



**EDMONTON  
TRIBUNALS**

*Subdivision &  
Development  
Appeal Board*

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Date: August 16, 2018  
Project Number: 280807879-001  
File Number: SDAB-D-18-105

**Notice of Decision**

**July 19, 2018 Hearing:**

Motion:

“That SDAB-D-18-105 be TABLED to August 15 or 16, 2018.”

**August 15, 2018 Hearing:**

Motion:

“That SDAB-D-18-105 be raised from the table.”

[1] On August 15, 2018, the Subdivision and Development Appeal Board (the “Board”) heard an appeal that was filed on **June 26, 2018**. The appeal concerned the decision of the Development Authority, issued on June 15, 2018, to refuse the following development:

**Add one additional Dwelling to an existing Apartment House (total of 26 Dwellings), existing without permits.**

[2] The subject property is on Condo Common Area (Plan 0727388), located at 10620 - 105 Street NW, within the (CB1) Low Intensity Business Zone. The Main Streets Overlay, and the Central McDougall / Queen Mary Park Area Redevelopment Plan apply to the subject property.

[3] The following documents were received prior to the hearing and form part of the record:

- A copy of the Development Permit application with attachments, proposed plans, and the refused Development Permit;
- The Development Officer’s written submission; and
- The Appellant’s written submissions.

**Preliminary Matters**

- [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 Presiding Officer outlined how the hearing would be conducted, including the order of appearance of parties, and no opposition was noted.
- [6] The appeal was filed on time, in accordance with section 686 of the *Municipal Government Act*, RSA 2000, c M-26.

**Summary of Hearing***i) Position of the Appellant, Mr. W. Rahime*

- [7] The subject building had 26 dwelling units when his company purchased the property in 2006.
- [8] An inspection was done by the City and he was informed that one suite was not properly permitted in accordance with the stamped approved drawings and required a permit. These drawings pre-date the acquisition of the property by the Appellant.
- [9] He referred to a floor plan showing that a wall was added to the middle of Unit 7 to create a bachelor suite.
- [10] He was informed by the City that a commercial use was required on the main floor of the building. However, there has never been a commercial use on the main floor.
- [11] The building meets the minimum required on-site parking.
- [12] The subject suite has been rented for several years with no known concerns.
- [13] No exterior alterations were made to the building structure.
- [14] There are some student renters in the building as it is in close proximity to Grant MacEwan University.
- [15] Mr. Rahime provided the following information in response to questions by the Board:
- a. The subject suite has a fire rated door, legal size window, a sink, and a washroom.
  - b. The subject suite complies with Alberta Health regulations and Fire Code regulations.
  - c. He is agreeable to the conditions suggested by the Development Officer.
  - d. The dwelling units on the main floor do not have balconies.

- e. He could not confirm if there is a park in close proximity to the building.
- f. There is fence on the side of the building and there is a grass area in the front of the building that tenants can use.

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

[16] The Development Authority provided a written submission and did not attend the hearing.

### **Decision**

[17] The appeal is **ALLOWED** and the decision of the Development Authority is **REVOKED**. The development is **GRANTED** as applied for to the Development Authority, subject to the following **CONDITIONS**:

1. The development shall be constructed in accordance with the stamped and approved drawings.
2. PRIOR TO THE RELEASE OF DRAWINGS FOR BUILDING PERMIT REVIEW, the applicant or property owner shall pay a Sanitary Sewer Trunk Charge fee of \$1,629.00. The SSTC charge is quoted at year 2018 rate. Please contact Private Development, Drainage Services, at 780-496-5665 for further details regarding the fee. However, the final SSTC is based on the prevailing rate at the time the applicant/owner makes payment at the 2nd Floor, Edmonton Tower, 10111 104 Avenue NW, Edmonton AB T5J 0J4.

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

1. Section 330.5(1)(a) that states “Apartment Housing shall be permitted only in buildings where the first Storey is used for commercial purposes” is waived.
2. The minimum Amenity Area requirement per section 46 is waived.

### **Reasons for Decision**

[19] The proposed development, an additional Dwelling to an Apartment House, is a Discretionary Use in the (CB1) Low Intensity Business Zone. The existing Apartment House is non-conforming.

[20] Section 643(5) of the *Municipal Government Act* states the following:

(5) A non-conforming building may continue to be used but the building may not be enlarged, added to, rebuilt or structurally altered except

- (a) to make it a conforming building,
- (b) for routine maintenance of the building, if the development authority considers it necessary, or
- (c) **in accordance with a land use bylaw that provides minor variance powers to the development authority for the purposes of this section.** [emphasis added].

