

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

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Date: August 21, 2015  
Project Number: 151016175-001  
File Number: SDAB-D-15-177

### **Notice of Decision**

This appeal dated July 14, 2015, from the decision of the Development Authority for permission to:

Add the Use of a Child Care Services (10 children) to an existing Single Detached House.

On Plan 0023214 Blk 2 Lot 24, located at 2711 - 33 Street NW, was heard by the Subdivision and Development Appeal Board on August 6, 2015.

#### **Summary of Hearing:**

At the outset of the appeal hearing, the Presiding Officer confirmed with the parties in attendance that there was no opposition to the composition of the panel.

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

The Board heard an appeal of the decision of the Development Authority to refuse an application to add the Use of a Child Care Services (10 children) to an existing Single Detached House located at 2711 – 33 Street NW. The subject site is zoned RSL Residential Small Lot Zone and is within the Silver Berry Neighbourhood Structure Plan and the Meadows Area Structure Plan.

The development permit application was refused because the Site is located on an interior lot between two Single Detached Houses and cannot be considered as a preferred location for a Child Care Services Use in the RSL Residential Small Lot Zone, the proposed on-site outdoor play space may interfere with the peaceful enjoyment of adjacent Single Detached properties, there is a deficiency in the minimum required number of on-site drop off and loading spaces, there is a deficiency in the minimum required number of bicycle spaces, and because information regarding exterior lighting was not provided.

Prior to the hearing the following information was provided to the Board:

- A written submission from the Development Officer dated July 20, 2015.
- Written submissions from the Appellant dated July 30, 2015 and August 3, 2015.

At the outset of the hearing the Presiding Officer acknowledged the e-mail received from the Appellant on August 3, 2015. The Appellant advised the Board that he was out of the country

and not able to attend the hearing on August 6, 2015. The Appellant asked the Board to proceed with the hearing based on the written submission and the following points:

1. We currently have a Government approved day home with 6 children and would like to increase the number of children from 6 to 10.
2. We have an outside playing area in the back yard with equipment.
3. The outside playing area is covered with a 6 foot plastic fence and wooden doors.
4. Outside playing area has lights for proper lighting.
5. We have one loading space outside the garage.
6. We have bicycle parking space outside.
7. We have 6 spaces at our premises for drop-off and vehicle parking.
8. We have no objection letters from our adjacent neighbours.

The Board then heard from Ms. Peacock, representing the Sustainable Development Department, who provided the following responses to questions:

1. The Child Care Service for 6 children has been operating without any known complaint and she referenced the letters of support received from the neighbours in her written submission.
2. It was her opinion that even though the neighbours support the proposed development, the development of a commercial use for a Child Care Service is not compatible with the adjacent Single Detached Homes and could interfere with the amenities of the neighbourhood and/or materially interfere with or affect the use, enjoyment or value of neighbouring properties.
3. Unlicensed child care does not require approval by the City of Edmonton but there is a significant difference when you increase the number of children from 6 to 10.
4. It was her opinion that from a neighbour's perspective, the proposed Use would be like having a birthday party every day.
5. The City receives numerous parking complaints from residents who reside in close proximity to child care sites.
6. She is concerned that the drop off and pick up of children will affect neighbours because this area is comprised primarily of small lots with front attached garages which limits the amount of on street parking.
7. Although the affected neighbours are currently supportive, the use will remain with the property and could cause problems in the future.
8. She noted that Transportation Services did not object to the parking deficiency and indicated that Child Care Services typically do not require loading spaces and bicycle parking.
9. The onsite outdoor play area is located at the rear of the building and noise resulting from outside play activities could impact the abutting residences. The outdoor play space is fenced but the fencing is not sufficient to mitigate the noise impacts.
10. She could not provide any information about the DC2 Zone located behind the houses, which are across the street from the subject site.
11. It was her opinion that both a) and b) of section 80(1), and either c) or d) of section 80(1) of the *Edmonton Zoning Bylaw* must be met for a location to qualify as "preferred". The proposed development does not meet any of the locational requirements for Child Care Services.

