



**EDMONTON
TRIBUNALS**

*Subdivision &
Development
Appeal Board*

*10019 - 103 Avenue NW
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Date: April 21, 2016
Project Number: 180917066-001
File Number: SDAB-D-16-087

Notice of Decision

- [1] On April 6, 2016, the Subdivision and Development Appeal Board heard an appeal that was filed on March 4, 2016. The appeal concerned the decision of the Development Authority, issued on February 25, 2016, to refuse the following development:

Construct interior alterations (add 1 unit, increase from a 21 unit to a 22 unit building) to an existing Apartment Housing building, existing without permits.

- [2] The subject property is on Plan 7726AH Blk D Lots 9-11, located at 10337 - 122 Street NW, within the RA7 Low Rise Apartment Zone. The Medium Scale Residential Infill Overlay applies to the subject property.
- [3] The following documents were received prior to the hearing:
- Appellant's submissions;
 - Development Officer's submissions; and
 - Refused Development Permit.

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, Mr. D. Mitton

- [6] Mr. Mitton asks the Board to approve a development permit to construct one additional unit to a 21 unit apartment building complex, for a total of 22 units.

- [7] Prior to Mr. Mitton's involvement with the apartment complex, the unit in question was built as a four bedroom unit. In the 1970s or 1980s it was converted to two one-bedroom units. The building was constructed in 1969 an approved building permit for 21 units.
- [8] Mr. Mitton argued that the impact of the additional unit is mitigated because the apartment complex is located in Oliver, a highly dense neighbourhood with adequate parking to accommodate the additional unit.

ii) Position of the Development Officer, Mr. B. Liang

- [9] The Board asked Mr. Liang if he was aware of density, and amenity and balcony depth requirements as they existed in the Land Use Bylaw when the apartment complex was built in 1969. Mr. Liang advised the Board that he did not conduct an historical search of the legislative requirements of that time, but conceded that it is possible the building is a legal non-conforming building.
- [10] He also advised the Board that the Development Officer does not have the authority to vary density regulations.

Decision

- [11] The appeal is **ALLOWED** and the decision of the Development Authority is **REVOKED**. The development is **GRANTED**. In granting the development the following variances to the *Edmonton Zoning Bylaw* are allowed:
- i)* A variance to the maximum Density requirement pursuant to Section 210.4(1) is granted to allow for an increase in density from 15units to 22 units.
 - ii)* A variance of 3.78 square metres to the minimum Amenity Area per dwelling pursuant to Section 210.4(10).
 - iii)* A variance of 0.78 metres to the depth of the balcony Amenity Area pursuant to Section 46(3)(a) for a proposed depth of 1.2 metres.

Reasons for Decision

- [12] Pursuant to Section 210.2(1), the subject Site is a Permitted Use in the RA7 Medium Scale Residential Infill Overlay Zone.
- [13] Twenty-two units have existed in this apartment complex since the 1970s or 1980s without known complaint.
- [14] The Appellant indicated and provided evidence that the apartment complex structure has been identified to the City, and taxed as a 22 unit apartment complex since the Appellant purchased the apartment complex one year ago.

- [15] The Development Officer acknowledged that the building could possibly be a legal non-conforming use, which is allowed under the *Municipal Government Act*.
- [16] With respect to the variances granted, the Board asked the Development Officer if he had any knowledge of the minimum Amenity Areas and Density requirements when the building was constructed in 1969. The Development Officer indicated that he was not aware of what was in force in the Land Use Bylaw at that time. However, he indicated that the Development Officer originally assigned to the matter (just prior to Mr. Liang's involvement with the file) did not raise any issue with regard to impacting the amenities of the community.
- [17] Therefore, the Board finds that the proposed development would not unduly interfere with the amenities of the neighbourhood, or materially interfere with or affect the use, enjoyment or value of neighbouring parcels of land.

Mr. B. Gibson, Presiding Officer
Subdivision and Development Appeal Board

Board members:
Ms. A. Lund
Ms. E. Solez
Mr. N. Somerville
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*,
 - 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*, 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.
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.



