



**EDMONTON  
TRIBUNALS**

*Subdivision &  
Development  
Appeal Board*

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Date: September 12, 2019  
Project Number: 305039914-001  
File Number: SDAB-D-19-132

**Notice of Decision**

- [1] On August 28, 2019, the Subdivision and Development Appeal Board (the “Board”) heard an appeal that was filed on August 6, 2019. The appeal concerned the decision of the Development Authority, issued on July 15, 2019 to approve the following development:

**To operate a Major Home Based Business (Massage Therapy - SILVA JESSICA) 4 visits per day by appointment only with no overlapping appointments. Hours of operation are from 9:00 AM to 9:00 PM Mondays, Thursdays, and weekends. Expires on July 15, 2024**

- [2] The subject property is on Condo Common Area (Plan 1623022), located at 18122C - 77 Street NW, within the RA7 Low Rise Apartment Zone. The Crystallina Nera West Neighbourhood Structure Plan and Edmonton North Area Structure Plan apply to the subject property.

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

- Copy of the Development Permit application with attachments and the approved Development Permit;
- The Development Officer’s written submissions;
- The Appellant’s written submissions; and
- One letter in opposition to the proposed development.

**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 (the “*Municipal Government Act*”).
- [7] The Appellant was not in attendance at the hearing and asked the Board to proceed with the hearing based on her written submissions.

### **Summary of Hearing**

*i) Position of the Appellant, Ms. C. Stuart, as stated in the written reasons for appeal:*

- [8] This is a residential building for adults, seniors and children and not a place to run a business.
- [9] Security is a concern because clients of the proposed business will have access to the entire building, not just the fourth floor, and possibly the underground parking. She questioned how clients would enter and exit the building because tenants use a fob system. Tenants of the building may feel threatened by clients accessing the common areas, front entrance, elevator, stairwells and hallways.
- [10] The Vita Estates Condo Board did not receive notice of the approval from the City of Edmonton and only became aware of the proposed development after she contacted them.
- [11] Approval of this business sets a precedent for the approval of other businesses in this complex.
- [12] The operation of this business will not attract tenants nor will it increase the real estate value of currently owned units in the building. There are sufficient opportunities for the Applicant to meet the needs of her clients from other sites in this neighbourhood.

*ii) Position of Affected Property Owners in Support of the Appellant, Ms. A. Edwards, Ayre & Oxford Inc.:*

- [13] Ms. Edwards only became aware that the development permit for a Major Home Based Business had been approved after receiving an email from the Appellant, Ms. Stuart.
- [14] The Board of Directors received multiple complaints from owners regarding the approval of this development permit after they were notified of the approval by the City of Edmonton.
- [15] The Applicant did not discuss the proposed development with the Board of Directors or Management prior to applying for a development permit to operate her Massage Therapy business from her condominium.

- [16] The proposed development is in violation of the Condominium Bylaws. Specifically, Bylaw 58, Use and Occupancy Restrictions, which states:
- b. An Owner shall not:
    - i. Use his Unit or any part thereof for any commercial or professional purpose or for any purpose which may be illegal or injurious to the reputation of the condominium project or for a purpose involving the attendance of the public at such Unit;
    - ii. Use or permit the use of his Unit other than as a single-family dwelling or for a purpose other than for residential purposes.
- [17] Management issued a letter to the unit owner, the Applicant, advising her that the proposed development permit violated the Corporation Bylaws and to cease all business transactions immediately upon receipt of the letter.
- [18] She contacted the Development Officer to inquire about the type of permission that was provided by the Applicant and to ensure that she was aware that this development was in contravention of the Condo Bylaws and not supported by the Board of Directors or Management.
- [19] Management has to ensure that the Condominium Bylaws and the *Condominium Property Act* are complied with by all unit owners in order to ensure the safety of the residents of this complex. Operating this business from the Applicant's condominium will result in members of the general public coming and going from the proposed business which will create a safety concern for the tenants and property owners in this building. The approval also sets a precedent to allow other businesses to operate from this complex.
- [20] At this point, the Presiding Officer clarified that the Condominium Bylaws are outside the purview of both the Development Officer and the Board.
- [21] Ms. Edwards provided the following information in response to questions from the Board:
- a) The proposed hours of operation and the comings and goings of the clients of the proposed Massage Business increases the security risks and impacts her role as Property Manager to ensure that the units and the residents in this complex are safe and secure.
  - b) The Corporation has recently installed security cameras and changed the lock system in the building to a fob system that is used by residents to access the building. The fact that members of the general public will be coming and going from the building during the evening hours to access this business is a safety concern.

