

***Edmonton Subdivision and
Development Appeal Board***

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SDAB-D-15-081

Application No. 162509298-001

An appeal to construct (3) Accessory Buildings, Accessory to an existing General Industrial Use (3 concrete silos) on Plan 0020287 Blk 1 Lot 5, located at 22235 - 115 Avenue NW, was **TABLED TO MAY 13 OR 14, 2015.**

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10905 - 73 Avenue NW
Edmonton AB
T6G 0C3

Date: May 8, 2015
Project Number: 166828870-003
File Number: SDAB-D-15-074

Notice of Decision

This appeal dated March 25, 2015, from the decision of the Development Authority for permission to:

Install (1) Freestanding On-Premises Sign and (1) Fascia On-Premises Sign (Kandath Law Office)

on Plan 5718AE Blk 29 Lot 27, located at 10905 - 73 Avenue NW, was heard by the Subdivision and Development Appeal Board at its hearing held on April 23, 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 install (1) Freestanding On-Premises Sign and (1) Fascia On-Premises Sign (Kandath Law Office), located at 10905 - 73 Avenue NW. The subject Site is zoned RA7 Low Rise Apartment Zone. The development permit was refused as a Freestanding On-premises Sign is not permitted for a Major Home Based Business and the proposed Fascia On-premises Sign is over the permitted size for a Major Home Based Business.

The Board heard from the Appellant, Ms. Kandath of Kandath Law Office, who provided the following information:

1. Two signs, one Freestanding On-premises Sign and one Fascia On-premises Sign, are proposed for her law office. Both signs will be located on her property, which is on the southwest corner of 109 Street and 73 Avenue. The Fascia On-premises sign will be located on the side of her house facing 109 Street.
2. An aerial photograph of the area was provided to the Board, marked Exhibit "A". Photographs showing different services around her location were provided to the Board,

marked Exhibit "B" through Exhibit "L". The photographs show signs for businesses including a hairdressing salon, a medical building, a church, a strip mall, a gas station and a compassionate care home. The majority of these businesses are located south of her property and zoned CB1.

3. She knows her neighbours, but has not specifically talked to them about the proposed signs. She believed that her neighbours have no concerns about either sign.
4. Having the two signs would have no impact on and would not change the area in any way.
5. The Major Home Based Business regulations do not mention having a Freestanding On-premises Sign, but does allow for a small identification plaque or Fascia On-premises Sign.
6. Hers is the only law firm in the area and many of her clientele are elderly persons who do not want to take public transportation, when they can walk around the corner to access legal services. The community benefits from her providing legal services in close proximity.
7. Currently, she has a small sign on her front door and one in her front window. These are not useful as they are hard to see and are blocked by three trees on City property on the southwest corner of 109 Street and 73 Avenue. Without a variance, she could only have a sandwich-type sign as an additional sign, which is a hazard in strong winds.
8. A permanent sign would be of greater benefit to people accessing her property and for her business.

In response to questions from the Board, Ms. Kandath provided the following information:

1. There is a secondary suite in the house, but it is not being used as such at the moment.
2. There was one Fascia On-premises Sign on the side of the building, which was 6 feet (1.83 metres) by 4 feet (1.22 metres), which she would like to replace. She did not have a permit for the Fascia On-premises Sign and had to remove it after receiving a notice from the City.
3. There were no complaints about the fascia sign when it was in place.
4. She would like to have a Fascia On-premises Sign on the side of the house and a Freestanding On-premises Sign on an angle in the front yard so the law practice is visible from both 109 Street and 73 Avenue.
5. The photographs in Exhibit "B" through Exhibit "L" were of signs on commercial properties.
6. The proposed Signs will not compromise her home, but will be a benefit to the community.
7. Looking at the definition of Major Home Based Business, she stated the signage would not interfere with the residential character of the home. It would be a home first and a business second.

