



**EDMONTON
TRIBUNALS**

*Subdivision &
Development
Appeal Board*

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Project Number: 252325505-001
File Number: SDAB-D-17-146

Notice of Decision

- [1] On August 16, 2017, the Subdivision and Development Appeal Board heard an appeal that was filed on **July 21, 2017**. The appeal concerned the decision of the Development Authority, issued on July 21, 2017 to refuse the following development:

Operate a Major Home Based Business (Ordersunshine Music & Art Studio).

- [2] The subject property is on Plan 1323984 Blk 10 Lot 29, located at 2619 - Wheaton Close NW, within the (RSL) Residential Small Lot Zone. The Windermere Area Structure Plan and Windermere Neighbourhood Structure Plan apply to the subject property.
- [3] The following documents were received prior to the hearing and form part of the record:
- A copy of the Development Permit application with attachments and the refused Development Permit;
 - The Development Officer's written submission;
 - The Appellant's written submissions, PowerPoint presentation, and community consultation; and
 - On-line responses from three properties 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.

Summary of Hearing*i) Position of the Appellant, Ms. C. Yang*

- [7] Ms. Yang referenced her PowerPoint presentation, which included photographs of Wheaton Close NW and the basement of the residence, the proposed Music and Art Studio.
- [8] She has revised her development application to mitigate any parking, traffic, and noise concerns.
- [9] The proposed development will provide private and group piano, voice, and painting classes with up to three to four students per class. The weekend business hours from September 2017 to May 2018 will be between 10:00 a.m. to 12:00 p.m. and 1:30 p.m. to 3:30 p.m. on Saturday and between 10:00 a.m. to 12:00 p.m. on Sunday.
- [10] For the piano group class there will be three to four vehicles dropping off and picking up students and the teacher will not have a vehicle. There are two driveway spaces and one-to-two public spaces in front of the subject Dwelling.
- [11] For the painting group class there will be three to four vehicles dropping off and picking up students and there will be one car used by the teacher. There are two driveway spaces and two-to-three public spaces in front of the subject Dwelling.
- [12] All of the students attending the classes will be dropped off. Her husband is able to pick up students in the Windermere area on the weekends, if needed.
- [13] All classes will be held in the basement studio and classes will not be held outdoors. She will provide parents with parking and safety rules. All of the windows are decorated to prevent neighbours from seeing into the house.
- [14] She spoke to neighbouring property owners regarding the changes of the Major Home Based Business and she received support from 11 neighbouring property owners. Some of the neighbours indicated that parents could use their driveways to drop off and pick up students as needed.
- [15] With regard to noise, she stated that she did two tests with the doors and windows closed and sound could not be heard outside. The only instrument that will be electrical is the electric piano but the volume can be adjusted.
- [16] Operating the business from her home will provide a financial benefit. Operating her business will enhance her career and will promote education and multiculturalism in Canada. Her business will provide one to two positions for the labour market.
- [17] Ms. Yang provided the following with respect to questions from the Board:

- a. From Monday to Friday there will be (two) one-on-one piano lessons from 6:00 p.m. to 7:30 p.m. each evening.
- b. The signatures of support from the neighbours were based on the original application of classes with a maximum of 8 to 10 students.
- c. Some of the students will be walking to the subject Dwelling.
- d. She agreed that there will be more vehicles parking in the area on the weekends. However, classes will not take place on holidays or long weekends.
- e. The photographs she submitted were taken between 4:00 p.m. and 5:00 p.m. during the week, not on the weekend.
- f. She cannot afford to start her business in a commercial area but if the business does well and the clientele demand increases, she will move the business to a commercial area.
- g. She is agreeable to the conditions suggested by the Development Officer and a permit with a one year expiry.
- h. She referred to a map of the area to show how she will instruct parents to drop off and pick up their children from the subject Dwelling.
- i. She confirmed that she is the sole teacher for the one-on-one piano lessons held Monday to Friday from 6:00 p.m. to 7:30 p.m. There will be a maximum of two students in that time period and the students will not overlap.

