



**EDMONTON  
TRIBUNALS**

*Subdivision &  
Development  
Appeal Board*

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Date: October 4, 2018  
Project Number: 279770619-001  
File Number: SDAB-D-18-147

**Notice of Decision**

- [1] On September 19, 2018, the Subdivision and Development Appeal Board (the “Board”) heard an appeal that was filed on August 28, 2018. The appeal concerned the decision of the Development Authority, issued on August 14, 2018, to refuse the following development:

**Construct an Accessory structure (carport 7.3 metres by 4.74 metres)**

- [2] The subject property is on Plan 4892HW Blk 12 Lot 22, located at 7764 - 83 Avenue NW, within the RF1 Single Detached Residential Zone. The Mature Neighbourhood Overlay applies 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; and
  - The Appellant’s written submissions.

**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 (the “*Municipal Government Act*”).

**Summary of Hearing***i) Position of the Appellant, Mr. Farrell*

- [7] The garage and driveway have been in existence for over 60 years without any known complaints.
- [8] In Mr. Farrell's opinion, the excess of one percent for site coverage for the proposed development will not negatively impact the property.
- [9] There will be a significant cost to have the driveway off of the rear lane. The existing garage is concrete and would be difficult to demolish.
- [10] The orientation of the rear yard will change if the driveway is off the rear lane.
- [11] The carport will only cover the driveway and will have translucent material on the roof which will not create a visual impact.
- [12] He is trying to upgrade the property in keeping with the characteristics of the neighbourhood.
- [13] The carport will provide shelter for their vehicles and the driveway free from snow and ice.
- [14] He did not speak to his neighbours but several approached him and provided verbal support of the carport.
- [15] Mr. Farrell provided the following information in response to questions by the Board:
- a. He revised the plans for the carport as suggested by the Development Officer.
  - b. The carport's width will be in line with the walls of the garage.
  - c. The existing tree will remain as it is and will not interfere with the carport.
  - d. The fence will remain as it is and does not extend to the edge of the sidewalk.
  - e. The carport will only extend to the property line.
  - f. He understands that the *Edmonton Zoning Bylaw* changed after the garage was built.
  - g. He could not confirm if there were other carports in the area.
  - h. There are several garages in the neighbourhood that have access off of 79 Street.

- i. The carport will only cover the driveway and will not create a visual impact for vehicles travelling on 79 Street.
- j. He confirmed that the 6 feet by 24 feet shed in the rear yard was included in the site coverage calculation.

ii) *Position of the Development Officer, Ms. Bauer*

- [16] The Development Authority did not appear at the hearing and the Board relied on Ms. Bauer's written submission.

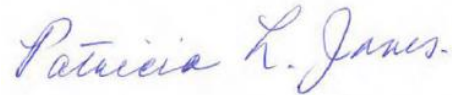
**Decision**

- [17] The appeal is DENIED and the decision of the Development Authority is CONFIRMED. The development is REFUSED.

**Reasons for Decision**

- [18] The proposed development is Accessory to a Permitted Use in the RF1 Single Detached Residential Zone.
- [19] The subject property has had non-conforming access off of 79 Street for several years. Section 814.3(17) of the *Edmonton Zoning Bylaw* has been recently enacted and states "regardless of whether a Site has existing vehicular access from a public roadway, other than a Lane, no such access shall be permitted to continue where an Abutting Lane exists." It appears it is Council's intent that access should exist from the abutting lane. The proposed carport would further the non-conformity that already exists. The Transportation Department agreed that this non-conforming access could remain only until this site is redeveloped sometime in the future.
- [20] Insufficient planning reasons were provided to permit a carport which would be constructed from the garage to almost the edge of the property line as it would protrude almost entirely into the flanking side setback.
- [21] The Board finds that the carport will have a negative visual impact on traffic and pedestrians using 79 Street.
- [22] The Board finds that the carport is uncharacteristic of the neighbourhood as there was insufficient evidence provided to indicate that there are other such carports in this area.

[23] Based on the above, it is the opinion of the Board that the proposed development will unduly interfere with the amenities of the neighbourhood, and materially interfere with or affect the use, enjoyment or value of neighbouring parcels of land.

A handwritten signature in blue ink that reads "Patricia K. Jones". The signature is written in a cursive style.

Ms. P. Jones, Presiding Officer  
Subdivision and Development Appeal Board

Board Members in Attendance:

Mr. V. Laberge; Ms. E. Solez; Ms. D. Kronewitt Martin; Mr. D. Fleming

CC: City of Edmonton, Development & Zoning Services, Attn: Ms. Bauer / Mr. Wen

**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. 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.
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 Development & Zoning Services, located on the 2nd Floor, Edmonton Tower, 10111 – 104 Avenue NW, Edmonton, AB T5J 0J4.