- c) If this business is approved, any one of the owners of the 164 units in this complex can apply and have a development permit for a home based business approved.
- d) She received multiple telephone calls from residents in opposition to the proposed business. The entire Board of Directors is opposed to the proposed business as well as the Appellant.
- e) The primary concern of the residents that she spoke to was the safety concern based on the fact that members of the general public will be coming and going from the building. The residents wanted to know how this development permit could have been approved in this residential non-commercial complex and what the Corporation was doing about it.
- f) She called the Applicant on August 12, 2019 to discuss the matter and advised her that the proposed business violated the Condominium Bylaws and the *Condominium Property Act*.
- g) Visitor parking spaces are located between the two buildings. Vehicles cannot be parked in these parking spaces for more than six hours. None of the residents who contacted her raised the parking variance that was required as a concern.
- h) The Corporation can begin to impose monetary penalties up to \$1,000.00 on the Applicant if the proposed business continues to operate in violation of the Bylaws.

*iii) Position of the Development Officer, Mr. R. Zhou:*

- [22] Mr. Zhou did not attend the hearing but provided a written submission that was considered by the Board.

*iv) Position of the Respondent, Ms. J. Silva:*

- [23] Ms. Silva was working at a public clinic that closed in January and needed a place where she could care for the clientele that she has built up over the past 8 years. Since January, she has started to transition into the financial field and obtained a licence to practice as a financial advisor. Because of this transition, she has reduced her clientele to her core clients.
- [24] She will not be doing massage therapy long term because of the toll it is taking on her body. However, she still cares for her clients and applied to open the home based business to ensure that her clients are taken care of during her transition out of her practice.

[25] She takes responsibility for not following the proper steps prior to applying for a development permit. However, she would never do anything to jeopardize her safety or the safety of the other residents. Most of her clientele are seniors, parents and children.

[26] Ms. Silva provided the following information in response to questions from the Board:

- a) She was vaguely aware of the Condominium Bylaws before she made her application and acknowledged that the rules should not be relaxed for one person. She acknowledged that she was in a tough position but is concerned about her clients.
- b) She did speak to the President of the Condominium Board who is also a close friend. He did not raise any specific concerns and advised her to proceed with the business. However, that did not sit right with her because she wanted to follow the proper channels and obtain a development permit for her business.
- c) She has not had any formal discussions or meetings with the Condominium Board. She received a telephone call from the Board advising her to cease and desist but she decided to proceed with the appeal hearing and make her case heard. She acknowledged that she still has an issue with the Condominium Board even if the development permit is issued.
- d) Her unit is located on the fourth floor and her clients would have to be buzzed in and then use the elevator or stairs to the fourth floor. The hours of operation were established to leave a window of opportunity for her clients who are seen by appointment only.
- e) She has never felt threatened by any of her clients and it was her opinion that they will not be threatening to any of the residents of her building. The traffic in and out of the building will be no different than residents inviting people into the building for a party.
- f) She has built up a relationship with her clients over the past 8 years.
- g) She acknowledged that even if the Board approves the development permit for her home based business, it violates the Condominium Bylaws and will not be allowed to operate in the building.
- h) She has approximately 100 regular clients but massage therapy is seasonal. High season occurs during the winter months because clients choose to postpone their health benefits and spend them all at the end of the year. She would only see up to four clients per day.
- i) Her work as a financial planner is done from an office off site.
- j) The recommended conditions provided by the Development Officer have been reviewed and are acceptable.

- k) She understands the position of the Condominium Corporation and the fines associated with operating her business in violation of the Condominium Bylaws.

### Decision

- [27] 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

- [28] A Major Home Based Business is a Discretionary Use in the (RA7) Low Rise Apartment Zone, pursuant to section 210.3(8) of the *Edmonton Zoning Bylaw*.
- [29] Pursuant to section 7.3(7) of the *Edmonton Zoning Bylaw*, a Major Home Based Business means:

A development consisting of the use of an approved Dwelling or Accessory building by a resident of that Dwelling for one or more businesses that 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 includes Bed and Breakfast Operations but does not include General Retail Sales, Cannabis Retail Sales or Cannabis Production and Distribution.