She will be teaching two piano sessions on the weekend with a maximum of four students. After the Saturday morning piano lessons, there will be a Saturday painting class with a maximum of four students with one instructor and she will be assisting. There will be one vocal lesson on Sundays with a maximum of four students with one instructor and she will be assisting. The vocal teacher does not drive.

ii) Position of the Development Officer, Mr. C. Lee, who was accompanied by Mr. B. Murphy and Ms. A. Dechamplain, City of Edmonton, Parking Services

[18] Mr. Lee stated that the refusal was based on the original application and not the revised information provided by the Appellant. He confirmed that his written submission and his suggested conditions if the development is approved were also based on the original application.

- [19] Mr. Lee and Mr. Murphy provided the following with respect to questions from the Board:
- a. Mr. Lee confirmed that a variance in parking is not required.
 - b. Based on the revised proposal and the new conditions, he would allow the proposed Major Home Based Business. However, he would have still consulted with Parking Services as there is still opposition from neighbours.
 - c. Mr. Murphy stated that the business is located in a cul-de-sac and vehicles tend to park around the middle area of the island. The City installs “no parking” signs in some areas.
 - d. In his opinion, the proposed business will not negatively affect the neighbours in the cul-de-sac. The average home takes at least four trips per day and the impact of the proposed business would not increase the traffic intensity beyond the normal traffic flow of the neighbourhood.

iii) Position of the affected property owners in opposition, Ms. W. Hu and Mr. D. Li

- [20] They reviewed the website of the proposed Major Home Base Business and stated that the website indicates there will be ten students per class. Children play in the middle area of the cul-de-sac and they are concerned about the safety of their children with the additional traffic.
- [21] They are concerned that any conditions imposed on an approved permit will not be enforced.
- [22] In their opinion, hardwood floors in the basement will not reduce the noise of the instruments.
- [23] In their opinion, a Major Home Based Business will generate additional traffic in the area. It would be more suitable if students were picked up.
- [24] Ms. Hu and Mr. Li provided the following with respect to questions from the Board:
- a. The conditions imposed by the Board may ease their concerns; however, that would depend on the size of classes and the resulting traffic in the cul-de-sac.
 - b. Several vehicles park around the middle area of the cul-de-sac on the weekends.
- [25] The Presiding Officer indicated that the website may pertain to the off-site commercial business as the Appellant operates classes at another site. Any conditions imposed by the Board will only apply to the Major Home Based Business.

iv) Rebuttal of the Appellant, Ms. C. Yang

- [26] The website schedule is only to promote the type of classes available. There is no registration accepted until a permit is issued.
- [27] Her business will be honest and they will comply with conditions imposed by the Board.
- [28] Her presentation with the revised business proposal is based on the worst case scenario.
- [29] It is everyone's responsibility to make their neighbourhood a nice, quiet, and vibrant neighbourhood. She reiterated that her business will be responsible.

Decision

- [30] The Appeal is **ALLOWED** and the decision of the Development Authority is **REVOKED**. The development is **GRANTED**, subject to the following **CONDITIONS**:
1. The development is approved for a period of five years and will expire on **August 24, 2022**.
 2. From Monday to Friday, the hours of operation shall be between 6:00 p.m. to 7:30 p.m. with a maximum of two clients (students) in that time period. From Monday to Friday, the only employee (teacher) shall be the Applicant.
 3. Saturdays and Sundays, the hours of operation shall be between 10:00 a.m. to 12:00 p.m. and 1:30 p.m. to 3:30 p.m. with a maximum of four students between each time interval as listed above. One additional employee (teacher) is allowed Saturday and one additional employee (teacher) is allowed Sunday.
 4. There shall be no mechanical or electrical equipment used that creates external noise, or visible and audible interference with home electronics equipment in adjacent Dwellings.
 5. The Board has accepted and imposed the following conditions recommended by the Development Authority:
 6. There shall be no exterior display or advertisement other than an identification plaque or Sign a maximum of 20 cm x 30.5 cm in size located on the Dwelling.
 7. Client visits must be by appointment only and appointments shall not overlap with each other.