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Date: October 4, 2018  
Project Number: 283331093-001  
File Number: SDAB-D-18-148

**Notice of Decision**

- [1] On September 19, 2018, the Subdivision and Development Appeal Board (the “Board”) heard an appeal that was filed on August 27, 2018. The appeal concerned the decision of the Development Authority, issued on August 20, 2018, to approve the following development:

**Operate a Major Home Based Business (Administration office for Lawn Care Services - ANGKOR LAWN CARE SERVICES)**

- [2] The subject property is on Plan 7521612 Blk 16 Lot 117, located at 18408 - 93 Avenue NW, within the RF1 Single Detached Residential 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 approved Development Permit;
  - The Development Officer’s written submissions;
  - The Appellant’s written submissions; and
  - The Respondent’s email.

**Preliminary Matters**

- [4] 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*”).
- [5] At the outset of the hearing the Presiding Officer indicated that an email was received from the Respondent indicating that they would not be in attendance at the hearing and would like the Board to proceed and consider the written submission when making the decision.

- [6] The Appellant was not in attendance at the hearing and the Board's Meeting Coordinator contacted the Appellant who indicated they were not able to attend and would like the Board to proceed with the hearing based on their written submissions. The Board's Meeting Coordinator confirmed that submissions were not previously received from the Appellant. The Appellant sent an email containing a written submission and photographs of the subject property.

### Summary of Hearing

*i) Position of the Appellant, Mr. and Mrs. Beauchamp*

- [7] The Appellants were not in attendance at the hearing. The Board proceeded with the hearing and considered their written submission when making their decision.

*ii) Position of the Development Officer, Ms. Watts*

- [8] The Development Authority was not in attendance at the hearing. The Board proceeded with the hearing and considered her written submission when making their decision.

*iii) Position of the Respondent, Mr. Tes*

- [9] The Respondent was not in attendance at the hearing. The Board proceeded with the hearing and considered his written submission when making their decision.

### Decision

- [10] The appeal is **ALLOWED IN PART** and the decision of the Development Authority is **VARIED**. The development is **GRANTED** with the following change:

The Board **DELETES** the following variance:

**Outdoor Storage: To allow outdoor storage of one non-enclosed trailer, 10 feet long (Section 75.5)**

- [11] The Development is subject to the following **CONDITIONS** as proposed by the Development Authority:

1. This Development Permit may be revoked or invalidated, at any time, if the Home Based Business as stated in the Permit Details, or if the character or appearance of the Dwelling or Accessory Building, changes. This includes mechanical or electrical equipment used which creates external noise or interference with home electronic equipment in adjacent Dwellings. (Reference Section 75.2).

2. There shall be no exterior display or advertisement other than an identification plaque or sign a maximum of 20 cm (8") x 30.5 cm (12") in size located on the dwelling. (Reference Section 75.1).
3. This approval is for a 5 year period ONLY from the date of this decision. A new Development Permit must be applied for to continue to operate the business from this location.
4. There shall be no more than five business associated visit per day at the Dwelling. The business Use must be secondary to the residential Use of the building and no aspects of the business operations shall be detectable from outside the property. The number of non-resident employees or business partners working on-site shall not exceed two at any one time. (Reference Section 75.4).
5. There shall be no mechanical or electrical equipment used that creates external noise, or visible and audible interference with home electronics equipment in adjacent Dwellings. No offensive noise, odour, vibration, smoke, litter, heat or other objectionable effect shall be produced. (Reference Section 75.2).
6. No person shall keep in any part of a Site in any Residential Zone any commercial vehicle, loaded or unloaded, having a maximum gross vehicle weight (G.V.W.R.) exceeding 4 600 kg or more than one commercial vehicle having a maximum gross vehicle weight (G.V.W.R.) of 4 600 kg or less, for longer than reasonably necessary while loading or unloading such vehicle. (Reference Section 45.1).
7. The business Use must maintain the privacy and enjoyment of adjacent residences and the character of the neighbourhood.
8. No commodity shall be displayed on the premises.
9. Clients visits must be by-appointment only and appointments shall not overlap with each other.
10. A new Development Permit must be obtained should the business change or expand.
11. There shall be no outdoor business activity, or outdoor storage of material or equipment associated with the business. Indoor storage related to the business activity shall be allowed in either the Dwelling or Accessory buildings. (Reference Section 75.5).
12. All parking for the Home Based Business must be accommodated on site. Parking on the street in conjunction with this Home Based Business is not permitted.