**Decision:**

The appeal is **ALLOWED** and the decision of the Development Authority is **REVOKED**. The development is **GRANTED** as applied for to the Development Authority. In granting the development the following variances to the *Edmonton Zoning Bylaw* are allowed:

1. The requirements of section 80(1) are waived to allow a Child Care Services Use on the subject site in an RSL Residential Small Lot Zone.
2. The requirements of section 80(8) are waived to allow the proposed outdoor play space.
3. The deficiency of 2 on-site vehicular spaces is waived, pursuant to section 54.2 schedule 1 and section 80(6).
4. The deficiency of 1 loading space is waived, pursuant to section 54.4 schedule 3(1).
5. The deficiency of 5 bicycle parking spaces is waived, pursuant to section 54.3 schedule 2(1).

**Reasons for Decision:**

The Board finds the following:

1. A Child Care Service is a Discretionary Use in the RSL Residential Small Lot Zone.
2. Based on the evidence provided, a Child Care Service for 6 children has been operating at this location for an extended period without any known complaint. Therefore, the Board has granted the required variances for the following reasons:
  - a) The incremental increase of four children will not have a material impact on the neighbouring property owners.
  - b) The most affected property owners have provided support for the proposed development.
  - c) The locational criteria for a Child Care Service have been waived based on the evidence provided that there is no conflict between the existing Child Care Service and the adjacent residents.
  - d) Transportation Services does not object to the required parking variance because on street parking is available on 33 Street.
  - e) The Development Officer reviewed the justification for variances to the required bicycle parking and loading space and has no objection to relaxing the requirements for one loading space and five bicycle parking spaces because large loading trucks will not be visiting the site and children will be dropped off and picked up by their parents.
3. Based on the above, it is the opinion of the Board, 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.

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**Important Information for the Applicant/Appellant**

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1. This is not a Building Permit. A Building Permit must be obtained separately from the Sustainable Development Department, located on the 5<sup>th</sup> 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 with the provisions of section 22 of the *Edmonton Zoning Bylaw*, 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.*

Mr. V. Laberge, Presiding Officer  
Subdivision and Development Appeal Board

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Date: August 21, 2015  
Project Number: 174404940-001  
File Number: SDAB-D-15-178

### **Notice of Decision**

This appeal dated July 10, 2015, from the decision of the Development Authority for permission to:

Change the Use from General Retail Stores to Child Care Services (up to 24 children) and to construct interior alterations (Kid-Tech Preschool)

On Plan 9123322 Blk 1 Lot 56, located at 4333 - 50 Street NW, was heard by the Subdivision and Development Appeal Board on August 6, 2015.

#### **Summary of Hearing:**

At the outset of the appeal hearing, the Presiding Officer confirmed with the parties in attendance that there was no opposition to the composition of the panel.

The appeal was filed on time, in accordance with section 686 of the *Municipal Government Act*, RSA 2000, c M-26 (“*MGA*”).

The Board heard an appeal of the decision of the Development Authority to refuse an application to change the Use from General Retail Stores to Child Care Services (up to 24 children) and to construct interior alterations (Kid-Tech Preschool) located at 4333 – 50 Street NW. The subject site is zoned DC2.504 Site Specific Development Control Provision and is within the Burnewood Neighbourhood Area Structure Plan.

The development permit application was refused because no portion of a Child Care Service Use shall be located within 50.0 metres of a Major or Minor Service Station or a Gas Bar and a deficiency in the required number of drop-off spaces.

Prior to the hearing the following information was provided to the Board:

- A written submission from the Development Officer dated July 13, 2015.
- A written submission from the Appellant dated August 4, 2015.

The Presiding Officer referenced section 641(4) of the *MGA* which states that despite section 685, if a decision with respect to a development permit application in respect of a direct control district is made by a council, there is no appeal to the subdivision and development appeal board, or is made by a development authority, the appeal is limited to whether the development authority followed the directions of council, and if the subdivision and development appeal board

finds that the development authority did not follow the directions it may, in accordance with the directions, substitute its decision for the development authority's decision.

