



**EDMONTON
TRIBUNALS**

*Subdivision &
Development
Appeal Board*

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Over The Rainbow

Date: May 12, 2016

Project Number: 187047819-001

File Number: SDAB-D-16-106

Notice of Decision

[1] On April 27, 2016, the Subdivision and Development Appeal Board heard an appeal that was filed on April 5, 2016. The appeal concerned the decision of the Development Authority, issued on March 23, 2016, to refuse the following development:

change the Use from a Single Detached Housing to Child Care Services (19 children - 5, 3-4.5yrs/ 6, 4.5-7yrs/ 8, school-aged-children) (Over the Rainbow) [unedited from Development Permit Refusal]

[2] The subject property is on Plan 1226AQ Blk 5 Lots 1-2, located at 9616 - 96 Avenue NW, within the RF3 Small Scale Infill Development Zone. The Mature Neighbourhood Overlay, North Saskatchewan River Valley and Ravine System Protection Overlay, and Cloverdale Area Redevelopment Plan apply to the subject property.

[3] The following documents, which were received prior to the hearing and are on file, were read into the record:

- Written submissions of the Appellant, received April 22, 2016;
- Copies of the Development Permit Application and Refusal;
- Written submissions of the Development Officer, dated April 18, 2016; and
- Two online responses from neighbours within the 60 m notification area, in opposition to the appeal, one of whom also submitted a letter of opposition.

Summary of Hearing

[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 appeal was filed on time, in accordance with Section 686 of the Municipal Government Act, RSA 2000, c M-26.

i) *Position of the Appellant, Over the Rainbow*

- [6] The Appellant was represented by Ms. C. Kinasewich, Mr. H. Kinasewich and Ms. T. Smitke, the Directors and Owners of Over the Rainbow Family-Centred Pediatric Services (“Over the Rainbow”).

Background

- [7] Ms. Kinasewich explained that Over the Rainbow is one of eight approved service providers for the Government of Alberta’s Family Support for Children with Disabilities. It is also accredited by Alberta Education. Over the Rainbow facilitates inclusion of children with special needs at home, school and within communities, and would like to expand on providing skill-specific, small group services.

Locational Preference

- [8] The subject property is situated on a corner Site, in front of Gallagher Park, and surrounded by the Muttart Conservatory and the Edmonton Ski Club. The design of the house is such that there are no residential neighbours to the sides or front of the house.
- [9] The location promotes the inclusion of special needs children and their families within the community, particularly in partnership with neighbouring businesses such as the Muttart Conservatory and the Edmonton Ski Club. The location provides a sense of “home” for children, rather than a hospital or an institution.

Exterior Lighting

- [10] Referring to the Appellant’s written submissions, Ms. Kinasewich clarified that there are two large floodlights, already existing, that illuminate the outdoor play space.

Location and Security of Outdoor Play Space

- [11] Ms. Kinasewich stated that locks secure the gate around the outdoor play space, providing additional security.
- [12] She recognized the concerns raised by the Development Officer with respect to the balcony on the second storey of the building. However, children will not be permitted to access rooms with balconies, and such rooms will also be locked.
- [13] With respect to the noise generated from the outdoor play space, Ms. Kinasewich noted that the application for Child Care Services with 19 children and 3 staff members is potentially misleading.
- [14] She provided background information about the initial difficulties in determining how to classify the Use class of the proposed development. After consultation with the

Development Authority, it was determined that Child Care Services Use was most suitable.

