



**EDMONTON
TRIBUNALS**

*Subdivision &
Development
Appeal Board*

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Date: August 22, 2019
Project Number: 153667830-003
File Number: SDAB-D-19-118

Notice of Decision

- [1] On August 7, 2019, the Subdivision and Development Appeal Board (the “Board”) heard an appeal that was filed on July 12, 2019. The appeal concerned the decision of the Development Authority, issued on June 27, 2019, to approve the following development:

Operate a Major Home Based Business (Administration Office for Lawn Care Services - LAWN TECH INC) expires June 27, 2024

- [2] The subject property is on Plan 7823434 Blk 31 Lot 2, located at 11931 - 140 Avenue 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 approved Development Permit;
- The Development Officer’s written submissions;
- The Appellant’s written submissions; and
- Online responses.

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. Gorman

- [7] The proposed Major Home Based Business is an administration office operating from the subject Site, but equipment for the business is stored at the rear of the property on the garage pad next to the detached garage. Trailers used for the business are loaded at the subject Site before they leave in the morning and return each night. The business appears to operate during the Spring, and there is lot of business activity at the property each morning and evening.
- [8] There are often two trucks in the rear lane used for the business, and in his view, traffic associated with the use of the trailers is not compatible with the residential traffic in the rear lane. Vehicles using the rear lane can be held up when there are business-associated vehicles in the rear lane. The rear lane is also used as a muster point for the business.
- [9] This is a residential area and he is concerned with the safety of the children in the neighbourhood.
- [10] It was his understanding that in *Edmonton (City) v Edmonton (Subdivision and Development Appeal Board)*, 2017 ABAC 140, the Alberta Court of Appeal held that there shall be no outdoor business activity or storage in relation to a Major Home Based Business. Based on his understanding of this decision, the proposed Major Home Based Business should be refused.
- [11] The storage of two trailers has increased to four trailers. The trailers should be stored at an industrial lot where trucks can access the trailers at any time and will not interfere with the character of the residential neighbourhood. In his opinion, the activity associated with the business would be better suited in a non-residential area.
- [12] Mr. Gorman provided the following information in response to questions from the Board:
- a. The trucks used for the business are F-150 trucks.
 - b. The business does not operate all summer, it operates mostly in the spring.
 - c. The trailers are stored at the subject Site year round. There are four or five trailers stored at the rear of the property, and they utilize all the driveway space at the rear of the property. The trailers are utility trailers that are not enclosed and are used to haul lawn equipment and chemicals used for the business.
 - d. He could not confirm the dimensions of the trailers.
 - e. If the permit is approved, he would like a condition of only two trailers to be used for the business.

ii) Position of the Development Officer, Mr. Folkman

[13] The Development Authority did not appear at the hearing and the Board relied on Mr. Folkman's written submission.

iii) Position of the Respondent, Mr. Brown

[14] Mr. Brown is the sole owner of the Major Home Based Business. He has owned the property for seven years and operated the business from this location for five years. He lives on the property. During this period, he did not receive any complaints from neighbouring property owners or from the City regarding the Major Home Based Business.

[15] He spoke to three neighbours regarding the business, and all were in support. One of the adjacent neighbours provided an online response in support of the business. The other adjacent neighbour to the west did not provide any feedback.

[16] He spoke to the Appellant regarding the appeal to clarify details of the approved permit.

[17] He does not have any employees in the winter and fall, and there will be no increased activity of the business from the previous permit.

[18] Storing the trailers at the subject Site makes it easier to operate the business, but they are stored off-site during the winter. Some trailers stored at the property are also for personal use, and he parks his vehicle in front of the house year round.

[19] In his view, the traffic generated by the trucks and trailers in the rear lane is less than that generated by the residents.