The Board heard from the Appellant, Ms. Aboagye, who provided a written submission, including a petition of support and a letter regarding the provision of three designated parking spaces, marked Exhibit "A". Ms. Aboagye referenced her written submission and provided the following information in support of the appeal:

1. The landlord has agreed to provide three designated parking spaces for the proposed Child Care Service which addresses the parking deficiency.
2. There is ample parking available during the hours of operation which are 8:00 a.m. to 3:00 p.m. or 3:30 p.m. The parking justification indicated that there were a minimum of 20 parking spaces available during these hours and at times up to 40 spaces available.
3. Transportation Services does not object to these parking arrangements.
4. Ms. Aboagye explained the difference between day cares and preschools. Day cares offer fulltime programming for children between 8 and 10 hours per day. Preschools offer part time educational programming similar to a kindergarten.
5. The proposed preschool will offer morning and afternoon classes that are three hours long with a maximum of 24 children.
6. Children attending the morning classes will return home during the lunch break.
7. The preschool will close or offer limited programming during the summer months.
8. Licencing regulations require day cares to provide outdoor play space because of the length of time that children attend the facility. However, preschools are not required to provide an outdoor play space.
9. She conceded that the 50 metre separation space regulation was established to ensure that children would not be endangered when playing outside.
10. However, the proposed development does not have any outdoor play space.
11. She attempted to speak to as many affected neighbours as possible and provided a petition of support, marked "A".
12. Many of the neighbours expressed excitement about the proposed preschool and were satisfied that the safety concerns have been addressed.
13. There are a number of day cares in this area but they service a different need than a preschool.
14. She provided examples of other Child Care Services operating in the city located within 50 metres of a gas station. Specifically, a dance studio and two day cares.
15. The dance studio offers longer hours of operation and the day cares have outdoor play areas.
16. The Licencing Officer has approved her programming, which is referenced in her written submission
17. The Licencing Officer cannot move forward until the development permit is issued.

At this point the Presiding Officer asked the Appellant to reference section 641(4)(b) of the *MGA* and explain how the Development Officer erred in following the direction of Council in refusing this application.

Ms. Aboagye continued by making the following points:

1. It was her opinion that the proposed development is a school and should not be classified as a Child Care Service.
2. She conceded that the definition of Child Care Services does include preschools.
3. She questioned why other similar Uses that are located within 50 metres of a gas station site have been approved.

The Board then heard from Mr. Eric Slatter from Colliers Inc. who appeared on behalf of the landlord, Qualico Homes. He provided the following information:

1. Collier negotiates leases on behalf of Qualico Homes.
2. There are a number of similar Uses that have been approved within 50 metres of a gas station although he conceded that the zoning of those sites could be different.
3. This process has been very frustrating for the Appellant.

The Board then heard from Ms. Erica Peacock, representing the Sustainable Development Department, who provided the following information:

1. She acknowledged that this is a small DC District and advised that a Child Care Service located at the far north end of the site may fall outside of the 50 metre separation distance but that she would have to confirm the distance by using a map tool.
2. Gas Bars and Child Care Services are both listed Uses in the DC District and she advised that a development would have to be designed to accommodate both Uses within the requirements of the regulation.
3. A variance can only be considered in cases of unnecessary hardship or practical difficulties peculiar to the Use, character, or situation of land or a building, which are not generally common to the other land in the same Zone.
4. She referenced section 3.2 of the *Edmonton Zoning Bylaw* which states that for all Direct Control Provisions created prior to the passage of Bylaw 11095, which contain Daytime Child Care Services as a listed Use, this Use Class shall be replaced by the Use Class Child Care Services and the development of such Uses shall be in accordance with the regulations of section 80 Child Care Services.
5. It was her opinion that some variance power would still be provided by the *Edmonton Zoning Bylaw* since it references section 80. She provided two possible examples, the first that in a situation where the separation distance would just fall short of 50 metres between a Gas Bar and a Child Care Service and the facility was aligned to effectively provide a 50 metre separation space. The second example is that if another building or intervening situation would effectively provide barrier screening between the Gas Bar and the Child Care Service.
6. She confirmed that an error was made in the memorandum from Transportation Services dated July 8, 2015 where it was stated that the proposed hours of operation would be evening and weekends.
7. It was her opinion that variance power was provided in the DC Bylaw but that she would defer to the opinion of their Legal Counsel.
8. Section 11.3 of the *Edmonton Zoning Bylaw* provided variance power to the Development Officer.