- [15] However, the actual services they would provide are not those of a traditional daycare, wherein children would be dropped off in the morning and picked up in the evening on a daily basis. Referring to the Appellant's written submissions, Ms. Kinasewich noted that the primary use for the centre would be for the facilitation of child care groups, wherein children would be placed in groups of no more than eight, meeting on a weekly basis for a variable number of weeks.
- [16] Due to the nature of the children's needs, it would not actually be possible to place them in groups of 19. As such, even though the application describes the development as Child Care Services for up to 19 children, in practice, group activities including outdoor play periods would be restricted to eight children or less at a time. Noise impacts would therefore be minimized, as would parking stresses since no more than eight children would be picked up or dropped off at any given time.
- [17] The Board drew attention to Section 80(8)(d) of the *Edmonton Zoning Bylaw*, which states in part:
- where on-site outdoor play space is provided, pursuant to the Provincial *Child Care Licensing Regulation*, it shall comply with the following regulations... outdoor play space may be allowed in any Yard, providing it is designed to limit any interference with other Uses, or the peaceful enjoyment of the properties of nearby residents, through fencing, landscaping, buffering and the placement of fixed play equipment.
- [18] The Board referred to the photographs in the Appellant's written submissions, which showed pictures of fencing and gates with no slats, with little landscaping around the perimeter of the property that would provide a noise buffer.
- [19] The Appellant clarified that fencing could be adapted as needed, without changing the character of the home, and additional shrubbery could be planted. Mr. Kinasewich observed that shrubbery exists on the south side of the property, referring to a photograph on page 14 of 17 from the Appellant's written submissions.
- [20] Ms. Kinasewich acknowledged that there is currently no definitive plan with respect to noise buffering of the outdoor play area, but that the centre would be prepared to collaborate with the community in this regard. She also reiterated that outdoor play groups would be limited to no more than eight children.
- [21] The Board explained that if it were to grant the development application for 19 children, the permit would run with the land, even if the Appellant were to relocate its services to a new location. While the Board recognized that Over the Rainbow may not fully utilize the 19 children capacity, a future owner or tenant may choose to do so.

- [22] The Appellant acknowledged the concerns of the Board, and stated that it would have no objections should the Board choose to impose a condition for a maximum of eight or ten children.

Parking and Loading Space Requirement

- [23] During questioning, the Appellant confirmed that for most programs, they expect children to be dropped off by their parents. For parent-child programming where parents would stay with the children during the entire session, there would be an average of six children, plus four to five parents.
- [24] Where needed, additional on-site parking is available on the side of the house. They are also prepared to negotiate with Edmonton Ski Club wherein off-site parking could be provided to the centre for a fee. A portion of the backyard could also be cut out to provide additional parking.
- [25] In response to questions from the Board about existing parking stresses, the Appellant clarified that although there is a possibility for after-school sessions, the majority of the services they provide will be offered during the weekday, when parking stresses spilling over from the Muttart Conservatory and the Edmonton Ski Club will be lessened. On the occasion where there are special events in the area, such as the Edmonton Folk Fest, they will avoid running children's groups. In addition, program scheduling is staggered such that there are never any overlaps between child assessment and group sessions.

Community Consultation

- [26] Upon questioning by the Board with respect to the community consultation requirements stipulated under Section 814.3(24), Ms. Kinasewich explained that she had not realized that letters of support or petitions are the usual method of recording the consultation process.
- [27] Instead, the Appellant spoke with a resident or owner from every home within the 60 metres notification area that was not under construction. The development was explained, and the verbal expressions of support from the residents were written down. With consent of the residents, their names and associated address were recorded, as were the dates that the resident was contacted.
- [28] Ms. Kinasewich stated that many neighbours offered to sign petitions or provide letters of support, but she declined their offers as she had thought that quoting their expressions of support would be sufficient.
- [29] Ms. Kinasewich also explained that due to the initial confusion about the proposed development's Use class, the initial contact with the community league related to a

possible rezoning of the Site. At that point, the community league maintained a neutral position.

[30] Once the Appellant realized that the proposed development could fit under Child Care Services, it attempted to provide the community league with an update, but was unable to speak directly with a community league representative.

[31] Mr. Kinasewich acknowledged the letter of opposition received from 9606 – 96 Street. However, it was his belief that the letter was from someone renting the home and not from the actual owner.

ii) *Position of the Development Officer, Ms. E. Peacock*

Locational Preference

[32] The Board referenced Section 80(1) of the *Edmonton Zoning Bylaw*, which states:

A Child Care Service shall comply with the following regulations:

1. in all low density Residential Zones the Development Officer shall, when making a decision on the suitability of the Child Care Service for the location proposed, give **preference** [emphasis added] to those facilities that are located:
 - a. abutting a collector or arterial road,
 - b. on a corner Site,
 - c. adjacent to or in community facilities such as a school, park, church or community centre; **or** [emphasis added]
 - d. adjacent to commercial areas or multi-family development;

[33] The Board noted that the use of the disjunctive, “or”, would suggest that only one of the four criteria need to be met to satisfy the requirements under Section 80(1). In this case, the subject property is located on both a corner site and adjacent to a park.