13. All commercial, industrial and overweight vehicles shall be parked at an approved storage facility when not in use. The Development Permit will be revoked if any commercial, industrial and overweight vehicles are parked/stored on the Residential Site.

#### ADVISEMENTS:

1. A Major Home Based Business shall not be allowed within the same principal Dwelling containing a Secondary Suite or within the same Site containing a Garden Suite and an associated principal Dwelling, unless the Home Based Business is a Bed and Breakfast Operation and the Secondary Suite or the Garden Suite is an integral part of the Bed and Breakfast Operation.
2. An approved Development Permit means that the proposed development has been reviewed against the provisions of this bylaw. It does not remove obligations to conform with other legislation, bylaws or land title instruments including, but not limited to, the *Municipal Government Act*, the *Safety Codes Act* or any caveats, restrictive covenants or easements that might be attached to the Site. (Reference Section 5.2).
3. Unless otherwise stated, all above references to section numbers refer to the authority under the *Edmonton Zoning Bylaw 12800*.

#### Reasons for Decision

- [12] The Respondent made application for and received a Development Permit to operate a Major Home Based Business (Administration office for Lawn Care Services - ANGKOR LAWN CARE SERVICES), which is a Discretionary Use in the RF1 Single Detached Residential Zone.
- [13] The Development Authority imposed a number of conditions on the approved development permit, plus granted a variance as follows: “Outdoor Storage: To allow outdoor storage of one non-enclosed trailer, 10' long. (Section 75.5).”
- [14] A neighbouring property owner appealed the approval of the Development Permit, citing the following concerns: “Too many vehicles on the street, disruption early in the morning, too much on the front drive way, like fertilizer, sand, lawn treatment etc., difficult for city vehicles like garbage truck and snow plow to get around all the equipment.”

- [15] The Board is bound by the recent decision of the Court of Appeal of Alberta in *Edmonton (City) v Edmonton (Subdivision and Development Appeal Board)*, 2017 ABCA 140. In this decision, the Court of Appeal provided an interpretation of the definition of a Major Home Based Business, pursuant to section 7.3(7) of the *Edmonton Zoning Bylaw*. Paragraphs 7 through 10 of the Court of Appeal decision concluded that the Major Home Based Business use class does not capture, nor is it intended to capture, business uses that occur on the property outside an approved Dwelling or Accessory building.
- [16] While the Court of Appeal noted that outdoor business activity or storage is prohibited by the regulations contained in section 75(5) of the *Edmonton Zoning Bylaw*, the Court of Appeal found that the definition of a Major Home Based Business does not allow the outdoor storage or parking of vehicles on Site. The decision stated: “All elements of a Major Home Based Business definition refer to the use of the dwelling or accessory building, making it clear that it is the building which must be used to conduct the business”.
- [17] The Court of Appeal specifically found that “the outdoor storage/parking” of trucks related to the business brought the nature of the activity outside the definition of a Major Home Based Business.
- [18] Therefore, in accordance with the Court of Appeal decision, the Board DELETES the following variance: Outdoor Storage: To allow outdoor storage of one non-enclosed trailer, 10 feet long (Section 75.5). This will ensure that no outdoor business activity or storage of commercial vehicles will occur on the subject Site. This will maintain the character of the proposed development as a Major Home Based Business.
- [20] This Development Permit is for an administration office for a Major Home Based Business. The Board finds the proposed use as applied for can be provided within the principal residence without changing the character of this building in that its principal use remains that of a Single Family Dwelling and the Major Home Based Business will be secondary in nature.
- [21] The Board notes the Development Authority has addressed all of the Appellants’ concerns with the conditions imposed on the approved Development Permit, listed above.
- [22] The Board is satisfied that compliance with all of the conditions in the Development Permit will ensure that the proposed development is reasonably compatible with surrounding uses and will not unduly interfere with the amenities of the neighbourhood nor will it materially interfere with or affect the use, enjoyment or value of neighbouring parcels of land.

- [23] The Board notes that the Development Permit has only been approved for a period of five years. This will allow sufficient time for neighbouring property owners to assess the impact of the proposed development and report any violations of the conditions to Bylaw Enforcement. This will result in appropriate actions, which could include the cancellation of the approved Development Permit.



Ms. P. Jones, Presiding Officer  
Subdivision and Development Appeal Board

Board Members in Attendance

Mr. V. Laberge; Ms. E. Solez; Ms. D. Kronewitt Martin; Mr. D. Fleming

CC:

City of Edmonton, Development & Zoning Services, Attn: Ms. Watts / Mr. Wen

**Important Information for the Applicant/Appellant**

1. This is not a Building Permit. A Building Permit must be obtained separately from Development & Zoning Services, 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 Development & Zoning Services, 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.*