9. She agreed that the variance powers provided did not relate to Child Care Services under the previous Land Use Bylaw and that it does not apply to the current Bylaw regulations for Child Care Services.

Ms. Aboagye provided the following information in rebuttal:

1. She expressed confusion regarding the variance power provided to the Development Officer and questioned why the Development Officer had variance power for other development applications but not for this one.

**Decision:**

The appeal is **DENIED** and the decision of the Development Authority is **CONFIRMED**. The development is **REFUSED**.

**Reasons for Decision:**

The Board finds the following:

1. Section 641(4)(b) of the *MGA* states, “if a decision with respect to a development permit application in respect of a direct control district is made by a development authority, the appeal is limited to whether the development authority followed the directions of council, and if the subdivision and development appeal board finds that the development authority did not follow the directions it may, in accordance with the directions, substitute its decision for the development authority’s decision.”
2. A Daytime Child Care Service is a listed Use in the DC2.504 Site Specific Development Control Provision.
3. Section 3.2 of the *Edmonton Zoning Bylaw* states that for all Direct Control Provisions created prior to the passage of Bylaw 11095, which contain Daytime Child Care Services as a listed Use, this Use Class shall be replaced by the Use Class Child Care Services and the development of such Uses shall be in accordance with the regulations of Section 80 Child Care Services.
4. Section 7.8(2) of the *Edmonton Zoning Bylaw* states that Child Care Services means a development intended to provide care, educational activities and supervision for groups of seven or more children under 13 years of age during the day or evening, but does not generally include overnight accommodation. This Use Class typically includes daycare centres; out-of-school care centres; preschools; and day homes (providing child care within the care provider’s residence).
5. Section 80(5) of the *Edmonton Zoning Bylaw* states that no portion of a Child Care Service Use, including the building or bay of building and, where provided, on-site outdoor play space, shall be located within 50.0 metres of a Major or Minor Service Station or Gas Bar. This distance shall be measured from the pump island, fill pipes, vent pipes, or service station or gas bar building, depending on whichever is closest to the child care facility.
6. DC2.504.4.m states that development in the District shall be evaluated with respect to compliance with the General Development Regulations of Sections 50 to 79 inclusive of the *Land Use Bylaw*, with the exception that parking shall be provided on the basis of 3.5 spaces

per 100 square metres of gross floor space in buildings, with the exception of one parking space per four seats in Minor Eating and Drinking establishments.

7. DC2.504.4.n states that the Development Officer may grant relaxations to sections 50 to 79 of the *Land Use Bylaw* and the provisions of this District, if in his opinion such a variance would be in keeping with the general purpose of this District and would not affect the amenities, use and enjoyment of neighbouring properties.
8. The development regulations for Child Care Services were contained in section 93 of the *Land Use Bylaw*.
9. Therefore the Development Officer does not have variance power because Child Care Services were regulated by section 93 of the *Land Use Bylaw*.
10. Based on the evidence provided, the mandatory language in section 3.2 of the *Edmonton Zoning Bylaw* requiring that Child Care Services comply with section 80, and the lack of discretion accorded to Development Officers with respect to Child Care Services under the terms of the DC2.504.4.n, the Board is satisfied that the Development Authority did follow the direction of City Council in refusing the proposed development.

### **Important Information for the Applicant/Appellant**

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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.

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Mr. V. Laberge, Presiding Officer  
Subdivision and Development Appeal Board

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Date: August 21, 2015  
Project Number: 148765660-003  
File Number: SDAB-D-15-138

### **Notice of Decision**

This appeal dated June 8, 2015, from the decision of the Development Authority for permission to:

Develop a Secondary Suite in an existing Single Detached House

on Plan 512V Blk 84 Lot 20, located at 11234 - 86 Street NW, was heard by the Subdivision and Development Appeal Board at its hearing held on June 30, 2015 and August 6, 2015.

#### **June 30, 2015 Hearing:**

##### **Summary of Hearing:**

At the outset of the appeal hearing, the Presiding Officer confirmed with the parties in attendance that there was no opposition to the composition of the panel.