[34] Ms. Peacock explained that the Development Authority has interpreted the provision to mean that the first two criteria are read in conjunction (ie. abutting a collector or arterial road *and* on a corner Site), while the last two criteria are read disjunctively.

[35] The Development Officer also acknowledged the use of the word, “preference”; however, Section 80(1) also states that “A Child Care Service shall comply with the following regulations”. As such, in her mind, Section 80(1) remains a regulatory requirement and not an optional preference.

Parking and Parking Impacts

- [36] The Development Officer acknowledged the submissions of the Appellant with respect to exterior lighting, restricted access to above ground play space including rooms with balconies, and secure fencing for the outdoor play space in the rear and side yards. She stated that she no longer had any concerns with respect to these issues, but the potential noise and parking impacts remain.
- [37] Although there is sufficient parking on-site, it is provided as tandem parking, which is not permitted under the Bylaw. She acknowledged that Schedule 1(A)(33) to Section 54.2 allows the Development Officer to exercise discretion to consider tandem parking, but in her view, that provision relates specifically to day homes. She was unsure as to why the Bylaw draws this distinction, but she speculated that one tandem parking space may be permitted for day homes since residents actually live in the day home.
- [38] Upon questioning from the Board, she acknowledged that some of her concerns with respect to parking and noise impacts would be alleviated should the Board limit the maximum number of children to ten. However, she reiterated the Board's previous comments with respect to an approved permit running with the land, and noted that in the future, there could be more than eight children. As such, parking and noise impacts remain a concern.

Recommended Conditions for SDAB Consideration

- [39] She clarified that the recommended conditions as set out in her written submissions were recitations of various regulations under the *Edmonton Zoning Bylaw*. They serve as reminders to the Appellant that even if the Board were to grant the development, they must still comply with other bylaw provisions.
- [40] She did, however, emphasize the fourth recommendation, which states: "Outdoor play space shall be securely enclosed on all sides" pursuant to Section 80(8)(c) of the *Edmonton Zoning Bylaw*.

iii) Rebuttal of the Appellant

- [41] Ms. Kinasewich reiterated her previous points regarding the services Over the Rainbow intends to provide, the number of children who will participate in group activities, and her willingness to accept a condition for a maximum of ten children.
- [42] She noted that during the community consultation, members of the community, including the Edmonton Ski Club, drew attention to existing noise disturbances such as snow vehicles used by the Ski Club, which could impact the subject development. Ms.

Kinasewich stated that it would appear that community members are already accustomed to increased traffic and noise within the area.

Decision

[43] 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) At no given time can the Child Care Services development have more than ten non-resident children on site.
- 2) Outdoor play space shall be securely enclosed on all sides as per Section 80(8)(c) of the *Edmonton Zoning Bylaw*.
- 3) All outdoor trash collection areas shall be located and screened to the satisfaction of the Development Officer in accordance with Sections 55(4) and (5).
- 4) No children shall be allowed on the second story balcony. The development shall not provide children with access to the second story balcony.

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

- 1) Section 54.1(2)(f) is waived to permit Tandem Parking.
- 2) Schedule 2(1) to Section 54.3 is varied to permit a deficiency of five Bicycle Parking spaces.
- 3) Section 54.4(3)(a) and Schedule 3(2) to Section 54.4 are varied to permit a deficiency of one Loading Space.

Reasons for Decision

[45] Child Care Services are a Discretionary Use in the RF3 Small Scale Infill Development Zone.

[46] The Board first considered whether the proposed development, as a Discretionary Use, was appropriately located on the subject Site.

[47] In determining whether this Discretionary Use should be allowed, the Board was informed by Section 80(1) of the *Edmonton Zoning Bylaw*, which describes the preferred locations for Child Care Services within low density residential zones.

[48] Four criteria are listed under Section 80(1), and the Board notes that the list is disjunctive, meaning that the satisfaction of any one of the criteria in the list would allow the proposed development to be seen as a preferred location for Child Care Services.