[20] Mr. Brown provided the following information in response to questions from the Board:

- a. The number of trailers used for the business changes depending on the season. They are all the same size. A maximum of seven trailers are stored on the garage pad. The trailers for personal use are stored along the back of the property. The numbers used for the business and for personal use varies.
- b. A commercial storage lot is not feasibly profitable and not even a year round option.
- c. Lawn equipment used for the business is hauled on the trailers. Items for the business such as power racks, trimmers, lawn mowers, and equipment related to the business are stored in the garage. It is not possible to store or stack the trailers in the garage given the other business equipment and materials in the garage. The trailers all fit on the rear driveway. Also, it would be much more difficult to load and unload the trailers if they were stored in the garage.

- d. The business operates in the Spring until the middle of May. After this time period, the trailers are stored off site.
- e. He has zero employees. The trailers are put into storage in the winter and are less impactful than the average home owner who may also hook up trailers for personal use. When the trailers are stored on the rear driveway, he parks on the front street which lessens traffic in the lane.
- f. He corresponded thoroughly with the Development Officer who was aware of all the relevant information and made the right decision in allowing the variance. In his opinion the Board should therefore follow the Development Officer's decision. Considering the seasonal nature of the business, a variance for outdoor storage is reasonable.
- g. The Presiding Officer asked the Respondent to review and comment on the conditions proposed by the Development Officer in his written report, which differ from those in the approved permit including the condition that the site shall not be used as a daily rendezvous for employees or business partners. The Respondent indicated that he would like to park a minimum of four trailers at the subject Site, continue with the bookkeeping aspect of the business, and continue to store equipment in the garage.
- h. He was not aware that the previous approved permit had expired as the City failed to inform him.

iv) Rebuttal of the Appellant, Mr. Gorman

- [21] He was not aware that a previous approved permit was expired.
- [22] He would like to see the Major Home Based Business revert back to the original permit that approved the storage of up to two trailers.

Decision

- [23] The appeal is ALLOWED and the decision of the Development Authority is REVOKED. The development is REFUSED.

Reasons for Decision

- [24] The proposed development is "To operate a Major Home Based Business (Administrative Office for Lawn Care Services – LAWN TECH INC). Expires June 27, 2024."

- [25] Major Home Based Business is a Discretionary Use in the RF1 Single Detached Residential Zone.
- [26] The proposed development was approved by the Development Officer subject to several conditions and with a variance to Section 75(5) to allow outdoor storage of up to four small trailers associated with the business on the rear driveway.
- [27] The approval was appealed by a neighbouring property owner who shares the use of the rear lane with the Respondent. His main concern was that the increased use of large trucks to pick up and drop off trailers in the rear lane (as a commercial muster point) impacts the safety for him and families, making the rear lane incompatible with the residential nature of the neighbourhood.
- [28] The Board considered the approved permit and notes the following:
- a) The Description of the Business states that the proposed development is an “Administration office for a Lawn Care Services, 1 employee, business related storage in rear detached garage and driveway up to 4 small trailers. Hours of operation Monday to Friday 9 am to 5 pm.”
 - b) The Permit Details indicate that there will be outdoor storage on the site.
 - c) The approval is subject to nine conditions. Eight conditions reference the definition of Minor Home Based Businesses in section 7.3(8) and development regulations that govern Minor Home Based Businesses in section 74 of the *Bylaw*. For example, condition 5 states: “There shall be no outdoor business activity, or outdoor storage of materials or equipment associated with the business allowed on the site. Indoor storage shall only be allowed inside the Dwelling (Section 74.4).”
 - d) The permit also indicates the following variance has been granted “Outdoor storage – Allow the storage of up to 4 small trailers associated with the business on the rear driveway (section 75.5).
- [29] Based on the submissions of the Respondent, and his written permit application, the Board finds that the Respondent is applying for:
- a. Use of the principal dwelling as an administrative office for his landscaping business;
 - b. Indoor storage of equipment and chemicals related to the business within the rear detached garage; and
 - c. Outdoor storage of up to four trailers on the rear Driveway which may be loaded, and hooked to F-150 trucks at the beginning of the business day and then unloaded and unhooked at the end of the business day.

