit was received and was not party to any of the negotiations leading up to it.
- [9] An aerial photo showed that this area is primarily composed of single family residential dwellings. There is a school just to the north and a church and some multi-family dwellings further west. There is an abutting lane and the majority of the properties in the vicinity have garages accessed from the lane.
- [10] A series of photographs was presented showing views from the subject site towards the immediately neighbouring properties as well as views looking towards the subject site from all directions (Exhibit A).
- [11] The property to the west has two single detached garages accessed from a single driveway. The dwelling to the east is two stories high, is located on a large yard and has a single detached garage. There is some vegetation in between the subject site and the property to the east. A single detached dwelling is located directly across the lane with vegetation providing some privacy. The proposed development is essentially sandwiched between accessory buildings.
- [12] The Garage Suite is under construction at the current time and a tarp is covering the cut-outs for the overhead doors. A Stop Work Order was received which was complied with and the home owner applied for the required Development Permit.
- [13] A driveway from the front street goes along the side of the principal building but there is no access from the driveway to the garage.

- [14] Mr. Romanesky showed a photograph and marked Site Plan (Exhibit B) of the area between the principal residence and the Garage Suite and conceded that there is a deficiency in the required separation distance but feels it is mitigated by the large side setbacks of the accessory building.
- [15] The elevation drawings provided by the Appellant showed more windows than the drawings received by the Board. The Appellant agreed that the drawings were different and the original elevations drawings that were provided to the Board were reviewed. The drawings show that the balcony faces the principal dwelling rather than the lane.
- [16] Most of the houses on the Avenue have a large front setback and have smaller yards in the back. The subject site is very large (24 metres wide as opposed to the typical 18 metres on the block). The side setbacks to the proposed Garage Suite are also very large (5.66 metre setback to the west and 10.05 metre setback to the east). The rear lane is fairly level – only a one to two foot grade change.
- [17] The cross section drawings showing ceiling heights of 8 feet on the second floor and 9 feet on the main floor which are common ceiling heights.
- [18] The Refusal from the Development Officer shows that the lot width is 18.76 metres but this is incorrect. The average site width of this site is 23.25 metres. The Appellant confirmed that there are two separate lots but they are all under one title.
- [19] The Appellant then reviewed the eight reasons for refusal:
1. Maximum Height (Section 87.2)
The proposed Height of 6.19 metres is only 0.69 metres over the maximum permitted height and will not impact neighbours due to the extra large site. The majority of Garage Suites are located only 1.2 metres from the property line. In this case there is at least four times more separation distance from the neighbours than normal and the Garage Suite is sandwiched between accessory buildings. It does not overlook the amenity space of adjoining sites and there is some vegetation for privacy. The Garage Suite is not very visible from the front street and the adjacent neighbours on either side are not concerned. Also the maximum permitted Height would increase if the roof slope was higher.
 2. Maximum Floor Area of a Garage Suite shall be 60 square metres (Section 87.3(a))
The proposed Floor Area of 62.25 square metres requires only a minimal variance of 2.25 square metres. At 809.5 square metres this site is more than twice the minimum required area of 400 square metres for a Garage Suite. The excess of 2.25 square metres does not represent any overbuilding on the site.

3. Maximum Floor Area may be increased by 7.5 square metres if the additional floor area is an associated Platform Structure (Section 87.3(c))
The proposed total Floor Area, including the balcony, is 70.61 square metres, which would require a small variance of 3.11 square metres. The reason for the limit on balcony size is to prevent large gatherings of people which could result in excessive noise. The proposed balcony is not wide enough to even hold chairs and a table for dinner and is not intended for activities. It is only slightly over the maximum permitted Floor Area due to its length and the large size of the lot ensures there is no impact on neighbouring properties.
4. Minimum required Separation Distance between the Principal dwelling and a detached Garage containing a Garage Suite is 4 metres (Section 87.7)
Only a small portion of the corner of the proposed building does not meet the separation requirement and requires a variance of 1.34 metres. Due to this being a very large site, access from the front to the back of the lot can be achieved quite easily on both the east and west sides. This deficiency only affects the Principal dwelling and has no effect on neighbouring properties.
5. A Balcony on a Garage Suite must face the lane rather than the principal building (Section 87.10)
The proposed balcony has no impact on the neighbouring properties as it faces the principal dwelling. The Board could impose a condition reducing the size of the balcony by 3 metres from the west wall of the accessory building and adding 5 foot high privacy screening on the west end of the balcony. Although the neighbors to the west have not identified any issues this would increase their privacy and a variance would no longer be required for the maximum permitted Floor Area of the balcony.
6. Drive aisles shall be a minimum of 7 metres wide for 90 degree parking. (Section 54.2)
Mr. Romanesky submits that the access to the garage should be considered a driveway as opposed to a drive aisle. An aisle gives access to stalls in a parking lot and is associated with two-way traffic. It allows for a very quick one point turn into a parking stall. This is a private driveway entirely off the lane so the user can do a 2 or 3 point turn if required. 5.66 metres allows comfortable access to the garage and the 1.34 metre variance has no impact on surrounding properties.
7. If the accessory building had no Garage Suite the separation requirement would only be 3 metres. (Section 814.3.22)
This variance is not applicable in this case because there is a Garage Suite.
8. Garage Suite is a Discretionary Use in the RF1 Single Detached Residential Zone (Section 110.3.3).
There is no reason why a Garage Suite should not be permitted on this property. All required variances are minor and will not affect neighbouring properties. The large Site Area and Setbacks make this a very suitable site for a Garage Suite.