Under Section 80(1), preference is given to a Child Care Service that meets one of the following four locational criteria:

- a. Abuts a collector or arterial road;
 - b. Located on a corner Site;
 - c. Adjacent to or in community facilities such as a school, park, church or community centre; or
 - d. Adjacent to commercial areas or multi-family development.
- [49] The Board finds that two of these criteria are met, namely the Site is a corner Site and adjacent to a park.
- [50] Although two neighbours expressed concerns about noise, the location will minimize the impact of the noise of children in the outdoor play area as will the condition that no more than 10 non-resident children are allowed onsite at one time.
- [51] Accordingly, the Board finds that not only the requirements of Section 80(1) have been met, but this development is an appropriate development for the subject Site, and this Discretionary Use will be allowed.
- [52] The Board has granted variances to the parking, loading space and bicycle requirements. These variances have been allowed for the following reasons:
- a. While the parking requirements have been calculated on the basis of nineteen children accessing this Child Care Service, the Board has placed a condition on this permit that a maximum of ten non-resident children may be present on the subject Site at any given time, thereby reducing the parking demands created by the development as allowed by the Board.
 - b. The reason that the parking requirements of the *Edmonton Zoning Bylaw* were not strictly complied with stems from the fact that parking stalls located in tandem are not included in the number of parking stalls that are considered by the Bylaw to be present on the subject Site. The evidence from the Appellants, however, was that the existence of the tandem stalls would reduce the impact of the development upon on-street parking. While the tandem stalls are not ideal, they do mitigate the parking impact of this development that would otherwise exist with respect to the neighbouring lands.
 - c. The Cloverdale Area Redevelopment Plan applies to the subject development, and the Board notes that the Cloverdale Area will eventually be serviced by the Light Rail Transit system, which will reduce the on-street parking demands within the neighbourhood.

- d. The Permit is for a Child Care Services development, and the Board finds that such a development will generate minimal visits via bicycle, as most of the time, parents will be dropping off their children at the subject Site either on foot or by way of a motor vehicle.
- e. While the Board did receive one letter in opposition to the subject development and evidence by a neighbouring property owner objecting to this appeal, the neighbourhood consultation conducted by the Appellants demonstrated widespread support in the community for this development.

[53] Accordingly, the granting of the variances 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. As such, the appeal is allowed and the development is granted, subject to the conditions imposed.

Ian Wachowicz, Chair

Subdivision and Development Appeal Board

Board Members in Attendance

Mr. M. Young, Mr A. Nagy, Ms. K. Oviatt, Ms. K. Thind

Advisements:

- 1) Signs require separate Development Applications.
- 2) An approved Development Permit means that the proposed development has been reviewed only against the provisions of the Edmonton Zoning Bylaw. It does not remove obligations to conform with other legislation, bylaws or land title instruments such as the Municipal Government Act, the ERCB Directive 079, the Edmonton Safety Codes Permit Bylaw or any caveats, covenants or easements that might be attached to the Site.
- 3) The Development Permit shall not be valid unless and until the conditions of approval, save those of a continuing nature, have been fulfilled; and no notice of appeal from such approval has been served on the Subdivision and Development Appeal Board within the time period specified in subsection 21.1 (Ref. Section 17.1).
- 4) The City of Edmonton does not conduct independent environmental checks of land within the City. If you are concerned about the suitability of this property for any purpose, you should conduct your own tests and reviews. The City of Edmonton, in issuing this 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.

- 5) 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.
- 6) This Development Permit is not a Business Licence. A separate application must be made for a Business Licence.

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*, RSA 2000, c S-1;
 - c. the requirements of the *Permit Regulation*, Alta Reg 204/2007;
 - d. the requirements of any other appropriate federal, provincial or municipal legislation; and
 - 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 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.



Date: May 12, 2016
Project Number: 179771257-001
File Number: SDAB-D-16-107

Notice of Decision

- [1] On April 27, 2016, the Subdivision and Development Appeal Board heard an appeal that was filed on April 4, 2016. The appeal concerned the decision of the Development Authority, issued on March 18, 2016, to approve the following development:

operate a Major Home Based Business (Administration office and storage for framing contractor - SSW CONSTRUCTION) [unedited from Development Permit]

- [2] The subject property is on Plan 1321173 Blk 1 Lot 22, located at 1508 - 30 Avenue NW, within the RSL Residential Small Lot Zone. The Tamarack Neighbourhood Area Structure Plan and Meadows Area Structure Plan apply to the subject property.