8. A Major Home Based Business shall not be allowed within the same principal Dwelling containing a Secondary Suite or within the same Site containing a Garage Suite or a Garden Suite and an associated principal Dwelling, unless the Home Based Business is a Bed and Breakfast Operation and the Secondary Suite or the Garage Suite or the Garden Suite is an integral part of the Bed and Breakfast Operation.
9. There 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.

Reasons for Decision

- [31] The proposed development, a Major Home Based Business, is a Discretionary Use in the (RSL) Residential Small Lot Zone.
- [32] The Board was presented with a revised business operation schedule by the Appellant that reduced the intensity of the proposed development compared to the original application.
- [33] The Board accepts the Development Authority's conclusions at the hearing that based on the revised business operating schedule; the proposed development is no longer deemed to be a Commercial School Use and is now considered to be a low impact Major Home Based Business.
- [34] With respect to the two reasons of refusal in the original permit decision, the Board accepts the conclusions of the Development Authority that the proposed development now completely complies with section 75 and meets the minimum parking requirements of the *Edmonton Zoning Bylaw*.
- [35] The Board notes that a City official with Parking Services upon learning about the revised business operation schedule, concluded that the proposed development would not increase the traffic intensity beyond the normal traffic flow of the neighbourhood.
- [36] The Alberta Court of Appeal has recently provided direction to the Board on what three elements must be satisfied when considering a Major Home Based Business:

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.

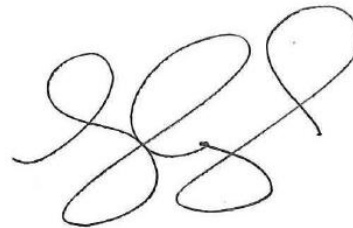
(Edmonton (City) v Edmonton (Subdivision and Development Appeal Board), 2017 ABCA 140 at paragraph 8.

[37] The Board determined that the three elements identified by the Court of Appeal are satisfied in this case :

1. The principal Dwelling is occupied by the resident of the Major Home Based Business.
2. The Major Home Based Business is secondary to the residential Use.
 - a. The majority of the space in the Dwelling is being used for a residential Use and approximately half of the basement is used as a Music and Art Studio.
 - b. The Dwelling will be used for the business for a total of 7.5 hours, Monday to Friday and a total of 8 hours, Saturday to Sunday.
3. The Major Home Based Business must not change the character of the Dwelling.
 - a. The Board considered the vehicular traffic impact on the neighbourhood and specifically the cul-de-sac of Wheaton Close NW. The Board accepts the opinion of Parking Services that traffic concerns are mitigated as the proposed development will not intensify the normal traffic flow Wheaton Close NW and the surrounding roadways.
 - b. There will be no outdoor storage related to the proposed development.

[38] With respect to the neighbours who appeared in opposition, the Board heard there were traffic safety concerns from the vehicles of clients and employees accessing and egressing the subject Dwelling. However, the Board accepts the opinion of Parking Services that they did not have safety concerns and accepts that the vehicles related to the proposed development are within the normal traffic patterns of the neighbourhood.

- [39] The Board notes that there is support for the proposed development from the Greater Windermere Community League as well as several neighbours including the most affected neighbours immediately adjacent to the subject Dwelling.
- [40] The Board accepts the evidence by the Appellant that she had sufficiently dealt with any noise concerns and this was further confirmed with the acceptance and support of the neighbours most affected.
- [41] Accordingly, the Board concludes that the proposed development to allow a Discretionary Use with the attached conditions is reasonably compatible with the neighbourhood.

A handwritten signature in black ink, consisting of several loops and a long horizontal stroke, positioned above the printed name.

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

Important Information for the Applicant/Appellant

1. This is not a Business Licence. A Business Licence 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.

SDAB-D-17-136

Application No. 237601282-001

An appeal by Admax Media to demolish an existing Freestanding Off-premises Sign (Existing without Permit) & install a Freestanding Minor Digital Off-premises Sign (Single sided facing SE), located at 8715 – 109 Street NW, was tabled to September 20, 2017.