- [20] Neighbourhood consultation was conducted and only one response was received requesting clarification but did not express opposition to the project. Mr. Romanesky referred to the two comments from neighbours in opposition which were submitted to the Board. One just says “it’s ugly” and another neighbor said it will affect the enjoyment of their property but does not say how. It is hard to understand how the development will impact a neighbor two houses down. There are a minimum number of windows and the Board could choose to condition that the windows must be frosted.
- [21] The Appellant is comfortable with the conditions proposed by the Development Officer if this application is approved.
- [22] There are two lots but Lot 29 (west side) is restricted because of easements and nothing can be built on it.
- [23] The building was designed by a structural engineer. Although it could have been designed in such a way that the variances would not be required, they are not creating any real impact. Permit Masters only got involved after the refusal was received by the Owner and agreed to represent the client as they feel the variances are minor.
- [24] The eaves on the west side of the existing structure encroach over the easement but Mr. Romanesky thinks that this is permitted as they are 2.24 metres above grade. He feels this is a civil matter between those registered on the Title and the owner of the easement.
- [25] Although he has not researched the presence of other Garage Suites in the area he confirmed there are not any others in the immediate vicinity.
- [26] The owner does have an approved permit for a garage without a Garage Suite.
- [27] There was originally going to be a stairway connecting the two buildings but the design has been changed and the stairs to go to the ground rather than connecting the two buildings.

ii) Position of the Development Officer, George Robinson

- [28] He provided a brief timeline of events on the site. In October 2011, an application for a rear detached Garage with a second floor was refused. In June 2012 a Development Permit for a single storey detached Garage was granted. In response to a neighbour’s complaint, a site inspection revealed a two storey Garage was being constructed contrary to the approved permit resulting in a Stop Work Order being issued. The Owner then applied for a new Development Permit.

- [29] The Real Property Report shows that the site consists of two lots under one title.
- [30] Telus and Epcor were informed of the application as the building encroaches on a portion of the subject site which includes an easement. Telus had no objections although they advised it is the land owner's responsibility to contact Alberta One-Call and any damage to Telus facilities would be at the land owner's cost. Epcor expressed similar cautions to those of Telus.
- [31] Eleven of nineteen neighbours returned comments during the Community Consultation – two of these were in opposition. The Belgravia Community League was also in opposition.
- [32] Mr. Robinson clarified that the deficiency calculation in reason for refusal No. 4 was incorrect and should be 1.8 metres rather than 1.3 metres. The proposed separation distance should be calculated from the corner of the covered balcony to the foundation of the house.
- [33] The eaves of the accessory building encroach into the separation distance between the two buildings and may be a building code violation. A building permit safety code review would be required.
- [34] Mr. Robinson suggested that if this permit were to be approved a stipulation should be added that the windows of the accessory building should be frosted.
- [35] A revised second floor plan was submitted showing the layout of the 2 bedrooms, the open concept living area and a small bathroom, marked Exhibit C.
- [36] The Appellant's suggestion to reduce the length of the balcony by 3 metres would result in a revised balcony area of 4.67 square metres.
- [37] The cumulative effect of the many required variances creates a structure that is very non-compliant and is over-built for this site. The Development Authority has received very clear guidelines from City Council regarding size, location, massing and particularly floor size area of Garage Suites. It is not administration's practice to vary the Floor Area. The deficiency in the separation distance between the two buildings is the largest area of concern.
- [38] Mr. Robinson confirmed that the Transportation Department considers the garage access to be an aisle and 7 metres of clearance is required. There is no specific definition of aisle in the *Edmonton Zoning Bylaw*.
- [39] The stairwell that was shown in the photograph is also present on the site plan that was submitted by the engineer (Drawing SD1 of the refused set of drawings).