- [30] The proposed development complies with all of the development regulations for a Major Home Based Business with the exception of section 54.2, Schedule 1(A)(8), which states that a Major Home Based Business requires one parking space in addition to parking required for the principal Dwelling. This site has one parking space and is therefore deficient by one parking space. The Board grants the variance for the following reasons:
- a) The Applicant currently owns one parking space. The Board agrees with the Development Officer that requiring the purchase of a second parking space would create a hardship as the parking space would remain unused for the majority of the day.
  - b) Neither the Appellant nor the Property Manager raised any concerns regarding the required parking variance.
  - c) Based on the evidence provided, there is ample visitor parking available on site as well as on street parking on 77 Street to accommodate parking for this business.
- [31] The primary concern of the Appellant was that the proposed Major Home Based Business was not approved by the Condominium Board, contravenes the Condominium Bylaws and is incompatible with the residential nature of the building.

[32] Based on the evidence provided by Ayre & Oxford Inc. on behalf of the Board of Directors, Vita Estates, Bylaw 58, Use and Occupancy Restrictions, states:

b. An Owner shall not:

- i. Use his Unit or any part thereof for any commercial or professional purpose or for any purpose which may be illegal or injurious to the reputation of the condominium project or for a purpose involving the attendance of the public at such Unit;
- ii. Use or permit the use of his Unit other than as a single-family dwelling or for a purpose other than for residential purposes.

[33] The Board acknowledges that, based on this evidence, the proposed Major Home Based Business may contravene this Condominium Bylaw. However, enforcement of this Bylaw is outside the purview of the Board and is a private legal matter between the Applicant and the Board of Directors of the Condominium Corporation. This is not a valid planning reason that would persuade the Board to refuse the proposed development.

[34] Based on a review of the development regulations contained in the *Edmonton Zoning Bylaw*, that the Board must consider, the Board finds that the proposed development is reasonably compatible with surrounding land uses for the following reasons:

- a) No exterior or interior changes to the building or the dwelling unit are proposed.
- b) The safety concerns addressed by the Appellant will be mitigated because the business owner lives on the site and the proposed business use is secondary to the residential use of the building and the dwelling unit.
- c) There will be no non-resident employees.
- d) There will be a maximum of four client visits per day by appointment only. The Applicant has a long standing relationship with the clientele that has been established over the past 8 years.
- e) The business will only operate four days a week from 9:00 a.m. to 9:00 p.m.
- f) The proposed four visits per day will not generate pedestrian or vehicular traffic or parking in excess of what is characteristic for an Apartment building where the guests of residents of the building commonly come and go.

- g) Approval of the proposed development will not set a precedent for the commercialization of other units in this building because the Board is required to assess each development permit application on its own merit. Therefore, any future development permit applications for units located in this complex would be reviewed for compliance with the *Edmonton Zoning Bylaw*.

[35] The Board concludes that the proposed development with the conditions imposed is reasonably compatible with the neighbourhood and is of the opinion that granting the required variance 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.



Ms. G. Harris, Presiding Officer  
Subdivision and Development Appeal Board

Board members in attendance: Mr. M. Young, Mr. A. Bolstad, Ms. S. McCartney, Mr. J. Wall



**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 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 the Sustainable Development Department, 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: September 12, 2019  
Project Number: 315807526-001  
File Number: SDAB-D-19-133

**Notice of Decision**

- [1] On August 28, 2019, the Subdivision and Development Appeal Board (the “Board”) heard an appeal that was filed on July 31, 2019. The appeal concerned the decision of the Development Authority, issued on July 30, 2019, to refuse the following development:

**To convert a Single Detached House to a Child Care Service with a maximum 40 children, construct interior alterations, and demolish a Detached Garage**

- [2] The subject property is on Plan 2314TR Blk 1 Lot 166, located at 15123 - 118 Street NW, within the RF1 Single Detached Residential Zone.