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Date: April 21, 2016
Project Number: 187264729-001
File Number: SDAB-D-16-088

Notice of Decision

[1] On April 6, 2016, the Subdivision and Development Appeal Board heard an appeal that was filed on March 10, 2016. The appeal concerned the decision of the Development Authority, issued on March 7, 2016, to refuse the following development:

Change the Use from a General Retail Stores to a Minor Alcohol Sales and to construct interior alterations.

[2] The subject property is on Plan 1025566 Blk 3 Lot 9, located at 5003 - 55 Avenue NW, within the CSC Shopping Centre Zone.

[3] The following documents were received prior to the hearing:

- Affected Property Owners Report;
- Appellant's written submissions;
- Development Officer's refusal, drawings, and written submissions; and
- Refused Development Permit.

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, Mr. V. Thind

[6] Mr. Thind seeks a development permit to change the use of his business from a General Retail Store to a liquor store, but was refused because another liquor store, which has a valid development permit, exists within 500 metres from the location of his store.

- [7] He argued that the other liquor store has not been open in the past six months and submitted photographic evidence to substantiate his claim.
- [8] Both liquor stores are located in an industrial area across the business park, east of 50th Street and 55th Avenue.

ii) Position of the Development Officer, Mr. C. Chan

- [9] Mr. Chan provided a map (Exhibit “A”) showing the location of both liquor stores.
- [10] He confirmed that Section 85 of the Edmonton Zoning Bylaw prevents the Development Authority from granting a variance to the required 500 metres separation distance between the two liquor stores, but conceded that the proposed development would not have adverse impacts on the neighbourhood because there are no residential homes nearby.
- [11] Mr. Chan advised that the affected business owner had a valid development permit issued in 2009, but no current business license to operate a minor liquor store.

iii) Rebuttal of the Appellant

- [12] Mr. Thind argued that his store is 136 metres away from the other liquor store, which has never been an operating business. There is no negative impact on the community because they are in a shopping centre in an industrial area, away from residential properties.

Decision

- [13] The appeal is **ALLOWED** and the decision of the Development Authority is **REVOKED**. The development is **GRANTED**. In granting the development the following variances to the *Edmonton Zoning Bylaw* are allowed:
- i)* A variance to the minimum separation distance required between Major and Minor Alcohol Sales use establishments pursuant to Section 85 is granted to allow for a separation deficiency of 364 metres.

Reasons for Decision

- [14] The proposed development is a Permitted Use in the CSC Commercial Shopping Centre Zone.
- [15] In this case the Board’s test is enunciated in Section 687(3)(d) of the *Municipal Government Act* in accordance with the principles of *Newcastle Centre GP v Edmonton*,

2014 ABCA 295. Section 85(3) of the *Edmonton Zoning Bylaw* provides that any Major or Minor Alcohol Sales Use shall not be located closer than 500 metres from any other Major or Minor Alcohol Sales Use.

- [16] Based on the evidence submitted, the proposed development is located 136 metres from an existing Minor Alcohol Sales Use establishment.
- [17] The proposed development is located on a large site separated from a Minor Alcohol Use development, west of a major arterial roadway.
- [18] The Board recognizes that City Council's intent for the legislated 500 metres separation distance was to address negative impacts arising from the concentration of liquor stores. The potential negative impact includes the devaluation of neighbouring properties, excessive traffic, public drunkenness, crime, and the sale of liquor to minors.
- [19] The Board is required to evaluate each development on its own merits to determine whether it 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. However, the Board cannot assume these negative impacts will arise every time two liquor stores are within 500 metres of one another. Moreover, the Board notes these businesses are located in an industrial area, and will not have an impact on neighbouring residential properties.
- [20] Further, the two liquor stores are separated by a major arterial roadway and there is no direct access between them. This factor reduces the concentration effect that City Council was trying to address in legislating the 500 metres separation distance between Major and Minor Alcohol Sales Use establishments.
- [21] No evidence was presented to the Board to show how the proposed liquor store might result in a negative impact that City Council is concerned about, such as excessive traffic, public drinking, crime, or the sale of liquor to minors.
- [22] The operator of the adjacent liquor store provided only reasons for negative commercial impact, but failed to provide any indication of a negative impact from a planning point of view.