- [40] Section 814.3.10 of the Mature Neighbourhood Overlay was reviewed with respect to the existing front driveway and whether this access should be removed. Mr. Robinson felt this regulation should be enforced as fewer than 50 percent of the principal Dwellings on the blockface have vehicular access from the front. If this had come in as a new application, the Development Authority would have requested that the front access be eliminated and the garage doors be oriented towards the lane.
- [41] The Development Authority is required to list the fact that the Garage Suite is a Discretionary Use as a reason for refusal. The proposed development is not reasonably compatible with the existing neighbourhood because of all the required variances and the design. The Applicant is proposing vinyl siding while the principal dwelling has stucco and the small windows of the Garage Suite do not break up the massing effect very well. Typically there is a negotiation process and the applicant would be advised on changes that could be made to make the development more suitable for the area. None of the suggestions have been acted on.

iii) Rebuttal of the Appellant

- [42] Mr. Romanesky clarified that only the eaves of the Accessory building encroach onto the easement, not the building itself. He acknowledged that the driveway could be at risk but since utilities are usually in the middle of the easement he feels the proposed development is nowhere near where the actual utilities are placed.
- [43] The front driveway was approved a long time ago; therefore it is a legal, non-conforming driveway and should be left as it is. He does not believe the new application process provides authority to remove the existing front driveway.
- [44] If the Board accepts the Appellant's proposal to reduce the size of the balcony he feels reasons for refusal Nos. 2 and 3 would no longer apply. The Board pointed out that even if the balcony were reduced the floor area of the Garage Suite is still 62.25 square metres rather than the permitted 60 square metres.
- [45] If there were issues with materials being used this should have been pointed out very clearly in the reasons for refusal. There are a lot of things than can be done to dress up a building but it is difficult to address matters they have no knowledge of. He requests the Board to give proper weight to this new-found issue.
- [46] The minimum required distance between an accessory building and a principal building is 1 metre according to the building code. The drawings were stamped by a structural engineer showing that building code requirements are met.

Decision

[47] The appeal is ALLOWED and the decision of the Development Authority is REVOKED. The development is GRANTED as applied for to the Development Authority, subject to the following CONDITIONS/ADVISEMENTS:

1. The length of the Platform Structure is to be reduced by 3 metres from the west face of the garage face. The revised dimensions of the balcony will be 3.8 metres by 1.23 metres.
2. Privacy screening not less than 1.52 metres in Height is to be erected along the west end of the Platform Structure.
3. The layout of the Garage Suite on the second floor of the Accessory building is to be as per the revised floor plan submitted.
4. No front drive access is permitted to the proposed development.
5. The development shall be constructed in accordance with the stamped and approved drawings, as revised by the Board as per the conditions noted above.
6. Eave projections shall not exceed 0.46 metres into required yards or Separation spaces less than 1.2 metres. (Reference Section 44.1(b))
7. Frosted or opaque glass treatment shall be used on windows on the red-lined stamped approved elevation plan to minimize overlook. (Reference Section 87.8)
8. Only one of a Secondary Suite, a Garage Suite or Garden Suite may be developed in conjunction with a principal Dwelling.
9. A Garage Suite shall not be allowed within the same Site containing a Group Home or Limited Group Home, or a Major Home Based Business and an associated principal Dwelling, unless the Garage Suite is an integral part of a Bed and Breakfast Operation in the case of a Major Home Based Business.
10. Notwithstanding the definition of Household within this Bylaw, the number of unrelated persons occupying a Garage Suite shall not exceed three.
11. The Garage Suite shall not be subject to separation from the principal Dwelling through a condominium conversion or subdivision.
12. The area hard surfaced for a driveway, not including the area used for a walkway, shall comply with Section 54.6 of the Zoning Bylaw 12800.