- [3] The following documents, which were received prior to the hearing and are on file, were read into the record:

- Appellant's submissions and email attachments, received April 26, 2016;
- Ten photographs and 21 letters of support, submitted by the Respondent and received on April 27, 2016;
- Copies of the Development Permit Application and Decision;
- Development Officer's Written Submissions, dated April 20, 2016; and
- One online response expressing neither support nor opposition to the development.

Summary of Hearing

- [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 appeal was filed on time, in accordance with Section 686 of the *Municipal Government Act*, RSA 2000, c M-26.

- [6] The Presiding Officer noted that the Appellant would not be attending the hearing, as indicated in an email from the Appellant, dated April 26, 2016. The Board accepted the Appellant's written submissions and proceeded with the hearing.

i) *Position of the Respondent, Mr. S. Uppal*

- [7] Mr. Uppal was represented by legal counsel, Mr. R. Bhalla.
- [8] Mr. Bhalla summarized the background information for the proposed development. No materials are ordered or delivered to the home. There is no storage of any materials on the subject Site, as any materials picked up or dropped off from the construction site are stored within the trailer.
- [9] Mr. Bhalla explained that the Applicant had previously left the trailer on a construction Site overnight, and the expensive materials stored within the trailer were stolen. It is therefore necessary to store the trailer on the subject property.
- [10] He submitted that the 12-foot trailer by itself does not constitute outdoor storage of a piece of equipment; rather, the equipment is stored within the trailer itself. When parked, the trailer is unhooked and stored on the Driveway. The height of the trailer prevents it from being stored in the garage.
- [11] In the morning, the trailer is hooked onto the Ford F-150 truck, and leaves the subject Site at around 7 or 8 a.m. Both the truck and trailer return at around 7 or 8 p.m. The truck and trailer are operated by the Applicant or his brother. On the way to or from the construction site, they would pick up or drop off employees, but no employees actually come to the subject Site.
- [12] Four family members reside in the subject property, each with a vehicle. As such, four vehicles are associated with the residence, including the Ford F-150 truck and trailer.
- [13] The Board noted that a condition of the Development Officer's approval of the proposed development was that "All commercial, industrial and overweight vehicles shall be parked at an approved storage facility. The Development Permit may be revoked if any commercial, industrial and overweight vehicles are parked or stored at the residential site." The Board questioned whether the Ford F-150 truck and trailer could be considered a "commercial, industrial and overweight vehicle".
- [14] In response, Mr. Bhalla submitted that the Ford F-150 truck is identified as a normal truck. In support, he submitted Exhibit "A", an electronic photograph of the vehicle registration for the Ford F-150 truck. The vehicle registration stated that the truck weighs 3170 kg, which is less than the maximum gross vehicle weight of 4,600 kg permitted under Section 45(1)(b) of the *Edmonton Zoning Bylaw*.
- [15] The Board referred to an image submitted by the Appellant, which showed the Ford F-150 truck with the attached trailer parked on the street. Mr. Bhalla explained that during the course of the day, the Applicant or his brother may return home for lunch, and in such case, they would not unhook the trailer from the truck. Also, when the Applicant arrives home, the trailer is initially still hooked to the truck; however, overnight, the trailer is

unhooked. He referred the Board to a photo submitted by the Respondent, showing the unhooked trailer parked on the Driveway.

[16] When questioned about the existing parking stresses in the neighbourhood, Mr. Bhalla stated that to his knowledge, there are no other such trailers in the neighbourhood. He clarified that there is only fencing across from the subject property, and no houses have been built. There are no parking restrictions, and anyone can park along the street, which is usually empty.

[17] Mr. Bhalla acknowledged the letter of opposition, but noted that it is from an individual who resides approximately three to four houses down from the subject property.

ii) Position of the Development Officer, Ms. F. Hetherington

[18] Ms. Hetherington explained that the variance to Section 75(5) with respect to the outdoor storage of materials was granted subject to the trailer remaining parked on the Driveway, and that signatures of support were obtained from the immediately adjacent neighbours.