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

- Copy of the Development Permit application with attachments, proposed plans, and the refused Development Permit;
- The Development Officer’s written submissions;
- The Appellant’s written submissions;
- Two online responses in opposition to the proposed development;
- Two emails in opposition to the proposed development; and
- One email in support of the proposed development.

- [4] The following exhibits were presented during the hearing and form part of the record:

- Exhibit A – Google Street Map

**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 (the “*Municipal Government Act*”).

### **Summary of Hearing**

*i) Position of the Appellant, Mr. M. Memon and Ms. C. Kurek, Real Estate Agent:*

- [8] The scale of the proposed conversion of the Single Detached House to a Child Care Service for 40 children meets the General Purpose of the (RF1) Single Detached Residential Zone as a Discretionary Use.
- [9] The proposed Child Care Service will have a positive impact on the local community because it will create jobs and provide a quality child care service in this neighbourhood.
- [10] The addition of business activity into the neighbourhood will ultimately increase property values.
- [11] It was his opinion that increased noise is not a concern because during the winter months the children are always inside. He acknowledged that the children will be playing outside during the summer months. However, based on the child/staff ratio, small groups of between 6 and 8 children will be allowed outside at any one time under staff supervision. The children will be playing outside during the day when most of the neighbours will be away at work.
- [12] Increased traffic for the pickup and drop off of children will not be an issue because the south end of the site will be converted into a parking pad that will accommodate five vehicles. The Real Property Report was referenced to illustrate the location of the proposed parking pad which will replace the rear detached garage after it is demolished.
- [13] Child Care Services are regulated by the Government of Alberta. His wife has operated a day home for 15 years and has obtained the Level III Child Care Degree.
- [14] Ms. Kurek clarified that the dedicated parking will be located along the side of the house that faces the rear lane. This space will be used to provide pick up and drop off spaces for parents at the beginning and end of the day. Vehicles will not be coming and going from the site all day long.
- [15] Priority will be given to neighbourhood residents when hiring staff so that they can walk to work.
- [16] There is a high population of children in this neighbourhood. The proposed Child Care Service will provide a valuable service to residents of this area because there are two elementary schools and several high density housing complexes in the area.

[17] Mr. Memon and Ms. Kurek provided the following information in response to questions from the Board:

- a) The staffing requirements are regulated by the Provincial Government based on the approved number of children.
- b) Staff parking will be provided on the proposed parking pad and on street parking is available in front of the house along 118 Street.
- c) The pickup and drop off spaces will be provided on the proposed parking pad that will be accessed from the rear lane.
- d) The outdoor play area is located in the rear yard that is completely fenced. Small groups of children determined by the staffing requirements will only be allowed to play outside at any one time. During the summer months, small groups of children will be rotated through the outdoor play space during the day. During the winter months, outdoor play is restricted based on temperature.
- e) There are several parks and playgrounds located in close proximity to the subject site. There is also some space available on the other side of the house that could accommodate additional outdoor play space if required.
- f) The two elementary schools are located on 118 Street. There is a three storey condominium building located on the west side of 118 Street. All of the residents have a designated parking space.
- g) The majority of the single family houses in this area access parking from the rear lane.
- h) Parking is permitted on both sides of 118 Street which is a bus route. Traffic is heavy when parents are dropping off and picking up their children from school.
- i) A day home for six children previously operated from this house without any known complaints from any of the neighbours.
- j) There will only be between 24 and 26 children on site during the day, the remainder of the children will be attending school and only require before and after school care.
- k) Sound barriers can be installed on the existing fence to address noise concerns if required.
- l) Based on his experience from living in this neighbourhood, most residents are respectful of on street parking and try to park their vehicles in front of their residence.

- m) This house has been vacant for many months and Ms. Kurek has never seen any vehicles parked in front of the house when she has visited the site.
- n) No one will be living in the house; it will be used exclusively as a Child Care Service.
- o) Provincial licencing is done after the development and building permits are issued. The application has been made based on 40 children but that number could be reduced after the provincial review.
- p) The recommended conditions provided by the Development Officer have been reviewed and are acceptable.

