



**EDMONTON
TRIBUNALS**

*Subdivision &
Development
Appeal Board*

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Date: April 26, 2018
Project Number: 267178487-001
File Number: SDAB-D-18-049

Notice of Decision

- [1] On April 11, 2018, the Subdivision and Development Appeal Board (the “Board”) heard an appeal that was filed on **March 16, 2018**. The appeal concerned the decision of the Development Authority, issued on March 16, 2018, to refuse the following development:

Change the Use from a Single Family House to a Group Home (14 residents) (People Support Services).

- [2] The subject property is on Plan 4799TR Lot 18B, located at 9910 - 213 Street NW, within the (RR) Rural Residential Zone. The Lewis Farms Area Structure Plan 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 submission; and
 - The Appellant’s written submissions.
- [4] The following exhibit was presented during the hearing and forms part of the record:
- Exhibit A – The Development Officer’s submission.

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*”).

- [8] At the outset of the hearing the Presiding Officer indicated that the Board received a large submission from the Appellant. The Presiding Officer stated that the Board could adjourn the hearing to a later date to allow them time to review the submission or they could proceed with the hearing.
- [9] Mr. Comsa indicated that he would reference his submission and did not want to postpone the hearing.

Summary of Hearing

i) Position of the Appellant, Mr. S. Comsa

- [10] Mr. Comsa referred to the three reasons for refusal on the refused development application.
- [11] The subject site is a 2.14 acre property. The existing Bed and Breakfast has eight units with two occupants per unit with a potential of some 20 visitors or guests.
- [12] There is an approved gas station application to be developed on the southwest corner of the immediate area, as well as a playground and park approximately one block away for the subject site. A bus stop is located approximately one property from the subject site.
- [13] The majority of the traffic comes from the industrial area to the east. Traffic would not be generated from the subject site as residents of the Group Home would not drive.
- [14] He referred to the *Edmonton Zoning Bylaw* definitions outlined in his submission. In his opinion, some of the definitions were not properly outlined in the Development Officer's written submission.
- [15] The Development Permit Application is for 14 residents and not 14 sleeping units. He stated that a sleeping unit means a Habitable Room in a building used for congregate living in which the room is occupied by a person under any form of accommodation agreement providing remuneration for the room. A sleeping unit can provide accommodation for two residents. In his opinion, 14 residents could be accommodated in 7 sleeping units.
- [16] With regard to section 96.3(a) of the *Edmonton Zoning Bylaw*, he stated that you cannot have 0.2 of a facility. The Threshold regulation is to have a facility in every neighbourhood and the Threshold regulation is to ensure that Special Residential Facilities are not exceeded. There are no Group Homes in the neighbourhood, therefore the proposed development does not violate this regulation.
- [17] He referred to Section 96.2(b) that states that the Threshold is to ensure that Special Residential Facilities are available in all neighbourhoods.

- [18] The subject site is surrounded by a residential area and the site will be serving a large area.
- [19] In his opinion, the proposed development will increase the value for the City which will attract developers to build in this area.
- [20] He stated that a previous Major Home Based Business on the subject site was approved by the Board for 8 sleeping units for 16 residents.
- [21] He does not agree with the Development Officer's statement in his written submission that the subject site will create a nuisance in the neighbourhood. In his opinion, a Group Home is more suitable in this area than a high density neighbourhood like downtown.
- [22] It was clarified that the subject site is for sale which is contingent on the approval of the development permit. He clarified that People Support Services applied for the development permit.
- [23] He does not object to a staff member being on site 24 hours a day. However, the proposed development is not his business so he could not confirm if this would happen.
- [24] In response to a question from the Presiding Officer, the Appellant confirmed that all of the proposed conditions in the Development Officer's Report would be acceptable to him or the eventual operator of this site, insofar as he was aware.
- ii) *Position of the Development Officer, Mr. B. Liang, who was accompanied by Ms. T. Edgcombe, representing the City of Edmonton, Fire Rescue Services*
- [25] Mr. Liang indicated that there are three areas of review for Group Home applications, which include:
- a. What type of Group Home?
 - b. What type of neighbourhood?
 - c. Is it an appropriate location?
- [26] A Group Home can range from a small Single Detached House conversion of four to five residents to large Apartment complexes with hundreds of residents.
- [27] A Limited Group Home must have six or less residents and have 24/7 care. A Group Home can have much more than six residents or have six or less residents without 24/7 care.