[19] With respect to the Ford F-150 truck being parked on the street at various times of the day, sometimes with the trailer connected, Ms. Hetherington clarified that she would not have considered the application had she known that there would be on-street outdoor storage of business-related materials or equipment.

[20] She acknowledged that decisions with respect to Home Based Business applications can be subjective, as each application is different. For example, if frequent complaints regarding on-street parking are received, the Development Authority would take those complaints into consideration. A development compliance officer would also investigate the Site, and fines could be issued. The development permit could also be revoked.

[21] Upon questioning by the Board with respect to the Bylaw's distinction between the parking of recreational vehicles versus trailers, Ms. Hetherington acknowledged that she was unclear as to why a differentiation has been made. However, she opined that recreational vehicles are generally parked for a shorter or temporary period of time, usually during the summer months when in use, and are stored elsewhere during the off-season. Trailers, by contrast, are expected to require more long-term storage due to the nature of their use.

Decision

[22] The appeal is **ALLOWED** and the decision of the Development Authority is **REVOKED**. The development is **DENIED**.

Reasons for Decision

[23] Major Home Based Business is a Discretionary Use in the RSL Residential Small Lot Zone.

[24] The *Edmonton Zoning Bylaw* sets out under Section 45 the regulations pertaining to Home Based Businesses. Key amongst them is Section 75(5), which states:

A Major Home Based Business shall comply with the following regulations: ...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;

[25] This application includes, and may even centre around, an application for outdoor storage of a 12-foot utility trailer. The Development Officer granted a variance to Section 75(5) to allow for the outdoor storage of this trailer on the front driveway.

[26] Although the Respondent argued that the trailer did not constitute equipment, the Board finds that the trailer is equipment as that term is used in Section 75(5). The Board also accepts the evidence of the Appellant that the trailer is frequently stored on the street, either alone or hitched to the Respondent's truck.

[27] The Board is of the view that this variance should not be granted. The test for granting a variance is set out in Section 687(3)(d), which states:

In determining an appeal, the subdivision and development appeal board... may make an order or decision or issue or confirm the issue of a development permit even though the proposed development does not comply with the land use bylaw if, in its opinion,

(i) the proposed development would not

(A) unduly interfere with the amenities of the neighbourhood, or

(B) materially interfere with or affect the use, enjoyment or value of neighbouring parcels of land,

and

(ii) the proposed development conforms with the use prescribed for that land or building in the land use bylaw.

- [28] Section 687(3)(d) consists of a two-part test, which requires that the Board first be satisfied that the granting of the variance will not materially affect the use, value and enjoyment of neighbouring properties. The Board recognizes that twenty-one letters of support have been received. The Board has reviewed these letters, which are a form letter prepared by the Respondent-Applicant that was then signed by individuals in the neighbourhood. The form letter however, does not identify the requested variance. It simply states that the undersigned has “no objection or concern to allow a Home Based Business SSW CONSTRUCTION application for permit to operate business from the residence.” The form does not specify outdoor storage of a 12-foot trailer, nor the on-street parking that the trailer may occupy from time-to-time. The weight given to the letters of support is thereby lessened.
- [29] Under Section 115.1, the General Purpose of the Residential Small Lot (“RSL”) Zone is “to provide for smaller lot Single Detached Housing with attached Garages in a suburban setting that provides the opportunity for the more efficient utilization of undeveloped suburban areas and includes the opportunity for Secondary Suites.”
- [30] This purpose to provide for increased densification, while maintaining a “suburban setting”, is not furthered by allowing outdoor storage of a clearly very visible, large piece of equipment, namely the 12-foot utility trailer. The houses in the RSL Zone are closer together than in other residential zones, such as the RF1 Single Detached Residential Zone, which increases the impact upon surrounding properties stemming from the storage of the trailer. Given that this is not only a contravention of the outdoor storage regulations under Section 75(5), but also the front yard storage of equipment, the Board finds that the amenities of the neighbourhood will be unduly impacted by the proposed application.
- [31] The Board also took into consideration the definition of Major Home Based Business under Section 7.3(7), which states:
- 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.* [emphasis added] 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.
- [32] While the buildings themselves will not be affected by the proposed development, storing the 12-foot utility trailer on the front Driveway, as well as on-street, does negatively impact the residential nature of the subject Site, and materially interferes with the use and enjoyment of neighbouring parcels of land.

