

Edmonton Subdivision and Development Appeal Board

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DATE: April 16, 2015
PROJECT NO.: 166511335-001
FILE NO.: SDAB-D-15-068

NOTICE OF DECISION OF THE SUBDIVISION AND DEVELOPMENT APPEAL BOARD

This appeal dated March 9, 2015, from the decision of the Development Authority for permission to:

Operate a Major Home Based Business (administrative office for waste removal and hauling business)

on Plan 5765Q Blk 4 Lot 1, located at 10851 - 75 Avenue NW, was heard by the Subdivision and Development Appeal Board at its hearing held on April 1, 2015. The decision of the Board was as follows:

SUMMARY OF HEARING:

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.

The appeal was filed on time, in accordance with Section 686 of the Municipal Government Act, R.S.A 2000, c. M-26.

The Board heard an appeal of the decision of the Development Authority to refuse an application to operate a Major Home Based Business (administrative office for waste removal and hauling business), located at 10851 – 75 Avenue NW. The subject Site is zoned RF6 Medium Density Multiple Family Zone and is located in the Medium Scale Residential Infill Overlay, and the 109 Street Corridor Area Redevelopment Plan.

The development permit was refused because 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.) exceeding 4,500 kilograms; and it is the opinion of the Development Officer that such Use would be more appropriately located in a Commercial or Industrial Zone having regard for the overall compatibility of the Use with the residential character of the area.

Prior to the hearing the following information was provided to the Board, copies of which are on file:

- a. Printed copy of a PowerPoint presentation submitted by the Appellant.
- b. Copy of the Development Authority's submission supporting the decision.

The Board notes that 11 letters and one web response was received from neighbouring property owners, including the Queen Alexandra Community League, in support of the proposed development.

The Board heard from Mr. Peter, the Appellant, who made the following points:

1. He provided the Board with an overview of the nature of the neighbourhood, the traffic, and neighbouring yards.
2. In his opinion, there will be no adverse impact from the proposed business, and it is a general benefit to the neighbourhood.
3. The proposed business is small and there will be no business activity at the site nor will there be any business related visits to the subject Site.
4. He provided photographs of his house adjacent to 109 Street and indicated it was on a busy arterial road with heavy traffic flow all day.
5. The truck associated with the proposed business is parked at the rear of the property and does not change the residential character of the neighbourhood.
6. He provided the Board with photographs showing dilapidated garages and yards in the neighbourhood.
7. He is on good terms with the most adjacent neighbour as well as other neighbouring property owners.
8. The adjacent property owners cannot see into his rear yard due to the existing fence; however, he intends on building a new fence.
9. He is in the process of renovating his house and related materials are stored in the rear yard.
10. One neighbour complained about noise; however, this occurred some time ago while he was doing house renovations.
11. Although his property has been untidy at times, there has not been an adverse effect on neighbouring properties.
12. He collected a petition with 36 signatures from neighbouring property owners in support of the proposed development and several letters in support of the proposed development.
13. He received a letter from the Community League in support of the proposed development.
14. His neighbours are upset with the City and their approach to the proposed business and his property.
15. A neighbour four houses from the subject Site is opposed to the proposed development.
16. In his opinion, Bylaw Enforcement has misled the Board in the past. He referred to a FOIP request to illustrate this point where 11 complaints were received on his property.
17. Four of these complaints were regarding snow on the sidewalk and a tree that fell on the property; two were regarding a yard sale that took place six years ago, for which he had a permit; and the other complaints are invalid.
18. He does not and never has used a truck trailer for the business.
19. He provided photographs to illustrate the state of the back yard, which includes several sheds and no outside storage.
20. The sheds are needed as there is no garage on the property.

21. In his opinion, a Home Based Business should not be forced to move into an industrial zone.
22. In his opinion, the Lodging House regulations are not relevant to the appeal.

In response to questions by the Board, Mr. Peter provided the following information:

1. He confirmed that the second truck associated with the business is parked on the street.
2. He lives in the principal Dwelling and has several renters.
3. With regard to parking a commercial vehicle on the property, he stated that it is his understanding that anyone can park a commercial vehicle on their property up to 4,500 kilograms G.V.W regardless if they are using it or not.
4. The second commercial vehicle can be used for loading and unloading items.
5. He confirmed that his truck is slightly over the permitted weight when it is loaded.
6. He referred to photograph No. 21 in the Development Authority's submission showing that the G.V.W. is 14,250 kilograms, and stated that this is a mistake.
7. He confirmed that one truck is stored on the subject Site but the second truck is not.
8. He confirmed that occasionally the truck protrudes into city property but is not an issue as illustrated in the photographs from his submission.
9. Parking the truck on the subject Site is the only business related activity; therefore, he has not considered rezoning his property.
10. He confirmed that he has 8 sheds in the rear yard that are used to store tools and personal items.
11. There are two employees for the business during the busy season and none during the winter. Two of his employees live at the subject Site.
12. He confirmed that the business is operating without a permit.
13. He confirmed that he does not have an advertising sign on the building; however, the truck has a large display advertising the business.
14. He questioned whether or not the truck display should be classified as a Sign.
15. He confirmed that the truck is parked at the property and it is in a state of disrepair.
16. He confirmed that the business is not large and the second truck is not required.