[23] Based on the above, the Board finds that the proposed development will not unduly interfere with the amenities of the neighbourhood, or materially interfere with or affect the use, enjoyment or value of neighbouring parcels of land.

Mr. B. Gibson, Presiding Officer
Subdivision and Development Appeal Board

Board members:
Ms. A. Lund
Ms. E. Solez
Mr. N. Somerville
Ms. K. Thind

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 - 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*, 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.
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Date: April 21, 2016
Project Number: 184004621-001
File Number: SDAB-D-16-089

Notice of Decision

- [1] On April 6, 2016, the Subdivision and Development Appeal Board heard an appeal that was filed on March 15, 2016. The appeal concerned the decision of the Development Authority, issued on February 26, 2016, to approve the following development:
- To construct a two Storey Accessory Building (Garage Suite on the second floor, Garage on the main floor; 9.14m x 8.53m), and to demolish the existing rear detached Garage.
- [2] The subject property is on Plan 6490KS Blk 19 Lot 8, located at 13207 - 105 Street NW, within the RF1 Single Detached Residential Zone. The Mature Neighbourhood Overlay applies to the subject property.
- [3] The following documents were received prior to the hearing:
- Appellant's submissions; approved development permit, and letters from community members; and
 - Plans, drawings, a waiver, and written submissions from the Development Officer.

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, Mr. and Mrs. Desjarlais*

- [6] Mr. and Mrs. Desjarlais are concerned that the proposed development will cause an increase in parking and traffic congestion. They also believe the increase in traffic will present a safety concern for children playing in the front yard and rear alleyway. Their view of their backyard is impacted because of the cars parked in the rear laneway.
- [7] They are also concerned that the proposed development will decrease their property value and will have a negative impact on the established, larger lot-smaller house, single family neighbourhood.

ii) Position of Affected Property Owners in Support of the Appellant, Mr. M. Steingard

- [8] Mr. Steingard lives next door to the proposed development. He has four concerns. First, his view from his home will be obstructed by the two-storey development, the result of which will be a decrease in his property value.
- [9] Second, he is concerned about increased parking on an already congested street. He advised the Board that there are seven vehicles associated with the proposed development.
- [10] Third, the yard has been poorly maintained and more occupants will exacerbate the problem.
- [11] Finally, privacy is a concern given the Height of the proposed development as compared to the surrounding single-storey homes and Garages. He argued that he will not feel comfortable using his deck and patio given that the occupants of the proposed development will have a full view of his yard.
- [12] Mr. Steingard provided a series of photographs (Exhibit "A") to illustrate the parking congestion and the nature of a two-storey building compared to the rest of the neighbourhood.
- [13] Mr. Steingard confirmed that the Respondents did not consult with the neighbours about the proposed development.

iii) Position of Affected Property Owners in Support of the Appellant, Mr. J. Osborn

- [14] Mr. Osborn lives across the alley from the proposed development and is concerned about privacy, parking, and cleanliness of the yard. He confirmed he was not consulted about the proposed development.

iv) Position of the Development Officer, Mr. G. Robinson

- [15] Mr. Robinson provided the Board with an explanation of his decision to approve the proposed development. He noted that the elevation plans show a bump out articulation that helps reduce building massing, and the windows facing the other homes are opaque.
- [16] He also attached a number of conditions to the approved development permit including, notably, that the workshop on the lower level shall not be used as a bedroom, and that the proposed development can only house three unrelated persons because of an earlier lodging complaint about the principal dwelling that was investigated by Bylaw Enforcement.
- [17] Mr. Robinson was asked if his decision would have changed if he had known about the lodging complaint prior to making his decision. He advised the Board that the lodging complaint would have to be dealt with prior to approving the proposed development.
- [18] The Board noted a number of problems with the building plans for the proposed development including the fact that under the *Edmonton Zoning Bylaw*, a Garage Suite is defined as a residence located over a Garage (not over a Garage and workshop). Mr. Robinson advised the Board that the Garage and workshop area are to be used by occupants of the principal dwelling.
- [19] Another issue with the building plans for the proposed development is that the plans indicate “Bedroom 1” and “Bedroom 2” when in fact Bedroom 1 is actually the workshop. Mr. Robinson advised the Respondents that Applicant had initially proposed to use the workshop as a bedroom, but upon being advised that the minimum floor area was insufficient for a bedroom, the Respondents decided to repurpose the space as a workshop.
- [20] Mr. Robinson confirmed that there is no Home Based Business registered to the subject property and that Section 87(13) prohibits both a Garage Suite and a Major Home Based Business on the same subject Site (but a Minor Home Based Business could be permitted).
- [21] When asked whether consultation is required in this case, pursuant to Section 814.3(23), Mr. Robinson advised the Board that consultation is not required in this case because a variance to the Mature Neighbourhood Overlay has not been granted since it is a Discretionary Use in the underlying zone.