*ii) Position of Affected Property Owners in Opposition to the Appellant:*

**Mr. J. Budy:**

- [18] Mr. Budy lives three houses away from the subject site on 152 Avenue.
- [19] The proposed Child Care Service is not suitable for this residential neighbourhood.
- [20] It was his opinion that the proposed parking pad will not provide enough space to accommodate five vehicles.
- [21] There is already too much traffic and not enough parking in this neighbourhood and it will only get worse with parents picking up and dropping off children from the proposed Child Care Service.
- [22] There is a bus stop located in front of the subject site on 152 Avenue that limits on street parking for the proposed Child Care Service.
- [23] He and his neighbours are of the opinion that proposed Child Care Service will devalue their properties and make them more difficult to sell.
- [24] Mr. Budy provided the following information in response to questions from the Board:
  - a) He is not concerned with the parking variance required as long as all of the parking is located on the subject site and accessed from the lane.
  - b) He does not currently hear any noise from children playing outside at the nearby schools.
  - c) A Google street view photograph was referenced, marked Exhibit A, to confirm the location of the bus stop located on 152 Avenue. The bus stop limits on street parking adjacent to the subject property.

- d) It was acknowledged that there is an ample amount of street parking available during the day but it is more limited when residents arrive home from work.

*iii) Position of the Development Officer, Ms. H. Xu:*

- [25] Ms. Xu did not attend the hearing but provided a written submission that was considered by the Board.

*iv) Rebuttal of the Appellant:*

- [26] On street parking is not required along 152 Avenue because parking is available along 118 Street in front of the house.
- [27] Based on his experience, parents do not all arrive at the same time to pick up and drop off their children.
- [28] It is his hope that children from this neighbourhood will be using the Child Care Service and he plans to hire employees who live in the neighbourhood which will reduce the number of vehicles coming and going from the site.

## **Decision**

- [29] The appeal is **DENIED** and the decision of the Development Authority is **CONFIRMED**. The development is **REFUSED**.

## **Reasons for Decision**

- [30] A Child Care Service is a Discretionary Use in the (RF1) Single Detached Residential Zone, pursuant to section 110.3(1) of the *Edmonton Zoning Bylaw*.
- [31] The proposed development was refused by the Development Officer because:
- a) the scale of the proposed conversion of the Single Detached House to a Child Care Service with 40 children does not meet the General Purpose of the RF1 Zone and will generate a negative impact uncharacteristic of the existing low density single detached residential district.
  - b) the proposed development does not comply with the minimum required number of parking spaces pursuant to section 54.2 Schedule 1(A)(29) and section 54.2.2(e)(ii) of the *Edmonton Zoning Bylaw* and the parking deficiency would have a negative impact on the surrounding properties.

- [32] Since the proposed development is a Discretionary Use, the Board must consider its compatibility with adjacent properties and existing neighbourhood uses.
- [33] The Appellant proposes to convert a Single Detached House located in an RF1 zone to a Child Care service for 40 children.
- [34] The Appellant indicated that he will not be residing in the subject property and that the Single Detached House will be converted entirely into a daycare/after-school care facility.
- [35] The Board finds that the proposed Child Care Service is not reasonably compatible with surrounding developments for the following reasons:
- a) The intensity and scale of the proposed Child Care Service for 40 children will generate significantly increased traffic to accommodate the pickup and drop off of 40 children which is uncharacteristic of the existing low density Single Detached Residential Zone, located immediately east and north of this neighbourhood.
  - b) While the parking variance needed for the pickup and drop off spaces at the rear of the site could be accommodated, the Board notes that access to the spaces from the rear lane will increase traffic in the laneway to a level that is uncharacteristic of the area.
  - c) The Board notes that there was mixed support and opposition to the proposed development. The objections raised by adjacent neighbours addressed concerns regarding increased traffic, parking and noise. While the Appellant submitted that the neighbours' concerns about increased traffic, parking problems and noise could be addressed, the Board finds that given the scale and intensity of the proposed development, the anticipated increased noise and non-residential traffic and parking impacts, the conversion of the house to a child care facility will have a negative impact upon neighbouring properties.

[36] For the above reasons, the Board finds that the scale and intensity of the proposed development is not reasonably compatible with surrounding land uses in this neighbourhood. Therefore, the development is refused.



Ms. G. Harris, Presiding Officer  
Subdivision and Development Appeal Board

Board members in attendance: Mr. M. Young, Mr. A. Bolstad, Ms. S. McCartney, Mr. J. Wall



**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.
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*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.*