[33] As such, the Board declines to grant the required variance and the appeal is allowed.

Ian Wachowicz, Chair
Subdivision and Development Appeal Board

Board Members in Attendance

Mr. M. Young, Mr A. Nagy, Ms. K. Oviatt, Ms. K. Thind

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 the Sustainable Development Department, located on the 5th Floor, 10250 – 101 Street, Edmonton.



Rohit Communities Inc.
550 - 91 Street SW
Edmonton AB T6X 0V1

Date: May 12, 2016
Project Number: 186009506-001
File Number: SDAB-D-16-108

Notice of Decision

[1] On April 27, 2016, the Subdivision and Development Appeal Board heard an appeal that was filed on April 4, 2016. The appeal concerned the decision of the Development Authority, issued on March 16, 2016, to approve the following development:

Construct 5 Apartment House buildings (87 Dwellings) and 3 Row House buildings (15 Dwellings). Total number of Dwellings is 102 [unedited from Development Permit decision]

[2] The subject property is on Plan 1424127 Blk 5 Lot 102, located at 420 – Allard Boulevard SW, within the RA7 Low Rise Apartment Zone. The Allard Neighbourhood Area Structure Plan applies to the subject property.

[3] The following documents, which were received prior to the hearing and are on file, were read into the record:

- The Appellant's letter of opposition, with photos;
- Respondent-Applicant's written submissions, dated April 27, 2016;
- Copies of the Development Permit Application and Approval, with original plans and revised plans, with attachments, including advisements from Fire Rescue Services and Drainage;
- Various correspondence exchanged between the Applicant and the Development Authority; and
- Development Officer's written submissions, dated April 20, 2016

Preliminary Matter

[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 appeal was filed on time, in accordance with Section 686 of the *Municipal Government Act*, RSA 2000, c M-26.

- [6] The Presiding Officer pointed out that the both Apartment Housing and Row Housing are permitted uses in the RA7 Low Rise Apartment Zone and that the only variance granted related to the mix of coniferous and deciduous trees on the site. He referred the parties to Section 685(3) of the *Municipal Government Act*, which states: “Despite subsections (1) and (2), no appeal lies in respect of the issuance of a development permit for a permitted use unless the provisions of the land use bylaw were relaxed, varied or misinterpreted.”
- [7] The Presiding Officer explained that the grounds for appeal are restricted to submissions with respect to whether the land use bylaw had been misinterpreted, or whether the variance regarding the landscaping would unduly interfere with the amenities of the neighbourhood, or materially interfere with or affect the use, enjoyment or value of neighbouring parcels of land.

Summary of Hearing

i) Position of the Appellant, Mr. H. Dhillon

- [8] Mr. Dhillon was accompanied by Mr. D. Mathew and Mr. J. Homvye, who reside within 60 metres of the subject property.
- [9] Mr. Dhillon stated that he moved into his home just a few months ago, and found out only afterward that the zone for the proposed development was not MDR (“Medium Density Residential”) as stated on one of the developer’s signs. His main concern is the impact of the development upon his privacy. His property is located at the edge of the proposed development, so any development will occur adjacent to his backyard. In his mind, the variance to allow the ratio of coniferous to deciduous trees to be 70:30 should not be granted. The 50:50 ratio required by the *Edmonton Zoning Bylaw* would provide greater screening and less impact upon the privacy of his backyard.
- [10] Mr. Mathew stated that the signboard for the development states that the property is zoned MDR, which he understood to be an abbreviation for Municipal Dynamic Reserve. He had no concerns with respect to the variance granted to the ratio of coniferous to deciduous trees.
- [11] Mr. Homvye occupies the corner lot property opposite the development. His concerns mirror those of Mr. Dhillon and Mr. Mathew. He noted that trees do not grow overnight, and will take five to ten years to fully develop. During that time, the privacy of his property will be negatively impacted by the proposed development.