The Board heard from Mr. Young, representing the City of Edmonton Sustainable Development Department, who answered questions by the Board and provided the following information:

1. The G.V.W. includes the total capability not just the curb weight of the truck.
2. He confirmed that 11 complaints were received from 5 complainants regarding the business. The complaints were not regarding snow removal.
3. With regard to the City officials being involved with the subject Site, he stated they operate under different regulations; the *Edmonton Zoning Bylaw* and the *Community Standards Bylaw*.
4. With regard to photograph No. 21 of his submission, he stated that this truck is parked on the subject Site most of the time.
5. He stated that any vehicle over 4500 kilograms G.V.W. cannot be kept in a residential Zone.
6. A commercial vehicle is defined by its purpose and this vehicle is commercial related.

7. Commercial vehicles can only be parked for a short period of time to load and unload.
8. With regard to the advertising on the truck, he stated that there shall be no exterior display or advertisement other than an identification plaque or sign located on the dwelling for a Home Based Business.
9. The external display is not defined in the Bylaw and he interprets the advertising on the truck as external display.
10. With regard to storage, he stated that there shall be no storage of materials on the subject Site for a Major Home Based Business.
11. He confirmed that there are no regulations regarding the number of sheds allowed on a property but noted there is a restriction on the Site Coverage for Accessory Buildings.
12. He has requested information from Mr. Peter regarding the Accessory Buildings to determine the Site Coverage but did not receive any information from him.
13. With regard to the five-year time limit, he stated that this allows the City to assess the business during this time to determine if there is any negative impact on neighbouring properties.
14. He confirmed that a Major Home Based Business and a Lodging House cannot coexist together.
15. With regard to parking, he stated that the truck cannot be parked on the flanking Side Yard. An approved parking area would be on a parking pad leading to a garage or parking area.
16. He confirmed that 8 sheds in the rear yard are filled with salvageable items, which does not comply with the *Edmonton Zoning Bylaw*.
17. He confirmed that the Major Home Based Business has not changed the appearance of the principal dwelling.

In rebuttal, Mr. Peter provided the following information:

1. The G.V.W. sticker on the truck was a mistake done by the welder that prepared the truck.
2. The truck has a tare weight of 4200 kilograms.
3. No complaints have been received with regard to the truck being parked at the rear of the subject Site.
4. The few complaints received regarding the untidy yard are related to the renovations taking place on the subject Site.
5. In his opinion, the signage on the truck does not create negative issues for the neighbourhood.
6. With regard to shed permits, he stated that no complaints were received regarding the sheds.
7. In his opinion, he is within the allowable 12 percent Site Coverage as each shed is approximately 8 feet by 8 feet in size.
8. In his opinion, no one appearing in opposition to the proposed development shows the support of his neighbours.
9. In his opinion, even if 5 valid complaints were received, they are not significant given the area that the business is located in.

10. The Lodging House requirements are unreasonable. He was not aware that a Major Home Based Business and a Lodging House could not coexist on the property.
11. He would like clarity regarding advertisement as there have been no complaints from neighbouring property owners.
12. Storing of materials does not take place at the subject Site as all material picked up is taken to the dump.
13. The Morinville address previously referred to is no longer his business address.
14. The subject site is not unsightly and the trucks are clean and presentable.
15. With regard to items stored in the sheds, he stated that there are no business related items stored in the shed and only personal items and some tools and shovels are stored.
16. He would like a permit that allows him to have a commercial vehicle with a G.V.W. of 6500 kilograms along with a Lodging House permit.
17. In his opinion, because there have been no complaints regarding the Major Home Based Business, there is no reason why the proposed development should not be approved.
18. He would like to continue to park the commercial vehicles at the subject Site but will comply with not having any outdoor storage.

DECISION:

that the appeal be DENIED and the decision of refusal by the Development Authority CONFIRMED.

REASONS FOR DECISION:

The Board finds the following:

1. The proposed development is a Discretionary Use in the RF6 Medium Density Multiple Family Zone.
2. The Board accepts the Development Authority's submission that a commercial vehicle is regularly parked on the property and excessively exceeds a Gross Vehicle Weight of 4500 kilograms. The Board notes that a second commercial vehicle frequents the property and is parked on adjacent roadways.
3. Based on the evidence submitted, the size and positioning of the commercial vehicle that is regularly parked on the subject Site represents an external display that is not allowed as outlined in Section 75.1 and Section 75.5 of the *Edmonton Zoning Bylaw*.
4. Given the Appellant's acknowledgement that the commercial vehicle regularly parked on site is not currently operable; its only purpose appears to be to provide advertising for the business, contrary to the requirements of both Minor and Major Home Based Businesses.
5. The Board acknowledges the receipt of a petition and several letters in support of the proposed development. However, the Board notes that the petition and several of the letters were generated in 2014, and are not related to the proposed development being appealed.

6. Eleven complaints were received regarding the proposed development and four of them are related to the impact of the commercial vehicle parked on the subject Site.
7. The Board accepts the Development Authority's interpretation that a permit with a five year time limit allows an opportunity to review any further Development Permit application to access compatibility within the Zone in which the Major Home Based Business operates.
8. 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.

IMPORTANT INFORMATION FOR 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, R.S.A. 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 the Sustainable Development Department, located on the 5th Floor, 10250 – 101 Street, Edmonton.

Mr. N, Somerville, Presiding Officer
SUBDIVISION AND DEVELOPMENT
APPEAL BOARD

CC:

NOTE: Citizens can call 311, 24-hours a day, every day of the year for access to City of Edmonton information, programs and services.