The Board heard from Mr. Ahuja, City of Edmonton Sustainable Development, who provided the following information:

1. The Board approved the Major Home Based Business in March 2013, with a condition stating:
There shall be no exterior signage, display or advertisement other than a business identification plaque or sign 20 centimetres by 30.5 centimetres in size located on the Dwelling.
2. The permit could become invalid if the conditions are not met.
3. The permit was refused based on the Major Home Based Business guidelines.

4. A written submission was provided to the Board, marked Exhibit "L", which included photographs of the Fascia On-premises Sign and Freestanding On-premises Sign before being removed. Both of the Signs faced 109 Street.
5. Fascia On-premises Signs is a permitted use in the RA7 Zone. The Fascia On-premises Signs can be used to advertise Personal Service Shops or a Religious Assembly, which are Discretionary Uses in the RA7 Zone.
6. The development on the Site is a Major Home Based Business, as per the definition in the *Edmonton Zoning Bylaw*.
7. The Development Authority has the authority to grant the permit, but it was refused as it would negatively affect the neighbourhood.
8. The proposed Freestanding On-premises Sign is 6 feet (1.83 metres) high.

Ms. Kandath provided the following information in rebuttal:

1. She would like the Freestanding On-premises Sign, which is 6 feet (1.83 metres) by 4 feet (1.22 metres) to remain at that size, but she would entertain a reduction in the size.
2. Having both signs does not change the flavour of the house from a dwelling to a business.

Decision:

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

Reasons for Decision:

The Board finds the following:

1. Fascia On-premises Signs are a Permitted Use in the RA7 Low Rise Apartment Zone.
2. Freestanding On-premises Signs are a Discretionary Use in the RA7 Low Rise Apartment Zone.
3. The development on the subject Site is a Major Home Based Business, a Discretionary Use, which was allowed by the Board on March 22, 2013. A condition of that permit was:
There shall be no exterior signage, display or advertisement other than a business identification plaque or sign 20 centimetres by 30.5 centimetres in size located on the Dwelling.
4. The Appellant requests variances from the regulations in section 75 of the *Edmonton Zoning Bylaw*, which forbid Freestanding On-premises Signs and restrict the size of Fascia On-premises Signs for Major Home Based Businesses.
5. The Board declines to grant the variance requested waiving the prohibition for Freestanding On-premises Signs for Major Home Based Businesses.
6. Under section 7.3(7) of the *Edmonton Zoning Bylaw*:
Major Home Based Business means development consisting of the use of an approved Dwelling or Accessory building by a resident of that Dwelling for one or more businesses such businesses may generate more than one business associated visit per day. The business use must be secondary to the residential Use of the building and shall not change the residential character of the Dwelling

- or Accessory building. The Dwelling may be used as a workplace by a non-resident. This Use Class includes Bed and Breakfast Operations but does not include General Retail Sales.
7. The Board finds that allowing a Freestanding On-premises Sign would significantly alter the character of the subject Site making it immediately identifiable as a business use to both pedestrian and vehicular traffic.
 8. The Board declines to grant a variance for the proposed oversized Fascia On-premises Sign. The permit application applies for a Fascia On-premises Sign measuring 6 feet (1.83 metres) by 4 feet (1.22 metres), which is vastly in excess of what is allowed under section 75(1) of the *Edmonton Zoning Bylaw* and by the earlier condition placed by the Board on the permit for the Major Home Based Business.
 9. The Board finds that a Fascia On-premises Sign of 6 feet (1.83 metres) by 4 feet (1.22 metres) would alter the character of the building clearly indicating that the building is more commercial than residential in nature.
 10. It is the hallmark of a Major Home Based Business that people who view the development immediately perceive the development as primarily residential. The proposed Signs would prevent that from happening.
 11. Based on the above, it is the opinion of the Board, that the proposed development will unduly interfere with the amenities of the neighbourhood or 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. I. Wachowicz, Presiding Officer
Subdivision and Development Appeal Board