v) Position of the Respondent, Mr. M. Azad

- [22] Mr. Azad advised the Board that there are four occupants of the subject property; he argued that the lodging issue can be resolved because one person is moving out at the end of April.

- [23] He argued, with respect to the suggestion that the yard is unkempt, that the Appellants and affected neighbours have provided no evidence to that effect and that furthermore, it is a matter of Bylaw Enforcement.
- [24] With respect to the Appellants and affected neighbours' argument that they can no longer use their backyards because of privacy issues stemming from the proposed development, he argued that at this point, there is still a Garage on the subject property, albeit a single-storey Garage, and there is a nearby park for people to use.
- [25] He argued that impact on neighbouring property values is "not their issue to deal with".
- [26] When asked by the Board what the workshop space will be used for, he advised the Board that it will be used to fix cars for personal, not commercial purposes. He also advised that the workshop will be for storage of household items; it would not be used by the tenants of the principal residence.
- [27] Asked whether he intends to live in the home, he advised the Board that he does not; he is the landlord. The Board further questioned why they would require the space for storage since they do not live at the subject property. Mr. Azad responded that he lives five or six minutes away.

vi) Rebuttal of the Appellant

- [28] They reiterated that they are concerned about the obstruction of their view and restricted privacy as a result of the Height of the proposed development. They further argued that they do not want to have to go to a park to have family gatherings and that they should be able to use their yard as they have always done.

Decision

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

Reasons for Decision

- [30] The proposed development is a Discretionary Use in the RF1 Single Detached Residential Zone.
- [31] The Board was provided with evidence that the building plans were originally for a three bedroom Garage Suite with one of those bedrooms being on the main floor of the subject Site.
- [32] The design and layout that currently exists on the plans are more reflective of a bedroom than they are of a workshop.

- [33] The Respondent's evidence was unclear as to what they were going to use the space for. They indicated a variety of uses, however, the Board finds that the plans are more consistent with the use of the space as a bedroom as opposed to any other use.
- [34] The Board notes that neighbours from three properties were present to voice their concerns with respect to the massing of the structure that would cause over-look and privacy issues, and to raise objection to the parking proposal that was contained with the structure's building plans.
- [35] In addition, the Board received two letters from residents who were not present at the hearing voicing concern about the massing, over-look, and parking impacts of the proposed development.
- [36] The Board also notes the subject property is a rental property. As indicated in the Development Officer's written submissions, because there are more unrelated residents in the principal dwelling, it is more reflective of a Lodging House than a single family residence.
- [37] The Respondents' indicated they were going to resolve the Lodging House complaint issue in the coming months. The Development Officer, however, indicated that if this had come to light prior to his approval, the lodging issue would have had to be resolved before he would have approved the proposed development.
- [38] The Development Officer also indicated that if this should be classified as a Lodging House, then a Garage Suite is not a Permitted Use.
- [39] The Board finds that refusal of the proposed development is necessary to ensure that there will be no interference with the amenities of the neighbourhood, or material impact on the use, enjoyment or value of neighbouring parcels of land.

Mr. B. Gibson, Presiding Officer
Subdivision and Development Appeal Board

Board members:
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Ms. E. Solez
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Important Information for the Applicant/Appellant

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