- [28] Mr. Liang referred to the Density variance and stated that the number of sleeping units determines what type of building is appropriate. In his review of Group Homes, six or less sleeping units is treated as a household and 7 or more sleeping units is treated as Use that should be in a higher density zone. The (RR) Rural Residential Zone is the lowest density residential zone.
- [29] When the City plans for growth, newer areas like Lewis Estates is planned in phases. Neighbourhood Structure Plans shows where low density and high density areas should be placed based on roadways, parks, and utilities and other amenities. High density areas are planned along arterial and collector roadways. The City locates high density areas adjacent to these services because they are maximized by the number of people benefiting from them. This proposed development is a high density use of 14 residents plus visitors and staff and it does not meet the City's objectives on cost-effective planning.
- [30] This area does not have a Neighbourhood Structure Plan in place and there are no service / utilities. Mr. Liang referred to a map showing existing utilities and indicated that a new water line would need to be constructed along 100 Avenue to 211 Street to adequately connect to the property. Currently, a septic tank services the subject site and in his opinion, a high density use should be provided by a sewer line.
- [31] This neighbourhood is also a semi-industrial area. There is an approval for a General Industrial Use north of the subject site and there are at least three Industrial Uses to the east. The Area Structure Plan provides a buffer to future residential areas and once the Neighbourhood Structure Plan is in place there will be a buffer. This proposed Group Home is not appropriate in a semi-industrial area. The subject building is only 3.3 metres from the abutting industrial site to the north.
- [32] Mr. Liang indicated that he has no authority to vary Density.
- [33] Ms. Edgecomb reviewed the Fire Rescue Services memorandum and indicated that the conditions are based on Municipal Standards. The fire flow requirements are set out in the memorandum to advise applicants that there could be significant building retrofits required prior to the building permit stage. To meet the Municipal Standards could be quite costly to applicants.

iii) Rebuttal of the Appellant, Mr. S. Comsa

- [34] Mr. Comsa stated that development of the surrounding land would not take place in the near future.
- [35] He stated that the water concerns are not an issue for the subject site as the operator of the Group Home would abide by the requirements of their governing body. Specific reference was made to sprinklers and a waterflow rate of 100 litres per second.

Decision

[36] 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**:

1. The Group Home shall provide continuous (24 hours, seven days a week) on-site professional care and supervision by staff licensed or certified to provide such care.
2. The development shall be recognized, authorized, licensed or certified by a public authority as a social care facility.
3. Water supply and sewage disposal shall be provided in accordance with the Public Health Act regulations (Reference Section 240.4.8).
4. The maximum number of Sleeping Units in this Group Home is 14.
5. The maximum occupancy in this Group Home is 14.
6. No Major Home Based Business, Secondary Suite, or Garden Suite shall be permitted on the Site (Section 79.2.g).
7. Parking shall be provided in accordance with the approved Site Plan.

TRANSPORTATION CONDITIONS:

8. Access from the site to 213 Street is existing, as shown on Enclosure I. Any modification to the existing accesses requires the review and approval of Subdivision Planning.
9. The existing gate must not swing out over road right-of-way. It must either swing into the property or slide along the fence. No objects are permitted to encroach onto, over or under road right-of-way, as shown on Enclosure I.
10. There may be utilities within road right-of-way not specified that must be considered during construction. The owner/applicant is responsible for the location of all underground and above ground utilities and maintaining required clearances as specified by the utility companies. Alberta One-Call (1-800-242-3447) and Shaw Cable (1-866-344-7429; www.digshaw.ca) should be contacted at least two weeks prior to the work beginning to have utilities located. Any costs associated with relocations and/or removals shall be at the expense of the owner/applicant.

11. Any hoarding or construction taking place on road right-of-way requires an OSCAM (On-Street Construction and Maintenance) permit. OSCAM permit applications require Transportation Management Plan (TMP) information. The TMP must include:
- the start/finish date of project;
 - accommodation of pedestrians and vehicles during construction;
 - confirmation of lay down area within legal road right of way if required; and
 - to confirm if crossing the sidewalk and/or boulevard is required to temporarily access the site.

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/transportation/on_yourstreets/on-street-construction-maintenance-permit.aspx

12. Any boulevard damage occurring as a result of construction traffic must be restored to the satisfaction of Development Inspections, as per Section 15.5(f) of the Zoning Bylaw. The boulevard will be inspected by Development Inspections prior to construction, and again once construction is complete. All expenses incurred for repair are to be borne by the owner.