[21] The Board grants the variances to this development for the following reasons:

- a. The Board accepts the submission of the Appellant that this building in this configuration has existed for several years in its present form.
- b. The Appellant purchased the property in 2006, six years after first Development Permit refusal for an additional Dwelling and the Board accepts that the Appellant had no knowledge that the subject Dwelling was illegal.
- c. The Board finds that the variances to this application are *de minimis*. The subject Apartment House was built long before the City required a Commercial Use on the main floor as there has never been a Commercial Use in the building and the Board accepts that this building is not set up in any way for a Commercial Use in its space.
- d. The Board accepts that there is sufficient amenity and storage space on-site and considering it is an urban development. The Board notes that the main floor Dwelling Units do not have private outdoor amenity space and only the upper floor Dwelling Units have balconies.
- e. The Board notes that the subject Site meets the minimum on-site parking requirements and is in close proximity to a LRT station and near Grant MacEwan University and the additional Dwelling Unit will have no impact on the adjacent parcels of land.
- f. There is no opposition to the proposed development and no one appeared in opposition.

[22] The Board concludes that the proposed development will not unduly interfere with the amenities of the neighbourhood nor materially interfere with or affect the use, enjoyment or value of neighbouring parcels of land.



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

Board Members in Attendance:

Mr. B. Gibson, Ms. S. McCartney, Ms. E. Solez, Mr. J. Wall

**Important Information for the Applicant/Appellant**

1. This is not a Building Permit. A Building Permit must be obtained separately from Development & Zoning Services, located on the 2nd Floor, Edmonton Tower, 10111 – 104 Avenue NW, Edmonton, AB T5J 0J4.
2. Obtaining a Development Permit does not relieve you from complying with:
  - a) the requirements of the *Edmonton Zoning Bylaw*, insofar as those requirements have not been relaxed or varied by a decision of the Subdivision and Development Appeal Board,
  - b) the requirements of the *Alberta Safety Codes Act*,
  - c) the *Alberta Regulation 204/207 – Safety Codes Act – Permit Regulation*,
  - d) the requirements of any other appropriate federal, provincial or municipal legislation,
  - e) the conditions of any caveat, covenant, easement or other instrument affecting a building or land.
3. When an application for a Development Permit has been approved by the Subdivision and Development Appeal Board, it shall not be valid unless and until any conditions of approval, save those of a continuing nature, have been fulfilled.
4. A Development Permit will expire in accordance to the provisions of section 22 of the *Edmonton Zoning Bylaw, Bylaw 12800*, as amended.
5. This decision may be appealed to the Alberta Court of Appeal on a question of law or jurisdiction under section 688 of the *Municipal Government Act*, RSA 2000, c M-26. If the Subdivision and Development Appeal Board is served with notice of an application for leave to appeal its decision, such notice shall operate to suspend the Development Permit.
6. When a decision on a Development Permit application has been rendered by the Subdivision and Development Appeal Board, the enforcement of that decision is carried out by Development & Zoning Services, located on the 2nd Floor, Edmonton Tower, 10111 – 104 Avenue NW, Edmonton, AB T5J 0J4.

*NOTE: The City of Edmonton does not conduct independent environmental checks of land within the City. If you are concerned about the stability of this property for any purpose, you should conduct your own tests and reviews. The City of Edmonton, when issuing a development permit, makes no representations and offers no warranties as to the suitability of the property for any purpose or as to the presence or absence of any environmental contaminants on the property.*



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Date: August 16, 2018  
Project Number: 282112638-001  
File Number: SDAB-D-18-120

**Notice of Decision**

- [1] On August 15, 2018, the Subdivision and Development Appeal Board (the “Board”) heard an appeal that was filed on **June 29, 2018**. The appeal concerned the decision of the Development Authority, issued on June 6, 2018, to approve the following development:

**To operate a Major Home Based Business (Make up, Esthetics and Hair Styling - IMH STUDIOS).**

- [2] The subject property is on Plan 1424124 Blk 16 Lot 31, located at 4136 - Cameron Heights Point NW, within the (RSL) Residential Small Lot Zone. The Cameron Heights Neighbourhood Area Structure Plan applies to the subject property.
- [3] The following documents were received prior to the hearing and form part of the record:
- A copy of the Development Permit application with attachments and the approved Development Permit;
  - The Development Officer’s written submission; and
  - The Appellant’s submission with an aerial photograph.
- [4] The following exhibits were presented during the hearing and form part of the record:
- Exhibit A – A written submission read by the Appellant.
  - Exhibit B – Letters of support submitted by the Respondent.

**Preliminary Matters**

- [5] At the outset of the appeal hearing, the Presiding Officer confirmed with the parties in attendance that there was no opposition to the composition of the panel.
- [6] The Presiding Officer outlined how the hearing would be conducted, including the order of appearance of parties, and no opposition was noted.

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

### **Summary of Hearing**

*i) Position of the Appellant, Ms. J. Liu, who was accompanied by Mr. R. Chen*

- [8] They are concerned that the Major Home Based Business will have several safety hazards for the residents in the area including children that play on the street.
- [9] They are concerned that there will be an excess of customers visiting the subject property each day.
- [10] The business is in a small cul-de-sac which will be a concern if there is additional traffic coming and going from the neighbourhood. Parking is also limited which will be an issue.
- [11] In their opinion, the Major Home Based Business will have a negative impact on the neighbourhood.
- [12] The Presiding Officer confirmed that the number of customer visits that were approved by the Development Officer for the Major Home Based Business is two customers per day.