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

The Board heard an appeal of the decision of the Development Authority to approve an application to develop a Secondary Suite in an existing Single Detached House located at 11234 – 86 Street NW. The subject site is zoned RA7 Low Rise Apartment Zone and is within the Mature Neighbourhood Overlay, Medium Scale Residential Infill Overlay and Parkdale Area Redevelopment Plan.

The development permit was approved with conditions and was subsequently appealed by the Parkdale-Cromdale Community League (the “Community League”).

The Board heard from Mr. Chris Wagner, Civics Director for the Community League who advised that the Community League wished to request a postponement of the hearing because they were awaiting the receipt of some information about the subject Site and because a number of affected neighbours were unable to attend the hearing.

Upon questioning, Mr. Wagner clarified that the Community League had made information requests to various City Departments including Community Standards.

The Presiding Officer advised that a postponement would result in the scheduling of the hearing during the summer months when it may also be difficult for affected neighbours to attend.

The Board then heard from Ms. Lamont and Ms. Ziober, representing the Sustainable Development Department, neither of whom objected to the requested postponement.

The Board then heard from the Respondent, Ms. Fassman, who had no objections to the requested postponement.

**Decision:**

The appeal shall be TABLED to August 5, or 6, 2015, or as the parties dictate.

**Reasons for Decision:**

The Board finds the following:

1. Postponement of the hearing will allow the Appellant to obtain information from other City Departments and will allow other affected parties to attend the hearing.
2. This is the first request for a postponement and neither the Respondent nor the Sustainable Development Department objected to the requested postponement of the appeal hearing.

**August 6, 2015 Hearing:**

**Motion:**

SDAB-D-15-138 shall be raised from the table.

**Summary of Hearing:**

Prior to the hearing the following information was provided to the Board, copies of which are on file:

- Letter of opposition from a property owner within the 60 metres notification area;
- Letter of opposition from a previous homeowner within the 60 metres notification area;
- Letter of opposition from the Parkdale/Cromdale Community League dated July 21, 2015;
- Letter of opposition from the Alberta Avenue Community League dated August 6, 2015; and
- A copy of the Parkdale Area Redevelopment Plan.

The Board heard from Mr. Martin Bundred, on behalf of the Parkdale-Cromdale Community League who submitted a letter from the Community League marked Exhibit "A" and a petition in opposition, marked Exhibit "B". Mr. Bundred provided the following information in opposition to the development:

1. The Community League opposes the variance granted to allow the proposed Secondary Suite because the site is zoned RA7 Low Rise Apartment Zone, and the intent of the Zone is to allow the development of low rise apartments on lands that are currently underutilized.
2. Allowing the development of a basement suite in a house that is at or near its serviceable lifespan does not reflect the intent of the Zone.
3. A Secondary Suite is a Discretionary Use in this Zone and the Development Officer should have considered the spirit of the Zone before approving this development permit application.
4. The Development Officer should have also considered whether or not the proposed change will positively or negatively affect the surrounding community.
5. Section 11.3.1(b) of the *Edmonton Zoning Bylaw* suggests that a development should not be approved if it will “materially interfere with or affect the use, enjoyment or value of neighbouring properties.”
6. It was his opinion that the Board must also consider this factor.
7. Through neglect, the current owners of the property have allowed this rental property business to negatively affect the use and enjoyment of neighbouring properties.
8. Allowing a basement suite will result in increased disorder, traffic and negative consequences for surrounding neighbours.
9. The submitted petition contains the signatures of approximately 70 residents in the neighbourhood who are opposed to the proposed development.

Mr. Bundred provided the following responses to questions:

1. He was not sure how long a secondary suite had existed at the subject Site.
2. He had no comment regarding the variance that was granted for the minimum required Site Area.
3. Most of the traffic problems occur in the rear lane.
4. There have been problems with drug dealings, people coming and going at all hours, excess garbage and confrontations between neighbours and the tenants of the subject property.
5. On-street parking is allowed on 86 Street but he was unsure whether it was allowed in front of the house.

The Board then heard from Ms. Theilmann, an affected property owner, who provided the following information in opposition to the development:

1. She agreed with everything that had been submitted by Mr. Bundred.
2. The subject property affects her personally because she has had to barricade herself in her house just to function. She also has not been able to use her garage and has had to block off her driveway.
3. The best solution would be to tear down the house and build an apartment house.