FIRE RESCUE SERVICES CONDITIONS:

13. The applicant shall provide, to the satisfaction of the Fire Rescue Services, a Fire Underwriter's Survey analysis for this project that confirms the site-specific fire flow requirements will be met with the installation of the proposed fire water storage tanks. The on-site water supply shall be sufficient for firefighting use and for sprinkler system for the duration recommended per NFPA 13. Fire Underwriter's Survey shall be submitted for review by Fire Rescue Services.
14. The applicant shall identify the Sprinkler Fire Department Connection for the building, to the satisfaction of Fire Rescue Services. The fire department connection shall be located no closer than 3 m and no further than 15 m from the principal entrance to the building.
15. The applicant shall confirm that the Fire Alarm Annunciator panel is located in close proximity to the building entrance that faces a street or emergency access route, to the satisfaction of Fire Rescue Services.

16. The applicant shall prepare a Fire Safety Plan in accordance with the EFRS Construction Site Fire Safety Plan Template, (which can be found here: https://www.edmonton.ca/programs_services/fire_rescue/fire-safety-planning-for-const.aspx). The Fire Safety Plan must be submitted to Fire Rescue Services prior to the issuance of the Building Permit.
17. An all-weather road shall be constructed prior to construction.

WASTE MANAGEMENT CONDITIONS:

18. Waste Management Services shall be provided by a private provider.

EPCOR WATER CONDITONS:

19. The applicant shall submit an on-site servicing plan and a lot grading plan stamped by a professional engineer to EPCOR Drainage Public Service.

NOTES:

- A. Signs require separate Development Applications.
- B. A Building Permit is required for any construction or change in use of a building. For a building permit, and prior to the Plans Examination review, you require construction drawings and the payment of fees. Please contact the 311 Call Centre for further information.
- C. This Development Permit is not a Business Licence. A separate application must be made-for a Business Licence.

DRAINAGE ADVISEMENTS:

- D. Permanent Area Contribution (PAC), Sanitary Servicing Strategy Expansion Assessment (EA) and Arterial Roadway Assessment (ARA) assessment has been deferred under this Development Permit application due to the scope of work of this application.

TRANSPORTATION ADVISEMENTS:

- E. This site falls within the Lewis Farms Arterial Roadway Assessment (ARA) catchment and is set up as a means for cost sharing the arterial roadway construction. The ARA will be deferred for this application only and the owner/applicant will be required to pay the ARA for the entire site as a condition of approval of any future subdivision or development. In addition, there may be over-expenditures owing on this site. For further information regarding the ARA and additional costs with future development, please contact Dan Christian Yeung (780-496-4195) of Development Coordination.

F. The Stony Plain Road Concept Plan, which includes the grade separation of Winterburn Road, has been approved and will require property from this site with construction (see Enclosure II). Funding for land acquisition and construction is currently unavailable for this project and therefore timing of the improvements has not been determined.

G. The owner is advised that access to the site will require review with further redevelopment of the site.

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

1. The maximum number of Dwellings per section 240.4(9) is waived. A maximum of 14 Dwellings is allowed.
2. The maximum number of residents per section 79.2(a) is waived. A maximum of 14 residents is allowed.
3. The maximum number of Congregate Living facilities per section 96.3(a) is waived.

Reasons for Decision

[38] The proposed development, a Group Home, is a Discretionary Use in the (RR) Rural Residential Zone.

[39] The Board notes that there are no neighbours in opposition irrespective of the fact that 16 properties were notified including the Lewis Estates Community League.

[40] In waiving the requirements of Section 240.4(9), the Board notes that the proposed development is a single, free-standing Special Residential Facility, and finds it unreasonable to equate the provision for 14 residents as breaching the requirement for a maximum of one dwelling per site.

[41] The Board notes the Development Officer had no authority to vary any Density calculations. This restriction is a hardship which is in direct conflict with section 96.2(b) which ensures that **Special Residential Facilities are available in all neighbourhoods**. This Board finds that section 96.2(b) is of primordial importance to achieving social equality in development.

[42] The Board notes that it was previously faced with the existing Use with balancing incomplete urban servicing at the subject site which is not dissimilar than what is presently approved. As such, due to the fact that new exterior alterations are required and traffic is similar to the present Use, the Board accepts the submissions of the Appellant regarding the proposed development.

- [43] Irrespective of the appeal being allowed, the Board cautions that the proposed development may not have all infrastructure requirements to proceed as the Appellant envisions. Consequently, these additional infrastructure requirements for the Subject Site are known to the Appellant but are outside the Board's purview.
- [44] Based on the above, the Board is of the opinion 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.



Mr. W. Tuttle, Presiding Officer
Subdivision and Development Appeal Board

Board Members in Attendance

Mr. N. Somerville; Ms. N. Hack; Ms. S. LaPerle; Mr. L. Pratt

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.