[30] Major Home Based Business is a Use defined in section 7.3(7) of the Bylaw:

Major Home Based Business means development consisting of the Use of an approved Dwelling or Accessory building by a resident of that Dwelling for one or more businesses 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.

[31] This Use is subject to development regulations in section 75 of the Special Land Use Provisions, including section 75(5), which states:

[T]here shall be no outdoor business activity, or outdoor storage of material or equipment associated with the business. Indoor storage related to the business activity shall be allowed in either the Dwelling or Accessory buildings;

[32] In *Edmonton (City) v Edmonton (Subdivision and Development Appeal Board)*, 2017 ABAC 140, the Alberta Court of Appeal addressed the meaning of the Major Home Based Business Use class and the related regulations in section 75. According to the Court at paragraphs 8 to 10:

[8] The definition of the Major Home Based Business use class found in s. 7.3.7 of the *Zoning Bylaw* contains three central elements. First is the fundamental requirement that it involve “the use of an Approved Dwelling or Accessory building by a resident of that Dwelling for one or more businesses...”. Second, the business use must be secondary to the residential use of the building. Third, the business use must not change the residential character of the dwelling or accessory building.

[9] All elements of the Major Home Based Business definition refer to the use of the dwelling or accessory building, making it clear that that it is the building which must be used to conduct the business. As argued by the City, the Major Home Based Business use class does not capture, nor is it intended to capture, business uses that occur on the property outside an approved dwelling or accessory building.

[10] This interpretation is further reinforced by s. 75(5) of the *Zoning Bylaw*, which provides that there shall be no outdoor business activity or storage in relation to a Major Home Based Business. Although this prohibition on outdoor business activity and storage is a regulation, and regulations can be varied by the Board, a variance is only available in certain circumstances

including that “the proposed development conforms with the use prescribed for that land or building in the land use bylaw”: *Municipal Government Act*, s. 687(3)(d)(ii). Outdoor business activity does not conform with the criteria of the Major Home Based Business use class. [Emphasis as per original]

- [33] The Board is bound by this decision. The development permit application includes outdoor storage, albeit seasonal, to accommodate four small trailers associated with the business on the rear driveway. The Respondent indicated it is impossible to store the trailers within the garage on Site. Therefore, the Board finds that the proposed development does not fit in the parameters of the Major Home Based Business Use class and must be refused following the Court of Appeal ruling. While this Board has authority under section 687(3)(d) of the Act to vary development regulations, it cannot vary Use Classes.
- [34] Finally, the Board notes that the Respondent and Appellant both referred to the existence of a prior Home Based Business permit which permitted outdoor trailer storage for two trailers. This development permit was not in evidence before the Board and based on the Respondent’s submissions it has expired. In any event, the Board is bound in this appeal by the intervening 2017 Alberta Court of Appeal decision as noted above.



Ms. K. Cherniawsky, Presiding Officer
Subdivision and Development Appeal Board

Board Members in Attendance:

Mr. W. Tuttle; Ms. D. Kronewitt Martin; Mr. A. Nagy; Mr. J. Wall

CC: City of Edmonton, Development & Zoning Services, Attn: Mr. J. Folkman / Mr. Wen

Important Information for the Applicant/Appellant

1. This decision may be appealed to the Alberta Court of Appeal on a question of law or jurisdiction under Section 688 of the *Municipal Government Act*, RSA 2000, c M-26. If the Subdivision and Development Appeal Board is served with notice of an application for leave to appeal its decision, such notice shall operate to suspend the Development Permit.
2. When a decision on a Development Permit application has been rendered by the Subdivision and Development Appeal Board, the enforcement of that decision is carried out by 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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SDAB-S-19-005

Application No. 301232305-001; LDA19-0017

An appeal to create two (2) additional single detached residential lots was **TABLED TO SEPTEMBER 4, 2019.**