The Board then heard from Ms. Patience who explained that although she resides outside of the 60 metres notification radius, the proposed development affects her for the following reasons:

1. She has personally witnessed fights and violence caused by the residents of the property.

2. She referenced recent articles published in the Edmonton Journal, marked Exhibit “C”, and advised that the Edmonton Police Service is aware of the problems arising with the residents of the subject property.
3. She has been personally threatened by a worker who resides in one of the rental properties that is owned by the same owner of the subject property.
4. Two of her vehicles were broken into during the winter, and the tracks in the snow led back to these rental properties.
5. She has attended numerous hearings regarding these properties, and wishes that there was another avenue through which she may raise her concerns.

The Board then heard from Ms. Filevich, who explained that although she resides outside of the 60 metres notification radius, the proposed development affects her for the following reasons:

1. The traffic volume and unpleasant activities associated with these properties spill over onto adjacent blocks.
2. There have been vehicle break-ins and vehicles have been stolen from the neighbourhood.
3. Many of the activities that occur are inappropriate in a residential community.
4. Her children were afraid to come to the hearing to provide evidence because they have been threatened by the owners and occupants of these buildings.
5. It was her opinion that the Board should advocate to City management in an attempt to change this situation.
6. She and her neighbours should not have to take time from work to attend hearings to deal with these problems and advocate for their basic safety.

The Board then heard from Ms. Lamont and Mr. Wen on behalf of the City of Edmonton’s Sustainable Development Department, who provided the following responses to questions:

1. The life cycle of a house is typically not considered when dealing with planning issues because the structure would have to comply with building code requirements as part of the building permit process.
2. The General Purpose of the RA7 Zone was considered as part of this review. The subject site does not meet the development requirements for Apartment Housing because it is too small.
3. A higher density development on this site would require more parking than a Secondary Suite.
4. Single detached houses are allowed in the RA7 Zone because some of the lots are smaller and cannot accommodate Apartment Housing.
5. The requirements under RF4 Zoning<sup>1</sup> and Section 86 of the *Edmonton Zoning Bylaw* were applied when reviewing the application for this development permit.
6. Single Detached Housing and Secondary Suites are Discretionary Uses in the RA7 Zone.
7. The subject Site is a good location for higher density housing because the Site is located by two arterial roadways, 86 Street and 112 Avenue, and a transit corridor along 112 Avenue.
8. The Area Redevelopment Plan does not discourage the development of Secondary Suites.

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<sup>1</sup> With respect to Discretionary Uses in the RA7 Low Rise Apartment Zone, Section 210.5(1) states, in part, that “...Secondary Suites... in this Zone shall be developed in accordance with the provisions of the RF4 Zone.”

9. Secondary Suites are a Discretionary Use in the RA7 Zone because the purpose of the zone is to accommodate apartment housing.
10. It would not be possible to develop an apartment on this site because of the size requirements. It would be necessary to consolidate Sites to provide an area large enough to support Apartment Housing.
11. Property owners cannot be forced to consolidate properties to accommodate an RA7 development.
12. Approval of the Secondary Suite will allow higher density Use on the Site until enough properties can be consolidated to support a development that meets the purpose of the RA7 Zone.
13. The only variance required for this development is a minor variance to the minimum required Site area.
14. There are still building code and fire code regulations to meet as part of the building permit process.
15. Required parking needs to be accommodated on site regardless of the availability of on-street parking.
16. This site requires three onsite Parking spaces and those spaces are provided on the Site plan.
17. They agreed that parking at the rear may increase traffic in the rear lane.