13. Except for the hard surfacing of driveways and/or parking areas approved on the site plan for this application, the remainder of the site shall be landscaped in accordance with the regulations set out in Section 55 of the Zoning Bylaw 12800.
14. WITHIN 14 DAYS OF APPROVAL, prior to any demolition or construction activity, the applicant must post on-site a development permit notification sign (Section 20.2)

ADVISEMENTS:

1. Lot grades must comply with the Edmonton Drainage Bylaw 16200. Contact Drainage Planning and Engineering at 780-496-5576 or lot.grading@edmonton.ca for lot grading inspection inquiries.
2. The driveway access must maintain a minimum clearance of 1.5m from all surface utilities.
3. Any hoarding or construction taking place on road right-of-way requires an OSCAM (On-Street Construction and Maintenance) permit. It should be noted that the hoarding must not damage boulevard trees. The owner or Prime Contractor must apply for an OSCAM online at: http://www.edmonton.ca/bylaws_licences/licences_permits/oscam-permit-request.aspx

[48] In granting the development the following variances to the *Edmonton Zoning Bylaw* are allowed:

1. The maximum allowable Height of 5.50 metres as per Section 87.2(a) is varied to allow an excess of 0.69 metres, thereby increasing the maximum allowed to 6.19 metres.
2. The maximum allowable Floor Area of 60.0 square metres as per Section 87.3(a) is varied to allow an excess of 2.25 square metres, thereby increasing the maximum allowed to 62.25 square metres.
3. The minimum distance between a detached Garage containing a Garage Suite and the principal Dwelling on the same Site of 4.0 metres as per Section 87.7 is varied to allow a deficiency of 1.8 metres, thereby decreasing the minimum allowed to 2.2 metres.
4. The minimum distance between a principal Dwelling and a rear detached Garage of 3.0 metres as per Section 814.3(22) is varied to allow a deficiency of 0.8 metres, thereby decreasing the minimum allowed to 2.2 metres.

5. The requirement that Platform Structures, including balconies, shall be allowed as part of a Garage Suite developed above a detached Garage only where the balcony faces the land or a flanking roadway as per Section 87.10 be waived.
6. The minimum width of 7.0 metres of an aisle as per Section 54.2(4)(a)(vi) is varied to allow a deficiency of 1.34 metres, thereby decreasing the minimum allowed to 5.66 metres.

Reasons for Decision

- [49] A Garage Suite is a Discretionary Use in the RF1 Single Detached Residential Zone.
- [50] Notwithstanding the fact that the structure has been standing in place for some 11 months now, no parties attended to oppose the proposed development. The most immediate neighbours did not object or appear in opposition. Although there were two letters of opposition both only addressed the aesthetics of the building under construction and not the finished product. The Board finds the community consultation provisions have been complied with.
- [51] The Board accepts the Appellant's submission that the proposed development is not very visible from the street and this is a mitigating factor in allowing the foregoing variances. The Site is actually comprised of two lots which further mitigates the massing effect of the proposed development. The total area of the two lots is more than twice the minimum size required for a Garage Suite. This allows for separation distances between the properties to the east and west to be in excess of 10 metres and 5 metres respectively. Finally, there are deciduous trees which will further reduce the massing effect of the proposed development during certain months of the year.
- [52] Regarding the variances required with respect to the separation distance between the proposed development and the Principal Building, this distance is only between two corners of the structures rather than along the length of their walls, meaning the reduced distance will not significantly interfere with the amenity space on the Site. The effect of the reduced separation space is further mitigated by the fact that the distance is measured between the raised Platform Structure and the Principal Building. There is more space between the structures at ground level.
- [53] The Board accepts the submission of the Appellant that there is no privacy concern with this proposed development. It overlooks the neighbours' garages rather than their yards and the windows will be frosted. Also the required reduction in the size of the balcony and the addition of privacy screening will further mitigate any privacy concerns.
- [54] The Board notes that while there was a concern about eaves encroaching onto a utility right of way. Both utilities wrote letters indicating they were not opposed to the proposed development.

[55] The Board finds that the proposed development, with conditions imposed, will be reasonably compatible with surrounding developments and 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.

Winston Tuttle, Presiding Officer
Subdivision and Development Appeal Board

Board Members Present:

M. Young; R. Hachigian; A. Peterson; C. Weremcuk

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 5th Floor, 10250 – 101 Street, Edmonton.
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 5th Floor, 10250 – 101 Street, Edmonton.

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.



**EDMONTON
TRIBUNALS**

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SDAB-D-16-267

Application No. 224601991-001

An appeal to **Change the Use from Warehouse Sales to Restaurants (170 seats) and to construct interior alterations on Plan 9220996 Blk B Lot 9C, located at 11807 – 105 Avenue NW, was **WITHDRAWN****