ii) *Position of the Development Officer, Mr. K. Bacon*

- [12] After providing a summary of the development, Mr. Bacon explained that the regulations in the *Edmonton Zoning Bylaw* provide for an approximate 50:50 ratio of coniferous to deciduous trees, which he took into consideration when reviewing the plans provided by the Respondent's landscape architect. However, he decided to grant the variance based on the concerns raised by the landscape architect about overcrowding on the site.
- [13] Subsequent to this appeal, the Respondent submitted a second set of plans which does not require a variance to the 50:50 ratio. He has reviewed these plans and they are in compliance with the *Edmonton Zoning Bylaw*. He confirmed that, if the Board accepted the new plans, the proposed development would be a Class A Development with no variances.
- [14] Upon questioning by the Board, Mr. Bacon stated that, when reviewing the landscaping requirements, his biggest concern had been the impact upon the properties lying along the west property line, where a mix of Row Housing and Single Detached Housing exists. The revised plan, with a greater number of coniferous trees, would provide for more screening for these properties.
- [15] The Board noted that the Allard Neighbourhood Area Structure Plan provides for a higher standard of urban design for new developments, and questioned how the proposed development meets this criteria. As an example, Mr. Bacon explained that most of the apartment buildings front onto the boulevard, which creates a greater sense of occupancy and streetscape appeal. He also confirmed that the landscaping plan he approved exceeds the landscaping requirements with respect to the number of trees.

iii) *Position of the Respondent, Rohit Communities Inc.*

- [16] The Respondent was represented by Mr. B. Trevelyan.
- [17] Mr. Trevelyan reiterated information from the Respondent's written submissions. He drew attention to the letter that was submitted, which stated in part that "It should be noted the zoning for this site was approved as RA7 on May 23, 2013 by the subdivision authority under LDA13-0041."
- [18] Mr. Trevelyan explained that on the original design, the landscape architect suggested a ratio of 70:30 to create more openness. Over time, coniferous trees grow up and outward, and begin to spill onto sidewalks, whereas deciduous trees grow up and create greater openness and, therefore, better sight lines and more safety for residents.

[19] Mr. Trevelyan noted that, notwithstanding the submission of the revised landscaping plan for a 50:50 ratio of trees, the landscape architect still expressed concern about too many trees and too much crowding with this plan.

iii) Rebuttal of the Appellant

[20] The Appellant acknowledged the Respondent's submission with respect to the additional safety afforded by a 70:30 ratio of trees. However, he pointed out that this additional security benefits the residents of the subject development, whereas the privacy of neighbouring properties is negatively impacted.

Decision

[21] The appeal is DENIED and the decision of the Development Authority is CONFIRMED. The development is GRANTED as approved by the Development Authority.

Reasons for Decision

[22] Apartment Housing and Row Housing are Permitted Uses in the RA7 Low Rise Apartment Zone.

[23] Section 685(3) of the *Municipal Government Act* states that no appeal lies in respect of the issuance of a development permit for a permitted use unless the provisions of the land use bylaw were relaxed, varied or misinterpreted.

[24] The one variance granted by the Development Officer related to the ratio of coniferous trees and deciduous trees required under Section 55.8(3) of the *Edmonton Zoning Bylaw*, which states in part: "All planting shall conform to the following... the proportion of deciduous to coniferous trees and shrubs shall be approximately 50:50".

[25] In the written submissions received from the Appellant and other affected parties, the main concern raised was the presence of multi-storey buildings next to single family housing. The variance was not addressed at all.

[26] In oral submissions, with respect to the variance, one resident in opposition to the development expressed no concern. The Appellant and another resident expressed a preference for a 50:50 ratio of deciduous to coniferous trees, which they felt would provide greater privacy screening for their properties.

[27] The Board notes that the landscaping plan approved by the Development Authority provides for more trees than are required by the *Zoning Bylaw*. Although more coniferous

trees would provide somewhat greater privacy to some nearby residents, the Board is of the opinion that the approved landscaping plan provides adequate privacy and that the variance granted 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.

[28] Accordingly, the appeal is denied.

Mark Young, Presiding Officer
Subdivision and Development Appeal Board

Board Members in Attendance

Mr A. Nagy, Ms. K. Oviatt, Ms. K. Thind

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*, RSA 2000, c S-1;
 - c. the requirements of the *Permit Regulation*, Alta Reg 204/2007;
 - d. the requirements of any other appropriate federal, provincial or municipal legislation; and
 - 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 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.