The Board then heard from the Respondent, Ms. S. Fassmann, who provided the following information in support of the proposed development:

1. On street parking is limited in the subject neighbourhood.
2. It was her belief that Parking is not allowed between 3:30 and 6:00 p.m. daily or during stadium events.
3. The subject Site is located close to the LRT.
4. She provided a written submission and a petition of support signed by a number of area residents, marked Exhibit "D".
5. She agreed with the Development Officer's characterization that the purpose of the RA7 Zone is to provide a low to medium density residential use.
6. The Secondary Suite already exists and there will no intensification if the development is approved.
7. A number of the complaints regarding behavior, garbage, nuisance, drugs, and traffic do not come as a surprise, but she indicated that all of the concerns cannot solely be attributed to the subject property.
8. This neighbourhood is located close to the stadium and there is a lot of traffic and activity.
9. Tenants of her property have been asked to comply with garbage pickup times and not to rent out parking spaces for stadium events.
10. The Secondary Suite provides much needed housing in the neighbourhood.
11. She questioned the relevance of many of the allegations and indicated that some of the concerns should be addressed through the building permit process and others by the Edmonton Police Service.
12. The Secondary Suite existed when the subject property was purchased in 2013.
13. She was informed that "everything was in place" when the property was purchased.
14. She did not know that the Secondary Suite did not have a development permit until the property was inspected in 2014.

The Board then heard from Ms. A. Fassmann who lives outside of the 60 metres notification radius, and who provided the following information in support of the development:

1. She agreed with many of the concerns raised by the Appellant and affected neighbours about the problems in the neighbourhood.
2. However, not all of the problems are directly related to the subject Site.
3. In response to a question, Ms. Fassman indicated that she did not know which houses on the block were owned by the same owner as the subject property.

The Presiding Officer allowed Mr. Wen to comment on the Respondent's written submission that was received at the outset of the Respondent's submissions. Mr. Wen provided the following comments:

1. The Sustainable Development Department is obligated to review and process development permit applications based on planning merits.
2. This development permit application is for a Secondary Suite in a Single Detached House and was approved accordingly based on the relevant planning regulations.
3. Questionable activity on the site is regulated by other laws and government bodies.
4. The Sustainable Development Department deals only with development permits and planning issues.

Mr. Bundred made the following points in rebuttal:

1. The RA7 Zone is intended to accommodate Low Rise Apartment development.
2. There are 3 or 4 other vacant lots on the street that will be developed as Low Rise Apartments.
3. The Respondent owns five other properties within the neighbourhood, which are rented out to undesirable individuals, causing problems for the neighbourhood's residents.
4. Stolen vehicles have been recovered from the landlord's other rental properties, one of which contained a supply of hand guns.
5. The litter and mess in the rear lane is the cumulative effect of the five rental properties in the neighbourhood that are owned by the Respondent.
6. The landlord is experienced and should have realized that the Secondary Suite was illegal when he purchased the subject property.
7. Seven of the 12 people who signed the petition submitted by the Respondent are tenants of the Respondent.
8. He acknowledged that all of the problems in the neighbourhood are not attributable to a single property. However, the problems did not arise until the landlord purchased properties within the neighbourhood.

Mr. Bundred provided the following responses to questions:

1. If the development permit for the Secondary Suite is denied, it will send a message to the landlord that his developments are detrimental to the neighbourhood.



2. If the Secondary Suite is allowed it will increase the stress already being experienced by the adjacent neighbours.
3. He was not aware of other Secondary Suites existing on the block.

**Decision:**

The appeal is **DENIED** and the decision of the Development Authority is **CONFIRMED**. The development is **GRANTED** as approved by the Development Authority, subject to the following **CONDITIONS** as set out in the Minor Development Permit, Project Number 148765660-003:

A Secondary Suite shall not be developed within the same principal Dwelling containing a Group Home or Limited Group Home, or a Major Home Based Business, unless the Secondary Suite is an integral part of a Bed and Breakfast Operation in the case of a Major Home Based Business.

Notwithstanding subsection 86.7 of this Bylaw, the number of unrelated persons occupying a Secondary Suite shall not exceed three.

The Secondary Suite shall not be subject to separation from the principal Dwelling through a condominium conversion.

Only one of a Secondary Suite, a Garage Suite or Garden Suite may be developed in conjunction with a principal Dwelling.

A Secondary Suite shall be developed in such a manner that the exterior of the principal building containing the Secondary Suite shall appear as a Single Dwelling.

1 parking space per 2 Sleeping Units in addition to the parking requirements for primary Dwelling. Tandem Parking is allowed for Secondary Suites and Garage Suites.