*ii) Position of the Development Officer, Ms. M. Ziober*

- [13] The Development Authority provided a written submission and did not attend the hearing.

*iii) Position of the Respondent, Ms. El Zahr, who was accompanied by Mr. D. Tam*

- [14] The Major Home Based Business is a studio for a few clients but is the head office for the business.
- [15] Ninety percent of the business is mobile where she does hair and make-up at the customer's location.
- [16] She is an agent to seven other make-up and hair stylists.
- [17] All of the employees work full time and part time for her business where the work is done off-site.



- [18] There may be one or two customer visits to the subject site per week.
- [19] Customers will not have to park on the street as there is space for three vehicles to park on the driveway.
- [20] She has two small children and she would not want the Major Home Based Business to be a safety issue for her family or the neighbourhood.
- [21] She provided the Board with four letters in support from neighbours from her previous residence that was located in a cul-de-sac where she operated the Major Home Based Business.
- [22] Ms. El Zahr provided the following information in response to questions by the Board:
- a. She has lived at the subject site for just over a year.
  - b. This is the first business that she has operated from the subject site.
  - c. The Appellants are not aware of the operations of the Major Home Based Business as they do not currently live in the cul-de-sac.

*iv) Rebuttal of the Appellant, Ms. J. Liu and Mr.R. Chen*

- [23] They indicated that the Major Home Based Business is advertised on Google.
- [24] Ms. Liu stated that the business advertises workshops and she is concerned that they will be held at the subject site which will attract several customers.
- [25] The Respondents confirmed that the workshops take place off site.
- [26] Mr. Chen indicated that although they do not live in the cul-de-sac, they have been to the neighbourhood and have seen children playing outside and are concerned for their safety.
- [27] The Presiding Officer outlined the regulations for a Major Home Based Business and confirmed what was approved on the Development Permit Application for Ms. Liu and Mr. Chen.

**Decision**

- [28] The appeal is **DENIED** and the decision of the Development Authority is **CONFIRMED**. The development is **GRANTED** as applied for to the Development Authority, subject to the following **CONDITIONS**:

1. The business owner must live at the site. 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 (Section 7.3(7)).
2. There shall be no exterior display or advertisement other than an identification plaque or sign a maximum of 20 cm (8") x 30.5 cm (12") in size located on the dwelling (Section 75.1).
3. The Major Home Based Business shall not generate pedestrian or vehicular traffic, or parking, in excess of that which is characteristic of the Zone in which it is located (Section 75.3).
4. If non-resident employees or business partners are working on-site, the maximum number shall not exceed the number applied for with this application.
5. If there are visits associated with the business the number shall not exceed the number applied for with this application.
6. Clients visit must be by-appointment only and appointments shall not overlap.
7. There shall be no outdoor business activities, or outdoor storage of material or equipment associated with the business (Section 75.5).
8. No offensive noise, odour, vibration, smoke, litter, heat or other objectionable effect shall be produced.
9. The business use must maintain the privacy and enjoyment of adjacent residences and the characteristic of the neighborhood.
10. All parking for the Dwelling and Home Based Business must be accommodated on site unless a parking variance has been granted for this Major Home Based Business.
11. This Development Permit may be cancelled at any time if the Home Based Business as stated in the Permit Details changes (Section 17.2).
12. This approval is for a 5 year period from the date of this decision. A new Development Permit must be obtained to continue to operate the business from this location. This Development Permit expires on **August 16, 2023.**

**Reasons for Decision**

- [29] The proposed development, a Major Home Based Business, is a Discretionary Use in the (RSL) Residential Small Lot Zone.
- [30] Having heard from both parties, the Board accepts the submissions from both parties but find that the principal submission of the Respondent significantly mitigates the concerns of the Appellant. Namely, that this business is primarily mobile and 90 percent of the business is off-site and the home based aspect is mainly for an administrative function.
- [31] The Board accepts the Respondent's submission that the maximum number of customer visits of two clients per day will actually be closer to two customer visits per week.
- [32] The Board accepts that there are three Driveway parking spaces available, which will mitigate safety and parking concerns.
- [33] The Board was presented with positive neighbourhood feedback (*Exhibit B*) from the Respondent's previous location that was also in a cul-de-sac. The Board accepts that this Major Home Based Business that operated for seven years is almost identical to what is being applied for currently.
- [34] The Board notes that the proposed Major Home Based Business completely complies with the *Edmonton Zoning Bylaw*.
- [35] Based on the above, the Board finds that the proposed Major Home Based Business is reasonably compatible with the surrounding properties and there are no planning reasons to allow this appeal.



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

**Board members in attendance:**

Mr. B. Gibson, Ms. S. McCartney, Ms. E. Solez, Mr. J. Wall

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