For an on-site driveway in any Residential Zone, the area required to be hard surfaced may be constructed on the basis of separated tire tracks, with natural soil, or gravel between the tracks, but shall be constructed so that the tires of a parked or oncoming vehicle will normally remain upon the hard surface. (Reference Section 54.6.2 (b)) of Edmonton Zoning Bylaw)

The Driveway shall lead directly from the roadway to the required Garage or Parking Area. The existing driveway shall not be widened for additional parking stall. The Secondary Suite parking is to be in tandem on the existing driveway.

Note: 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.

An approved Development Permit means that the proposed development has been reviewed against the provisions of Edmonton Zoning Bylaw 12800. It does not remove obligations to conform with other legislation, bylaws or land title instruments such as the Municipal Government Act, the Edmonton Building

Permit Bylaw or any caveats, covenants or easements that might be attached to the Site. (Reference Section 5.2 of Edmonton Zoning Bylaw 12800).

In granting the development, the following variance to the *Edmonton Zoning Bylaw* is allowed:

1. The deficiency of 3.32 square metres in the minimum required Site Area for a Single Detached Dwelling containing a Secondary Suite, pursuant to Section 86.1 of the *Edmonton Zoning Bylaw*.

**Reasons for Decision:**

1. A Secondary Suite is a Discretionary Use in the RA7 Low Rise Apartment Zone.
2. The proposed development is supported by the following Policies and Goals stated in the Parkdale Area Development Plan:
  - a) Goal 2 - to maintain Parkdale as a stable, family oriented residential community;
  - b) Policy 2.3 - that future residential development in Parkdale will provide for a mix of unit types. This will be defined by size, amenity space and access. Family oriented housing be especially encouraged; and
  - c) Policy 3.1 - that development in the area generally west of 82 Street between 112 and 117 Avenues will be maintained as low density residential but allow for small scale redevelopment.
3. Section 210.5(1) of the *Edmonton Zoning Bylaw* states that “Notwithstanding subsection 210.4, Single Detached, Semi-detached Duplex Housing, Secondary Suites, Garage Suites and Garden Suites in this [RA7 Low Rise Apartment] Zone shall be developed in accordance with the provisions of the RF4 Zone.”
4. With respect to development regulations for the RF4 Zone, Section 150.4(18) of the *Edmonton Zoning Bylaw* states that “Secondary Suites shall comply with Section 86 of the *Edmonton Zoning Bylaw*.”
5. With the exception of one variance required for the minimum Site Area stipulated under section 86 of the *Edmonton Zoning Bylaw*, the proposed development complies with all of the requirements for a Secondary Suite.
6. The required variance has been granted for the following reasons:
  - a) Based on the evidence provided, the Secondary Suite has existed for some time;
  - b) The exterior of the existing Principal Dwelling will remain unchanged and is reasonably compatible with the neighbourhood;
  - c) The intent of the RA7 Zone is to provide a zone for Low Rise Apartments. However, the subject site is too small to accommodate a low rise apartment development because of deficiencies in site area, site width and overall parking requirements; and
  - d) Allowing the development of a Secondary Suite in this Single Detached House will allow increased density in the existing house on an interim basis.
7. The Board acknowledges the problems in this neighbourhood and the concerns of affected property owners. However, those concerns relate to an alleged lack of supervision by the Appellant of his tenants, such as general disorder, noise, loose garbage and criminal activity. These issues are outside the purview of the Board. The problems relate to the behaviour of people rather than to the type of development on the property.

8. Further, the Board heard no evidence linking these problems specifically to the occupants of the Secondary Suite, which has existed for some time. It was acknowledged by the Appellant that the problems are caused by the residents of multiple properties in the neighbourhood.
9. The Board must make decisions regarding development approvals based on planning considerations as set out in the *Edmonton Zoning Bylaw*, Statutory Plans and the *Municipal Government Act*.
10. For the above reasons, it is the opinion of the Board 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.

### **Important Information for Applicant/Appellant**

1. This is not a Building Permit. A Building Permit must be obtained separately from the Sustainable Development Department, located on the 5<sup>th</sup> 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.*

Mr. V. Laberge, Presiding Officer  
Subdivision and Development Appeal Board